



# **Suicide and Self-harm in the Immigration Detention Network**

**May 2013**

Report by the Commonwealth and Immigration Ombudsman,  
Colin Neave, under the *Ombudsman Act 1976*

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# KEY FINDINGS AND RECOMMENDATIONS

## Key findings

Australia's immigration detention network has been subject to numerous reviews in recent years. This was due to the unprecedented strain on the network arising from increased Irregular Maritime Arrivals and the subsequent unrest and increase in suicide and self-harm incidents in 2010 and 2011. The Department of Immigration and Citizenship (the department) and its service providers have undertaken, and are continuing to undertake, significant work to address the problems that these reviews have highlighted.

We recognise that this investigation started during a particularly difficult period due to the immigration detention policies in place and the significant increase in Irregular Maritime Arrivals. The large numbers of people seeking asylum also led to significant delays in processing of claims and in subsequent merits and judicial reviews sought by individuals. In 2010, the Australian Government suspended processing of asylum claims by people from Sri Lanka and Afghanistan for three and six months respectively. In 2011, the Malaysia Solution was announced by the Australian Government and subsequently invalidated by the High Court. There was a large number of people in detention and many remained detained for long periods while awaiting finalisation of their asylum claims and substantive visas to be granted.

During this period, the department and its service providers were required to manage day-to-day operations under significant strain, while simultaneously responding to changes in Australian Government policy, increase the available infrastructure and recruit and train large numbers of staff. We recognise that establishing appropriate processes and functions to support detention operations in these circumstances was difficult.

The department necessarily had a strong focus on day-to-day logistics and the operational challenges that it was dealing with. In our view however, under this pressure, the department may not have fully appreciated some of the lessons gained from the experience of self-harm in immigration detention in the early 2000s. Issues around infrastructure and service provision – such as the adverse impact of overcrowded and/or remote facilities, and limited meaningful activities on the mental health of those in immigration detention facilities – were not fully addressed. In saying this, we also acknowledge that the department was obliged to respond within the constraints imposed by the law, the Australian Government's immigration policies, and capital funding decisions relating to infrastructure.

We note and welcome the considerable efforts that the department has made over the last 18 months to address many of the issues that were apparent in the early part of this investigation. As a result of multiple internal and external reviews, the relevant policies and procedures have been reviewed, realigned and more strongly implemented. Important developments include the efforts to strengthen the Psychological Support Program and the new Programs and Activities Framework.

Overall, we believe the department is now in a stronger position in terms of its capacity to manage the immigration detention network and associated risks and issues. However, this investigation has found scope for further improvement, and also identified lessons that can be learned from challenges of the recent past.

The department's self-harm data indicates that the incidence of self-harm increased rapidly from early 2011, with recorded incidents peaking around September 2011, before dropping away later that year and then remaining relatively low from around May 2012. The data

shows that the increased incidence of self-harm during 2011 was not simply a function of the number of people in detention having increased, but reflected an increased rate of self-harm by detainees. There is a strong correlation between the rise in the average time in detention and the increase in self-harming behaviour during 2011. We acknowledge that this was during a period when Irregular Maritime Arrivals were not, as a matter of government policy, entitled to be released from detention on bridging visas while their claims were still being processed.

Australian and international evidence supports the conclusion that immigration detention in a closed environment for a period of longer than six months has a significant, negative impact on a detainee's mental health. The data shows that a steady increase in the average length of detention, as well as the rapid rise in the numbers of people in detention, was a precursor to the peak in the rate of self-harm in 2011.

The Australian Government's policy decision in October 2011 to allow bridging visas to be granted to people while their asylum claims are being processed, and the expansion of the community detention program, have significantly decreased the period of time most people spend in immigration detention facilities. The implementation of this policy effectively broke the link between processing of claims for Irregular Maritime Arrivals and the time spent in immigration detention. In this context, the number of incidents and rate of self-harm have also decreased significantly. However, challenges remain due to the continued high number of arrivals and, for some people, protracted case resolution and/or security concerns leading to continued long-term forms of closed detention.

Between 1 July 2010 and 24 April 2013, there were 11 deaths in immigration detention. Coronial inquiries found four of these to be suicide and two to be due to natural causes. The coronial inquiries into the remaining four deaths are not yet finalised. The most recent death, in April 2013, was under police investigation at the time of writing.

The investigation identified many factors that may contribute to the risk of self-harming behaviour including:

- the personal experience of many detainees, such as a history of past torture and/or trauma, widespread fears for the wellbeing of family and dependants left behind, and social isolation and loneliness – particularly for those with poor English skills
- aspects of the closed detention environment itself, including lack of autonomy and disempowerment, limited privacy, and varied and meaningful activities being limited or not accessed by detainees
- the impact of facilities that are overcrowded and/or located in remote areas
- the possible operation of a 'contagion' effect within detention facilities, particularly among detainees who identify strongly with, and cannot physically dissociate themselves from, other detainees who self-harm
- delays in processing refugee claims (at times due to lengthy merits and judicial review initiated by the detainee), a lack of understanding of and perceived unfairness in claims and security assessment processes and decisions, and associated feelings of uncertainty about the future.

The investigation found that, as a result of major reforms in the period after the reports on the Rau and Alvarez cases, the department had constructed a comprehensive contractual and policy framework to manage mental and physical health in immigration detention. However, under the significant pressure of the surge in Irregular Maritime Arrivals from late



2009, and the impact of immigration policy changes and High Court decisions, the department did not adequately support and implement these policies.

In our view, some gaps in the policy framework remain. Several aspects of the Detention Health Framework relevant to the management and care of detainees engaging in or at risk of suicide and self-harming behaviours remain outstanding, more than five years after the framework was initiated. We have been advised that these policies are close to completion. Additionally, the department does not, as a matter of course, undertake internal reviews into the circumstances surrounding deaths or serious self-harm incidents in immigration detention, instead relying on coronial inquiries to identify issues for improvement highlighted by the specific incident.

Particular problems in implementing the department's Detention Health Framework have included:

- the department has been slow to respond to problems identified with the framework by stakeholders and external scrutiny bodies
- the external accreditation of health services in detention facilities has been delayed and is incomplete
- significant delays occurred in the roll-out of the Psychological Support Program for the Prevention of Self-Harm for People in Immigration Detention, there has been insufficient training of staff, and there were delays in clarification of key policies at an operational level
- the department was slow to clarify and resolve concerns about the perceived tension between medical confidentiality and the need for appropriate sharing of critical detainee information.

Integrated implementation of the policy framework has been a weakness, but the department has undertaken significant work over the past year to improve this. For example, there was a lack of integration between the department's Psychological Support Program and Serco's (the detention service provider's) Keep SAFE procedures. The department has worked collaboratively with its service providers to improve implementation of policies to support people in detention and address gaps in staff training. The department has advised it is currently revising its governance arrangements to ensure better integration with, and implementation of, the department's policies by its service providers.

The investigation found limitations in the data the department and its service providers maintained in relation to self-harm. This limited our ability to draw conclusions about the reasons for self-harm, and in our view, constrains the department's ability to effectively manage and respond to the risks of suicide and self-harm.

Our concern about the data is two-fold. First, we found the incident reporting framework has been inadequate. A new framework was implemented in March 2013 which may remove some ambiguity and improve consistency. Secondly, we are not assured that the department has the systems in place to collect the breadth of data to enable it to understand the nature of self-harming behaviour, nor the demographics or history of the people who are self-harming. In May 2012, the department started monthly trend analysis of self-harm incidents. While we believe this is a step in the right direction, we note that this report only provides a broad overview of self-harm incidents and does not enable more detailed analysis.

The department has recently advised that it has significantly invested in improving systems to establish a more comprehensive dataset from which it now reports. The department advised that this dataset links detention, processing and incident reporting datasets to enable multi-factor analysis on potential reasons for self-harm. We welcome this as a

positive development but are unable to comment further as we have not had the opportunity to review any outputs from this dataset.

The department was unable to provide us with comprehensive data on the cohorts of people who have been in immigration detention for more than one year. While we appreciate that its case management model is designed to ensure that individual cases are regularly reviewed to ensure immigration status resolution is progressing, and that detention arrangements are appropriate, we believe this gap may reduce the department's capacity to develop appropriate policy responses for managing protracted caseloads. We encourage the department to develop policies and placement options specifically for those detainees facing long-term and potentially indefinite detention.

From a governance perspective, the department and its service providers have developed a detailed set of contracts, policies and procedures relating to the provision of services to, and care for, people in immigration detention. This framework properly recognises that the department and its service providers have an overriding duty of care to detainees, and commits them to work together to deliver the required services and care. We do not believe that the department had a sufficiently robust governance framework in place at the time that there was a significant increase in the number of suicides and self-harm incidents, and increased risks to detainees due to the surge in the numbers of people detained and the increase in the average length of detention. Such a framework was needed to work with the detention providers to proactively identify issues as they arose and to strategically respond to the emerging risks.

We believe the department needs to further consider the data and governance arrangements that it needs to effectively manage the risk of suicide and self-harm. The department needs to assure itself that the service providers are delivering services consistent with the contract, including providing appropriate clinical response to suicide and self-harming behaviours. We are concerned that there may not be adequate data collection or evaluation systems in place for this purpose. In addition, the department could work more closely with its service providers to implement elements of the contracts – particularly the duty of care, code of conduct and cultural aspects.

In our view, the department could have been more responsive to environmental intelligence about the increased risk and incidence of self-harm in the immigration detention network during 2010 and 2011, such as the concerns raised by stakeholders, including this office, the Australian Human Rights Commission and the Detention Health Advisory Group, relating to the operational challenges and escalating self-harm.

The department's more recent work towards strengthened governance of the immigration detention network is positive. The success of this work will in part depend on the capacity of departmental and service provider staff to integrate its concepts into day-to-day business, while responding to the operational demands of managing the immigration detention network.

In our view, there is value in the department regularly looking at the framework as a whole, in addition to having a focus on continuous improvement of policies and processes. The department has demonstrated its responsiveness to the significant level of external scrutiny since this investigation was initiated. However, we have observed through this investigation that while reviews are being undertaken, not all recommendations are being fully implemented or responded to. In some cases, work has commenced but not been completed or has been significantly delayed. Effective management and evaluation of the policy framework and its implementation needs to be accompanied by appropriate data collection mechanisms to enable evaluation and good governance.

## Recommendations

1. The Ombudsman recommends that the Department of Immigration and Citizenship (the department) continues to review and improve its data collection and management reporting so that the physical and mental health of people held in immigration detention can be measured and monitored to enable effective management and response to the risk of suicide and self-harm. Consideration should be given to:
  - a. promoting a clear shared understanding of self-harm incidents by ensuring categories for reporting are appropriate and revised in consultation with independent health and mental health experts
  - b. embedding standard data collection into service provider contracts and shared systems, and ensuring relevant staff are appropriately trained
  - c. ensuring consistency and accuracy of data extraction for analysis and reporting
  - d. developing an integrated health dataset using a standard methodology, consistent with mechanisms used in mainstream health services in the Australian community and in consultation with the Immigration Health Advisory Group and bodies with appropriate expertise, such as the Australian Institute of Health and Welfare.
2. The Ombudsman recommends that the department continues to review and improve policies and governance frameworks for managing the risk of suicide and self-harm. Consideration should be given to:
  - a. ensuring policies are integrated and implemented consistently across the immigration detention network, and regular management-initiated reviews are undertaken to ensure there is ongoing evaluation of the policy, implementation and governance frameworks
  - b. developing a set of management reports that can be used by the department to review the operation of policies to identify and support people at risk
  - c. ensuring there are appropriate internal mechanisms for the reporting, escalation and response to self-harm risks and incidents, which encourage departmental and service provider management and staff to take an integrated approach to: robustly managing contractual requirements of service providers; proactively addressing risk factors to minimise incidents occurring; undertaking systemic analysis of incidents; having clear accountability for response to incidents; and developing strategic and operational policy responses.
3. The Ombudsman recommends that the department continues to review and improve processes in the status resolution and placement of people in immigration detention, particularly for those people detained for long periods. The Ombudsman acknowledges that the department's administrative actions need to be considered in the context of government policy and the non-compellable and non-delegable ministerial powers under the *Migration Act 1958*. Notwithstanding this, consideration should be given to:
  - a. prioritising the processing of cases of those detainees who have been detained for the longest period
  - b. providing timely advice to the Minister for Immigration and Citizenship (the minister) on the exercise of discretionary powers in relation to individual cases, with a focus on moving long-term detainees out of immigration detention facilities where possible
  - c. clarifying the 'no advantage' policy in relation to the processing of claims, including the statutory requirement to process protection claims within 90 days (ss 65A and 414A of the Migration Act).

4. The Ombudsman recommends that the department prioritises developing a policy framework and process for managing protracted caseloads in immigration detention – refugees with adverse security assessments, character cancellation cases and those who cannot be returned to their country of origin – to help reduce the long-term detention of these detainees, particularly in immigration detention facilities. The Ombudsman acknowledges that the department’s administrative actions need to be considered in the context of government policy and the non-compellable and non-delegable ministerial powers under the Migration Act. Notwithstanding this, consideration should be given to:
  - a. regular compilation and management reporting of data on the cohorts of people in long-term detention
  - b. working with relevant agencies to develop options for government consideration to reconcile the management of any security threat with the department’s duty of care to immigration detainees by considering risk levels and alternatives to closed detention for managing risks, such as regular reporting and monitoring
  - c. ensuring there is a process in place to respond to the review of adverse security assessment cases, so that any reconsideration of the security assessment that impacts on the detention placement or visa status of those detainees who have previously received an adverse security assessment, is managed expeditiously.
5. The Ombudsman recommends that the department, in consultation with its service providers, immediately and systematically reviews the circumstances of all future deaths and serious incidents of self-harm in immigration detention to determine if there are policies, processes or practices that need to be revised or addressed to prevent future occurrences. This review process would be separate to any coronial process.
6. The Ombudsman recommends that deaths in immigration detention should be included in the National Deaths in Custody Program of the Australian Institute of Criminology (AIC), noting that the department is having discussions with the AIC on this issue.
7. The Ombudsman recommends that the department continues to review and improve health and mental health standards in accordance with state, territory and national standards. Detention health standards should cover the range of services provided under the *Health Services Contract* in all locations of immigration detention. Contractual arrangements should ensure that standards are adhered to and reported on.
8. The Ombudsman recommends that the department continues to review and improve information delivery and engagement with people in immigration detention. Consideration should be given to providing these people with:
  - a. translated information explaining the protection visa process including merit and judicial review, processes and factors which are considered in referrals for community detention placements, processes and factors which are considered in referrals for grant of a bridging visa, and the role of the department’s case managers
  - b. key elements of significant decision letters in a language that the detainee can reasonably be expected to understand within the timeframes required for the detainee to pursue review mechanisms.
9. The Ombudsman recommends that the department and its service providers review the findings and recommendations contained in this report and consider their applicability to the offshore processing system. It is acknowledged that people transferred to Regional Processing Centres are not in immigration detention, however the Commonwealth retains some obligation to them in relation to the services and arrangements that they are directly responsible for delivering.

## PART 1—INTRODUCTION

1.1 In July 2011, the then Commonwealth and Immigration Ombudsman announced an own motion investigation to examine the incidence and nature of suicide and self-harm in Australia's immigration detention network. The investigation was prompted by an escalation in self-harm incidents and significant concerns about the mental health and wellbeing of detainees arising from this office's inspections of the immigration detention facilities at Curtin, Leonora and Christmas Island during 2011.<sup>1</sup>

1.2 This investigation and report has been undertaken over the course of nearly two years. Some issues that were significant at the outset of the investigation have been addressed, diminished in importance or overtaken by policy changes. We describe the detention services network and policy framework around the time of the peak in self-harming behaviour in mid-2011, and reflect on the current situation, the improvements that have been made by the Department of Immigration and Citizenship (the department) and its service providers, and identify the areas where we think that scope for further improvement remains. We have included current time series data but also highlighted data relating to the specific period in time when self-harm incidents were high, and this investigation was initiated.

1.3 This report was not intended to, and does not, explore issues relating to the re-establishment of Regional Processing Centres in Nauru and Manus Island in Papua New Guinea in 2012. However, the Ombudsman recommends that the department and its service providers review the findings and recommendations contained in this report and consider their applicability to the offshore processing system. The Commonwealth retains some obligation to these people in relation to the services and arrangements that they are directly responsible for delivering, despite people transferred to Regional Processing Centres not being in immigration detention.

### Terms of Reference

1.4 The Terms of Reference announced in July 2011 were to:

- 1) Examine the incidence and nature of suicide and self-harm in the immigration detention network.
- 2) Identify the factors contributing to suicide and self-harm including:
  - demographic information including gender, age, country of origin, urban/rural background, language, and length of time in detention of people who participate in suicidal or self-harming behaviours
  - potential determinants of this behaviour, including pre-existence of mental illnesses
  - catalysts for suicidal ideation and self-harming behaviours, for example denial of visa applications, detention overcrowding, uncertainty about the future
  - contagion issues and the impact of attempted or completed suicides and incidents of self-harm on other detainees.
- 3) Evaluate the practices, policies and procedures of the Department of Immigration and Citizenship (the department) and its contracted service providers in relation to:

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<sup>1</sup> Commonwealth Ombudsman, *Inquiry to examine suicide and self-harm in immigration detention*, Media release, 29 July 2011, <http://www.ombudsman.gov.au/media-releases/show/189> (viewed 21 November 2012).

- prevention, intervention and postvention initiatives including access to counselling and other health services
- adequacy of detention facility guidelines and protocols
- the availability of appropriately qualified and professionally trained staff
- the nature and different types of immigration detention facilities, access to means to self-harm or suicide, physical environments, risk assessments and mitigation strategies/measures.

1.5 While we have attempted in this investigation to fulfil the original terms of reference, it has not been possible to explore all these issues in the detail originally envisaged. In particular, we have not been able to properly address the first two terms of reference because of the limitations in the department's data on self-harm in immigration detention. We have also broadened the scope of the original investigation to include community detention and incorporated reference in the report to the re-opening of regional processing centres.

## **Methodology**

1.6 We received a broad range of information from the department and its main detention service providers, Serco, International Health and Medical Services (IHMS) and the Australian Red Cross, including:

- data on the incidence and nature of suicide and self-harm
- copies of key policies and procedures relating to case management, detainee placement decisions, health and welfare including management of suicide and self-harm and critical incident management.

1.7 The investigation drew on information obtained and observations made during our visits to immigration detention facilities that incorporated meetings with staff,<sup>2</sup> interpreters and detainees including at:

- Villawood Immigration Detention Centre
- Northern Immigration Detention Centre
- Curtin Immigration Detention Centre.

1.8 While we did not have a formal public submission process, submissions were received from members of the community including advocates, academics, refugee lobby groups and former detention centre medical staff.

1.9 Aspects of the investigation were discussed with:

- Prof Diego De Leo, Director of the Australian Institute for Suicide Research and Prevention
- Prof Nicholas Procter, Minister's Council on Asylum Seekers and Detention
- Prof Louise Newman, former Chair of the Detention Health Advisory Group (now the Immigration Health Advisory Group)
- Dr Ida Kaplan, Foundation House
- Mr Greg Kelly, former First Assistant Secretary, Detention Operations, Department of Immigration and Citizenship.

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<sup>2</sup> Detention staff includes staff from the Department of Immigration and Citizenship and its contracted service providers, Serco Australia Pty Ltd (Serco) and International Health and Medical Services (IHMS).

1.10 We also consulted with a range of key stakeholders. These consultations included:

- multiple meetings with the department, Serco and IHMS
- meetings with:
  - the Detention Health Advisory Group
  - Forum of Australian Services for Survivors of Torture and Trauma
  - the Australian Red Cross
  - the Minister's Council on Asylum Seekers and Detention
  - the Mental Health Council of Australia
  - Suicide Prevention Australia
  - the New South Wales State Coroner, who in 2011 conducted a coronial inquest into the deaths at Villawood Immigration Detention Centre in 2010<sup>3</sup>
- meetings in Darwin, Sydney and Melbourne with:
  - refugee advocacy groups
  - counselling service providers
  - legal service providers
  - pastoral care providers
  - community cultural representatives
  - non-government organisations.

1.11 Australia's immigration detention network has been the subject of considerable scrutiny in recent years, and where relevant we have drawn on the analysis and recommendations of other recent reports, including the:

- Hawke and Williams August 2011 Independent Review of the Incidents at the Christmas Island Immigration Detention Centre and Villawood Immigration Detention Centre<sup>4</sup> (Hawke and Williams Review)
- Comcare July 2011 report, Investigation Report on National Detention Facilities<sup>5</sup>
- NSW Coroner's December 2011 report into deaths at Villawood in 2010<sup>6</sup>
- March 2012 report of the Joint Select Committee on Australia's Immigration Detention Network (Joint Select Committee Report)<sup>7</sup>

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<sup>3</sup> Magistrate M Jerram, NSW State Coroner, *Findings in the inquests into the deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi, David Saunders at Villawood Detention Centre, NSW, in 2010*, 19 December 2011, [http://www.coroners.lawlink.nsw.gov.au/agdbasev7wr/\\_assets/coroners/m401601l3/05\\_villawoodfindings-redacted.pdf](http://www.coroners.lawlink.nsw.gov.au/agdbasev7wr/_assets/coroners/m401601l3/05_villawoodfindings-redacted.pdf) (viewed 11 November 2012).

<sup>4</sup> Dr Allan Hawke AO and Ms Helen Williams AM, *Independent Review of the Incidents at the Christmas Island Immigration Detention Centre and Villawood Immigration Detention Centre*, 31 August 2011, <http://www.immi.gov.au/media/publications/pdf/2011/independent-review-incident-christmas-island-villawood-full.pdf> (viewed 11 November 2012).

<sup>5</sup> Comcare, *Investigation Report on National Detention Facilities*, July 2011, released in August 2011 under the Freedom of Information Act 1982, [http://www.comcare.gov.au/\\_data/assets/pdf\\_file/0008/95984/A\\_copy\\_of\\_the\\_Investigation\\_Report\\_on\\_National\\_Detention\\_Facilities.pdf](http://www.comcare.gov.au/_data/assets/pdf_file/0008/95984/A_copy_of_the_Investigation_Report_on_National_Detention_Facilities.pdf) (viewed 24 November 2012).

<sup>6</sup> Magistrate M Jerram, NSW State Coroner, *Findings in the inquests into the deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi, David Saunders at Villawood Detention Centre, NSW, in 2010*, *op cit*.

- Australian National Audit Office (ANAO) February 2013 report, *Individual Management Services Provided to People in Immigration Detention*.<sup>8</sup>

1.12 We also drew on previous Ombudsman reports on immigration detention, complaints to this office and our own detention review reports and post-visit inspection reports.

## The structure of this report

1.13 **Part 1** of the report outlines the terms of reference and methodology for the investigation, and provides a brief summary of each part of the report.

1.14 **Part 2** provides an overview of the domestic and international context in which the discussion of immigration detention in Australia, particularly of asylum seekers, takes place.

1.15 **Part 3** examines the legal and policy framework underpinning immigration detention. This Part outlines the variety of accommodation options within the definition of ‘immigration detention’ in the *Migration Act 1958* (the Migration Act). It explores the recent legislative and policy history of the detention of unlawful non-citizens in Australia, including people who arrive in Australia without a valid visa, particularly Irregular Maritime Arrivals seeking asylum, people refused entry at Australia’s international airports, people who have overstayed their visa, and people who have had their visa cancelled.

1.16 As Australia’s immigration detention network has been under significant pressure in recent years largely due to a surge in Irregular Maritime Arrivals, we have also explored the recent history of the legal and policy framework for assessing the protection claims of asylum seekers.

1.17 **Part 4** of the report explores the Commonwealth’s duty of care to people held in immigration detention. The department, acting for the Commonwealth, has a very high level of control over detainees. It uses its coercive powers to hold detainees against their will, determines the conditions and length of time of their detention, and is responsible for providing their needs. It is not enough for the department to avoid acting in ways that directly cause harm to detainees; it also has a positive duty to act to prevent harm from occurring.

1.18 We note that the Commonwealth’s duty of care is not diminished by the use of contracted service providers because its duty of care is legally ‘non-delegable’. The Commonwealth remains ultimately responsible for the care of each and every detainee and must ensure that its service providers actually provide the required level of care.

1.19 This part also notes that the department does not have control over all the factors that may impact on the length of detention and conditions of detention as it is constrained by the parameters of immigration policy and capital funding decisions relating infrastructure.

1.20 **Part 5** of the report explores the immigration detention network administered by the department and its service providers. In response to the recent surge of Irregular Maritime Arrivals, the network has expanded significantly in the last three years. It also examines the composition and placement of the detention population over this period.

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<sup>7</sup> Joint Select Committee on Australia’s Immigration Detention Network, *Final Report*, March 2012, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=immigration\\_detention\\_ctt/e/immigration\\_detention/report/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctt/e/immigration_detention/report/index.htm) (viewed 9 October 2012).

<sup>8</sup> Australian National Audit Office report, *Individual Management Services Provided to People in Immigration Detention*, Audit Report No.21, 2012-13, 11 February 2013, <http://www.anao.gov.au/~media/Files/Audit%20Reports/2012%202013/Audit%20Report%2021/201213%20Audit%20Report%20No%2021.pdf> (viewed 17 March 2013).



1.21 **Part 6** provides information and some analysis on the incidence of suicide and self-harm in immigration detention.

1.22 When this investigation was initiated in July 2011, it was intended that this report would consider a broad range of issues related to the incidence of suicide and self-harm within the immigration detention network. As Part 6 outlines, we were limited in our capacity to do this as the range of data collected and reported by the department and its service providers in relation to self-harm has been inadequate. We consider however that the data provided by the department sufficiently demonstrates the trends in the incidents and rates of self-harm in immigration detention facilities over recent years.

1.23 The department's data shows that the number and rate of self-harm incidents in detention facilities increased significantly from early 2011, with recorded incidents peaking in August 2011, gradually dropping later that year and then receding rapidly in the early months of 2012. The rate of self-harm has been relatively low since that time.

1.24 While we note that the department has recently sought to improve its data collection and reporting mechanisms relating to self-harm statistics, we consider that the data available concerning self-harm and suicide in immigration detention continues to have considerable shortcomings. We make recommendations concerning the need for more robust monitoring and recording of incidents of self-harm, consistent across the entire immigration detention network including community detention, and the need for such mechanisms to be embedded in the department's contracts with its service providers.

1.25 It is important to note at the outset of this report that we do not believe that there is a simple cause and effect explanation for self-harm in immigration detention, but rather a combination of environmental factors. **Part 7** explores a broad range of factors – personal, procedural and institutional – which we have identified as having contributed to an increase in suicidal and self-harming behaviours in immigration detention facilities over recent years.

1.26 However, we do consider that the length of detention is a key factor affecting the incidence of self-harm. As outlined in Part 7, there is clear international and Australian evidence suggesting that immigration detention in a closed environment for a period of longer than six months has a significant, negative impact on mental health.

1.27 We emphasise the need for the department to be vigilant in addressing bottlenecks and delays in processing as they arise, and to ensure that the continued detention, especially in closed immigration detention facilities, of an unlawful non-citizen is appropriate in all the circumstances.

1.28 **Part 8** begins by exploring the department's contractual arrangements with its detention service providers. It then examines the policy framework that the department and its two key service providers, Serco and IHMS, have developed to meet their duty of care to detainees.

1.29 In our view, some gaps remain in this policy framework. We make recommendations regarding the need for the department to finalise all of its detention health policies and to develop a strategic response to manage detainees who face indefinite detention.

1.30 We also encourage the department to continue to improve its systems and data management to enable the compilation of comprehensive, consistent and reliable data on the incidence of self-harm and the overall mental health of detainees, in consultation with experts such as its own Immigration Health Advisory Group and the Australian Institute of Health and Welfare.

1.31 **Part 9** examines the practices and procedures of the department and its service providers in implementing the policy framework. We focus on issues relating to the implementation of the department's client placement policies, the Psychological Support Program and other aspects of the Detention Health Framework.

1.32 This part concludes with consideration of the department's governance framework for detention services and its obligation to work cooperatively with the service providers using an integrated service model and its capacity to undertake strategic assessment of the risks to the detention population.

1.33 The department is implementing revised governance arrangements for detention services. We welcome this positive development and encourage the department to continue to review and improve policies and governance frameworks, particularly for managing the risk of suicide and self-harm.

1.34 The terms of reference for this inquiry were to examine the incidence and nature of suicide and self-harm across the immigration detention network. While we have focused on suicide and self-harm in closed detention facilities, given the rapid and significant expansion of community detention over the past two years, we considered it important to also briefly examine these issues in that context.

1.35 **Part 10** of this report explores the department's contractual arrangements with its primary service provider for health and welfare support to people in community detention, the Australian Red Cross, and the policy framework governing community detention.

1.36 When people are closely managed but not continually monitored by the department and its service providers as is the case in the community detention program, it is difficult to gain an accurate picture of the full incidence of self-harm. As for the broader immigration detention network, we have noted some difficulties associated with the quality and range of data collected and reported by the department and the Australian Red Cross in relation to self-harm in community detention. However, the data that is available suggests the prevalence of reported serious self-harm or attempted self-harm by people in community detention is substantially less than that experienced in closed immigration detention facilities.

1.37 **Attachment 1** provides the department's response to the report recommendations.

1.38 **Attachment 2** provides a chronology of key legal and policy developments in relation to immigration detention.

1.39 **Attachment 3** provides an overview of key immigration detention policies of particular relevance to this investigation.

1.40 **Attachment 4** provides a breakdown of the detention centre population by location since 2008, the beginning of the current wave of Irregular Maritime Arrivals.

1.41 **Attachment 5** provides two tables of self-harm data showing the trends in the incidence of self-harm and the trends in the rate of self-harm.

1.42 **Attachment 6** provides an overview of the location and capacity of immigration detention facilities.

1.43 The report also includes a number of case studies at **Attachment 7**. Beyond the legislative, policy and governance frameworks, the contractual arrangements and the statistics, this story has a human side. The case studies outline the circumstances of a number of people who have been, or are currently held in immigration detention. They give

some perspective on how the administrative issues we discuss in this report affect individuals. On occasion, we have included comments from detainees themselves, which were recorded in the department's own documents or those of its service providers, to give voice to their own experiences of immigration detention.

## PART 2—DOMESTIC AND INTERNATIONAL CONTEXT

2.1 Australia operates a universal visa regime that requires anyone in Australia who is not an Australian citizen to hold a valid visa.

2.2 Under Australian law, non-citizens who seek to enter Australia, or who are in Australia, and who do not hold a valid visa are 'unlawful non-citizens'. All unlawful non-citizens are liable to detention and removal from Australia. Non-citizens who seek to enter Australia by sea without a visa are unlawful non-citizens, and are often referred to as 'Irregular Maritime Arrivals'. Other unlawful non-citizens may have initially held a valid visa but been refused entry at Australia's entry ports, or overstayed their visa, or breached their visa conditions and had their visa cancelled.

2.3 The number of unlawful non-citizens in Australia arising from people being refused entry, overstaying their visa or having their visa cancelled for breach of conditions has remained fairly constant over the past decade.

2.4 However, Australia has experienced a significant increase in the number of Irregular Maritime Arrivals in recent years, in what the department has described as the 'fourth wave' of asylum seekers to Australia by boat since World War II.<sup>9</sup>

**Table 1: Total number of boats and boat arrivals 2008-09 to 2011-12<sup>10</sup>**

Financial year	Boats	Boat arrivals
2008-09	23	985
2009-10	117	5327
2010-11	89	4730
2011-12	111	8371

2.5 The extent and challenges of global irregular migration are well documented. According to the United Nations High Commission for Refugees (UNHCR), by the end of 2011 there were 42.5 million forcibly displaced people worldwide, including 15.2 million refugees. The UNHCR found that 2011 had been a record year for forced displacement across borders, with more people becoming refugees than at any time since 2000.<sup>11</sup>

2.6 As the department has acknowledged, 'Australia is not immune to these global trends. While the vast majority of people fleeing persecution seek refuge in their own and neighbouring countries, some make the journey to industrialised countries.'<sup>12</sup>

<sup>9</sup> Department of Immigration and Citizenship, *An Historical Perspective of Refugees and Asylum Seekers in Australia 1976-2011*, prepared for Joint Select Committee on Australia's Immigration Detention Network, August 2011,

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=immigration\\_detention\\_ctt/e/immigration\\_detention/submissions.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctt/e/immigration_detention/submissions.htm) (viewed 11 November 2012).

<sup>10</sup> *ibid*, Table 8; Department of Immigration and Citizenship, *Annual Report 2011-12*, p. 168,

<http://www.immi.gov.au/about/reports/annual/2011-12/pdf/> (viewed 11 November 2012).

<sup>11</sup> United Nations High Commission for Refugees, *Global Trends 2011* report, 2011, p. 3,

<http://www.unhcr.org/4fd6f87f9.html> (viewed 11 November 2012).

<sup>12</sup> Department of Immigration and Citizenship, *Global Population Movements: Sources and Destinations*, prepared for Joint Select Committee on Australia's Immigration Detention Network, August 2011, p. 1, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=immigration\\_detention\\_ctt/e/immigration\\_detention/submissions.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctt/e/immigration_detention/submissions.htm) (viewed 11 November 2012).

2.7 Each year the UNHCR publishes its report on asylum trends to 44 industrialised countries. The 2011 statistics show there was a sharp increase that year in asylum claims in industrialised countries, with an estimated 441,300 asylum claims registered in 2011, 20% more than the 368,000 applications in 2010<sup>13</sup> and the highest since 2003.<sup>14</sup> In 2011, Australia received 11,510 asylum applications, accounting for 3% of applications submitted among industrialised countries.<sup>15</sup>

2.8 In June 2012, the Australian Government commissioned an Expert Panel on Asylum Seekers to advise government regarding the management of asylum seekers.<sup>16</sup> In its August 2012 report, the Expert Panel commented on the 'global realities' impacting on irregular migration to Australia, noting that many of the world's refugees were in protracted situations for longer periods than in the past, stretching local resources and infrastructure in host countries and contributing to onward movement of refugees.<sup>17</sup>

2.9 The Expert Panel considered that 'Such pressures are intensifying in critical parts of the Middle East, South Asia and elsewhere and are likely to intensify further in the period ahead as governance and security arrangements in source countries for asylum-seeker flows, and in countries of first asylum, deteriorate.'<sup>18</sup>

2.10 The Expert Panel highlighted the barriers faced by many urban refugees in host countries, noting that 'they may have freedoms and opportunities to integrate locally into the society but they also face a range of protection risks, including the threat of arrest and detention, refoulement, harassment, exploitation and discrimination.'<sup>19</sup>

2.11 The Expert Panel also considered the 'Regional Dimension in the Asia Pacific', noting that:

- the Asia Pacific region currently has more than 3.6 million refugees, around 24% of the total world refugee population<sup>20</sup>
- there are few signatories to the 1951 Convention on the Status of Refugees and its 1967 Protocol (the Refugees Convention) in the Asia Pacific region and the level of accession in the region to other human rights conventions is also variable
- the UNHCR's role in processing asylum seekers in the region is challenged by 'a lack of resources, security considerations and the parameters in which UNHCR can operate in some countries'<sup>21</sup>
- refugee determination in the Asia Pacific is complicated by mixed migration flows: 'economic migrants, refugees and asylum seekers often travel in the same direction, using the same routes and modes of transport and facing the same risks en route'.<sup>22</sup>

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<sup>13</sup> United Nations High Commission for Refugees, *Asylum Levels and Trends in Industrialized Countries: Statistical overview of asylum applications lodged in Europe and selected non-European countries*, 2011, p. 2, <http://www.unhcr.org/4e9beaa19.html> (viewed 16 May 2013).

<sup>14</sup> *ibid.*

<sup>15</sup> *ibid.*, Table 1.

<sup>16</sup> Prime Minister the Hon Julia Gillard MP and the Hon Chris Bowen MP, then Minister for Immigration and Citizenship, *Transcript of Press Conference*, Canberra, 28 June 2012, <http://www.pm.gov.au/press-office/transcript-joint-press-conference-canberra-29> (viewed 24 November 2012).

<sup>17</sup> Air Chief Marshal Angus Houston AC, AFC (Ret'd), Paris Aristotle AM and Professor Michael L'Estrange AO, *Report of the Expert Panel on Asylum Seekers*, August 2011, para 1.7, <http://expertpanelonasylumseekers.dpmc.gov.au/report> (viewed 11 November 2012).

<sup>18</sup> *ibid.*, para 1.8.

<sup>19</sup> *ibid.*, para 1.9.

<sup>20</sup> *ibid.*, para 1.12, citing the United Nations Human Rights Commission's *Global Trends 2011* report, *op cit.*

<sup>21</sup> *ibid.*

<sup>22</sup> *ibid.*, para 1.13.

2.12 The factors impacting on where people seek asylum are well documented. As the Expert Panel on Asylum Seekers observed:

Individual migrants are usually influenced by a range of 'push' and 'pull' factors when choosing pathways and destinations for migration. Some may be more immediate and more significant than others. Some relate to fear of persecution, others to economic circumstances and the search for a better life ... Individuals weigh their risks and prospects differently, but at the secondary movement<sup>23</sup> stage it is more likely that migrants will consider pull factors such as stability, existing diasporas, employment or education prospects, the availability of an established refugee determination system and perceived livelihood opportunities.<sup>24</sup>

2.13 While the UNHCR attempts to provide durable solutions for refugees through voluntary repatriation, local integration or resettlement to a third country, it noted in 2011 that just 22 countries resettled 79,800 refugees.<sup>25</sup> Of these, Australia admitted 9200 refugees, ranked third after the United States (51,500) and Canada (12,900).<sup>26</sup>

2.14 While some seek protection through these limited established channels, others travel to Australia and other destinations in an irregular manner. The Expert Panel noted that an estimated 30-40% of all migration flows in Asia take place through irregular channels,<sup>27</sup> and observed that 'those who choose to move through irregular pathways may be further influenced in their choice of destination by people smugglers, relative costs and their own assessment of whether they will be able to remain in a country permanently.'<sup>28</sup>

2.15 The significant increase in Irregular Maritime Arrivals since 2009-10 has placed considerable strain on both the immigration detention framework and on the processing of protection claims. The challenge for the department in managing Irregular Maritime Arrivals is to balance Australia's international humanitarian obligations with the need to ensure the integrity of Australia's borders and to undertake the appropriate screening of individuals under Australia's laws before they are allowed to remain in Australia.

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<sup>23</sup> The United Nation Human Rights Commission defines secondary movement as 'The phenomenon of refugees, whether they have been formally identified as such or not (asylum-seekers), who move on in an irregular manner from countries in which they have already found protection, in order to seek asylum or permanent resettlement elsewhere, is a matter of growing concern': 'Problem of Refugees and Asylum-Seekers Who Move in an Irregular Manner from a Country in Which They Had Already Found Protection', ExCom Conclusion 58 (XL), 13 October 1989, para a, <http://www.unhcr.org/3ae68c4380.html> (viewed 4 March 2013).

<sup>24</sup> Houston, Aristotle and L'Estrange, *Report of the Expert Panel on Asylum Seekers*, *op cit*, para 1.21.

<sup>25</sup> United Nation Human Rights Commission, *Global Trends 2011 report*, *op cit*, p. 19.

<sup>26</sup> *ibid.*

<sup>27</sup> Houston, Aristotle and L'Estrange, *Report of the Expert Panel on Asylum Seekers*, *op cit*, para 1.11.

<sup>28</sup> *ibid.*, para 1.22.

## PART 3—LEGAL AND POLICY FRAMEWORK

3.1 The *Migration Act 1958* regulates the coming into, and presence in, Australia of non-citizens.<sup>29</sup>

3.2 The powers in the Migration Act and the associated departmental policies particularly relevant to this investigation are those that deal with the detention and care of unlawful non-citizens in immigration detention and the processing of protection claims.

### Detention of unlawful non-citizens

3.3 Since 1992, Australia has had a policy of mandatory immigration detention. This means that it is mandatory for an unlawful non-citizen to be taken into immigration detention until either they are removed from Australia, or their immigration status is made lawful by the grant of a visa, including a bridging visa.<sup>30</sup>

3.4 Under the Migration Act, if the department knows or reasonably suspects that a person is an unlawful non-citizen, then that person must be taken into immigration detention.<sup>31</sup> Unlawful non-citizens include:

- people who arrive in Australia without a valid visa, including Irregular Maritime Arrivals seeking asylum,<sup>32</sup> and people refused entry at Australia's international airports
- people who have overstayed their visa
- people who have had their visa cancelled.

3.5 The Minister for Immigration and Citizenship (the minister) is empowered under the Migration Act to establish detention centres.<sup>33</sup> Australia's immigration detention network currently includes a variety of accommodation options:

- Immigration Detention Centres are closed detention environments that are fully guarded, such as the North West Point facility on Christmas Island and the Villawood Immigration Detention Centre
- Alternative Places of Detention are places that have been specifically authorised for immigration detention, and where people who are detained must be accompanied by a person designated under the Migration Act for that purpose. Alternative Places of Detention include Immigration Transit Accommodation, Immigration Residential Housing, correctional facilities, watch houses and other places in the broader community, such as hotels, apartments, foster care and hospitals.
- Immigration Transit Accommodation is hostel-style accommodation, with central dining areas and semi-independent living
- Immigration Residential Housing is less institutional accommodation than either Immigration Detention Centres or Immigration Transit Accommodation, allowing

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<sup>29</sup> Section 4, *Migration Act 1958*.

<sup>30</sup> Section 196, *Migration Act 1958*.

<sup>31</sup> Section 189, *Migration Act 1958*.

<sup>32</sup> 'Irregular Maritime Arrival' is a non-legal term referring to a person who is an 'offshore entry person' who comes to Australia by boat. Under s 5 of the Migration Act, an 'offshore entry person' is a person who enters Australia at an excised offshore place and became an unlawful non-citizen because of that entry.

<sup>33</sup> Section 273, *Migration Act 1958*.

for a more domestic and independent environment. It is often used for families with children.<sup>34</sup>

3.6 For the purposes of this report, Immigration Detention Centres and Alternative Places of Detention are considered and referred to as ‘closed detention facilities’.

3.7 Since 2005, the minister has had a non-compellable and non-delegable (personal) ministerial power to make a ‘residence determination’.<sup>35</sup> This is commonly referred to as ‘community detention’. A residence determination enables an unlawful non-citizen to be held in immigration detention in the Australian community at an address specified by the minister. People in community detention can move freely in the community without needing to be accompanied by an officer, but may be subject to conditions such as reporting requirements.<sup>36</sup>

3.8 The current immigration detention network is discussed further in Part 5.

### ***The 2005 legislative amendments***

3.9 A number of legislative reforms, aimed at administering immigration detention with ‘greater flexibility, greater fairness and in a more timely manner’ were enacted in 2005.<sup>37</sup> The *Migration Amendment (Detention Arrangements) Act 2005*:

- introduced ‘residence determination’, known as community detention<sup>38</sup>
- embedded in the Migration Act the principle that children would only be detained as a measure of last resort<sup>39</sup>
- provided the minister with a non-compellable and non-delegable power to grant a visa to a person who is in detention, if that is in the public interest<sup>40</sup>
- introduced a requirement for the Commonwealth Ombudsman to give to the minister an assessment of the appropriateness of the arrangements of a person’s detention when the person had been detained for a period of two years and thereafter at six monthly intervals while the person remains in detention.<sup>41</sup>

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<sup>34</sup> Department of Immigration and Citizenship, *Submission to Joint Select Committee on Australia’s Immigration Detention Network*, August 2011, p. 7, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Committees?url=immigration\\_detention\\_ctt/e/immigration\\_detention/submissions.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=immigration_detention_ctt/e/immigration_detention/submissions.htm) (viewed 11 November 2012).

<sup>35</sup> Section 197AB, *Migration Act 1958*.

<sup>36</sup> *ibid.*

<sup>37</sup> Senator Ian Macdonald, Second Reading Speech, *Migration Amendment (Detention Arrangements) Bill 2005*, 23 June 2005, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F2005-06-23%2F0085%22> (viewed 9 October 2012).

<sup>38</sup> Section 197AB, *Migration Act 1958*.

<sup>39</sup> Section 4AA, *Migration Act 1958*.

<sup>40</sup> Section 195A, *Migration Act 1958*.

<sup>41</sup> The Ombudsman is required under s 486O of the Migration Act 1958 to review the circumstances of the detention of people held in immigration detention for two years, and every six months thereafter. To prepare the report the department provides the Ombudsman’s office with a report as required under s 486N, an IHMS report is prepared for the Commonwealth Ombudsman, and where relevant, copies of the RSA record, IMR review and any Incident Reports are provided. The Ombudsman report will also refer to information obtained through any interview/s with the detainee, complaint/s to the Ombudsman’s office from the detainee, and correspondence from the department if further information has been sought. A 486O report usually includes basic demographic information, report on actions taken in relation to the resolution of the person’s immigration status, key issues – if any – relating to criminal history and detention incidents, health and welfare, and other matters. The Ombudsman may include recommendations in reports made under s 486O. The Minister is not bound by the Ombudsman’s recommendations. The Ombudsman prepares a de-identified version of the report (to protect the privacy of people mentioned in it), which the Minister is required to table in Parliament within 15 sitting days of receipt. The Minister’s response to the recommendations is tabled in Parliament at the same time.



3.10 Also in 2005, a new visa, the removal pending bridging visa came into effect. The removal pending bridging visa was introduced to enable the release, pending removal, of people in immigration detention who were cooperating with efforts to remove them from Australia, but whose removal was not reasonably practicable at that time.<sup>42</sup> A removal pending bridging visa may be granted using the minister's non-delegable, non-compellable public interest power to grant a visa to a person in immigration detention.<sup>43</sup> Removal pending bridging visas give the department greater flexibility to manage people who otherwise would have remained in indefinite detention.

### **Post 2005 detention policy reforms**

3.11 The Rau<sup>44</sup> and Alvarez<sup>45</sup> Reports in 2005 – respectively examining the immigration detention of a permanent resident Ms Cornelia Rau and the detention and removal from Australia of Australian citizen Ms Vivian Alvarez – together with the Commonwealth Ombudsman's reports on the 247 immigration detention 'not unlawful' cases,<sup>46</sup> pointed to systemic failures in immigration detention.

3.12 Administrative, legislative, policy and system-based changes recommended in these reports provided the 'major catalyst for comprehensive business and cultural change in the Department.'<sup>47</sup>

3.13 Since 2005, a comprehensive set of governance arrangements has been designed to ensure that immigration detention facilities reflect best practice and that people have access to appropriate care and services applicable to their particular circumstances and needs while in immigration detention. These governance arrangements covered not only the management, maintenance and servicing of immigration detention facilities through a new service delivery model, but also a framework for the care and early resolution of the immigration status of people being held in immigration detention. Enhanced governance arrangements were complemented by improved staff training and information technology systems.

3.14 Among the most significant post-2005 detention reforms were changes aimed at improving the department's capacity to provide an effective level of health care for people held in immigration detention, including in relation to mental health. An overview of the Detention Health Framework and its key policies is provided in Attachment 3.

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<sup>42</sup> Department of Immigration and Citizenship, *Factsheet 85 – Removal Pending Bridging Visa*, revised 28 February 2011, <http://www.immi.gov.au/media/fact-sheets/85removalpending.htm> (viewed 9 October 2012).

<sup>43</sup> Section 195A, *Migration Act 1958*.

<sup>44</sup> M Palmer AO APM, *Report of Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau* (the Palmer Report), July 2005, <http://www.immi.gov.au/media/publications/pdf/palmer-report.pdf> (viewed 9 October 2012).

<sup>45</sup> Commonwealth Ombudsman, *Report of Inquiry into the Circumstances of the Vivian Alvarez Matter* (the Comrie Report), Report No 03/2005, September 2005, [http://www.ombudsman.gov.au/files/investigation\\_2005\\_03.pdf](http://www.ombudsman.gov.au/files/investigation_2005_03.pdf) (viewed 9 October 2012). The Comrie Report focused on the need to use health assessments to manage a person's wellbeing, not just resolution of their immigration status.

<sup>46</sup> The issues arising from the investigation of the 247 cases between 2000 and 2007 formed the basis of six consolidated public reports and two reports on individual cases. A further report was published by the Commonwealth Ombudsman "to draw together the ten lessons from the referred immigration reports that are relevant to all areas of government: Commonwealth Ombudsman, *Lessons for public administration, Ombudsman investigation of [247] referred immigration cases*, Report, No.11/2007, August 2007, [http://www.ombudsman.gov.au/files/investigation\\_2007\\_11.pdf](http://www.ombudsman.gov.au/files/investigation_2007_11.pdf) (viewed 9 October 2012). Notably, the Ombudsman's reports found that 11 of the 247 cases involved mental health and incapacity. Of the 247 cases in 2007, five cases remain outstanding: two are before the courts and three are being considered under the Scheme for Compensation for Detriment caused by Defective Administration: Department of Immigration and Citizenship, *Annual Report 2011-12, op cit*, p. 302.

<sup>47</sup> Department of Immigration and Citizenship, *Detention Health Framework*, 2006, Foreword, <http://www.immi.gov.au/managing-australias-borders/detention/services/detention-health-framework.pdf> (viewed 9 October 2012).

3.15 In September 2005, in response to the Rau Report recommendations, the department established a Detention Health Taskforce. Following consultation with external stakeholders, the taskforce articulated 'a high level statement of intention', the *Future Detention Health Strategy*, which was approved by the Australian Government in May 2006. Under this strategy, the department formed the Detention Health Branch.<sup>48</sup>

3.16 Also in response to the Rau Report, the department established the Detention Health Advisory Group (DeHAG) in March 2006. The DeHAG's members were drawn from key Australian professional bodies and expert bodies and other health groups. The DeHAG provided the department with independent expert and professional advice on designing and implementing health and mental health policy and procedures in immigration detention.<sup>49</sup>

3.17 The DeHAG was replaced by a new Immigration Health Advisory Group (IHAG) in March 2013. The IHAG has broader terms of reference than DeHAG, recognising the expansion of community detention and bridging visas over recent years.<sup>50</sup> The Ombudsman's office had an observer membership status on DeHAG and this role has continued on IHAG.

3.18 In November 2007, the department, in collaboration with DeHAG, released the Detention Health Framework, a policy framework for health care for people in immigration detention.<sup>51</sup> The Framework

... describes the principles and practical arrangements that underpin DIAC's improved approach to health care for people in immigration detention. It builds on issues identified in the Palmer and Comrie reports, and the various subsequent reports by the Commonwealth Ombudsman, but goes further in attempting to understand and anticipate issues of health and wellbeing that may be expressed by the different groups of people who may enter immigration detention.<sup>52</sup>

3.19 The implementation of components of the Detention Health Framework is discussed in Part 9.

### ***New Directions in Detention policy and the Immigration Detention Values***

3.20 In July 2008, the then minister delivered a speech entitled '*New Directions in Detention – Restoring Integrity to Australia's Immigration System*'.<sup>53</sup> In this speech, the then minister announced major reforms to Australia's immigration detention system and set out the Immigration Detention Values that would underpin a more compassionate and risk-based approach to detention and asylum seekers.

3.21 The then minister affirmed the Australian Government's commitment to mandatory immigration detention but outlined major reforms to the application of that policy on unlawful non-citizens. He outlined seven values that would guide and drive new detention policy and practice into the future:

- mandatory detention is an essential component of strong border control

<sup>48</sup> Department of Immigration and Citizenship, *Detention Health Framework*, *op cit*, p. 9.

<sup>49</sup> Department of Immigration and Citizenship, *Submission to Joint Select Committee on Australia's Immigration Detention Network*, *op cit*, p. 59.

<sup>50</sup> Consideration of DeHAG's membership and Terms of Reference was recommended in the May 2011 internal departmental review of the Detention Health Framework by Dermot Casey, Assistant Secretary, Character and Case Management: Department of Immigration and Citizenship, *Review of the Detention Health Framework: A policy framework for health care for people in immigration detention*, May 2011, para 3.2.

<sup>51</sup> Department of Immigration and Citizenship, *Detention Health Framework*, *op cit*, Foreword.

<sup>52</sup> *ibid*, p. 11.

<sup>53</sup> The Hon Senator Chris Evans, then Minister for Immigration and Citizenship, *New Directions in Detention – Restoring the Integrity to Australia's Immigration System*, Speech: Australian National University, 29 July 2008, <http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm> (viewed 9 October 2012).

- to support the integrity of Australia’s immigration program, three groups will be subject to mandatory detention:
  - all unauthorised arrivals, for management of health, identity and security risks to the community
  - unlawful non-citizens who present unacceptable risks to the community and
  - unlawful non-citizens who have repeatedly refused to comply with their visa conditions.
- children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre
- detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review
- detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time
- people in detention will be treated fairly and reasonably within the law
- conditions of detention will ensure the inherent dignity of the human person.<sup>54</sup>

3.22 The then minister made it clear that in making an assessment about whether or not to continue to detain an unlawful non-citizen in immigration detention:

The values commit us to detention as a last resort; to detention for the shortest practicable period; to the rejection of indefinite or otherwise arbitrary detention. In other words, the current model of immigration detention is fundamentally overturned.<sup>55</sup>

3.23 Under the values, the government sought to ensure that unlawful non-citizens were not arbitrarily held in immigration detention. Rather, the detention arrangements for an unlawful non-citizen would be subject to regular review to ensure that they are appropriate in the circumstances.<sup>56</sup>

3.24 The Ombudsman agreed to perform this role, and oversee the non-statutory refugee status assessment then utilised in relation to asylum seekers on Christmas Island.

