Australian Human Rights Commission

Management of COVID-19 risks in immigration detention

REVIEW • 2021

Management of COVID-19 risks in immigration detention • Review • 2021

ISBN 978-1-925917-51-2

Communications Unit
Australian Human Rights Commission
GPO Box 5218
SYDNEY NSW 2001
Telephone: (02) 9284 9600
TTY: 1800 620 241
Email: **communications@humanrights.gov.au**

Design and layout: Dancingirl Designs
Cover image: iStock

The **Australian Human Rights Commission** is Australia's National Human Rights Institution. It is an independent statutory organisation with responsibility for leading the promotion and protection of human rights in Australia.

Authors:

Alice McBurney, Edward Santow and John Howell

Acknowledgements:

- President Rosalind Croucher.
- Australian Human Rights Commission staff: Darren Dick, Graeme Edgerton and Jodie Ball.
- Independent medical consultant, Dr Nadia Chaves, for her advice and review of this report.
- The Department of Home Affairs, the Australian Border Force, and contracted detention service providers, Serco and International Health and Medical Services, for their responses to requests for information and documents to inform this review.
- Civil society organisations and networks for sharing information to inform this review.

Management of COVID-19 risks in immigration detention

Review

June 2021

Australian Human Rights Commission

Australian
Human Rights
Commission

Contents

Edward Santow

Human Rights Commissioner
Australian Human Rights Commission

Commissioner's Foreword

The COVID-19 pandemic is a serious threat for people held in Australia's immigration detention network.

COVID-19 can spread quickly in enclosed, confined spaces such as detention. A high proportion of people in immigration detention have pre-existing health conditions—a factor that can worsen the health impact of people who contract COVID-19.

To date, no-one detained in Australia's immigration detention facilities has tested positive to the virus, and only a small number of people working in these facilities have tested positive. We acknowledge this achievement.

This report sets out important additional steps the Government should take to improve measures to combat the risk of COVID-19 in immigration detention. It also recommends some more targeted measures to reduce the negative human rights impact on people in detention.

The pandemic poses an ongoing, serious threat. At the time of writing, many countries are struggling to contain a resurgence of COVID-19, especially following the emergence of new variants of the virus. Even jurisdictions such as Singapore and Taiwan, which have previously had considerable success in keeping case numbers low, are now taking urgent action to address a dangerous new wave of infection.

Since mid-2020, the Australian Human Rights Commission has worked to understand and assess the measures taken to combat the COVID-19 threat in immigration detention. This report contains 20 recommendations for action by the Government to reduce the risk of the virus entering and being transmitted in detention facilities, and also to reduce unnecessary or disproportionate restrictions on people in immigration detention.

On 28 May 2021, the Commission received the Department of Home Affairs' formal response to this report's recommendations. That response is published alongside this report. The Department agreed in full with six of the Commission's recommendations; in part with two recommendations; while noting seven recommendations. It disagreed with five recommendations.

The Commission will work with the Government, especially to implement recommendations with which the Department agrees.

The Commission's recommendations can be divided into three groups.

The first group relates to the size of the immigration detention population. When large numbers of people are confined in small spaces, there is a high risk of COVID-19 transmission.

Many other countries, such as the United Kingdom, Canada and the United States, responded to this risk by reducing the number of people held in closed immigration detention—by around 39%, 66% and 69% respectively. By contrast, the immigration detention population in Australia increased by nearly 12% in the six months since the COVID-19 pandemic was declared in March 2020—resulting in significant strain across the immigration detention network as facilities operate close to or at their regular capacity.

While re-opening of the North West Point detention facility at Christmas Island has provided some capacity relief, the Commission considers this is not an appropriate solution to address increasing numbers and overcrowding. The Island's isolation and lack of sophisticated healthcare facilities would make it more difficult to respond as effectively as possible to a possible outbreak. Moreover, people detained on the island generally cannot receive face-to-face visits from family and other loved ones, and must instead rely on the limited broadband service for tele- and video-conferencing.

The Government should follow expert health advice by placing people who present a low security risk in community-based alternatives to closed detention—much as other comparable jurisdictions have done with success.

Secondly, the Commission makes a number of recommendations to improve physical distancing, which is a crucial way of reducing risk of virus transmission. In particular, some bedrooms in immigration detention facilities are too small—they do not provide for at least four square metres per person (excluding any sanitary facilities included in the bedroom) as required by expert health advice and human rights standards. In addition, most people share bedrooms that contain bunk beds with at least one or two other people—a layout that makes it impossible to keep 1.5 metres apart.

Special attention should be given to people with pre-existing health conditions. The Department of Home Affairs advised that, as at 28 September 2020, 247 people in closed immigration detention were assessed as particularly vulnerable to COVID-19. Where it is unsafe to remove those people from closed detention, at the very least they should be accommodated in single rooms with separate bathroom facilities.

Thirdly, measures that restrict an individual's basic rights—such as freedom of movement—must be reasonable, necessary and proportionate to addressing COVID-19 risks. The buildings used for quarantine inside immigration detention tend to be harsh and prison like, with no or very limited access to outdoor areas. The Government should improve the physical conditions and amenities, and access to support for the duration of a person's quarantine.

Quarantine should be used only where medically necessary, taking into account risk that the relevant individual has been exposed to COVID-19 and the level of transmission in the community. The Commission is concerned that the use of 'operational quarantine'— for example, where a person is quarantined for 14 days, regardless of symptoms, after an offsite appointment—may not be sufficiently targeted to ensure it is used only when necessary.

As the Australian Government expands its vaccine roll out over the course of 2021, it has indicated the vaccine will be available to everyone in Australia, including those in detention. The Commission commends this approach, and urges that people in immigration detention, and others who work in these facilities, be given priority in being offered COVID-19 vaccination.

Edward Santow
Human Rights Commissioner

June 2021

1. Introduction

The outbreak of the COVID-19 pandemic has introduced new challenges for the management of Australia's immigration detention facilities, and significant risks to health and well-being, especially of people detained in these facilities.

COVID-19 presents some urgent and serious risks for immigration detention facilities, as it does for the management of other enclosed places. This has required changes to the management of immigration detention facilities in order to protect the health of people held in closed detention, facility staff and the broader community.

The Department of Home Affairs (Home Affairs), the Australian Border Force (ABF) and the principal contracted detention services providers, Serco and International Health and Medical Services (IHMS), all have critical roles in addressing risks associated with the COVID-19 pandemic in respect of immigration detention facilities.

In mid-2020, the Australian Human Rights Commission (the Commission) commenced a review of this collective response to the human rights risks posed by the COVID-19 pandemic in the context of immigration detention.

The Commission's review has assessed information provided by Home Affairs regarding the policies and actions taken by Home Affairs, the ABF, Serco and IHMS, as well as other information. On this basis, the Commission recommends a number of changes to improve human rights protection for people who are detained in these facilities, as well as facility staff and the broader community.

The human rights review undertaken by the Commission is necessarily complex. On one hand, measures to address COVID-19 expressly aim to protect the right to adequate health care and public health more broadly. Some of these measures—such as increasing the availability of sanitation facilities—are wholly benign, in the sense that they are likely to have no negative effect on human rights. Other measures, such as restricting or suspending visits from family and friends for people in immigration detention, involve a balance: they are directed towards protecting individual and public health, but they also have the effect of limiting the human rights of people in immigration detention. Under international law, Australia is obliged to adopt measures that address risks associated with COVID-19 in ways that minimise any negative human rights impact.

The Commission acknowledges that Home Affairs, the ABF and its service providers are committed to preventing the entry and spread of COVID-19 at all immigration detention facilities. To date, there have been no confirmed COVID-19 cases among people detained in immigration detention facilities.[1]

This report documents a number of good practices, and it also makes 20 recommendations to improve human rights protections and ensure that there continue to be no cases of COVID-19 in immigration detention facilities. The Commission's recommendations can be grouped into two categories:

- some measures restrict human rights more than is necessary or proportionate to reduce COVID-19 risks—in these areas, the Commission proposes less restrictive alternative measures
- some COVID-19 risks should be addressed more effectively—in these areas, the Commission makes practical recommendations to achieve that result.

A list of the Commission's 20 recommendations is contained in the Appendix to this report. As is the Commission's long-standing practice, the report generally identifies the entity or entities responsible for implementing the various recommendations. Some recommendations need to be implemented by companies that the Australian Government contracts to provide particular services in immigration detention. These companies are referred to in the report's recommendations as the 'detention service providers'. The current main detention service providers are Serco and IHMS.

This review has focused on issues including the number of people held in immigration detention facilities, physical distancing measures, screening for COVID-19 and quarantine arrangements. Some of these issues have also been considered by other monitoring bodies, such as the Commonwealth Ombudsman.[2] There were some human rights issues that could not be fully assessed in a review of this nature.[3]

The Commission acknowledges the contribution of independent medical consultant, Dr Nadia Chaves, a public health and infectious diseases specialist. Dr Chaves reviewed relevant materials and provided advice on measures required to prevent the entry and spread of COVID-19 in immigration detention facilities and protect the health of people detained in these facilities.

The Commission also acknowledges the assistance provided by Home Affairs, the ABF and detention service providers in providing responses to the Commission's requests for information and documents to inform this review.

The Commission provided a copy of this report to Home Affairs on 20 April 2021, inviting the Department to comment on the Commission's findings and recommendations prior to publication. The Commission received a response from Home Affairs on 28 May 2021, which has been published alongside this report.

