



Australian Government
Department of Immigration and Citizenship

**Response to the Australian Human Rights Commission's 2009
Immigration Detention and Offshore Processing on Christmas Island
Report.**

Introduction

The Department of Immigration and Citizenship (DIAC) welcomes the opportunity to respond to the Australian Human Rights Commission (the Commission) report on *Immigration detention and offshore processing on Christmas Island* following its visit to Christmas Island in July 2009.

DIAC appreciates the Commission's recognition of recent positive reforms implemented on Christmas Island, but is of the view that the report could go further in recognising the improvements in processing and client care that have been implemented progressively over the past 12 months.

The report highlights areas where further changes are proposed and work is already being advanced in some of these areas. For example, improvements have been made in relation to client access to health and other services, including specialised support for children, as well as measures to streamline processing and reduce the length of time that clients are in detention. As noted below, the Commission's recommendations will be considered by DIAC in progressing a number of other issues.

On 29 July 2008, the Minister for Immigration and Citizenship Senator Chris Evans, announced a suite of reforms to Australia's immigration detention policy based on seven Key Immigration Detention Values.

The Key Immigration Detention Values reinforce that mandatory detention is an essential component of strong border control and an integral part of ensuring the integrity of Australia's migration program.

Under the Government's New Directions in Detention policy, irregular maritime arrivals (IMAs) will continue to be mandatorily detained and processed on Christmas Island.

When announcing New Directions in Detention on 29 July 2008, the Minister for Immigration and Citizenship emphasised that the values were intended to maintain strong border security, but also treat people with human dignity.

The Minister made clear that the values would apply on Christmas Island to the full extent possible within the government's excision and non-statutory refugee status processing arrangements, and given the accommodation and other services that are able to be provided on the island.

The Migration Amendment (Immigration Detention Reform) Bill 2009 (the 'Detention Reform Bill'), which was introduced into Parliament on 25 June 2009, will further improve Australia's system of immigration detention. The

Bill proposes to amend the Migration Act 1958 (the 'Act') to support the implementation of the Government's Key Immigration Detention Values and will ensure increased clarity, fairness and consistency in responding to unlawful non-citizens.

Outlined below is an overview of DIAC's progress to date in implementing the Key Immigration Detention Values on Christmas Island, and DIAC's response to the recommendations of the Commission's report.

Key improvements in improving processing and detention services on Christmas Island

Some of the key improvements to services on Christmas Island have been:

- **Prioritisation and care of minors and vulnerable clients:**
 - The welfare of children remains a primary consideration. In accordance with the Government's Key Immigration Detention Values, minors are never accommodated in the Christmas Island Immigration Detention Centre (CIIDC);
 - Children and their accompanying family members are prioritised for both Refugee Status Assessment (RSA) processing and community detention placements;
 - In the case of unaccompanied minors on Christmas Island, DIAC engages with professional foster care service providers to care for these minors in the community. Unaccompanied minors attend school and their care arrangements are the subject of review by the Commonwealth Ombudsman's Office and the Australian Human Rights Commission. Australian Red Cross and volunteers from community groups also visit these young people regularly.
 - Those who require specialised physical or mental health care are transported to the mainland to access the required service, if it is unavailable on Christmas Island.
- **Client amenities and case management of clients:**
 - Further works are planned over the coming months at the CIIDC, Construction Camp and Phosphate Hill, to improve amenities for clients;
 - Case management on Christmas Island is focused on ensuring that cases are processed as quickly as possible and that individual clients are supported and informed through Case Management or external service providers as they proceed through the RSA process.
- **Health care arrangements and support.** A suite of health services are provided to people on Christmas Island, including:
 - Health care services commensurate to those available to the broader Australian community including early intervention, routine health care, emergency management of injuries/illnesses and counselling services. A triage system is used to prioritise services provided to clients, and where clinically indicated, clients may be

- Mental health and torture and trauma diagnostic screening for clients on arrival with ongoing assessments offered as part of ongoing care;
- Torture and trauma counselling services for people in immigration detention; and
- Mental health trained professionals on staff to service all clients (including those in community detention) with general mental health issues.
- Cross agency cooperation:
 - Refined whole of government IMA processes and information sharing has removed duplication in processes and the number and length of interviews, which has helped to minimise the period of time clients spend in immigration detention;
- Streamlined irregular maritime arrival (IMA) processing arrangements
 - Improvements to processing, including health, identity, security and refugee status assessment (RSA) processes, are minimising the amount of time IMA clients spend in immigration detention. Even with increases in the number of people being processed on the Island, DIAC is in practice deciding the vast majority of asylum claims on Christmas Island in around 100 days.
- Publicly funded migration assistance for asylum seekers:
 - All asylum seekers on Christmas Island are offered independent, professional migration assistance to help to prepare and present their case. The service continues to provide assistance during any independent merits review in the event of an unfavourable decision, when independent merits review is pursued by the client.
- Building stronger ties with the Christmas Island community:
 - DIAC is conducting regular monthly consultation forums with the local community where open and frank discussions are able to take place; and
 - A departmentally funded, locally based community liaison officer is to be engaged by the Shire to act as a conduit between DIAC and the local community and help bridge any gaps that may currently exist.