3.25 A Bill to embed the values in the Migration Act, the *Migration Amendment (Immigration Detention Reform) Bill 2009*,<sup>57</sup> was introduced in 2009, but lapsed after the 2010 election. Nevertheless the values underpin the department’s detention policies and procedures and contracts for the provision of services to people in immigration detention.

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<sup>54</sup> *ibid.*

<sup>55</sup> *ibid.*

<sup>56</sup> *ibid.*

<sup>57</sup> According to the Parliamentary Library digest, the Migration Amendment (Immigration Detention Reform) Bill 2009 sought to ‘amend the *Migration Act 1958* (the Act) to create more flexibility in managing the detention of “unlawful non-citizens”. Explicitly, it restricts mandatory detention to a specific category of people, introduces express discretionary detention for other ‘unlawful non-citizens’, creates temporary community access permissions (TCAPs) and removes the requirement that only the Minister for Immigration and Citizenship (the Minister) can personally grant residency determinations’: Karlsen E, Laws and Bills Digest Section, Parliamentary Library, *Migration Amendment (Immigration Detention Reform) Bill 2009*, Bills Digest no.26, 2009-10, 11 September 2009, [http://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/6HNU6/upload\\_binary/6hnu60.pdf;fileType=application%2Fpdf#search=%22legislation/billsdgs/6HNU6%22](http://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/6HNU6/upload_binary/6hnu60.pdf;fileType=application%2Fpdf#search=%22legislation/billsdgs/6HNU6%22) (viewed 1 March 2013).

### **Expansion of community detention and increased use of bridging visas**

3.26 In October 2010, the Prime Minister and the then minister announced expanded residence determination arrangements, with unaccompanied minors and vulnerable families to be placed into community detention.<sup>58</sup> By February 2012 a quarter of the 6644 people in immigration detention, or 1700 people, were accommodated in community detention.<sup>59</sup> As at 28 February 2013, there were 2202 people accommodated in the community under residence determinations, including 946 children.<sup>60</sup>

3.27 From November 2011, the then minister commenced granting bridging visas, following initial health, security and identity checks, to Irregular Maritime Arrivals in detention pending finalisation of their protection claims.<sup>61</sup> In 2011-12, 2741 bridging visa E grants were issued to Irregular Maritime Arrivals.<sup>62</sup>

3.28 These developments helped to ease the overcrowding and some of the tensions we had observed in closed detention facilities in 2011. In particular, Irregular Maritime Arrivals were no longer required to remain in immigration detention pending processing of their claims and the granting of a protection visa.

3.29 However, with the substantial increase in boat arrivals in second half of 2012 (around 10,000 between 13 August and 31 December 2012) the proportion of Irregular Maritime Arrivals in community detention declined and closed detention facilities were operating at or above contingency. These issues are explored further in Part 5.

3.30 We welcome the expansion of community detention and the greater use of bridging visas for Irregular Maritime Arrivals. We encourage the department to keep both initiatives under close review, with a continued focus on resolution of immigration status for these cohorts. Community detention is discussed further in Part 10.

## **Processing of Protection Claims**

### **Statutory process under the Migration Act**

3.31 Australia, as a party to the *1951 Convention Relating to the Status of Refugees (Refugee Convention)* and its *1967 Protocol* (together called the 'Refugee Convention') has obligations to not return (*non-refoulement*) people to countries where they have a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group. To achieve this end, there is also a requirement to consider the claims for protection of people who enter its territory.

3.32 Section 36 of the Migration Act establishes a class of visas to be known as protection visas and sets out the criteria for a protection visa.

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<sup>58</sup> The Hon Chris Bowen MP, then Minister for Immigration and Citizenship, *Government to move children and vulnerable families into community-based accommodation*, Joint Media Release with the Prime Minister, 18 October 2010, <http://www.minister.immi.gov.au/media/cb/2010/cb155484.htm> (viewed 9 October 2012).

<sup>59</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 29 February 2012, Figure 1. The department regularly publishes immigration detention statistics on its website: <http://www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/>.

<sup>60</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 28 February 2013. The Department noted that 'The increase in the number of children in detention facilities for December 2012 is due to a rapid increase in irregular maritime arrivals during October and November 2012. This number has since reduced as children complete mandatory processing and are transferred into the community'.

<sup>61</sup> The Hon Chris Bowen MP, then Minister for Immigration and Citizenship, *Bridging visas to be issued for boat arrivals*, Media Release, 25 November 2011, <http://www.minister.immi.gov.au/media/cb/2011/cb180599.htm> (viewed 16 May 2013).

<sup>62</sup> Department of Immigration and Citizenship, *Annual Report 2011-12*, p. 220, <http://www.immi.gov.au/about/reports/annual/2011-12/> (viewed 16 May 2013).

3.33 People in respect of whom Australia has protection obligations under the provisions of the *Refugee Convention* and Migration Act – and who satisfy the other criteria for the grant of the visa including health, character and security checks – are eligible for the grant of a protection visa.

3.34 Since 24 March 2012, s 36 of the Migration Act has included a criterion for a protection visa, known as the Complementary Protection criterion. This system of complementary protection gives effect to Australia's international *non-refoulement* obligations under international human rights conventions to which Australia is a party: the *International Covenant on Civil and Political Rights* (ICCPR), its *Second Optional Protocol aiming at the abolition of the death penalty* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT).

3.35 Under complementary protection, a protection visa may be granted to people who are not refugees as defined in the *Refugees Convention*, but who cannot be returned to their home country because there is a real risk that they would suffer significant harm. 'Significant harm' is defined exhaustively and includes arbitrary deprivation of life, the death penalty, torture, cruel or inhuman treatment or punishment and degrading treatment or punishment.<sup>63</sup> People found to satisfy the complementary protection criterion must also satisfy health, character and security checks before the grant of a protection visa.

3.36 Under this statutory process, where the department refuses an application for a protection visa (whether on the basis of the *Refugees Convention* or complementary protection), the applicant can seek a merits review of the decision at the Refugee Review Tribunal (RRT) or the Administrative Appeals Tribunal (AAT), depending on the basis for refusal.<sup>64</sup> People may also seek judicial review of a decision of the RRT or AAT. Courts exercising judicial review of a tribunal's decision consider whether the tribunal complied with its legal obligations rather than undertaking a review of the merits of a person's claims for protection.

3.37 The *Migration and Ombudsman Legislation Amendment Act 2005* introduced provisions obligating the department and the RRT to make protection visa decisions, under this statutory framework, within 90 days of receiving the application.<sup>65</sup>

### ***Excision, the Introduction of a Non-Statutory Framework and Offshore Processing Centres***

3.38 In 2001 the *Migration Amendment (Excision from Migration Zone) Act 2001* (the Excision Act) amended the Migration Act to define certain places as 'excised offshore places', created a category of unauthorised arrivals known as 'offshore entry persons', restricted the right of offshore entry persons to validly apply for visas, including protection visas, and provided for offshore processing of protection claims.

3.39 'Excised offshore places' include external Australian Territories such as Christmas Island and the Cocos (Keeling) Islands.<sup>66</sup> 'Offshore entry persons' are persons who enter Australia at an excised offshore place without a valid visa.<sup>67</sup> The Excision Act amended the Migration Act to prevent, or 'bar', offshore entry persons from validly applying for any visa –

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<sup>63</sup> Department of Immigration and Citizenship, *Factsheet 61a – Complementary Protection*, reviewed June 2012, <http://www.immi.gov.au/media/fact-sheets/61a-complementary.htm> (viewed 9 October 2012).

<sup>64</sup> Part 7 and s 500, *Migration Act 1958*.

<sup>65</sup> Sections 65A and 414A, *Migration Act 1958*. The failure to comply with the 90-day requirement does not invalidate a decision.

<sup>66</sup> 'Excised offshore place' is defined in s 5 of the *Migration Act 1958*. Christmas Island is an excised offshore place.

<sup>67</sup> Section 5, *Migration Act 1958*. An 'Irregular Maritime Arrival' is an 'offshore entry person' who comes to Australia by boat

including a protection visa – unless the minister exercises a personal discretion to lift the bar.<sup>68</sup>

3.40 In order to support the minister's decision whether or not to lift the bar, the Commonwealth established a non-statutory process, the Refugee Status Assessment, through which the Commonwealth determined whether it had protection obligations to each offshore entry person. The Refugee Status Assessment process was replaced by the Protection Obligation Determination process on 1 March 2011.<sup>69</sup> Under both processes, if a person was found to be a genuine refugee, and met the health, character and security requirements for the grant of a protection visa, then the minister would consider 'lifting the bar' and allowing the person to apply for a visa. In 2007, the government introduced an 'independent merit review' for persons who were found not to be owed protection, and as clarified by the High Court in November 2010,<sup>70</sup> they could also seek judicial review of negative decisions.

3.41 The Excision Act also amended the Migration Act to allow the Commonwealth to take offshore entry persons to designated third countries while Australia determined if it had protection obligations to them.<sup>71</sup> The Commonwealth established 'Offshore Processing Centres', managed by the International Organisation for Migration, on Nauru and Manus Island in Papua New Guinea, as places to which offshore entry persons could be taken for this purpose. Between 2001 and 2008, processing of offshore entry persons largely occurred on Nauru and Manus Island.<sup>72</sup> From 2008, processing of offshore entry persons occurred on Christmas Island.<sup>73</sup>

3.42 Thus, from 2001, two different processing arrangements applied to asylum seekers, depending on the circumstances and means of their arrival:

- 'onshore' applicants – people who claimed protection after arriving in Australia on valid visas, or after arriving at a place that was not an excised offshore place – could validly apply for a protection visa, and then have their claims considered under the statutory process in the Migration Act.
- offshore entry persons, who entered Australia at 'excised offshore places', usually by boat, had their claims considered under the non-statutory process before the minister decided whether to allow them to apply for a protection visa.

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<sup>68</sup> An 'offshore entry person' may only make a valid visa application if the Minister for Immigration and Citizenship determines that it is in the public interest that such a person should be able to make a valid visa application: s 46A(2), *Migration Act 1958*.

<sup>69</sup> Following the High Court decision of 11 November 2010, *Plaintiff M61/2010E v Commonwealth of Australia & Ors; Plaintiff M69 of 2010 v Commonwealth of Australia & Ors* [2010] HCA 41, the Government replaced the Refugee Status Assessment process with the Protection Obligation Determination process. The Protection Obligation Determination process applied to all Irregular Maritime Arrivals that arrived at an offshore entry place after 1 March 2011 and those asylum seekers who had not yet had a Refugee Status Assessment interview. The Protection Obligation Determination process was subsequently replaced by the statutory protection visa process from 24 March 2012.

<sup>70</sup> The High Court decided in *Plaintiff M61* that offshore entry persons who applied for asylum in Australia have a right to judicial review.

<sup>71</sup> Section 198A, *Migration Act 1958*.

<sup>72</sup> The Rudd Labor Government formally closed the Offshore Processing Centres in Nauru and Manus Island in early 2008: The Hon. Senator Chris Evans, then Minister for Immigration and Citizenship, *Last refugees leave Nauru*, Media Release, 8 February 2008, <http://www.minister.immi.gov.au/media/media-releases/2008/ce08014.htm> (viewed 1 March 2013).

<sup>73</sup> The Hon Senator Chris Evans, then Minister for Immigration and Citizenship, *New Directions in Detention – Restoring the Integrity to Australia's Immigration System*, *op cit*.

### ***Return to a Single Statutory Protection visa process***

3.43 In November 2011, the then minister announced that the government would revert to using the statutory framework for offshore entry persons, as well as onshore applicants. The onshore statutory framework applied to all new arrivals from 24 March 2012, and to any Irregular Maritime Arrivals who had not yet had a protection assessment interview as at that date.<sup>74</sup>

3.44 As noted above, the department (under s 65A of the Migration Act) and RRT (under s 414A of the Migration Act) are required to make protection visa decisions within 90 days.

3.45 However, we note that, as at 15 November 2012, 416 people remained subject to the pre-March 2012 arrangements.<sup>75</sup> The department will need to ensure that its governance processes – managing two separate processes simultaneously – does not lead to delays in the resolution of the earlier cases as it transitions into the statutory arrangements.

### ***Return to offshore processing and the ‘no advantage’ principle***

3.46 As discussed in Part 2, the government commissioned an Expert Panel on Asylum Seekers in June 2012 to advise government on the management of asylum seekers. In its August 2012 report, the Expert Panel made a number of recommendations to act as ‘disincentives to irregular maritime voyages to Australia by establishing a clear “no advantage” principle whereby asylum seekers gain no benefit by choosing not to seek protection through established mechanisms.’<sup>76</sup>

3.47 In response to the Expert Panel’s report, the government instituted new processes for managing Irregular Maritime Arrivals and re-opened regional processing centres on Nauru<sup>77</sup> and Manus Island in Papua New Guinea.<sup>78</sup> Since 13 August 2012, anyone who arrived in Australia by boat seeking protection has been liable to be transferred to a regional processing country to have their protection claims assessed.<sup>79</sup>

3.48 We are in discussions with the department regarding the Ombudsman’s jurisdiction in relation to complaints resolution and oversight of these arrangements.

3.49 On 21 November 2012, the government announced that all people who arrived by boat on or after 13 August 2012, and all future arrivals, would have the ‘no advantage’

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<sup>74</sup> The Hon Chris Bowen MP, then Minister for Immigration and Citizenship, *Bridging visas to be issued for boat arrivals*, *op cit*; Department of Immigration and Citizenship, *Factsheet 65 – Onshore processing, Irregular Maritime Arrivals*, reviewed June 2012, <http://www.immi.gov.au/media/fact-sheets/65onshore-processing-irregular-maritime-arrivals.htm> (viewed 9 October 2012).

<sup>75</sup> The Department has advised that these Irregular Maritime Arrivals had sought either independent merits review or judicial review of negative protection obligation determinations.

<sup>76</sup> Houston, Aristotle and L'Estrange, *Report of the Expert Panel on Asylum Seekers*, *op cit*, Foreword.

<sup>77</sup> Australia and Nauru signed a Memorandum of Understanding for the establishment of a regional processing centre in Nauru in August 2012: Prime Minister the Hon Julia Gillard MP and the Hon Chris Bowen MP, then Minister for Immigration and Citizenship, *Australia signs Memorandum of Understanding with Nauru*, Joint Media Release, 29 August 2012, <http://www.minister.immi.gov.au/media/cb/2012/cb189579.htm> (viewed 1 March 2013). Nauru was designated as a regional processing country under the Migration Act on 10 September 2012: The Hon Chris Bowen MP, then Minister for Immigration and Citizenship, *Nauru designated for regional processing*, Media Release, 10 September 2012, <http://www.minister.immi.gov.au/media/cb/2012/cb189739.htm> (viewed 1 March 2013).

<sup>78</sup> The Australian and Papua New Guinea Governments signed an updated Memorandum of Understanding on 8 September 2012. Papua New Guinea was designated as a regional processing country under the Migration Act on 9 October 2012: The Hon Chris Bowen MP, the Minister for Immigration and Citizenship, *Papua New Guinea designated for regional processing*, Media Release, 9 October 2012, <http://www.minister.immi.gov.au/media/cb/2012/cb190599.htm> (viewed 1 March 2013).

<sup>79</sup> Prime Minister the Hon Julia Gillard MP and the Hon Chris Bowen MP, then Minister for Immigration and Citizenship, *Transcript of Press Conference*, Canberra, 13 August 2012, <http://www.pm.gov.au/press-office/transcript-press-conference-canberra-28> (viewed 24 November 2012).

principle applied to their cases. That is, they would not be issued with a permanent protection visa if found to be a refugee, until such time as they would have been resettled in Australia if they had been processed in Australia's region.<sup>80</sup>

3.50 The government flagged that while transfers to Nauru and Manus Island would continue, some of the post-13 August arrivals would be granted bridging visas while their protection claims were processed in the community. The government said that, consistent with the 'no advantage' principle, those granted bridging visas would have no work rights, would receive only basic accommodation assistance and limited financial support, and can be transferred offshore to have their claims processed at a later date.<sup>81</sup>

3.51 We note the clear implication of this policy will be that a proportion of the Irregular Maritime Arrivals seeking asylum on or after 13 August 2012 will be detained for indeterminate periods, either at Regional Processing Centres in Nauru or Manus Island or in onshore detention facilities, with a heightened sense of uncertainty about their future.

3.52 We believe that the Commonwealth has some obligation to those held in Regional Processing Centres in Nauru or Manus Island but the arrangements in place with the respective governments make this a complex issue.

3.53 In Part 7 of this report we discuss a number of factors that we have identified as contributing to the incidence of self-harm in immigration detention. We suggest that these factors are highly relevant to the post-13 August 2012 Irregular Maritime Arrival cohort, whether they are detained at Regional Processing Centres in Nauru or Manus Island or in onshore detention facilities.

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<sup>80</sup> The Hon Chris Bowen MP, then Minister for Immigration and Citizenship, *No advantage onshore for boat arrivals*, Media release, 21 November 2012, <http://www.minister.immi.gov.au/media/cb/2012/cb191883.htm> (viewed 24 November 2012).

<sup>81</sup> *ibid.*



## PART 4—DUTY OF CARE TO PEOPLE IN IMMIGRATION DETENTION

4.1 The Commonwealth owes a duty of care to people (detainees) held in immigration detention. This duty of care is based on the legal obligation that everybody has: to take reasonable care to avoid acting in ways that are reasonably foreseeable as likely to harm others. A person breaches their duty of care if they act without taking reasonable care, and thereby causes harm that was reasonably foreseeable to another person. In legal terms, a person who has acted in this way has committed the common law tort of negligence.

4.2 The Commonwealth owes a common law duty of care to detainees because, as the High Court said in *Behrooz v Secretary, Department of Immigration & Multicultural & Indigenous Affairs*, detainees:

... [do] not stand outside the protection of the civil and criminal law. If an officer in a detention centre assaults a detainee, the officer will be liable to prosecution, or damages. If those who manage a detention centre fail to comply with their duty of care, they may be liable in tort.<sup>82</sup>

4.3 The nature and extent of a person's duty of care is affected by the level of control that the person has over others, and how vulnerable those others are. The higher the level of control the person has, and the greater the vulnerability of the others, the greater the person's duty of care is.<sup>83</sup>

4.4 The department, acting for the Commonwealth, has a very high level of control over detainees in closed detention facilities. It uses its coercive powers to hold those detainees against their will, determines the conditions and length of time of their detention, and is responsible for providing all of their needs.

4.5 At the same time, detainees are particularly vulnerable to harm – especially psychological harm – for a range of reasons. These include the circumstances that caused them to seek refuge in Australia in the first place, which often includes a history of torture and trauma; their loss of connection with family and community and their social isolation; their inability to provide or make meaningful decisions for themselves; and the anxiety caused by the lack of certainty about their future. These vulnerabilities can be exacerbated by the conditions of their detention, particularly overcrowding, exposure to self-harm incidents, and lack of meaningful activities. These vulnerabilities can also be exacerbated by anxiety about, and frustrations with, immigration decision-making processing, and especially by the length of their detention.

4.6 Because the department has a high level of control over particularly vulnerable people, its duty of care to detainees is therefore a high one. It is not enough for the department to avoid acting in ways that directly cause harm to detainees. It also has a positive duty to take action to prevent harm from occurring.

4.7 As well as its common law duty of care, the department also has statutory duties of care under the *Work Health and Safety Act 2011*. Under s 19(2) of that Act, the department has a duty to take all reasonably practicable steps to ensure that detainees are not exposed to risks to their health and safety – both physical and psychological. Again, this is a positive duty on the department to prevent harm, not just to avoid acting in ways that cause harm.

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<sup>82</sup> *Behrooz v Secretary of the Department of Immigration and Multicultural and Indigenous Affairs* [2004] HCA 36; 219 CLR 486; 208 ALR 271; 78 ALJR 1056 (6 August 2004) Gleeson CJ at para [21]. See also [49-53] (McHugh, Gummow and Heydon JJ), [174] (Hayne J), 219 (Callinan J).

<sup>83</sup> *S v Commonwealth* [2005] FCA 549 at [209-211], citing *Kondis v State Transport Authority* [1984] HCA 61, *Burnie Port Authority v General Jones Pty Ltd* [1994] HCA 13; (1994) 179 CLR 520.

4.8 The department's common law and statutory duties of care towards detainees require it to be proactive in ensuring that detainees' physical and mental health needs are met. This includes providing health services that are broadly consistent with those available in the Australian community, and which are reasonably designed to meet detainees' health care needs, including their need for psychiatric care, taking into account their particular vulnerabilities.<sup>84</sup>

4.9 The department's duty of care is owed not just to detainees as a group, but to each and every detainee individually. The more vulnerable an individual detainee is, the greater the onus is on the department to understand his or her vulnerability and needs, to manage the risks to that individual, and to ensure that his or her needs are met.

4.10 The department has contracted out the day-to-day running of closed immigration detention facilities to Serco. It has also contracted out the provision of health services for all detainees, those in closed facilities and in community detention, to IHMS. Its contracts with Serco and IHMS recognise the department's duty of care to detainees, and require Serco and IHMS to perform that duty on the department's behalf. Similar arrangements exist with the Australian Red Cross and the other contracted providers of community detention.

4.11 The department's contracts with Serco and IMHS also set out standards of conduct that are fundamental to the performance of their service obligations. This includes promoting a healthy detention environment and providing appropriate amenities (especially for those with special needs). The contracts with service providers also impose a general duty of care in carrying out its responsibilities to manage detention facilities including 'be alert for People in Detention who appear to be, traumatised and/or vulnerable to self-harm and by the actions of others, and manage and report on these'.<sup>85</sup> The contract arrangements recognise that the department will implement a strategy to manage the coordinated delivery of services from all service providers working in the immigration detention network and that an integrated service relationship requires the service provider to cooperate with the department in meeting its obligations.<sup>86</sup>

4.12 Even though the department has contracted out detention services, its duty of care is legally 'non-delegable', which means that it remains ultimately responsible for the care of each and every detainee.<sup>87</sup> The department cannot discharge its duty simply by making reasonable arrangements for its service providers to perform the duty for it.<sup>88</sup> It must ensure that its service providers actually provide the required level of care.

4.13 The department therefore has to ensure that detention facilities are adequately staffed by properly trained staff; that detention conditions are humane and not unreasonably restrictive or coercive; and that proper policies and procedures are in place to assess and manage risks and to ensure that individual needs are identified and met. The department also has to ensure that the service providers adhere to their contractual obligations to perform their duties in accordance with standards of conduct, such as their duty of care to detainees, maintaining a healthy detention environment and providing a supportive culture and appropriate amenities.

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<sup>84</sup> *S v Commonwealth* [2005] FCA 549 at [212].

<sup>85</sup> *Health Services Contract* Sch 4.2, Annexure A, cl 2.4; *Detention Services Contract*, Sch 4.2, Annexure A, cl 2.4.

<sup>86</sup> *Detention Services Contract* cl 12; *Health Services Contract* cl 9.

<sup>87</sup> *SBEG v Secretary, Department of Immigration and Citizenship* [2012] FCAFC 189 at [7].

<sup>88</sup> At times, detainees may access general community health services, such as State-run hospital and psychiatric services. The providers of those services have their own duty of care to all their patients, including any detainees that they treat. However, that duty of care does not replace the Commonwealth's duty of care, but is in addition to it. The Commonwealth remains responsible for ensuring that detainees receive all the health services that they need.

4.14 Furthermore, the department cannot simply rely on assurances from its contractors that these things are in place. It must itself effectively monitor and audit its contractors' performance.<sup>89</sup> As envisaged by the contractual and the governance framework arrangements, the department must work in an integrated and proactive way with the service providers to ensure that the overall duty of care owed to detainees can be provided, especially in an environment where risk to detainees may be heightened. This is especially the case when the incidents of self-harm and cases of people with deteriorating mental health in immigration detention centres had significantly increased.

4.15 The department must also ensure that each individual detainee has access to the care that they need. It has to ensure that its contractors monitor each individual detainee's health, and provide the health services that they need in a timely way. Again, the Commonwealth cannot simply rely on assurances from its contractors that this is happening. It has to make its own active, independent assessment.<sup>90</sup>

4.16 Where a detainee is at risk of suicide or self-harm, the department (including through its contractors) has to take reasonable steps to manage this risk. It is not enough simply to monitor the detainee, limit their access to the means of suicide or self-harm, and/or physically restrain the detainee so that they cannot act. Indeed, managing the risk in these ways might itself cause further psychological harm to the detainee. The department's duty of care extends to ensuring that the detainee receives appropriate psychiatric treatment, that treatment plans are properly implemented, and that the conditions in which the person is detained are consistent with their psychological needs.

4.17 This duty extends to the decisions that the department makes about where it places a detainee in the detention network. For example, if a person detained in a detention facility in a remote location requires medical services that are not practically available to them in that facility, then the department's duty of care may require it to relocate the detainee to another facility where those services are available. Similarly, if the conditions of detention in a particular facility are incompatible with the reasonable management of a detainee's known needs and risks, then the department's duty of care may require it to relocate the detainee to another facility where the conditions of detention are more suitable.<sup>91</sup>

4.18 However, there are limits to the department's duty of care. It must take 'reasonable care' of detainees. When deciding what 'reasonable' care is, account must be taken of what it is reasonably possible for the department to do. For example, the department can only detain people in places designated by the minister as places of immigration detention, and it has a limited budget to construct and alter facilities within those places. Its duty is to take reasonable care within these constraints.

4.19 The Australian Government's mandatory detention policy is a key constraint on the department. An increasing body of evidence suggests that being in immigration detention itself can cause psychological harm to detainees. However, the department's duty of care to detainees arises because of, and is subject to, its overarching statutory duty under the Migration Act to detain unlawful non-citizens. Therefore, while it has a duty to care for detainees as best it can while they are in detention, that duty cannot extend to an obligation to release an unlawful non-citizen, even where it is clear that continuing to detain that person is likely to cause them further psychological harm.<sup>92</sup>

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<sup>89</sup> *S v Commonwealth* [2005] FCA 549 at [220]-[221].

<sup>90</sup> *ibid* at [224], [257].

<sup>91</sup> *S v Commonwealth* [2005] FCA 549 at [262-263]; *Secretary, Department of Immigration and Multicultural and Indigenous Affairs v Mastipour* [2004] FCAFC 93; *SBEG v Secretary, Department of Immigration and Citizenship (No 2)* [2012] FCA 569 at [117].

<sup>92</sup> *SBEG v Secretary, Department of Immigration and Citizenship* [2012] FCAFC 189.

4.20 Under ss 195A and 197AB of the Migration Act, if the minister thinks it is in the public interest to do so, the minister has the power to grant a visa to a detainee, or to place a person in community detention by making a residence determination. These provisions provide mechanisms by which the minister can release people from immigration detention or place people in community detention, including in circumstances where continuing to detain them in a closed detention environment is likely to cause them further psychological harm. However, the Migration Act provides that the minister 'does not have a duty to consider whether to exercise [either power], whether he or she is requested to do so by any person, or in any other circumstances'.<sup>93</sup> This means that the minister is not obliged to consider using these powers in order to give effect to the Commonwealth's duty of care to detainees.

4.21 These limitations on the Commonwealth's duty of care are graphically illustrated by the Federal Court decisions in *SBEG v Secretary, Department of Immigration and Citizenship*.<sup>94</sup> In that case, the Commonwealth's own expert witness gave evidence that the applicant suffered from a mental illness, and that if the applicant continued to be held in immigration detention, then 'there is a real risk to he would once again engage in a potentially lethal suicide attempt' and that 'he is at a very real risk of dying'. However, the court could not compel the minister to issue a visa to the applicant, or make a residence determination, and all available forms of immigration detention suffered from the same inherent problem of being immigration detention. There was, therefore, no practical remedy that the court could give.

4.22 Under paragraph (b)(v) of the definition of 'immigration detention' in s 5(1) of the Migration Act, the Minister may approve a place in writing as a place of immigration detention. In *SBEG*, the plaintiff argued that the Commonwealth's duty of care extended to the minister having a duty to exercise that power, in order to ensure a place of 'detention' existed that was not likely to cause the applicant further psychological harm. The court (Besanko J) rejected this argument, holding that 'it is not possible to formulate the practical content of a duty to exercise the power in paragraph (b)(v)' and therefore 'the Commonwealth (or the Minister) would not be in breach of any duty of care for failing to exercise the power'.<sup>95</sup>

4.23 In *MZYR v Secretary, Department of Immigration and Citizenship*,<sup>96</sup> the court (Gordon J) did not accept that this is necessarily correct, without ultimately deciding the question. In that case, the court held that the applicant had established a *prima facie* case that the department was in breach of its duty of care by failing to provide necessary psychiatric treatment. The expert evidence before the court suggested that it would be difficult for the applicant to receive the necessary treatment while detained at any available place of detention. Rather than ordering the Commonwealth to exercise its power to devise a new place of detention for the applicant, the court instead ordered the Commonwealth to take all reasonable steps to provide the necessary health services to the applicant. The onus therefore was on the department to find a way to perform its duty to the applicant.

4.24 When *SBEG* was considered on appeal,<sup>97</sup> the Full Court of the Federal Court did not hold that the Commonwealth could never have a duty to exercise the power in paragraph (b)(v). What it did say is:

Immigration detention under the Act involves "restraint by an officer" while a detainee is in that officer's company, or "being held by, or on behalf of, an officer" in one of the places described in paragraph (b)

<sup>93</sup> Subsection 195A(4); s 197AE, *Migration Act 1958*.

<sup>94</sup> *SBEG v Secretary, Department of Immigration and Citizenship (No 2)* [2012] FCA 569; on appeal *SBEG v Secretary, Department of Immigration and Citizenship* [2012] FCAFC 189.

<sup>95</sup> *ibid* at [113].

<sup>96</sup> *MZYR v Secretary, Department of Immigration and Citizenship* [2012] FCA 694.

<sup>97</sup> *SBEG v Secretary, Department of Immigration and Citizenship* [2012] FCAFC 189.

of the definition of immigration detention. That means confinement in a facility and restrictions upon the movements of the detainee so that the detainee is not free to come and go as he or she pleases. Detention necessarily involves the loss of personal liberty, and, usually, of the right to privacy as well.<sup>98</sup>

4.25 The medical evidence was that SBEG's condition 'could be substantially improved by allowing him to come and go as he pleased and to live without the presence of guards, and in a supportive family environment.'<sup>99</sup> However, the court said, that would be tantamount to a residence determination as contemplated by s 197AB. It is not a form of accommodation that the minister could validly specify as 'immigration detention' under s 5(1)(b)(v) of the Act.<sup>100</sup>

4.26 Therefore, the Commonwealth's duty of care to detainees does not extend to it having a duty to create forms of 'immigration detention' that avoid the risk of psychological harm inherent in the very fact that they are being detained.

4.27 However, the Full Court of the Federal Court appears to have left open the possibility that a detainee might, in a particular case, be able to 'demonstrate that the Minister should, acting reasonably'<sup>101</sup> devise a form of 'immigration detention' that would both satisfy the requirements of s 5(1)(b)(v) of the Act, and significantly alleviate the detainee's psychological disorder.

4.28 In *SBEG*, the court said that the appellant had failed to make out such a case. In particular, the appellant's case did not 'include evidence from potential "officers" that they were ready, willing and able to accompany and, if necessary, to restrain the appellant or to hold him in a place approved by the Minister against his will'.<sup>102</sup> The appellant, therefore, had not proved the elements of his case necessary 'to demonstrate that the Minister, should, acting reasonably, appoint members of any given household as "officers" for the purposes of the Act'.<sup>103</sup>

4.29 In summary, the department (acting on behalf of the Commonwealth) has a non-delegable duty of care towards detainees. That duty of care does not override its duty under the Migration Act to detain unlawful non-citizens, even where it is reasonably foreseeable that doing so is likely to cause a detainee psychological harm.

4.30 However, it does require the department to take reasonable, positive steps to ensure that detainees' physical and mental health needs are met. It can contract out the day-to-day running of immigration detention facilities and the provision of health services for detainees, but it cannot contract out of, or delegate, its duty of care to detainees to its contracted service providers. In order to meet its duty of care obligations, the department must ensure that its service providers actually provide the required level of care, including that:

- detention conditions are not inhumane and not unreasonably restrictive or coercive
- detention service providers maintain healthy detention environments and provide a supportive culture and appropriate amenities
- detainees have access to health services that are broadly consistent with those available in the Australian community

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<sup>98</sup> *ibid* at [54].

<sup>99</sup> *ibid* at [55].

<sup>100</sup> *ibid* at [55], [59].

<sup>101</sup> *ibid* at [60].

<sup>102</sup> *ibid* at [57].

<sup>103</sup> *ibid* at [60].

- proper policies and procedures are in place to identify individual needs, and to assess and manage individual risks
- detention placement decisions take into account each individual detainees' needs and risks, and the impact that different detention environments are likely to have on vulnerable individuals
- each detainee actually receives the health services he or she needs in a timely way, and
- reasonable steps are taken to manage a detainee's risk of suicide or self-harm, including ensuring that the detainee receives appropriate psychiatric treatment, and that treatment plans are properly implemented.

4.31 In order to properly identify individual needs, and to assess and manage individual risks, the department needs to understand the factors that impact on individual detainees' vulnerability to harm, particularly the factors that impact on the incidence of self-harm. The department also has to understand protective factors, so that it can identify what steps it reasonably must take to reduce detainees' vulnerability and their risk of self-harm. Without this understanding, the department will inevitably fail to anticipate reasonably foreseeable risks of harm, and/or to take reasonable steps to manage the risk when it is foreseen.

4.32 In practice, developing this understanding requires the department to engage with the risk of suicide and self-harm at a strategic as well as at an operational level. For example, it cannot just rely on its individual case-managers to discern the risk and protective factors through their own experience, but must strategically collect and analyse data about the incidence of self-harm, its causes, and what works to reduce it, and disseminate and implement this knowledge in its management of the immigration detention network.

4.33 Similarly, the department will only be able to take reasonable steps to manage foreseen risks to individual detainees if doing so is a strategic priority. For example, the department can only make appropriate placement decisions about vulnerable detainees if processes are in place to ensure that particular places are actually made available to the detainees that most need them. In other words, the department must manage places in the network strategically – particularly when the detention network is under stress. Otherwise, it is simply responding to operational pressures by moving detainees to whatever places happen to be available, irrespective of the suitability of the place for the detainee.

4.34 The department does not directly breach its duty of care to individuals if it does not engage strategically with the issues in these and similar ways. However, a lack of effective strategic engagement increases the risk that the department will breach its duty of care to particular detainees.

4.35 In our view, this report identifies a number of areas in which the department could have engaged more strategically with the operational challenges it faced when the number of Irregular Maritime Arrivals sharply increased from 2009 and through 2011. We acknowledge that the department improved its strategic engagement with the issues during 2012. However, the issues of concern highlighted in this report remain important areas of strategic risk for the department.

# PART 5—DETENTION POPULATION AND NETWORK

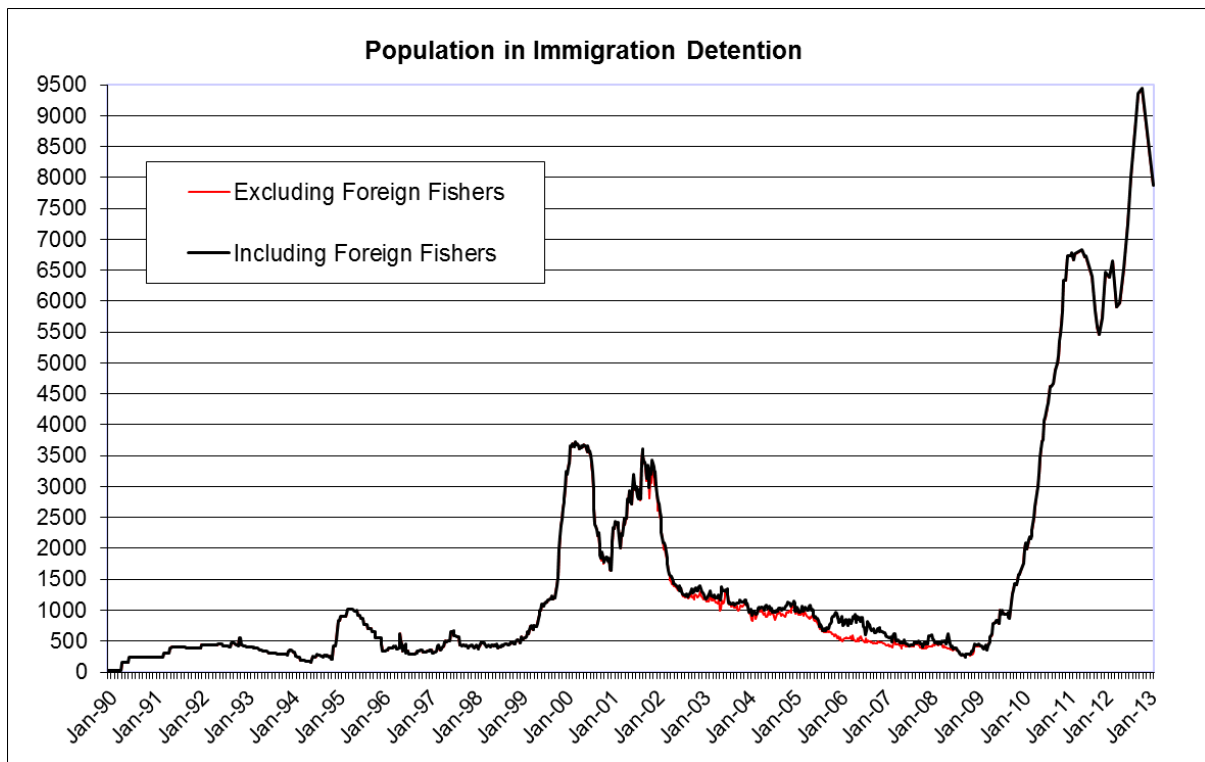
## Detainee population

5.1 A breakdown of the detention centre population by location since 2008 is provided at Attachment 4.

### *Detention patterns over recent years*

5.2 The graph below shows that the number of people in immigration detention steadily declined between January 2003 and January 2009, and then increased sharply to its highest level in late 2012.

**Graph 1: Population in Immigration Detention<sup>104</sup>**



5.3 As at 29 August 2008, there were only 279 people in immigration detention, including 50 people in community detention.<sup>105</sup> The detention population at this time was predominately comprised of people detained for compliance reasons: only 6 people (2%) were unauthorised boat arrivals and 41 (15%) were unauthorised air arrivals.<sup>106</sup>

5.4 Between early 2009 and early 2011, the number of people in immigration detention facilities increased markedly, reflecting the most recent wave of Irregular Maritime Arrivals.<sup>107</sup> By February 2011, 6758 people were in immigration detention, and almost a third

<sup>104</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 31 January 2013.

<sup>105</sup> Department of Immigration and Citizenship, *Report on Number of People in Immigration Detention as at 29 August 2008*, Figure 1.

<sup>106</sup> *ibid.*

<sup>107</sup> See Attachment 3 for the number of persons in immigration detention between 2008 and 2012.

of the detention population was accommodated in alternative places of detention – both on Christmas Island and the mainland – and 106 people were in community detention.<sup>108</sup>

5.5 The composition of the immigration detention population also shifted during this period, from a primarily compliance population to an overwhelming asylum seeker population. In a pattern that has continued to the present, by February 2011 about 96% of the total population had arrived by air or boat without a visa.<sup>109</sup>

5.6 From mid to late 2011, the number of people in immigration detention decreased,<sup>110</sup> reflecting a comparatively smaller number of boat arrivals in 2010-11. Reflecting the government's policy announcement in October 2010, the number in closed immigration detention facilities also substantially reduced during this period, as the department transferred more people to community detention: in November 2011, some 1324 people or 23% of the total detention population of 5733 was in community detention.<sup>111</sup>

5.7 Despite the government's policy decision to make greater use of bridging visas from November 2011, another increase in boat arrivals in 2011-12<sup>112</sup> saw further increases in the detention population in 2012. In February 2012, 6644 people were in immigration detention, including 1700 people – or 26% of the total detention population – in community detention.<sup>113</sup>

5.8 In the second half of 2012, following the announcement of a return to offshore processing in Regional Processing Centres, there was another substantial increase in Irregular Maritime Arrivals. The arrival of over 9800 Irregular Maritime Arrivals between 13 August and 31 December 2012 again placed pressure on the detention network.

5.9 This increase was reflected in detention numbers. As at 31 December 2012, there was a total of 9059 people in immigration detention (a decrease from the 10,165 in detention the previous month),<sup>114</sup> including 7237 people in closed immigration detention facilities including alternative places of detention, comprising 5005 detainees on the mainland and 2232 on Christmas Island and Cocos Keeling Islands.<sup>115</sup> A further 1822 people – or 20% of the detention population – were approved to live in community detention including 732 children.<sup>116</sup>

5.10 There was a decline in Irregular Maritime Arrivals in January and February 2013. As at 28 February 2013, 7952 people were in immigration detention, including 2202 people – or 28% of the total detention population – in community detention.<sup>117</sup>

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<sup>108</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 18 February 2011.

<sup>109</sup> *ibid.* In November 2011 and February 2012 this figure was 94%: Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 30 November 2011, Figure 3; Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 29 February 2012, Figure 3. In December 2012, this figure was 96%: Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 31 December 2012, Figure 3.

<sup>110</sup> See Attachment 3.

<sup>111</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 30 November 2011, Figure 1.

<sup>112</sup> See Attachment 4.

<sup>113</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 29 February 2012, Figure 1.

<sup>114</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 31 December 2012, Figure 1.

<sup>115</sup> *ibid.*

<sup>116</sup> *ibid.*

<sup>117</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 28 February 2013.



## Detention network and centre capacity

5.11 The department operates an extensive network of immigration detention facilities across Australia.

5.12 As the number of Irregular Maritime Arrivals has increased, the network of immigration detention facilities has expanded. In 2008, prior to the current wave of Irregular Maritime Arrivals, there were eight operational immigration detention facilities, including five Immigration Detention Centres.<sup>118</sup>

5.13 As at 6 February 2013, there were 24 operational immigration detention facilities including Alternative Places of Detention, with a capacity expanded to accommodate some 7329 detainees, and a contingency capacity of 9357.<sup>119</sup> This included accommodation capacity on Christmas Island for 1094 detainees with a contingency capacity of 2078.<sup>120</sup> These immigration detention facilities included nine Immigration Detention Centres across Australia including on Christmas Island, three Immigration Residential Housing facilities, three Immigration Transit Accommodation facilities and nine Alternative Places of Detention.<sup>121</sup>

5.14 In addition, in response to increasing numbers of Irregular Maritime Arrivals arriving at Cocos Keeling Islands, in June 2012 the department established temporary accommodation arrangements there to accommodate up to 100 detainees for a short period until they could be transferred to the Christmas Island facility.<sup>122</sup>

5.15 As at 31 December 2012, the detention facilities at Scherger in Far North Queensland and Curtin in Western Australia, and on Christmas Island, housed more than half of the closed detention population.<sup>123</sup> These remote locations pose the greatest challenges, both logistically and in the provision of time critical and effective services because of their geographical isolation and limited transport links. These challenges are discussed further in Part 7.

5.16 A full list of the types of detention facilities and their regular operational and current contingency capacities are provided in Attachment 6.

5.17 With increasing arrivals continuing, we have been concerned that some closed detention facilities were operating at or above contingency capacity. At 31 October 2012, 956 people were in Christmas Island Immigration Detention Centre<sup>124</sup> when its contingency capacity was 850 persons.<sup>125</sup> In addition, 1262 people, including families, were in alternative

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<sup>118</sup> These were: Villawood Immigration Detention Centre, Northern Immigration Detention Centre, Maribyrnong Immigration Detention Centre, Perth Immigration Detention Centre, Christmas Island Immigration Detention Centre, Sydney Immigration Residential Housing, Perth Immigration Residential Housing, Brisbane Immigration Transit Accommodation: Department of Immigration and Citizenship, *Report on Number of People in Immigration Detention as at 29 August 2008*, Figure 1.

<sup>119</sup> Department of Immigration and Citizenship, *Accommodation Capacity at immigration detention facilities as at 6 February 2013*, <http://www.immi.gov.au/managing-australias-borders/detention/facilities/capacity/> (viewed 26 February 2013).

<sup>120</sup> *ibid.*

<sup>121</sup> *ibid.*

<sup>122</sup> Department of Immigration and Citizenship, *Annual Report 2011-12*, *op cit*, p. 220.

<sup>123</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 31 December 2012, Figure 1.

<sup>124</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 31 October 2012, Figure 1.

<sup>125</sup> *ibid.*, Figure 1; Department of Immigration and Citizenship, *Accommodation Capacity at immigration detention facilities as at 21 November 2012*, <http://www.immi.gov.au/managing-australias-borders/detention/facilities/capacity/> (viewed 27 December 2012). This information does not include reference to capacity on Cocos Keeling Island, despite the establishment of temporary accommodation there in June 2012.

places of detention on Christmas Island and Coco's Keeling Island, when the combined contingency capacity of these facilities at that time was 1228.<sup>126</sup>

5.18 In November 2012, Curtin and Yongah Hill Immigration Detention Centres were both operating above contingency capacity, and 1354 people, including families, were in alternative places of detention on Christmas Island and Coco's Keeling Island, well over the 1228 combined contingency capacity of these facilities.<sup>127</sup> By 31 December 2012, the number of detainees at the Christmas Island Immigration Detention Centre had returned to 853 men, closer to the centre's contingency capacity. However, 1379 people were in alternative places of detention on Christmas Island, again well over the contingency capacity.<sup>128</sup>

5.19 The department's data at 28 February 2013 show that all of the above detention facilities and alternative places of detention were operating below contingency capacity.<sup>129</sup>

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<sup>126</sup> *ibid.*

<sup>127</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 30 November 2012.

<sup>128</sup> Contingency capacity at the Lilac, Aqua, Construction Camp and Phosphate Hill APODs on Christmas Island increased in the interim period to 1228: Department of Immigration and Citizenship, *Accommodation Capacity at immigration detention facilities as at 6 February 2013*, <http://www.immi.gov.au/managing-australias-borders/detention/facilities/capacity/> (viewed 26 February 2013).

<sup>129</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 28 February 2013.

## PART 6—THE INCIDENCE OF SUICIDE AND SELF-HARM IN IMMIGRATION DETENTION

6.1 This investigation commenced in July 2011 in response to the deteriorating psychological health of detainees we had observed, particularly on Christmas Island, and against a backdrop of several deaths and escalating self-harm in immigration detention. As the Joint Select Committee later observed in its March 2012 report: ‘An alarming number of detainees have resorted to self harming. The Committee is not able to accurately estimate the current number or frequency of self harm incidents, however it appears to be a regular occurrence.’<sup>130</sup>

6.2 It appears that the Committee’s inability to accurately estimate the incidence of self-harm was a consequence of the fact that the department did not have any mechanism in place to regularly and consistently extract and analyse self-harm data across the detention network prior to May 2012, when it started producing its *Monthly Self-Harm Snapshot*. While the department could produce some self-harm data for specific purposes, such as responding to parliamentary inquiries, it appears that it was not itself regularly monitoring the incidence of self-harm among detainees across the detention facilities network. Further, as discussed below, the accuracy of the data that the department was able to produce during 2011 and 2012 is open to question.

6.3 When this investigation commenced, we intended to consider not just the incidence of suicide and self-harm within the immigration detention network, but also demographic information such as gender, age, country of origin, urban/rural background, language, and length of time in detention of people who participated in suicidal or self-harming behaviours. We also intended to examine the potential determinants of this behaviour, including pre-existence of mental illnesses, and catalysts for suicidal ideation and self-harming behaviours. However, the limited available data did not allow us to do this.

6.4 During the course of this investigation, the department has improved its collection and analysis of self-harm data. The advent of the *Monthly Self-Harm Snapshot* was a positive step, although for the reasons given below, we have continuing concerns about the integrity of the self-harm data that the department is collecting and reporting in those snapshots.

6.5 On 15 March 2013, the department provided us with a data set that it considered to represent an accurate picture of all self-harm incidents reported to the department by Serco since January 2011. The data points to escalating self-harm within detention facilities from early 2011, with recorded incidents peaking between June and September 2011. We also know that there have been 11 deaths in immigration detention over recent years, and at the time of writing, four of these deaths have been found through coronial processes to be suicides.

6.6 In our view, the deficiencies in the department’s data at the time that self-harm was increasing is likely to have undermined its ability to anticipate, monitor and respond to suicidal and self-harming behaviours, in a manner consistent with its duty of care to detainees.

6.7 The department has recently sought to further improve its data collection and reporting mechanisms relating to self-harm statistics, and a departmental working group has developed amendments to the detention incident reporting categories, which we understand

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<sup>130</sup> Joint Select Committee on Australia’s Immigration Detention Network, *Final Report, op cit*, para 5.13.

will be implemented from March 2013. We welcome this development, but for the reasons given below and in Part 8, we consider that the department needs to collect better data about individual self-harm incidents, ensure that it is accurately extracting and analysing aggregate self-harm statistics, and has in place effective mechanisms to monitor, anticipate and respond to self-harming behaviour shown in those statistics.

## **The incidence of suicide and self-harm in immigration detention**

### ***Deaths in immigration detention since 2007***

6.8 An Iranian national detained at Villawood Immigration Detention Centre died from natural causes while being treated in hospital in 2007-2008. There were no deaths in immigration detention in the financial years of 2008-2009 and 2009-2010. Between 1 July 2010 and 31 December 2012 there were 11 deaths in immigration detention:

- on 22 August 2010 an Afghan Irregular Maritime Arrival died in Curtin Immigration Detention Centre
- on 20 September 2010 a Fijian national, who was detained in relation to visa compliance issues, died at Villawood Immigration Detention Centre
- on 16 November 2010 an Iraqi Irregular Maritime Arrival died at Villawood Immigration Detention Centre
- on 8 December 2010 a British national, who was detained in relation to visa compliance issues, died at Villawood Immigration Detention Centre
- on 17 March 2011 an Afghan Irregular Maritime Arrival died at Scherger Immigration Detention Centre
- on 28 March 2011 an Afghan Irregular Maritime Arrival died at Curtin Immigration Detention Centre
- on 22 July 2011 an Afghan Irregular Maritime Arrival died in community detention in Victoria
- on 26 October 2011 a Sri Lankan Irregular Maritime Arrival died at Sydney Immigration Residential Housing
- on 27 February 2012 an Iranian national, who was detained in relation to visa compliance issues, died at Sydney Immigration Residential Housing
- on 5 June 2012 a Sri Lankan Irregular Maritime Arrival died in community detention in NSW
- on 20 April 2013 a Papua New Guinean national, detained after his visa was cancelled, died in NSW.<sup>131</sup>

6.9 The deaths at Villawood Immigration Detention Centre in September, November and December 2010 were the subject of a coronial inquiry report in December 2011 and were all ruled to be suicides.<sup>132</sup> The death in March 2011 was found by a coroner to be caused by hanging. The deaths in July 2011 and June 2012 were found by coroners to be medically-related. At the time of writing, the death in April 2013 was under NSW Police investigation. The remaining four deaths are the subject of current coronial inquiries.

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<sup>131</sup> This person had been detained in Villawood Immigration Detention Centre but his death occurred after he had been admitted to hospital.

<sup>132</sup> Magistrate M Jerram, NSW State Coroner, *Findings in the inquests into the deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi, David Saunders at Villawood Detention Centre, op cit.*

6.10 We are concerned by the accuracy of the information held by the department relating to these deaths. We needed to seek clarification from the department on several occasions to ascertain the dates and circumstances of the deaths that have occurred in immigration detention over the past few years, and the status of subsequent coronial processes and findings.

6.11 The records kept by the department, Serco and the Australian Red Cross did not have dates of death aligned. In one case, a person who the Australian Red Cross considered to be in community detention had been granted a protection visa prior to their death, but it appears that this information had not been conveyed by the department to its community detention service provider. In another case, the Australian Red Cross was aware of a coronial finding in relation to one of the deaths in community detention, but the department was not.

6.12 It is clear that there is no one source of collated information within the department concerning deaths in immigration detention. In our view, the department needs to develop more robust procedures for collecting key information about each death in detention. To this end, we have made recommendations concerning the need for internal reviews of detainee deaths and the monitoring of deaths in custody.