2. Background

2.1 COVID-19 risks in immigration detention

It has been widely recognised internationally and in Australia that COVID-19 poses heightened risks to people in all forms of detention, including immigration detention facilities.[4] The Department of Health has recognised that people in correctional and detention facilities are among those most at risk of contracting the virus in Australia.[5]

Immigration detention facilities are high-risk settings for the spread of COVID-19.[6] People in immigration detention facilities live in close proximity with one another, in most cases sharing bedrooms, bathrooms and other enclosed communal spaces. This results in a heightened risk of rapid person-to-person transmission in the immigration detention population, should there be exposure to the disease in a facility. Not only does an outbreak of COVID-19 in an immigration detention facility pose risks to the health of people in closed detention and facility staff, it may also act as a source of infection, amplification and spread of COVID-19 beyond the facility and into the broader Australian community.[7]

The World Health Organization (WHO) has advised that measures must be introduced into places of detention, including immigration detention facilities, in order to prevent the introduction of COVID-19 into facilities, limit the spread within facilities and reduce the possibility of spread from the facility to the outside community.[8] The WHO acknowledges that not only are people in closed detention likely to be more vulnerable to infection with COVID-19, they are also especially vulnerable to human rights violations. The WHO highlights that all measures introduced in response to COVID-19 must also be firmly grounded in international human rights law and standards.[9]

Public health and infectious diseases experts, including the Australasian Society for Infectious Diseases (ASID) and the Australian College of Infection Prevention and Control (ACIPC), have advised that an effective response to protecting the health of people in immigration detention and the broader community requires a significant reduction of the numbers of people in immigration detention, in addition to other risk mitigation strategies to prevent and manage an outbreak of COVID-19.[10]

2.2 2019 inspections

During the second half of 2019, the Commission conducted inspections of all immigration detention facilities on the Australian mainland.[11] While these inspections took place before the COVID-19 pandemic, some of the Commission's observations and concerns following these inspections are relevant to this review. These include:

- some immigration detention facilities were operating over their operational capacity
- there was overcrowding in some compounds with dormitory-style accommodation
- people in immigration detention facilities generally share bedrooms as well as toilet and shower facilities with other people, in some cases with large numbers of other people
- significant numbers of people in immigration detention have pre-existing health conditions that may put them at higher risk if they contract COVID-19.[12]

In addition to these specific risk factors, the report also documents conditions and treatment more broadly. This provides further context for considering the impacts of any measures introduced in response to COVID-19 that may nevertheless restrict a person's human rights.

2.3 Methodology

In July 2020 the Commission commenced a targeted review of the responses taken by Home Affairs, the ABF and contracted detention services providers, Serco and IHMS, to address the risks posed by COVID-19 in immigration detention facilities.

The Commission wrote to Home Affairs on 15 July 2020 and requested the following:

- any policies and procedures introduced in response to COVID-19
- numbers of people in immigration detention
- the capacity and physical features of facilities
- information regarding people at additional risk of health complications from COVID-19
- training and other material provided to facility staff and detainees
- information regarding screening for COVID-19 on entry and exit of facilities
- information regarding identification and testing of COVID-19
- information regarding isolation, quarantine, and conditions at hotel APODs.

The Commission received material from Home Affairs in tranches between 28 September 2020 and 12 March 2021.[13] It analysed this material, as well as other relevant information, including from the Commission's previous physical inspections of immigration detention facilities and from organisations that provide services and support to people in immigration detention.

That analysis has informed this report. Specifically, the Commission has assessed the adequacy and appropriateness of measures taken in response to COVID-19 risks against international human rights standards, expert health advice and the guidelines developed by the Communicable Diseases Network Australia (CDNA Guidelines) for addressing risks posed by COVID-19 for Australia's correctional and other detention facilities.[14]

The Commission has considered how effectively relevant measures protect the right to health,[15] and whether some measures that limit human rights are necessary, reasonable and proportionate in the circumstances. The report documents the Commission's key observations, concerns and recommendations.

The scope of this review is necessarily limited. The material assessed in the course of the review was provided primarily by Home Affairs. It did not involve information gathered in the course of interviews with people in immigration detention, physical inspections of detention facilities or meetings with facility staff.

2.4 Relevant standards

(a) Human rights

The following international human rights treaties, which Australia has ratified, contain obligations that are relevant to the conditions and treatment of people in immigration detention:

- *International Covenant on Civil and Political Rights* (ICCPR)
- *International Covenant on Economic, Social and Cultural Rights* (ICESCR)
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT)
- *Convention on the Rights of the Child* (CRC)
- *Convention on the Rights of Persons with Disabilities* (CRPD)
- *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW)
- *Convention relating to the Status of Refugees* (the Refugee Convention).

Australia has a range of specific obligations towards refugees and asylum seekers under the last of these conventions.

Some obligations relevant to Australia's response to COVID-19 risks in immigration detention facilities include those relating to: security of the person; humane treatment in detention; freedom from arbitrary detention; freedom from torture and other cruel, inhuman or degrading treatment or punishment; freedom of movement; right to life; right to the highest attainable standard of health; freedom of expression and association; and, protection of the family.

Measures introduced in response to COVID-19 risks in immigration detention facilities may, in some cases, limit the human rights of people in detention. Under international law, most human rights may be limited, but for such a limitation to be compatible with Australia's international human rights obligations, it must be necessary, reasonable and proportionate in the circumstances.[16]

(b) CDNA guidelines

The Commission acknowledges the work of the Australian Health Protection Principal Committee (AHPPC) in providing advice to the Government on preventing and managing a potential outbreak of COVID-19 in detention settings. The AHPPC endorsed the Communicable Diseases Network Australia (CDNA) Guidelines for addressing risks posed by COVID-19 for Australia's correctional and other detention facilities.[17]

The CDNA Guidelines are necessarily broad, in that they apply to all forms of detention and correctional facilities in Australia, including prisons, juvenile detention centres, youth justice centres and immigration detention facilities. They do not refer to the specific characteristics of Australia's immigration detention facilities.

Essentially, the CDNA Guidelines contain a set of principles that must be applied to a number of specific and distinct detention contexts. That process of applying the Guidelines necessarily involves considering the particular issues that arise in the immigration detention environment and the use of clinical judgment.[18]

The Commission also notes that the advice of the relevant State or Territory Department of Health is relevant to the assessment of COVID-19 risks in relation to a particular facility and measures required to mitigate these risks. While the primary responsibility of managing COVID-19 outbreaks lies with each facility and the Australian Government, the respective State and Territory departments of health and their public health units (PHUs) ordinarily assist facilities to detect, assess and manage COVID-19 outbreaks.[19]

2.5 Key statistics

Australia's immigration detention population has increased in 2020 during the COVID-19 pandemic. The average number of people detained in immigration detention facilities in 2019 was 1,340, and this average increased to 1,487 in 2020. Since June 2020, the population has reached and stayed above 1,500 people.

Figure 1: Number of people in immigration detention—January 2019 to December 2020[20]

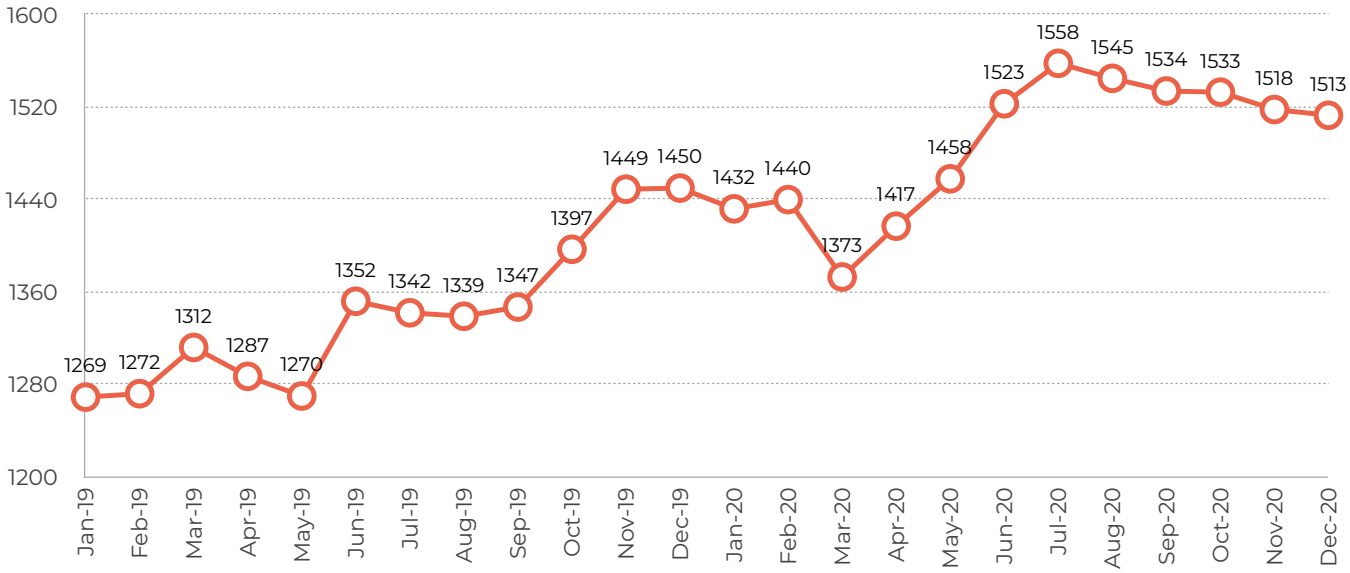
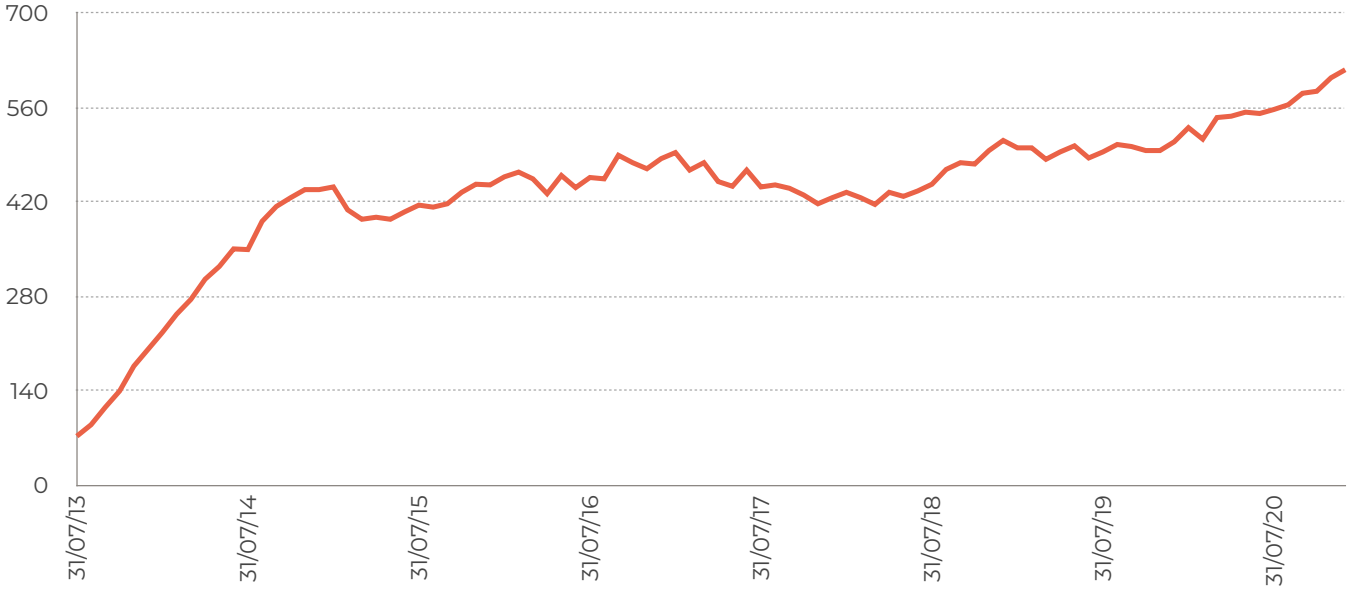