Recommendation 1: The Australian Government should repeal the provisions of the Migration Act relating to excised offshore places.

The retention of the excision of offshore islands, the mandatory immigration detention of all irregular arrivals for the management of health, identity and security risks to the community and the continued use of Christmas Island for the non-statutory RSA processing of people who arrive at excised offshore places are matters of Government policy. The Government is committed to these policies as essential components of strong border control and important elements in ensuring the integrity of Australia's immigration program.

The Government has no intention to repeal or amend the provisions of the Migration Act relating to excised offshore places or offshore entry persons.

Recommendation 2: The Australian Government should abandon the policy of processing some asylum claims through a non-statutory refugee status assessment process. All unauthorised arrivals that make claims for asylum should have those claims assessed through the refugee status determination system that applies under the Migration Act.

The retention of the excision of offshore islands, the mandatory immigration detention of all irregular arrivals for the management of health, identity and security risks to the community and the continued use of Christmas Island for the non-statutory RSA processing of people who arrive at excised offshore places are matters of Government policy. The Government is committed to these policies as essential components of strong border control and important elements in ensuring the integrity of Australia's immigration program.

A number of changes have been made to the non-statutory RSA processing regime on Christmas Island as part of the New Directions in Detention reforms. These changes have improved the transparency and accountability of the RSA process. As part of these reforms, asylum seekers receive publicly funded advice and assistance, access to independent review of unfavourable decisions, and external scrutiny by the Immigration Ombudsman. These measures build on strengthened procedural guidance for departmental decision makers.

Publicly funded advice and assistance for asylum seekers is being provided on Christmas Island under the existing contract arrangements between the Australian Government and agencies employing professional migration agents under the Immigration Advice and Assistance Scheme (IAAAS). This independent advice and assistance is of the same quality as that which is afforded to protection visa applicants onshore. In terms of quality of advice provided, there is no disadvantage to asylum seekers on Christmas Island when compared to Protection visa applicants on the mainland.

The draft policy guidelines governing RSA processes and the draft guidelines under which the Independent Reviewers operate were circulated for consultation on 11 September 2009 to the Commission, as well as UNHCR, the Commonwealth Ombudsman and members of the Onshore Protection

Consultative Group (OPCG). Some responses remain outstanding but DIAC's aim is to finalise and publish the guidelines following the next meeting of the OPCG in early November.

In respect of the specific concerns expressed by the Commission regarding the non-statutory RSA process, DIAC would note, firstly, that DIAC is in practice deciding the vast majority of asylum claims on Christmas Island in around 100 days. Furthermore, there has been no single instance where the Minister has not accepted a recommendation of either the departmental decision-maker or the Independent Reviewers.

The Government is satisfied that the non-statutory RSA process is consistent with Australia's international obligations under the Refugees Convention and provides procedural fairness for asylum seekers.

Recommendation 3: The Australian Government should stop using Christmas Island as a place in which to hold people in immigration detention.

The retention of the excision of offshore islands, the mandatory immigration detention of all irregular arrivals for the management of health, identity and security risks to the community and the continued use of Christmas Island for the non-statutory RSA processing of people who arrive at excised offshore places are matters of Government policy. The Government is committed to these policies as essential components of strong border control and important elements in ensuring the integrity of Australia's immigration program.

Recommendation 4: If the Australian Government intends to continue using Christmas Island for immigration detention purposes, it should abolish the policy of mandatorily detaining all unauthorised boat arrivals on the island. The Migration Act does not require detention in excised offshore places.

The retention of the excision of offshore islands, the mandatory immigration detention of all irregular arrivals for the management of health, identity and security risks to the community and the continued use of Christmas Island for the non-statutory RSA processing of people who arrive at excised offshore places are matters of Government policy. The Government is committed to these policies as essential components of strong border control and important elements in ensuring the integrity of Australia's immigration program.

The Government's Key Immigration Detention Values reinforce that mandatory detention is an essential component of strong border control and an integral part of ensuring the integrity of Australia's migration program. In accordance with the Government's policy all irregular maritime arrivals are subject to detention on Christmas Island whilst they undergo health, security and identity checking. Where it is considered appropriate to refer cases to the Minister under section 197AB of the Migration 1958 for a possible community detention placement, these are made on a case by case basis with priority

given to unaccompanied minors, families and others for whom it is considered more appropriate to refer for a residential determination.

Recommendation 5: Section 494AA of the Migration Act, which bars certain legal proceedings in relation to offshore entry persons, should be repealed. The Migration Act should be amended to accord with international law by requiring that a decision to detain a person, or a decision to continue a person's detention, is subject to prompt review by a court.