6.13 The department does not as a matter of policy collect data specifically on the number of attempted suicides in immigration detention, because:

The literature on suicide indicates that it is notoriously difficult to distinguish between suicidal gestures (actions resembling suicide attempts while not being fully committed) and 'genuine' suicide attempts (actions taken with intent to die) ... This policy does not attempt to provide guidance on the distinction between self-harm without suicidal intent and 'genuine' suicide attempts but recognises that such judgements may be necessary for assessing the level of risk. Judgements of this nature will always be made by qualified clinicians.<sup>133</sup>

6.14 We accept that it is therefore reasonable for the department to categorise suicidal gestures as self-harm incidents rather than as suicide attempts.

### ***The reported incidence of self-harm in immigration detention***

6.15 In the course of the investigation, we sought data from the department and Serco regarding the incidence of self-harm among the current population in closed detention facilities on a number of occasions.<sup>134</sup> We have also explored public statements by departmental officials at Senate Estimates hearings, departmental responses to Questions on Notice, and departmental submissions to other inquiries in which the department has reported on the incidence of self-harm in detention centres. For the reasons given below, we have lacked confidence in the accuracy of the department's data obtained from these sources.

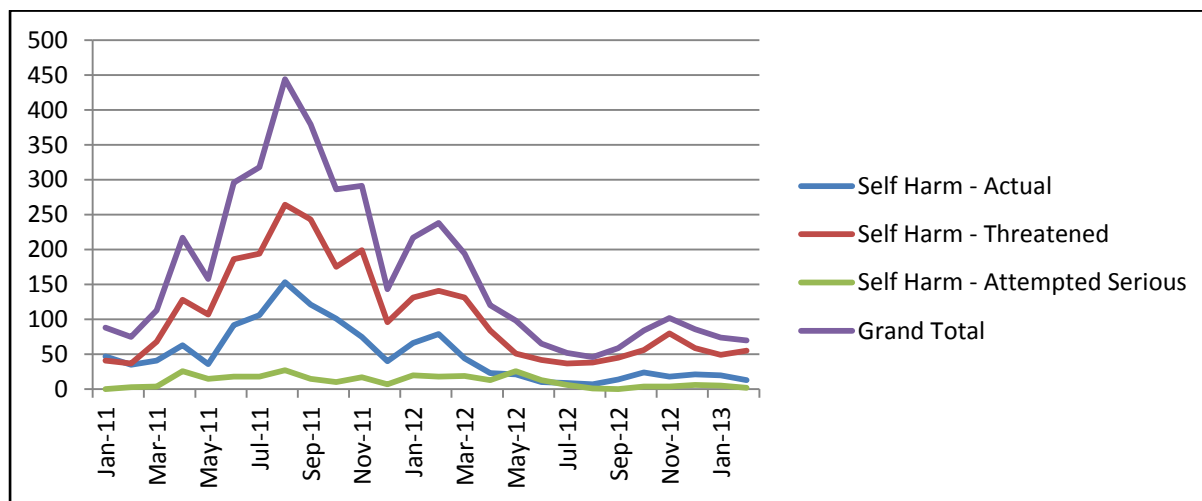
6.16 On 15 March 2013, the department provided us with a dataset that it considered to represent an accurate picture of self-harm incidents reported to the department by Serco. While we continue to have concerns about the categorisation of incidents as reported by Serco to the department, we accept that this data set demonstrates the general trend of self-

<sup>133</sup> Department of Immigration and Citizenship, *Psychological Support Program for the Prevention of Self-Harm in Immigration Detention*, 3 April 2009, p. 5.

<sup>134</sup> IHMS advised this office that IHMS's health information system, Chiron, 'records client details, health events and selected medical history such as immunisation records. Health records are the property of DIAC, and therefore we provide extracts to DIAC either for individual records or as data extracts upon request, consistent with the Privacy Act... Overall the Chiron system records clinic hours, appointments, health events such as consultations and the results of primary and mental health assessments. It records diagnoses of primary health issues but not mental health issues'.

harm incidents in immigration detention. We present that data graphically below. A table setting out the relevant data is in Attachment 5.

**Graph 2: Reported incidence of self-harm in detention facilities (excluding community detention), January 2011 – February 2013**



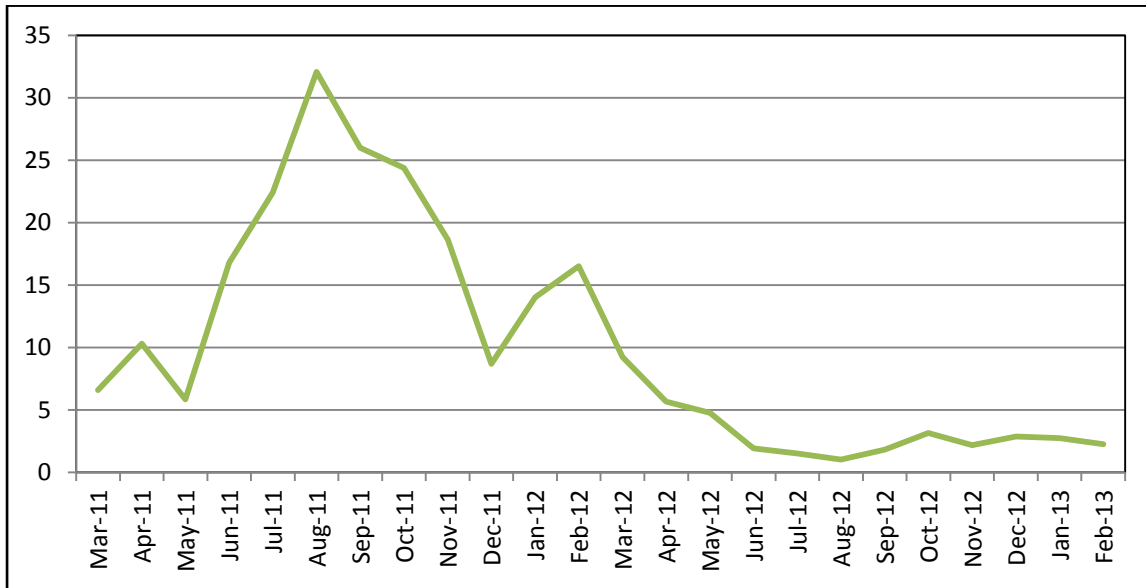
6.17 This data indicates that the incidence of self-harm and associated behaviours increased rapidly from early 2011, with recorded incidents peaking around September 2011, before dropping away later that year and then remaining fairly stable from around May 2012.

6.18 It is not possible to tell from these figures alone whether the increased incidence of self-harm during 2011 simply reflected a parallel increase in the number of people in immigration detention. It is therefore useful to consider also the 'rate' of self-harm by reference to the number of people in detention over the same period.

6.19 The department started producing a statistical *Monthly Self-Harm Snapshot* in May 2012. Its snapshot included the a 'self-harm incident rate per 1000 clients', based on the number of reported self-harm – actual incidents each month, and the average number of people in detention facilities (excluding community detention) for the corresponding month.

6.20 We have adopted the same approach here. Again, for the reasons given below, we have concerns about the accuracy of the data provided to this office on the average number of people in detention facilities in each month, but we consider the data robust enough to graphically represent the trend in the rate of self-harm behaviour, even if not the precise rate at any given time. The table setting out the relevant data is also in Attachment 5.

**Graph 3: Reported rate of self-harm/1000 detainees (excluding community detention), January 2011 – February 2013**



6.21 As can be seen, the trend-line of the rate of actual self-harm per 1000 detainees follows almost exactly the trend-line of the incidence of self-harm. This shows that the increased incidence during 2011 was not simply a function of the number of people in detention having increased. We discuss the factors that we consider drove this increase in the rate of self-harm in Part 7.

**Self-harm by children**

6.22 This office is concerned that self-harm by children in immigration detention facilities is an ongoing issue, notwithstanding the decrease in self-harm incidents since the peak in August 2011.

6.23 Prior to May 2012, reports produced by the department and Serco did not routinely and separately monitor self-harm by children. However, in October 2011 the department provided data to Parliament that demonstrated that self-harm involving children was at a concerning level, representing almost 14% of self-harm incidents between 1 July 2010 and 30 June 2011.<sup>135</sup>

6.24 The following table, outlining the number of children reported by Serco to have engaged in self-harm from 1 February 2011 to 13 February 2012 by month, indicates that there was a peak in self-harm among children in closed detention facilities corresponding with the broader pattern across the detention network during this period.<sup>136</sup>

<sup>135</sup> The Department reported that between 1 July 2010 and 30 June 2011, the total number of self-harm incidents was 386, of which 53 incidents involved children: Department of Immigration and Citizenship, Legal and Constitutional Affairs Committee, *Budget Estimates*, 23-24 May 2011, answer to *Question on Notice BE11/0500*, tabled 13 October 2011, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=legcon\\_ctte/estimates/bud\\_1112/diac/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/bud_1112/diac/index.htm) (viewed 26 February 2013).

<sup>136</sup> Department of Immigration and Citizenship, Legal and Constitutional Affairs Committee, *Additional Estimates*, 13 February 2012, *Question on Notice AE12/0411*, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=legcon\\_ctte/estimates/add\\_1112/diac/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/add_1112/diac/index.htm) (viewed 26 February 2013). These statistics do not include children in community detention.

**Table 2: Self-Harm by Children, February 2011 – February 2012**

<b>Month</b>	<b>Self-harm – actual</b>	<b>Average number of children in immigration detention facilities during the month</b>
February 2011	3	975
March 2011	5	918
April 2011	2	803
May 2011	2	749
June 2011	2	531
July 2011	5	384
August 2011	14	420
September 2011	2	387
October 2011	4	407
November 2011	4	425
December 2011	1	638
January 2012	0	594
February 2012	1	542

6.25 The department's July 2012 *Monthly Self-Harm Snapshot* reported that there were 42 incidents of actual self-harm', 3 incidents of 'attempted serious self-harm' and 74 incidents of 'threatened self-harm' by children in 2011-2012.<sup>137</sup>

6.26 The department's February 2013 snapshot reported that there had been 17 incidents of actual self-harm', 4 incidents of 'attempted serious self-harm', and 42 incidents of 'threatened self-harm' by children in between 1 July 2012 and 28 February 2013.<sup>138</sup>

## **Data integrity issues**

6.27 During the course of this investigation, we found the self-harm data collected and reported by the department to be poor in quality and breadth. The department only started regularly analysing self-harm data in May 2012, which was well after the incidence of self-harm had peaked. Furthermore, as demonstrated below, the department has on occasion produced inconsistent self-harm statistics for the same reference periods, which suggest the need for improved integration of the systems that the department has put in place to collect, extract and analyse self-harm data. We acknowledge that there may be different purposes for such systems that the department and service providers use, however greater integration and consistency is necessary for reporting purposes.

### **Input issues**

6.28 To properly manage self-harm in immigration detention, the department must be able to collect accurate data about the incidence of self-harm. It relies on Serco to perform this function for it. The *Detention Services Contract* requires Serco to maintain an Incident Management Log and report incidents to the department. Serco Client Service Officers are expected to submit an incident report for each self-harm incident, including details such as the method and nature of injury, and the incident's time and place. A categorisation and brief description of the incident is then entered into the department's 'Portal' database, from which the department extracts its self-harm data.

<sup>137</sup> Department of Immigration and Citizenship, *Monthly Self Harm Snapshot*, 31 July 2012.

<sup>138</sup> Department of Immigration and Citizenship, *Monthly Self Harm Snapshot*, 28 February 2013.



6.29 The *Detention Services Contract* categorises incidents generally as ‘critical’, ‘major’ or ‘minor’.<sup>139</sup> ‘Critical’ incidents include:

- the death of a person in detention
- actual self-harm, and
- serious attempted self-harm.<sup>140</sup>

6.30 ‘Major incidents’ under the *Detention Services Contract* include:

- voluntary starvation (over 24 hours)
- voluntary starvation by minor, and
- attempted or threatened self-harm.<sup>141</sup>

6.31 However, the contract does not define ‘actual self-harm’, ‘serious attempted self-harm’ and ‘threatened self-harm’, which are the three categories that the department uses when it extracts self-harm data from the database. Nor does the contract explain the difference between ‘serious attempted’ and ‘attempted’ self-harm – it is unclear whether the intended distinction is between ‘serious’ (real) and ‘purported’ (not real) attempts, or between real attempts at ‘serious’ (grievous) and ‘non-serious’ (superficial) self-harm. Combining ‘attempted’ and ‘threatened’ self-harm in the one category also makes it impossible to distinguish between ‘non-serious’ attempted actions (whatever they are), and verbal threats.

6.32 These terms are also not defined in either departmental or Serco policy. The department’s Detention Health Services Branch advised our office in July 2011 that it was up to the discretion of each Serco officer to categorise each self-harm incident.

6.33 In our view, the combination of ambiguous and overlapping categories, and reliance on the unstructured discretion of individual officers, makes inconsistent and inaccurate reporting practically inevitable, and our observation of a large number of incident reports has confirmed this in practice.

6.34 Having viewed a substantial number of incident reports covering all immigration detention facilities, we have observed a wide variance in the detail and quality of the information recorded in the reports. Some were well-structured, informative reports detailing the incident and the circumstances surrounding the event, the response and follow up plan. Others recorded only the date, the fact that an incident of self-harm, use of force or injury had occurred, and who had recorded the incident. In some cases only boxes were ticked (including on occasion multiple inconsistent boxes), with no detail or explanation provided. Where details are provided, their intelligibility often depends on readers having knowledge of the circumstances at the time of the incident, or access to supplementary information such as case notes, use of force reports or the detainee’s medical file.

6.35 We have also observed inconsistencies in the way that Serco officers have reported similar incidents, including the application of terminology. For example, hanging incidents that do not result in death are sometimes characterised as ‘self-harm actual’ and sometimes as ‘self-harm serious attempted’. Similarly, we have observed incidents of detainees banging their heads against walls or similar objects characterised sometimes as ‘self-harm actual’ and sometimes as ‘self-harm serious attempted’.

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<sup>139</sup> *Detention Services Contract*. Sch 2 (Statement of Work), cl 2.2.3 (Business Services and Continuous Improvement), cls 8.6 and 8.7.

<sup>140</sup> *Detention Services Contract*. Sch 2 (Statement of Work), cl 2.2.3 (Business Services and Continuous Improvement), Annexure B – Incidents.

<sup>141</sup> *ibid.*

6.36 The department has recently reviewed the categories Serco uses for incident reporting. From March 2013, Serco will only use two categories: 'self-harm – actual' and 'self-harm – threatened'. We accept that this change will remove some of the ambiguity in the existing categories, and reduce the level of subjectivity in the reporting process. However, as discussed further in Part 8, in our view the department needs to collect a wider range of information about each self-harm incident to better understand the determinants of self-harm behaviours and respond accordingly.

6.37 We have also noted that the incident reporting categories specified in the department's *Health Services Contract* with IHMS are different from those specified in the *Detention Services Contract*. Under the *Health Services Contract*, IHMS is required to notify the department of incidents categorised as being either a 'critical incident' or an 'other incident'.<sup>142</sup> The death of a person in detention is categorised as a 'critical incident' while 'other incidents' includes:

- an occurrence of self-harm resulting in an injury to a person in detention
- an occurrence of attempted self-harm by any person in detention
- the voluntary starvation (over 48 hours) of a person in detention
- the end of voluntary starvation (three subsequent meals consumed) of a person in detention.<sup>143</sup>

6.38 The *Health Services Contract* refers to 'attempted self-harm' but it does not include 'threatened self-harm' or 'actual self-harm' – the two incident categories that the department and Serco are currently using to collect self-harm data. While we understand that IHMS and Serco categorise incidents for different purposes, we encourage the department to consider whether there would be benefit in aligning the incident reporting categories in the two contracts.

### Data inconsistencies

6.39 As noted above, in the course of this investigation, we obtained self-harm data from the department, Serco, and from information provided by the department to Parliament. We have identified many inconsistencies in these data sets, including:

- inconsistencies between data the department has given to Parliament and to this office – for example, if the data the department provided to this office on 15 March 2013 is correct, then the department significantly underreported the number of actual self-harm incidents to Parliament in October 2011 and May 2012
- inconsistencies between Serco's and the department's data
- inconsistencies in the data the department has provided to this office at different times
- inconsistencies in the department's own *Monthly Self-Harm Snapshots*.

6.40 We are not in a position to determine exactly why all these inconsistencies have occurred. If data is subject to revision the published reports should note this and the reasons for revision. What is clear is that the department needs to take steps to ensure that the data it collects is accurate, stable, and extracted and analysed in a defined and consistent way. The evidence we have seen indicates that the department is not yet at that point.

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<sup>142</sup> *Health Services Contract*: Sch 2 – Statement of Work, cl 8, Incident Notification.

<sup>143</sup> *Health Services Contract*: Sch 2 – Annexure A.

## **PART 7—FACTORS CONTRIBUTING TO SELF-HARMING BEHAVIOUR**

7.1 There is not a simple cause and effect explanation for self-harm in immigration detention. Rather, as we outline below, we consider that a combination of factors contribute to the broader environment in which this occurs.

7.2 This Part begins by exploring the personal experience of many detainees and how these factors may impact on suicidal or self-harming behaviours. For example, many detainees have a history of past trauma, hold fears for the wellbeing of family and dependants left behind and experience isolation and loneliness, particularly those with poor English skills.

7.3 Next, we consider the context of the closed detention environment itself: the impact of confined and controlled physical surroundings; the lack of autonomy and feelings of disempowerment around everyday functions and the limited privacy and boredom reported by many detainees. We particularly explore the challenges associated with overcrowded detention facilities, and how such an environment – where detainees are surrounded by people in the same situation, also experiencing mental illness, frustration or distress – can adversely affect mental health and contribute to self-harming or suicidal behaviours.

7.4 Within the immigration detention environment these personal and institutional dynamics intersect with the anxieties, frustrations and misunderstandings associated with immigration processing. We particularly consider the protection visa and security assessment processes for Irregular Maritime Arrivals, and examine how these procedures – and the associated uncertainty about the future – can adversely affect the mental health of detainees, particularly when there are delays or difficulties in reaching resolution of immigration status or where there are perceptions of unfair treatment.

7.5 We have observed how this mix of factors can have a cumulative effect on the mental health of detainees: medical records and interviews with detainees have highlighted disturbed sleep patterns and nightmares, heightened feelings of anxiety, and depression attributed to these factors.

7.6 We conclude this Part by examining how all of these contributing factors coalesce when detention is prolonged or indefinite. We document the adverse impact of prolonged detention on the physical and mental health of detainees, and how the length of detention affects the incidence of self-harm. As we detail below, we consider that the significantly increased length of detention of the majority of detainees in early 2011 had a direct impact on the escalation of self-harm in mid-2011.

### **A vulnerable population**

7.7 Among the factors contributing to self-harm in immigration detention are the pre-existing conditions and backgrounds of the detainees themselves. These factors are not presented as the causes of self-harm, but provide part of the contextual background to the incidence of self-harm.

#### ***A history of torture and trauma***

7.8 A proportion of the people held in immigration detention arrive in Australia with a burden of past trauma. This is particularly true of Irregular Maritime Arrivals, many of whom

have come from countries where significant crisis, instability and human rights abuses have been common in recent years.<sup>144</sup>

7.9 Studies have indicated that people who have fled violence and disruption in their countries of origin, and who may have been subject to torture and trauma, often exhibit pre-existing mental health conditions or are vulnerable to developing a post traumatic condition.<sup>145</sup>

7.10 As Guy Coffey, a clinical psychologist with the Victorian Foundation for Survivors of Torture (Foundation House) stated in a submission to the Joint Select Committee, a large proportion of asylum seekers have

... experienced some form of traumatic event including assault by authorities or non state actors, arrest and detention, death threats against themselves or their families, the recent death or disappearance of family members in traumatic circumstances, and exposure to war related violence including witnessing the death of others. Many have undergone very difficult experiences of flight and transit particularly those who have travelled by boat. Most asylum seekers are separated from their families whose living circumstances are often parlous and about whom asylum seekers often have grave concerns.

Consequently, upon arrival in Australia, most asylum seekers are anxious about their future, fear repatriation, and worry about their family's safety and well-being. Many have been made psychological vulnerable by trauma and loss and are at risk of developing a post traumatic related mental illness.<sup>146</sup>

This is supported by the Ombudsman statutory reviews of the detention arrangements of people detained for two years or more: torture and trauma issues were noted in relation to 28% of individuals reviewed in s 486O reports between 2008-09 and 2011-12.

7.11 Medical records examined for this investigation highlight cases where people arrive in Australia with a burden of past trauma.

Mr A (Case study 1), when questioned about his reasons for self-harming, advised that it was because of his negative outcome, the fact that some of his family members were killed and his concern that he would not be able to bring his remaining family to Australia.

Mr C (Case study 3) disclosed at his initial Mental State Examination that he left his country because his life was in danger and his girlfriend had committed suicide. Reference was made in his IHMS medical record that he was still grieving for his girlfriend.

<sup>144</sup> Departmental statistics indicate that the four leading source countries for Irregular Maritime Arrivals seeking protection in Australia in 2008-09, 2009-10, 2010-11 and 2011-12 were Afghanistan, Iran, Iraq and Sri Lanka. Together with stateless persons, these countries have consistently rated in the top five countries for Irregular Maritime Arrivals to Australia: Department of Immigration and Citizenship, *Asylum statistics – Australia: Quarterly tables – June Quarter 2011*, Table 13, <http://www.immi.gov.au/media/publications/statistics/asylum/files/asylum-stats-june-quarter-2011.pdf> (viewed 15 March 2013) and Department of Immigration and Citizenship, *Asylum statistics – Australia: Quarterly tables – June Quarter 2012*, Table 13, <http://www.immi.gov.au/media/publications/statistics/asylum/files/asylum-stats-june-quarter-2012.pdf> (viewed 15 March 2013).

<sup>145</sup> See, for example, Robjant K *et al*, 'Mental health implications of detaining asylum seekers: systemic review', *The British Journal of Psychiatry*, 2009, 194:306-312.

<sup>146</sup> Guy Coffey, *Submission to the Joint Select Committee on Australia's Immigration Detention Network*, 15 August 2011, p.3, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Committees?url=immigration\\_detention\\_ctt/e/immigration\\_detention/submissions.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=immigration_detention_ctt/e/immigration_detention/submissions.htm) (viewed 11 November 2012).

Mr F (Case study 6) reported a history of torture and trauma at his initial Mental State Examination. Mr F claimed he was forced to leave because he feared for his life after being subjected to several torture and trauma experiences related to suspicion that he was involved in adverse activities related to the militia. On his journey to Australia the vessel Mr F travelled on sank, and 12 of his fellow passengers drowned. Various reports state that Mr F reported post-traumatic symptoms including regular repetitive nightmares and flashbacks relating to the drowning experience of the many people whom he travelled with by boat to Australia.

### **Fears for family**

7.12 Anxiety about family members left behind – and associated shame and guilt – featured in many of our interviews with detainees. Difficulty or risks in contacting family members exacerbated fears for the safety of family members.

‘Day by day we are under massive pressure. I have 12 children; two are in prison and two are missing.’

‘If husband and wife separate the wife finds someone else, children are affected ... If the military come to know they give more trouble to their families, sexual harassment of the women.’

‘Our news from home is that women and children are now being killed. This causes mental problems for me. For the past five years there have been many new refugee camps but they are not safe, the tents easily become targeted and there are many kidnaps. I ran away because I was on a black list.’

7.13 In many cases, news from home or family triggered a self-harm incident or suicidal ideation. A serious threat we observed in several cases was ‘if anything happens to [X] I will kill myself’.

The NSW Coroner’s report into three deaths at Villawood Immigration Detention Centre in 2010 documented how the anxiety around family circumstances contributed to the deteriorating mental and physical health of Mr A, a 41 year old Iraqi who had been in detention for nearly a year when he took his own life by hanging in November 2010.

The NSW Coroner’s report notes that he went on a hunger strike and was briefly hospitalised after apparently receiving information that his sister and two of her children had been killed by a bomb in Iraq in April 2010. In early October 2010 Mr A told his lawyer that other detainees had made threats against his family in Iraq. On 15 November he received a phone call which left him upset and distressed. Shortly after midnight, he was found hanging from a pipe in a bathroom.<sup>147</sup>

7.14 In other cases, deep concerns and ongoing worry were expressed to our staff about how detainees were to continue to financially provide for their families while they were in detention, particularly when that detention and the assessment of their claims and any subsequent reviews were more prolonged than anticipated.

### **Social isolation**

7.15 An associated issue we identified was the loneliness and social isolation experienced by many detainees who had arrived in Australia without the support structures of family and

<sup>147</sup> Magistrate M Jerram, NSW State Coroner, *Findings in the inquests into the deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi, David Saunders at Villawood Detention Centre, NSW, in 2010, op cit*, pp. 6-7.

community. While we have observed some detainees establishing new and supportive relationships within the detention environment, usually with fellow detainees of similar cultural and linguistic backgrounds, others struggled.

7.16 The impact of separation from family can be exacerbated by language barriers. The immigration detention network accommodates people from a diverse range of countries, circumstances and cultural and language backgrounds, and in many cases their English is not at the level required to enable services to be provided without the use of an interpreter or translator. In these circumstances, access to interpreting services is a common concern across the immigration detention network.<sup>148</sup>

7.17 As Guy Coffey from Foundation House has noted, language barriers may also add to a person's sense of isolation in immigration detention:

For detainees whose language is not shared by anyone in the centre, they have no opportunity for conversation and can be very isolated. Among a small number of asylum seekers, this has meant they sometimes have not been able to speak freely with anyone for weeks at a time, the opportunity only arising when an interpreter is employed for a medical or Departmental appointment.<sup>149</sup>

7.18 An example of this linguistic isolation came to our attention in early 2012 when we were concerned to learn of the placement of a single Rohingya detainee at the Brisbane Immigration Transit Accommodation, among Tamil and Kurdish detainees. In our view, the department should ensure that potential linguistic isolation is taken into account in placement decisions.

### ***Children in immigration detention***

7.19 A significant proportion of the Irregular Maritime Arrivals who have come to Australia in recent years have been unaccompanied minors and families with children. Children are a particularly vulnerable group within the immigration detention network.

7.20 The adverse impact of immigration detention on children, including the risk of long-term mental illness and emotional problems, is well-documented.<sup>150</sup> The Joint Select Committee noted in its March 2012 report that it had 'received no evidence to contradict the view that detention was an unhealthy and damaging environment for children'<sup>151</sup> and 'heard that children in detention are at particular risk of suffering long-term consequences. These can manifest in varied ways and to different extents depending on the circumstances of the individual. Impacts can be physical, psychological, or both, and can affect ongoing development.'<sup>152</sup>

7.21 The particular vulnerability of children in immigration detention arises from their dependence on the department and its service providers to supply an environment and care conducive to their developmental, health, educational and welfare needs. Consequently, the department and its service providers have a heightened duty of care to children in

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<sup>148</sup> See, for example, our discussion of interpreting issues in our Christmas Island oversight report: Commonwealth Ombudsman, *Christmas Island immigration detention facilities: Report on the Commonwealth and Immigration Ombudsman's Oversight of Immigration Processes on Christmas Island October 2008 to September 2010*, February 2011, [http://www.ombudsman.gov.au/files/christmas\\_island\\_immigration\\_detention\\_facilities\\_report.pdf](http://www.ombudsman.gov.au/files/christmas_island_immigration_detention_facilities_report.pdf) (viewed 17 January 2013).

<sup>149</sup> Guy Coffey, *Submission to the Joint Select Committee on Australia's Immigration Detention Network*, *op cit*, p. 5.

<sup>150</sup> See in particular Australian Human Rights Commission, *A last resort? National Inquiry into Children in Immigration Detention*, April 2004, [http://www.humanrights.gov.au/human\\_rights/children\\_detention\\_report/](http://www.humanrights.gov.au/human_rights/children_detention_report/) (viewed 26 February 2013)

<sup>151</sup> Joint Select Committee on Australia's Immigration Detention Network, *Final Report*, *op cit*, para 5.90.

<sup>152</sup> *ibid*, para 5.88.

immigration detention, not only to avoid acting in ways that directly cause harm to children, but to also take action to prevent harm from occurring.

7.22 The particular vulnerability of children in immigration detention was recognised by the Parliament in 2005 when it introduced s 4AA(1) of the Migration Act, which provides 'The Parliament affirms as a principle that a minor shall only be detained as a measure of last resort.'<sup>153</sup> In accordance with this legislative principle and the government's immigration detention values, children and their families, as well as unaccompanied minors, have been detained in alternative places of detention, including Immigration Residential Housing and Immigration Transit Accommodation, or in community detention, rather than in closed immigration detention facilities. Since October 2010, a significant number of families and children, as well as unaccompanied minors, have also been placed in community detention.

7.23 We comment on the incidence of self-harm by children in immigration detention in Part 6, and on the importance of placement within the immigration detention network, which is particularly relevant to children, in Part 9.

## **The detention environment**

7.24 Closed immigration detention is, by definition, a confined and controlling environment that limits detainees' ability to self-care, and to take responsibility for their actions.

7.25 As the Forum of Australian Services for Survivors of Torture and Trauma told the Joint Select Committee:

Detention facilities are experienced as prisons because they treat people as presenting such risks to the community that they must be confined behind fences and subject to constant surveillance. It should also be recalled that many asylum seekers were imprisoned in their countries of origin and detention facilities represent all too vivid reminders of the persecution that they have fled.<sup>154</sup>

7.26 Recent Australian research examined the experience of asylum seekers detained for extended periods to identify the consequences of these experiences for life after release.<sup>155</sup> This research highlighted the psychological experience of detention, with participants in the study describing an environment characterised by confinement, deprivation, loss of liberty, isolation and hopelessness. The authors noted:

All participants referred to the prison-like atmosphere of the centres, including the inflexible institutional routines and practices, and physical features of the centres. Almost all made mention of the extensive security and monitoring measures, and the omnipresent surveillance features, including high wire and razor wire fences, surveillance cameras, body searches, room searches, roll calls, and being constantly watched over by uniformed security personnel.

...

The majority spoke of the tedium and restrictive routine of the detention environment and the dearth of meaningful activities available to them...<sup>156</sup>

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<sup>153</sup> This section goes on to say that the measure of last resort principle does not apply to residence determination detention arrangements: s 4AA(2), *Migration Act 1958*.

<sup>154</sup> Forum of Australian Services for Survivors of Torture and Trauma, *Submission to the Joint Select Committee on Australia's Immigration Detention Network*, August 2011, p. 3, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Committees?url=immigration\\_detention\\_ctt/e/immigration\\_detention/submissions.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=immigration_detention_ctt/e/immigration_detention/submissions.htm) (viewed 27 November 2012).

<sup>155</sup> The study comprised seventeen adult refugees who had been held in immigration detention for an average of three years and two months, interviewed on average three years and eight months following their release: Coffey G *et al*, 'The meaning and mental health consequences of long-term immigration detention for people seeking asylum', *Social Science & Medicine*, 2010, 70: 2070-2079.

<sup>156</sup> *ibid*, p. 2073.

7.27 The NSW Coroner's report into three suicides at Villawood Immigration Detention Centre in 2010 endorsed the view of Associate Professor Sundram, a consultant psychiatrist with wide experience of asylum seekers and refugees, expressed in a written report to the inquiry, that identified 'frustration, resentment and feelings of powerlessness and helplessness at being in immigration detention. These feelings have a potent capacity to exacerbate depression disorders which in turn will exacerbate these feelings.'<sup>157</sup> The coroner concluded:

It is surely stating the obvious to observe that persons detained in Immigration Detention Centres must, by the nature of their various situations, be at much greater risk of suicide than the general community. Loss of families, freedom, status, work and length of time must all play their part.<sup>158</sup>

### **Remote physical infrastructure**

7.28 In expanding its detention facilities the department has established a number of immigration detention facilities in extremely remote locations – Scherger Immigration Detention Centre is approximately 35km south east of Weipa in Far North Queensland, Curtin Immigration Detention Centre is approximately 40km south west of Derby in Western Australia, Leonora Alternative Place of Detention is approximately 300km north east of Kalgoorlie in Western Australia, and the Christmas Island detention facilities are located in the Indian Ocean, 2600 km northwest of Perth, Western Australia. In some locations, such as Scherger, weather conditions may be extreme and access to the centre limited by flooding.

7.29 In our view, the location of facilities in remote and difficult to access locations does not itself directly contribute to the incidence of self-harm. However, it is an indirectly contributing factor because it creates challenges for the good management of detention facilities and constrains the department and its service providers in implementing their policy framework. Among other things, remoteness:

- limits access to mainstream medical and allied health services and makes access to specialist or urgent medical services difficult and expensive. Remote facilities are particularly unsuitable for people with chronic illnesses
- makes it more difficult for the department and its service providers to recruit, retain, train and accommodate staff
- limits accessibility – travel can be costly and time consuming, such as charter flights to move detainees between immigration detention centres and to hospitals when required, transport of food and medical equipment, relocation of staff, and access by oversight agencies, legal representatives and advocates
- impedes the efficiency of the refugee status processing and constrains detainees' access to legal advisors and advocates
- affects the provision of interpreter services and community services in the areas of education and activities, and is reliant on relevant staff staying nearby
- limits the availability of activities and excursions.

7.30 We note the Joint Select Committee recommended that detention facilities should be located in metropolitan areas wherever possible<sup>159</sup> and agree that this will assist to facilitate

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<sup>157</sup> Magistrate M Jerram, NSW State Coroner, *Findings in the inquests into the deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi, David Saunders at Villawood Detention Centre, NSW, in 2010, op cit*, p. 10.

<sup>158</sup> *ibid.*

<sup>159</sup> Joint Select Committee on Australia's Immigration Detention Network, *Final Report, op cit*, Recommendation 18.



access to health services, and a wider range of activities and opportunities for community engagement to support detainee wellbeing while they are in immigration detention.

### **Exposure to incidents in immigration detention**

7.31 People detained in an immigration detention facility in recent years may have been exposed to, or involved in, suicidal or self-harm behaviours. This is a particularly difficult issue, as detainees seeking to maintain their own stability are unable to physically dissociate themselves from their environment, and often cannot choose to associate with people with more positive modes of thinking and behaviours.

According to the Federal Court's judgment, the detainee in *SBEG* "witnessed distressing events in detention, such as another inmate trying to commit suicide by hanging himself and by taking an overdose of medication. He began hearing voices. He said that he began taking illegal drugs in [Immigration Transit Accommodation]."<sup>160</sup>

7.32 As explored elsewhere in this report, there is a high level of mental and psychological illness among detainees, particularly those detained for extended periods. This creates an environment where many detainees are surrounded by people in the same situation, also experiencing mental illness, frustration or distress.

7.33 Drawing on our discussions with detainees, we believe there may be a contagion effect that magnifies dysfunctional thinking in these circumstances. Impulsive and dysfunctional methods for problem solving and drawing attention to the perceived problems may include the behaviours seen in riots and disturbance.

7.34 Witnessing others self-harm can heighten the risk of imitative behavior or contagion and lead to broader self-harm among the detention population. We have been advised that this phenomenon, known as contagion effects, has its origins in social learning theory. The basic premise of this theory is that verbal transfer of information and observation of other people's acts make up the basis for the acquisition of all types of human behavior. Witnessing others self-harm or suicide, for example, following the receipt of bad news – which is presented as a solution or 'way out' – may serve to model for others who have similar problems.<sup>161</sup>

7.35 We have received expert advice that this phenomenon is made more significant when the imitator identifies strongly with the self-harming detainee in some way – for example, if the detainee came from the same village, was of similar age or family background, or had travelled on the same boat to Australia. In such circumstances, and in the context of closed detention environments, individuals tend to identify more intensely and readily with those they are physically close to or most resemble themselves. The detainee's inability to move away from, or out of, the environment compounds this effect.

7.36 Instances have also been reported where people perceive that others have achieved their objectives after a self-harm act, reinforcing the view that the behaviour can be effective.

### **The importance of meaningful activities**

7.37 Within the confined and controlling environment of closed immigration detention facilities, the availability of varied and meaningful activities becomes critical. In our experience, the variety, regularity and suitability of activities is an important factor in

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<sup>160</sup> *SBEG*, *op cit*, at [98].

<sup>161</sup> Phillips D, 'The Werther effect: suicide and other forms of violence are contagious', *The Sciences*, 1985, 7: 32-39.

maintaining a healthy and constructive detention environment. We have observed the benefits of meaningful and engaging activities, excursions and ongoing engagement with local communities in supporting the mental health of detainees, in supporting feelings of self-worth and in providing diversions for detainees. Conversely, we have observed that limited availability of meaningful activities often leaves detainees bored and overly focused on delays in their case or uncertainties in their situation.

7.38 During our inspection visits, we have observed that attendance levels at activities are commensurate with the mental health and levels of optimism expressed by the detainees at particular times. Participation in activities by people remaining in detention for prolonged periods is often reduced and inconsistent, and they will frequently withdraw from socialising with other detainees as well.

7.39 The department acknowledges that programs and activities are a key mechanism for achieving positive client outcomes in immigration detention.<sup>162</sup> The importance of varied and appropriate programs and activities in enhancing the mental health and wellbeing of detainees is built into the *Detention Services Contract*.<sup>163</sup>

7.40 The provision of activities has varied across the detention network. We reported to the department after our visits to Curtin Immigration Detention Centre in March 2011,<sup>164</sup> Leonora Alternative Place of Detention in April 2011,<sup>165</sup> and Christmas Island in May and June 2011<sup>166</sup> that detainees had inadequate access to activities and education. Our post-visit report regarding the Christmas Island Immigration Detention Centre explicitly linked access to viable and structured activities with the mitigation of mental health issues associated with long-term detention.<sup>167</sup>

7.41 Our observation is that, over the past 18 months, the quality of activities provided by Serco has improved significantly. Its program of activities, including English language education, cultural awareness classes, sport, fitness, arts and crafts, meets or exceeds the contracted requirements.<sup>168</sup> However, Serco is constrained in what it can offer by a combination of factors.

7.42 Location of the facility is a key issue. In remote centres, activities are restricted by the distance from local communities and the difficulties in sustaining activities onsite, while opportunities for excursions are severely restricted. For example, while external sporting facilities are utilised, excursions outside the Scherger Immigration Detention Centre are limited. Attempts at interaction with the broader Weipa community have not been successful and the isolation of the centre adversely affects the ability of the detainees to receive visitors from their respective ethnic communities, friends, family or relatives.

7.43 Similarly, at Curtin Immigration Detention Centre, excursions outside the centre are difficult. While there is a high level of community engagement with the centre, its remote locality means that detainees rarely receive personal visitors or visits from ethnocentric organisations and community groups. Similar limitations are evident at other remote facilities on Christmas Island and to a lesser extent Leonora.

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<sup>162</sup> Department of Immigration and Citizenship, *Australian Immigration Detention Facilities: Programs and Activities Framework*, 3 July 2012, p. 10.

<sup>163</sup> *Detention Services Contract*, Sch 2, cl 2.2.1 – People in Detention Services.

<sup>164</sup> Commonwealth Ombudsman, *Post-visit report: Curtin Immigration Detention Facilities, 14-18 March 2011*.

<sup>165</sup> Commonwealth Ombudsman, *Post-visit report: Leonora Alternative Place of Detention, 5-7 April 2011*.

<sup>166</sup> Commonwealth Ombudsman, *Post-visit report: Christmas Island Immigration Detention Facilities, 4-12 May & 21-20 June 2011*.

<sup>167</sup> *ibid*.

<sup>168</sup> *Detention Services Contract*, Sch 2, cl 2.2.1 – People in Detention Services.

7.44 Access to materials and equipment is also an issue in some facilities, particularly the more remote centres, where these have to be ordered and transported over long distances. Activities are also adversely affected when recreation and education facilities are diverted to other uses, and when access to activities is affected by broader detention management and infrastructure issues. Activity areas in the Christmas Island Immigration Detention Centre, for example, have been taken over to provide additional accommodation at times of overcrowding. Activities on Christmas Island and Villawood Detention Centres have also been restricted due to protests and escapes.

7.45 A meaningful activities program becomes even more important where there are factors which increase the risk of self-harm among the detention population. It is important that the department and Serco work together to be proactive in addressing its duty of care through the provision of meaningful activities.

7.46 We welcome the department's adoption of a Programs and Activities Framework in July 2012, in which programs and activities are characterised as 'a key mechanism for the promotion of good/positive mental health and wellbeing of clients in immigration detention facilities.'<sup>169</sup>

7.47 The Framework explicitly recognises the department's duty of care to detainees and the role of programs and activities in achieving positive client outcomes in immigration detention:

The department recognises the need to enhance clients' sense of empowerment and control over their immediate and future circumstances, and aims to provide opportunities that will assist in the future integration and participation of clients in society by developing skills that will enable them to prosper in the community, irrespective of whether that be in Australia or elsewhere.<sup>170</sup>

7.48 Our early observations are that these intentions appear to be being met. We encourage Serco and the department to continue their efforts to maintain and expand their activities programs. We encourage Serco to engage with detainees to determine the type and nature of activities they wish to participate in, and continue to provide activities that are age-appropriate and provide psychological support, particularly to longer term detainees.

7.49 We have noticed that the level of engagement by detainees in activities and educational opportunities has improved in several facilities in more recent times. Staff in the facilities have attributed this to the expansion of community detention, increasing grants of bridging visas and movement of detainees into the community. We encourage the department and Serco to consider programs that allow detainees to maintain or acquire new skills, such as trades-based skills, vocational training, or preparation for university courses. Detainees have advised us that they are most interested in these activities.

### **Overcrowding**

7.50 The increase in the number of people in immigration detention since January 2009 has put considerable strain on immigration detention facilities. As the department acknowledged in February 2012, the detention network has been in 'surge' conditions since the end of 2009.<sup>171</sup> This has periodically led to additional detainees and extra beds being

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<sup>169</sup> Department of Immigration and Citizenship, *Australian Immigration Detention Facilities: Programs and Activities Framework*.

<sup>170</sup> *ibid*, p. 10.

<sup>171</sup> This means that the detention network was operating at contingency rather than regular capacity: Department of Immigration and Citizenship, *Joint Select Committee on Australia's Immigration Detention Network, response to Question on Notice 92*, 29 February 2012, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=immigration\\_detention\\_ctt/immigration\\_detention/submissions.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctt/immigration_detention/submissions.htm)

placed in bedrooms, and temporary living quarters being set up in recreation rooms, education rooms, dorms and marquees.<sup>172</sup> In August 2011, Serco acknowledged that its Personal Officer Scheme was not in place in all facilities 'due to difficulties created by overcrowding and other external pressures.'<sup>173</sup>

7.51 This office has periodically raised concerns about overcrowding in detention facilities, particularly on Christmas Island. In our February 2011 Christmas Island oversight own motion report,<sup>174</sup> we warned that operations on Christmas Island were not sustainable given the large number of detainees. We recommended that the department urgently expedite the movement of as many detainees as possible to the Australian mainland to address overcrowding on Christmas Island, and address the shortage of facilities on Christmas Island to provide appropriate services for detainees.<sup>175</sup>

7.52 A number of other reports examining the immigration detention network have identified overcrowding as a key issue. The Hawke and Williams Review identified chronic overcrowding and the accompanying severe stress on amenities as among the reasons for the riots.<sup>176</sup> It said:

While DIAC managed to provide sufficient beds for the rising number of detainees, by no means an easy task given the circumstances, the trade-off involved a reduction in the standard of accommodation, level of amenities and servicing capability (impacting particularly on Serco's ability to provide meaningful programs and activities to keep detainees occupied), with an accompanying reduction in security overall.<sup>177</sup>

7.53 The Australian Human Rights Commission's *2010 Immigration Detention on Christmas Island Report* similarly examined the significant deterioration in living conditions on Christmas Island arising from overcrowding, particularly for those accommodated in marquees and dormitory bedrooms, and the strain on 'access to facilities and services including communication facilities, recreational facilities, educational activities and opportunities for people to leave the detention environment.'<sup>178</sup>

7.54 As we discuss further in Part 9, overcrowding can also have an impact on placement decisions, as operational needs and constraints override the best interests of detainees. As the Joint Select Committee Report noted, 'it is a regrettable consequence of overcrowding in the detention system that detainees who are at risk of suicide are at times transferred straight from hospital back into high security detention facilities.'<sup>179</sup>

7.55 In our view, overcrowding also contributes more directly to the incidence of self-harm in immigration detention because it can impact on detainees' mental health in a number of ways. Overcrowded detention facilities can impact on sleep and increase stress and anxiety.

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<sup>172</sup> *ibid.*

<sup>173</sup> Serco Australia, *Submission to Joint Select Committee on Australia's Immigration Detention Network*, August 2011, p. 22,

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=immigration\\_detention\\_ctte/immigration\\_detention/submissions.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctte/immigration_detention/submissions.htm) (viewed 24 November 2012).

<sup>174</sup> Commonwealth Ombudsman, *Christmas Island immigration detention facilities – Report on the Commonwealth and Immigration Ombudsman's Oversight of Immigration Processes on Christmas Island October 2008 to September 2010*, February 2011.

<sup>175</sup> We note that the Christmas Island facilities are now being utilised in a very different manner to early 2011, and the population currently is new arrivals who are on the island for a short period before being transferred to mainland detention facilities. However, the challenges and risks associated with overcrowded facilities on Christmas Island remain.

<sup>176</sup> Hawke and Williams Review, *op cit.*

<sup>177</sup> Hawke and Williams Review, *op cit.*, p. 34.

<sup>178</sup> Australian Human Rights Commission, *2010 Immigration detention on Christmas Island Report*, p. 6. See also pp. 32-40 and Recommendations 10, 11 and 12.

<sup>179</sup> Joint Select Committee on Australia's Immigration Detention Network, *Final Report, op cit.*, para 5.33.

Professor Nicholas Procter, Chair of Mental Health Nursing at the University of South Australia and a member of the Minister's Advisory Council on Asylum Seekers and Detention, has noted that overcrowding is:

... associated with an increased number of sound exposures both day and night, contributing to the adoption of inverted sleep patterns, with detainees sleeping during the day. This has a knock-on effect where detainees miss meals, social interaction, group activities and access to morning legal and / or medical appointments. The frequency of waking increases with the number and level of noise stimuli in the night. Sleep disturbance leads to chronic physiological change, compounding their anxiety and depression.

The cumulative mental health effect of sleep disturbance is associated with people being unable to cope with everyday stress, unable to effectively problem solve and may contribute to physical health complaints.<sup>180</sup>

7.56 Overcrowding also compromises the privacy of detainees and their capacity to communicate freely and spontaneously in a language most familiar to them. Overcrowding impacts upon both detainees and staff working in the detention setting, as both staff and detainees are feeling under pressure and scrutiny to maintain 'good order' (staff) and 'good behaviour' (detainees). With limited privacy and scope to de-stress, and the cumulative effects of pre-existing mental distress among many detainees, a feeling of being 'boxed-in' emerges – as neither group has readily accessible opportunity for respite or solitude. It also appears that overcrowding can amplify the contagion effect discussed earlier in this part.

## **Immigration processing**

7.57 Immigration processes are often complex and difficult to follow, as Irregular Maritime Arrivals and others undergo multiple interviews, referrals and reviews to ascertain their identity and background, and assess the veracity of their claims. For some, these processes can be relatively straightforward, but for others they are complex processes where difficult judgments must be made on an individual's claim for protection under the Refugee Convention.

7.58 For many people in immigration detention, lack of autonomy and feelings of disempowerment around everyday functions are compounded by uncertainty about the future. Unsurprisingly, this can breed frustration and suspicion among detainees about immigration processes. These frustrations can be further heightened in cases where a detainee needs the help of an interpreter to participate in those processes.

7.59 Processing times for the resolution of immigration status are often prolonged and, particularly before the policy to grant bridging visas was introduced in late 2011, directly affected the length of time a person spends in detention.

7.60 The significant increase in the numbers of Irregular Maritime Arrivals in the past few years has placed pressure on the processing of claims (both primary decisions and reviews). This resulted in delays and uncertainty. As we examine below, there have been significant delays in recent years in relation to both protection visa and security screening processes. In our view, these processes and associated delays have led to increased time in detention and directly impacted on the incidence of self-harm.

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<sup>180</sup> Professor Nicholas Procter, 'Our barbed borders', *The Independent Weekly*, 9-15 July 2010, p10.

### ***Frustrations with, and misunderstandings about, immigration processes and decisions***

7.61 The Australian study examining the experience of asylum seekers detained for extended periods referred to earlier noted that:

All participants spoke of a sense of powerlessness and disenfranchisement with respect to the visa application process. The majority expressed the belief that they were vulnerable to the whims of detention and immigration officials regarding the processing of their cases and felt defenceless in this respect.<sup>181</sup>

7.62 This finding reflects our own discussions with detainees during the course of this investigation. Detainees commonly expressed concerns and feelings of anger and anxiety about various aspects of immigration processes and their perceptions of differential treatment.

7.63 Delays at all stages of immigration processing is the most common area of concern raised by Irregular Maritime Arrivals with staff from our office during our regular detention centre visits, and include delays in:

- receiving an outcome from the Refugee Status Assessment/Protection Obligations Determination process
- having an interview for an Independent Merits Review/Independent Protection Assessment of a negative Refugee Status Assessment/Protection Obligations Determination decision
- receiving an Independent Merits Review/Protection Obligations Determination decision
- judicial review of a negative Independent Merits Review/Protection Obligations Determination decision
- the outcome of a security assessment by the Australian Security and Intelligence Organisation (ASIO). This is further exacerbated because a security clearance referral is only made to ASIO once a person has been determined to be a refugee.

7.64 The issue of delay, and its impact on length of time in detention, is discussed further below. Other issues raised with our office by detainees include concerns:

- that their story was not believed and they were not being provided with adequate reasons for this assessment
- that their claims were not correctly interpreted and this was the reason for a negative decision
- that decision-makers were not utilising the most up to date and relevant country information to determine individual Irregular Maritime Arrival's refugee status
- about access to quality legal assistance, reflecting difficulties in contacting IAAAS migration and legal representatives
- about whether an Independent Merits Review application had been submitted
- that some decision-makers were biased, that certain Independent Merits Reviewers were consistently positive or consistently negative in their decisions,

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<sup>181</sup> Coffey *et al*, 'The meaning and mental health consequences of long-term immigration detention for people seeking asylum', *op cit*, p. 2074.

and that allocation of their case to a particular reviewer pre-determined the outcome.

7.65 While we acknowledge that the department seeks to demystify immigration processes for detainees, in our observation it often presents information to detainees about the processing of their claims in inaccessible ways, and this appears to contribute to frustration, uncertainty and mistrust. This is particularly the case when processes are revised or completely replaced, as has occurred several times in recent years as a result of High Court decisions and government policy changes.

7.66 The department's case managers play an important role in explaining immigration processes to detainees. Detainees rely on case managers to provide accurate and timely information about their cases. However, case managers are not directly involved in the decision-making process, but can only act as a conduit for information. At times, case managers cannot provide meaningful answers to detainees' questions about their case. This can increase detainees' frustration with, and mistrust of, immigration processes.

7.67 In the case of negative decisions, detainees commonly displayed to us a lack of understanding of the reason why their application had been refused.

7.68 These difficulties are compounded by language and communication barriers. As noted above, interpreting services are a major concern of many detainees. A recurring theme in discussions with detainees has been concerns that protection claims were not being properly articulated or conveyed to the department. Concerns were often raised with the quality of the interpreting, lack of coverage of certain languages and dialects, and some interpreters not understanding complex English terms or technical terms in their own language, such as civil service or military terms, used during processing interviews and health consultations.

7.69 Decision letters are provided to detainees in English without a translation. Although the details of the letter are explained by the case manager during the hand down of the decision, this process has led to misunderstandings, confusion and frustration as detainees invariably seek assistance of their fellow detainees to translate the record – with considerable variation in quality and comprehension of the translation.

7.70 We acknowledge that the provision of interpreters and translating represents a significant challenge for the department and its service providers, as in many cases the number and quality of interpreters in particular languages and dialects is simply not available in Australia. In our experience, the interpreter services offered to detainees is of a reasonable standard, with National Accreditation Authority for Translators and Interpreters qualified interpreters used where possible.<sup>182</sup> However, the availability and quality of interpreters can vary<sup>183</sup> and the impact that a poor interpreter has on processing a Refugee Status Assessment is significant. Miscommunication or poor interpreting may not only cause significant frustration for an individual detainee, but have the effect of prolonging the resolution of their immigration status and consequently their time in detention.

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<sup>182</sup> We have been advised that there is no National Accreditation Authority for Translators and Interpreters accreditation of some significant language groups such as Kurdish: Commonwealth Ombudsman, *Post visit report: Brisbane Immigration Transit Accommodation*, 22 November 2011.

<sup>183</sup> For example, on Christmas Island we have observed a shortage of interpreters was placing pressure on other services such as medical and mental health consultations: Commonwealth Ombudsman, *Post visit report: Christmas Island Immigration Detention Facilities*, 13-20 December 2011. However, we noted during our visits to Scherger and Inverbrackie in November 2011 that detainees were happy with the quality of the interpreter services, and did not indicate any of the systemic concerns raised in other locations in the detention network: Commonwealth Ombudsman, *Post visit report: RAAF Base Scherger Immigration Detention Centre*, 15-18 November 2011; Commonwealth Ombudsman, *Post visit report: Inverbrackie Alternative Place of Detention*, 21-22 November 2011.