Figure 2: Average length of time in immigration detention—July 2013 to December 2020[21]



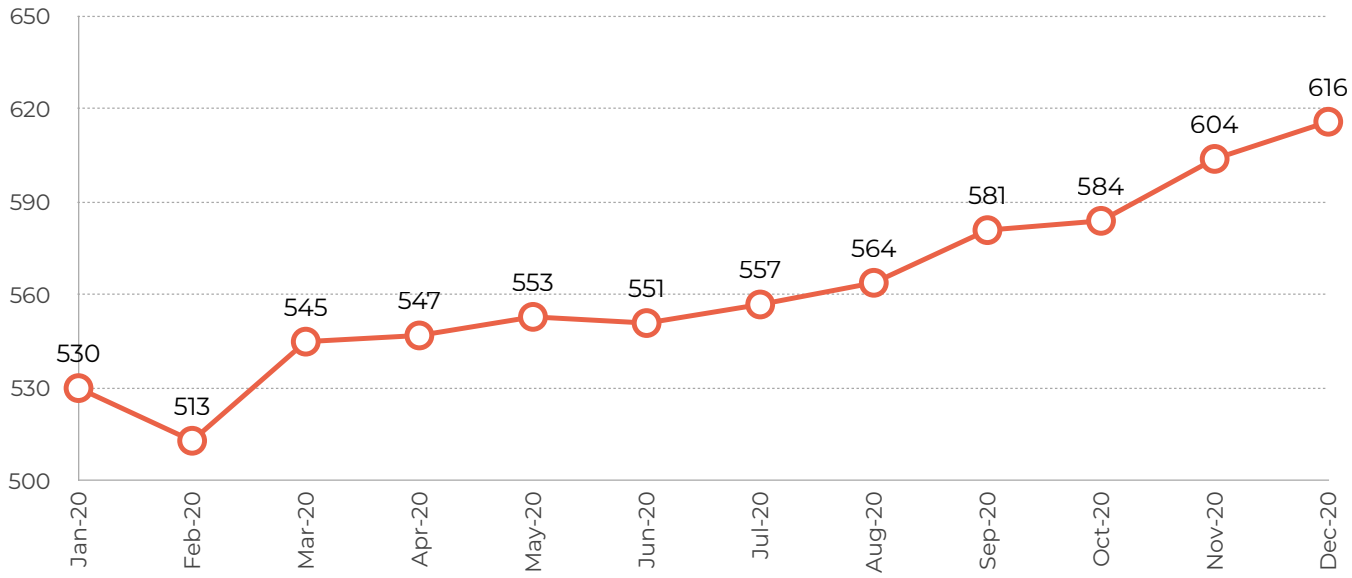
As the Commonwealth Ombudsman observed, this increase is the result of the number of incoming detainees being greater than those exiting closed immigration detention facilities. That, in turn, is caused by the inability, due to COVID-19, to facilitate the normal rate of international removals.[22]

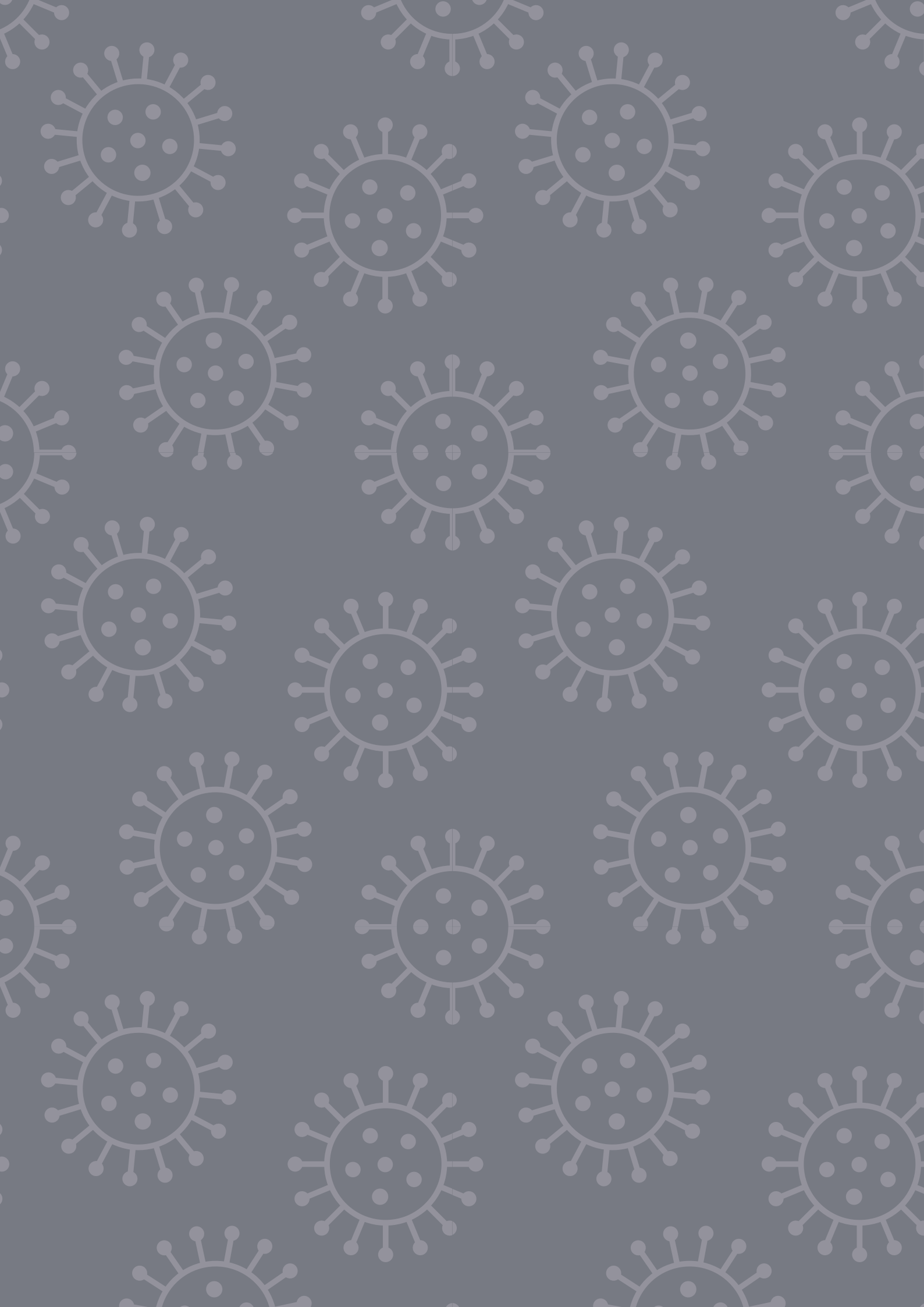
The Commission also notes that there were very few releases of people into community-based alternatives from closed detention in 2020. From December 2020 onwards, there has been a growing number of people released on bridging visas into the community from hotels that had been designated as 'alternative places of detention' (APODs).

The average length of detention has continued to increase, and it exceeded 600 days for the first time on public record by November 2020. It reached 616 days in December 2020—which is the highest ever recorded. On average, the number of people in very long-term detention (two years or longer) comprised around 26% of the detention population during 2019, which is an increase from around 22% in 2019.[23]

In December 2020, more than 100 people had been detained for longer than five years, and some people had been detained for longer than 10 years.[24]

Figure 3: Average length of time in immigration detention—January 2020 to December 2020[25]





3. Key observations and concerns

3.1 Number of people

Immigration detention facilities, like other places of detention, are a high-risk setting for the spread of COVID-19.[26] People live in close proximity with one another, in most cases sharing bedrooms, bathrooms and other enclosed communal spaces, and this results in a heightened risk of rapid person-to-person transmission of COVID-19 in the immigration detention population, should there be exposure or the introduction of cases into a facility.

Public health experts and international bodies have therefore recommended that the number of people held in closed detention be reduced as much as possible as a key measure to reduce the risks of COVID-19 exposure. However, the number of people in closed immigration detention in Australia has in fact increased since the start of the pandemic, as demonstrated in Figure 1 above.

In March 2020 there were a total of 1,373 people in immigration detention facilities (including all offsite APODs) and most recent government statistics indicate that this has increased to 1,527 in February 2021.[27] This population increase has contributed to capacity pressures throughout Australia's network of immigration detention facilities and increased the concentration of detainees in compounds at various times throughout 2020.

The number of people released from closed immigration detention in Australia over this period has been very small in comparison with other jurisdictions, such as the United Kingdom, Canada, and the United States. The table below illustrates the numbers of people in immigration detention before and since the outbreak of COVID-19 in Australia, the United Kingdom, Canada and the United States.

Table 1: Number of people in immigration detention before and after the start of the COVID-19 pandemic—Australia, the United Kingdom, Canada, and the United States

Immigration detention population during COVID-19	Australia[28]	United Kingdom[29]	Canada[30]	United States[31]
Late 2019 or early 2020	1,373 (as at 31 March 2020)	1,637 (as at 31 December 2019)	353 (as at 17 March 2020)	50,922 (as at 4 October 2019)
Late 2020	1,533 (as at 31 October 2020)	990 (as at 30 September 2020)	119 (as at 7 May 2020)	15,772 (as at 5 December 2020)
Change (%)	+11.7	−39.5	−66.3	−69.0

Table 1 shows that the United Kingdom, Canada and the United States have significantly reduced the number of people in immigration detention facilities since the outbreak of COVID-19, whereas the number of people in immigration detention in Australia has increased.