The retention of the excision of offshore islands, the mandatory immigration detention of all irregular arrivals for the management of health, identity and security risks to the community and the continued use of Christmas Island for the non-statutory RSA processing of people who arrive at excised offshore places are matters of Government policy. The Government is committed to these policies as essential components of strong border control and important elements in ensuring the integrity of Australia's immigration program.

Section 494AA of the *Migration Act* is part of the excision arrangements; the Government has no intention to repeal or amend the provisions of the Migration Act relating to excised offshore places or offshore entry persons.

In accordance with the Government's Key Immigration Detention Values, immigration detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention will be subject to regular review. The Government's intention is that immigration detention will be for the shortest period possible and subject to increased transparency and accountability.

In this respect DIAC would note, firstly, that it is in practice deciding the vast majority of asylum claims on Christmas Island in around 100 days. Secondly, the Ombudsman's reviews of all people in detention also apply on Christmas Island. These reviews consider the appropriateness of the person's detention, their detention arrangements and other matters relevant to their ongoing detention and case resolution.

The s 494AA bar on certain proceedings relating to offshore entry persons does not affect the jurisdiction of the High Court under s 75 of the Constitution.

The broader matter of judicial review of a decision to detain is being considered in the context of the Government's response to the Joint Standing Committee on Migration's recommendations from its Inquiry into Immigration Detention (see report 1, recommendation 14 re the Criteria of Release from Detention).

Recommendation 6: Legislation should be enacted to set out minimum standards for conditions and treatment of detainees in all of Australia's immigration detention facilities, including those located in excised offshore places. The minimum standards should be based on relevant international human rights standards, should be enforceable and should make provision for effective remedies.

The Government's Key Immigration Detention Values state that: '6. People in detention will be treated fairly and reasonably within the law,' and '7. Conditions of detention will ensure the inherent dignity of the human person.'

As indicated in DIAC's response to the Commission's *Immigration Detention Report 2008*, DIAC has already put in place mechanisms to ensure minimum standards for the treatment of people in immigration detention, in line with the Key Immigration Detention Values.

DIAC has implemented, and continues to develop, instructional material (Detention Instructions) that direct how departmental staff and service providers must interact with and support people in immigration detention. These instructions are reviewed regularly to ensure they are up to date and represent best practice. Adherence to these instructions is stipulated in Chief Executive Instruction 30.

The tender process used to determine DIAC's new detention and health service providers, and the new contracts in place with those providers, provide significant opportunity for the DIAC to ensure compliance with Detention Instructions. DIAC's contract management area monitors service providers' performance to ensure compliance with these Instructions.

In June 2007, the Royal Australian College of General Practitioners published the *Standards for Health Services in Australian IDCs*. These standards stipulate the level of health care that people in immigration detention can expect to receive. While the standards are currently being adhered to by DIAC's Health Service Providers (HSP), new arrangements are being put in place to monitor adherence and performance against these standards.

Regulatory reform processes are underway. The Detention Reform Bill proposes to amend the Act to support the implementation of the Government's Key Immigration Detention Values.

The Bill proposes to amend the Act to:

- affirm the principle that the purpose of immigration detention is to manage risks to the Australian community and to resolve the non-citizen's immigration status;
- affirm the principle that non-citizens must only be detained in a detention centre established under the Act as a measure of last resort and, if so detained, must be detained for the shortest practicable time;

- strengthen the existing principle in the *Migration Act* (that the detention of a minor is a measure of last resort) by providing that a minor, including a person reasonably suspected of being a minor, is not to be detained in a detention centre established under the Act:
 - and if a minor is to be detained, an officer must regard the best interests of the minor as a primary consideration for the purposes of determining where the minor is to be detained;
- create arrangements for granting temporary community access permissions which would allow a person in immigration detention to leave an immigration detention facility for specified periods or purposes without being accompanied by an escort;
- enable the Minister to delegate to senior departmental officers his power to make residence determinations, which enable immigration detainees to live in a community setting while their detention continues;
- make clear in the Act the specific classes of unlawful non-citizens who are subject to mandatory detention under the government's key Immigration Detention Values; and
- for certain immigration detainees who are not in excised offshore places, to require an officer to make reasonable efforts to:
 - ascertain the person's identity;
 - identify whether the person is of character concern;
 - ascertain the health and security risks to the Australian community of the person entering or remaining in Australia; and
 - resolve the person's immigration status.

The provisions of the Reform Bill will all have effect throughout Australia, including in excised offshore places such as Christmas Island.

Recommendation 7: The Australian Government should accede to the Optional Protocol to the Convention against Torture and establish an independent National Preventive Mechanism to conduct regular inspections of all places of detention. This should include all immigration detention facilities, including those located in excised offshore places.

Demonstrating its commitment to the prevention of torture and to ensuring that Australia meets its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention), the Australian Government on 19 May 2009 signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Optional Protocol).