7.71 We encourage the Department to continue to liaise with the National Accreditation Authority for Translators and Interpreters about its linguistic needs for the diverse Irregular Maritime Arrival language groups and to use accredited translators and interpreters wherever possible.

7.72 The Ombudsman recommends that the department continue to review and improve information delivery and engagement with people in immigration detention. In particular, the department should consider providing these people with:

- translated information explaining the protection visa process including merit and judicial review, processes and factors which are considered in referrals for community detention placements, processes and factors which are considered in referrals for grant of a bridging visa, and the role of the department's case managers, and
- key elements of significant decision letters in a language that the detainee can reasonably be expected to understand within the timeframes required for the detainee to pursue review mechanisms.

### ***Perceptions of unfairness with immigration processes***

7.73 In our experience delays in processing, and the sequencing of one detainee's process being different to another detainee's process, can raise perceptions of unfairness in detainees' minds.

7.74 Perceptions that arrivals on later boats received preferential treatment over arrivals on earlier boats were common. Similarly, on an individual level, detainees remaining in detention who see others from the same boat released – or others who they perceive to have the same or less meritorious claims as themselves receive visas – construe these outcomes as indications of unfairness.

A combination of these concerns was summed up by two detainees who had been in immigration for over 12 months:

'Here everyone is talking about injustice ... we live in suspense and fear. We don't know what to do if our case is refused ... The case officers don't give good reasons ... our lawyers are not defending us. My submission was written incorrectly for the initial interview .... We came here to save our lives, we escaped from territorial death ... when someone is losing their life and becomes an asylum seeker, instead of getting assistance we are taken advantage of, you just get to a point that whatever we have experienced in the past becomes a lie. They treat us like we are dumb, stupid because we can't speak English.'<sup>184</sup>

7.75 We have observed that confusion and misunderstanding arising from concurrent processing systems – where people within the same facilities are processed under different arrangements – compounds detainee frustration with immigration processes. During our visits to Christmas Island in May and June 2011, for example, we received complaints that processing was unfair as those who arrived before the March 2011 processing changes did not receive the same processing time benefits as the Protection Obligations Determination process provided for later arrivals.<sup>185</sup>

<sup>184</sup> Commonwealth Ombudsman office discussion with detainee groups at Northern Immigration Detention Centre in Darwin, 20 October 2011.

<sup>185</sup> Commonwealth Ombudsman, *Post-visit report: Christmas Island Immigration Detention Facilities, 4-12 May & 21-20 June 2011*.



7.76 As discussed further in Part 10, the use of community detention has significantly increased in recent years. During our recent detention centre visits, we have identified uncertainty, suspicion and distrust around the process of referrals for community detention and bridging visas. The Joint Select Committee also identified this issue in their final report, recommending that:

The Committee recommends that the Department of Immigration and Citizenship consider publishing criteria for determining whether asylum seekers are placed in community detention or on bridging visas.<sup>186</sup>

7.77 In an environment where immigration processes and decisions are the entire focus of detainee's detention, it is not surprising that such developments can contribute to detainee frustration and anger, sometimes escalating to suicidal and self-harming behaviours.

### **Other factors**

7.78 The department has also identified the receipt of negative decisions as a factor that may affect the incidence of self-harm. The department advised that, as part of the Client Health View Project (discussed further in Part 8), it developed and analysed a data set that:

indicated a clear correlation between increased rates of self-harm and the reception of a negative decision (such as the refusal of a Protection Visa application or unsuccessful tribunal or judicial review matter). There were also possible correlations between time of day, nationality and location of detention. Given the data integrity issues and the complexities around self-harming behaviour, the Department is unable to draw any definitive conclusions about the strength of these correlations.

7.79 We agree that the receipt of a negative decision, or a specific government policy announcement, may be specific triggers for self-harming behaviour. The department's Psychological Support Program specifically recognises receiving a negative decision as a potential trigger event. However, in our view these kinds of events are better understood as specific 'tipping points' or triggers, rather than the underlying risk factors that we have identified in this report.<sup>187</sup>

### **Length of detention**

7.80 The international<sup>188</sup> and Australian<sup>189</sup> evidence demonstrates that immigration detention in a closed environment for longer than six months has a significant, negative impact on mental health.

7.81 In response to criticism in the 2005 Rau Report, in 2006 the department funded the Centre for Health Service Development at the University of Wollongong to undertake a study into the health profiles of people in immigration detention. The study examined the health records of 720 people from 58 countries who had been in immigration detention for different lengths of time, ranging from days to years, in financial year 2005-06. The objective of the

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<sup>186</sup> Joint Select Committee on Australia's Immigration Detention Network, *Final Report, op cit*, Recommendation 29.

<sup>187</sup> On the distinction between underlying risk factors and tipping points or triggers, see the *LIFE Framework for prevention of suicide in Australia*, <http://www.livingisforeveryone.com.au/LIFE-Framework.html> (viewed 22 April 2013).

<sup>188</sup> See, for example: Hallas P *et al*, 'Length of stay in asylum centres and mental health in asylum seekers: a retrospective study from Denmark', *BMC Public Health*, 2007, 7:288; Keller A *et al*, 'Mental health of detained asylum seekers', *Lancet*, 2003, 362:1721-3.

<sup>189</sup> See, for example: Steel Z *et al*, 'Impact of immigration detention and temporary protection on the mental health of refugees', *British Journal of Psychiatry*, 2006, 188: 58-64; Procter N *et al*, 'Refugee and Asylum Seeker Self Harm with Implications for Transition to Employment Participation – A Review', *Suicidologi*, 2011, Arg 16, NR 3: 30.

study was to determine the health status of people in detention and the effect of time in, and reason for, their detention.<sup>190</sup>

7.82 Published in 2010, the study identified that those detained for longer periods reportedly had a significantly larger number of both mental and physical health problems. Specifically, the report found that people detained for more than 24 months had rates of new mental illness 3.6 times higher than for those who were released within three months.<sup>191</sup>

7.83 The study also found that the reason for detention was found to have a significant additional effect on the rate of new mental health problems, with the rate for unauthorised boat arrivals significantly higher than other groups in detention.<sup>192</sup> The frequency of self-harm among unauthorised boat arrivals in detention was 17.7%, and 14.4% for unauthorised air arrivals – well above the rates for illegal foreign fishers (2.1%), visa overstayers (3.6%) and the average for all groups in detention (6.2%).<sup>193</sup>

7.84 These adverse effects of prolonged detention were reiterated through the sample of medical records we examined for this investigation, along with information we obtained when investigating complaints from detainees. Throughout the medical case notes there are many references made to the detainees' frustration and anxiety about being in detention longer than they anticipated, as well as frustration with immigration processes. At interviews with our staff, detainees regularly reported intensification of feelings of depression and anxiety over time, conditions which may contribute to mental illness amongst detainees and one of the factors associated with self-harming behaviour.

Mr I (Case study 9) was referred to a psychologist after he attempted suicide, two months after his first self-harm incident. The psychologist's notes indicate that when they visited Mr I in the Support Unit at Christmas Island Immigration Detention Centre they found Mr I sitting in a squatting position and that '*It soon became evident he was/is experiencing a range of emotions, loss, frustration, isolation, confusion and aloneness in relation to his negative IMR status and life in general at this point ...*'.

When this office interviewed Mr I, he complained of 'sadness and lack of motivation'.<sup>194</sup>

7.85 Recently published independent research by Associate Professor Suresh Sundram and Dr Samantha Loi suggests that prolonged immigration detention can both intensify existing mental disorders, such as post-traumatic stress disorder, and can itself cause a newly identified form of disorder:

Australia's protracted refugee determination process is often difficult and distressing for asylum seekers. And we now have evidence to show this process contributes directly to post-traumatic stress disorder in those who have repeatedly had their claim for asylum rejected.

We've also found that because of the protracted refugee determination process, some asylum seekers develop a clinical syndrome which is distinct from other trauma-related mental disorders. We've labelled this disorder 'protracted asylum-seeker syndrome'.<sup>195</sup>

<sup>190</sup> Green J and Eager K, 'The health of people in Australian immigration detention centres', *Medical Journal of Australia*, 2010,192: 65-70.

<sup>191</sup> *ibid*, p. 68.

<sup>192</sup> *ibid*.

<sup>193</sup> *ibid*, Table 7.

<sup>194</sup> Interviews conducted with detainees at North West Point Immigration Detention Centre in June 2011.

7.86 The Ombudsman reviews of the detention arrangements of people detained for two years or more similarly document serious concerns for the deterioration of the mental health and psychological outlook of detainees when detention is prolonged.

7.87 A methodical review, by academics at the School of Criminology and Criminal Justice at Griffith University, of 500 of the Ombudsman's two year detention review reports under s 486O of the Migration Act – covering 419 cases from the introduction of the reviews in July 2005 to March 2009 – found that approximately 60% (252) of individuals reported having mental health problems. Of these 252 cases, 179 were professionally confirmed by a medical practitioner and 73 were self-reported, of which 23 were also reported by non-medical professionals.<sup>196</sup>

7.88 The most prevalent complaint identified in the review was depression, identified by two-thirds of those with mental health problems, while 40% of reports indicated that individuals had experienced suicidal ideation.<sup>197</sup> Further, the study found that:

Thirty per cent of those presenting mental health problems were reported to suffer from sleep disorder, with a similar number experiencing anxiety, approximately one quarter post traumatic stress disorder (PTSD) and a similar number self harm.<sup>198</sup>

7.89 The study acknowledged that 'it is difficult to determine the extent to which health issues were pre-existing, linked to past experiences, to the experience of detention itself or both.'<sup>199</sup>

7.90 Our own analysis of 311 s 486O reports between 2008-09 and 2011-12 – covering 285 individuals – supports these findings. Our analysis found that:

- mental health issues were identified in relation to 62.5% of individuals
- the risk of self-harm or suicide was identified in relation to 23.9% of individuals
- actual self-harm was reported in relation to 8.8% of individuals
- voluntary starvation was reported in relation to 7.7% of individuals
- torture and trauma issues were noted in relation to 27.7% of individuals
- hospitalisation for mental health issues had occurred for 3.5% of individuals

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<sup>195</sup> Sundram S and Loi S, 'Long waits for refugee status lead to new mental health syndrome', *The Conversation*, 23 May 2012, <http://theconversation.edu.au/long-waits-for-refugee-status-lead-to-new-mental-health-syndrome-7165> (viewed 16 May 2013).

<sup>196</sup> Bull M *et al*, 'Sickness in the System of Long-term Immigration Detention', *Journal of Refugee Studies*, 2013, 26: 47-68.

<sup>197</sup> *ibid*.

<sup>198</sup> *ibid*, pp. 47-48.

<sup>199</sup> *ibid*, p. 49.

Mr B (Case study 2) arrived in Australia in April 2010. Mr B's Refugee Status Assessment found him not to be owed protection on 2 August 2010, affirmed by an IMR in February 2011. Mr B requested judicial review on 29 April 2011 and his case was last heard by the Federal Magistrates Court in June 2011 when judgement was reserved.

In Mr B's first year in detention he had very little contact with IHMS, although his records show that he had a history of presenting to Serco with anxiety during that time. He was transferred from Christmas Island to a mainland Immigration Detention Centre after 11 months in detention and from that point he had regular consultations with IHMS, particularly in relation to his mental health issues. Appointment records show that Mr B had at least 143 consultations over a nine-month period, with his medical condition described as 'extreme stress reaction to prolonged detention and the associated uncertainties in his life'.

7.91 It is important to consider these findings in the broader context of the Australian community, and in the context of other detention environments.

7.92 The 2007 National Survey of Mental Health and Wellbeing conducted by the Australian Bureau of Statistics found that an estimated 3.2 million Australians (20% of the population aged between 16 and 85) had a mental disorder in the 12 months prior to the survey.<sup>200</sup> In relation to the impact of incarceration on mental health, the Survey found that people who reported a previous history of incarceration were twice as likely (41.1%) to have had mental disorders in the previous 12 months when compared to the general population.<sup>201</sup>

7.93 The Survey also considered suicidality,<sup>202</sup> finding that at some point in their lives, 13.3% of Australians aged 16-85 years had experienced suicidal ideation, 4.0% had made suicide plans and 3.3% had attempted suicide.<sup>203</sup> In the 12 months prior to interview, 2.4% of the total population or just over 380,000 people reported some form of suicidality.<sup>204</sup>

### ***Length of detention impacting on incidence of self-harm***

7.94 The evidence shows that length of time in detention is directly associated, not only with poor mental health, but also with the incidence of self-harm. Research conducted for the department by Ipsos Social Research Institute found that there is an exponential relationship between length of time in immigration detention and reported self-harm.<sup>205</sup>

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<sup>200</sup> Department of Health and Ageing, *The mental health of Australians 2: report on the 2007 national survey of mental health and wellbeing*, 2009, para 2.1, <http://www.health.gov.au/internet/main/publishing.nsf/content/mental-pubs-m-mhaust2/> (viewed 26 November 2012).

<sup>201</sup> *ibid.*, para 2.2.6.

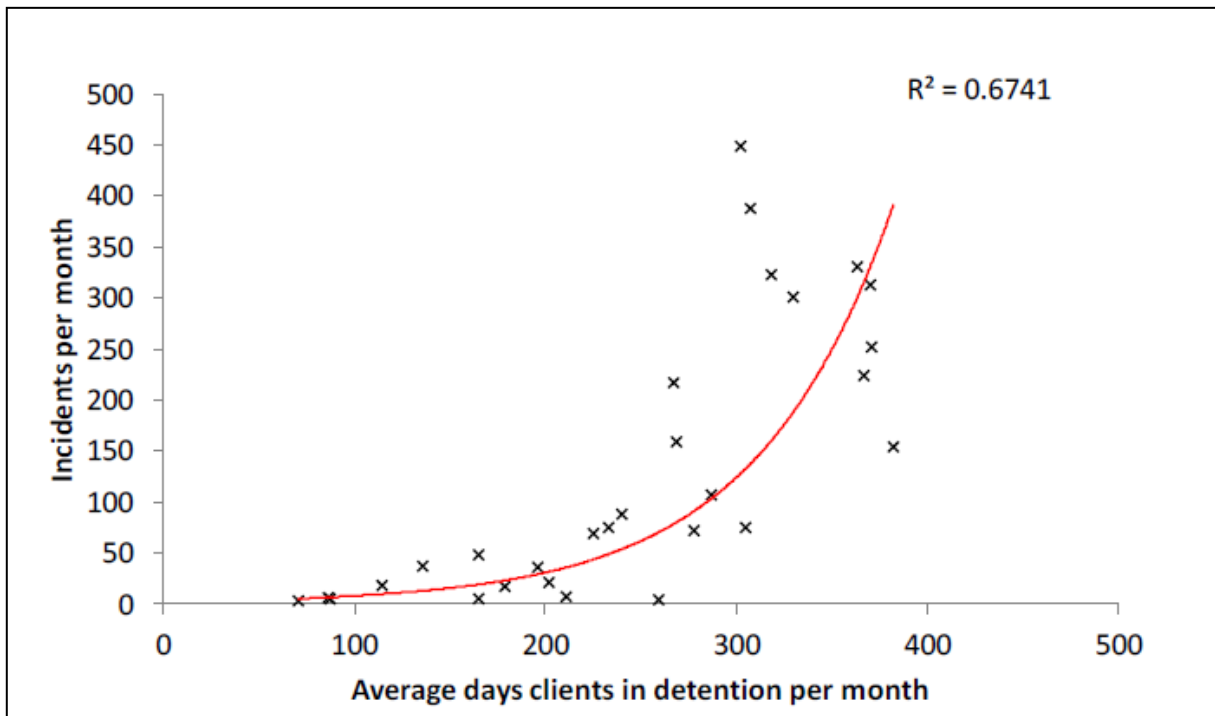
<sup>202</sup> The Department of Health and Aging report notes that 'The term suicidality covers suicidal ideation (serious thoughts about taking one's own life), suicide plans and suicide attempts. People who experience suicidal ideation and make suicide plans are at increased risk of suicide attempts, and people who experience all forms of suicidal thoughts and behaviours are at greater risk of completed suicide': *ibid.*, para 8.1.

<sup>203</sup> *ibid.*

<sup>204</sup> *ibid.*

<sup>205</sup> Ipsos Social Research Institute, *Evaluation of the Psychological Support Program (PSP) Implementation* June 2012, p 50-51.

**Graph 4: Reported incidents of self-harm and average time in detention<sup>206</sup>**



7.95 The number of people in long-term detention increased significantly over the past several years but has been steadily declining since June 2011. The number of people in immigration detention for longer than six months rapidly increased from early 2011:

- in July 2010 there were 689 people who had been detained for longer than six months, less than 15% of the total detention population<sup>207</sup>  
in February 2011 this group had grown to 3686 people, 54% of the total detention population at that time<sup>208</sup>
- in April 2011, those detained longer than six months comprised 4201 people, 61% of the detention network population<sup>209</sup>
- by 30 June 2011, there were 4446 people, or 69% of the total detention population, detained longer than six months.<sup>210</sup>

7.96 The substantial increase in reported self-harm incidents in 2011 aligns with the period when the number of people spending more than six months in detention increased dramatically, and when this group also comprised a significant majority of the detention population. This analysis suggests that the length of detention had a direct impact on the incidence of self-harm – both on an individual level as the effects of prolonged detention and uncertainty took effect, and as a form of contagion among detainees when there is a widespread feeling of frustration and hopelessness.

<sup>206</sup> *ibid.*

<sup>207</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 30 July 2010, Figure 8.

<sup>208</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 18 February 2011, Figure 8.

<sup>209</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 15 April 2011, Figure 8.

<sup>210</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 30 June 2011, Figure 7.

7.97 Our observation, highlighted in the table below, is that both the numbers and proportion of the detention population detained for longer than six months declined significantly from July 2011 – this may similarly have contributed to the drop in recorded incidents of self-harm from October 2011.

**Table 3: Detention longer than 6 months<sup>211</sup>**

Date	Persons detained longer than 6 months	Total detention population	% of total population in detention longer than 6 months
30 June 2011	4446	6403	69%
31 July 2011	3952	5780	68%
31 August 2011	3874	5845	66%
30 September 2011	3664	5597	65%
31 October 2011	3500	5454	64%
30 November 2011	3307	5733	58%
31 December 2011	3159	6461	49%
31 January 2012	3050	6383	47%
29 February 2012	2816	6644	42%
31 March 2012	2279	5909	39%
30 April 2012	2017	5967	34%
31 May 2012	2047	6530	31%
30 June 2012	1908	7252	26%
31 July 2012	1587	8026	20%
31 August 2012	1482	8741	17%
30 September 2012	1298	9358	14%
31 October 2012	1259	9449	13%
30 November 2012	1485	10,165	15%
31 December 2012	1686	9059	19%
31 January 2013	1885	7875	24%
28 February 2013	2354	7952	30%

### ***Delays in immigration processing***

7.98 Many factors affect the length of time that a person spends in immigration detention. Some of these factors are outside of the department's control, such as the time spent while those who have been refused protection exercise their appeal and judicial review rights. This is a result of the Australian Government policy that such people should remain in detention pending resolution of their claims. We also recognise that the more recent Australian Government policy decision to grant bridging visas to people while their claims are processed, and the greater use of community detention placements, have had positive impacts on the numbers of people who remain in closed detention centres pending resolution of claims.

7.99 However, it is clear that delays in refugee and security assessment processes can increase detainees' feelings of frustration and powerlessness, as well as directly impacting on the length of time people spend in detention.<sup>212</sup>

<sup>211</sup> Statistics drawn from monthly Department of Immigration and Citizenship detention statistics.

<sup>212</sup> Joint Select Committee on Australia's Immigration Detention Network, *Final Report, op cit*, para 6.41ff; Australian Human Rights Commission, *Submission to Joint Select Committee on Australia's Immigration Detention Network*, August 2011, para. 49, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=immigration\\_detention\\_ctt/e/immigration\\_detention/submissions.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctt/e/immigration_detention/submissions.htm) (viewed 11 November 2012).

7.100 The increased number of people arriving in Australia as Irregular Maritime Arrivals since 2009, and several revisions in the refugee and security assessment processes in response to High Court decisions in 2011 and 2012, led to significant delays in immigration processing during the period covered by this report.

7.101 The Australian Government's decision in April 2010 to pause the processing of new asylum claims for people from Sri Lanka and Afghanistan, for three and six months respectively, and the High Court of Australia's decision in *Plaintiff M61/2010E v Commonwealth*,<sup>213</sup> which resulted in the department having to reconsider the protection claims in relation to a number of asylum seekers, also significantly impacted on the number and length of time people remained in detention. While these two developments did not directly concern all immigration detainees, the consequences were felt across the entire network and had the effect of significantly increasing processing times. The ANAO has recently found that the suspension decision also adversely affected security assessment timeframes.<sup>214</sup>

Mr D (Case study 4) arrived in Australia in February 2010. Due to a complex investigation to confirm his identity, Mr D did not receive a decision notifying him that he was not owed protection until March 2011. Mr D sought an Independent Merits Review (IMR) and in November 2011 was again found not to be owed protection. However, Mr D's case was affected by the High Court's November 2010 decision in *M61* and he was offered a second IMR, which found in July 2012 that Mr D was not owed protection.

In December 2010, after he had been in detention for ten months, Mr D told the doctor that he was feeling anxious and stressed about the outcome of his visa application and his anti-depressant medication was increased. He advised that he would 'hunger strike until death' due to his frustration with the delay. In April 2011, Mr D was placed on the Psychological Support Program (High Imminent) after expressing suicidal thoughts after being notified of his negative Refugee Status Assessment. During his time in closed detention facilities Mr D continued to regularly express his frustrations with delays in processing. Mr D was transferred from closed detention to community detention in June 2012 and has been referred for removal action.

7.102 The department's September 2011 submission to the Joint Select Committee acknowledged the impact of increased processing times on the detention network:

The significant increase in the number of irregular maritime arrivals ... over the past few years has led to a marked increase in the number of people held in detention while their claims for protection are assessed. This has had significant implications on the detention network and, in conjunction with a range of other factors, has led to an increase in the average length of time that people are held in detention. The average processing times for irregular maritime arrivals to visa grant has increased from 103 days in 2008-09 to 304 days in the 2011-12 program year up to 13 September 2011.<sup>215</sup>

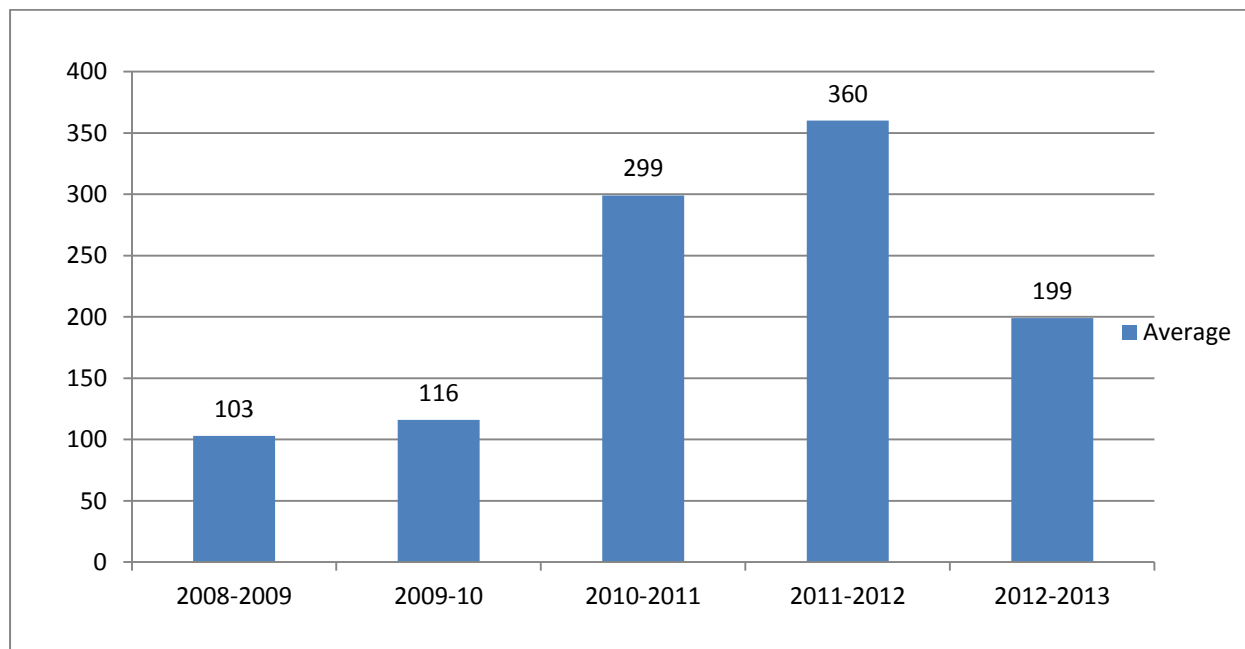
<sup>213</sup> [2010] HCA 41.

<sup>214</sup> Australian National Audit Office, *Security Assessments of Individuals*, Audit Report No. 49, 2011-12, 25 June 2012, pp. 88-89, <http://www.anao.gov.au/~media/Uploads/Audit%20Reports/2011%2012/201112%20Audit%20Report%2049/201112%20Audit%20Report%20No%2049.pdf> (viewed 29 January 2013).

<sup>215</sup> Department of Immigration and Citizenship, *Submission to Joint Select Committee on Australia's Immigration Detention Network*, *op cit*, p. 50.

7.103 Data provided by the department on 8 February 2013 indicates that the average processing time for Irregular Maritime Arrivals, from arrival to protection visa grant, significantly increased during 2010-11 and peaked at 360 days in 2011-12.

**Graph 5: Average processing times for Irregular Maritime Arrivals from arrival to grant of protection visa<sup>216</sup>**



7.104 It appears that average processing timeframes for Irregular Maritime Arrivals, from arrival to protection visa grant have significantly reduced in the current financial year to February 2013.

7.105 It is important to note that the above data refers only to those Irregular Maritime Arrivals who have been granted protection visas. It does not include the large number of Irregular Maritime Arrivals who have been refused protection, and have remained in immigration detention for extended periods either seeking merits and/or judicial review of the refusal decision, or awaiting removal from Australia. The data also does not include those detainees who have been refused protection, but have remained in detention while the department assesses whether Australia has complementary international treaty obligations in relation to them.

7.106 Also, as we have discussed elsewhere, a substantial number of people continues to be considered under the previous non-statutory arrangements and some cohorts face long-term or indefinite detention.

7.107 On the other hand, the recent policy decision to grant bridging visas to people while claims are processed, and the greater use of community detention placements, have both had a positive impact on the potential numbers of people who remain in closed detention centres pending resolution of their claims.

### **Security Screening for Irregular Maritime Arrivals**

7.108 Under current immigration policy, all Irregular Maritime Arrivals are subject to a security assessment by ASIO.

<sup>216</sup> Departmental statistics provided 8 February 2013.



7.109 The ANAO, in its recently published report on *Security Assessments of Individuals*, noted that the Irregular Maritime Arrivals caseload is complex:

IMAs typically arrive without proper documentation and, when required, IMA-related security assessments generally entail extensive ASIO investigation.<sup>217</sup>

7.110 Prior to April 2011, the department referred all Irregular Maritime Arrivals to ASIO for a security assessment at the beginning of their refugee status processing. This ‘parallel processing’ arrangement involved ASIO conducting a full investigative process simultaneously with the department’s assessment of the person’s claims to protection. The ANAO found that ‘The approach proved difficult to sustain when the number of IMAs arriving increased so markedly’.<sup>218</sup>

7.111 The ‘parallel processing’ arrangement saw ASIO’s pending Irregular Maritime Arrival cases – cases referred by the department and in the queue waiting to be assessed – peak in December 2010 at 2908 cases.<sup>219</sup> As noted above, these delays were also impacted by the April 2010 decision to suspend processing.

7.112 This data suggests that delays with security screening was one of the factors contributing to the increase in both the number of people in detention and the increased length of detention in late 2010 and early 2011.

The impact of delay in the security screening on a detainee’s mental health is illustrated in the case of Mr H (Case study 8). Mr H arrived in Australia in October 2009 and was found to be a refugee after being in detention for approximately two months. However, he then had to wait close to two years in an immigration detention centre for his security clearance before he was granted a protection visa in December 2011. Mr H had been in immigration for a total of two years and 66 days. The time taken to complete the process took a toll on his mental health, with Mr H attempting to hang himself in October 2011.

7.113 In late 2010, the ‘parallel processing’ arrangement was amended, after the government decided that the department would only refer a person for a security assessment after a positive refugee determination had been made. This change was accompanied, from April 2011, by a new ASIO referral framework based on what it described as ‘an intelligence-led, risk-managed approach to security assessments’.<sup>220</sup>

7.114 These streamlined arrangements have effectively filtered out low risk individuals and allowed ASIO to focus more closely on cases that require an intelligence investigation.<sup>221</sup>

7.115 According to the ANAO, ‘the introduction of a risk-based “triaging” approach has successfully reduced the IMA backlog, and eased pressure in the overall security assessment function.’<sup>222</sup> From mid-2011, some 3000 Irregular Maritime Arrivals who had been found to be owed protection were security assessed by ASIO under the new

<sup>217</sup> Australian National Audit Office, *Security Assessments of Individuals*, *op cit*, p.15.

<sup>218</sup> *ibid*, p. 33.

<sup>219</sup> *ibid*, p. 81.

<sup>220</sup> Australian Security Intelligence Organisation, *Annual Report to Parliament 2011-2012*, p. 21, <http://www.asio.gov.au/Publications/Report-to-Parliament/Report-to-Parliament.html> (viewed 16 May 2013).

<sup>221</sup> *ibid*.

<sup>222</sup> Australian National Audit Office, *Security Assessments of Individuals*, *op cit*, p. 20.

framework.<sup>223</sup> The backlog dropped from its peak in December 2010 to 345 cases in February 2011 and 511 cases in June 2011.<sup>224</sup>

7.116 In its submission to the Joint Select Committee, ASIO stated that:

The impact of these measures has been a significant reduction in the number of IMAs in detention solely awaiting security assessment.” Significantly, the submission noted that as at 12 August 2011 – coinciding with the peak of self-harm incidents in closed immigration facilities – of 5232 Irregular Maritime Arrivals in detention, some 448 or 8% were undergoing a security assessment.<sup>225</sup>

7.117 In our view, the triage arrangements introduced in 2011 were a welcome improvement to the processing system as a whole, as it helped to reduce delays across the immigration detention network.

7.118 However, we are still seeing individual cases where there are significant delays in the resolution of a person’s status due to security assessments. We consider that the sequence in which referrals are made to ASIO for higher risk individuals may be problematic as it is our observation that complexity in the early stages of a person’s processing tends to flow through the whole process.

7.119 In addition to the improvements noted above, the department has advised it has developed an escalation process for vulnerable cases and that further streamlining was introduced in March 2013 to improve resolution of bridging visa and community detention cases. The department has also worked with ASIO to review outstanding security assessment referrals and implement a strategy to reduce the length of time referrals are outstanding.

### ***A significant number of detainees face prolonged detention***

7.120 The significant reduction, from mid-2011, in the number and proportion of detainees who had been detained for longer than six months was accompanied by improvements in the average length of detention in closed detention facilities.

7.121 Departmental statistics indicate that the average period people were held in detention, including community detention, in November 2011 was 277 days.<sup>226</sup> While the overall reduction in average length of detention is welcomed, we note that this timeframe – which had been reduced to 74 days in October 2012<sup>227</sup> – has been again increasing in recent months. The average length of detention was 141 days as at 28 February 2013.<sup>228</sup> We encourage the department to be vigilant in continuing to reduce the timeframes that people spend in closed immigration detention facilities.

7.122 In our view, the decision in late 2011 to grant bridging visas prior to full processing of protection claims has had, and will continue to have, a positive impact in relation to the duration of detention.

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<sup>223</sup> Department of Immigration and Citizenship, *Submission to Joint Select Committee on Australia’s Immigration Detention Network*, *op cit*, p. 53.

<sup>224</sup> Australian National Audit Office, *Security Assessments of Individuals*, *op cit*, p. 81.

<sup>225</sup> Australian Security Intelligence Organisation, *Submission to Joint Select Committee on Australia’s Immigration Detention Network*, p. 3, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=immigration\\_detention\\_ctt/immigration\\_detention/submissions.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctt/immigration_detention/submissions.htm) (viewed 29 January 2013).

<sup>226</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 31 March 2012, Figure 10. Earlier figures are not available in monthly Departmental detention statistics.

<sup>227</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 31 October 2012, Figure 10.

<sup>228</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 28 February 2013

7.123 Notwithstanding the improvement in the average length of detention since 2011, it is important to note a significant number of individual detainees who continue to face prolonged or indefinite detention. Of the 7952 people in immigration detention as at 28 February 2013, there were 2354 who had been detained longer than six months:

- 1466 people detained for 6-12 months
- 179 people detained for 12-18 months
- 156 people detained for 18-24 months
- 553 people detained for more than 2 years.<sup>229</sup>

7.124 Together, this group – which as discussed above is most susceptible to developing mental health issues while in immigration detention – accounts for 30% of the detention population.

7.125 It is of particular concern to this office that the number of people detained longer than two years has been growing each month throughout 2012: in December 2011 this group comprised 126 people,<sup>230</sup> by December 2012 it had increased by more than four-fold, to 591 people.<sup>231</sup>

7.126 The department's published monthly detention statistics do not disaggregate length of detention by location so it is not possible to ascertain what proportion of these detainees remains in closed detention facilities and what proportion are in community detention. Regardless, the significant numbers remaining in immigration detention for lengthy periods have been increasing during a time when bridging visas have been available to be issued to Irregular Maritime Arrivals.

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<sup>229</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 28 February 2013, Table 5.

<sup>230</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 31 December 2011, Figure 9.

<sup>231</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 31 December 2012, Figure 9.

## PART 8—SERVICE DELIVERY AND POLICY FRAMEWORK

8.1 Following the Rau and Alvarez reports the department put in place a range of reforms aimed at ensuring it could meet its duty of care to people in immigration detention. The framework to manage the department's duty of care in relation to the mental health of detainee is spelt out in policy, governance arrangements, and contractual arrangements with the department's service providers.

### The Department's contractual arrangements with detention service providers

8.2 Prior to 1996, immigration detention facilities were managed by public service agencies – Australian Protective Services, for example, provided guarding services in detention facilities. Following a National Commission of Audit review in 1996, the then-government announced that these functions would be put out to competitive tender.<sup>232</sup> Between 1998 and 2007, Australasian Correctional Management Pty Ltd and then GSL Australia Pty Ltd were contracted by the department to provide detention services including guarding, catering and the provision of health, welfare and educational services.<sup>233</sup>

8.3 As discussed in Part 3, the Rau and Alvarez reports in 2005 were followed by significant reforms in immigration detention. The department released three requests for tender on 24 May 2007 for the provision of:

- detention services for people in Immigration Detention Centres and Alternative Places of Detention
- health services for people in immigration detention
- detention services for people in Immigration Residential Housing and Immigration Transit Accommodation.

8.4 The tenders for delivery of immigration detention services closely reflected the post-2005 reforms, as well as recommendations made by the ANAO on the management of the tender process.<sup>234</sup>

8.5 One of the most significant changes was the separation of contractual arrangements for the delivery of health and psychological services from the broader *Detention Services Contract*. This had first been effected in September 2006, to ensure that health care and wellbeing support provided to people in detention was not compromised by the administrative detail associated with security-related legislative requirements.<sup>235</sup>

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<sup>232</sup> According to the department's submission to the Joint Select Committee: 'In 1996, the Australian Government established a National Commission of Audit (the commission). This commission was tasked with examining the finances of the Australian Government, identifying duplication, overlap and cost shifting between Australian Government and the state/territory governments in service delivery and establishing a methodology for developing and implementing financial performance targets for Australian Government departments and agencies. Following its inquiry, the commission recommended the government should undertake a fundamental review of its objectives and justification for all of its programs, activities and services. This included the services of the Australian Protective Services, which was providing guard services in IDFs': Department of Immigration and Citizenship, *Submission to Joint Select Committee on Australia's Immigration Detention Network*, *op cit*, p. 195.

<sup>233</sup> *ibid.*

<sup>234</sup> Australian National Audit Office, *Management of the Tender Process for the Detention Services Contract*, Audit Report No.32 2005-06, 2 March 2006, [http://www.anao.gov.au/~media/Uploads/Documents/2005%2006\\_audit\\_report\\_32.pdf](http://www.anao.gov.au/~media/Uploads/Documents/2005%2006_audit_report_32.pdf) (viewed 15 March 2013).

<sup>235</sup> Department of Immigration and Citizenship, *Detention Health Framework*, *op cit*, p. 9.

8.6 The tender process was completed in 2009 and contracts were aligned with the key immigration detention values.<sup>236</sup>

### **Serco Australia Pty Ltd**

8.7 In June 2009, the department entered into a five-year contract with Serco Australia Pty Ltd (Serco) to provide services to people in immigration detention facilities throughout Australia, including Immigration Detention Centres and Alternative Places of Detention, as well as a range of transport and security functions. In December 2009, the department entered into a five-year contract with Serco to provide services to people in Immigration Residential Housing and Immigration Transit Accommodation throughout Australia.

8.8 Under the *Detention Services Contract*, Serco is required to provide a range of detention services including:

- providing accommodation including bedding and bathroom facilities
- catering, which includes the provision of a minimum of three meals per day and the accommodation of particular requirements such as halal, kosher and vegetarian foods
- arranging access to religious practitioners, prayer rooms, services and other religious activities
- providing access to television, library services and other educational and entertainment facilities
- arranging access to visitors (including visitor accommodation), a mail service and to telephones, computers and the internet
- arranging access to interpreters
- arranging excursions to locations or venues external to the Immigration Detention Centres
- facilitating a schedule of programs and activities (participation in which is voluntary) targeted at enhancing the mental health and wellbeing of clients
- administering an income allowance program and operating shops and a hairdressing service
- recreational and sporting facilities
- supplying and replenishing clothes, footwear, toiletries, hygiene products and other personal items.<sup>237</sup>

8.9 The *Detention Services Contract* articulates governance requirements to ensure there is an integrated service relationship where Serco must cooperate with other service providers and work closely with all the stakeholders to successfully deliver services.<sup>238</sup>

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<sup>236</sup> See Department of Immigration and Citizenship, *Immigration health services contract finalised*, Media release, 28 January 2009, <http://www.newsroom.immi.gov.au/releases/Immigration-health-services-contract-finalised> (viewed 24 November 2009); Department of Immigration and Citizenship, *Immigration detention services contract signed*, Media release, 30 June 2009, <http://www.newsroom.immi.gov.au/releases/Immigration-detention-services-contract-signed> (viewed 24 November 2009); Department of Immigration and Citizenship, *Serco contract signed*, Media release, 12 December 2009, <http://www.newsroom.immi.gov.au/releases/Serco-contract-signed> (viewed 24 November 2009).

<sup>237</sup> Serco Australia, *Submission to Joint Select Committee on Australia's Immigration Detention Network*, *op cit*, p. 18.

<sup>238</sup> *Detention Services Contract* cl 12.

8.10 The contract requires all Serco staff to comply with a Code of Conduct that provides guidance in meeting the immigration detention values in the fair and reasonable treatment of people in detention. Among other things it includes promoting a healthy environment with regard to the physical and psychological wellbeing of detainees, and requires Serco staff to be alert to detainees who are, or appear to be, traumatised and/or vulnerable to self-harm and by the actions of others.<sup>239</sup>

8.11 The department measures Serco's compliance with the contract by reference to an abatement regime established under the *Detention Services Contract*. The detention services fee is adjusted if Serco fails to meet the minimum performance levels under the contract.<sup>240</sup> The Joint Select Committee Report in March 2012 noted that 'In every month since the abatement process commenced Serco has been subject to abatement – that is, a penalty fee for failing to comply in full with its terms. No incentive payments have been paid.'<sup>241</sup>

### ***International Health and Medical Services (IHMS)***

8.12 In January 2009, the department signed a contract with IHMS to provide general and mental health services to people in immigration detention including general practitioner, nursing, counselling and psychology services. This contract provided for services on the mainland, and augmented the Health Care Services Agreement, which had commenced on 29 September 2006, and which covered the provision of health care services to people in immigration detention on Christmas Island.<sup>242</sup>

8.13 In 2011, a departmental taskforce reviewed the detention health service delivery model and identified required contract variations. From 31 March 2012, health services for both the mainland and Christmas Island have been provided under a single *Health Services Contract*.<sup>243</sup>

8.14 Under the *Health Services Contract*, IHMS is contracted to provide health services to people in detention including:

- the provision of primary and mental health services within immigration detention facilities
- the coordination of specialist and allied health services by providers outside the facilities
- the credentialing of healthcare providers for those in community detention
- the operation of a Nurse Triage and Advice Service for department and contractor personnel to call when clinic services are not available
- reporting functions to support the department and Ombudsman requirements.<sup>244</sup>

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<sup>239</sup> *Detention Services Contract*, Sch 4.2, Annexure A, cl 2.4.

<sup>240</sup> *Detention Services Contract*, Sch 4. The contract also provides for a regime of incentive payments in circumstances where Serco's service delivery is assessed as superior.

<sup>241</sup> Joint Select Committee on Australia's Immigration Detention Network, *Final Report*, *op cit*, para 3.15.

<sup>242</sup> Department of Immigration and Citizenship, *Joint Select Committee on Australia's Immigration Detention Network*, response to Question on Notice 296, 15 March 2012,

[http://www.apf.gov.au/Parliamentary\\_Business/Committees/Senate/Committees?url=immigration\\_detention\\_ctt/immigration\\_detention/submissions.htm](http://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=immigration_detention_ctt/immigration_detention/submissions.htm) (viewed 24 November 2012).

<sup>243</sup> *ibid*.

<sup>244</sup> International Health and Medical Services, *Submission to Joint Select Committee on Australia's Immigration Detention Network*, *op cit*, p. 3.

In providing these services, IHMS must ensure that these are being delivered with a cultural appreciation and an understanding of the issues and concerns that may impact on detainees and that:

Detention Health Care [is] coordinated, high quality, safe and prioritised on the basis of clinical need. It should be delivered without any form of discrimination, and with appropriate dignity, humanity cultural and gender sensitivity, and respect for privacy and confidentiality.<sup>245</sup>

8.15 Under the *Health Services Contract*, the IHMS is required to ensure that:

People in Detention have access to clinically recommended care, at a standard generally commensurate with Health Care available to the Australian community, taking into account the diverse and potentially complex health needs of People in Detention. Detention Health Care must be delivered in accordance with the principles underpinning the Service Delivery Model and the Immigration Detention Values.<sup>246</sup>

8.16 Clause 2.4 of the Code of Conduct in the *Health Services Contract* refers to IHMS' duty of care, and requires the Health Services Manager and health personnel to:

...be alert for People in Detention who are or appear to be, traumatised and/or vulnerable to self-harm or to harm by the actions of others.<sup>247</sup>

8.17 IHMS's Health Services Manager is responsible for managing the Performance Standards as stipulated in clause 17.1 of the contract.

### ***Life Without Barriers and MAXimusSolutions***

8.18 Life Without Barriers was contracted by the department to provide care and support to unaccompanied minors accommodated in alternative places of detention and community detention on mainland Australia. According to the department's 2011-12 Annual Report:

[Unaccompanied minors] are supported under a care model that meets the cultural, spiritual and linguistic needs of each individual. The model facilitates meaningful skills development opportunities, English language classes, day-to-day living skills and engagement in recreational activities, which supplement those provided by the detention services provider, Serco, at the facilities.<sup>248</sup>

8.19 Life Without Barriers was also contracted to fulfil the role of independent observer on Christmas Island and mainland Australia. The independent observer provides support to children during entry and intelligence interviews. According to the department, 'Independent observers ensure that the treatment of minors is fair, appropriate and reasonable during formal processes with the department and other agencies.'<sup>249</sup>

8.20 During 2011-12 an open market tender was conducted for support services to unaccompanied minors for 2012-14.

8.21 A new contract with MAXimusSolutions Australia took effect from 20 July 2012, for the provision of support to unaccompanied minors in alternative places of detention on mainland Australia, and to fulfil the role of independent observer in sites located on Christmas Island and mainland Australia.

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<sup>245</sup> *Health Services Contract*, Sch 2, Statement of Work, cl 1.

<sup>246</sup> *ibid.*

<sup>247</sup> *Health Services Contract*, Sch 2, Annexure A – Code of Conduct: cl 2.4(e).

<sup>248</sup> Department of Immigration and Citizenship, *Annual Report 2011-12*, *op cit*, p. 223.

<sup>249</sup> *ibid.*

## **Australian Red Cross**

8.22 The Australian Red Cross has been the primary service provider contracted by the department since the inception of community detention in 2005. The operation of community detention is explored in Part 10.

## **Commitment to joint service delivery**

8.23 Under their respective contracts, Serco and IHMS are required to work cooperatively with the department and with each other to provide coordinated services to people in immigration detention, in line with the immigration detention values.<sup>250</sup>

## **Immigration Detention Policy Framework**

8.24 In order to ensure the proper functioning of immigration detention facilities and the management of the health and wellbeing of people held in immigration detention, a comprehensive set of policies and procedures has been developed by the department and its service providers. These policies cover the provision of services to, and for the care of, people held in immigration detention facilities, including community detention.

8.25 These policies and procedures reflect the commitment to joint service delivery, noted above, and the intention that each party would bring its own expertise in providing holistic and coordinated services to detainees in line with the government's immigration detention values.

8.26 This complex set of contracts policies and service delivery arrangements culminate in one basic principle – that all agencies have an overriding duty-of-care to detainees while they are in immigration detention.

8.27 Existing policies which are particularly relevant to the management of suicide and self-harm in the immigration detention environment are outlined in Attachment 3 and include:

- the department's Detention Health Framework,<sup>251</sup> including:
  - Mental Health Screening for People in Immigration Detention<sup>252</sup>
  - Identification and Support of People in Immigration Detention who are Survivors of Torture and Trauma<sup>253</sup>
  - Psychological Support Program for the Prevention of Self-Harm for People in Immigration Detention<sup>254</sup>
- the department's Case Management Service
- the department's client placement policies
- Serco's Wellbeing of People in Detention policy and procedure manual, including Serco's Personal Officer Scheme and Individual Management Plans<sup>255</sup>
- Serco's Keep SAFE program

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<sup>250</sup> See *Detention Services Contract*: Part 4 – Immigration Detention Values, cl 15 – Case Management Framework; *Health Services Contract*: Part 4 – Legal and Policy Framework, cl 9 – Consultation, Collaboration and Cooperation.

<sup>251</sup> Department of Immigration and Citizenship, *Detention Health Framework*, *op cit*.

<sup>252</sup> Department of Immigration and Citizenship, *Mental Health Screening for People in Immigration Detention*, April 2009.

<sup>253</sup> Department of Immigration and Citizenship, *Identification and Support of People in Immigration Detention Who are Survivors of Torture and Trauma*, April 2009.

<sup>254</sup> Department of Immigration and Citizenship, *Psychological Support Program for the Prevention of Self-Harm in Immigration Detention*, 3 April 2009.

<sup>255</sup> Serco Australia, *Wellbeing Policy Manual*, version 1.1, 3 February 2011, para 3.1, Annexure 4 to *Submission to Joint Select Committee on Australia's Immigration Detention Network*, *op cit*.



- Serco's Behaviour Management policy
- IHMS's procedures for the provision of health services.

## **Gaps in the Policy Framework**

8.28 Notwithstanding the complex set of contracts, policies and service delivery arrangements in place, during the course of this investigation we identified a number of areas where policy completion or development is needed.

### ***Detention Health Policies***

8.29 Appendix G to the Action Plan 2007-2010 of the Detention Health Framework, discussed in Attachment 3, listed 'the scope of policies developed or under development at 28 June 2007.' Our review of the policy framework found that a number of the policies relevant to the management and care of detainees engaging in suicidal and self-harming behaviours are not yet drafted. When queried, the department advised us in September 2012 that the departmental policies on 'Health discharge from immigration detention' and 'People under immigration detention on voluntary starvation' were currently being drafted, due to be finalised in late 2012 or early 2013. The department subsequently advised it anticipated that these two policies would be published on Legend on 15 May 2013. It advised that it appears that a third policy, 'Management of drug-related health problems' has not been developed by either the department or its service providers.

8.30 It is of significant concern that these policies remain outstanding five years after the launch of the Detention Health Framework. We encourage the department to undertake an audit of its detention health policies to identify where there are gaps, and prioritise the further development, implementation, evaluation and ongoing monitoring of these policies.

### ***An overarching suicide prevention strategy***

8.31 Australia has, since the 1990s, had a National Suicide Prevention Strategy which 'provides the platform for Australia's national policy on suicide prevention with an emphasis on promotion, prevention and early intervention.'<sup>256</sup> The strategy includes the Living Is For Everyone (LIFE) Framework, which provides 'national policy for action based on the best available evidence to guide activities aimed at reducing the rate at which people take their own lives.'<sup>257</sup>

8.32 While elements of the department's mental health policies reflect international best practice in this area, we note that the department does not have an overarching suicide prevention strategy that explicitly relates to the LIFE Framework. Correspondence from the Secretary of the department to Professor Newman, Chair of the DeHAG, in 2011 indicated that the department intended to develop a strategy specifically to address the issue of suicide in immigration detention, in consultation with the Council on Immigration Services and Status Resolution, the DeHAG and other expert bodies. This does not appear to have come to fruition.

8.33 The LIFE Framework identifies six 'Action Areas':

- improving the evidence base and understanding of suicide prevention
- building individual resilience and the capacity for self-help

<sup>256</sup> Department of Health and Ageing, National Suicide Prevention Strategy, <http://www.health.gov.au/internet/main/Publishing.nsf/Content/mental-nsps> (viewed 15 March 2013).

<sup>257</sup> Department of Health and Ageing, *Living Is For Everyone: A Framework for prevention of suicide in Australia*, 2008, p. 6, <http://www.livingisforeveryone.com.au/LIFE-Framework.html> (viewed 15 March 2013).

- improving community strength, resilience and capacity in suicide prevention
- taking a coordinated approach to suicide prevention
- providing targeted suicide prevention activities
- implementing standards and quality in suicide prevention.

8.34 The LIFE Framework goes on to elaborate each Action Area with a set of specific outcomes and strategies.

8.35 The LIFE Framework is based on research that, among other things, identifies that prolonged incarceration (more than six months) in immigration detention centres is a risk factor 'commonly found to increase the likelihood of suicide among refugees and immigrants'<sup>258</sup> and that 'effective suicide prevention activities in refugee communities need to include culturally appropriate mental health interventions, particularly for people who have experienced pre-migration torture and trauma, refugee camp internment, periods of containment in immigration detention and post-migration stresses.'<sup>259</sup>

8.36 We encourage the department to develop an overarching suicide prevention strategy that explicitly aligns its existing policies and programs with the LIFE Framework's action areas, outcomes and strategies, and identifies any gaps and/or aspects that require further development.

#### ***Internal reviews of detainee deaths***

8.37 There were 11 deaths in immigration detention between 1 July 2010 and 24 April 2013.

8.38 Serco undertakes an internal investigation as to the circumstances surrounding all deaths in detention and makes detailed recommendations. These reports are provided to the department and the coroner.

8.39 The Australian Red Cross, the primary service provider in community detention, submits a Critical Incident Report to the department following a death of any person in community detention. The Australian Red Cross also prepared an internal report regarding one of the two deaths in community detention in 2011 and 2012.

8.40 The department itself reviewed one of these deaths, which occurred at Sydney Immigration Residential Housing in October 2011, examining issues that may have contributed to the death and making recommendations on how the department could act to minimise the possibility of similar situations occurring in the future. However, the department has advised our office that it does not have a policy to undertake internal reviews into the circumstances surrounding deaths in immigration detention but relies on independent coronial reviews.

8.41 In our view, as a matter of good practice, the department should have a policy to conduct its own internal reviews of all deaths and serious incidents of self-harm in immigration detention, separate to any coronial inquiries. We note that there can be considerable delays between when a death occurs and when a coronial inquiry reports. The

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<sup>258</sup> Department of Health and Ageing, *Living Is For Everyone (LIFE): Research and evidence in suicide prevention*, 2008, p. 40, <http://www.lifeisforeveryone.com.au/uploads/docs/LIFE-research-web.pdf>

<sup>259</sup> *ibid.*

failure to conduct an internal review first may mean that the implementation of potentially life-saving changes in practices and procedures is significantly delayed, if not lost altogether.

### ***External monitoring of deaths in custody***

8.42 In Australia, dealing with the risks of self-harm and deaths in closed detention facilities and custody is not confined to the immigration detention jurisdiction. Indeed, the Royal Commission into Aboriginal Deaths in Custody, established in 1988, highlighted many of the issues that have arisen in the immigration detention environment.<sup>260</sup> At the heart of that commission's report were issues of cultural miscommunications, poor reporting and governance of custodial institutions, a breakdown in services and presumptions about the individuals being held in custody.