United Kingdom

The UK Home Office has attributed the reduction in the immigration detention population, which reached as low as 313 at the start of May 2020, to an 'increase in numbers leaving detention … as well as falls in numbers entering detention'.[32] In correspondence with the President of the First-tier Tribunal (Immigration and Asylum) (FtT(IAC)), the UK Home Office stated:

> The Home Office has, since the emergency began, reviewed the cases of all of those who were detained under immigration powers. This was to ensure that, in our view, detention remains appropriate in the current circumstances. In line with our existing policies, these reviews have considered the level of vulnerability of detainees, with particular reference to Covid-19, and the likelihood of achieving removal within a reasonable period.[33]

Following an inquiry into the UK Home Office's preparations for and response to COVID-19, the Home Affairs Committee welcomed the substantial reduction in the number of individuals detained in 'Immigration Removal Centres'[34] and stated that 'this was a sensible response to COVID-19 and will have helped prevent infections'.[35] It found that the significant reduction of people in immigration detention was the result of actions by the UK Government to reduce the numbers of persons detained, as well as grants of immigration bail by the FtT(IAC).[36]

Canada

The Canada Border Services Agency stated that it

> continues to review its detention population to ensure that volumes remain at a minimum and that all options for release are explored for cases where an individual's risk can be managed in the community.[37]

It also attributes the decline in the immigration detention population from 352 people in March 2020 to 119 in May 2020 to the use of alternatives to detention.[38]

United States

Similarly to the UK, in the United States, Immigration and Customs Enforcement (ICE) has

> evaluated its detained population based upon the CDC's [Centres for Disease Control and Prevention] guidance for people who might be at high risk of severe illness as a result of COVID-19 to determine whether continued detention was appropriate.[39]

As a result of this initial review, ICE released over 900 individuals from immigration detention.[40] ICE states this methodology is being applied to other vulnerable populations in immigration detention on an ongoing basis, as well as all new arrestees when making custody determinations.[41] In addition, there has been a reduced intake of new detainees entering the detention system due to a reduced number of apprehensions in the community.[42]

These measures have significantly reduced the number of people in immigration detention in the United States. Between 1 October 2018 to 30 September 2019 the average daily population was 50,165, which reduced to 34,427 between 1 October 2019 and 30 September 2020.[43] This has further reduced to 17,722 between 1 October 2020 to December 2020.[44]

Public health experts, including the Australasian Society for Infectious Diseases (ASID) and the Australian College of Infection Prevention and Control (ACIPC), have advised that an effective response to protecting the health of people in immigration detention and the broader community requires a significant reduction in numbers of people in immigration detention, which should occur in addition to other risk mitigation strategies to prevent and manage an outbreak.[45]

International bodies have also consistently recommended urgent reductions in the number of people held in places of detention, including immigration detention, as measures to protect the right to health and the right to life during the COVID-19 pandemic.[46] For example, in a joint statement, the United Nations Office on Drugs and Crime, the World Health Organization, the United Nations Office of the High Commissioner for Human Rights, and the Joint United Nations Programme on HIV/AIDs have said that, in all places of detention,

> efforts should encompass release mechanisms for people at particular risk of COVID-19, such as older people and people with pre-existing health conditions, as well as other people who could be released without compromising public safety.[47]

In relation to immigration detention specifically, the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (SPT) advised that the use of immigration detention should be reviewed 'with a view to reducing their populations to the lowest possible level'.[48] Many of these international bodies have also emphasised that measures to reduce the number of people detained are in many cases an essential precondition to the effectiveness of other prevention and control measures.[49]

The Commonwealth Ombudsman has stated that increasing the number of people detained during the COVID-19 pandemic will increase the risk, and recommended that the number of people held in immigration detention facilities be reduced.[50]

In line with health advice and international human rights standards, the Commission also urges the Australian Government to significantly reduce the number of people detained in Australia's closed immigration detention facilities by releasing people into community-based alternatives, such as community detention, where they do not pose a significant security risk to the Australian community, or where the relevant security risk can be effectively managed with the individual being outside of closed detention.

Other comparable jurisdictions, including the United Kingdom, Canada and the United States, have been able to significantly reduce their respective immigration detention populations by releasing people into the community, especially those vulnerable to COVID-19. The Commission is not aware of any resultant increase in community safety or other security problems in those jurisdictions as a result of this action.

During inspections of immigration detention facilities over many years, the Commission has consistently identified individuals whose detention did not appear to be justified under international human rights law.[51]

Following inspections in 2019, the Commission found that the ongoing detention of refugees and asylum seekers transferred from Nauru and PNG for medical treatment and/or assessment in closed facilities may not be necessary, reasonable and proportionate in the individual's circumstances, and recommended that they should be released into community detention.[52] Those with co-morbidities may be at increased risk of serious illness if they contract COVID-19 (see Section 3.5). Due to issues of overcrowding, the Commission also recommended that all people in dormitory-style accommodation in low-medium security compounds should be considered for release into community-based alternatives.[53]

The Commission welcomes the Government's decision to release from closed detention significant numbers of refugees and asylum seekers, who were previously transferred to Australia from PNG or Nauru for medical assessment or treatment. Many of these people were previously detained in hotel APODs (see Section 3.9).[54] The ABF advised that, as at 2 March 2021, a total of 147 people in this group remained in closed immigration detention facilities, including hotel APODs.[55]

The Commission considers that any steps the Australian Government takes to reduce the number of people in immigration detention facilities in line with Recommendation 1 should prioritise those at higher risk of health complications from COVID-19 or contracting COVID-19.

RECOMMENDATION 1

The Department of Home Affairs and relevant Ministers should take urgent steps to significantly reduce the number of people in immigration detention facilities by releasing people into community-based alternatives to closed detention, such as community detention, unless an individual assessment identifies security risks that cannot be managed in the community. The following groups should be prioritised for release from closed immigration detention:

- **people assessed to be at risk of health complications if they contract COVID-19**
- **refugees and asylum seekers transferred from Nauru and PNG for medical assessment or treatment, and**
- **those accommodated in dormitory-style accommodation in low-medium security compounds.**

3.2 Capacity

The Commission requested information on the capacity of each facility and compound from Home Affairs. The capacity of a facility, or a particular compound within a facility, reflects an assessment by Home Affairs of how many people can be accommodated in it. It informs placement and transfer decisions and affects the conditions of a person's detention. In particular, the assessed capacity of a facility—together with the size, layout and other features of the facility—will affect how much space each person will have, how many people in each bedroom, and the level of access they have to shared services.

This analysis can help assess whether people in a particular immigration detention facility have sufficient space to practise appropriate physical or social distancing and take other such steps to reduce the risk of COVID-19 transmission. The SPT has advised that the risks posed by COVID-19 in places of detention require that states and monitoring bodies place particular emphasis on facilities

> where occupancy exceeds the official capacity, and where the official capacity is based on square metre-age per person which does not permit social distancing in accordance with the standard guidance given to the general population as a whole.[56]

Expert health advice provided to the Commission emphasised the importance of carefully regulating the numbers of people in a particular immigration detention facility, as the population density will determine the effectiveness of measures introduced to mitigate the spread of COVID-19 in a facility, such as physical distancing (see Section 3.4).

The capacity assessment conducted by Home Affairs should consider what is required to ensure accommodation facilities meet the requirements of health and human dignity and, in particular, ensure that conditions minimise the risks of COVID-19 transmission. This includes design and fit-out that meet relevant standards concerning cubic content of air, minimum floor space, room height, lighting, hygiene, heating and ventilation suitable for the climate, and the health, dignity, privacy and other needs of detainees, such as accessibility for persons with a disability.[57] Further information on room size and minimum floor space is contained in Section 3.4(a) on physical distancing in bedrooms.

The ASID and ACIPC have stated that, as a minimum standard, people in immigration detention should be held in single rooms with their own bathroom facilities to reduce the risk of COVID-19 spreading in a facility.[58] The Commission notes that the specific accommodation requirements for an individual may vary, depending on their physical and mental health and other needs. For example, people with a physical or cognitive disability or people subject to long-term detention or people at high risk of health complications if they contract COVID-19 may require access to their own bedroom and private bathroom facilities.

In order to comply with relevant human rights standards and expert health advice, Home Affairs and the ABF should ensure that facility capacity assessments meet the requirements of health and human dignity, and allow for adequate physical distancing and access to single occupancy bedrooms with private bathroom facilities, especially where a person is at risk of health complications if they contract COVID-19.

RECOMMENDATION 2

The Department of Home Affairs and the Australian Border Force should consider the following principles when conducting capacity assessments for a facility:

- **accommodation facilities meet the requirements of health and human dignity**[59]
- **single occupancy bedrooms with private bathroom facilities are preferable**
- **the specific needs and care requirements of individuals are provided for (for example, the care and accessibility requirements for persons with a disability or the requirements of a person at risk of health complications if they contract COVID-19).**

The table below compares the respective capacities of the main purpose-built immigration detention facilities (ie, this excludes all APODs) during the Commission's inspections in 2019 with updated information provided by Home Affairs in 2020.

Table 2: Capacity of each purpose-built immigration detention facility in 2019 and 2020

Facility	2019 operational capacity	2019 surge capacity[60]	2020 capacity
Perth Immigration Detention Centre (PIDC)	32	40	45
Yongah Hill Immigration Detention Centre (YHIDC)	420	460	558
Adelaide Immigration Transit Accommodation (AITA)	25	38	34
Melbourne Immigration Transit Accommodation (MITA), which includes the Broadmeadows Residential Precinct (BRP)	263	309	396
Villawood Immigration Detention Centre (VIDC)	480	559	616
Brisbane Immigration Transit Accommodation (BITA)	119	140	145
North West Point Immigration Detention Centre (NWP IDC)	N/A	N/A	500
Total	**1339**	**1546**	**2294**

The 2020 capacity figures are higher, and in some cases, significantly higher than even the surge capacity figures provided to the Commission in 2019.[61]

The Commission sought clarification from Home Affairs about the difference between the capacity figures provided to the Commission in 2019 and those for 2020. Home Affairs confirmed the capacity figures had changed in 2020 and stated that changes to infrastructure can impact the capacity of the network. Home Affairs did not identify what infrastructure changes had been made or explain the basis for increasing the capacity of each facility.

The most obvious way to increase the capacity of a facility would be to increase its total size, while also building new infrastructure especially for bedrooms. It is also theoretically possible to increase the capacity of a facility within its existing land size and with existing infrastructure—for example, by increasing available space for bedrooms or reconfiguring bedrooms. However, the Commission has not been provided with any information that explains how the significant increase in the respective capacities of these facilities has been achieved in ways that also ensure compliance with relevant human rights principles, and especially so as to ensure that individuals who are detained can maintain appropriate physical distancing.

Home Affairs and the ABF should review current capacity assessments of each facility to ensure compliance with the requirements of health and human dignity, including physical distancing and occupancy levels in bedrooms, and report publicly on the findings and outcomes of this review.