The Optional Protocol aims to assist parties to the Convention to comply with their international obligations through the establishment of regular visits to places of detention by an independent international body established under the Optional Protocol (the United Nations Subcommittee for the Prevention of

Torture (the Subcommittee)). In addition, within one year from the date of entry into force, parties are required to designate or establish one or more independent national preventive mechanisms (NPM) with the power to examine places of detention.

The Australian Government is working towards ratification in 2010 and is proposing to defer the establishment of the NPM for three years, which is permitted under the Optional Protocol. This will allow time to plan for and implement Australia's NPM, including completing any necessary legislative amendments at the Commonwealth, State and Territory level. Consultations are continuing with the States and Territories and Commonwealth agencies on necessary steps to implement the Optional Protocol within this timeframe. In addition, the usual treaty making processes will apply, including preparation of a national interest analysis for tabling in Parliament and scrutiny by the Joint Standing Committee on Treaties.

Taking the further step of ratification will oblige Australia to allow the Subcommittee, and the NPM once established, to conduct regular inspections of all immigration detention facilities, including those located in excised offshore places. DIAC is working with the Attorney-General's Department to establish the necessary legislative mechanisms to facilitate this.

In the meantime, DIAC will continue to facilitate regular visits to immigration detention facilities for oversight bodies such as the AHRC and the Commonwealth Ombudsman.

Recommendation 8: If the Australian Government intends to continue the practice of holding children in immigration detention on Christmas Island, children should be accommodated with their family members in community-based accommodation. They should not be detained in the construction camp immigration detention facility, the secure compound of the Phosphate Hill immigration detention facility, or the Christmas Island IDC.

In accordance with the Government's Key Immigration Detention Values, minors are never accommodated in the Christmas Island Immigration Detention Centre nor at the secure Bravo Compound at Phosphate Hill.

All arrivals at Christmas Island are given initial public health checks to protect the Christmas Island community. Single adult men are housed in the Christmas Island Immigration Detention Centre, while children and their families are housed in the low-security Construction Camp facility. The construction camp is not an immigration detention centre; it was originally established for use by construction workers on the island and includes a range of recreational facilities and ensuite rooms.

From here, clients seeking to remain in Australia undergo immigration processing including more rigorous health checks, identity checks and security clearance processes.

The priority is that minors and, where relevant their families, are promptly accommodated in the Christmas Island community under residential determinations once the appropriate checks, accommodation, support and supervision are in place. These decisions are based on a needs-based assessment by case managers.

Minors and their accompanying family members are also prioritised for refugee status assessment processing. All claims for protection are assessed thoroughly and DIAC aim to do this as quickly as possible. If protection is granted, arrangements are made for immediate settlement on the mainland.

Recommendation 9: The Australian Government should implement the outstanding recommendations made by the Commission in the report of its national inquiry into children in immigration detention, *A last resort*. These include that Australia's immigration detention laws should be amended, as a matter of urgency, to comply with the Convention on the Rights of the Child. In particular, the new laws should incorporate the following minimum features:

- **There should be a presumption against the detention of children for immigration purposes.**
- **A court or independent tribunal should assess whether there is a need to detain children for immigration purposes within 72 hours of any initial detention (for example for the purposes of health, identity or security checks).**
- **There should be prompt and periodic review by a court of the legality of continuing detention of children for immigration purposes.**
- **All courts and independent tribunals should be guided by the following principles:**
 - **detention of children must be a measure of last resort and for the shortest appropriate period of time**
 - **the best interests of the child must be a primary consideration**
 - **the preservation of family unity**
 - **special protection and assistance for unaccompanied children.**

In 2005 the Migration Act was amended to affirm the principle that children should only be detained as a last resort.

Section 4AA currently states:

- (1) The Parliament affirms as a principle that a minor shall only be detained as a measure of last resort.
- (2) For the purposes of subsection (1), the reference to a minor being detained does not include a reference to a minor residing at a place in accordance with a residence determination [Community Detention].

While section 4AA affirms the principle that children should only be detained as a last resort, the principle does not limit the location and nature of any such detention. The announcement of the Government's Key Immigration Detention Values formalised arrangements already in place operationally within the Department, which – following the election of the Rudd Labor Government – ensured that minors would never be detained in an immigration detention centre.

The Detention Reform Bill currently before the Parliament includes two measures to embed in the Act the Government's detention values relating to children. It strengthens current section 4AA of the Act to provide that if a minor is to be detained as a measure of last resort, the minor must not be detained in a detention centre established under the Act. In addition, section 4AA is extended to explicitly state that if a minor is to be detained, the best interests of the child must be a primary consideration for the purposes of determining where and how the minor is accommodated. A proposed Government sponsored amendment to the Bill will also make it clear that the best interests of the child are a primary consideration in decisions about where any members of the same family unit as the child are placed in immigration detention.