8.43 In response to the Royal Commission, the Australian Institute of Criminology was given the responsibility for reporting on deaths in custody. While the original reference was related to Aboriginal deaths in custody, it has progressively started to report more broadly on all deaths in police custody and correctional institutions including prisons and juvenile detention.

8.44 According to the Australian Institute of Criminology's most recent Deaths in Custody Report:

The purpose of monitoring deaths in custody is to provide accurate, regular information that will contribute to policy and programs that aim to reduce deaths in custody and to increase public understanding of the issues.<sup>261</sup>

8.45 The Australian Institute of Criminology's regular reports document important information such as the cause, manner and location of death.

8.46 In February 2013, the department briefed the minister on the Deaths in Custody Report, and the minister agreed that the department should further discuss the reporting of deaths in immigration detention with the Australian Institute of Criminology. The department also intends to consult stakeholders including the Minister's Council on Asylum Seekers and Detention and the Immigration Health Advisory Group.

### ***Groups facing prolonged or indefinite detention***

8.47 We are particularly concerned about the circumstances of those detainees facing long-term – potentially indefinite – detention, and the potential adverse impact this will have on these individuals' mental health. We do not think there are adequate policies in place for these groups.

8.48 We note that two groups of Irregular Maritime Arrivals appear to be facing indefinite detention:

- those who have provisionally been found to be refugees but have received an adverse security assessment
- those who are not found to be refugees but are not easily returned to their country of origin due to external country constraints, including those considered to be stateless.

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<sup>260</sup> The commission produced a number of reports, including individual reports for each death investigated, which were presented separately as they were completed. The commission's final report, signed on 15 April 1991, made 339 recommendations.

<sup>261</sup> Australian Institute of Criminology, *Deaths in custody in Australia: National Deaths in Custody Program 2008*, December 2010, p. 4, <http://www.aic.gov.au/en/publications/current%20series/mr/1-20/10.aspx> (15 March 2013).

8.49 In addition, there are a number of character cancellation cases in prolonged immigration detention.

8.50 We acknowledge that the department faces complex problems in developing options for these groups, and that the department's administrative actions need to be considered in the context of Australian Government policy and the non-compellable and non-delegable ministerial powers under the Migration Act. However, we have been concerned for some time that no solution for people in these groups has yet been identified, and that these people currently face indefinite detention in secure and closed detention accommodation.

8.51 As part of the investigation we asked the department to provide us with aggregated data on the cohorts of people who have been in immigration detention for more than one year. It is concerning to us that the department was unable to provide us with this data as it is not compiled as a matter of course. While we appreciate that the case management model is designed to ensure that individual cases are regularly reviewed to ensure immigration status resolution is progressing and detention arrangements are appropriate, we believe this gap may reduce the department's capacity to develop appropriate policy responses for managing protracted caseloads.

8.52 The department advised that there are limitations on its ability to 'rapidly report in a systemic way on cohorts that have been in immigration detention for extended periods, partly due to the complex multi-faceted circumstances that are generally a feature of these cases'. The department does not believe that this has prevented it from developing policy responses to guide the case management of longer term detainees, and considers that 'the factors that lead to longer term detention are well known, they feature in policy discussions and are taken account in operational practice'.

8.53 The Ombudsman recommends that the department gives priority to developing a policy framework and process for managing these protracted caseloads in immigration detention, including regular compilation and management reporting on the cohorts of people in long-term detention, to assist towards reducing the length of detention of these detainees, particularly in closed immigration detention facilities.

#### **Adverse security assessments**

8.54 Under Australian Government policy, all Irregular Maritime Arrivals are subject to a security assessment by the Australian Security Intelligence Organisation (ASIO). The Ombudsman notes with concern the significant number of people held in immigration detention who have been found to be refugees but have received an adverse security assessment from ASIO. Such people are not eligible for the grant of a permanent protection visa and under the Australian Government's current policy; they are also ineligible for placement in community detention. Unless an alternative country can be found for settlement, under current policy people found to be refugees who have an adverse security assessment face detention in closed facilities indefinitely.

8.55 The department has advised our office that, as at 31 January 2013, 55 people in immigration detention have an adverse security assessment. Of these, 17 are accommodated in Immigration Detention Centres, 27 in Immigration Residential Housing and 11 in Immigration Transit Accommodation. In addition, there are three families, all accommodated at Sydney Immigration Residential Housing, where family members are detained with those with adverse security assessments – comprising one spouse and seven children.

Mr E (Case study 5) was found to be owed protection in October 2009, but has received an adverse security assessment. He currently faces indefinite detention and separation from his family, including his young child, under the current policy settings. The department is exploring third country resettlement for Mr E and his family but its advice to the minister in September 2011 was that ‘the Department considers ... the process for exploring third country resettlement is likely to be protracted and is unable to ascertain whether it will result in any successful resettlements.’

8.56 We acknowledge ASIO’s assessment that these detainees pose a direct or indirect threat to Australia, and that the majority of these adverse security assessments have been issued in relation to politically motivated violence.<sup>262</sup>

8.57 We also note the government’s duty of care to detainees and the serious risk to mental and physical health that prolonged and indefinite closed immigration detention may pose.

8.58 This is particularly true with respect to the incidence of self-harm. As for the broader immigration detention population, threatened, attempted and actual incidents of self-harm recorded among the adverse security assessment cohort peaked in mid-2011. We have observed a consistent rate of threatened self-harm recorded by the department among this group since late 2010, demonstrating a continuing level of distress. We note with concern that information provided to this office by the department identifies several individuals in this cohort who appear to be exhibiting regular self-harm behaviour.

8.59 In October 2012, the Attorney-General announced an independent review process for those assessed to be a refugee but not granted a permanent visa as a result of an adverse security assessment.<sup>263</sup> Under the terms of reference for the independent review function, the reviewer will examine all of the ASIO material that was relied upon in making the adverse security assessment, including unclassified written reasons provided by ASIO for the eligible person, as well as other relevant material, which may include submissions or representations made by the eligible person.<sup>264</sup> The review process also provides for annual reviews where new information can be considered.

8.60 The terms of reference for the independent review function further provided that the reviewer:

- upon conclusion of every review, form and record in writing an opinion as to whether the assessment is an appropriate outcome based on the material ASIO relied upon (including any new material referred to ASIO) and provide such opinion to the Director-General, including recommendations as appropriate

<sup>262</sup> Australian Security Intelligence Organisation, *Annual Report to Parliament 2011-2012*, 25 June 2012, p. 19, <http://www.asio.gov.au/img/files/ASIO-Report-to-Parliament-2012-update.pdf> (viewed 29 January 2013).

<sup>263</sup> The Hon Nicola Roxon MP, then Attorney-General, *Independent Reviewer for Adverse Security Assessments*, Media Release, 16 October 2012, <http://www.attorneygeneral.gov.au/Media-releases/Pages/2012/Fourth%20Quarter/16-October-2012---Independent-Reviewer-for-Adverse-Security-Assessments.aspx> (viewed 4 February 2013). A further media release from the Attorney on 3 December 2012 announced the Independent Reviewer’s appointment: The Hon Nicola Roxon MP, then Attorney-General, *Independent Reviewer for Adverse Security Assessments*, Media Release, 3 December 2012, <http://www.attorneygeneral.gov.au/Media-releases/Pages/2012/Fourth%20Quarter/3December2012CommencementofIndependentReviewerofAdverseSecurityAssessments.aspx> (viewed 4 February 2013).

<sup>264</sup> Attorney-General’s Department, *Independent Review function – Terms of Reference*, 16 October 2012, <http://www.attorneygeneral.gov.au/Media-releases/Documents/IndependentReviewFunction-TermsOfReference.pdf> (viewed 4 February 2013).

- provide a copy of that written opinion to the Attorney-General, the Minister for Immigration and Citizenship and the Inspector-General of Intelligence and Security (IGIS)
- advise the subject of the security assessment in writing of the outcome of the review.<sup>265</sup>

8.61 It is unclear, at time of writing, whether this process will provide the minister and department with an opportunity to reconsider the detention placement or visa status of those detainees who have previously received an adverse security assessment, in cases where the outcome of a reassessment is different to the original decision.

8.62 We encourage the department to ensure that it has a process in place to respond to reviews of adverse security assessment cases, so that any reconsideration of the security assessment that affects the detention placement or visa status of those detainees who have previously received an adverse security assessment, is managed expeditiously.

8.63 Notwithstanding the management of these reviews, this office remains concerned about the management of the department's duty of care to those detainees whose adverse security assessment is affirmed by the independent review process.

8.64 We note in this respect that ASIO has made clear that 'the action taken in relation to an IMA subsequent to ASIO making an adverse security assessment is a matter for DIAC'.<sup>266</sup>

8.65 We also note the *Inquiry into ASIO's security assessments for community detention determinations* commenced by the Inspector-General of Intelligence and Security in late 2011.<sup>267</sup> The Inspector-General considered security assessments for community detention and recommended that:

In cases where ASIO issues an adverse security assessment for community detention but where DIAC has identified significant health, welfare or other exceptional issues, ASIO should engage in a dialogue with DIAC so the Minister for Immigration and Citizenship can be advised on possible risk mitigation strategies and conditions with which a person allowed community detention might be required to comply.<sup>268</sup>

8.66 In response to this recommendation, ASIO indicated that it considers that the suggested approach may be outside its current legislative remit, but that it is 'open to dialogue with DIAC should the department wish to pursue this proposal with us'.<sup>269</sup>

8.67 The Inspector-General of Intelligence and Security concluded that:

The scope of this inquiry and recommendations is limited to security assessments for community detention. The proposed provision by ASIO of advice on risk mitigation strategies and conditions as recommended above apply only in that context. *It is possible, however, that a similar strategy could be explored more broadly in situations where a visa applicant has received an adverse security assessment and is facing an indefinite period in a detention centre.*<sup>270</sup> (emphasis added)

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<sup>265</sup> *ibid.*

<sup>266</sup> Australian National Audit Office, *Security Assessments of Individuals, op cit*, p. 43.

<sup>267</sup> Inspector-General of Intelligence and Security, *Annual Report 2011-2012*, 'Annex 4: Inquiry into ASIO's security assessments for community detention determinations', [http://www.igis.gov.au/annual\\_report/11-12/08\\_Annex-4.cfm](http://www.igis.gov.au/annual_report/11-12/08_Annex-4.cfm) (viewed 4 February 2013).

<sup>268</sup> *ibid.*, Recommendation 1.

<sup>269</sup> *ibid.*

<sup>270</sup> *ibid.*

8.68 Further:

I understand the implementation of any proposal of this type could be contingent upon the reallocation of resources by Government, but believe that modest funding in this area could significantly benefit a small number of vulnerable individuals who might otherwise be kept in an immigration detention centre for an indefinite period (with all of the financial and other costs attendant upon such an action).<sup>271</sup>

8.69 The Joint Select Committee on Australia's Immigration Detention Network (Joint Select Committee) also considered this issue noting that the potential risks involved in releasing such detainees into the community, 'must be carefully weighed against the proven human cost of holding people in detention with little or no prospect for release.'<sup>272</sup> The Joint Select Committee recommended:

... that the Australian Government and the Department of Immigration and Citizenship seek briefing on control orders in use by the criminal justice system and explore the practicalities of employing similar measures for refugees and asylum seekers who are in indefinite detention or cannot be repatriated.<sup>273</sup>

### **People who cannot be returned to their home country**

8.70 The department has advised this office that, as at 26 November 2012, 294 Irregular Maritime Arrivals in immigration detention were on a negative pathway, but could not be immediately removed. Of these, 27 were held in an Immigration Detention Centre, nine in Immigration Transit Accommodation, two in Immigration Residential Housing and a further two were accommodated in an Alternative Place of Detention. Some 254 people are in community detention. In addition to the 294 in immigration detention a further 234 people are living lawfully in the community on a bridging visa.<sup>274</sup> The department has advised that the majority of these Irregular Maritime Arrivals have ongoing requests for judicial review or they are within a statutory appeal period to seek further judicial review, others have either ongoing departmental post review checks or outstanding identity issues.

8.71 We note that the Hawke and Williams Review considered the growing number of detainees on removal pathways who had 'nothing to lose in terms of their immigration status.'<sup>275</sup> The report considered that these negative pathway detainees presented a significant risk to the good order of detention facilities and recommended that:

DIAC develop advice for the Government on options for managing detainees on a negative pathway, particularly those who have been found not to be refugees, but where removal is problematic.<sup>276</sup>

8.72 We understand that in the case of people who are not refugees, but where return to their country of origin is not possible, the department is exploring other options such as third country resettlement. We note that this is not likely to progress quickly nor is it a viable option for many.

### **Character cancellation cases**

8.73 The Ombudsman has previously raised concerns about a static approach to risk assessment for people whose visas have been cancelled under s 501 of the Migration Act and who have remained in detention for several years.

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<sup>271</sup> *ibid.*

<sup>272</sup> Joint Select Committee on Australia's Immigration Detention Network, *Final Report, op cit*, para 7.90.

<sup>273</sup> *ibid*, Recommendation 30.

<sup>274</sup> *ibid.*

<sup>275</sup> Hawke and Williams Review, *op cit*, p. 141.

<sup>276</sup> *ibid*, Recommendation 36.

8.74 These people often experience extended periods of immigration detention due to long review processes and/or ongoing issues relating to international treaties which prevent their removal.

*Example 1*

In October 2006 Mr K's transitional visa was cancelled under s 501 and was detained at an Immigration Detention Centre. He was released from immigration detention in July 2008 as a person affected by the Full Federal Court decision in *Sales*<sup>277</sup> and his transitional (permanent) visa was reinstated. After legislative amendments came into force validating the cancellation of Mr K's visa, he was re-detained in October 2008. Mr K applied for a protection visa in July 2007, which was refused in August 2008 before being reviewed by both the Refugee Review Tribunal and the Administrative Appeals Tribunal. Both tribunals found in favour of Mr K's protection visa application being remitted to the department for reconsideration. Mr K remained in detention until September 2009 when he was granted a protection visa. While detained for almost three years, Mr K had ongoing mental health issues, including incidents of self-harm, and was placed on 'suicide and self-harm watch' on five occasions.

*Example 2*

In November 2004 Mr L's permanent child visa was cancelled under s 501 and he was detained at an Immigration Detention Centre in November 2008 after serving a prison term. The Administrative Appeals Tribunal affirmed the department's decision to cancel Mr L's child visa, and in October 2009 Mr L applied for a protection visa, which was refused in April 2010. Mr L sought further review through the Federal Magistrates Court and to the Full Federal Court. He was voluntarily removed from Australia on 4 August 2011. In the Ombudsman's report of July 2011, it was noted that prolonged detention in an Immigration Detention Centre had been detrimental to Mr L's mental health. IHMS reports show that he was referred to a psychiatric hospital due to 'worsening in his depressive symptoms and suicidality'. Despite indications from Mr L's treating psychiatrists that the Immigration Detention Centre was not compatible to his recovery or mental state, requests for him to be transferred to less restrictive detention while his immigration status was being resolved were refused.

*Example 3*

Mr M entered Australia on a business (short stay) visa in 1997. From the time he was refused a business visa in June 1998, he had an extensive immigration history relating to visa applications and refusals. Mr M was in immigration detention for over eight years, after first being detained in February 2004. He was briefly released in May 2005 as he was considered to be 'Srey affected'.<sup>278</sup> His bridging visa was cancelled under s 501 in June 2005. From December 2008 he was in community detention, where he remained until being granted a bridging visa in March 2012.

In addition to ongoing tribunal and court appeals, Mr M's prolonged detention was due to complex International Treaty Obligation Assessment processes. Mr M is wanted by authorities of his country of origin for a kidnap and murder allegedly committed in December 1996. Australian Government agencies have been involved in ongoing negotiations with authorities in his country of origin, seeking assurances that Mr M would not face the death penalty if returned.

During his time in detention Mr M's mental health deteriorated and there is a documented history of depression and self-harm. A health report dated February 2008

<sup>277</sup> *Sales v Minister for Immigration and Citizenship* [2008] FCAFC 132.

<sup>278</sup> That is, affected by the Federal Court decision in *Chan Ta Srey v Minister for Immigration & Multicultural & Indigenous Affairs* [2003] FCA 1292.



stated that 'His ongoing long-term detention of 4 years is becoming a major causal factor of significant decrease in resilience and coping mechanisms'.

As of August 2012 Mr M was awaiting an outcome from the Administrative Appeals Tribunal in relation to his appeal against the refusal of his protection visa application.

8.75 A former Commonwealth Ombudsman in 2006 recommended the use of a variety of alternative arrangements for non-citizens who have had their visas cancelled under s 501 and who are not judged to be a significant risk to the community.<sup>279</sup>

### **Persons of interest accommodated in immigration detention**

8.76 This office is aware of a significant number of individuals who have been, or continue to be, detained in immigration detention facilities as 'persons of interest' in criminal justice investigations related to their alleged involvement in riots and other protest actions in immigration detention facilities. There is also a number of individuals suspected of involvement in 'people-smuggling' activities who have been, or continue to be, detained in immigration detention facilities for long periods without charges being laid.

8.77 We do not question the appropriateness of pursuing criminal charges against these groups of detainees, where the relevant authorities have determined there is sufficient evidence to do so. However, this office is concerned with the practice of continuing to detain individuals who have been identified as persons of interest, for extended periods of time while investigatory and court processes are pursued. We are particularly concerned about several cases where detainees have been identified as refugees, but remained in high security immigration detention centres for up to two years while their criminal matters have been pending. As discussed earlier in this report, prolonged detention – under any circumstances – can have an adverse impact on the mental health of detainees and can affect the incidence of suicide and self-harm.

Medical records indicate that while in a detention facility Mr J's mental health deteriorated (Case study 10). Mr J experienced a fellow detainee committing suicide, and a torture and trauma specialist advised that Mr J 'demonstrated features of anxiety and severe depression, and post-traumatic stress disorder'. Another psychotherapist advised that Mr J was in 'urgent need of transfer out of detention'.

The department advised us that Mr J was identified as a person of interest (POI) to the Australian Federal Police (AFP) after his alleged involvement in a large scale incident at the IDC and 'He will not be considered for referral while he continues to be a POI to the AFP, as the Minister has indicated his preference that these matters are resolved prior to the case being referred to him for his consideration of exercising his MI powers under s 46A of the Act'.

Mr J had been in detention facilities for 17 months when he was found to be owed protection and two months later he was advised that ASIO had given him a security clearance. However, because he was a POI, Mr J continued to be detained for more than seven months before being granted a protection visa and released from detention. Mr J was not charged with an offence.

<sup>279</sup> Commonwealth Ombudsman, *Department of Immigration and Multicultural Affairs: Administration of s 501 of the Migration Act, 2006*, para 3.92 and Recommendation 9, [http://www.ombudsman.gov.au/files/investigation\\_2006\\_01.pdf](http://www.ombudsman.gov.au/files/investigation_2006_01.pdf) (viewed 27 November 2012).

### **Need for a more targeted and flexible risk assessment**

8.78 While we acknowledge that government policy and the non-compellable and non-delegable ministerial powers under the Migration Act may limit the administrative actions of the department, we reiterate the concern that the department does not have a policy framework to manage protracted caseloads. As an interim measure, we encourage the department to make immediate arrangements for detainees in these circumstances – who have been detained for more than two years – to be transferred to a less restrictive place of detention or be granted a bridging visa, unless the department can demonstrate specific individual reasons why doing so would pose a threat to the Australian community.

8.79 We encourage the department to consider developing, in consultation with relevant agencies, a more targeted and flexible assessment process that identifies the specific nature of the risk to the Australian community of placing such people in the community on a temporary basis. Options could be developed for government consideration on alternatives to closed detention for managing different levels of risk.

8.80 We believe this is possible. We note that arrangements to accommodate people of security interest have been possible in other countries, such as the United Kingdom and Canada, without the need for closed detention arrangements.

8.81 The department should also consider alternative, more open detention arrangements, including community detention, for those who do not pose a direct threat to the Australian community. In such cases appropriate safeguards and oversight such as monitoring and reporting could be put in place to address any security concerns about the individual that have been identified in the assessment process.

8.82 This office considers that people facing long-term or indefinite detention should also be considered for a visa grant under the s 195A Ministerial Intervention power. This mechanism, and the removal pending bridging visa, was introduced in 2005 to provide greater flexibility to the minister and the department for these types of cases. In these circumstances, conditions and regular reporting regimes can be established to mitigate risk. In the case of non-compliance with these conditions, or new information about risk, any such visa could be cancelled and the person returned to a detention facility.

### ***The need for accurate data about individuals who self-harm***

8.83 In part 6, we discussed the need for the department to collect more accurate data about individual self-harm incidents, so that it can accurately monitor and respond strategically to self-harming behaviour. That discussion focused particularly on the problems in the way that individual self-harm incidents are categorised when the data is put into the Portal database, and the problems that the department has had in extracting, aggregating and analysing the data.

8.84 However, fixing these problems will not be sufficient. It is not enough for the department to be able to accurately monitor the number and rate of self-harm incidents. For example, that data alone does not allow the department to identify which detainees repeatedly self-harm and which do not, and what are the relevant factors that might cause some detainees to continue to self-harm and others to stop.

8.85 DeHAG raised similar concerns in correspondence with the department in May 2011, noting that 'DIAC should as a matter of urgency dig deeper to understand the prevalence and profile of people who self-harm in immigration detention in relation to numerous demographic, diagnostic and needs related variables across the immigration detention network using a standard methodology.'

- 8.86 It suggested that the department needed to know more about:
- a client's static and dynamic risk and protective factors
  - a client's preparatory acts toward imminent suicidal behaviour (for example, location of ligature points and assembling of apparatus)
  - how clients are managed after a serious suicide attempt
  - what evaluation is undertaken to determine the client's immediate safety, the best setting for treatment and aftercare
  - the type of postvention being provided. Key concerns here include the well-known occurrence of contagion around suicide and self-harm (especially among young people)
  - the prevalence of such contagion in the detention context, and what should be done to address it.

8.87 DeHAG further stated that 'The minimum data set to be collected is age, sex, type and severity of self-harm (details of definitions), time of day and whether or not the client's suicidal presentation is for the first time or a repeat episode. Also, it would be desirable to record in each case whether any statements by the detainee or those who know him point to the influence of other detainees' suicide or self-harm'.

### **The Department's Client Health View Project**

8.88 In response to DeHAG's advice, the department established the *Client Health View Project*. The department advised this office that the project was intended to 'examine the prevalence and determinants of self-harm in immigration detention'. It said:

A program of work is being undertaken to develop an integrated client health dataset and to understand the prevalence and profile of people who self harm in immigration detention in relation to numerous demographic, diagnostic and needs related variable across the immigration detention network using a standard methodology ... The Department is currently working to quantify levels of self-harm in immigration detention, including detailed information on the form it takes, the location at which it occurs within each place of immigration detention and the full backgrounds of the clients involved.

- 8.89 The Department advised that the project's parameters included to:
- map and streamline the epidemiological profile of Irregular Maritime Arrival clients across the lifespan in detention with physical and mental health problems
  - develop a data dictionary in relation to self-harm as there are a range of definitions and ways of classifying these events
  - identify uniform measures for risk and protective factors for self-harm and suicidal crisis across age, clinical history, ethnicity, length of detention, history of torture and trauma, and other nominated health and biographical variables, for Irregular Maritime Arrivals within the detention network
  - lay a foundation for effective examination of service delivery models for Irregular Maritime Arrivals at either low or high/extreme risk of suicide and self-harm.

8.90 These parameters appeared to address DeHAG's concerns. The department confirmed the project's scope in correspondence to our office in February 2012, stating that the Client Health View Project was intended 'to undertake a more focused mapping of the

epidemiological profile of IMA clients across the lifespan in detention with physical and mental health problems.’ The department said:

This type of in-depth analysis of self-harm and attempted suicide in the immigration network is a first for the department and will assist the department and its service providers understand the prevalence and profile of people who self-harm in relation to demographic, diagnostic and needs related variables across the immigration detention network.

In addition, it will lay evidence based foundation for the examination of service delivery models for IMA clients and provide an evidence based foundation for a range of health professionals to provide recommendations to assist in mitigating the continued risk associated with IMA clients who are currently in immigration detention.

8.91 A positive, early output of the *Client Health View Project* was the commencement in May 2012 of the *Monthly Self Harm Snapshot*, which was discussed in Part 6. The *Snapshot* is a significant step forward, although as noted in Part 6 some data integrity issues remain.

8.92 However, the snapshot data is not, and was not intended to be, as comprehensive as that envisaged by DeHAG and the Client Health View Project parameters. In light of this, we sought an update on the Client Health View Project from the department in October 2012. In response, the department advised us that:

The Client Health View project has been completed and merged into a corporate system. The Client Health View was a tactical solution as an interim measure until a more robust corporate system was developed. An IT systems project was undertaken at the beginning of 2012 which gave the department the ability to capture this same information but through corporate systems. This enables the Department to capture this information in timely manner and be maintained by the DIAC data warehouse.

8.93 When we sought further clarification from the department, it confirmed in December 2012 that the Client View Health Project had ceased. It acknowledged ‘data integrity issues, predominantly related to inconsistencies in the recording of self-harm throughout the immigration detention network’. It advised that, in light of this, it had not proceeded with developing a self-harm predictive model. It was ‘instead focusing on managing self-harm risk through the review and improvement in implementation of the Psychological Support Program’. As discussed earlier, it has also reviewed the self-harm incidents categories.

8.94 In April 2013, the department advised that the IT systems project referred to above had established ‘a more comprehensive dataset upon which it can and does report. This includes establishing links between detention, processing and incident reporting datasets to enable multi-factor analysis on potential reasons for self-harm’. However, the department has not provided this office with any examples of how it now reports or undertakes such multi-factor analysis. It is therefore unclear to us whether the department has achieved the outcomes that the Client Health View Project was intended to achieve.

8.95 The Ombudsman recommends that the department continue to review and improve its data collection and management reporting so the physical and mental health of people held in immigration detention can be measured and monitored to enable effective management and response to the risk of suicide and self-harm.

## **PART 9—IMPLEMENTATION AND GOVERNANCE**

9.1 Part 8 of this report considered the adequacy of the existing policy framework. This Part examines the practices and procedures of the department and its contracted service providers in implementing those policies. As previously observed, we are concerned that detention facilities, services and administrative arrangements have not kept pace with the demands of the changes and challenges presented by a rapid and significant increase in the detention population.

9.2 When this investigation was started, there was, and there remains, significant pressure of the immigration detention network because of the number of Irregular Maritime Arrivals. A limitation on the capacity for the department to ensure a healthy detention environment and manage the broader risk to the detention population was apparent. The volume of people in the detention network strained the capacity of the department and its service providers to adhere to their own policy frameworks and processes.

9.3 In this part, we focus particularly on issues concerning the effective implementation of the department's client placement policies, and the Psychological Support Program and other aspects of its Detention Health Framework. The part concludes with consideration of the department's governance framework and its obligation to work cooperatively with the service providers using an integrated service model and its capacity to undertake strategic assessment of the risks to the detention population.

### **Appropriate Placements in the Immigration Detention Network**

9.4 As discussed in Part 4, the department's duty of care to detainees extends to the decisions it makes about where a detainee is placed in the detention network. For example, if a person detained in a detention facility in a remote location requires medical services that are not practically available to them in that facility, then the department's duty of care may require it to relocate the detainee to another facility where those services are available. Similarly, if the conditions of detention in a particular facility are incompatible with the treatment of a particular detainee's mental illness, then the department's duty of care may require it relocate the detainee to another facility where the conditions of detention are more suitable.<sup>280</sup>

9.5 The department has a number of detention options available to it to manage the accommodation and other needs of individual detainees, ranging from secure immigration detention centres, through lower security but still closed alternative places of detention, to community detention. A critical question for the department and its service providers is whether the network includes an adequate range of facilities for meeting detainees' needs, particularly whether these facilities allow the department and its service providers to supply appropriate mental health services to detainees.

9.6 Decisions about where detainees are placed within the immigration detention network are guided by the department's Detention Facility Client Placement Model (see Attachment 3). The intent is to take a more targeted approach to where certain detainees will be placed in the network. We understand that a number of individual factors – including the detainee's family structure, security risk assessment, background and cultural sensitivities, and any ongoing medical and mental health issues – should be taken into consideration. Issues such as the detainee's immigration pathway status and language group may also be considered. Importantly, we understand that some capacity in major capital city detention

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<sup>280</sup> *S v Commonwealth* [2005] FCA 549 at [262-263]; *Secretary, Department of Immigration and Multicultural and Indigenous Affairs v Mastipour* [2004] FCAFC 93; *SBEG v Secretary, Department of Immigration and Citizenship (No 2)* [2012] FCA 569 at [117].

facilities will be designated for detainees requiring specialised health services, including access to torture and trauma counselling and other ongoing specialist care.

9.7 However, in response to the surge of Irregular Maritime Arrivals and the rapid expansion of the detention network over recent years, operational imperatives appear to have overridden consideration of the needs of individual detainees as the primary concern. For example, we have observed occasions on which the department has relocated detainees from one immigration detention facility to another for operational reasons, without apparent regard for the impact of this on the detainee's relationship with and access to their treating psychiatrist, or their pending medical treatment. While we understand that operational requirements may need to override individual-based case management decision around placement, this practice needs to be underpinned by strong governance and sharing of detailed and relevant information about the individual detainees.

9.8 The department has advised that the Detention Facility Client Placement Model is a dynamic model which is continually adjusted to reflect the composition of detainees and the detention facilities available. We explore below several issues of particular concern about the placement of clients within the immigration detention network, with particular reference to the risk of suicide and self-harm. We encourage the department to consider these issues in implementing its Detention Facility Client Placement Model and Case Management Placement Review Policy Guide.

#### ***Transfers to mainland facilities***

9.9 The Detention Facility Client Placement Model aims to transition Irregular Maritime Arrivals through Christmas Island facilities into mainland detention facilities within 14 days of arrival. During our inspections of detention centres in 2012, departmental, IHMS and Serco staff on the ground expressed concern to our office that detainees are arriving at mainland detention facilities directly from Christmas Island without individual placement considerations being taken into account.

9.10 This office is concerned that this practice may lead to critical health and welfare information about individual detainees – such as medical conditions, management of mental health issues, or existing family or community relationships – not being sufficiently considered in these placement decisions.

9.11 We encourage the department to review its transfer processes on Christmas Island with a view to ensuring that informed case management and placement assessments can be made for detainees prior to their transfer to mainland detention facilities.

#### ***Detention Placement Decisions for Survivors of Torture and Trauma***

9.12 This office has been concerned for some time about the number of people who are survivors of torture and trauma, who are being detained, including in closed detention facilities.<sup>281</sup>

9.13 The department's *Identification and Support of People in Immigration Detention who are Survivors of Torture and Trauma* policy<sup>282</sup> was one of the three mental health policies developed in 2009 aimed at promoting early identification and appropriate management of people at risk of mental health problems. The policy is discussed in detail in Attachment 3.

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<sup>281</sup> Commonwealth Ombudsman, *Submission to the Joint Select Committee on Australia's Immigration Detention Network*, September 2011, p. 11, [http://www.ombudsman.gov.au/files/Joint\\_Select\\_Committee\\_on\\_Australias\\_Immigration\\_Detention\\_Network\\_September\\_2011.pdf](http://www.ombudsman.gov.au/files/Joint_Select_Committee_on_Australias_Immigration_Detention_Network_September_2011.pdf) (viewed 11 November 2012)

<sup>282</sup> Department of Immigration and Citizenship, *Identification and Support of People in Immigration Detention Who are Survivors of Torture and Trauma*.

9.14 Under the department's policy, detainees who are identified as survivors of torture and trauma are deemed 'vulnerable' and should not be managed in an immigration detention centre, except as a last resort.<sup>283</sup> Similarly, the ministerial guidelines on community detention specify that torture and trauma cases should be prioritised for consideration for residence determination.<sup>284</sup>

9.15 However, application of these policies has been inconsistent and we have seen torture and trauma survivors continue to be detained in immigration detention centres and in some instances detainees not being provided with appropriate access to torture and trauma counselling.

9.16 We encourage the department to ensure that its client placement policies align with the principles and practices outlined in the department's *Identification and Support of People in Immigration Detention who are Survivors of Torture and Trauma* policy.

### ***Detention Placement Decisions for Children***

9.17 Australia ratified the United Nations *Convention on the Rights of the Child* in January 1991. Article 37 of the Convention provides that detention of a child 'shall only be used as a measure of last resort and for the shortest appropriate period of time' and that a child deprived of liberty 'shall be treated with humanity and respect for the inherent dignity of the human person.' This principle is explicitly recognised in the Migration Act, following the passage in 2005 of the *Migration Amendment (Detention Arrangements) Act 2005*. Section 4AA(1) of the Migration Act provides that 'The Parliament affirms as a principle that a minor shall only be detained as a measure of last resort.'<sup>285</sup>

9.18 In accordance with this legislative principle and the immigration detention values, children and their families, as well as unaccompanied minors, have been detained in alternative places of detention, including Immigration Residential Housing and Immigration Transit Accommodation, or in residence determination (community detention) arrangements.

9.19 We recognise that the department has, since October 2010, moved a significant number of families and children, as well as unaccompanied minors, to community detention.

9.20 However, many families with children remain in closed detention facilities across the network. As at 28 February 2013, there were 946 children accommodated in community detention under residence determinations, but 1160 children held in alternative places of detention including Immigration Residential Housing and Immigration Transit Accommodation.<sup>286</sup> Almost a third (29%) of these children were detained in alternative places of detention on Christmas Island. This is a significant decrease from the end of December 2012 when half (614) of the children in immigration facilities were on Christmas Island.<sup>287</sup>

9.21 It is important to note that accommodation in these lower security detention environments continues to constitute 'immigration detention' under the Act, and involves a restriction on the liberty and movement of the child. While these facilities may not be defined

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<sup>283</sup> *ibid*, p. 8.

<sup>284</sup> Department of Immigration and Citizenship, *Residence Determination guidelines – Guidelines approved by Minister Evans*, 1 September 2009.

<sup>285</sup> This section goes on to say that the measure of last resort principle does not apply to residence determination detention arrangements: s 4AA(2), *Migration Act 1958*.

<sup>286</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 28 February 2013.

<sup>287</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 31 December 2012.

The Department noted in this publication that "The increase in the number of children in detention facilities for December 2012 is due to a rapid increase in irregular maritime arrivals during October and November 2012. The majority of children in facilities-based detention have been in detention for less than two months": p7.

as 'immigration detention centres' under the Act, the larger alternative places of detention in particular are not far removed from conditions in immigration detention centres and children in these places remain susceptible to the effects of an environment populated by people in confinement and distress.

9.22 On a related point, we note with concern the department's action of re-classifying detention facilities according to operational needs. We are aware that certain facilities on Christmas Island have at different times been classified as Immigration Detention Centres and Alternative Places of Detention under the Migration Act, without the conditions of detention within changing. Similarly, the Pontville facility in Tasmania, which was re-opened in November 2012 to provide additional capacity,<sup>288</sup> was initially designated as an Immigration detention Centre.<sup>289</sup> As at 31 December 2012, the facility accommodated 94 men.<sup>290</sup> However, the most recent information on accommodation capacity at immigration detention facilities as at 6 February 2013, states that the Pontville facility is an Alternative Place of Detention.<sup>291</sup>

9.23 The significance of this practice is that, as noted above, under existing policy children and families with children may be accommodated in Alternative Places of Detention, but not in Immigration Detention Centres. Acknowledging that operational changes can be made to reduce the level of supervision and other limitations on freedom of movement, this office does not believe it is good practice to re-classify particular facilities to ensure that children are not, technically and legally, being accommodated in Immigration Detention Centres, when the physical reality is that they are being accommodated in facilities that are considered to have sufficient security at other times to be designated under the Migration Act as Immigration Detention Centres.

9.24 As a general principle, we consider that children and families should remain together as family units unless there are exceptional circumstances to justify other arrangements. We are, however, concerned that this approach has led to seven children being held in indefinite detention with their parents who have adverse security assessments. This difficult caseload was discussed in Part 8. The additional complication of children being detained in these circumstances adds impetus to the urgent need for the department to develop a strategic policy framework to manage the adverse security assessment caseload.

9.25 More broadly, we encourage the department to continue to give active consideration to less restrictive detention options being utilised for detaining children, including both unaccompanied minors and children accompanied by family members, as soon as possible after their arrival in immigration detention.

9.26 We further encourage the department to prioritise placements for children in alternative detention in facilities with small groups of detainees, close to established Australian communities where children can attend regular pre-school and school environments and enjoy as normal an amount of freedom as possible.

### ***Implementation of the Detention Facility Client Placement Model***

9.27 The Detention Facility Client Placement Model was developed to enable the department to better respond to fluctuations in the detention population and to foster a more strategic approach in relation to detainee placement decisions.

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<sup>288</sup> Minister Bowen, *No advantage onshore for boat arrivals*, Media release, 21 November 2012, *op cit*.

<sup>289</sup> Department of Immigration and Citizenship, *Accommodation Capacity at immigration detention facilities as at 21 November 2012*, *op cit*.

<sup>290</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 31 December 2012, Figure 1.

<sup>291</sup> Department of Immigration and Citizenship, *Accommodation Capacity at immigration detention facilities as at 6 February 2013*, *op cit*.



9.28 It is important that the department ensure that it is in a position to take a strategic and holistic approach to detainee placement decisions in order to fulfil its duty of care to detainees, and to ensure the appropriate health care and support is being provided while the detainee is in detention. We support the department in its work to take a more strategic and individualised approach to detainee placement decisions through its implementation of its client placement policies.

9.29 We have made recommendations around the need for the department to develop a strategic policy framework for the management of the caseloads facing prolonged and sometimes indefinite detention: those detainees who have received an adverse security assessment from ASIO, character cancellation cases, and those detainees found not to be refugees who cannot be returned to their countries of origin.

### **Implementation of the Department's Psychological Support Program**

9.30 The Psychological Support Program for the Prevention of Self-Harm for People in Immigration Detention (PSP) was one of three specific mental health policies developed by the department under the Detention Health Framework. It is discussed in detail in Attachment 3. The PSP is the department's overarching policy for identifying and supporting people in immigration detention who are at risk of suicide and self-harm, and it is jointly administered by the department and its service providers.

9.31 Despite being released in April 2009, the PSP was not rolled out across the detention network until 2010, starting in the Australian Capital Territory in February and ending in New South Wales in late November. While there were delays in implementing the PSP, the program it superseded, the Suicide Awareness and Self Harm Program, was in place.

9.32 The PSP's phased implementation was driven by individual business areas, which were responsible for updating local operating procedures to align them with the policies and for ensuring that any procedural training required for their staff was undertaken before the scheduled start dates.

9.33 The roll out of the mental health policies was accompanied by four different training courses delivered to separate groups of participants across the detention network in 2010. The training was delivered to approximately 1180 staff across the immigration detention network, including staff from the department, Serco, IHMS, the Australian Red Cross, Life Without Barriers; and member organisations of the Forum of Australian Services for Survivors of Torture and Trauma (FASSTT). Updated training was delivered to some staff in 2011. Issues around training are discussed later in this part.

9.34 The PSP's effectiveness was immediately challenged by the rapid increase in the number of people in detention, the length of detention for the majority of detainees extending beyond six months, and the incidence of reported self-harm across the detention network escalating. Below, we discuss several specific issues concerning the way that the department implemented the PSP.

#### ***Interaction with Serco's Keep SAFE policy***

9.35 As noted above, the PSP is jointly administered by the department and its service providers. However, Serco also developed its own 'Keep SAFE' policy, which it describes as supporting the PSP, and providing some standardised documentation (see Attachment 3).

9.36 In theory, the PSP and Keep SAFE can work in complementary fashion. The PSP is designed to provide a clinical response (determined by IHMS) to people at risk of suicide and self-harm. Serco is responsible for the initial risk assessment and for referring people at risk to an IHMS health professional, who then determines whether the detainee should be on

the PSP. Keep SAFE has a role to play in guiding Serco's initial risk assessment, and its management of that risk in the period before IHMS provides a clinical response. Keep SAFE also has scope to operate in circumstances where IHMS decides that a clinical response is not required.

9.37 However, in the course of our oversight of immigration detention we found that, in practice, the interaction between the PSP and Keep SAFE policies was poorly understood by staff on the ground. We observed many examples where staff either thought Keep SAFE and the PSP policies were the same thing, or not clearly understood how the policies were related.

9.38 As discussed further below, other stakeholders also expressed concern about the interaction between the PSP and Keep SAFE, and the department commissioned the Ipsos Social Research Institute to evaluate the PSP's implementation in February 2012. In response, Serco revised its Keep SAFE policy revised in July 2012 to improve its alignment with the PSP, including a standardised documentation process to record observations and interactions for clients on PSP or Keep SAFE.

9.39 While the Ombudsman understands that Serco identified a need to operationalise the PSP, in our view the department, as policy owner, was responsible for ensuring that Keep SAFE was complementary to the PSP, and did not undermine the effectiveness of the overarching PSP framework.

### ***Characterisation of behaviours***

9.40 The PSP's operation depends crucially on how Serco officers understand specific incidents, and their assessment as to whether the detainee should be referred to IHMS for a clinical assessment. We recognise that this assessment is not always easy to make, for the reasons given below. Nevertheless, we are concerned that the response of Serco officers to these difficulties has often undermined the PSP's effective implementation.

9.41 It can be very difficult for trained clinicians, let alone operational security staff, to accurately understand and interpret a person's motivations, and particularly the extent to which a particular incident indicates a risk of further self-harm behaviour. Nevertheless, this assessment has to be made, often in difficult circumstances.

9.42 Self-harm behaviour, including threats and attempts, does not only affect the individual concerned. It also disrupts the peace and good order of the detention facility, and may affect the wellbeing of staff and other detainees who are involved in, or witness, the incident. It can also involve actions that would otherwise call for a behaviour management (that is, disciplinary) response. For example, a detainee may damage property in order to obtain the means of self-harm, for example by pulling out a light fitting to obtain access to live wires that they then use to threaten self-electrocution. Or a detainee may threaten, attempt or actually harm others at the same time that they threaten, attempt, or actually harm themselves.

9.43 Self-harm behaviour, particular threats and purported attempts, can also be used intentionally to manipulate and influence others. Patterns of behaviour can develop in which individual detainees repeatedly threaten or make seemingly only purported attempts at self-harm, without their behaviour escalating to actual self-harm over an extended period of time.

9.44 Serco officers may already have referred a detainee to IHMS for a clinical assessment, and IHMS may have determined that placement on PSP was not necessary, before another self-harm incident occurs. In these circumstances, it is not easy for Serco officers to assess whether or not they should again refer the detained to IHMS.

9.45 We acknowledge that this all makes it challenging for staff on the ground in detention facilities to know how to respond to particular self-harm incidents. Nevertheless, we are concerned that self-harm incidents are often portrayed in incident reports as ‘protesting’, ‘acting out’, ‘playing up’ or attempts at intimidation. It appears that such characterisation may sometimes adversely influence detainees’ behaviour, prompting them to escalate their behaviour in order to obtain help or assistance to relieve their distress – and the escalated behaviour itself may then be labelled as ‘more naughty’ or as ‘acting out big time’. While we have had concerns about Serco staff trying to manage a detainee’s pattern of self-harm behaviour through a Behaviour Management Plan (BMP) rather than through the PSP, the BMP processes require that IHMS undertake a mental health assessment prior to a BMP being developed and then reviewed by IHMS on a regular basis. This requirement was reiterated in September 2012 through the joint policy communicated to staff by the department, Serco and IHMS. Actions that downplay incidents and focus on their ‘disciplinary’ rather than self-harm aspects could adversely impact on the management of self-harm incidents in the immigration detention network.

9.46 The inherent risk in oversimplifying or negatively characterising behavioural distress and disturbance is that it obscures – and in some instances, completely removes – clinician opportunities to know and understand the causative, interactive, and facilitative relationships between self-harm or suicide ideation, intent, planning and action. This in turn limits the opportunities for intervention before such behaviours escalate.

#### ***Appropriate infrastructure***

9.47 Effective implementation of the PSP requires appropriate infrastructure. This issue has two aspects.

9.48 First, as noted above, a critical question for the department and its service providers is whether the network includes an adequate range of facilities for meeting detainees’ needs, particularly whether these facilities allow the department and its service providers to supply appropriate mental health services to detainees.

9.49 The court cases discussed in Part 4 demonstrate that the department has at times struggled to locate detainees in places where they can receive the treatment they need, and/or where the conditions of detention are compatible with the treatment they are receiving.

9.50 The second aspect concerns the need for the department to ensure that immigration detention facilities include an appropriate range and sufficient number of safe and therapeutic environments so that risks of self-harm can be properly managed.

9.51 We recognise that the department is limited to the range of facilities that the minister designates as places of immigration detention, and by the budget that it has available to construct and alter facilities within those places. Nonetheless, we are concerned that the majority of immigration detention centres have no dedicated rooms for assisting people in the acute stage of psychological distress, or for times when close observation is required. Similarly, we are concerned that many of the alternative places of detention are without dedicated rooms for detainees requiring psychological support.

9.52 Our observation from our detention centre visits, and advice received from detention centre staff, is that the lack of suitable rooms in close proximity to mental health service providers makes the management of suicide and self-harm prevention much more difficult. It places pressure on mental health service providers and requires a heavy reliance on Serco

officers, who may or may not have the required skills to monitor and assist people on the PSP.

9.53 We are also concerned about the practice of locating behavioural management rooms adjacent to psychological recovery rooms such as the Murray Unit at Villawood Immigration Detention Centre, and the Support Unit at the Christmas Island Immigration Detention Centre. While we recognise that the department and its service providers face a difficult balance in meeting their duty of care to other detainees and to staff when an individual is in acute psychological distress, advice from experts suggest that a high security environment is usually not compatible with providing an appropriately therapeutic environment for an individual who is in acute psychological distress.

9.54 Feedback from detainees gathered from complaints and interviews suggest that detainees become fearful of being moved to these units because the action is associated with what is perceived as punitive behavioural management. This issue is not new – it was considered in the report into the circumstances of the immigration detention of Cornelia Rau in 2005.<sup>292</sup> In our view, it has a tendency of exacerbating the difficulties identified earlier of properly distinguishing between therapeutic and behavioural management responses to specific incidents.

9.55 It appears that the department and its service providers may have used and adapted what facilities they have available rather than pursue the facilities required to support the mental health of detainees. The department should reconsider the need for more appropriate infrastructure to manage the mental health of detainees in a therapeutic manner.

9.56 We are also concerned about the lack of purpose-built facilities designed to limit further opportunities for self-harm for detainees who are in acute psychological distress.

9.57 The PSP emphasises the need, wherever possible, to strengthen ‘protective factors’ which may serve to counterbalance risk factors, including ‘restricted access to highly lethal means of suicide.’<sup>293</sup> It specifically states that:

Highly secure environments for people at risk of self-harm should be free of hanging points, free of objects that can be smashed or broken to fashion a sharp implement and free of any shoelaces, drawstrings, ties, belts, long socks or any other material that could be used to fashion a noose. The removal of any items of clothing or personal items must be handled sensitively and explained as a measure to keep the person safe.<sup>294</sup>

9.58 Our review of health and incident reports suggests that this aspect of the PSP is not being implemented as robustly as desired. We are also concerned about a detention network where detainees exhibiting extreme distress have been repeatedly placed in environments where they are able to access the means to again attempt self-harm.

The experience of Mr C (Case study 3) demonstrates this practice. Within hours of attempting to set himself alight using a blanket, Mr C attempted to choke himself with a bed sheet. After being transferred to the mental health wing of the Support Unit, Mr C again tried to choke himself with a bed sheet. The following day, while still in the mental health wing of the Support Unit, Mr C self-harmed a number of times by banging his head against the wall and eating soap.

<sup>292</sup> See Palmer, *Report of Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, *op cit*, 4.4 – Operational considerations and 4.5 – Infrastructure.

<sup>293</sup> Department of Immigration and Citizenship, *Psychological Support Program for the Prevention of Self-Harm in Immigration Detention*, p. 7.

<sup>294</sup> *ibid*, p. 22.

Mr F (Case study 6) had a history of self-harm incidents while in detention. This included cigarette burns, punching himself in the face, slashing his wrists and torso with a razor on more than one occasion, and attempted suicide by trying to hang himself using the cord from his tracksuit pants.

Mr I (Case study 9) first self-harmed after ten months in detention when he slashed his left forearm with a razor blade. In the seven and a half months following, more than 15 incidents relating to self-harm were recorded, which included attempted suicides by hanging, self-harming by banging his head against glass, slashing his arms with a razor, overdosing on medication, voluntary starvation, and threats of self-harm.

### ***Delay in reviewing the PSP's implementation***

9.59 Stakeholders started voicing concerns about the PSP's implementation within months of its roll-out. We are concerned that the department and its service providers were slow to respond to these concerns.

9.60 The Detention Health Advisory Group (DeHAG) expressed serious concerns about the provision of mental health and psychological supports to detainees in correspondence to the department's Secretary in December 2010, shortly after the suicides at Villawood Immigration Detention Centre. DeHAG raised particular issues about the slow implementation of the PSP, and asserted that there was 'an urgent need for external independent review of implementation of Mental Health Policy and to ensure that there is appropriate availability of resources and widespread provision of staff training in immigration detention facilities to hopefully prevent further tragic events.'

9.61 Correspondence between the department and DeHAG indicated that the department agreed with this recommendation in December 2010, and undertook to commission an external review in early 2011. Subsequent correspondence indicated that the department worked with members of DeHAG in the following months to establish a panel for the review, but as discussed below this was not commissioned until February 2012.

9.62 In May 2011, a key recommendation of the internal departmental review of the Detention Health Framework was the need to review the PSP's implementation and related mental health policies. The report noted that:

This Review has identified that there have been inconsistencies in the implementation of these important policies. In particular the levels of training that staff have experienced may have been less than optimal and client case review protocols may not be operating consistently across the Network.<sup>295</sup>

9.63 The Australian Human Rights Commission, in its August 2011 submission to the Joint Select Committee, raised concerns that the PSP had not been adequately implemented across the detention network and that many staff working across the network had not had appropriate training in the policy.<sup>296</sup>

9.64 The Chair of DeHAG, Professor Louise Newman, was critical when she appeared before the Joint Select Committee in November 2011, referring to 'a dysfunctional

<sup>295</sup> Department of Immigration and Citizenship, *Review of the Detention Health Framework: A policy framework for health care for people in immigration detention*, op cit, para.3.13, p.10.

<sup>296</sup> Australian Human Rights Commission, *Submission to Joint Select Committee on Australia's Immigration Detention Network*, op cit, para. 97.

triangulated relationship' in relation to the immigration detention contractual arrangements, which was impeding the PSP's implementation.<sup>297</sup>

9.65 In December 2011, the NSW Coroner's report into the three deaths at Villawood Immigration Detention Centre considered the appropriateness of the treatment of the three detainees by the department and its service providers and emphasised need for:

- increased collaboration between the department and service providers to ensure consistent procedures to manage mental health related issues
- standard procedures to assess risk of self-harm
- periodic training for mental health staff.<sup>298</sup>

9.66 The Joint Select Committee Report endorsed the evidence provided by DeHAG and the Australian Human Rights Commission regarding the PSP's implementation, and raised its own concerns around the interaction between the PSP and Serco's Keep SAFE policy.<sup>299</sup> The Committee made three specific recommendations in relation to the PSP:

Recommendation 6 – The Committee recommends that the Department of Immigration and Citizenship effectively contract manage Serco's implementation of the Psychological Support Program Policy.

Recommendation 7 – The Committee recommends that the Department of Immigration and Citizenship work with Serco and the Detention Health Advisory Group to reform the Keep Safe policy to ensure it is fully consistent with the Psychological Support Program Policy, as soon as possible.

Recommendation 8 – The Committee recommends that the Department of Immigration and Citizenship ensure that Serco provides adequate Detention Health Advisory Group –endorsed mental health training to Serco officers who implement the Psychological Support Program Policy.<sup>300</sup>

9.67 The range of issues raised by these stakeholders and reports reflects this office's concerns about the PSP's implementation. Following our visits to several detention facilities, we advised the department of our view that there was inadequate understanding of the PSP and the individual responsibilities of Serco and other line staff in managing detainees with mental health concerns. A key issue we regularly identified in detention inspections was the need for additional training opportunities for those who missed the initial roll-out of PSP training.

9.68 However, despite the department having agreed to an external review of the PSP in December 2010, it advised this office that it did not commission the Ipsos Social Research Institute to review the PSP's implementation until February 2012.

### **PSP Review**

9.69 The Ipsos Social Research Institute conducted its review between February and May 2012, receiving input from stakeholders and a broad range of staff across the detention

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<sup>297</sup> Prof Louise Newman, Chair Detention Health Advisory Group, evidence to Joint Select Committee on Australia's Immigration Detention Network, 18 November 2011, p. 9, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Committees?url=immigration\\_detention\\_ctt/e/immigration\\_detention/hearings/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=immigration_detention_ctt/e/immigration_detention/hearings/index.htm) (viewed 27 January 2013).