RECOMMENDATION 3

The Department of Home Affairs and the Australian Border Force should review current capacity assessments of each facility to:

- **apply the principles in Recommendation 2**
- **ensure bedroom arrangements comply with Recommendation 6.**

The Department of Home Affairs and the Australian Border Force should report publicly on the findings and outcomes of this review.

During inspections in 2019, facility staff advised the Commission that each facility had a 'surge capacity', as outlined in Table 2. The 'surge capacity' allows each facility to accommodate population numbers over operational capacity to a limit.

Following inspections in the second half of 2019, which occurred prior to the outbreak of COVID-19, the Commission considered that accommodating population numbers over operational capacity would only be appropriate for very short periods.[62]

Given the risks posed by COVID-19, accommodating population numbers over the operational capacity, even for a short period, is unjustifiable. Detaining a greater number of people than a facility's operational capacity also makes it difficult, if not impossible, to apply the principles set out in Recommendation 2. Going beyond a facility's operational capacity generally would prevent the effective implementation of measures to mitigate COVID-19, such as the provision of single occupancy bedrooms, access to sanitary facilities in a clean and timely manner and the ability to physically distance in all bedrooms and communal areas.

As outlined in Section 3.1, alternatives to closed immigration detention are readily available, and should be used to protect the health of detainees and facility staff. The Commission considers that the number of people detained in any immigration detention facility should be no greater than the facility's operational capacity, or the number of people who can be accommodated while applying the principles in Recommendation 2, whichever is the smaller number of people.

RECOMMENDATION 4

The Department of Home Affairs and the Australian Border Force should ensure that the number of people detained in any facility should be no greater than the facility's operational capacity, or the number of people who can be accommodated while applying the principles in Recommendation 2, whichever is the smaller number of people.

The table below outlines the capacity of each facility as assessed by Home Affairs and ABF in 2020 (excluding all smaller offsite APODs that are not semi-permanent) as well as the number of people detained in each facility in March and August 2020.

Table 3: Facility capacity and population in 2020

Facility	Capacity	Number of people detained: March 2020	Number of people detained: August 2020
PIDC	45	22	22
YHIDC	558	341	353
AITA	34	23	24
MITA (including BRP)	396	262	262
Mantra Bell City APOD	77	67	75
Best Western APOD	22	0	17
VIDC	616	423	455
BITA	145	89	101
Kangaroo Point Central Hotel and Apartments APOD	122	111	96
Meriton Suites APOD	51	<5	27
NWP IDC	500	0	74
Phosphate Hill APOD	N/A	<5	<5
Northern APOD (Mercure Darwin Airport Resort)	44	15	16

These figures demonstrate that the population at each facility between March and August 2020 generally increased. However, in some facilities the number of people detained has remained the same. The most significant increases between March and August are at some of the larger facilities, such as VIDC and YHIDC. At VIDC the population increased from 423 in March 2020 to 455 in August 2020.

Following inspections in the second half of 2019, when the total immigration detention population was lower,[63] the Commission observed that some immigration detention facilities were operating at very close to or over their operational capacity.[64] The Commission also identified overcrowding in some compounds with dormitory-style accommodation and found that the conditions in these compounds were unsuitable and appeared to be adversely affecting the health and well-being of the people detained there.[65]

The table below compares the respective populations in each dedicated immigration detention facility during the Commission's 2019 inspections and in August 2020.

Table 4: Population of dedicated immigration detention facilities—2019 and 2020

Facility	Number of people detained during Commission's 2019 inspections[66]	Number of people detained in August 2020
PIDC	25	22
YHIDC	327	353
AITA	32	24
MITA (including BRP)	260	262
VIDC	450	455
BITA	120	101

The figures above indicate that there has been little significant change in the number of people detained at each of the dedicated immigration detention facilities between the Commission's last inspections in 2019 and August 2020, with small net increases and decreases at the various facilities.

The Commission is not aware of any steps that Home Affairs has taken to address concerns about overcrowding in low and medium security accommodation with dormitory-style accommodation at BITA, MITA, AITA and PIDC, identified during inspections in 2019.[67] Given that the overall detention population has increased, and there has not been a significant reduction in the population at any of these facilities since the Commission's inspections in 2019, it is likely that these issues remain. This is a significant concern given that overcrowding can enable the rapid spread of COVID-19 in a facility.

Despite a significant net detention population increase since the start of the COVID-19 pandemic, this is not reflected by population increases in mainland dedicated facilities between 2019 and 2020. The increase in population has largely been absorbed by the use of additional purpose-built facilities that were not being utilised in March 2020 and an upscaling of the use of hotel APODs since then (see Sections 3.3 and 3.9).

3.3 Transfers to Christmas Island

In August 2020, the ABF announced detainees would be temporarily transferred to the North West Point Immigration Detention Centre (NWP IDC) on Christmas Island from mainland facilities to 'relieve capacity pressure across the detention network in Australia'.[68] Before the Senate Select Committee on COVID-19, the ABF stated it would transfer up to 250 people to NWP IDC, at a cost of $55.6 million over six months from August 2020 to February 2021.[69] On 29 March 2021, the ABF advised the Commission that there was a total of 217 people detained at NWP IDC.[70]

While transfers to NWP IDC have provided some capacity relief across the network, the Commission considers that this is not an appropriate solution to address increasing population numbers and overcrowding in immigration detention facilities because it creates other significant human rights issues.[71]

The Commission last inspected NWP IDC in August 2017.[72] The Commission found that due to its remoteness, the nature of its security infrastructure, and limited access to facilities and services on Christmas Island, the NWP IDC is not an appropriate facility for immigration detention, particularly for people who are vulnerable or have been detained for prolonged periods of time.[73] This remains the Commission's view.

There is limited health care available on Christmas Island. The Commission understands that acute medical care is not available on Christmas Island. In September 2020, the ABF informed the Commission that if a detainee required acute care, an air ambulance to Perth would be arranged. At this time, the ABF also informed the Commission that there were no ventilators available on Christmas Island, and that all testing of COVID-19 swabs occurred in Perth.[74] The Commission is not aware of any changes to these arrangements.

The Commission has two principal concerns regarding the decision to transfer detainees from mainland facilities, as well as large numbers of facility staff, to NWP IDC during the COVID-19 pandemic. First, this poses significant health risks for detainees, facility staff as well as the local population on Christmas Island. If there were a COVID-19 outbreak on Christmas Island, it would be very difficult to address it effectively with the available health facilities and services, and given Christmas Island's extreme remote location.

Secondly, the remoteness of Christmas Island significantly restricts communication and visits with family, friends, lawyers, and other key supports. In-person visits are difficult, if not impossible, due to geographical and other barriers. While in-person visits are recommencing for people detained in most mainland facilities (see Section 3.10), it is unlikely that people detained on Christmas Island will be able to receive regular, if any, in-person visits from family or friends.

Mobile phone reception on Christmas Island is only available via Telstra's 2G network, which does not offer data. The Commission welcomes steps taken by the ABF to set up Wi-Fi access at NWP IDC from mid-October 2020. However, the Commission is concerned that it is not possible for people detained at NWP to access the internet reliably on their mobile phones and use internet-based applications, which is the primary means to maintain meaningful contact with family, friends, lawyers and other key supports—especially through video calls. The Commission has previously found that NWP has not been able to provide adequate digital communication services. For example, access to video calls and private communications via mobile phones and especially smartphones is of great important in upholding the basic rights of people who are in immigration detention, and alternative services, such as landline phones and desktop computers in common areas of a detention facility, are not an equivalent alternative.[75]

The ABF has acknowledged that the internet available through the Wi-Fi network can be slow, particularly during periods of high internet usage or bad weather, and that it can only be accessed in some areas of the facility. The ABF has informed the Commission that they have increased the bandwidth of the Wi-Fi network, and that any further improvements require infrastructure changes, which are under consideration.[76]

Some of the unrest and protest activity at NWP IDC in January 2021 appears, at least in part, to have been the result of dissatisfaction with conditions of detention on Christmas Island resulting from its remoteness and limited access to some basic services. The Commission considers that high levels of distress and frustration, which may contribute to unrest and protest activities, are more likely when people are detained in isolation from family, friends, lawyers, and other supports.

The Commission considers that Christmas Island is an inappropriate location for immigration detention facilities, due to its remoteness and limited access to facilities and services, particularly for people who are vulnerable or have been or are likely to be detained for prolonged periods.

RECOMMENDATION 5

As a matter of urgency, the Australian Government should decommission the use of all immigration detention facilities on Christmas Island, and implement more appropriate solutions to reduce the number of people in closed immigration detention as outlined in Recommendation 1.

3.4 Physical distancing

Expert health advice provided to the Commission outlined the critical importance of maintaining effective physical distancing measures in immigration detention facilities, irrespective of whether there are any confirmed cases of COVID-19 in a facility. Physical distancing is critical in reducing the risk of COVID-19 spreading within a facility, especially if an individual with COVID-19 enters the facility. The CDNA guidelines also recognise physical distancing as an important infection prevention and control measure in a detention environment.[77]

The Commission requested information on measures taken by Home Affairs and its contracted detention service providers to ensure adequate physical distancing in bedrooms, shared bathroom facilities, compound common areas, shared facilities, and outdoor spaces in each facility, including APODs.

Home Affairs guidance states that strict adherence to physical distancing is required by staff and detainees, where operationally feasible. The Serco outbreak management plan for immigration detention facilities outlines that physical distancing requires that 'persons should remain 1.5 m apart … and in an enclosed space four square metres should be provided per person'. For example, facility outbreak management plans direct that programs and activities should be delivered with '1.5 metres between each detainee and moved to larger areas wherever possible'. This is consistent with the advice provided by the Australian Government,[78] and is reflected in restrictions that have been applied by most State and Territory governments in response to COVID-19.

People in immigration detention are encouraged to engage in physical distancing through: signage displayed in the facilities (including translated materials); verbal communications by ABF staff to detainees (for example, at Detainee Consultative Committee (DCC) meetings); and distance markers and furniture rearrangements in communal areas, such as common rooms, gyms, classrooms, dining rooms and waiting rooms. Home Affairs has advised that ABF staff conduct 'compound walk audits' to check compliance with physical distancing and other measures. In relation to physical distancing, the checklist includes the following: that signage is clearly visible, that social distancing markers are in place, and that physical distancing is being practised and enforced by staff. The Commission does not know how often such audits are conducted by ABF staff.