Additionally, the Minister intends to issue a Ministerial Direction under section 499 of the Act to guide departmental officers as to the principles that apply if a minor is detained. The broad objective behind the Ministerial Direction will be to ensure that if a minor is detained for a short period while their status is being resolved, their treatment and the conditions of the detention environment are humane and have as little adverse impact on the child as possible. The principles will be consistent with Australia's obligations under the Convention of the Rights of the Child 1989.

In addition to these reforms, DIAC is currently concluding a review of compliance, removals and detention policy documents to ensure they reflect the Government's Key Immigration Detention Values and make explicit the 'best interests of the child principle' as a primary consideration when making decisions in relation to minors as they enter, transit and leave immigration detention.

Additionally, DIAC has implemented a notification process ensuring that minors are appropriately placed and managed in the detention environment. The procedure, established in January 2009, ensures senior executive service officer oversight in situations where the detention or removal of a child is being contemplated.

In relation to review processes relating to the decision to detain please see the response to recommendation 5 above.

Recommendation 10: If the Australian Government intends to continue the practice of holding children in immigration detention on Christmas Island it should, as a matter of priority:

- **clarify the applicable laws and jurisdiction of relevant state and federal bodies;**
- **clarify through formal Memoranda of Understanding the respective roles and responsibilities of state and federal authorities with regard to the welfare and protection of children in all forms of immigration detention on Christmas Island;**
- **clearly communicate these roles and responsibilities to all relevant state and federal authorities, and to unaccompanied minors and their carers or representatives;**
- **ensure that there are clear policies and procedures in place regarding child welfare and protection concerns that may arise in respect of children in immigration detention on Christmas Island, and communicate these policies and procedures to all relevant staff.**

Under the *Christmas Island Act 1958* (Cth) (the CI Act), the laws in force in the Territory of Christmas Island are:

- Commonwealth Acts as in force from time to time in or in relation to the Territory;
- Ordinances made under the CI Act after 1 July 1992, and certain specified Territory Ordinances made before that date; and
- Western Australian laws as in force in the Territory in accordance with s 8A of the CI Act.

DIAC notes the complexity of this legal framework and accepts the need to clarify the respective roles and responsibilities of DIAC, other Commonwealth agencies and state child welfare authorities with regard to the welfare and protection of children who are in detention on Christmas Island. Policy work is being progressed within DIAC around these issues. As part of this process DIAC will examine the desirability of clarifying through formal Memoranda of Understanding the respective roles and responsibilities of State and Commonwealth authorities with regard to the welfare and protection of children who are in detention on Christmas Island.

In relation to current care arrangements for unaccompanied minors, DIAC has an agreement with Families South Australia, which governs foster care arrangements for unaccompanied children residing in that state. DIAC is keen to put similar arrangements in place in other states and territories. In the absence of an agreement with the West Australian Government, DIAC has a foster care arrangement with Life Without Barriers to support unaccompanied minors placed in the community on Christmas Island.

Where DIAC staff have child welfare and protection concerns in respect of children in immigration detention, they will refer those concerns immediately to the relevant child protection authorities. On Christmas Island the department refers any such concerns to the WA Department for Child Protection.

Recommendation 11: The Australian Government should, as a matter of priority, implement the recommendations made by the Commission in *A last resort* that:

- **Australia's laws should be amended so that the Minister for Immigration and Citizenship is no longer the legal guardian of unaccompanied children.**
- **An independent guardian should be appointed for unaccompanied children and they should receive appropriate support.**

The Immigration (Guardianship of Children) Act 1946 (IGOC Act), rather than the Migration Act, creates the Minister's guardianship obligations towards children. It is recognised that the IGOC Act is outdated and not designed for the purpose for which it is now used. The Government particularly acknowledges the perceived conflict of interest between the Minister's role as guardian under the IGOC Act and being the decision-maker under the Migration Act. Policy work is being progressed within DIAC to improve the regime governing children and guardianship.

DIAC's policy work will be progressed within the Government's broader agenda relating to children. The Council of Australian Governments (COAG) recently endorsed a National Framework for Protecting Australia's Children – Protecting Children is Everyone's Business 2009-2020, which is a long-term agenda to improve the safety and well-being of children in Australia. The Commonwealth and State and Territory Governments are now working towards implementation of the first of three rolling action plans under this Framework.

One of the key national priorities identified in the first action plan is the potential role for a National Children's Commissioner. This issue will be taken forward by the Commonwealth, State and Territory Children's Commissioners and Guardians, in consultation with children and young people. Advice will be provided to the Commonwealth Government in late 2009.

DIAC is a part of the Commonwealth Working Group addressing the implementation of the first three-year action plan and will be actively addressing the Child Commissioner issue from an immigration perspective, including examining the ongoing appropriateness of the Immigration (Guardianship of Children) Act 1946 and the role of the Minister for Immigration and Citizenship under this act as the legal guardian of unaccompanied children.

In the interim, staff from Life Without Barriers act as independent adults when unaccompanied minors are interviewed on Christmas island, and participate in decision making to ensure the best interests of the child.