<sup>298</sup> Magistrate M Jerram, NSW State Coroner, *Findings in the inquests into the deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi, David Saunders at Villawood Detention Centre, NSW, in 2010, op cit.*

<sup>299</sup> Joint Select Committee on Australia's Immigration Detention Network, *Final Report, op cit*, Chapter 3.

<sup>300</sup> *ibid.*

network. It delivered its final report in early August 2012. The report considered the PSP's design and implementation, and made 11 recommendations. Areas covered in the recommendations included:

- measures to enhance flexibility of Psychological Support Program policy
- the need for immigration detention facility staff to have access to initial and ongoing competency-based training that is relevant to their engagement with detainees
- strengthening the preventative focus of the Psychological Support Program, including a range of activities such as improved cultural awareness, showcasing best practices in prevention from each facility, improving the integration of mental health staff into the detention facility environment or increasing the engagement of detainees in meaningful activities
- developing a Joint Communication Strategy for sharing information about detainees at risk of self-harm – including internal agency communication strategies
- improving case management processes for detainees identified as at ongoing risk of self-harm
- amending the Psychological Support Program procedures to provide for sharing of mental health information about detainees, with the view to better manage their risk of self-harm and preventative engagement
- developing a nationally consistent strategy to guide implementation and monitoring of the Psychological Support Program
- developing a nationally consistent strategy to guide the implementation and monitoring of the Psychological Support Program
- developing agreed data definitions and pilot testing of the reliability and validity of reporting to develop a robust measurement system and improve the quality of data reporting.<sup>301</sup>

9.70 The department finalised its response in September 2012.<sup>302</sup> It accepted all of the recommendations and highlighted a number of processes already underway:

- developing a joint Serco, IHMS and departmental communication document, 'Policy and Procedure Implementation Advice: The Psychological Support Program (PSP)/Keep SAFE', released September 2012<sup>303</sup>
- developing a Mental Health and Policy Awareness Training Framework, finalised September 2012<sup>304</sup>
- developing a Programs and Activities Framework, approved July 2012
- Serco's Keep SAFE procedures were revised in July 2012 to improve the alignment with the Psychological Support Program, including a standardised documentation process to record observations and interactions for clients on Psychological Support Program or Keep SAFE

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<sup>301</sup> Ipsos Social Research Institute, *Evaluation of the Psychological Support Program Implementation*, pp. 3-5.

<sup>302</sup> *Departmental Response to Recommendations: Evaluation of the Psychological Support Program (PSP), Undertaken by Ipsos Social Research Institute*, 18 September 2012.

<sup>303</sup> Serco, IHMS and Department of Immigration and Citizenship, *Policy and Procedure Implementation Advice: The Psychological Support Program (PSP)/Keep SAFE - Joint services communication to staff working in immigration detention facilities*, September 2012.

<sup>304</sup> Department of Immigration and Citizenship, *Mental Health Policy and Awareness Training Framework, V0.5*, September 2012.

- A renewed focus on Individual Management Plans, including greater collaboration between Serco's Personal Officers and departmental case managers.

9.71 The departmental response<sup>305</sup> also highlighted a number of other developments being initiated. First, it had developed a Stakeholder Collaborative Pilot (SCP). We were first briefed on this project in April 2012 and informed that it was initially devised as a 'DIAC Case Management and Serco Personal Officer Pilot' but subsequently it had been expanded to include IHMS and MAXimusSolutions Australia.<sup>306</sup> The pilot was due to begin in September 2012. The department envisioned that the pilot would:

... improve the management of people in detention and support a more collaborative, teamwork approach between DIAC Case Managers and Contract Managers, Serco and IHMS...

This will be achieved by various strategies including supporting role clarity and promoting consistent information sharing and record keeping practices between Serco Personal Officers, DIAC Case Managers and Contract Managers and International Health and Medical Services (IHMS). The SCP facilitates the collegial creation and review of Individual Management Plans (IMPs) by all stakeholders involved in the management of clients. The SCP also seeks to incrementally improve the quality of client information contained in IMPs.<sup>307</sup>

9.72 The department has since advised that it decided to postpone the pilot rollout 'to ensure all new documentation and processes were fully socialised and resourced.' The pilot will be rolled out at Villawood Immigration Detention Centre in mid-March 2013 before an envisioned national rollout across the immigration detention network in 2013.

9.73 Second, the department advised that it would commence revising the PSP policy later in 2012. The department has since advised this office that this will occur during 2013, in consultation with the Immigration Health Advisory Group and its mental health subgroup.

9.74 Third, IHMS were seeking to address the issue of sharing health information (discussed below) through the development of new consent and confidentiality policies. The department has since advised this office that IHMS have developed a preliminary draft which the department is currently considering.

9.75 Fourth, the department's Detention Health Services Branch was developing a 'Psychological Support Program Framework' to:

- provide a clear and transparent framework for management and implementation of the PSP that supports departmental and external service provider staff
- describe the processes for implementation, data handling and recording, policy alignment, monitoring and control, evaluation and review
- outline the associated governance arrangements and responsibilities of those involved in the process.

9.76 The department has since advised us that it will be developing this framework in conjunction with the revision of the PSP policy during 2013.

9.77 Fifth, a departmental Incident Management and Reporting Working Group had been established to consider ways to improve consistency in incident reporting and streamline immigration detention risk classifications to align them with departmental risk classifications and Portal categories.

<sup>305</sup> Department of Immigration and Citizenship, *Departmental Response to Recommendations: Evaluation of the Psychological Support Program (PSP)*, undertaken by Ipsos Social Research Institute.

<sup>306</sup> Department of Immigration and Citizenship, *Response to Ombudsman's Office Quarterly Briefing – April 2012*.

<sup>307</sup> *ibid.*



9.78 Notwithstanding the delay in the department's response to concerns raised about the PSP and associated policies and procedures, we acknowledge the breadth of this proposed work plan.

9.79 In our view, this work will be vital in addressing the deficiencies in the initial implementation of the PSP, improving the governance framework for these policies and ultimately in equipping the department and its service providers with the means to deliver effective services to detainees and create a safer and healthier environment for detainees. The department and its service providers must be vigilant in ensuring all of the projects identified are completed as envisioned, without substantive delays. We do note that a number of these projects have already slipped significantly from timeframes initially proposed.

### **Implementation of the Department's Detention Health Framework**

9.80 The Psychological Support Program is a central plank of the department's Detention Health Framework. In addition to our concerns about the PSP's implementation outlined above, we have a range of other concerns regarding the framework's implementation, and in particular how this has affected detainees engaging in suicidal and self-harming behaviours.

9.81 In our view, the Detention Health Framework is a reasonably comprehensive policy document that responds to many of the issues raised in the Rau and Alvarez reports, together with the Commonwealth Ombudsman's systemic reports on the 247 immigration detention 'not unlawful' cases.<sup>308</sup>

9.82 When launching the Framework in 2007, the then Secretary highlighted the 'sustained effort required to achieve the improvements set out in the framework.'<sup>309</sup> In March 2011 the Secretary commissioned an internal review of the framework to 'examine whether that sustained effort has been maintained and the policy intent been implemented.'<sup>310</sup>

9.83 The review was completed in May 2011. It is consistent with our assessment that, under the significant operational pressures of the surge in Irregular Maritime Arrivals and the substantially increased number of people in immigration detention, the department had not sustained the effort required to ensure that the framework was effectively implemented:

It appears evident that elements of the Plan have not been developed because of the relentless demands on staff just to deal with the here and now.<sup>311</sup>

9.84 We agree with the review that:

If good policy and program design are to happen these functions need to be protected from the daily operational demands.<sup>312</sup>

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<sup>308</sup> The issues arising from the investigation of the 247 cases between 2000 and 2007 formed the basis of six consolidated public reports and two reports on individual cases. A further report was published by the Commonwealth Ombudsman "to draw together the ten lessons from the referred immigration reports that are relevant to all areas of government: Commonwealth Ombudsman, *Lessons for public administration, Ombudsman investigation of [247] referred immigration cases*, Report, No.11/2007, August 2007, [http://www.ombudsman.gov.au/files/investigation\\_2007\\_11.pdf](http://www.ombudsman.gov.au/files/investigation_2007_11.pdf) (viewed 9 October 2012). Notably, the Ombudsman's reports found that 11 of the 247 cases involved mental health and incapacity.

<sup>309</sup> *ibid*, Foreword.

<sup>310</sup> Department of Immigration and Citizenship, *Review of the Detention Health Framework: A policy framework for health care for people in immigration detention*, *op cit*, p. 5.

<sup>311</sup> Department of Immigration and Citizenship, *Review of the Detention Health Framework: A policy framework for health care for people in immigration detention*, *op cit*, para. 1.5.2, p. 48.

<sup>312</sup> *ibid*.

9.85 The review made a number of recommendations to address the challenges arising from the increase in the immigration detention population, and to better implement the framework. The department advised this office in November 2012 that it has accepted the majority of the review's recommendations and it is continuing to work through their implementation.

9.86 In our view, in addition to the issues concerning the PSP's implementation discussed above, two other key issues must be addressed: the delayed and incomplete accreditation of detention health facilities, and inadequate sharing and use of detainee health information.

### ***Delayed Accreditation under the Health Services Contract***

9.87 One of framework's three primary objectives in 2007 was that 'the quality of health services provided to people in immigration detention is ... assured by independent accreditation'.<sup>313</sup> This was to be achieved via 'a three (3) year action plan for implementing the framework, including accreditation of health services in immigration detention centres against new [Royal Australian College of General Practitioners] standards'.<sup>314</sup>

9.88 In 2006, the department commissioned the Royal Australian College of General Practitioners (RACGP) to develop standards for health services in immigration detention centres, based on the college's own standards for general practices.<sup>315</sup> The RACGP's Detention Health Standards<sup>316</sup> cover a range of issues in respect of the health care provided to detainees at each immigration detention facility, including the care of detainees at risk of self-harm. For example, the standards specify that 'The health service needs to have an area that caters for the specific needs of patients who are at risk of self harm', and that 'The room should be designed with consideration of minimising potential for self harm'.<sup>317</sup>

9.89 Accreditation against these standards is an important independent mechanism to support the quality of health services to detainees. The department itself acknowledges this:

These standards underpin the accreditation requirements of the health services contract which IHMS is required to meet as an independent assurance mechanism and they support the primary objectives that the department is committed to achieving in health care.<sup>318</sup>

9.90 Under the terms of the department's *Health Services Contract* with IHMS, IHMS must commence the process of accreditation within six months of receiving a notice from the department, and IHMS must achieve accreditation within 12 months of the notice.<sup>319</sup> An independent accreditation body approved by the department must be engaged.<sup>320</sup> According to the contract, following initial accreditation at a centre, IHMS must maintain accreditation

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<sup>313</sup> Department of Immigration and Citizenship, *Detention Health Framework*, *op cit*, p. 13.

<sup>314</sup> <http://www.immi.gov.au/managing-australias-borders/detention/services/health-framework.htm>.

<sup>315</sup> Department of Immigration and Citizenship, *Submission to Joint Select Committee on Australia's Immigration Detention Network*, *op cit*, p. 60.

<sup>316</sup> Royal Australian College of General Practitioners (RACGP), *Standards for Health Services in Australian Immigration Detention Centres*, June 2007, [http://www.racgp.org.au/download/documents/Standards/racgpstandards\\_detention\\_centres.pdf](http://www.racgp.org.au/download/documents/Standards/racgpstandards_detention_centres.pdf) (viewed 24 November 2012).

<sup>317</sup> *ibid*, Standard 5.1, p,71.

<sup>318</sup> Department of Immigration and Citizenship, *Submission to Joint Select Committee on Australia's Immigration Detention Network*, *op cit*, p. 60.

<sup>319</sup> *Health Services Contract*. Sch 2 – Statement of Work, cl 13.1, Accreditation of Health Services at Immigration Detention Centres.

<sup>320</sup> *ibid*.

against the Detention Health Standards for the duration of the period it is providing health services at that Centre.<sup>321</sup>

9.91 Although accreditation was supposed to have been achieved by 2010, IHMS did not receive the notification to commence the accreditation process until August 2011.<sup>322</sup> The department and IHMS subsequently agreed that the accreditation of the health services at Villawood Immigration Detention Centre would need to be delayed due to the standard of the facilities at the time.

9.92 The department advised this office in November 2012 that IHMS had achieved accreditation at Maribyrnong, Northern and Perth Immigration Detention Centres in June 2012, with Villawood Immigration Detention Centre due to be assessed by the end of December 2012.<sup>323</sup> IHMS advised this office in April 2013 that Villawood was currently undergoing accreditation, which was expected to be achieved by June 2013, that Northwest Point Immigration Detention Centre on Christmas Island was scheduled to undergo an accreditation audit in June 2013, and that Wickham Point and Yongah Hill Immigration Detention Centres will be audited in July 2013.

9.93 The accreditation requirement in the *Health Services Contract* only applies to Maribyrnong, Northern, Perth and Villawood Immigration Detention Centres. It does not apply to Christmas Island, Curtin, Scherger, Yongah Hill and Wickham Point immigration detention centres, where the majority of detainees are located. It is our understanding that the department did not take the opportunity to extend the accreditation requirement to these facilities when it varied the *Health Services Contract* in 2011-12. The department has advised this office that it intends to raise extending the accreditation requirement with IHMS in upcoming *Health Services Contract* variation discussions, likely to occur during March-April 2013.

9.94 We note that the Detention Health Standards were developed in 2006, and that the department's internal review of the Detention Health Framework recommended in May 2011 that the standards be reviewed.

9.95 The department should review and improve the detention health and mental health standards in accordance with state, territory and national standards. Detention health standards should cover the range of services provided under the *Health Services Contract* in all locations of immigration detention. Contractual arrangements should ensure that standards are adhered to and reported on.

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<sup>321</sup> *ibid.*

<sup>322</sup> In 2010 the Department had commissioned Quality in Practice to review the RACGP *Standards for health services in Australian immigration detention centres*, develop an accreditation process, and provide a Detention Health Standards Report detailing recommended changes to the Standards: Department of Immigration and Citizenship, *Joint Select Committee on Australia's Immigration Detention Network, response to Question on Notice 106*, 17 November 2011, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=immigration\\_detention\\_ctt/e/immigration\\_detention/submissions.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctt/e/immigration_detention/submissions.htm) (viewed 24 November 2012). The department received the report, *An Accreditation Framework for Immigration Detention Centres, Quality in Practice (QIP) Pilot Project Report*, in October 2010. The report reflected a pilot testing of an accreditation schema at Villawood Immigration Detention Centre and Northern Immigration Detention Centre. In May 2011, the department's review of the Detention Health Framework said 'The pilot program has demonstrated the proposed accreditation process to be an appropriate platform on which to develop an on-going program of accreditation. Both health services demonstrated compliance with the majority of requirements under the Standards': Department of Immigration and Citizenship, *Review of the Detention Health Framework: A policy framework for health care for people in immigration detention*, *op cit.*, para 1.4.2, p. 45.

<sup>323</sup> Department of Immigration and Citizenship, *Review of the Detention Health Framework: A Policy Framework For Health Care For People In Immigration Detention – Response To Recommendations as at November 2012*, *op cit.*

9.96 Noting that the department's Detention Health Framework incorporates the *Royal Australian College of General Practitioners (RACGP) Standards for Health Services in Australian Immigration Detention Centres*, we encourage the department to consider:

- amending contractual arrangements to ensure, as a minimum, that all Immigration Detention Centres currently being used by the department, and any others that are established in the future, be required to be accredited against the RACGP standards
- reviewing the Detention Health Standards, in consultation with the RACGP and other external advisers, to ensure that the standards provide full coverage of the services to be provided under the Health Services Contract for all locations of detention.
- subject to the above, extending the accreditation process to all closed detention facilities – including alternative places of detention considered within the department's detention capacity plan – where health services are provided under the Health Services Contract.

9.97 The department has advised it is undertaking an Immigration Detention Standards project to develop standards for immigration detention and the health and welfare of detainees including, for example, standards relating to food and nutrition, initial health screening, and the social and emotional wellbeing of people in detention. However, this project will refer to the RACGP standards, as the primary source document, in all instances where the provision of health care services in immigration detention facilities is mentioned.

### ***The Sharing and Use of Health Information***

9.98 A common concern raised with our office by staff working in detention facilities is the perceived tension between medical confidentiality and the need for appropriate sharing of critical detainee information. Case records suggest that IHMS have struggled with the need to share critical information with Serco and the department and consider the sharing of information relevant to the management of a detainees' welfare to be in conflict with the need for medical confidentiality.

9.99 The May 2011 internal departmental review of the Detention Health Framework highlighted concerns about the impact of privacy constraints in the sharing of detainee's medical information, observing that:

Case managers in particular, but also specialist torture and trauma services, commented that the Detention Health Branch does not always facilitate health information transfer, even where clients have consented and service providers have requested that reports go to case managers. This represents a risk that where information about a client has been released with the client's consent it may not be properly considered by DIAC in decision making.<sup>324</sup>

9.100 The review recommended that Health Information Protocols needed to be revised to ensure case managers were able to consider all information that the department holds in working with their clients.<sup>325</sup>

9.101 The seriousness of these issues was raised in the NSW Coroner's report into three deaths at Villawood Immigration Detention Centre in 2010, which found that in all three cases 'communications were sadly lacking'.<sup>326</sup>

<sup>324</sup> Department of Immigration and Citizenship, *Review of the Detention Health Framework: A policy framework for health care for people in immigration detention*, op cit, para.1.3.1, p. 38.

<sup>325</sup> *ibid*, para 3.10, p. 58.

<sup>326</sup> Magistrate M Jerram, NSW State Coroner, *Findings in the inquests into the deaths of Josefa Rauluni, Ahmed Obeid Al-Akabi, David Saunders at Villawood Detention Centre, NSW, in 2010*, op cit, p. 11.

9.102 The coroner concluded that Mr Al Akabi ‘was probably misdiagnosed and medicated, his records were both lacking in detail and apparently not consulted... IHMS did not take adequate steps to make DIAC or Serco aware of his true level of risk.’<sup>327</sup>

9.103 In relation to Mr Saunders, there were ‘doubts about what, if anything, IHMS advised to DIAC and Serco about [Mr Saunders’] risk of suicide’<sup>328</sup> and that ‘Mr Saunders’ particularly difficult circumstances, known as they were to DIAC and ultimately to Serco, and partially to IHMS, should have alerted staff to the probability of risk to himself, particularly as it was known that he had made a previous suicide attempt.’<sup>329</sup>

9.104 The coroner recommended that:

DIAC, IHMS and Serco should work together to develop policy guidance on what information about a detainee’s mental health can be provided by IHMS to DIAC and Serco officers and in what circumstances on the basis of the “need to know”, without having to first consult via Detention Health Services.<sup>330</sup>

9.105 As noted above, the Ipsos Social Research Institute’s review of the PSP’s implementation also recommended amendments to procedures to allow IHMS staff:

... the option of consenting clients to share mental health information with other agencies involved in their care, for the purposes of better management of their risk about of self-harm and preventative engagement.<sup>331</sup>

9.106 In our view, a detainee’s privacy concerns should not be an issue as all detainees sign a consent form regarding their care at their health induction with IHMS.<sup>332</sup> Further, the sharing of relevant information, including medical information that supports the daily and case management of detainees, is an essential requirement which supports the department’s, Serco and IHMS’ duty of care to detainees.

9.107 While due care must be exercised in the sharing of such information, it is not acceptable that the appropriate decision-makers – whether for a detainee placement, protection visa decision or ministerial intervention request – are not provided with the relevant information. It is an incorrect understanding of the privacy principles to omit some of the information that could be detrimental to the overall interests and welfare of the detainee.

9.108 This issue is not new. The Ombudsman previously addressed this concern in its report on Mr W in 2009.<sup>333</sup> The Ombudsman recommended in that report that the department review:

- its procedures to ensure that different areas of DIAC that have a need to know about medical information relating to a detainee are provided with that information<sup>334</sup>

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<sup>327</sup> *ibid*, p. 11.

<sup>328</sup> *ibid*, p. 12.

<sup>329</sup> *ibid*, p. 11.

<sup>330</sup> *ibid*, Recommendation 5, p. 17

<sup>331</sup> Ipsos Social Research Institute, *Evaluation of the Psychological Support Program Implementation*, p. 4.

<sup>332</sup> The IHMS ‘Consent for Access to Your Medical Records’ form specifically states: ‘Providing your consent will also enable the provision of health information to the Commonwealth of Australia to assist in the assessment of your placement options and the progression of your immigration outcome – for example, to assist in determining your suitability for community placement or your fitness to travel’.

<sup>333</sup> Commonwealth Ombudsman, *Department of immigration and Citizenship: Detention Arrangements: The Case of Mr W*, Report No. 06/2009, April 2009, [http://www.ombudsman.gov.au/files/investigation\\_2009\\_06.pdf](http://www.ombudsman.gov.au/files/investigation_2009_06.pdf) (viewed 27 January 2013).

<sup>334</sup> *ibid*, p. 2.

- the adequacy of the message it provides to its staff and contractors on the importance of accurate and comprehensive recordkeeping and ensure sufficient resources are allocated to this task
- whether its systems ensure that the Department staff have a single view of a detainee's information and personal identifiers and that this information is accurate and up to date.<sup>335</sup>

9.109 The department accepted the Ombudsman's recommendations in full. Notwithstanding the operational demands of recent years, the lengthy delay in the department's response to these key issues is concerning.

9.110 The department advised our office in November 2012 that, in response to the recommendation in the internal departmental review of the Detention Health Framework cited above:

Detention Health Services now uploads a wide range of client health reports onto TRIM, which can be accessed by relevant staff, such as case managers, removals, and ministerial intervention staff. Relevant health information is also shared between IHMS and case managers during meetings held at detention facilities, such as client placement meetings.

If staff require any additional health information, they are able to request this information from IHMS (via Detention Health Services).<sup>336</sup>

9.111 The department also advised us in November 2012 that it was developing a policy regarding the privacy and management of health information, which will assist staff to understand the appropriate management of such information. The department anticipated that this work would be completed by March 2013.<sup>337</sup>

9.112 Further, as noted above, in March 2013 the department advised this office that IHMS, in response to the Ipsos Social Research Institute review of the PSP's implementation, had developed preliminary drafts of new consent and confidentiality policies, which the department was then considering. In April 2013, IHMS advised this office that information is now routinely being shared through daily PSP and client placement meetings, and that these policies are intended to formalise operational protocols that are now well established.

## **Staff training issues**

9.113 In 2010, the department conducted four training courses for staff across the detention network, to support the implementation of new mental health policies including the PSP. Training sessions were attended by 1180 staff, with varying levels of intensity depending on their level of engagement with detainees. It advised this office that this number includes departmental staff as well as staff of service providers including Serco, IHMS, Australian Red Cross, Life Without Barriers, and member organisations of the Forum of Australian Services for Survivors of Torture and Trauma (FASSTT) which provide torture and trauma counselling.

9.114 Stakeholders, including the Australian Human Rights Commission,<sup>338</sup> advocacy groups and the DeHAG, expressed concern about the number of staff employed across the

<sup>335</sup> *ibid*, p. 3.

<sup>336</sup> Department of Immigration and Citizenship, *Review of the Detention Health Framework: A Policy Framework For Health Care For People In Immigration Detention – Response To Recommendations as at November 2012*.

<sup>337</sup> *ibid*.

<sup>338</sup> Australian Human Rights Commission, *Submission to the Joint Select Committee on Australia's Immigration Detention Network*, *op cit*, para 97.

detention network who have either not received PSP training, or received inadequate training. In spite of these concerns, an evaluation of the training was not commissioned until February 2012. In questioning by the Joint Select Committee, the department was not able to advise how many immigration detention network staff had not attended some form of PSP training, 'due to staff turnover and movement between the facilities'.<sup>339</sup>

9.115 Since then the department has revised the Psychological Support Framework with input from the former DeHAG and its mental health subgroup. The *Mental Health Policy and Awareness Training Framework* provided to DeHAG on 12 October 2012 provides an 'overview of the rationale, approach, course content and learning outcomes that underpin the recommended approach to the development and delivery of mental health training'.

### ***Mental Health Policy and Awareness Training Framework***

9.116 The Mental Health Policy and Awareness Training Framework reiterates the contractual requirements of Serco and IHMS, including that Serco personnel undergo *Mental Health Awareness* training both prior to commencing work and through refresher courses, as well as DeHAG recommended training. IHMS must develop and deliver tailored pre-service induction and ongoing training programs for staff and training on the department's endorsed policies, as well as any other training the department recommends.

9.117 The framework specifies that training records must be kept that include who attended, the date and location of attendance, and that evaluation and feedback are to be provided to Detention Health Services Branch, Serco and IHMS. However, the revised framework document does not specify how the department will be monitoring compliance with these service provider requirements, nor how an assessment is to be made about the adequacy of the training provided by the service providers. We suggest that the department consider including in the framework an audit and assessment strategy to ensure compliance by service providers across the network.

### ***Induction Training***

9.118 While the revised Mental Health Policy and Awareness Training Framework states that service providers have contractual obligations to attend DeHAG recommended training, there is no reference to Keep SAFE or the PSP, nor is there a stipulation about timeframes for staff completing this training. In particular, it does not expressly require this training to occur prior to staff being deployed in detention facilities.

9.119 In practice, as part of their induction process, Serco personnel undertake *Mental Health Awareness and Suicide Awareness* training. This contains an overview of mental health conditions, and information about indicators of specific mental health conditions. Serco has advised that the Induction Training Course provided to staff prior to working in detention facilities includes comprehensive PSP and Keep SAFE training and this (or training on the former Suicide and Self Harm program) has been incorporated in induction training since contract commencement. However, feedback we received from Serco staff in the initial stage of this investigation indicated that induction training did not comprehensively cover PSP and the program was not consistently implemented and understood.

9.120 Similarly, IHMS staff are required to complete induction training as devised by IHMS. This training is to be tailored to meet the training requirements of the specific role. While it is

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<sup>339</sup> Department of Immigration and Citizenship, *Joint Select Committee on Australia's Immigration Detention Network, response to Question on Notice 193*, 10 August 2011, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=immigration\\_detention\\_ctt/e/immigration\\_detention/submissions.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctt/e/immigration_detention/submissions.htm) (viewed 24 November 2012).

appropriate that IHMS staff receive training specific to their role, the Ombudsman suggests that the framework require that IHMS include in their induction package a level of mental health training for all staff that is consistent across the network.

### ***Recruitment and retention of qualified staff***

9.121 We note that there are challenges in recruiting and retaining appropriately qualified mental health staff across the community. The remoteness of immigration detention facilities makes this more challenging.

9.122 With regard to Serco personnel, there is also a challenge in recruiting staff that are adept at behavioural and incident management, as well as being able to deal empathetically with clients with poor mental health. In this context, it is important that the department ensure that across the network, there is a culture of supporting clients with mental health issues.

## **Governance Framework**

9.123 The *Detention Services Contract* includes governance arrangements. In broad terms it provides for:

- an overview of the responsibilities of the service providers and the department under the Immigration Detention Values
- a partnered approach between the service providers, the department and other stakeholders
- how the service provider would work with the department to build a long-term relationship and improve service delivery
- a contract management and governance structure operating at the detention facility and national level, including the following committees and joint initiatives that the service provider will be required to participate in:
- at the facility level it includes joint committees, regular status meetings and other joint initiatives. Issues relating to ensuring proper welfare and wellbeing of detainees are to be the focus of such committees as well as service provider adherence to the code of conduct requirements under the contract. Meetings included at the facility level are as follows – facility level boards, placement committees, weekly departmental review, community consultative groups, prevention committees (as soon as a detainee is identified as being at risk), consultative committees, morning meetings, OH&S committee and security assessment review committee. The department' Regional Manager also has authority to manage at the facility level.
- at the national level all contract-related disputes and changes to the scope of the services or the contract will be taken up at the national level. Meetings at the national level include National Service Provider Contract Meetings (which take place monthly or quarterly and are intended to, among other things, resolve operational and service delivery issues, enable review of performance management reports and provide a forum to address specific issues, policies and strategies) and National Detention Service Conference (which is to be held annually and which includes the opportunity to discuss policies, reports and trends affecting the detention services environment and where service providers are able share and learn best practices and lessons learned for process improvements with other service providers).

9.124 The governance contractual arrangements also acknowledge that the department will implement a strategy to manage the coordinated delivery of services from all service



providers working within the detention services network. The service providers are required to:

- cooperate with the department and other service providers to assist with its obligations, including to stakeholders
- adhere to the Immigration Detention Values and acknowledges that the successful delivery of services to detainees requires all service providers to work closely with multiple stakeholders.

9.125 Importantly, the governance arrangements incorporate service provider adherence to standards of conduct for the successful performance of servicing the detention facility. In broad terms the code of conduct requires:

- an open and accountable organisation
- fair and reasonable dealings with people in detention
- well trained and supported personnel
- a duty of care and case management, including being alert to detainees who are, or appear to be, traumatised and/or vulnerable to self-harm and by the action of others, and manage and report on these
- a supportive culture, including supporting and promoting a stable and harmonious environment, and seeking resolution of situations and tensions peacefully)
- promotion of a healthy environment, including to support and promote a healthy physical, environmental and psychological environment by seeking to resolve issues peacefully and in a timely manner, and behave in a manner that promotes the physical and psychological wellbeing of detainees
- provision of appropriate amenities, including monitoring detainees with special needs
- a fair and transparent process for resolution of complaints about conduct.

9.126 The governance requirements are complemented by reporting requirements articulated in the contract. Reporting is aimed at enabling the department to confirm the service provider's compliance with processes and standards and to assist with the making of operational and managerial decisions.

### ***The Department's management of the governance and contractual arrangements with the service providers***

9.127 At the start of this investigation there was significant pressure on the immigration detention network due to the growth in the detention population and overcrowding of facilities, particularly at Christmas Island, increased processing time for refugee claims and prolonged detention as a result of numbers of people in system. This was compounded by heightened unrest and escalating self-harm incidents. The environment strained the capacity of the department and its service providers to adhere to their own policy frameworks and processes and there were limitations evident in the department's capacity to ensure a healthy detention environment and manage the broader risk to the detention population.

9.128 This investigation has considered the department's actions to manage this growing risk to detainees and to the detention network, including how it managed the contracts with service providers to address the risks and issues at the time, and assured itself that the service providers were compliant with their contractual obligations, not just in the context of individual key performance indicators, but also in accordance with the code of conduct principles set out in the contract.

9.129 The investigation found there were limitations in the department's management of the risks that were evident in 2010 and 2011 due to the strain on the detention network. In particular, there appeared to be a weakness in the way the department worked with its service providers to address the risks. It is not clear whether the department:

- used a partnership/cooperative approach to working with the service providers to manage the growing tensions and issues at detention facilities, including growing incidents of suicide and self-harm
- sought the expertise of service providers to provide ideas and lessons learned from other detention environments to address issues and find solutions
- sought to review the issues occurring at particular immigration detention facilities and centres including suicide and self-harm, for example by initiating any major reviews or developing action plans to improve conditions and address risks and issues
- provided appropriate response to calls by Serco to address the problems (discussed further below).

9.130 It is not clear to what extent the department's national management and executive were dealing with the risks at the time. Additionally, it was not clear whether the department, in seeking to find solutions, was considering the more strategic immigration issues (for example, increased refugee processing and review times, changes in processing for particular cohorts, challenges in processing of security assessments) as factors in the growing unrest, and seeking to address the issues with service providers and with other stakeholders.

9.131 We met with the departmental officers, including those responsible for managing the contracts, to discuss the concerns raised above. The department acknowledged that while there was significant engagement at the local and facility level, it did not have major reviews at the national and strategic level to address the growing concerns within the detention network, including increased self-harm activity. The officers referred to the monthly national meetings where ideas were shared and issues were discussed, such as those to address specific incentive and abatement issues or key performance indicators under the contract which the service providers either addressed or failed to comply with. In these meetings the department was unable to respond to the broader issues raised above. This included:

- how it assures itself that the duty of care it has to detainees is being addressed by the service providers
- how it deals with the broader risks and issues to all detainees when faced with sudden spikes in disturbances and incidents of suicide and self-harm
- how it manages and assesses the code of conduct obligations and issues
- what level of data and reporting was required to address the issues it is dealing with in the detention network.

9.132 In meetings with Ombudsman staff in late 2011, Serco indicated there was scope for the department and the service providers to work more collaboratively and strategically to address the operational risks and challenges within the detention network. Based on their experience in other jurisdictions, Serco told us they could provide advice on, and implement, further improvements such as designing healthier detention facilities with a view to building greater resilience with detainees, implementing a greater range of activities, and giving the detainees more control and responsibility over their lives and their decision-making.

### **The Department's revised governance arrangements**

9.133 The department itself has acknowledged the need to review its governance framework around the *Detention Services Contract* with Serco. In December 2011, it commissioned PriceWaterhouseCoopers to undertake a full review of its governance arrangements. PriceWaterhouseCoopers provided a discussion paper and a project implementation plan to the department in February and April 2012 respectively, and these were subsequently endorsed by the department's executive. The proposed Governance Framework focuses on the *Detention Services Contract* between the department and Serco, but is intended to be adapted to the department's other major detention contracts, particularly the *Health Services Contract*.<sup>340</sup>

9.134 The framework provided for a three-tiered structure supported by a series of committees and subcommittees, each with defined terms of reference:

- strategic level (policy) – focusing on the policies associated with the design of detention services (and related government policy) with a future orientation
- tactical level (procedure) – focusing on the procedures associated with the management of detention services (and related government policy) with a focus on the short to medium term
- operational level (execution) – focusing on the utilisation of resources associated with the delivery/execution of detention services (and related government policy) with a focus on the day-to-day operations.<sup>341</sup>

9.135 Noting that decision-making and issues management between the department and Serco had historically been very reactive, due largely to the surge of Irregular Maritime Arrivals and the rapid expansion of the immigration detention network, a key objective of the revised governance framework was 'to provide improved clarity around the processes and thresholds for decision-making at each level of governance.'<sup>342</sup> To that end, the PriceWaterhouseCoopers discussion paper included a model for decision-making, recommending the implementation of a formal risk-based decision and reporting framework to assist decision-makers' at all three levels with regard to escalation of events, matters, issues and information.<sup>343</sup>

9.136 The department advised this office in February 2013 that it developed an action plan for the staged implementation of the new arrangements, which commenced in May 2012. It advised that all strategic and tactical level meetings recommended in the review had been established by October 2013, and that work to implement some of the operational level meetings remains ongoing.

9.137 The department has also advised that it has established a secretariat team in the Detention Services Management Branch to provide high-level support, on a business as usual basis, to the committees established under the governance framework. The department has further advised that formal evaluation is planned once all of the arrangements have been in place for a reasonable length of time.

9.138 Given these relatively recent developments, this report does not attempt to assess the revised governance arrangements – but we do welcome the recognition that such a review, and a realignment of the governance arrangements, was necessary. In our view,

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<sup>340</sup> PriceWaterhouseCoopers, *Department of Immigration and Citizenship Detention Services – Proposed Governance Arrangements Discussion Paper*, 8 February 2013, para 1.2.

<sup>341</sup> *ibid*, para 2.2.

<sup>342</sup> *ibid*, para 3.

<sup>343</sup> *ibid*, Recommendation 4, p. 3.

extension of the governance framework to the *Health Services Contract* should be a priority for the department.

9.139 We encourage the department to consider its governance of detention services broadly and to include other internal and external stakeholders who may have interests related to the delivery of services to people in detention.

9.140 We also observe that, as with the other frameworks that have come before it, the successful implementation of the new governance framework depends critically on:

- widespread cultural commitment to the principles underpinning the framework at all levels within the department and its service providers
- effective integration of those principles into the day-to-day management of detention facilities
- appropriate reporting mechanisms underpinning the framework being established.

## PART 10—COMMUNITY DETENTION

10.1 The Terms of Reference for this investigation were to examine the incidence and nature of suicide and self-harm in the immigration detention network. While the focus of this investigation and report has been on suicide and self-harm in closed detention facilities, given the expansion of community detention in recent years, we consider it important to also examine the incidence of self-harm in community detention.

10.2 It is important to note that people accommodated in community detention under a 'residence determination' remain unlawful non-citizens. They are not permitted to work or undertake vocational education or training and remain in 'immigration detention' under the Migration Act.<sup>344</sup> As such, the Commonwealth's duty of care is in no way diminished by the individual's transfer from closed detention facilities to community detention.

### Expansion of Community Detention

10.3 As discussed earlier in this report, the use of community detention has rapidly expanded over the past two years. While community detention – or 'residence determination' as it known under the Migration Act – was introduced in 2005, its use has expanded exponentially since the government's announcement in October 2010 that it would begin moving significant numbers of children and vulnerable family groups out of immigration detention facilities and into community-based accommodation.<sup>345</sup>

10.4 While the department had initially focused on using community detention for family groups, by February 2012 it was increasingly placing vulnerable adult men in community detention.<sup>346</sup>

10.5 The department advised this office that the objectives of the community detention program are to:

- enhance wellbeing and resilience of clients awaiting resolution of their immigration status
- provide suitable and stable accommodation and support to clients living in the community
- enable greater individual independence and empowerment and social community participation
- enhance settlement outcomes for those clients granted protection
- support the status resolution process of clients on a return pathway.

10.6 The latest available figures indicate that as at 28 February 2013, 28% of the immigration detention population – or 2202 people – were in community detention.<sup>347</sup> This included 781 men, 475 women and 946 children.<sup>348</sup>

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<sup>344</sup> People in community detention can undertake adult education courses or similar short courses which do not result in a formally recognised qualification.

<sup>345</sup> The Hon Chris Bowen MP, then Minister for Immigration and Citizenship, *Government to move children and vulnerable families into community-based accommodation*, *op cit*.

<sup>346</sup> Ms Kate Pope, Assistant Secretary, Department of Immigration and Citizenship, evidence to Senate Legal and Constitutional Affairs Committee, *Additional Estimates*, 13 February 2012, p. 150,

[http://www.apf.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=legcon\\_ctte/estimates/add\\_1112/index.htm](http://www.apf.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/add_1112/index.htm) (viewed 25 November 2012).

<sup>347</sup> Department of Immigration and Citizenship, *Immigration Detention Statistics Summary*, 28 February 2013, Table 1.

<sup>348</sup> *ibid*.

## Community Detention Service Providers

10.7 Since the inception of community detention in 2005, the Australian Red Cross has been contracted by the department as its lead service provider for health and welfare support to people in community detention. The department also directly contracts a further 12 providers. The key requirements of the department's contract with the Australian Red Cross are:

- accommodation is sourced which is suitable to the client's needs
- accommodation is furnished according to the standard household formation package
- the client is provided with a financial allowance
- the client has access to health services, including mental health as required
- the client is supported to enrol children at schools, use public transport and amenities, and linked with community groups and other providers as required
- a client care plan is prepared for every client outlining their needs and support
- monthly reports are prepared for each client/family group
- all incidents that occur while in community detention are reported to the department.<sup>349</sup>

10.8 In relation to unaccompanied minors, the Australian Red Cross is required to provide 24-hour live-in support and care, in addition to the points above.<sup>350</sup>

10.9 Further:

The Australian Red Cross, or their sub-contracted agency, is required to provide emotional and welfare support and facilitate referral to appropriate specialist support to community detention clients following notification of a negative decision or a decision to remove a client.

The Australian Red Cross, or their sub-contracted agency, will continue to provide care and support to the client while arrangements are made for their return. The return arrangements are managed by departmental officers.<sup>351</sup>

10.10 Since the expansion of community detention in 2010, the Australian Red Cross has subcontracted more than 20 other non-government organisations to provide similar support.<sup>352</sup>

10.11 IHMS, as the department's contracted health service provider, also coordinates health care for people in community detention.

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<sup>349</sup> Department of Immigration and Citizenship, *Joint Select Committee on Australia's Immigration Detention Network, response to Question on Notice 43*, 10 August 2011, [http://www.apf.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=immigration\\_detention\\_ctt/immigration\\_detention/submissions.htm](http://www.apf.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctt/immigration_detention/submissions.htm) (viewed 24 November 2012).

<sup>350</sup> *ibid.*

<sup>351</sup> *ibid.*

<sup>352</sup> Organisations providing these services as at August 2011 included AMES, Multicultural Development Association, Anglicare, Jesuit Refugee Services, Marist Youth Care, Hotham Mission Asylum Seeker Project, Uniting Care, Mackillop Family Services, Catholic Care, Berry St, Wesley Mission and Life Without Barriers: *ibid.*

## Policy and Governance Framework for Community Detention

10.12 As outlined below, we have examined the policy and governance framework operating in the community detention environment during this inquiry. In our view, there are good examples here of clear and comprehensive policies. Furthermore, the governance arrangements the department has in place support the department and its service providers being both aware of, and able to perform, their respective roles and responsibilities.

10.13 We are, however, conscious that many of the people transferred from closed detention facilities to community detention are vulnerable people who remain at risk. We encourage the department to ensure it has adequate oversight mechanisms in place to meet its duty of care obligations to those in community detention.

Our concerns about appropriate mental health support for people as they transition into community detention are highlighted by the case of Ms G (Case study 7). Ms G had a history of self-harm while in closed detention, where she was offered a cross-sectional level of care and intervention. However, an IHMS health summary report provided after Ms G was transferred to community detention indicated that it was 'unlikely that Ms G will need to access external specialist services on a regular basis', implying that there were no major issues of concern relating to either her physical or mental health.

This statement appears out of step with the diagnosis of mental illness, Ms G's history of previous trauma and a previous suicide attempt, collectively major risk factors for ongoing mental health symptoms including eventual suicide. IHMS advised there is no evidence that Ms G has received mental health support while in community detention but she has attended her allocated GP a number of times and no mental health issues were reported or observed.

10.14 The ministerial guidelines were last issued in September 2009,<sup>353</sup> just as boat arrivals started to increase and well before the government decided to significantly expand community detention in late 2010. It would be timely to review the guidelines to reflect the current caseload as well as the significant expansion of community detention in the past two years. The department has advised that the guidelines are currently being revised for ministerial approval.

### ***Applicability of Departmental and Service Provider Policies in Community Detention***

10.15 Policies and procedures impacting on community detention reflect a mix of the department's general immigration detention policies – such as the Detention Health Framework and the Case Management service<sup>354</sup> – and more specific policies geared towards the particular circumstances of community detention, as detailed in the *Community Detention Operational Framework*.<sup>355</sup> Elements of the Department's *Operational Framework* are outlined in Attachment 3.

<sup>353</sup> *ibid.*

<sup>354</sup> Reflecting the fact that they remain in immigration detention, people in community detention are allocated a Departmental case manager who assists to progress their immigration status. This officer is the detainee's primary contact point with the department and works to resolve the detainee's immigration status, as well as manage their expectations about the community detention program and the level of support available once in the community: Department of Immigration and Citizenship, *Joint Select Committee on Australia's Immigration Detention Network, response to Question on Notice 45*, 10 August 2011, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=immigration\\_detention\\_ctt/immigration\\_detention/submissions.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctt/immigration_detention/submissions.htm) (viewed 24 November 2012).

<sup>355</sup> Department of Immigration and Citizenship, *Community Detention Operational Framework*, May 2012.

10.16 The Australian Red Cross, as the department's lead service provider for health and welfare support to people in community detention, has a well-developed policy and procedure framework guiding their operations. The Community Detention Program Policy and Procedural Manual<sup>356</sup> sets out the policy and procedures for managing the Australian Red Cross' community detention program. The Migration Support Programs Casework Model 2012 incorporates the Australian Red Cross' approach to casework in the community detention environment. The Australia Red Cross' framework is outlined in Attachment 3.

10.17 IHMS' policies reflect their general detention health policies as applied to the community detention environment. The primary difference in approach in community detention is that IHMS facilitates services provided by community-based health providers. This includes GPs, pharmacies, mental health counselors and specialist providers<sup>357</sup> through the provision of a Health Card to detainees in community detention – but does not include access to Medicare. IHMS' contractual requirements include the credentialing of healthcare providers for those in community detention.<sup>358</sup> These arrangements are outlined in Attachment 3.

### **Incidence of suicide and self-harm in community detention**

10.18 There have been two deaths in community detention in recent years and both were found by coroners to be medically-related. Neither was suicide or related to self-harm.

10.19 Given the inherent nature of community detention, when people are closely managed but not continually monitored by the department and its service providers, we consider that it is difficult to gain an accurate picture of the full incidence of self-harm in community detention.

10.20 However, we note that the reporting of incidents in community detention is a key requirement of department's contract with the Australian Red Cross and that all incidents of self-harm that come to the attention of the Australian Red Cross are reported to the department in accordance with the Incident Reporting Protocols within the department's *Community Detention Operational Framework*.

10.21 Under these protocols, service providers are responsible for reporting all incidents concerning people in community detention. The protocols provide for 'critical incidents', 'reportable incidents' and 'any other incidents', each with a series of specified telephone, email and reporting requirements.<sup>359</sup>

10.22 Four categories of incidents relating to self-harm are classified as 'reportable incidents':

- all serious self-harm attempts requiring medical treatment more than first aid
- attempted self-harm
- minor self-harm, not requiring medical assistance more than first aid

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<sup>356</sup> The Australian Red Cross advised in May 2013 it is revising this to reflect the second revision of the *Community Detention Operational Framework*.

<sup>357</sup> Department of Immigration and Citizenship, *Joint Select Committee on Australia's Immigration Detention Network, response to Question on Notice 44*, 10 August 2011, [http://www.apf.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=immigration\\_detention\\_ctte/immigration\\_detention/submissions.htm](http://www.apf.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctte/immigration_detention/submissions.htm) (viewed 24 November 2012).

<sup>358</sup> International Health and Medical Services, *Submission to Joint Select Committee on Australia's Immigration Detention Network, op cit*, p. 3; *Health Services Contract*, Sch 2, Statement of Work, cl 6 – Human Resource Management.

<sup>359</sup> Department of Immigration and Citizenship, *Community Detention Operational Framework*, cl 11.1 – Incident reporting.



- threat/ideation of self-harm.<sup>360</sup>

10.23 Under the protocols, 'reportable incidents' must be reported immediately to the Incident Reporting Hotline, with an email report to be followed within 24 hours and a written report within three calendar days.<sup>361</sup>

10.24 We note that the department's community detention Initial Incident Report and Detailed Incident Report templates, when referring to incident type, refer to 'Self harm (threat or actual)' rather than reflect the four categories of reportable incidents above. We also note that the four categories of reportable incidents relating to self-harm in community detention do not correlate with the categories currently used in closed detention facilities, nor do they correlate with the categories used in the department's reporting mechanisms. As we have suggested earlier in this report, the lack of consistency in terminology within reports significantly impedes effective data collection and analysis at a strategic level.

10.25 The department has advised:

- the department's Incident Management and Reporting Working Group included community detention. The working group has released a revised set of incident categories which standardises incident reporting and recording, including specific community detention incidents
- the Community Detention Operational Framework is currently in the process of being reviewed in relation to incident reporting for community detention service providers. The outcome of this review will be standardised definitions for incident types and language plus clear reporting priorities
- a community detention-specific environment has been developed in the CCMS portal. Community detention service providers will access this service through a user interface which will allow them to enter incident reports directly into the portal. This will allow for consistent sharing of information between the department and the service providers. All reporting will be coming from the portal and therefore there will be consistency between service provider and departmental statistical reporting on incidents. The portal changes will allow for the clear identification of incidents that occur in community detention as opposed to the broader held detention network
- the service providers will have portal access from early June 2013.

#### ***Australian Red Cross data on the incidence of self-harm in community detention***

10.26 The Australian Red Cross has advised that while self-harm incidents in community detention have been reported to the department since community detention commenced in 2005, they have only collated statistics on all self-harm incidents reported to the department following the finalisation of the *Community Detention Operational Framework* in late 2011. The Australian Red Cross has also advised that its data focuses on reportable incidents of self-harm and does not currently account for multiple reportable incidents for individual clients. As such, the number of individuals involved may be much lower than their figures indicate.

10.27 The Australian Red Cross data for the period 1 January 2012 to 30 November 2012, when they provided services to 2166 people in community detention, indicates the following reportable incidence of self-harm:

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<sup>360</sup> *ibid.*

<sup>361</sup> *ibid.*

**Table 4: Self-harm in Community Detention**

All serious self-harm attempts requiring medical treatment more than first aid	6
Attempted self-harm	8
Threat / ideation of self-harm	175
Total	189

10.28 The Australian Red Cross advised that its data indicates that up to one in every 11 people will have an incident of, or threaten to, self-harm during their time in detention.<sup>362</sup>

10.29 We note that this data suggests the prevalence of reported serious self-harm or attempted self-harm by people in community detention being supported by the Australian Red Cross is substantially less than that experienced in closed detention facilities and less than the prevalence of self-injury in the broader Australian community (see discussion in Part 7 above).

***Departmental data on the incidence of self-harm in community detention***

10.30 As noted above, it appears there have been inconsistent approaches to the inclusion of community detention within the department’s self-harm statistics.

10.31 Despite the Australian Red Cross reporting on incidents of self-harm by people in community detention since 2005, these incidents were not included in long-term departmental statistics provided to this office. The department advised the reason these incidents were not included was that there were very few people in community detention prior to October 2010 (an average of 30).

10.32 The department’s *Monthly Self Harm Snapshot*, which has been compiled since mid-2012, reports on ‘Self Harm – Actual’, ‘Self Harm – Threatened’ and ‘Self Harm – Attempted Serious’ in community detention on a monthly basis.<sup>363</sup> It is not clear how the four categories of reportable incidents relating to self-harm, under the department’s *Community Detention Operational Framework*, correspond with the three categories reported in the *Snapshot*. Further, self-harm in community detention is explicitly excluded from reporting on incidents per 1000 clients though appears to be included in other tables including self-harm by gender, age and citizenship.

10.33 As we have only had access to departmental statistics for self-harm in community detention since mid-2012, we are unable to assess the accuracy of these figures against those provided by the Australian Red Cross.

**Impact of expansion of community detention on self-harm trends across the immigration detention network**

10.34 The department has attributed the reduction in self-harm rates to the increased use of bridging visas and community detention.<sup>364</sup>

<sup>362</sup> Noting this data does not account for multiple reportable incidents for individual clients.

<sup>363</sup> Department of Immigration and Citizenship, *Monthly Self Harm Snapshot*, September 2012.

<sup>364</sup> Mr Martin Bowles, Secretary, Department of Immigration and Citizenship, evidence to Senate Legal and Constitutional Affairs Committee, *Budget Estimates*, 21 May 2012, p. 23, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=legcon\\_ctte/estimates/bud\\_1213/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/bud_1213/index.htm) (viewed 16 May 2013).

10.35 As demonstrated by the table below, both the number and proportion of detainees accommodated in community detention steadily increased from July 2011 to March 2012:

**Table 5: Proportion of detention population in community detention, July 2011 – February 2013<sup>365</sup>**

Date	Persons detained in community detention	Total population	% of total population in community detention
31 July 2011	998	5780	17%
31 August 2011	1138	5845	19%
30 September 2011	1151	5597	21%
31 October 2011	1231	5454	23%
30 November 2011	1324	5733	23%
31 December 2011	1366	6461	21%
31 January 2012	1600	6383	25%
29 February 2012	1700	6644	26%
31 March 2012	1712	5909	29%
30 April 2012	1710	6107	28%
31 May 2012	1624	6530	25%
30 June 2012	1437	7252	20%
31 July 2012	1217	8026	15%
31 August 2012	1403	8741	16%
30 September 2012	1688	9358	18%
31 October 2012	1816	9449	19%
30 November 2012	1716	10165	17%
31 December 2012	1822	9059	20%
31 January 2013	2178	7875	28%
28 February 2013	2202	7952	28%

10.36 The transfer of these detainees from closed immigration detention facilities to community detention certainly coincided with, and may have positively impacted on, the drop in the reported incidence of self-harm in immigration detention across this period. However, it is not possible, on the information available to this office, to draw direct links between the expansion of community detention from October 2010 and the increased use of bridging visas from November 2011 – and the drop in self-harm incidents in late 2011.

10.37 This is particularly difficult to establish as those accommodated in community detention remain in immigration detention and continue to be identified within immigration detention statistics, including length of detention statistics. From the material available to this office, it appears there have been inconsistent approaches to the inclusion of community detention within the department's self-harm statistics. The department records incidents of self-harm and can derive the length of detention so it would be possible to compile data on whether people moving to community detention are people who had self-harmed while in closed detention and the length of time those moving to community detention initially spent in closed detention facilities.<sup>366</sup>

<sup>365</sup> Statistics drawn from monthly Department of Immigration and Citizenship detention statistics.

<sup>366</sup> Those released from immigration detention into the community on bridging visas are by definition not included in immigration detention statistics and are not monitored by the department in relation to self-harm. As for community detention, we are not aware of any departmental statistics that correlate, for people granted bridging visas, the length of time they initially spent in closed detention facilities, or whether they were people who had self-harmed while in closed detention facilities. However, given the significantly expanded use of bridging visas from November 2011, this again may have had a positive impact on the incidence of self-harm in closed detention facilities from late 2011.