Based on its physical inspections in May and June 2020, which were necessarily brief, the Commonwealth Ombudsman observed that 'both detainees and staff were complying with [physical distancing] guidelines where possible.'[79]

The Commission is satisfied based on the materials provided that adequate measures have been taken to promote physical distancing in communal areas. However, the effectiveness of these measures depends on their consistent application by facility staff, and most importantly ensuring that the number of people in detention facilities does not exceed safe levels, as outlined in Section 3.2.

Home Affairs did not provide the Commission with any information on measures taken to promote physical distancing in bedrooms and shared bathroom facilities. As discussed below, the Commission is concerned that insufficient steps have been taken to ensure adequate physical distancing in bedrooms.

(a) Bedrooms

Expert health advice provided to the Commission is that all bedrooms in an immigration detention facility should have an occupancy level that allows for physical distancing of 1.5 metres per person at all times and provide for at least four-square metres per person.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) advises that the minimum standard of floor space in a single-occupancy bedroom is six square metres, and four square metres per detainee in a multiple-occupancy bedroom, excluding any sanitary facilities that may be located in a bedroom.[80] While these standards relate to prisons, the Commission considers they are equally applicable to immigration detention facilities.

However, the CPT notes that maintaining four square metres per person in a multiple-occupancy bedroom of up to four people may still lead to cramped conditions. The CPT advises that the desired standard regarding multiple-occupancy bedrooms of up to four people should add four square metres for each additional person to the minimum standard of six square metres for a single-occupancy bedroom. This means at least ten square metres for two people, 14 square metres for three people and 18 square metres for four people, excluding any sanitary facilities located in the bedroom.[81] This minimum living space *excludes* any sanitary facilities located in a bedroom, and the CPT advises that for multiple-occupancy rooms, any sanitary facilities should be fully partitioned from the living and sleeping space.

The vast majority of people in immigration detention share a bedroom and a bathroom with at least one or two other people. Nearly all bedrooms that accommodate two or more people contain bunk beds. Home Affairs informed the Commission that, in January 2021, there were nine bedrooms that accommodated four people, located in the Avon compound at MITA, at PIDC and in the Hawk and Falcon compounds at YHIDC. There were no bedrooms at any facility that had occupancy levels over four people.

This demonstrates a reduction in the number of bedrooms that accommodate four or more people. During inspections in 2019, the Commission observed that some low- and medium-security compounds with dormitory-style accommodation contained more than one set of bunk beds and could accommodate between four to 10 people.[82] Most people the Commission interviewed from these compounds in 2019 reported that all the beds in their rooms were usually occupied.[83] The Commission welcomes efforts to reduce the number of people in bedrooms that previously accommodated four or more people. This will improve the space available in some bedrooms. However, this is not sufficient to ensure adequate physical distancing in all bedrooms.

As outlined above, nearly all bedrooms with two or more people are configured with bunks beds. The layout of these bedrooms does not provide enough space for physical distancing—two people using a bunk bed will be in close proximity and will not be able to comply with physical distancing requirements of 1.5 metres. The Commonwealth Ombudsman also observed that the configuration of rooms with bunk beds will make effective physical distancing more difficult.[84]

The Commission requested the dimensions of a typical bedroom shared between two or more people in each compound, and the highest number of people accommodated in a bedroom in a compound.

Based on the information provided by Home Affairs, it appears that not all multiple-occupancy bedrooms provide the minimum standard of four-square meters per person.

For example, each bedroom in the La Trobe compound at VIDC measures 9.68 square metres. Home Affairs advised that the maximum number of people in any room in the La Trobe compound is three people. Where there are three people accommodated in a bedroom in the La Trobe compound, there will be less than four square meters available per person. Other facilities and compounds with some bedrooms that accommodate two or more people that may not meet this minimum standard include the Avon and Bass compounds at MITA, PIDC, Lachlan compound at VIDC and BITA.

At the time of the Commonwealth Ombudsman's inspections in May and June 2020, the assessment by Home Affairs was that bedrooms at most immigration detention facilities, except for some at BITA, provide four square metres per person based on occupancy levels and total room size.[85] The Commission's assessment is based on information received from Home Affairs in September 2020 and January 2021.

The Commission notes that many bedrooms across the network do not meet the CPT's desired standards for multiple-occupancy bedrooms of up to four people outlined above. The Commission also does not know if the measurements provided by Home Affairs include or exclude sanitary facilities, where they are located within bedrooms.

In line with expert health advice, the Commission considers that people in immigration detention who share a bedroom should be able to maintain a distance of 1.5 metres at all times. Bedrooms with bunk beds do not allow for adequate physical distancing. Where bedrooms are configured with bunk beds, this will likely require that most bedrooms be designated single occupancy bedrooms in order to comply with physical distancing requirements.

In addition, each bedroom should provide adequate floor space for each person. Expert health advice and minimum human rights standards state that in shared bedrooms each person should have at least four square metres of floor space. The Commission recommends that Home Affairs and the ABF limit bedroom occupancy levels to enable physical distancing of 1.5 metres between each person at all times and ensure that each multi-occupancy bedroom provides at least four square metres per person, excluding any sanitary facilities located in the bedroom.

Steps taken by Home Affairs and the ABF to increase the number of single occupancy bedrooms and reduce dormitory-style and shared bedrooms, will also improve conditions of immigration detention overall, in line with international human rights law standards. The Commission considers that if multi-occupancy bedrooms continue to be used in immigration detention facilities, Home Affairs and the ABF should work towards meeting the CPT's desired standards regarding multi-occupancy bedrooms of up to four people.

RECOMMENDATION 6

The Department of Home Affairs and the Australian Border Force should limit bedroom occupancy levels to ensure:

- **physical distancing of 1.5 metres between each person at all times**
- **at least four square metres per person in multi-occupancy bedrooms, excluding any sanitary facilities located in the bedroom**
- **sanitary facilities located in the bedroom are fully partitioned from the living and sleeping space.**

(b) Controlled movement

'Controlled movement' policies restrict freedom of movement within a detention facility and the level of access that people have to outdoor space and shared amenities for exercise, recreation and activities.

Controlled movement policies were applied in most facilities and compounds prior to COVID-19. For example, in the second half of 2019, the Commission observed that while some lower-security compounds continued to operate on a more 'open' model, many people were not permitted to leave certain compounds unless they had rostered access to areas outside of their compounds, and they generally required escort by Serco officers in order to move between their compound and other areas in the facility.[86]

The Commonwealth Ombudsman observed in 2020 that arrangements to group compounds and ensure there is no mixing of people detained in different compounds, were in place in most instances across the detention network.[87]

The use of controlled movement policies has increased as a result of COVID-19. Facility outbreak management plans outline that where there is a potential COVID-19 outbreak,[88] movement out of accommodation compounds will only occur for meals, medical appointments, interviews, or visits. This restricts people to their compounds most of the time, except in limited circumstances, with the objective of preventing a COVID-19 outbreak. Under these arrangements, it does not appear that they will have access to outdoors areas or shared facilities outside of their compounds.

While controlled movement policies reduce the risks of COVID-19 transmission in facilities by limiting or in some cases preventing the mixing of people accommodated in different compounds, the Commission has consistently raised concerns that such policies have a significant impact on living conditions and restrict access to recreational space and facilities for people in detention with adverse impacts on a person's health and wellbeing.[89] The impacts of such restrictions are especially concerning when they result in confinement to compounds or facilities with inadequate conditions and access to shared facilities and outdoor space for prolonged periods.[90]

Further restrictions on movement out of compounds, beyond what was already in place prior to the COVID-19 pandemic, may be justified in the event of a confirmed COVID-19 outbreak[91] in a facility. During a confirmed COVID-19 outbreak, all movement out of compounds should cease, except for medical appointments, interviews or visits, and meals will be delivered to the compound. However, restricting people to their compounds, except when they have meals, medical appointments, interviews or visits, may not be necessary when there are no confirmed cases of COVID-19 in a facility. The CDNA Guidelines do not require additional restrictions on detainee movement, except in the case of individuals who are confirmed or suspect cases.

Further controls on the movement of people in detention results in a significantly more restrictive environment. This also increases the importance of considering alternatives to closed detention wherever possible.

The Commission considers that further restrictions on movement out of compounds (beyond what was already in place prior to the COVID-19 pandemic) should only be applied when it is absolutely necessary to protect the health of people in detention, and only for the shortest possible duration.

RECOMMENDATION 7

The Australian Border Force and the relevant detention service provider should review current controlled movement policies to ensure only the minimum restrictions necessary to reduce COVID-19 risks are applied, and for the shortest duration possible.

3.5 People at risk of severe illness

Some people with underlying health conditions are at elevated risk of severe illness if they contract COVID-19, which may be life-threatening and can result in death. Special measures are required to address these increased risks and protect the health of people in this group, such as placement in single rooms with private bathroom facilities, separation from other detainees or release into community-based alternatives.

Consistent with the advice of the Department of Health, the CDNA Guidelines outline that people at high risk of severe illness from COVID-19 include those who:

- are 70 years old or over
- have had an organ transplant and are on immune suppressive therapy
- have had a bone marrow transplant in the last 24 months or are on immune suppressive therapy for graft versus host disease
- have a haematological (blood) cancer (eg, leukaemia, lymphoma or myelodysplastic syndrome diagnosed within the last 5 years)
- are having chemotherapy or radiotherapy.[92]

People at increased risk of moderate COVID-19 illness include those who have chronic liver disease, poorly controlled blood pressure, chronic kidney (renal) failure, heart disease, chronic lung disease, and diabetes, among a number of other conditions.[93]