Recommendation 12: If the Australian Government intends to continue to use the Christmas Island IDC, it should implement the recent recommendation of the Joint Standing Committee on Migration that all caged walkways, perspex barriers, and electrified fencing be removed and replaced with more appropriate security infrastructure.

DIAC is considering options for softening the appearance of the IDC, including removal of a number of internal fences and caged walkways. This will occur where it is possible to do so at an acceptable cost.

DIAC is not considering replacement of the Electronic Detection and Deterrent Systems (EDDS) with different fencing arrangements, as this would not be practical or cost-effective. In any case, the facility is being managed in low security mode and the EDDS is not activated. The EDDS is an accepted form of security in public places and is used in various situations (such as embassies, private businesses, etc) – it is not a security feature restricted to immigration detention centres or other higher security facilities.

Recommendation 13: DIAC should ensure that all immigration detainees on Christmas Island, upon entering detention, are provided with up-to-date induction materials with information on:

- **How to request an interpreter, including the phone number for the Translating and Interpreting Service (TIS).**
- **How to lodge a complaint with DIAC or the detention service provider, and how soon that complaint will be responded to. It should include contact phone numbers so that detainees do not have to rely solely on submitting a written complaint or request form.**
- **How to lodge a complaint with the Commonwealth Ombudsman or the Australian Human Rights Commission. Current contact details, including phone and fax numbers, should be included.**
- **Current contact details for the local police, including a phone number.**
- **What medical, dental and mental health services are available to detainees, and how a detainee can access those services.**
- **How to request an external excursion.**
- **What facilities are available for religious purposes.**
- **Contact details for Legal Aid, the United Nations High Commissioner for Refugees (UNHCR), Australian Red Cross, major refugee and asylum seeker information and advice groups, and Immigration Advice and Application Assistance Scheme (IAAAS) providers.**

These induction materials should be translated into the main languages spoken by the detainee population. Each detainee should be provided with a copy in a language they can understand. If this is not possible, or a detainee cannot read, an interpreter should be provided in person to go through the materials with the detainee in their preferred language.

As indicated in DIAC's response to the *Immigration Detention Report 2008*, all people entering immigration detention are provided with an induction to the facility, including participating in an induction interview with the Detention Services Provider (DSP). This induction includes information on accommodation, dining, access to health care, access to pastoral care, recreational activities, visitors and acceptable standards of behaviour. This induction is provided in a language that is understood by the person and qualified interpreters are used when required.

In addition, DIAC is currently drafting information sheets that provide an overview of DIAC processes on Christmas Island, as well as the Refugee Status Assessment process. Once finalised, these information sheets will be translated into the principal client languages and provided to all clients on Christmas Island.

People in immigration detention are actively encouraged to approach the DSP, Health Service Providers or departmental staff if they have any queries or need particular assistance. People in immigration detention are also encouraged to complain about any aspects of their detention about which they are concerned. Promotional material in several languages (including Arabic, Hindi, Mandarin and Vietnamese) is displayed informing people in immigration detention that complaints may be made to Departmental staff, DSP staff, the Ombudsman's Office, the Australian Human Rights Commission and the Australian Red Cross about any aspects of a person's detention and that relevant processes are in place to receive and respond to those complaints. DIAC facilitates interpreting services as required.

Information about health care

All people entering immigration detention are offered a Health Induction Assessment, and if they consent, this assessment is conducted within three days of the person entering detention. For people in an IDC, this assessment is conducted by an IHMS registered nurse or general practitioner, who tells the person about access to and the availability of health services. Where necessary, telephone interpreters are used through Translating Interpreting Services (TIS).

DIAC is in the process of developing a Health Handbook for Christmas Island which is expected to be implemented in the first quarter of 2010. Once finalised, this handbook will be translated into several key languages and distributed to people in immigration detention at the time of the Health Induction Assessment and on demand throughout their time in detention.

People in Community Detention receive a pack of information from the Health Services Provider setting out the process for accessing health services. This information pack is available in several frequently-used languages.

Migration Agent Assistance

Clients are provided with an IAAAS Client Information Sheet that outlines the scope of the IAAAS assistance that will be provided. This information is available in the major language groups of the current client caseload. IAAAS migration agents are also required to explain the process to their clients when

they first start assisting them. An interpreter is available to assist in this process at all times.

Recommendation 14: DIAC should ensure that all immigration detainees are provided with clear information on their arrival in immigration detention informing them of:

- **their right to seek asylum**
- **their right to access independent legal advice and assistance**
- **the scope of the IAAAS assistance that will be provided to them**
- **the non-statutory RSA process, including the steps in the process and the approximate estimated timeframes for each of those steps. This should include information about what will be expected of the detainee during each step in the process, and who will make the decision at each step. It should also clearly indicate any timeframes that detainees are expected to comply with.**

While this information may initially be provided verbally, detainees should also be provided with a written copy in a language they can understand. If this is not possible, or a detainee cannot read, an interpreter should be provided in person to go through the written information with the detainee in their preferred language.