## Impact of community detention on mental health of detainees

10.38 The department has indicated that it considers that the expansion of community detention has had a positive impact on the mental health and welfare of people in immigration detention in two ways.

10.39 First, the department has indicated that people in community detention are individually coping better:

... anecdotally—quite a number of advocates have commented on this as well—that people tend to improve in their mental health almost immediately. That does not mean that they do not necessarily have adverse reactions to things associated with their immigration pathway as they go along, but in general they deal with those things better than they had before.<sup>367</sup>

10.40 This improvement in the wellbeing of people detained has been attributed by the department to a number of factors:

Clients who live in community detention, and therefore have more responsibility for managing their own lives, can be expected to experience better mental health because they are living and operating as a person normally would. Improved family relationships are a consequence as well. Clients also have the opportunity to regain some of the living skills that they would have lost in the journey and in, potentially, their time in Indonesia, in detention and so on. That is beneficial to them, as I said before, whether they remain in Australia or return home.<sup>368</sup>

10.41 As noted by departmental officers, these observations are anecdotal. In May 2011 the department commissioned the Social Policy Research Centre at the University of New South Wales to design and conduct an evaluation of the expansion of community detention.<sup>369</sup> The objectives of the evaluation of community detention are to:

- determine the effectiveness and efficiency of the processes and procedures used to implement the program;
- identify any unintended positive or negative consequences from the program for clients
- determine, in broad qualitative terms, the costs and benefits for the program relative to alternative programs for comparable client groups
- evaluate how well the program is meeting its objectives.

10.42 The Ombudsman's office's direct observations of people in community detention are unfortunately quite limited. We have observed, however, while reviewing the detention arrangements of people detained for two years or more, that transfers to community detention from closed detention facilities are usually accompanied by an improvement in the mental and physical wellbeing of detainees. We also observe that the expansion of community detention, as well as the granting of bridging visas, has the capacity to take the pressure off the numbers of people in closed immigration detention facilities and reduce overcrowding.

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<sup>367</sup> Ms Kate Pope, Assistant Secretary, Department of Immigration and Citizenship, evidence to Senate Legal and Constitutional Affairs Committee, *Additional Estimates*, 13 February 2012, p. 150, *op cit*.

<sup>368</sup> *ibid*.

<sup>369</sup> *ibid*.

Mr D (Case study 4) had disclosed a history of torture and trauma at his initial Mental State Examination. He also had a history of self-harm while in closed detention, for which he was on occasion placed on the Psychological Support Program. While in closed detention facilities Mr D was supported by regular counseling and at times was prescribed anti-depressants.

Since being transferred to community detention in June 2012, on a removal pathway, Mr D has not requested or required any ongoing psychological counseling, and has not remained on any medication for depression or insomnia.

10.43 This assessment is supported by the Australian Human Rights Commission in its July 2012 report, *Community arrangements for asylum seekers, refugees and stateless persons*.<sup>370</sup> Based on a series of visits and interviews with asylum seekers, refugees and stateless persons in community arrangements between December 2011 and May 2012, the commission's report noted that:

... it appeared to the Commission that the benefits of community placement far outweighed any disadvantages. Asylum seekers and refugees living in community arrangements have, to a much greater extent than those living in detention facilities, opportunities to live in normalised environments, to personalise the space they reside in and to plan their days. Community arrangements also appear to help people cope with the stresses associated with undergoing often lengthy and sometimes traumatic refugee status assessment processes and associated checks.<sup>371</sup>

10.44 The report further noted that 'Many people told the Commission that since being placed in the community, they – and, where relevant, their children – were coping better. Many people felt able to reengage with their families, the community and DIAC processes.'<sup>372</sup>

10.45 Our office understands that the University of New South Wales evaluation is scheduled for completion in the first half of 2013 and we look forward to its findings, particularly – we anticipate – around the positive impacts of community detention as compared with detention in closed detention facilities.

## **Possible areas for improvement**

10.46 This office has welcomed the expansion of community detention over recent years. While our overall assessment is that these arrangements are working well, and have positively impacted on both the systemic and individual experiences of self-harm in immigration detention, we encourage the department to be vigilant in ensuring that its policies and processes related to suicide and self-harm are equally implemented in relation to community detention.

10.47 Noting that the Commonwealth's duty of care to detainees is not diminished by the transfer of detainees to community detention, we encourage the department to develop appropriate mechanisms to ensure robust ongoing monitoring of vulnerable caseloads in community detention as part of its work to review and improve policies and governance frameworks for managing the risk of suicide and self-harm.

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<sup>370</sup> Australian Human Rights Commission, *Community arrangements for asylum seekers, refugees and stateless persons: Observations from visits conducted by the Australian Human Rights Commission from December 2011 to May 2012*, 26 July 2012, [http://www.humanrights.gov.au/human\\_rights/immigration/2012community-arrangements/community\\_based\\_arrangements.pdf](http://www.humanrights.gov.au/human_rights/immigration/2012community-arrangements/community_based_arrangements.pdf) (viewed 25 November 2011).

<sup>371</sup> *ibid*, p. 22.

<sup>372</sup> *ibid*, p. 23.

10.48 We also note that some of the recommendations we have made elsewhere in this report – for example, regarding data categorisation and collection, and the need for systemic review and monitoring of deaths in detention – apply equally in the community detention context.

## ABBREVIATIONS AND ACRONYMS

AAT	Administrative Appeals Tribunal
AFP	Australian Federal Police
AHRC	Australian Human Rights Commission
AIC	Australian Institute of Criminology
AIHW	Australian Institute of Health and Welfare
ANAO	Australian National Audit Office
APOD	Alternative Places of Detention
ASIO	Australian Security and Intelligence Organisation
BMP	Behaviour Management Plan
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCMDS	Compliance, Case Management, Detention and Settlement Portal
DeHAG	Detention Health Advisory Group
DIAC	Department of Immigration and Citizenship
FASSTT	Forum of Australian Services for Survivors of Torture and Trauma
Foundation House	The Victorian Foundation for Survivors of Torture
IAAAS	Immigration Advice and Application Assistance Scheme
ICCPR	International Covenant on Civil and Political Rights
IDC	immigration detention centre
IDF	immigration detention facility
IGIS	Inspector-General of Intelligence and Security
IHAG	Immigration Health Advisory Group
IHMS	International Health and Medical Services Pty Ltd
IMA	irregular maritime arrival
IMP	Individual Management Plan
IMR	Independent Merits Review
IOM	International Organization for Migration
IPA	Independent Protection Assessment
IRH	immigration residential housing
ITA	immigration transit accommodation
LIFE Framework	Living is for Everyone Framework
MCASD	Minister's Council on Asylum Seekers and Detention
MHT	Mental Health Team
Migration Act	<i>Migration Act 1958</i>
MRT-RRT	Migration Review Tribunal – Refugee Review Tribunal
MSE	Mental State Examination

NSPP	National Suicide Prevention Program
POD	Protection Obligation Determination
POI	person of interest
PSP	Psychological Support Program
PTSD	Post traumatic Stress Disorder
RACGP	Royal Australian College of General Practitioners
RPC	Regional Processing Centre
RRT	Refugee Review Tribunal
RSA	Refugee Status Assessment
Serco	Serco Australia Pty Limited
STARTTS	Service for the Treatment and Rehabilitation of Torture and Trauma Survivors
UAA	unauthorised air arrival
UNHCR	United Nations High Commission for Refugees



# ATTACHMENT 1—RESPONSE TO RECOMMENDATIONS



**Australian Government**  
**Department of Immigration and Citizenship**

**SECRETARY**

9 May 2013

Mr Colin Neave AM  
Commonwealth Ombudsman  
GPO Box 442  
CANBERRA ACT 2601

Dear Mr Neave,

**Ombudsman's own motion investigation into suicide and self-harm in Australia's  
Immigration Detention Facilities**

Thank you for your office's letter dated 26 April 2013 and for providing a copy of your Own Motion Investigation into Suicide and Self-harm in Australia's Immigration Detention Facilities for comment.

The Department and its service providers has sought to proactively respond and support the Ombudsman throughout the investigation, participating in a steering committee, in many meetings, facilitating access to key staff for interviews and site visits, providing extensive material about its policies, processes and practices, and reviewing and providing information on many individual cases.

The Department would like to provide a response to your own motion investigation addressing your concerns. Please find the Department's response attached.

The Department will also provide a letter to your office on Friday 10 May 2013 to provide tactical comments on your latest draft report.

The Department looks forward to receiving the final report and continuing to work with the Ombudsman to improve the wellbeing of people in immigration detention.

Yours sincerely

  
Martin Bowles, PSM

## **Department of Immigration and Citizenship – Response to the Ombudsman’s own motion investigation into suicide and self harm in Australia’s Immigration Detention Facilities**

### **Introduction**

Suicide and self-harming behaviours are serious and complex issues. The immigration detention environment has and continues to be subject to a high level of scrutiny and this makes the issues of suicide and self-harm in immigration detention highly visible. The prevalence and challenges in managing these complex issues, however, are not unique to immigration detention environments; they are equally faced in other restrictive settings and in the broader Australian community. Within this context, the department, working closely with our service providers and health experts, is committed to continuing to build on the significant measures implemented to date to find improved ways to support the health and wellbeing of people in our care and minimise the risk of suicide and self-harm.

The period of the Ombudsman’s review coincided with a highly dynamic operational environment. Since July 2011, the number of irregular maritime arrivals to Australia increased significantly; the size and configuration of the immigration detention network has been modified in response to changing accommodation requirements resulting from an increase in the arrival of family groups. Arrangements to release people into the community on bridging visas following initial health, identity and security checks have been implemented; and the number of vulnerable people placed into community detention, where additional support services are available, has increased. The number of people removed from Australia has also increased in response to an increased number of arrivals who did not engage Australia’s international obligations. Furthermore, the transfers of people under regional processing arrangements in Nauru and Manus Island have been established.

Within this changing environment, the department has worked closely with service providers to review and make changes to its policies, practices, staffing and culture to better manage the risks associated with self-harm and suicide. Key improvements made during this time include: greater integration between departmental policies, procedures and practices of departmental and service provider staff that engage with people in immigration detention; and enhanced mental health training for staff and service providers to assist with early identification and responses to people at risk. There has also been a strong emphasis placed on positive preventative factors, including improvements to programs and activities available to people in immigration detention; improved systems to support client engagement throughout a person’s time in immigration detention; and implementation of a client placement model that improves the alignment between the needs of individuals and their placement within the range of options available. The department has implemented enhancements to its information technology platform to provide greater capacity to link and analyse information and data relating to client cohorts and circumstances and to refine the reporting categories in relation to self-harm incidents.

The department has also continued to focus strongly on resolving the immigration status of people as soon as practicable through providing information to clients that support informed choices, monitoring the progress of individual cases and groups and intervening to address barriers to resolution.

Together, these changes have resulted in some important outcomes. Due to a more flexible client placement model, today a significant majority of people are spending around 190 fewer days in Immigration Detention Facilities (IDFs) compared to 2011. Where people remain in immigration detention for longer periods due to individual circumstances or the

risks they pose to the community, they are generally accommodated in less remote locations and less restrictive environments and have access to specialist services that are appropriate for their needs. From September 2011, the rate of self-harm incidents in IDFs decreased significantly and has since remained steady.

While these outcomes are positive, this does not change the resolve of the department and its service providers to continue to work on making further improvements in its approach to managing the risks associated with suicide and self harm and in the provision of services to meet the needs of people in our care.

**Recommendation 1: The Ombudsman recommends that the Department continue to review and improve its data collection and management reporting so the physical and mental health of people held in immigration detention can be measured and monitored to enable effective management and response to the risk of suicide and self-harm. Consideration should be given to:**

- a. promoting a clear shared understanding of self-harm incidents by ensuring categories for reporting are appropriate and revised in consultation with independent health and mental health experts.**
- b. embedding standard data collection into service provider contracts and shared systems, and ensuring relevant staff are appropriately trained.**
- c. ensuring consistency and accuracy of data extraction for analysis and reporting.**
- d. developing an integrated health dataset using a standard methodology, consistent with mechanisms used in mainstream health services in the Australian community and in consultation with the Immigration Health Advisory Group and bodies with appropriate expertise, such as the Australian Institute of Health and Welfare.**

The department has accepted this recommendation.

Over the last 18 months the department has invested considerable resources to improve the comprehensiveness and quality of data holdings for people in immigration detention. This includes the completion of a project that links data sets on the detention population, incident reporting and immigration processing to enable more detailed analysis to be undertaken, including in relation to potential risk factors relating to self harm. The department is committed to ongoing improvement of these data sets and the analysis of cohorts to inform the management of the immigration detention network. This includes the implementation of enhanced data quality assurance arrangements through a data quality reference group that has recently been established within the department.

The department has also engaged with service providers to agree on a common definition of self-harm and the usage of reporting procedures and templates. Regular training of departmental and service provider staff on the use of departmental systems continues to be implemented.

The department will consult with its Immigration Health Advisory Group (IHAG) and Health Services Provider, International Health and Medical Services (IHMS), regarding detention health data collection and reporting strategies, including the development of a revised health dataset.

**Recommendation 2: The Ombudsman recommends the Department continue to review and improve policies and governance frameworks for managing the risk of suicide and self-harm. Consideration should be given to:**

- a. **ensuring policies are integrated and implemented consistently across the immigration detention network, and regular management initiated reviews are undertaken to ensure there is ongoing evaluation of the policy, implementation and governance frameworks.**
- b. **developing a set of management reports that can be used by the Department to review the operation of policies to identify and support people at risk.**
- c. **ensuring there is appropriate internal mechanisms for the reporting, escalation and response to self-harm risks and incidents, which encourage Departmental and service provider management and staff to take an integrated approach to: robustly managing contractual requirements of service providers; proactively addressing risk factors to minimise incidents occurring; undertaking systemic analysis of incidents; having clear accountability for response to incidents; and developing strategic and operational policy responses.**

The department has accepted this recommendation.

A new governance framework to underpin the delivery of detention services was developed in consultation with internal and external stakeholders with a staged implementation commencing in May 2012. Key features of the governance framework include:

- three distinct layers of governance (at the delivery, tactical and strategic levels) providing pathways to raise, discuss, respond to, and resolve issues;
- greater clarity about departmental and service provider roles and responsibilities at each level;
- a structure that supports improved reporting and management of service delivery; and
- a strong emphasis on 'joined-up' service provision between the relevant providers and the department.

By June 2012, committees in all layers of governance had been established and convened. The department continues to work closely with its service providers, both onshore and offshore, to implement and improve the governance arrangements. Informal evaluation has occurred through ongoing communication and engagement with the detention service delivery network and the department's service providers. Formal evaluation of the governance arrangements will be undertaken once all elements of both onshore and offshore governance arrangements have been in place for a reasonable length of time, enabling a more meaningful assessment and review of the current arrangements.

The department regularly undertakes management initiated reviews (MIRs) to ensure that sound and effective practices and processes are in place. The Departmental Audit Committee (DAC) takes a keen interest in the department's policies and governance frameworks, including MIRs.

The department acknowledges the importance of continual review and improvement of policies and governance frameworks for managing the risk of suicide and self-harm. The department is currently reviewing relevant detention mental health policies, in consultation with detention service providers, to ensure their suitability for the current detention cohort and environment. IHAG will have an important role in advising the department regarding the policies and associated governance frameworks.

The Psychological Support Program (PSP) policy is the department's key policy for managing suicide and self-harm in IDFs. In response to a recommendation arising from an earlier review of the implementation of the PSP, the department is also developing a PSP

framework to support departmental and service provider staff in the management and implementation of the PSP.

Since January 2013, policy on incident management and reporting has been available for the guidance and use by staff within the immigration detention network. The policy has not only been targeted to focus on the prevention and management of incidents, but also provide guidelines to assist with both minimising the potential for incidents to occur in the future and developing a planned response to incidents if and when they do occur. The policy also forms the basis for detention operational procedures and contractual requirements of service providers.

**Recommendation 3: The Ombudsman recommends the Department continue to review and improve processes in the status resolution and placement of people in immigration detention, particularly for those people detained for long periods. The Ombudsman acknowledges that the Department's administrative actions need to be considered in the context of Government policy and the non-compellable and non-delegable ministerial powers under the Migration Act. Notwithstanding this, consideration should be given to:**

- a. prioritising the processing of cases of those detainees who have been detained for the longest period**
- b. providing timely advice to the Minister on the exercise of discretionary powers in relation to individual cases, with a focus on moving long term detainees out of immigration detention facilities where possible**
- c. clarifying the 'no advantage' policy in relation to the processing of claims, including the statutory requirement to process protection claims within 90 days (ss 65A and 414A of the Migration Act).**

The department has accepted this recommendation in principle.

The department continues to review, and where possible improve processes to ensure that that status of people in detention is resolved as soon as possible within the framework of domestic law, Government Policy and international law.

The department has established processes for the referral of complex cases to the Minister for his consideration to exercise his non-delegable, non-compellable intervention powers under section 195A or section 197AB of the *Migration Act 1958*. Referral of clients under these powers is conducted in line with the respective Ministerial Intervention guidelines that have been issued by the Minister. Should the Minister decline to intervene in any case referred for his consideration, the department looks to manage these clients in the least restrictive environment appropriate for the person. These placements include consideration of placement in Immigration Residential Housing or Alternative Places of Detention. Consideration of placement in these environments includes client care requirements and an assessment of client behaviours and risks.

The department is in the process of finalising the processing model for asylum seekers who entered Australia on or after 13 August 2012 and are subject to the no advantage principle onshore.

The department notes that the length of time a person remains in immigration detention is also, in many cases, influenced by the circumstances of the person in detention. Where a person: refuses to cooperate or provides inconsistent information; contests decisions made by the department, independent reviews, tribunals or the courts; or engages in criminal behaviours or other activities that pose risks to the community; this can prolong a person's time in detention.

**Recommendation 4: The Ombudsman recommends that the Department give priority to developing a policy framework and process for managing protracted caseloads in immigration detention – refugees with adverse security assessments, character cancellation cases and those who cannot be returned to their country of origin – to assist towards reducing the long term detention of these detainees, particularly in immigration detention facilities. The Ombudsman acknowledges that the Department’s administrative actions need to be considered in the context of Government policy and the non-compellable and non-delegable ministerial powers under the Migration Act. Notwithstanding this, consideration should be given to:**

- a. regular compilation and management reporting of data on the cohorts of people in long term detention.**
- b. working with relevant agencies to develop options for Government consideration to reconcile the management of any security threat with the Department’s duty of care to immigration detainees by consideration of risk levels and alternatives to closed detention for the management or risks, such as regular reporting and monitoring.**
- c. ensuring there is a process in place to respond to the review of adverse security assessment cases, so that any reconsideration of the security assessment that impacts on the detention placement or visa status of those detainees who have previously received an adverse security assessment, is managed expeditiously.**

The department has accepted this recommendation in principle.

The department has a policy framework and process for managing protracted caseloads in immigration detention. This framework includes:

- Key detention values, which guides all program level policy and procedures administered by the department that affect detention clients.
- Reviewing clients’ circumstances whilst in immigration detention and reporting to the Ombudsman, for clients that have been in detention for two years or more.
- Ongoing consideration of the appropriateness of detention and placement decisions, which involves monthly case management reviews and senior officer reviews. Where the department is unable to grant a temporary visa, clients may be considered by the Minister personally under one of his non-compellable and non-delegable intervention powers, section 195A or section 197AB. Referral of clients under these powers is conducted in line with the respective Ministerial Intervention guidelines that have been issued by the Minister. Should the Minister decline to intervene in any case referred for his consideration, the department looks to manage these clients in the least restrictive environment appropriate for the person. These placements include consideration of placement in Immigration Residential Housing or Alternative Places of Detention. Consideration of placement in these environments includes client care requirements and an assessment of client behaviours and risks.
- A range of activities underway across the department to resolve various long-term client cohorts, including, for example, diplomatic approaches to source countries by which timely removal or third country resettlement can be facilitated and also the recent development of a whole of department ‘Returns Strategy’ in line with the recommendations from the Houston Report.

The department has a detailed understanding of individuals in protracted caseloads through its case management and complex case management roles. Aligned with our processes, the

department has management reporting in place to advise of the people in long term detention. Regular reviews of those in long term detention take place through the Detention Review Committee process. This committee sits on a monthly basis to review the caseload.

Further, the department is in regular contact with partner agencies to ensure clear communication regarding any possible change of circumstances. These agencies include the Australian Security and Intelligence Organisation and the office of the Independent Reviewer for adverse security assessments. The department notes however, that any expeditious management would have to include a consideration of what is in the client's best interests in terms of ongoing management and support.

**Recommendation 5: The Ombudsman recommends that the Department in consultation with its service providers immediately and systematically review the circumstances of all future deaths and serious incidents of self-harm in immigration detention to determine if there are policies, processes or practices that need to be revised or addressed to prevent future occurrences. This review process would be separate to any coronial process.**

The department has accepted this recommendation.

The department cooperates fully with all coronial inquiries into deaths in immigration detention. Where these inquiries have identified issues that relate to public administration, the department has taken appropriate action, in consultation with relevant service providers, to address these issues promptly and comprehensively.

In addition to any coronial inquiry process, the department is committed to conducting timely reviews of the circumstances of all future deaths and serious incidents of self-harm in immigration detention. The department will consider the best approach to such reviews to ensure that they are comprehensive, timely, and assist in identifying if there are policies, processes or practices that need to be revised or addressed to minimise the risk of future occurrences of self-harm.

The department has established policy advice for staff who may confront such issues within the immigration detention environment. Specifically, policy on incident management and reporting has been made available to the immigration detention network through the Detention Services Manual since January 2013. It provides guidance on how to adequately identify, address and manage critical matters such as self-harm and death and forms the basis of detention operational procedures.

The department has conducted a review of the Detention Service Provider's delivery of incident reporting, focussing on the quality, accuracy and timeliness of incident reporting and post-incident reviews, in relation to contractual obligations.

A process for ensuring best practice is achieved with incident management reporting is proposed for adoption within IDFs.

**Recommendation 6: The Ombudsman recommends that deaths in immigration detention should be included in the National Deaths in Custody Program of the Australian Institute of Criminology (AIC), noting that the Department is progressing discussions with the AIC on this basis.**

The department notes this recommendation.

The department notes that the Australian Institute of Criminology's (AIC) primary mandate relates to the development of evidence-based research to inform policy and practice in

relation to crime and justice and the National Deaths in Custody Monitoring Program was established as a result of the 1991 Royal Commission into Aboriginal Deaths in Custody (criminal and police custody).

The department considers it important to clearly distinguish the administrative immigration detention of people for the purpose of facilitating status resolution, which can include removal from Australia, and the people who are managed within this setting, from correctional, criminal justice settings and populations.

Notwithstanding this important distinction, the department is continuing discussions with the AIC regarding the possible reporting of deaths in immigration detention. The department will provide the Minister with a recommended course of action in relation to options for the possible reporting of deaths in immigration detention by the AIC in due course.

**Recommendation 7: The Ombudsman recommends that the Department continue to review and improve health and mental health standards in accordance with State/Territory and National Standards. Detention health standards should cover the range of services provided under the health services contract in all locations of immigration detention. Contractual arrangements should ensure that standards are adhered to and reported on.**

The department has accepted this recommendation in principle.

The department considers that health and mental services for immigration clients should be delivered in accordance with relevant State/Territory and National Health Standards to the extent they can be applied in an immigration detention setting. In this context the department will consider requiring that, in future contractual arrangements, all detention facilities with a full-time onsite health clinic obtain accreditation against the Royal Australian College of General Practitioner developed *Standards for Health Services in Australian Immigration Detention Centres* or other relevant standards such as the *National Standards for Mental Health Services 2010*.

**Recommendation 8: The Ombudsman recommends that the Department continue to review and improve information delivery and engagement with people in immigration detention. Consideration should be given to providing these people with:**

- a. translated information explaining the protection visa process including merit and judicial review, processes and factors which are considered in referrals for community detention placements, processes and factors which are considered in referrals for grant of a bridging visa, and the role of the Department's case managers.**
- b. key elements of significant decision letters in a language that the detainee can reasonably be expected to understand within the timeframes required for the detainee to pursue review mechanisms.**

The department has accepted this recommendation in principle.

The department recognises that client understanding and engagement is an integral part of supporting the resolution of immigration status. The provision of clear information helps to manage client expectations; it builds their understanding of the legislative frameworks and processes they are engaged in, and supports them in making informed choices about their next course of action.

Since 2010, the department has undertaken a range of activities to improve the consistency and quality of general client information provided to irregular maritime arrivals both in immigration detention and in the community. Communication materials are regularly



reviewed to ensure their accuracy and consistency with government policy and departmental procedures.

General information about Australia's protection assessment process (including the purpose of merits and judicial review), community detention, bridging visa responsibilities, and the role of the case manager, is provided as a matter of course where relevant to the client's pathway and circumstances. This information is translated into a consistent set of common Irregular Maritime Arrival languages (currently Arabic, Burmese, Dari, Kurdish Kurmanji, Kurdish Sorani, Pashto, Persian/Farsi, Sinhalese, Tamil, Urdu and Vietnamese), and is in a format that clients can take away and absorb in their own time.

In addition to providing general information, case managers engage with clients individually, especially as they progress through key immigration decision points. Case managers are supported with communication guides (along with printed products) to explain not only the decision point itself but the implications of this to the client. For clients in immigration detention, the content of any immigration correspondence provided in English is explained with the assistance of an interpreter, where required.

All clients undergoing an Australian protection process have a migration agent who provides them with independent advice and assistance. Since May 2012, the migration agent is also responsible for communicating the outcome of protection-related decisions to the client.

Both contractually and as authorised recipients under the Migration Act, Immigration Advice and Application Assistance Scheme providers are responsible for arranging interpreting services (where required) when they discuss with the client the Protection Visa decision, the review mechanisms and the timeframes required for the client to pursue review mechanisms. Translating key elements of significant decision letters into a language that the client can reasonably be expected to understand would risk delays in finalising the decision on protection claims. If translation occurred after the decision, it is highly unlikely that translations could occur in a timely manner, within the context of the client having only seven working days in which to consider and understand the decision and formally appeal to the Refugee Review Tribunal.

**Recommendation 9: The Ombudsman recommends that the Department and its service providers review the findings and recommendations contained in this report and consider their applicability to the offshore processing system. It is acknowledged that people transferred to Regional Processing Centres are not in immigration detention however the Commonwealth retains some obligation to them in relation to the services and arrangements that they are directly responsible for delivering.**

The department has accepted this recommendation in principle.

People transferred to RPCs are not held in immigration detention; they lawfully reside at a RPC that is administered in accordance with a Memorandum of Understanding established between Australia and Papua New Guinea and between Australia and Nauru.

While having no legal obligation regarding transferees in RPCs, the department agrees to consider the applicability of the report's findings to the services that are accessible to transferees located in RPCs. While the department can raise these issues with hosting countries, ultimately the arrangements in place in RPCs are a matter for those governments.

## ATTACHMENT 2—KEY DEVELOPMENTS IN AUSTRALIAN REFUGEE POLICY 2001-2013

Date	Development
2001	<i>Migration Amendment (Excision from Migration Zone) Act 2001</i> amended the Migration Act to define certain places as ‘excised offshore places’ and designates unauthorised arrivals to these zones ‘offshore entry persons.’ Offshore entry persons to be removed to a designated country for processing of claims.
September 2001	Statement of principles signed with Nauru for establishment of processing centre.
October 2001	Memorandum of Understanding with Papua New Guinea for establishment of processing centre on Manus Island.
11 May 2005	<i>Migration Amendment Regulations 2005 (No 2)</i> introduced removal pending bridging visas.
29 June 2005	<i>Migration Amendment (Detention Arrangements) Act 2005</i> passed. Granted minister non-compellable powers to make residence determinations (community detention) and to grant visas; introduced principle that children to be detained as measure of last resort; and mandated regular reporting by the Commonwealth Ombudsman on those detained for two years or more.
July 2005	MJ Palmer AO APM <i>Report of Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau</i> (Palmer Report) July 2005.
September 2005	<i>Report of Inquiry into the Circumstances of the Vivian Alvarez Matter</i> (the Comrie Report), Report no 03/2005, September 2005.
2005 and 2006	247 cases of persons who had been detained by the department and subsequently released referred by the Australian Government to the Commonwealth Ombudsman for investigation.
September 2005	The department formed the Detention Health Taskforce to examine findings of Palmer Report.
December 2005	Migration Act amended to require valid protection visa processing in 90 days. Time limit not applicable to offshore entry persons.
March 2006	Formation of the Detention Health Advisory Group (DeHAG).
May 2006	‘Future Detention Health Strategy’ approved by the Australian Government.
November 2007	The department and DeHAG release the <i>Detention Health Framework – a policy framework for health care for people in Immigration Detention</i> .
March 2008	Nauru and Manus Island processing centres formally closed.

29 July 2008	<i>New Directions in Detention – Restoring Integrity</i> speech by the Minister of Immigration setting out seven key immigration values.
July 2008	Ombudsman commenced reviews of those in detention for 6 months or more and oversight of the Refugee Status Assessment process.
20 December 2008	Christmas Island's North West Point detention centre opened.
9 April 2010	Suspension of processing of asylum claims from Sri Lanka and Afghanistan for three and six months respectively.
9 July 2010	Processing of asylum claims from Sri Lanka resumes
9 October 2010	Processing of asylum claims from Afghanistan resumes
18 October 2010	Australian Government announced unaccompanied minors and vulnerable families to be detained in the community.
11 November 2010	High Court decided <i>Plaintiff M61/2010 v Commonwealth; Plaintiff M69/2010 v Commonwealth</i> [2010] HCA 41, holding that offshore entry persons have right to natural justice and access to judicial review.
January 2011	Australian Government announced changes to the Refugee Status Assessment process in response to November 2010 High Court ruling, including an Independent Merits Review process.
1 March 2011	Refugee Status Assessment/Independent Merit Review process replaced by Protection Obligations Determination process for Irregular Maritime Arrivals (IMAs) arriving from 1 March.
7 May 2011	Australian Government announces a bilateral agreement with the Malaysian Government to transfer 800 IMAs to Malaysia for refugee status determination. In return, Australia to resettle 4000 refugees currently residing in Malaysia.
25 July 2011	Agreement reached between the Australian and Malaysian Governments for the transfer of IMAs to Malaysia in exchange for refugees.
August 2011	High Court decided <i>Plaintiff M 70/2011 v Minister for Immigration and Citizenship</i> [2011] HCA 32, invalidating the minister's declaration of Malaysia as a country to which offshore entry persons could be removed for processing.
October 2011	New policy announced to grant bridging visas to IMAs after initial health, security and identity checks, and pending finalisation of protection claims. The department commenced implementing this policy in November 2011.
November 2011	Australian Government announced an intention to move towards a single protection visa process for offshore entry persons and those applying for protection after entering Australia on a valid visa.

24 March 2012	Reversion to a single statutory process for the assessment of asylum seekers' claims (offshore entry persons or otherwise). Introduction of a system of complementary protection giving effect to Australia's international obligations.
June 2012	Australian Government commissioned the <i>Expert Panel on Asylum Seekers</i> to advise government regarding the management of asylum seekers.
August 2012	<i>Expert Panel on Asylum Seekers</i> Report recommended disincentives to irregular maritime voyages by a 'no advantage' principle.
13 August 2012	Australian Government announced that from this date IMAs will be transferred to regional processing centres in Nauru and Manus Island to have protection claims assessed.
21 November 2012	Australian Government announced that the 'no advantage principle' will be applied to IMAs arriving from 13 August 2013. No permanent protection visas will be granted until such time as they would have been resettled in Australia if they had been processed in Australia's region. Those processed in Australia on bridging visas will have no work rights and limited financial support and accommodation assistance.
March 2013	Immigration Health Advisory Group (IHAG) replaces Detention Health Advisory Group (DeHAG).

# ATTACHMENT 3—KEY IMMIGRATION DETENTION POLICIES

## The Department's Detention Health Framework

The department's policy framework for managing suicide and self-harm in immigration detention is guided by policies developed under the Detention Health Framework.

The department's Detention Health Framework was released in November 2007 and included a range of quality assurance measures and a three-year Action Plan 2007-2010. The purpose of the framework was described as:

... a set of principles and arrangements aimed at providing people in immigration detention with access to the health care that they could reasonably expect if they were living in the community. It will provide people in immigration detention with health services that are fair and reasonable, while recognising the physical and psychosocial health risks of being in detention.<sup>373</sup>

Health care processes in the detention environment were identified in the framework as four stages of initial health assessments, treatment plans, ongoing health monitoring and response, and discharge health assessment and planning – with the objective of providing continuity of care over time.<sup>374</sup>

Quality in health service delivery in the detention health setting was articulated in the framework through dimensions including effective governance, performance management and continuous improvement and establishing an evidence base. These dimensions in turn focused on issues of particular relevance to the current investigation, such as the new contractual arrangements for detention health; formal detention health standards; the qualifications, skills and registration for health care providers; privacy of personal health information; communication with people in detention and continuous and coordinated care.

The Action Plan described the work required to implement the framework and incorporated actions, outputs and outcomes across five core principles:

1. person-centred approach
2. appropriate health assessments
3. shared responsibility
4. effective governance
5. evidence-based decision-making<sup>375</sup>

In consultation with the DeHAG, its contracted detention service providers and other stakeholders, the department developed three key mental health policies under the umbrella of the Detention Health Framework. These policies were aimed at the early identification and appropriate management of people at risk of mental health problems, including risk of suicide and self-harm, and are outlined in further detail below. These three key policies are supported by additional departmental health policies.

Despite the significant changes in the immigration detention population since the development of the framework, it continues to be considered relevant, with the department stating in 2011 that 'The framework's aim is to create an immigration detention health

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<sup>373</sup> Department of Immigration and Citizenship, *Detention Health Framework*, *op cit*, p. 14.

<sup>374</sup> *ibid*, Chapter 7.

<sup>375</sup> *ibid*, Chapter 10.

system that mirrors the mechanisms in place in the wider Australian health system to ensure quality and appropriate clinical care'.<sup>376</sup>

### ***Mental Health Screening for People in Immigration Detention***

The Mental Health Screening for People in Immigration Detention<sup>377</sup> policy outlines the mental health screening and assessment processes for people in immigration detention. The policy was released in April 2009 after a review of existing policies by the Mental Health Sub-Group of DeHAG in 2007-08, and provides both for screening as part of the health induction assessment, and then for ongoing assessment during a person's period of immigration detention.

At indication, the policy aims to record a baseline mental health assessment; identify people with mental health problems who may need attention or treatment while detained and provide a basis for the development of treatment plans. At prescribed intervals, or when subsequently triggered by referral, the policy seeks to identify people for whom previous screening has resulted in false negatives, or detainees who have developed mental health problems while in detention. Mental health assessments, outside of those routinely scheduled, will be undertaken when concerns are raised about a person's mental health. Events such as the refusal of a visa application, for example, which may cause a detainee distress, may trigger a reassessment of the person.

The policy provides guidance for selecting and using mental health screening tools and provides a detailed description of mental health screening processes.

It is intended that measures to identify and support survivors of torture and trauma are built into the mental health screening and assessment process outlined in the policy. The policy is also intended to interact with the Psychological Support Program (PSP) for the Prevention of Self-harm in Immigration Detention.

Mental health screening has been built into IHMS' health induction assessment, discussed further below.

### ***Identification and Support of People in Immigration Detention who are Survivors of Torture and Trauma***

The Identification and Support of People in Immigration Detention who are Survivors of Torture and Trauma<sup>378</sup> policy was also released in April 2009 after the department worked with the DeHAG, particularly its Mental Health Sub-Group, to develop 'a best-practice approach to the identification and support of survivors of torture and trauma in immigration detention'.<sup>379</sup>

The purpose of the policy is 'to describe arrangements to ensure that people in immigration detention who have experienced torture and trauma:

- are identified as early as possible based on clinical presentation, available background and country information

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<sup>376</sup> Department of Immigration and Citizenship, *Submission to Joint Select Committee on Australia's Immigration Detention Network*, *op cit*, p. 60.

<sup>377</sup> Department of Immigration and Citizenship, *Mental Health Screening for People in Immigration Detention*, *op cit*.

<sup>378</sup> Department of Immigration and Citizenship, *Identification and Support of People in Immigration Detention Who are Survivors of Torture and Trauma*, *op cit*.

<sup>379</sup> *ibid*, p. 4.

- are connected as soon as possible with appropriate services to assist them with any aspect of their experience of torture and trauma, in such a way that they can avail themselves of these services as freely as possible
- are encouraged and supported, wherever possible following consideration of health, character and security risks, to reside legally in the community while their immigration status is being resolved or, where this is not possible, in the least restrictive form of detention to minimise the potential for immigration detention to exacerbate any vulnerabilities associated with their previous experience of torture and trauma. Continued accommodation of survivors of torture and trauma in an immigration detention centre is only to occur as a measure of absolute last resort where risk to the Australian community is considered unacceptable
- are actively managed to an immigration outcome as quickly as possible.<sup>380</sup>

The policy sets out eight principles which underpin the management process for identifying and supporting detainees who are survivors of torture and trauma<sup>381</sup>:

- early identification and response is critical
- useful therapeutic work does not depend on full disclosure
- balance the need for timely communication with respect for privacy and confidentiality
- expedited placement into the community
- screening is necessary but not conclusive
- flexible application of this policy is critical
- case conferencing approach
- well-trained and supported staff.

The policy provides guidance on the roles and responsibilities of key personnel, including departmental case managers, the Health Service Provider (IHMS) and torture and trauma specialists working in the immigration detention network, as well as departmental officers working in areas of case resolution and community detention.

Overall, the policy adopts a risk management approach, and the threshold for preventative action is the risk of harm, not actual damage. Notably in the context of this investigation, the policy supports referral, as soon as possible, for consideration of a placement in the community.

### ***Psychological Support Program for the Prevention of Self-Harm for People in Immigration Detention***

The Psychological Support Program for the Prevention of Self-Harm for People in Immigration Detention policy,<sup>382</sup> released in April 2009, replaced the department's Suicide and Self-Harm (SASH) Protocol. DeHAG, which was involved in its development, considered the Psychological Support Program policy to be 'best practice'.<sup>383</sup>

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<sup>380</sup> *ibid*, p. 3.

<sup>381</sup> *ibid*, pp. 14-15.

<sup>382</sup> Department of Immigration and Citizenship, *Psychological Support Program for the Prevention of Self-Harm in Immigration Detention*.

<sup>383</sup> Prof Louise Newman, Chair Detention Health Advisory Group, evidence to Joint Select Committee on Australia's Immigration Detention Network, 18 November 2011, *op cit*, p. 9.

The Psychological Support Program for the Prevention of Self-Harm for People in Immigration Detention policy aims to:

- provide a clinically recommended approach for the identification and support of people in immigration detention who are at risk of self-harm and suicide, thereby reducing risk and improving health outcomes
- reduce the level of uncertainty and stress for staff in dealing with people in immigration detention who exhibit self-harming and suicidal behaviour.<sup>384</sup>

The policy sets out the actions that the department, IHMS and Serco will take to assist and manage people in detention with mental illness.

This policy is targeted at all people in immigration detention, including community detention, and emphasises prevention, support, engagement, autonomy and reintegration.<sup>385</sup>

While departmental, Serco or IHMS staff may identify and report concerns about the wellbeing of a detainee, clinical assessment under the Psychological Support Program is undertaken by an appropriate health professional, who will determine both whether a person should be managed under the Psychological Support Program and the level of assessed risk.

People managed under the Psychological Support Program are cared for in accordance with the policy and the assessed risk level: High Imminent, Moderate or Ongoing.

Risk Level	Monitoring and Engagement Plan	Accommodation Arrangements	Clinical Review (minimum)
High Imminent	Constant – 'arms-length, eye sight'	Secure, safe environment with supervised exercise and interaction with others	Every 12 hours, with assessment by an external mental health professional after 24 hours
Moderate	30 Minute	A secure, safe but less restrictive environment	Every 24 hours
Ongoing	General non-intrusive	Normal accommodation	Every 7 days

The Psychological Support Program is managed within each immigration detention facility by a Psychological Support Program Team, comprising departmental, IHMS and Serco representatives. Regular clinical reviews are conducted by health professionals and client management is discussed and regularly reviewed by the Psychological Support Program Team. The Psychological Support Program Teams are led by a senior IHMS clinician who determines the level of risk, or whether that level is to be changed.

## The Department's Case Management Service

The development of the Department's Case Management Service was a response to the Rau report, recommendation 7.1, that the department:

<sup>384</sup> Department of Immigration and Citizenship, *Psychological Support Program for the Prevention of Self-Harm in Immigration Detention*, p. 3.

<sup>385</sup> *ibid.*



develop and implement a holistic case management system that ensures every immigration detention case is assessed comprehensively, is managed to a consistent standard, is conducted in a fair and expeditious manner, and is subject to rigorous continuing review.<sup>386</sup>

The department is responsible for providing case management services to all people in immigration detention who are not on a removal pathway.

Under the department's policy, the purpose of case management is to ensure that an immigration outcome is reached in a timely, lawful, fair and reasonable manner.

Case managers play a critical role as the detainee's primary point of contact with the department. They are responsible for ensuring that the detainee understands what their immigration status is, why they are being held in detention, what the processes are for regularising their immigration status and for identifying and resolving any barriers to resolving a person's immigration status.

Importantly, the role involves managing detainee expectations and being able to provide meaningful information on case updates, realistic timeframes for processing and information on what will happen in the event that a detainee is found not to be eligible to stay in Australia.

### **The Department's client placement policies**

The decision as to where detainees are placed within the immigration detention network is guided by the department's 'Detention Facility Client Placement Model' and the Case Management Placement Review Policy Guide.

The intent of these policies is to ensure that decisions about the type of facility and location where a detainee is accommodated takes into account their individual needs and the types of services and support they need. The policy also takes operational and security considerations into account, such as the client's security risk assessment.

The Case Management Placement Review Policy Guide provides the operational policy guidance to case managers on the appropriate placement of individuals in the detention network and processes to review placements. It incorporates a set of placement indicators and associated risks to be taken into account in placement decisions. This is governed by a Placement Committee, comprising representatives from the department, the detention services provider and the health services provider, that regularly reviews the placement of each person in detention.

The department started documenting the concept of a Detention Facility Client Placement Model in late 2011 and the principles were broadly adopted during the course of 2012. It is a dynamic model and is intended to be applied flexibly, and adjusted to reflect changes in immigration detention facilities and the composition of the client profile.

### **Serco's Wellbeing of People in Detention policy and procedure manual**

Serco's approach to service delivery is outlined in its *Wellbeing of People in Detention Policy and Procedure Manual*. According to Serco,

The primary goal is to ensure that all clients experience humane detention conditions and that facilities are at all times operated with respect for human dignity.<sup>387</sup>

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<sup>386</sup> Palmer, *Report of Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau* (the Palmer Report), *op cit*, Recommendation 7.1, p. xxxi.

The *Wellbeing Policy Manual* is designed to provide staff with an overview of the principles underpinning the Serco approach to client service, as well as specific guidance in the form of procedures and policies that recognise and respond to the physical and psychological components associated with client health and wellbeing.<sup>388</sup>

The *Wellbeing Policy Manual* notes that:

Many People in Detention may present with the impacts of accumulated adverse life experiences and may be both psychologically fragile and have extensive unmet needs which will have to be addressed to ensure their wellbeing whilst in detention.<sup>389</sup>

And that:

All People in Detention will be treated by Serco staff fairly and with dignity and respect.<sup>390</sup>

Matters covered in the manual of relevance to this investigation include:

- Reception and Induction Process – in accordance with the *Detention Services Contract*, Serco is responsible for undertaking the induction process for unlawful non-citizens, including Irregular Maritime Arrivals, when they are received into an immigration detention facility. According to Serco, the induction process has two purposes: to focus on identifying the needs of individual detainees, including any psychological or physical support they may require, and to provide information about the detention facility, addressing the client's immediate concerns. Information collected from detainees during this process forms the basis of an Individual Management Plan.<sup>391</sup>
- Personal Officer Scheme – Serco is also required to assign a personal officer to every detainee, whose role is to maintain regular contact with the detainee. According to Serco, 'The objective of the Personal Officer program is to personalise service delivery and to ensure the wellbeing of the client.'<sup>392</sup> Personal Officers are allocated as part of the induction process and are to act as the detainee's first point of contact for any issues or concerns that arise during their time in immigration detention. Serco's policy seeks to align the Personal Officer Scheme with the department's case management processes.
- Individual Management Plans – the Personal Officer allocated to each detainee is responsible for the development and implementation of Individual Management Plans for each person in immigration detention. These plans, for each individual client, are based on the assessed needs of the detainee and are designed to ensure the wellbeing of that individual. The purpose of the Individual Management Plan is to document the specific needs of the detainee and outline the services to be provided to the detainee to address their needs. Under the policy, creation of Individual Management Plans will include input from the detainee, the Serco Personal Officer, the IHMS health services officer, the

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<sup>387</sup> Serco Australia, *Submission to Joint Select Committee on Australia's Immigration Detention Network*, *op cit*, para 1.10, p. 7.

<sup>388</sup> *ibid*, para 3.39, p. 21.

<sup>389</sup> Serco Australia, *Wellbeing Policy Manual*, Annexure 4 to *Submission to Joint Select Committee on Australia's Immigration Detention Network*, *op cit*, para 3.1.3.

<sup>390</sup> *ibid*, para 1.

<sup>391</sup> Serco Australia, *Submission to Joint Select Committee on Australia's Immigration Detention Network*, *op cit*, para 3.43, p. 21.

<sup>392</sup> *ibid*, para 3.46, p. 22.

departmental case manager and other Serco officers. As a minimum it must include the following information:

- any special or preferred dietary needs
- the cultural, religious or spiritual and welfare needs of the detainee, including mental and physical health
- any identified developmental needs
- any program and/or activity needs of the detainee. This will include a mapping of preferred and/or intended programs and a capture of the preferred activities/hobbies/sports and interests of the detainee
- any requests or complaints
- staff observations or concerns
- any related behavioural management issues
- any health-related issues
- any arising pertinent welfare or assistance needs of the detainee
- any matters the Personal Officer or Client Services Officer consider material to the welfare and interaction of the detainee
- the current Security Risk Assessment for the detainee.<sup>393</sup>

Individual Management Plans are intended to be dynamic and subject to review and updates based on the needs of the detainee. To facilitate this, Serco is required to participate in a weekly review of Individual Management Plans with centre case management staff and the IHMS Health Services Manager to ensure that the needs of the detainee are addressed in a timely and comprehensive manner.<sup>394</sup>

In addition, senior Serco managers are to complete a monthly spot check of Individual Management Plans to ensure that:

- Individual Management Plans are being completed and are adequately capturing the needs of detainees
- there is a good capture and fit between what is documented and the needs of the detainee
- any client services officers who require further development of assistance to enable them to adequately complete Individual Management Plans
- Individual Management Plans are reviewed on a weekly basis
- actions identified are being appropriately addressed by the responsible Serco officer.<sup>395</sup>

An audit program is established to ensure contractual compliance in this area.

Other relevant areas included in the *Wellbeing Policy Manual* include: Programs and Activities, Religion and Wellbeing, Social Activities and Visits and Wellbeing.<sup>396</sup>

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<sup>393</sup> Serco Australia, *Individual Management Plan*, version 1.1.1, 4 February 2011, para 3.4, Annexure 5 to *Submission to Joint Select Committee on Australia's Immigration Detention Network*, *op cit*.

<sup>394</sup> *ibid*, para 3.7.

<sup>395</sup> Serco Australia, *Individual Management Plan*, Annexure 5 to *Submission to Joint Select Committee on Australia's Immigration Detention Network*, *op cit*.

## Serco's Keep SAFE program

The Keep SAFE / Psychological Support Program aims to:

- provide clear and practical instruction for all Serco staff in the management of persons in detention at risk of self harm or suicide
- introduce standard documentation for use across all sites thereby ensuring People in Detention are given the best possible support by staff who are able to recognise the documentation regardless of the facility in which they are working.<sup>397</sup>

Serco advised the Joint Select Committee that it had developed the Keep SAFE policy as 'an additional policy that supports' the Psychological Support Program:

Its principal aim is to provide our management and our staff on the ground with procedural guidance—things such as standardised documentation to be able to support the PSP.<sup>398</sup>

As part of the policy, standard documentation is used across the detention network, to monitor/support a detainee who may be at risk. In a situation when IHMS decides not to manage a detainee through the Psychological Support Program, Serco can continue to maintain the Keep SAFE process to monitor a detainee who continues to display risk-related behaviour.

## Serco's Behaviour Management policy

Serco's Behaviour Management Policy aims to manage any anti-social behaviour, or client behaviour that is not conducive to the good order of the facility so that a safe, well-ordered detention environment is maintained for clients and staff. Examples of the kind of behaviour targeted includes violence, wilful damage to property, brewing or consumption of alcohol, use of drugs, sexual humiliation or abuse, displaying or distributing pornographic material, or interfering with another client's property without permission.

Where client behaviour is not conducive to the good order of the facility, it is Serco policy that behavioural issues be identified and addressed early and that staff challenge a client's inappropriate behaviour in a non-confrontational manner to defuse the situation. All incidents should then be recorded on the department's reporting system, and a Behaviour Management Plan (BMP) based on incentives or the removal of privileges is to be developed within 48 hours.

A BMP sets out the background to the behaviour, any action that has been taken to modify the behaviour, and an undertaking by the client that s/he will improve their behaviour. Objectives are set for the client's behavioural improvement, and disincentives for poor behaviour and/or incentives for improved behaviour are set out (for example access to amenities). Beneficial activities may be suggested as well as a plan for any supportive interactions to assist the client. The plan includes milestones for assessing behaviour, and outlines the potential consequences of failing to adhere to the plan.

A BMP is developed in consultation with relevant departmental, Serco and IHMS stakeholders and the client. The policy requires IHMS to conduct a mental health

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<sup>396</sup> Serco Australia, *Wellbeing Policy Manual*, Annexure 4 to *Submission to Joint Select Committee on Australia's Immigration Detention Network*, *op cit*.

<sup>397</sup> Serco Australia, *Keep SAFE/Psychological Support Program*, undated, para 1.1, *Submission to Joint Select Committee on Australia's Immigration Detention Network, response to Question on Notice 54*, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Committees?url=immigration\\_detention\\_ctt\\_e/immigration\\_detention/submissions.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=immigration_detention_ctt_e/immigration_detention/submissions.htm) (viewed 24 November 2012).

<sup>398</sup> Joint Select Committee on Australia's Immigration Detention Network, *Final Report*, *op cit*, p. 65.

assessment and provide advice as to whether the behaviour of the detainee is indicative of a mental health issue. In this instance a BMP is not developed. Where a BMP is considered appropriate, IHMS advice should be sought and documented in relation to pre-existing conditions and vulnerabilities, and a plan for the appropriate level of support and engagement required should be documented. For the period that a client is subject to a BMP, IHMS are to monitor the client's mental state as frequently as clinically indicated, but no less than on a weekly basis.

Clients who continue to behave in a manner that threatens or undermines the good order of the facility may be subject to a range of consequences including the extension of the BMP, loss of access to amenities, counselling from a senior staff member, use of curfews, removal to a place of more restrictive accommodation, or a secure facility, referral to police (although this is required in the instance of any illegal activity), transfer to a correctional facility and communication of information to the department.

### **IHMS' procedures for the provision of health services**

IHMS is responsible for the provision of health and medical services to people across their whole experience of immigration detention, from an initial health assessment when a person first enters immigration detention, through to procedures for managing the ongoing health needs of detainees while they are in detention, and a health discharge assessment when they are released from detention. IHMS also facilitates community-based health services to detainees in community detention.

- Health induction assessment – every person entering immigration detention is offered an initial health assessment to identify any health conditions requiring attention. Under the *Health Services Contract*, the informed consent of the detainee must be obtained.<sup>399</sup> This assessment includes taking a personal and medical history as well as conducting a physical examination and oral check. Screening for communicable diseases and mental health concerns, substance dependence problems and torture and trauma history are also included, as well as a determination of the detainee's vaccination status and current medication requirements. Where necessary, the induction assessment is undertaken with the assistance of a translator or interpreter.<sup>400</sup>
- Management of the ongoing health needs of detainees – IHMS manages any health conditions identified at the initial health assessment or which subsequently arise. This clinical response may involve assessment, treatment, monitoring or case management by a multidisciplinary team of health care providers. Any detainee who has been in detention longer than 12 months and has not had contact with their General Practitioner is offered an annual check-up.<sup>401</sup>
- Provision of mental health services – the *Health Services Contract* requires IHMS to conduct regular mental health screening and assessment to ensure that the mental health needs of detainees are 'adequately and appropriately identified, monitored and treated at all times' during their detention.<sup>402</sup> If a detainee is identified as at-risk, the Health Services Manager must ensure that a specialist mental health management plan is developed or, where clinically required, a referral to external health care providers is organised. The mental health screening and assessment components must, under the contract, be consistent with the department's Detention Health Policy.