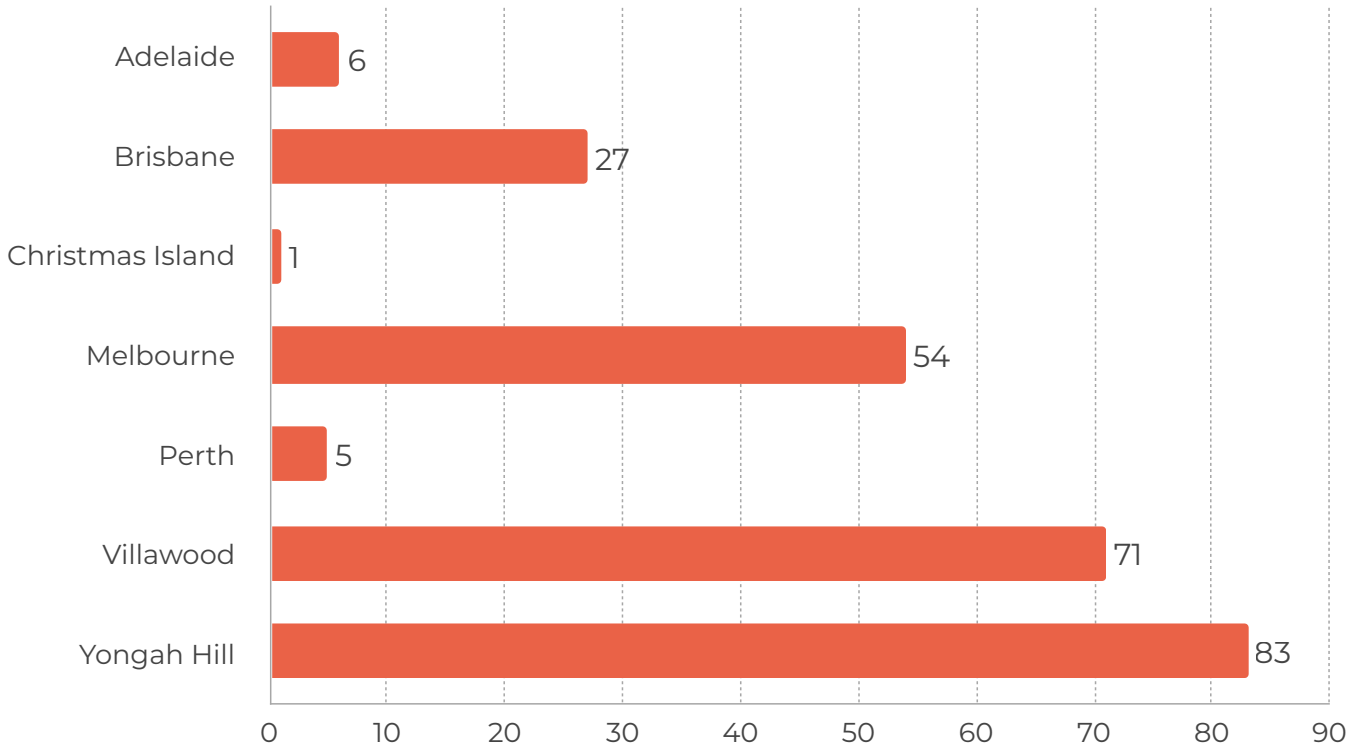
The CDNA Guidelines recommend consideration of additional measures to protect vulnerable detainees at risk of severe COVID-19 disease such as 'early release or alternative accommodation',[94] and that they be separated from those who may have been exposed.[95]

Expert health advice provided to the Commission stated that people in this group should be provided a single room with private bathroom facilities; however, it would be preferable for them to be released from closed immigration detention into community-based alternatives where possible.

The Commission requested information about how many people in closed immigration detention were at elevated risk of complications from COVID-19 in each facility in accordance with the CDNA Guidelines.[96]

Home Affairs advised that, as at 28 September 2020, a total of 247 people in immigration detention facilities had been identified as vulnerable to COVID-19. They noted that some people had been assessed as vulnerable, despite falling outside CDNA criteria, due to complex co-morbidities and/or disability that must be considered if isolation needs to occur.

Figure 4: Number of people at elevated risk from COVID-19 in immigration detention by location—28 September 2020



Home Affairs advised that the following measures have been taken in relation to people at elevated risk of complications from COVID-19 in immigration detention:

- IHMS completed a report detailing vulnerable persons in immigration detention in accordance with the CDNA Guidelines
- IHMS provides an updated list of all people assessed to be vulnerable twice weekly to Serco, the ABF and Home Affairs
- A clinical review is conducted by IHMS for all people assessed to be vulnerable to COVID-19.

The Commission also requested the number of people identified by IHMS as vulnerable to COVID-19, who have been placed in single rooms with private bathroom facilities. Home Affairs advised that while some people are in single rooms, these room types had been allocated due to complex clinical needs and not to protect people from COVID-19. The Commission does not know how many people in this group are in single rooms with private bathroom facilities.

The Commission welcomes advice from Home Affairs that IHMS has included in its assessment people who may not meet the criteria contained in the CDNA guidelines, however, may nonetheless be vulnerable due to co-morbidities and/or disability, and have specific care needs if they are placed in quarantine or isolation. The Commission encourages Home Affairs and IHMS to also consider the impacts of quarantine, isolation and other restrictive policies introduced to response to COVID-19 on people with mental health conditions or a history of torture and/or trauma.

However, the Commission is concerned that no steps have been taken to release people in this group into community-based alternatives, or to accommodate them in single rooms with private bathroom facilities, in line with health advice. Home Affairs' approach in this regard also differs from that in comparable jurisdictions, like the United Kingdom.

In the United Kingdom, for example, the Home Office directed that people who fall within the Public Health England (PHE) increased-risk groups from COVID-19 should be assessed under the 'adults at risk' (AAR) policy.[97] The AAR policy guides decision making regarding whether a person would be vulnerable to harm in detention (if they are an 'adult at risk'), and whether they should be held or remain in closed detention based on this assessment.[98] This was an important step by the UK Government to recognise the vulnerability of people in detention at higher risk of COVID-19; however, the Commission notes that significant concerns have been raised by the relevant UK parliamentary oversight committee about the way in which this policy has been applied.[99]

The Commission recommends that the Australian Government take steps to release people at risk of health complications from COVID-19 into community-based alternatives to closed detention unless an individual assessment identifies security risks that could not be managed in the community. Where this is not possible, Home Affairs and the ABF should offer placements in single bedrooms with private bathroom facilities for as many people in this group as possible.

RECOMMENDATION 8

The Department of Home Affairs and relevant Ministers should take steps to release people at risk of health complications from COVID-19 into community-based alternatives to closed detention unless an individual assessment identifies security risks that could not be managed in the community.

Where the release of an individual is not possible, the Department of Home Affairs and the Australian Border Force should offer the individual placement in a single bedroom with private bathroom facilities.

3.6 Training and education

It is widely recognised that training and education of staff, as well as people in detention, are central in implementing COVID-19 infection prevention and control measures.[100] The CDNA Guidelines state that education for staff and detainees is vital to inform their behaviour and help manage risks of COVID-19 transmission.[101]

(a) Staff

The CDNA Guidelines state that each detention facility is responsible for ensuring its staff are trained and competent in all aspects of infection outbreak management. All staff should know the signs and symptoms of COVID-19 and understand infection prevention and control guidelines and be able to competently implement these measures.[102] The CDNA Guidelines also clearly stipulate required topics for staff education and training.[103]

The Commission requested information and documents on all training provided to facility staff in relation to COVID-19, including the use of personal protective equipment (PPE) and appropriate methods of sampling to conduct a COVID-19 test.

Home Affairs advised that all Serco employees had been assigned an online course that covered the donning and doffing of PPE as well as hand washing, and that face-to-face training was provided to Serco staff who were required to use PPE as part of their duties.

Home Affairs also advised that refresher training was provided to all IHMS staff on the use of PPE in March and April 2020. In addition, all IHMS staff working in detention facilities are required to complete online training in relation to hand hygiene and infection control. They are also required to complete a clinical skills assessment in relation to hand hygiene, temperature assessment and how to fit an N95 Mask. Home Affairs also advised that all IHMS clinical staff are trained and assessed as competent to collect COVID-19 swabs.

The Commission did not receive any information about COVID-19 related training provided to Home Affairs or ABF staff who work in immigration detention facilities.

Based on the information and documents available to the Commission, it appears that most facility staff have received infection control training, including the use of PPE, and that all IHMS clinical staff are trained to take COVID-19 swabs. However, it is unclear whether facility staff have received training in all areas required by the CDNA Guidelines.

Expert health advice provided to the Commission stated that the following training should be prioritised for all facility staff: identifying symptoms and signs of COVID-19 and how to respond, exposure risk levels for COVID-19 (including travel and contact with confirmed cases), actions required if staff experience COVID-19 symptoms, and personal hygiene and environmental and equipment (including workwear) cleaning requirements.

The Commission welcomes steps taken by Home Affairs and its contractors to ensure that facility staff are trained in infection control practices required to manage COVID-19. The Commission considers that facility staff should receive training in all areas required by the CDNA Guidelines and encourages Home Affairs to take further steps where required. The training areas identified by the infectious diseases expert outlined above should be prioritised.

RECOMMENDATION 9

The Department of Home Affairs, the Australian Border Force and relevant detention service providers should ensure that all staff working in immigration detention facilities receive training on all areas required by the CDNA guidelines. In accordance with expert health advice, training on the following areas should be prioritised:

- **identifying symptoms and signs of COVID-19 and how to respond**
- **exposure risk levels for COVID-19 (including travel and contact with confirmed cases)**
- **actions required if staff experience COVID-19 symptoms**
- **personal hygiene and environmental and equipment (including workwear) cleaning requirements.**

The Commission considers that staff training on relevant skills, as well as new policies and procedures required to manage COVID-19 risks should be complemented with regular audits of sites and staff practice.

The Commission understands that some measures already exist for this purpose. For example, Home Affairs advised that Serco conduct regular spot checks on personnel to ensure appropriate and proper use of PPE. The Commission also reviewed a checklist used by the ABF to check compliance, including reception screening, cleaning measures, signage, catering service, physical distancing and use of PPE, during their compound walk.

The Commission agrees with the Commonwealth Ombudsman's recommendation that Home Affairs implement an assurance program to monitor staff and contracted service provider compliance with outbreak management plans and operational notifications and provide guidance on areas for improvement.[104]

In addition to providing relevant training to facility staff and regular audits of staff practice, Home Affairs and its contractors should also ensure that facility staff can easily access and refer to training materials and up-to-date policies and procedures for the management of COVID-19 risks in immigration detention facilities.

Expert health advice stated that facility staff should have access to a centralised system, preferably online, that contains up-to-date information, and clear actions required by staff to manage and mitigate COVID-19 risks, including links to relevant training materials, guidelines and organisational policy and procedure. Education materials for staff should also be provided in relevant languages where required.[105]

Based on the information and documents reviewed by the Commission, it is unclear whether this is available for staff working in immigration detention facilities. On the available material, the health expert expressed concern that staff working in immigration detention facilities may not have access to, or be able to easily find, the information required to prevent COVID-19 in a facility when they require it.

All facility staff should have ready access to current information and resources necessary to prevent and mitigate against COVID-19 in a facility. The Commission encourages Home Affairs, the ABF and its contractors, to review existing systems to ensure that all facility staff have ready access to training materials and up-to-date policies and procedures in relation to the management of COVID-19 risks, and that this information be stored in a centralised location.