As part of screening and induction processes on arrival at Christmas Island, clients:

- are provided with the opportunity to raise any claims that may prevent their return, including any protection claims;
- are provided with reasonable facilities to access legal advice during the initial processing;
- are advised that their cases are assessed individually and immigration outcomes are resolved subject to health, character and security processing, and;
- are advised of the scope of the IAAAS assistance to which they are entitled.

Asylum seekers are offered independent, professional migration advice and assistance through the Immigration Advice and Application Assistance Scheme (IAAAS), at public expense to help prepare and present their case. This independent advice and assistance is of the same quality as that which is afforded to protection visa applicants onshore. In terms of quality of advice provided, there is no disadvantage to asylum seekers on Christmas Island when compared to Protection visa applicants on the mainland. Individuals may also appoint their own migration agent at their own expense if they wish.

Clients are provided with an IAAAS Client Information Sheet which outlines the scope of the IAAAS assistance that will be provided. This information is available in the major language groups of the current client caseload. IAAAS migration agents are also required to explain the process to their clients. An interpreter is available to assist in this process at all times.

While clients are not currently provided with formal written advice about the RSA process, including the steps in the process and expected timeframes, a client information package on the RSA process is currently being developed. Currently this information is specifically provided to clients verbally by Departmental officers during the RSA interview. All interviews with clients are conducted with the assistance of an interpreter. Interpreters may also be made available to go through any written documentation with clients where required.

Recommendation 15: If DIAC intends to continue to use the separation detention system, it should ensure that all detainees are able to:

- **make an initial phone call to contact their family members**
- **access communication facilities if they wish to contact a lawyer or migration agent.**

DIAC should consider allowing detainees to have more regular communication with family members while they are in separation detention.

All IMAs in separation detention are able to call their family. Depending on individual circumstances, they may have regular communication (for example on compassionate grounds when a family member is ill).

Clients are able to access communication devices if they request access to a lawyer, regardless of the stage of their processing. Under section 256 of the Migration Act 1958 (the Act), DIAC is required to provide to people in immigration detention “all reasonable facilities for...obtaining legal advice or taking legal proceedings” on request.

Recommendation 16: If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should ensure that all detainees are provided with adequate access to phones, and that detainees can make and receive phone calls in privacy.

DIAC recognises that access to telephones had been a longstanding technical difficulty that created issues for clients with respect to timely, equitable and appropriate distribution of access, however this has now been resolved. IMA clients on Christmas Island (except for those clients in restrictive detention) are provided with access to phones, and are able to make and receive phone calls in privacy. Given the recently increased numbers of IMAs to Christmas Island, DIAC continues to monitor client’s access to telephones closely.

Recommendation 17: Wherever possible, DIAC should ensure that official letters and documents are provided to a detainee in a language the detainee can understand. Where this is not possible, the detainee should be offered the assistance of an interpreter to translate the contents of the letter or document. This should include documents relating to decisions, and reasons for decisions, at the primary and independent review stages of the non-statutory RSA process for

offshore entry persons; and the primary and RRT stages of the refugee status determination system for detainees who are not offshore entry persons.

DIAC notifies all detainees on Christmas Island of the outcome of their non-statutory refugee status assessment at both primary and review stages in writing. As for onshore protection visa applicants, notification letters are provided in plain English. Clients are provided with interpreters to inform them of the content of the notification letter and attached decision record in a language they can understand. In addition, interpreters can assist DIAC staff in answering any questions the clients may raise at the time of notification.

The IAAAS migration agent is also required to explain the RSA decision at both primary and review stages to their client and the options available, and interpreters are provided for this purpose.

These services are also made available to clients who are in onshore immigration detention facilities.

Recommendation 18: If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should ensure that detainees on the island are provided with access to appropriate health and mental health care services. These should be no less than the services available to detainees on the mainland.

Clients on Christmas Island are provided with a commensurate level of health care services as those accommodated in mainland immigration facilities. Health services are provided to people in immigration detention on Christmas Island by International Health and Medical Services (IHMS) and the Indian Ocean Territories Health Services (IOTHS).

While mental health services are available, DIAC continues to work with its providers to build more capacity in terms of access to torture and trauma support. All people who enter immigration detention are screened for torture and trauma and mental health issues on arrival at Christmas Island and are regularly offered subsequent assessments as part of their ongoing care.

IHMS currently have mental health trained professionals on staff to service clients in all facilities with general mental health issues.

IOTHS, the local health authority, provides specific Torture and Trauma services to all clients in immigration detention on Christmas Island.

Those who require specialised physical or mental health care are transported to the mainland to access the required service, if it is unavailable on Christmas Island.

In May 2009, DIAC ratified three new policies – *‘Identification and Support of People in Immigration Detention who are Survivors of Torture and Trauma’*, *‘Psychological Support Program for the Prevention of Self Harm in Immigration Detention’* and *‘Mental Health Screening for People in Immigration Detention’*. DIAC is currently working on a strategy to commence the rollout of these policies on Christmas Island. This will involve training to

detention service providers, detention health service providers, departmental staff and other key stakeholders.