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<sup>399</sup> *Health Services Contract*, Sch 2, Statement of Work, cl 19.2(b), 'Health Induction Assessment'

<sup>400</sup> *ibid*, cl 19.

<sup>401</sup> *ibid*, cl 21, 'Continuing Health Care'.

<sup>402</sup> *ibid*, cl 22, 'Mental Health Care'.

- Discharge assessment – to facilitate continuity of care the *Health Services Contract* requires IHMS to undertake a health discharge assessment to document the health profile of the person being discharged from detention, or removed. The process comprises a paper review of the detainee’s medical records, a physical examination, the preparation of a Health Discharge Summary and provision of 14 days medication and clinical referrals, where relevant.<sup>403</sup>

Under the terms of the *Health Services Contract*, IHMS are required to provide the same level and types of health as for closed detention facilities, including: a health induction assessment; continuing health care, including health management and periodic mental health screening and assessment; medical escort services; and a health discharge assessment.<sup>404</sup>

The *Health Services Contract* explicitly stipulates that health care for people in community detention is to be provided ‘exclusively through arrangements with local Network Providers.’<sup>405</sup>

IHMS are required to have arrangements with General Practitioner and pharmacy services, located within reasonable proximity of the detainee’s residential location, in place within 72 hours of being notified of the residential address by the department.<sup>406</sup> The allocated General Practitioner facilitates access by referral to clinically necessary specialist, hospital and allied health services.<sup>407</sup> The provision of a health care card to people in community detention enables a ‘cashless’ delivery of services, as required under the contractual arrangements.

## **The Department’s Community Detention Operational Framework**

The department has developed guidelines, known as the *Community Detention Operational Framework*, which give service providers clear instruction on management of a range of issues. The *Operational Framework* provides broad policy guidance on issues including:

- the roles and responsibilities of all actors involved in community detention, including the minister, different sections and staff of the department, service providers and sub-service providers.
- the stages of the community detention process, including:
  - minister’s decision
  - sourcing accommodation
  - approving services and accessing utilities for detainees
  - transferring detainees into community detention
  - ongoing support provided by case managers, health service providers and translating and interpreting services
  - transitioning out of community detention or revocation of placement
- service provider reporting requirements

<sup>403</sup> *ibid.*, ‘Health Discharge Assessment’.

<sup>404</sup> *Health Services Contract*, Sch 2, Statement of Work, cl 18, p. 39.

<sup>405</sup> *Health Services Contract*, Sch 2, Statement of Work, cl 24.3, p. 61.

<sup>406</sup> *ibid.*

<sup>407</sup> *ibid.*

- complaints handling and conflict resolution procedures

The *Operational Framework* also incorporates a number of template packs, including:

- client referral forms
- care plan templates
- transitional care plan templates
- incident reporting templates
- monthly report templates

In terms of managing the risk of self-harm among detainees in community detention, the *Operational Framework* explicitly states:

Managing the risk of self-harm is everyone's responsibility and must be holistic and multidisciplinary<sup>408</sup>

and that:

All threats of self-harm and/or suicide from clients in community detention should be taken seriously.<sup>409</sup>

The *Operational Framework* outlines the role of caseworkers, health services and emergency services, if required, in responding to threats or risk of self-harm and/or suicide by detainees in community detention.

In terms of monitoring and reporting such incidents, the *Operational Framework* details how and when service providers report any incidents involving threatened, attempted or actual self-harm.

The department then responds to the incident report. If extra services are identified as needed by the service provider, the service provider can submit a request for those services to the department, which then assesses those requests on the basis of recommendations by the service provider and health reports within the scope of the *Community Detention Operational Framework*. It has advised this office that service providers, in partnership with IHMS providers, monitor any follow-up action as a result of an incident.

## **Australian Red Cross' Community Detention Program Policy and Procedural Manual**

The Community Detention Program Policy and Procedural Manual sets out the policy and procedures for managing the Australian Red Cross' community detention program. It builds on the department's *Operational Framework* and includes guidance and templates for Australian Red Cross staff.

Matters covered in the manual relevant to this investigation include:

- needs assessments for individuals, family groups and unaccompanied minors – a though assessment undertaken by the Australian Red Cross caseworker prior to placement in community detention placement to ascertain a person/s

<sup>408</sup> Department of Immigration and Citizenship, *Community Detention Operational Framework*, p. 56.

<sup>409</sup> *ibid.*

background, identify their accommodation needs and the type of care and welfare support they require. This process also seeks to identify any physical and mental health concerns and possible vulnerabilities, such as exposure to torture and trauma. Information obtained in the assessment is used to form the basis of the person's care plan once they are in community detention.

- placement – the procedures followed, and the responsibilities of the department's case manager and the Australian Red Cross caseworker, in transitioning detainees once the minister has approved a detainee's placement in community detention. The manual notes that transfer of clients from a detention facility will generally occur within 96 hours following notification of the minister's decision. The manual provides for the Australian Red Cross to meet detainees at the arrivals gate of the airport and transport them to their allocated property.
- transitioning in – provides for the orientation of the detainee once they have been transported to their allocated property. The Australian Red Cross caseworker, in conjunction with the case coordinator and the carer, where applicable, orientate the detainees to their accommodation (including use of appliances and how to secure the property), to the community detention program (including explaining to the detainee the roles and responsibilities of the various service providers they may encounter), and to the broader community (including familiarisation with public transport and local services). The caseworker ensures that the detainee's living allowance and healthcare support are organised and where children are involved, enrolment in school or childcare as appropriate.
- Care Plans are drafted by the caseworker using a standard template. The Care Plan is based on information from the department as the detainee is transitioned into community detention, as well as the needs assessment and any other issues the caseworker identifies. The Care Plan provides the basis of all care and support provided to the detainee when they are in the community detention program. The Care Plan template documents physical and mental health needs and notes existing arrangements, as well as the need for torture and trauma counselling or GP follow up. Community Detention Care Plan Guidelines provide guidance to caseworkers in preparing the Care Plan, and promotes accuracy, national consistency and thoroughness. The Care Plan is intended to be a stand-alone document, outlining the specific needs of the detainee. The guidelines also include a Care Plan Implementation Checklist to assist caseworkers as detainees are transitioned in. The checklist covers issues such as housing, financial support and health. Care Plans are submitted to the department within 10 days of the person's placement in community detention.
- healthcare – the manual provides clear guidance to caseworkers around how to appropriately manage mental health concerns and assist the detainees to access appropriate support and/or counselling. The manual advises that all threats of self-harm and/or suicide 'should be taken seriously'. The manual provides guidance to caseworkers about incident reporting as well and how to manage and assist the detainee, including referral to a psychologist, psychiatrist or other health professional.
- monthly reports are provided by the Australian Red Cross to the department in relation to each individual or family group in the community detention program. The report is intended to ensure that service providers are reporting emerging or ongoing issues to the department and, as such, identify all issues affecting the detainee. The report covers issues such as housing, living allowance, physical/mental health, education and family issues where appropriate, As with the Care Plan, the Australian Red Cross has prepared guidelines and a template to assist caseworkers in preparing accurate and consistent reports. The



guidelines emphasise that the mental health section must be specific and include the medications that the detainee is taking. The client's consent is acquired prior to the report being submitted to the department.

- incident reporting – the Australian Red Cross and its partner agencies are required to report all incidents concerning detainees in community detention to the department. Monthly incident reports are also provided to Australian Red Cross senior managers for internal management and monitoring purposes.
- settlement in Australia – provides for the processes and roles and responsibilities of the department, the Australian Red Cross and its partner agencies, and settlement services once a person in community detention is granted a protection visa. People in community detention are entitled to up to four weeks transition support from the date of notification of their visa grant. During this period the Australian Red Cross and the Humanitarian Settlement Strategy service providers continue care and support for the person as they prepare to leave community detention and move to accommodation sourced by the settlement services provider.
- Transitional Care Plan – the Australian Red Cross utilises templates for caseworkers to outline a person's health and wellbeing, as well as any logistical requirements, and to assist the settlement services provider support a smooth transition from community detention into mainstream settlement services after a grant of a protection visa.<sup>410</sup> The Transitional Care Plan is prepared with the visa holder. The template refers to self-harm and mental wellbeing as 'behavioural issues' which may need to be highlighted to settlement services.

## **Australian Red Cross' Migration Support Programs Casework Model 2012**

While IHMS are responsible for providing community-based healthcare services to people in community detention, Australian Red Cross caseworkers effectively facilitate this access.

IHMS provide a Health Discharge Assessment to detainees as they transition from a closed detention facility to community detention.<sup>411</sup> On placement, the Australian Red Cross caseworker ensures that the detainee has their assessment and any medication, and provides the detainee with their IHMS card and details of their allocated General Practitioner and pharmacy. The Australian Red Cross caseworker is responsible for explaining how the system works, accompanying the detainee to their first medical appointment (General Practitioner and pharmacy), assisting with making appointments and raising issues with IHMS for resolution.

The Migration Support Programs Casework Model 2012 incorporates the Australian Red Cross's approach to casework in the community detention environment. The model includes ten Good Practice Guides, including a Good Practice Guide on Working with clients at risk of Suicide and Self-harm.

This document provides Australian Red Cross caseworkers with background information and guidance on how to monitor the mental health of people in community detention, and includes consideration of these factors in needs assessments and Care Plans; how to respond to, escalate and report self-harm incidents; and how caseworkers can develop good self-harm strategies. The Good Practice Guide details risk factors and protective factors for suicide and self-harm, as well as cultural considerations.

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<sup>410</sup> Transitional Care Plans are not required for a client transitioning into a Bridging Visa E as their transition period is only two weeks.

<sup>411</sup> This assessment is not provided to the Australian Red Cross caseworker.

The publication is simply set out and is detainee and caseworker-focused. It de-stigmatises distress and help-seeking and promotes personal problem solving; it promotes early intervention and has some very good information around postvention activity.

## ATTACHMENT 4—PERSONS IN IMMIGRATION DETENTION 2008-2013<sup>412</sup>

Place of detention	29 Feb 2008	28 Nov 2008	27 Feb 2009	27 Nov 2009	26 Feb 2010	19 Nov 2010	18 Feb 2011	30 Nov 2011	29 Feb 2012	30 Nov 2012	28 Feb 2013
Villawood IDC	272	124	127	127	171	308	381	361	344	358	384
Northern IDC (Darwin)	16	24	1	10	33	475	463	305	193	398	441
Maribyrnong IDC	56	57	59	41	46	91	79	83	93	99	86
Perth IDC	13	7	12	44	23	47	54	29	32	38	31
Christmas Island IDC	2	14	103	1045	1453	2109	1832	693	551	813	608
Curtin IDC	n/a	n/a	n/a	n/a	n/a	819	1130	973	956	1539	473
Scherger IDC	n/a	n/a	n/a	n/a	n/a	268	311	219	272	491	312
Pontville IDC <sup>413</sup>	n/a	n/a	n/a	n/a	n/a	n/a	n/a	251	132	n/a	?
Wickham Point IDC	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	468	1091	901
Yongah Hill IDC	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	651	242
<b>Total in IDCs</b>	<b>359</b>	<b>226</b>	<b>302</b>	<b>1267</b>	<b>1726</b>	<b>4117</b>	<b>4250</b>	<b>2914</b>	<b>3041</b>	<b>5478</b>	<b>3478</b>
Sydney IRH	13	11	16	17	24	34	24	22	28	28	27
Perth IRH	5	4	8	11	13	14	19	7	7	12	14
Brisbane ITA	5	1	4	6	20	50	43	50	45	70	69
Melbourne ITA	n/a	4	0	1	25	132	122	80	68	117	95
Adelaide ITA	n/a	n/a	n/a	n/a	n/a	n/a	18	6	9	20	22
Port Augusta ITA	n/a	n/a	n/a	n/a	n/a	53	54	39	0	50	48
<b>Total in IRH and ITA</b>	<b>23</b>	<b>20</b>	<b>28</b>	<b>35</b>	<b>82</b>	<b>283</b>	<b>280</b>	<b>204</b>	<b>157</b>	<b>297</b>	<b>275</b>
Alternative Places of Detention <sup>414</sup>	16	36	13	242	321	1657	2109	1291	1745	2674	1997
Restricted on Board Vessels in Port	33	3	0	0	1	2	13	0	1	0	0
<b>Total in closed detention facilities</b>	<b>431</b>	<b>285</b>	<b>343</b>	<b>1545</b>	<b>2130</b>	<b>6059</b>	<b>6652</b>	<b>4409</b>	<b>4944</b>	<b>8449</b>	<b>5750</b>
<b>Community Detention</b>	<b>44</b>	<b>49</b>	<b>58</b>	<b>37</b>	<b>27</b>	<b>15</b>	<b>106</b>	<b>1324</b>	<b>1700</b>	<b>1716</b>	<b>2202</b>
<b>Total in immigration detention</b>	<b>475</b>	<b>334</b>	<b>401</b>	<b>1581</b>	<b>2157</b>	<b>6074</b>	<b>6758</b>	<b>5733</b>	<b>6644</b>	<b>10165</b>	<b>7952</b>

<sup>412</sup> This table is drawn from regular immigration detention statistics published by the Department of Immigration and Citizenship on its website. The most recent statistics can be viewed at <http://www.immi.gov.au/managing-australias-borders/detention/facilities/statistics/>. 'n/a' denotes that the facility was not operational in the reference period.

<sup>413</sup> Pontville IDC was closed in March 2012 and reopened as an Alternative Place of Detention in December 2012.

<sup>414</sup> Includes detention in the community in private houses, correctional facilities, watch houses, hotels, apartments, foster care, and hospitals accompanied by a person designated under the Act, on Christmas Island, Cocos-Keeling Island, and the mainland.

## ATTACHMENT 5—SELF-HARM DATA

**Table 1: Reported incidence of self-harm in detention facilities (excluding community detention) January 2011 – February 2013<sup>415</sup>**

	Self-harm – Actual	Self-harm – Threatened	Self-harm – Attempted Serious	Total
January 2011	47	41	0	88
February 2011	35	37	3	75
March 2011	41	68	4	113
April 2011	63	128	26	217
May 2011	36	107	15	158
June 2011	92	186	18	296
July 2011	106	194	18	318
August 2011	153	264	27	444
September 2011	121	243	15	379
October 2011	101	175	10	286
November 2011	75	199	17	291
December 2011	40	96	7	143
January 2012	66	131	20	217
February 2012	79	141	18	238
March 2012	44	131	19	194
April 2012	23	84	13	120
May 2012	21	51	26	98
June 2012	10	42	13	65
July 2012	9	37	6	52
August 2012	7	38	1	46
September 2012	14	45	0	59
October 2012	24	56	4	84
November 2012	18	80	4	102
December 2012	21	59	6	86
January 2013	18	49	5	74
February 2013	13	55	2	70

<sup>415</sup> January 2011 to December 2012 data provided by the department, dated 7 March 2013. January 2013 and February 2013 data as reported in the department's *Monthly Self-harm Snapshot* for each respective month.

**Table 2: Reported rate of self-harm/1000 detainees (excluding community detention)  
January 2011 – February 2013<sup>416</sup>**

	<b>Average detainee population</b>	<b>Self-harm – Actual</b>	<b>Rate/1000</b>
January 2011	5856	47	8
February 2011	6415	35	5.5
March 2011	6229	41	6.6
April 2011	6105	63	10.3
May 2011	6155	36	5.9
June 2011	5482	92	16.8
July 2011	4732	106	22.4
August 2011	4772	153	32
September 2011	4655	121	26
October 2011	4141	101	24.4
November 2011	4024	75	18.6
December 2011	4605	40	8.7
January 2012	4708	66	14
February 2012	4788	79	16.5
March 2012	4771	44	9.2
April 2012	4063	23	5.7
May 2012	4405	21	4.8
June 2012	5178	10	1.9
July 2012	5904	9	1.5
August 2012	6870	7	1.0
September 2012	7644	14	1.8
October 2012	7570	24	3.2
November 2012	8230	18	2.2
December 2012	7322	21	3.2
January 2013	6537	18	2.8
February 2013	5719	13	2.3

<sup>416</sup> Average detainee population data for January 2011 to October 2012 provided by department at 27 November 2012. Average detainee population data from November 2012 to February 2013 as reported in the department's *Monthly Self-Harm Snapshot*. Actual self-harm incident data for January 2011 to December 2012 provided by the department, dated 7 March 2013. Actual self-harm incident data for January 2013 and February 2013 data as reported in the department's *Monthly Self-harm Snapshot* for each respective month.

## ATTACHMENT 6—LOCATION AND CAPACITY – IMMIGRATION DETENTION FACILITIES <sup>417</sup>

Immigration detention facility	Regular operational capacity (persons)	Contingency capacity (persons)
<i>Mainland</i>		
<b>New South Wales</b>		
Villawood IDC	379	480
Sydney IRH	24	48
<b>Victoria</b>		
Maribyrnong IDC	56	99
Melbourne ITA	130	144
<b>Western Australia</b>		
Perth IDC	27	42
Perth IRH	11	16
Curtin IDC	1200	1500
Leonora APOD	210	210
Yongah Hill IDC	600	600
<b>Northern Territory</b>		
Wickham Point	1500	1500
Northern IDC	456	554
Berrimah House APOD	16	16
Darwin Airport Lodge APOD	435	435
<b>Tasmania</b>		
Pontville APOD	400	400
<b>Queensland</b>		
Brisbane ITA	40	74
Scherger IDC	300	600
<b>South Australia</b>		
Adelaide ITA	13	25
Port Augusta IRH	58	64
Inverbrackie APOD	380	472
<i>Offshore</i>		
<b>Christmas Island</b>		
Christmas Island IDC	400	850
Lilac APOD	150	200
Aqua APOD	200	400
Construction Camp APOD	200	310
Phosphate Hill APOD	144	318

<sup>417</sup> Department of Immigration and Citizenship, *Accommodation capacity at immigration detention facilities as at 6 February 2013, op cit.*

## **ATTACHMENT 7—CASE STUDIES**

### **Case study 1 – Mr A**

Mr A was detained for 22 months before being granted a protection visa. At his induction health assessment, IHMS recorded that he had a pre-existing psychiatric/nervous disorder and a history of attempted suicide.

There is no evidence in Mr A's medical records that indicate that the pre-existing conditions he disclosed at his induction were followed up for further assessment. This discontinuity of information diminished the opportunity for therapeutic relationships to be developed between Mr A's detention placements. Mr A was transferred within the detention network twice in a three month period for operational reasons relating to hospital admissions. After both transfers he had induction health assessments, neither of which made reference to any previous assessments.

Mr A was told he did not meet the criteria for refugee status after being in detention for seven months. At this time Mr A self-harmed by cutting himself, followed a couple of days later by an attempt to hang himself. Mr A was on Psychological Support Program monitoring at the time. Mr A was provided with extensive psychiatric treatment and support after he self-harmed in September 2010.

Mr A's case highlights how pre-existing mental health conditions and prolonged uncertainty can affect a person's mental health. A Standard Health Event record dated 25 October 2010 indicated Mr A was questioned about his reasons for self-harming. He advised that it was because of his negative outcome, the fact that some of his family members were killed and his concern that he would not be able to bring his remaining family to Australia. He also explained that he felt heat in his head and thought that cutting himself would release some of that heat.

Mr A self-harmed on other occasions. A Standard Health Event record dated 22 December 2010 indicated that when questioned about his actions, Mr A explained that he had self-harmed to 'relieve tension'. He stated that he had not been in control and that it had 'just come over me'. He advised that he felt worse as there had been no progress in his review process, that he had been sick with a chest-infection and that he had been upset because he thought he would not be given medication.

### **Case study 2 – Mr B**

Mr B is 24 years old and arrived in Australia in April 2010 claiming to be stateless. He was detained at North West Point Immigration Detention Centre (IDC) on Christmas Island before being transferred to a mainland IDC in March 2011, and then to the Immigration Transit Accommodation (ITA) in March 2012. The minister approved a community detention placement for Mr B in July 2012, and he currently resides in community detention.

Mr B's Refugee Status Assessment found him not to be owed protection on 2 August 2010, affirmed by an Independent Merits Review in February 2011. Mr B requested a judicial review on 29 April 2011. On 31 October 2012, the Federal Magistrates Court set aside the department's decision allowing Mr B to seek a further merits review. Mr B is currently awaiting a merits review interview to be scheduled. As at 31 December 2012 Mr B had been in detention for 1004 days.

Mr B's case highlights how prolonged uncertainty can affect a person's mental health. In Mr B's first year in detention he had very little contact with IHMS, but his records show that

he had a history of presenting to Serco with anxiety during that time. He was transferred from Christmas Island to the mainland IDC after 11 months in detention and from that point he had regular consultations with IHMS, particularly in relation to his mental health issues.

Appointment records show that Mr B had at least 143 consultations over a nine-month period. His medical condition was described as 'extreme stress reaction to prolonged detention and the associated uncertainties in his life'. His medical report reiterates statements of 'ongoing themes of frustration, depression, anger and hopelessness due to his protracted detention' in numerous psychologist and psychiatrist consultations with IHMS and Foundation House.

At the point of being in closed detention facilities for 15 months Mr B was diagnosed with an anxiety disorder and referred to a specialist. He had several Accident & Emergency admissions because of his panic attacks and self-harm incidents, which included cutting his throat. He remains on a regular dose of anti-depressant medication. In June 2011 Mr B disclosed a history of torture and trauma and was referred to a Forum of Australian Services for Survivors of Torture and Trauma (FASSTT) service for counselling. As part of the Mental State Examination conducted by an IHMS mental health nurse in September 2011, under the heading *Trauma/Torture (Past and present)* it is recorded that Mr B 'Reports to have suffered T and T in his home country but states it was nothing compared to the T and T he has experienced in Detention'. While there were efforts to respond to Mr B's incidents of self-harm, there is no evidence of a treatment plan being implemented.

Mr B has been receiving regular care from a community based psychiatrist while in community detention. Mr B is also attending regular appointments with his GP for monitoring of his mental state and provision of medications.

### **Case study 3 – Mr C**

Mr C was 29 when he arrived on Christmas Island on 1 September 2010. He was in immigration detention for 449 days, and was detained at North West Point IDC on Christmas Island for this entire period.

Mr C had a Refugee Status Assessment interview on 4 October 2010, and on 25 November 2010 he was found not to be a refugee. He was notified of this outcome on 7 December 2010. Mr C requested an Independent Merits Review (IMR) on 17 December 2010, a process which took almost ten months to finalise. On 24 September 2011 he was found to be a refugee. Mr C's mandatory visa checks were finalised on 20 October 2011, he was granted a protection visa and released from detention on 24 November 2011. Mr C is now living in the community.

At his initial Mental State Examination conducted on 17 September 2010, it is recorded that Mr C left his country because his life was in danger. Mr C disclosed that his girlfriend had committed suicide and the impact that had on his wellbeing. Reference is made in his IHMS medical record that he was still grieving for his girlfriend.

After eight months in detention, between 20 and 25 May 2011, Mr C made several threats of self-harm to his case manager and IHMS, including producing a bag of laundry detergent powder which he said he would swallow because he was frustrated with the length of time he was in detention and concern for his family. Mr C said he believed that by doing this he would draw attention to what he felt was Australia's failure in regard to human rights.

The departmental case manager alerted Serco and IHMS and Mr C was consequently placed on the Psychological Support Program (PSP). This first placement, from 25 May to



21 June 2011, involved different levels of monitoring – Constant, Moderate and Ongoing – and regular reviews by the IHMS mental health team and observation by Serco officers.

While placed on PSP, Mr C mostly refused to engage with the Mental Health Team (MHT) who attempted to conduct PSP reviews. Mr C continued to threaten self-harm numerous times and despite being under ongoing observations, on 8 June he used a cardboard box to set himself alight. The IHMS case note documents Mr C's explanation for his self-harm as 'he felt tired and had enough. Has been in IDC for 10 months, has been given one rejection – awaiting IMR. Says that DIAC and lawyers "play with me like a toy". States there is no difference between the systems in country A and Australia ... client despondent about the future.' Mr C had superficial partial thickness burns on left forearm and left foot but refused medical treatment.

In the IHMS PSP review case notes, Mr C was often described as being angry and frustrated with the length of time he had been in detention and frustrated with the immigration system. The PSP placement forms indicate that Mr C denied self-harm ideation or intent but he remained on ongoing levels of observation due to his unwillingness to engage with the MHT.

After setting himself alight, Mr C's PSP observations were upgraded from ongoing to constant. The next day Mr C complained about Serco watching him constantly, and a mental health nurse explained the reason to him, to which he responded that being observed all the time will not stop him from self-harming. At this time, the MHT Leader recorded during a PSP review that Mr C was suffering an 'adjustment disorder with depressive symptoms in the context of prolonged detention. Ongoing risk of deterioration in mental state due to prolonged detention.'

On 20 June 2011, still on PSP (constant) observations, Mr C tried to use a broken mirror to self-harm but a Serco officer was able to intervene. A department Incident Report indicates that Mr C then produced a razor from his pocket and threatened to self-harm and Serco officers continued to try and engage with Mr C, including a welfare officer, and Mr C 'demanded that an Officer not follow him around continuously'. Mr C was reviewed by a mental health nurse twice on this day at Serco's request. A Standard Health Event dated the same day indicates that Mr C was treated for a self-inflicted head injury, but there was no record of this in any incident reports.

The next day Mr C requested to see the MHT urgently and advised that he had decided to return to his country. At the time Mr C was being held in the visits area, and the MHT leader intervened with Serco to request Mr C be returned to his usual compound as being in the visits area was increasing Mr C's stress. Mr C was removed from PSP at the same time. It was unclear from records viewed whether this was a reflection of Mr C's changed placement, or whether there was a clinical rationale for Mr C being removed from PSP.

Mr C's IHMS medical record indicates that from this point he engaged regularly with the MHT, who provided supportive counselling, referred him for torture and trauma counselling and to see the next visiting psychiatrist. Mr C was also treated for anxiety relating to his pending IMR interview and financial problems in his home country.

A case note for 5 August 2011 indicates that the MHT reviewed Mr C, noting that he was exhausted from his IMR interview the previous day which had taken eight hours. Mr C admitted to thoughts of self-harm but said he was in control and it was noted that financial worries were plaguing Mr C and that he was still grieving his girlfriend's death.

Mr C had been in closed immigration detention on Christmas Island for almost 12 months when on 31 August 2011 he was observed by a Serco officer attempting to self-harm by covering himself in a blanket and trying to set the blanket alight. Mr C was escorted by Serco

officers to his room. He refused to engage with Serco officers and went into his shower closing the bathroom door.

The Serco officer documented that he advised Mr C that he had to leave the bathroom door open. Mr C refused and reportedly pushed the Serco officer 'for no good reason'. The Serco officer called a 'code black' and Mr C was removed from his room by the Serco emergency response team. He was described as being aggressive and obstructive and had to be restrained by Serco staff using an 'arm lock technique' before being transferred to the behaviour wing of the support unit. An Arrival and Discharge Form indicates that Mr C was involuntarily transferred to 'more restrictive detention' for 'assault of an officer'.

The Serco record and an IHMS Incident Report indicates that Mr C was taken to the clinic about 30 minutes after being admitted to the support unit, as he started coughing up blood. IHMS recorded on the IHMS Incident Report that 'nil treatment required' and he was returned to the behavioural wing in the support unit. Despite the attempted self-harm incidents, Mr C's PSP status was recorded as 'nil'. However, Serco records indicate that Mr C was being observed by Serco officers every half hour, with officers looking through the window of his cell and recording what Mr C was doing at the time. About two and half hours after returning from the clinic another self-harm attempt was recorded – 'attempting to choke himself with bed sheet due to aggressive and threatening behaviour from another client'. It is unclear from available records how the contact with another detainee transpired.

A Serco officer sought and gained permission to transfer Mr C from the behaviour wing to the mental health wing of the support unit. IHMS records indicate that Mr C was placed on PSP (Moderate) after a second consultation with the MHT on the second day of being in the mental health wing of the support unit, after he told medical personnel that he was 'going to poke my eyes out'. Just over half an hour later, while on PSP (Moderate), Mr C was seen by Serco staff trying to choke himself with his bed sheet.

Serco advised Mr C, on his third day in the support unit, that due to concerns about his inconsistent behaviour he was going to be transferred to the visits area. Serco's decision to send Mr C back to the visits area does not seem to have taken into account his previous experience in the visits area. Mr C is recorded as becoming angry and agitated about this. Mr C hit a Serco officer, causing him to be held down and have his sheets removed. A decision was made to take Mr C back to the behaviour wing of the Management Support Unit. In the next three to four hours Mr C self-harmed a number of times by banging his head against the wall and eating soap. IHMS saw Mr C after Serco called a 'code blue' because Mr C began coughing up blood and sputum, and records indicate that he continued to be reviewed on PSP (Moderate).

Serco recorded that Mr C was transferred back to his usual compound due to 'DIAC decision to end his stay in support unit'. The records provided to this office by the department did not contain any information about why this decision was taken.

Mr C was removed from PSP a week after being transferred back to his usual compound. IHMS medical records indicate that Mr C continued to engage with the MHT and he appears to have started medication for treatment of anxiety.

Establishing what happened to Mr C while he was in immigration detention involved looking at records from the department, Serco and IHMS, which comprised hundreds of pages. It was not possible to look at one complete record for Mr C and confidently know or understand his experiences while he was in immigration detention. While it is understandable that each service provider has a different role and responsibilities in relation to the care and service provided to a detainee, the siloed records for each provider raises

the question of how a detainee's health and welfare can be well managed when information is not recorded in one place.

Where there are records that show there was sharing of information between service providers in order to make informed decisions, it is easier to identify how the detainee's care was managed. However, where there is no record, or there are inconsistent records, it is difficult to establish what has transpired or the reasons for a decision. In the case of Mr C's records, details provided in the different records vary significantly, particularly in relation to Mr C's placement in the support unit and the incidents of self-harm that occurred.

#### **Case study 4 – Mr D**

Mr D arrived in Australia in February 2010. He was transferred twice, and detained at three different detention facilities within his first seven months in detention, for operational reasons.

Due to a complex investigation to confirm his identity, Mr D did not receive a decision notifying him that he was not owed protection until March 2011. Mr D sought an Independent Merits Review (IMR) but in November 2011 was again found not to be owed protection. Following the High Court's November 2010 decision in *M61*, Mr D was offered a second IMR, which found that Mr D was not owed protection in July 2012.

Mr D's case highlights how prolonged uncertainty can affect a person's mental health. Mr D disclosed a history of torture and trauma at his initial Mental State Examination (MSE) in February 2010 and received supportive counselling in July 2010. In August 2010 Mr D saw a psychologist because he witnessed an incident of self-harm by another detainee. In December 2010, after he had been in detention for ten months, Mr D told the GP that he was feeling anxious and stressed about the outcome of his visa application and his anti-depressant medication was increased. He also advised that he would 'hunger strike until death' due to his frustration with the delay. Mr D threatened self-harm on two further occasions in January and March 2011.

Another MSE was conducted in April 2011 and no mental health illness was identified. On the same day he was placed on Psychological Support Program (PSP) (High Imminent) monitoring after expressing suicidal thoughts after being notified of his negative Refugee Status Assessment. PSP monitoring was downgraded to PSP (Ongoing) as the client denied self-harm and subsequently, after a follow up review, PSP was ceased.

Mr D's statements to us highlight his own anxiety around the resolution of his immigration status. When we interviewed Mr D in December 2011, he complained that it took the department 14 months [the department has clarified that it was 13 months] to make its primary decision and then a further six months before he received the review decision. Mr D advised Ombudsman staff that he was taking anti-depressant medication and sleeping tablets as he had trouble sleeping. He advised that life in detention was very dark and he was worried about dying in detention. Mr D wanted to be granted a bridging visa or community detention as he has a friend in the community who can support him.

Mr D was placed on PSP (Ongoing) in April 2012 following a review with the IHMS Mental Health Nurse, when he expressed depressive symptoms and frustration and anger with the detention process. Mr D engaged in voluntary starvation from 3 to 5 April.

On 4 May 2012 Mr D self-harmed, banging his head against a steel bench, and was placed on PSP (High Imminent) which was changed to PSP (Moderate) the following day after he agreed to not self-harm. Mr D was reduced to PSP (Ongoing) the day after, when he reported feeling much better within himself. Mr D was reviewed by a psychiatrist on

15 May 2012 who assessed that Mr D was suffering from grief and personality disorder. He was removed from PSP on 16 May 2012.

According to an IHMS report, dated 29 August 2012, Mr D has attended regular supportive counselling for his depression and insomnia throughout his period in immigration detention facilities. He has numerous issues such as frustration and anger relating to his lengthy stay in detention, grievance after his son died in an accident in December 2011, and delirium that was found to be related to his anti-depressants. These medications were ceased on 18 April 2012.

Mr D was transferred from restrictive detention to community detention on 6 June 2012 and he has been referred for removal action. Since being in community detention Mr D has not requested or required any ongoing psychological counselling, and has not remained on any medication for depression or insomnia.

### **Case study 5 – Mr E**

Mr E arrived in Australia with his wife and their young child in July 2009. The family was initially detained in an Alternative Place of Detention and then in community detention on Christmas Island. In June 2010 the residence determination was revoked and the family was relocated to Immigration Residential Housing (IRH).

Mr E was found to be owed protection in October 2009 but received an adverse security assessment in February 2011 and was transferred into a mainland detention facility. Also in February 2011, Mr E's wife and child were granted protection visas and released from immigration detention. Consequently Mr E was separated from his family, who now live in the community in the same state as Mr E.

While Mr E has been offered transfers to Immigration Residential Housing he has declined these offers and remains in a detention facility. The department continues to explore third country resettlement for Mr E and his family but advised the minister in its brief of September 2011 that the department 'considers ... the process for exploring third country resettlement will be protracted and is unable to ascertain whether it will result in any successful resettlements'. A subsequent departmental ministerial briefing of July 2012 further stated that 'it is recognised that we should not have high expectations that countries would be willing to accept refugees who have been determined by Australian authorities to have adverse security assessments.'

Mr E was approved for weekly special purpose visits to his family's home and since May 2012 these visits have taken place every Saturday for a period of four hours.

Mr E's mental health has deteriorated significantly while in closed detention, reflecting the impact of his dislocation from family and the breakdown of his family relationships. Mr E continues to engage, on an ongoing basis, with the Mental Health Team (MHT) at the IDC and has been identified with symptoms consistent with post-traumatic stress disorder, anxiety and depression. In interviews with Ombudsman staff, Mr E has reported that no-one can support him, not even God, and that all he wants is for his family to be together. He has advised that he does not participate in activities but loiters around the camp or sits around crying and weeping. Mr E told Ombudsman staff that he is unhealthy in every way and that he cannot have a healthy life away from his child. He advised that he is always worrying about his child, and has particular concerns about his child's developmental delay.

IHMS reports of 16 January 2012 and 26 June 2012 state that Mr E's anxiety and depressed mood would likely 'improve if he were reunited with his wife and [child].' IHMS recommended a community placement to assist in his management.

Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS) mental health professionals' reports outline the detrimental impact of Mr E's detention on the wellbeing of the family and indicate that the mental health of Mr E's wife and child has also deteriorated since their forced separation.

### **Case study 6 – Mr F**

Mr F is in his early 20s. He arrived in Australia as an Irregular Maritime Arrival in November 2009. Mr F was detained at North West Point Immigration Detention Centre (IDC) on Christmas Island for almost five months before being transferred to a mainland IDC in March 2010.

In March 2010 the Refugee Status Assessment (RSA) found Mr F was not owed protection. Mr F sought an Independent Merits Review (IMR) and in June 2010 was found to be owed protection. In mid-January 2010 a security check through ASIO had been requested, but this was cancelled after the negative RSA outcome. The security check with ASIO was reinstated after the positive IMR decision. It took approximately 18 months for his security clearance to be processed.

Mr F complained to the Australian Human Rights Commission (AHRC) about the delay and the department explained to the AHRC that Mr F's 'continued detention is appropriate as his identity has not been established and he has not been national security cleared.' The department explained further that they were not in a position to influence timeframes for the completion of a security assessment but they maintain regular liaison with ASIO and they have the capacity to escalate individual cases of concern for priority assessment.

Mr F's records show that he had regular contact with his departmental case manager, who was actively involved in following up Mr F's concerns about his immigration status, during this period. The department's case record notes indicate that Mr F's departmental case manager had difficulty in obtaining medical records to support attempts to escalate Mr F's case for resolution. The case manager was advised by Detention Health that they do not provide health reports to case management. This lack of sharing of information caused further delays in what was already a protracted process.

Mr F's IHMS medical record documents extensive contact with the detention health services during his time in detention. Mr F reported a history of torture and trauma at a Mental State Examination conducted by IHMS on the day he arrived. He claimed he was forced to leave because he feared for his life after being subjected to several torture and trauma experiences related to suspicion that he was involved in adverse activities related to the militia.

On his journey to Australia the vessel Mr F travelled on sank, and 12 of his fellow passengers drowned. The Induction Health Assessment conducted on the day Mr F arrived in Australia notes that he was 'aboard boat which sank'. Various subsequent reports state that Mr F reported post traumatic symptoms including regular repetitive nightmares and flashbacks relating to the drowning experience of the many people whom he travelled with by boat to Australia.

Mr F was referred to a Forum of Australian Services for Survivors of Torture and Trauma (FASSTT) service and records indicate that during his time in detention he attended two torture and trauma counselling sessions and one group session.

Mr F had a history of self-harm incidents while in detention. This included cigarette burns, punching himself in the face, slashing his wrists and torso with a razor on more than one

occasion, and attempted suicide by trying to hang himself using the cord from his tracksuit pants. Mr F was placed on the Psychological Support Program (PSP) on numerous occasions and had regular consultations with the IHMS psychologist.

While on PSP in June 2011, and on the same day he was stepped down from PSP (High Imminent) to PSP (Moderate), Mr F was involved in an incident which resulted in him being transferred by Serco to a small fenced-in compound used to separate individuals from the general detainee population. Serco's records indicate that this transfer was 'due to inappropriate and aggressive behaviour ... (and) alleged assaults to Serco officers on duty at the time. Mr F had to be restrained by officers'. Serco consequently placed Mr F on a Behaviour Management Plan (BMP) with the purpose 'To provide Mr F with appropriate support and behaviour counselling to modify his approach to staff and his life within the Centre'. On 1 July 2011 Mr F signed a Behavioural Contract.

It is not clear whether IHMS was aware of his BMP and therefore how it related to his PSP monitoring. During this period, while on PSP and a BMP, Mr F self-harmed again.

Mr F's medical records indicate that the possible triggers for his self-harming were:

- frustration with the length of time in detention and the lack of clarity of timelines for the immigration process – when a psychologist in December 2010 tried to discuss other options available instead of self-harming, Mr F said 'That is the way I can protest and I have no other options here.'
- anxiety and concern for his wife and mother who he had left behind – these worries about his family were the subject of many consultations with the IHMS psychologist, for which Mr F appeared to be receiving ongoing support. In a psychologist's consultation record in January 2011, Mr F is reported to have been very emotional and presented in a very low mood because his wife was under army custody.

Staff at the IDC – from the department, IHMS and Serco – all noted the deterioration in Mr F's mental health linked with the time spent in detention. The IHMS psychologist documented that while in detention Mr F experienced nightmares with chronic insomnia, flashbacks, excessive levels of anxiety, depressed mood, suicidal ideation, social avoidance, reduced appetite and low motivation. The psychologist concluded that 'despite a high level of intervention, Mr F has been observed to display a significant deterioration in his mental health and wellbeing, mainly attributed to his current living arrangement.'

Mr F was granted a protection visa on 27 July 2011 and released the same day. He had been in immigration detention facilities for 628 days.

### **Case study 7 – Ms E**

Ms E is aged in her 20s and arrived on a boat in February 2010 with a relative. She was detained at an Alternative Place of Detention (APOD) on Christmas Island for approximately six months before being transferred to a mainland APOD placement.

An Independent Merits Review (IMR) in December 2010 found Ms E to be owed protection, and she was notified in mid-January 2011. However, as she was awaiting the outcome of an ASIO security assessment, she remained in detention.

In June 2011, the minister intervened in Ms E's case under s 197AB of the Act, agreeing that she should be placed in community detention. In accordance with policy, a security check was conducted prior to Ms E's release into community detention. Ms E was granted a bridging visa on 26 July 2012, again after the requisite security check. According to the

department's two-year review of Ms E's case, in March 2012, the ASIO security assessment – for the purposes of a permanent protection visa grant – remained outstanding. In March 2013 the department advised that Ms E was still waiting for her security assessment to be finalised.

Ms E disclosed previous torture and trauma during a Mental State Examination in September 2010, which was followed up by psychologists and the IHMS Mental Health Team (MHT) with regular supportive counselling and a referral to Forum of Australian Services for Survivors of Torture and Trauma (FASSTT). Ms E was assessed by a FASSTT service in October 2010 as 'Not at risk for self-harm or suicide but display[ing] symptoms of trauma'.

In February 2011, Ms E's family member approached a departmental case manager and advised them that Ms E had been self-harming. The records indicate that Ms E continued to self-harm after receiving the positive IMR decision and her family member had advised detention staff that Ms E had been making cuts on her wrists and had swallowed toilet cleaner on previous occasions. The IHMS medical record indicates that detention staff were not aware of the self-harm until her family member reported that they had been occurring.

Ms E's IHMS medical record shows that as a consequence of the information received from the family member, the MHT had a consultation with Ms E and developed a care plan which involved placing her on the Psychological Support Program (PSP) (High Imminent), PSP review, a PSP meeting, a referral to the psychologist for coping strategies, a referral to the GP for medical investigations, regular mental health follow up, and to continue torture and trauma input. The next day she was reviewed again by the MHT at the request of Serco, and the MHT have recorded that Ms E 'has manipulative destructive behaviour with some borderline personality traits', and part of their management plan was to refer Ms E to the psychologist for a second opinion.

The records indicate that Ms E started therapy with the psychologist the following day, and saw the psychologist for three consecutive days. During these therapy sessions the psychologist's notes show that an assessment was made of Ms E's suicidal ideation, taking into consideration her past history of self-harming, exploring her emotions and discussing coping strategies. The case notes indicate that the intervention was only short-term and the psychologist ceased therapy after consultation with the MHT and in agreement with Ms E on the understanding that the MHT would review her in a week's time.

The MHT conducted a review as planned, and at this review the services of the psychologist were offered but Ms E refused 'as she feels that it would not help'. Ms E was removed from PSP (Ongoing) observations at this time, although the records completed during the consultation that Ms E showed 'extremely severe depression, extremely severe anxiety, extremely severe stress'. The next case record, dated the following day, indicates that Ms E had self-harmed: 'she cut her rib last night because she is frustrated'.

Subsequent IHMS records indicate that Ms E's thoughts and acts of self-harm were due to her concerns that other detainees were spreading rumours about her and records indicate that IHMS recognised that Ms E was 'vulnerable to stressors in her environment'.

After recording an extremely high Depression, Anxiety and Stress Scales (DASS21) score, when Ms E was also experiencing poor sleep and ruminating thoughts, she was started on anti-depressant medication. Ms E talked with a mental health worker about the medication a month later and did not think it was helping, and it appears an alternative medication was prescribed for a short time, but Ms E chose to stop taking this too. Concern was noted by mental health staff that Ms E was isolating herself from other detainees, but Ms E did not see this as an issue.

Overall, the medical records provided to our office show that a cross-sectional level of care and intervention were provided to Ms E while she was in immigration detention. While treatment plans were specified on occasion, it appears that implementation was neither consistent nor congruent with the assessments made about Ms E's mental health condition.

An IHMS health summary report provided after Ms E was transferred to community detention indicates that it was 'unlikely that Ms E will need to access external specialist services on a regular basis', implying that there were no major issues of concern relating to either her physical or mental health. This statement appears out of step with the diagnosis of mental illness, Ms E's history of previous trauma and a previous suicide attempt, collectively major risk factors for ongoing mental health symptoms including eventual suicide.

IHMS have advised that Ms E has attended her allocated GP while in community detention. According to progress notes received, nil mental health issues were reported or observed during these consultations.

### **Case study 8 – Mr H**

Mr H is 31 years old and arrived in Australia in October 2009. He was detained at North West Point Immigration Detention Centre (IDC) on Christmas Island until late March 2011, when he was transferred to a mainland IDC until his release in December 2011. He was granted a protection visa after being in detention for a total of two years and 66 days.

Mr H was found to be owed protection in early December 2009, two months after his arrival, but remained in detention for more than two years, while awaiting an ASIO security assessment.

Mr H disclosed a past history of torture and trauma at a Mental State Examination in April 2011 and was offered torture and trauma counselling but he declined at the time. His departmental case manager, concerned that Mr H's mental health was deteriorating, referred him to the Mental Health Team (MHT) in mid-September 2011, however he refused to engage with the MHT clinician unless she could give him information regarding his security clearance. Mr H was offered relaxation groups and further counselling to cope with his detention. Mr H left the consultation stating that he saw 'no point in anything'. Mr H attempted to hang himself in October 2011. He immediately received medical treatment and was placed on the Psychological Support Program.

### **Case study 9 – Mr I**

Mr I is in his 20s and arrived in Australia in August 2010 and claimed in his entry interview that he was stateless. He was detained at North West Point Immigration Detention Centre (IDC) on Christmas Island until mid-January 2012, before being transferred to Immigration Transit Accommodation (ITA) for approximately three months. Mr I was transferred to a community detention placement in March 2012 where he continues to reside.

In September 2010, shortly after his arrival, Mr I was found not to be owed protection under the Refugee Status Assessment (RSA). This was affirmed by an Independent Merits Review (IMR) in August 2011. Mr I requested a judicial review in November 2011 and on 5 October 2012 the Federal Magistrates Court dismissed his application.

As Mr I was found not to be owed protection by the RSA, his security referral was cancelled on 30 September 2010. Since Mr I is to be considered for a permanent visa under s195A of the Act, he was identified as requiring a Public Interest Criteria 4002 security assessment, but the referral has not been made because Mr I is unable/unwilling to provide details of



himself and his family which will inform the referral. A submission under s 195A of the Act will be provided to the minister for his non-compellable, non-delegable consideration of grant of a permanent visa to Mr I, once his security assessment is completed.

Documentation shows that the longer Mr I was in closed detention his mental health deteriorated. During his Mental State Examination (MSE) review in April 2011 he was described as 'irritable and angry at times, portrays self as one of great suffering'. Mr I also 'expressed a feeling of hopelessness' about his pending IMR interview. Under the MSE Assessment category 'Content of Thought', the mental health nurse has recorded '*Themes of persecution, "What have I done?"*'.

After ten months in detention, Mr I self-harmed by slashing his left forearm with a razor blade. Health documentation about this incident indicates that Mr I self-harmed following the significant trigger of being told by his immigration officer (presumably his case manager) that his IMR result was through, and known by others, but not revealed to him. The report indicates Mr I was angry and agitated.

From this point Mr I had regular contact with IHMS. Mr I was placed on the Psychological Support Program (PSP) several times at varying levels of monitoring at North West Point IDC. At the ITA he was initially placed on the Keep SAFE Program and then on PSP.

In the seven and a half months following this initial self-harm, Mr I had approximately 130 consultations with IHMS staff and about one-third of these appointments were with mental health staff. During this period more than 15 incidents relating to self-harm were recorded, which included attempted self-harm by hanging, self-harming by banging his head against glass, cutting his arms with a razor, overdosing on medication, voluntary starvation, and threats of self-harm. Mr I was also a witness to numerous self-harm incidents during this period.

There are indications of Mr I's deepening despair and distress being met by more restrictive and custodial forms of detention. While on PSP at Christmas Island, Mr I was placed in the restrictive detention area known as the Support Unit several times – on one occasion at his own request – where monitoring is conducted by Serco officers. One psychologist's notes indicate that when they visited Mr I in the support unit they found him in a squatting position, and that 'It soon became evident he was/is experiencing a range of emotions, loss, frustration, isolation, confusion and aloneness in relation to his negative IMR status and life in general at this point...'

Since being transferred to community detention, Mr I has presented to his IHMS assigned community GP with depression and anxiety. He was referred to a psychologist for assessment and supportive counselling, who in turn recommended Mr I continues with supportive counselling and is referred to a psychiatrist for medication review, but Mr I declined. He continues to be provided with prescribed medication.

Mr I's case review records indicate that his case managers have been very supportive and highly active in pursuing an immigration outcome for him, liaising regularly with Serco, IHMS, his migration agent, and senior management within the department. A senior case manager advised IHMS that Mr I 'did not appear to be threatening to achieve an outcome but rather truly hopeless and despondent'.

Mr I's records show that he has expressed concern that as he is stateless and cannot return to his country, he is scared he is going 'to spend the rest of his life in detention.'

## Case study 10 – Mr J

Mr J is in his 30s and arrived in Australia in November 2009. He was detained in North West Point Immigration Detention Centre (IDC) on Christmas Island until late March 2010, at which time he was transferred to a mainland IDC.

On 17 February 2010, the Refugee Status Assessment (RSA) found that Mr J was not owed protection. This decision was upheld in his Independent Merits Review (IMR) on 20 August 2010. Mr J was offered a second IMR following the High Court ruling in *M61*. The second IMR found Mr J to be owed protection on 2 April 2011. Mr J was advised of the positive IMR outcome on 15 April 2011.

Mr J had received an initial security clearance from ASIO in February 2010, but this expired in February 2011. The department requested a second security check in April 2011 after Mr J was found to be owed protection. Mr J was assessed as not requiring a further security assessment on 27 May 2011 and advised of this outcome on 21 June 2011.

Despite Mr J being found to be owed protection and meeting identity and security checks, he remained in immigration detention for more than seven months because he was identified as a person of interest (POI) to the Australian Federal Police (AFP) following a large scale incident at the IDC.

When advised by his case manager on 21 June 2011 that he was security cleared, Mr J was also advised that he was still of interest to the AFP. The department advised our office in their 18-month report regarding Mr J in August 2011, that 'He will not be considered for referral while he continues to be a POI to the AFP, as the Minister has indicated his preference that these matters are resolved prior to the case being referred to him for his consideration of exercising his MI powers under s 46A of the Act'. The department report further stated that 'The department will seek to finalise Mr J's case when the AFP investigation is completed.'

The AFP invited Mr J to participate in an interview on 10 August 2011, but Mr J sought legal advice and declined to be interviewed.

The department advised our office in their 24-month report regarding Mr J in November 2011, that the AFP were investigating Mr J's alleged involvement in the IDC incident, and that the AFP had not decided whether they would pursue charges against him.

No charges were laid and Mr J was granted a protection visa on 1 February 2012.

Records indicate that Mr J engaged with mental health support services during his time in detention facilities. Following his initial Mental State Examination, on arrival in November 2009, Mr J was offered a Forum of Australian Services for Survivors of Torture and Trauma (FASSTT) referral but it was refused.

Mr J had his first consultation with the Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS) in May 2011 after being referred by the department to assess 'whether Mr J's presentation and symptoms were consistent with his stated experiences, and to assess the impact of being detained on his mental and emotional health'. The STARTTS psychotherapist advised that Mr J's 'description of his symptoms demonstrated features of anxiety and severe depression, and post-traumatic stress disorder' and that Mr J's symptoms were being exacerbated by the experience of being in detention.

Mr J participated in voluntary starvation from 17 to 30 September 2010. An IHMS nurse who reviewed Mr J during this period wrote that he was 'on voluntary hunger strike, protesting in relation to visa processing ... says depressed in context of immigration matters.'

While the department's 24-month report to the Ombudsman, dated 28 November 2011, also indicates that Mr J participated in a group voluntary starvation action from 17 to 21 November 2010 – after a fellow detainee had committed suicide on 16 November 2010 – there is no record in the IHMS medical record which was provided to our office of Mr J being seen by IHMS during this time.

Mr J's IHMS medical record shows that Mr J made a number of requests to see a psychologist and IHMS mental health did try to engage with Mr J, scheduling several appointments during his time in detention – but Mr J mostly did not attend.

In October 2011, Mr J saw an external psychotherapist after a recommendation from a friend in the community. Mr J told this external psychotherapist that he did not trust the psychological services in the IDC to help him, because after seeing them he feels worse. This psychotherapist's report, dated 31 October 2011, documented that Mr J 'suffers from panic attacks, night terrors, headaches and fainting turns. His symptoms are typical of post-traumatic stress disorder'. The psychotherapist's assessment also records: 'He says that no-one predicted the suicides by the other detainees in recent months, but that a strong impulse must have suddenly overcome them. He feels similar impulses when he thinks about his detention in [the IDC] ... He feels increasingly hopeless and increasingly vulnerable.' The external psychotherapist's report advised that Mr J is in 'urgent need of transfer out of detention'. This report and the STARTTS report were cited in a Special Health Needs Assessment for referral to community detention in December 2011.

Mr J was one of a number of detainees who had been found to be owed protection and was security cleared, but who remained in closed detention while he was a POI to the AFP, in accordance with the minister's direction at the time that he would not consider community detention for POIs. Mr J was granted a protection visa and released from detention on 1 February 2012, after being kept in immigration detention facilities for just over seven months without being charged with an offence.