Recommendation 19: If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should ensure that all detainees, including those at the construction camp, are provided with a range of recreational facilities and activities. All detention facilities should have open grassy space for sports and recreation.

DIAC continues to improve its infrastructure to support recreational activities on Christmas Island. The Construction Camp has a small gymnasium, computer and internet services, an all-weather tennis and basketball court, and electronic games.

The CIIDC has a number of outdoor recreational areas, as well as indoor activity rooms. New sporting and gym equipment is being purchased for the IDC, to further enhance indoor recreation options.

In addition, SERCO is implementing a range of programs and activities at detention facilities on Christmas Island, including sporting competitions, gardening, sewing classes and ESL classes.

In relation to clients in community detention (CD), the Red Cross has a dedicated recreational officer on Christmas Island who is responsible for organising activities and excursions for clients in CD. Life Without Barriers (LWOB), who provide 24 hour care for unaccompanied minors in CD, are responsible for ensuring their clients have access to a broad range of activities and excursions. LWOB often joins with the Red Cross recreational officer in arranging activities or outings. DIAC encourages these organisations to build their capacity in this area, in consultation with the Christmas Island community.

Recommendation 20: If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should ensure that:

- **detainees have access to appropriate educational activities, including ESL classes**
- **each detention facility has an adequate supply of reading materials in the principal languages spoken by detainees.**

Children of school age are enrolled at the Christmas Island School, which DIAC funds to provide relevant services. DIAC is providing the following resources during Semester 2, 2009:

- five full-time teachers
- five full-time education assistants
- one refugee student coordinator (two days a week)
- provision of computers, printers and cameras for refugee classrooms, and
- adult education resources.

The ESL component of the children's education is incorporated into daily lessons.

A number of ESL classes are held each day for clients at the CIIDC and Construction Camp. In addition, adults in CD can attend daily ESL classes at the Community Centre.

DIAC notes that while some material is available, more reading material in relevant languages is required for the library available to clients in the CIIDC and the Construction Camp. SERCO has recently revamped the library at the CIIDC with a view to making it into a multicultural resource centre, which will provide both reading material and audio-visual material in the most prevalent languages.

The provision of reading materials in principal languages is a requirement of the detention service provider under their contract, so DIAC is negotiating with SERCO to arrange these as a matter of priority.

Recommendation 21: If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should:

- **adopt minimum standards for the conduct of regular external excursions from immigration detention facilities, including for detainees in separation detention**
- **include these standards in the contract with the detention service provider**
- **monitor compliance with these standards on an ongoing basis and take appropriate remedial action when they are not being complied with**
- **ensure that the detention service provider is allocated sufficient resources to provide escorts for regular external excursions.**

The Detention Services Contract (DSC) has been developed to ensure implementation of the Immigration Detention Values and includes a monitoring regime with penalty clauses for breaches. The DSC requires the DSP to provide an appropriate range of Programs and Activities which may include external excursions.

Examples of excursions and activities for people in immigration detention on Christmas Island include:

- movie excursions
- picnics
- fishing
- outings to local church services
- breakfast excursions for women and children
- art and Australian studies classes provided by local community members with education backgrounds
- performances for clients by visiting musicians
- sewing classes

- language lessons
- library and internet services.

DIAC and the DSP must always consider a range of operational requirements when determining the frequency and level of excursions.

In relation to activities and excursions for clients in community detention, the Red Cross has a dedicated recreational officer on Christmas Island who is responsible for organising activities and excursions for clients in community detention.

Life Without Barriers (LWOB), who provide 24 hour care for unaccompanied minors in community detention, are responsible for ensuring their clients have access to a broad range of activities and excursions. LWOB often joins with the Red Cross recreational officer in arranging activities or outings for clients in community detention.

Construction Camp and IDC clients are accompanied by designated persons when they participate in activities or excursions outside of a place of immigration detention. Clients in community detention are not required to be accompanied by designated persons when they participate in activities of excursions.

Recommendation 22: If the Australian Government intends to continue using Christmas Island for immigration detention purposes, DIAC should ensure that all detainees are provided with access to regular religious services conducted by qualified religious representatives.

Clients in CD can access religious services of their choice at either the mosque or the Community Centre. DIAC has provided CD clients with prayer mats and copies of the Qur'an when requested.

Clients at the IDC or the Construction Camp may access religious services once their restriction ends. The DSP is contracted to ensure suitable services are available at the facilities, and that these are conducted by suitable, qualified individuals. Visits to Christmas Island by religious leaders have also been facilitated to further ensure that clients can access a range of religious services.

Where possible, excursions to religious services in the community are facilitated once health screening is complete, but this is dependent on available transport and escort services (including the use of designated persons where appropriate). The security risk rating of the client is also taken into account when considering excursions in a community setting.