RECOMMENDATION 10

The Department of Home Affairs, the Australian Border Force and relevant detention service providers should ensure that all facility staff can quickly and easily access all available training materials and up-to-date policies and procedures in relation to the management of COVID-19 risks.

(b) People in detention

The CDNA Guidelines state that detention facilities should provide prompt and clear information and regular communications to people in detention facilities in relation to COVID-19.[106] It further states that signage and other forms of communication, such as information and fact sheets in relevant languages, must be used to convey key messages, including the actions being taken by the facility to protect people and what people who are detained can do to protect themselves.[107]

According to the WHO, it is essential to engage the detention population in widespread information and awareness-raising activities, so that people in detention are informed in advance of any measures, understand the procedures to be adopted and why they are necessary.[108] The WHO also states that it is especially important that any potential restrictive measures are explained, and their temporary nature emphasised.[109]

The Commission reviewed signage and factsheets that outlined key infection prevention and hygiene messages—for example, in relation to physical distancing, cough etiquette and handwashing. Most signage was issued by the Australian Government Department of Health for use in the community and was available in other languages spoken by people in immigration detention. However, the signs and factsheets prepared by IHMS did not appear to be available in any language other than English.

Some information sessions on COVID-19 were offered by IHMS to people in detention. However, such sessions appear to have been offered in some, but not all, facilities. Home Affairs stated that people in detention can seek further information on any concerns they may have from IHMS or Serco staff at any time and during scheduled health appointments. It also appeared that some information and updates on COVID-19 were provided to people in detention by the ABF at the Detainee Consultative Committee (DCC) meetings at each facility.

It is concerning that some IHMS materials were not translated into other languages spoken by people in immigration detention, and that information sessions on COVID-19 did not appear to be available at all facilities. English is not the primary language for many people in immigration detention facilities, and some, particularly those who have recently arrived in Australia, may not be able to speak, read or write in English. It is also important that any written materials are supplemented with education sessions that can provide further explanation and context, and provide a forum for people to ask questions or raise concerns. Some people in immigration detention may also have low literacy levels.

Home Affairs, the ABF and detention service providers should ensure that all signage and factsheets used to provide information to people in immigration detention in relation to COVID-19 are translated into relevant languages, and that information sessions on COVID-19 are available at all detention facilities, including APODs.

RECOMMENDATION 11

The Department of Home Affairs, the Australian Border Force and relevant detention service providers should ensure that:

- **all signage and factsheets used to provide information to people in immigration detention in relation to COVID-19 are translated into relevant languages**
- **information sessions on COVID-19 are available at all immigration detention facilities.**

The Commission notes that while the information on COVID-19 available to people in detention was accurate, it could have been better targeted to address the specific needs and concerns of people in immigration detention facilities. Some messages, which were designed for people living in the community, did not appear to be useful or practical in an immigration detention context, where there are significant restrictions on a person's ability to control their environment. In addition, the Commission did not review any material, including signage or factsheets, that outlined actions the facility was taking to protect people in immigration detention. Rather, the focus was on measures that individuals should take to protect themselves.

3.7 Screening for COVID-19

All places of detention, including immigration detention facilities, should have systems in place to screen accurately for COVID-19 and relevant risk factors among people in immigration detention, facility staff, and any other visitors to a facility.

The CDNA Guidelines state that, at the point of entry, detention facilities should screen all staff, including any visiting workers, and visitors. This process could include screening for symptoms and a temperature check.[110] Any exclusion or quarantine requirements related to returning from travel or having close contact with a confirmed case should be observed, and any staff and visitors with a COVID-19-like illness must stay away from the facility.[111] Visitors should not be permitted to enter a facility if they display symptoms suggestive of COVID-19, have been in contact with a known COVID-19 positive case in the past 14 days, or have been to a high-risk area in the past 14 days.[112] Detainees and staff should also be monitored for fever, acute respiratory and other relevant symptoms.[113]

Home Affairs advised that all persons seeking to enter a facility, including all staff and visitors, are subject to additional screening measures introduced to combat COVID-19. A health questionnaire is conducted by Serco staff, and a skin temperature check on entry and exit by Serco or IHMS staff. Where a person has two consistent temperature readings of 37.5 degrees or higher, or the health questionnaire identifies possible risk factors, the person will not be permitted to enter a facility. Staff who are prevented from entering a facility for one or more of these reasons must present a doctor's certificate confirming they are fit to work, before being permitted to return to their duties.

The Commonwealth Ombudsman confirmed that these additional screening measures were in place at all facilities they visited. Overall, they found the screening mechanisms to be satisfactory, but expressed concern that some facilities (YHIDC and VIDC) were not conducting temperature checks upon exit of the facility, as required by relevant policy and procedure.[114]

In relation to monitoring of detainees, the IHMS outbreak management plan outlines that all sites should monitor staff and detainees for signs and symptoms of COVID-19 with a high level of vigilance and a low threshold for investigation. It states suspect cases are most likely to be identified by facility staff, other detainees, by self-referral or at reception or IHMS clinic entry screening. Based on information available to the Commission, it is unclear when and how this monitoring takes place.

The Commission welcomes the introduction of additional screening measures for all people seeking to enter an immigration detention facility. Provided that the health questionnaire is accurate and up to date, and the temperature checking is conducted properly, these are important measures in addressing the threat of COVID-19.

The health expert reviewed information provided by Home Affairs to the Commission in relation to COVID-19 screening. Temperature checking on entry and exit of a facility, as outlined in policy and procedure, was assessed to be adequate. However, the health questionnaires used by Serco and IHMS to screen for COVID-19 were not considered to be up to date or sufficiently comprehensive. For example, some questionnaires did not check for all relevant symptoms or include questions required to properly assess the risks of COVID-19 exposure. On the basis of materials reviewed, the health expert advised that some of the materials used for COVID-19 screening in immigration detention should be revised and updated.

As the medical and public understanding of COVID-19 is continuing to develop, and the number of cases in the community has fluctuated over time, there is a need to update relevant policies and procedures accordingly.

Many of the documents received from Home Affairs in relation to COVID-19 screening, were provided to the Commission in August and September 2020, but were dated current as at January or March 2020. The Commission recommends that Home Affairs, ABF and detention service providers regularly update their policies and processes as knowledge and understanding of COVID-19 develops.

Screening of people entering a detention facility—including staff, visitors, and detainees—is critical in addressing the risk of COVID-19.

Expert health advice states that this requires stringent and up-to-date health questionnaires. Health questionnaires should cover all relevant and up to date symptoms and epidemiological indicators,[115] as outlined in the *COVID-19 CDNA National Guidelines for Public Health Units* (COVID-19 SoNG).[116]

RECOMMENDATION 12

The Department of Home Affairs, the Australian Border Force and detention service providers should ensure that all health questionnaires used to screen for COVID-19 in immigration detention facilities:

- **identify all COVID-19 risk factors (both clinical and epidemiological) as outlined in current health advice and as assessed by State and Territory health authorities**
- **are regularly updated to reflect the most current health advice.**

3.8 Quarantine

One of the measures used to prevent the entry, and control the spread, of COVID-19 into and within immigration detention facilities is to separate some detainees from the general population by way of quarantine. Quarantine in places of detention is recommended in some circumstances as an appropriate strategy by medical experts and the CDNA guidelines, to contain the spread in a facility.

Quarantine can therefore be legitimate to protect a person's health and broader human rights. However, quarantine is also necessarily restrictive, so should be applied only in accordance with medical advice about what is necessary to manage adequately the risks of infection.

Various quarantine measures are in place in immigration detention facilities.

Home Affairs distinguishes between several categories of quarantine, which are applied in different circumstances:

- 'medical quarantine' applies to any person assessed by IHMS as a 'suspect case',[117] based on presentation of symptoms consistent with COVID-19
- 'operational quarantine' applies to new arrivals to a facility or those returning from offsite appointments, who do not have symptoms associated with COVID-19
- 'isolation' applies to people who are confirmed COVID-19 cases.

Generally, a person will be quarantined for 14 days, but this may be longer if a person does not consent to testing.

To date, there have been no confirmed COVID-19 cases among people detained in immigration detention facilities. On 29 March 2021, a total of 951 tests for COVID-19 had been conducted on 639 people in immigration detention facilities.[118] As outlined in Section 3.8(b), the general practice is that those identified as 'suspect cases' are generally tested for COVID-19 and placed in medical quarantine while awaiting results. On this basis, the Commission considers it likely that as at 29 March 2021 around 639 people in immigration detention had been placed in medical quarantine for at least a period of time, pending the result of their test. The Commission does not know how many people have been subject to operational quarantine.

The Commission acknowledges that quarantine—when undertaken appropriately, as a proportionate response to a specific, identified threat—can be justified in preventing COVID-19 in immigration detention facilities. As detailed below, however, the Commission has several concerns about some current quarantine arrangements.

(a) Location and conditions of quarantine

In most immigration detention facilities, several sections or compounds have been designated as locations for quarantine. The location used will depend on how many people need to be quarantined at the same time. In most facilities, where the number of people quarantined is low, they are housed in areas designed for use as 'high-care accommodation'.[119]

The locations that have been designated as quarantine areas at each facility are outlined in the table below.

Table 5: Designated quarantine area(s) based on number of suspected cases requiring quarantine

Facility	Designated quarantine area(s) – numbers in brackets are the number of people that can be accommodated		
PIDC	Short-stay dormitory (1)	Short-stay dormitory or high-care accommodation (6)	Area 2 (female dormitory), short-stay dormitory and high-care accommodation (17)
YHIDC	High-care accommodation (1)	High-care accommodation (4 to 10)	Swan compound (11 to 20)
MITA	Dargo compound or high-care accommodation (Shaw compound) (1)	Dargo compound or high-care accommodation (Shaw compound) (2 to 10)	Dargo compound (10 to 20)
Melbourne APODs (Mantra Bell, Best Western)	Designated quarantine accommodation at MITA (see above) or Level 1 at Mantra Bell		
VIDC	High-care accommodation (Hotham compound) or Blaxland Annex (1 to 3)	High-care accommodation (Hotham compound) and Blaxland Annex or Blaxland Dorm 3 (4 to 10)	Blaxland Dorm 3 or Airport compound (over 10)
AITA	West wing, Platypus compound or hotel APOD (1)	West wing, Platypus compound or Koala compound or hotel APOD (2 to 10)	Entire facility in quarantine (over 10)
BITA	High-care accommodation (Hamilton compound) (1)	Residential compound (2 to 6)	Residential compound (6 to 10)
Brisbane APODs (Kangaroo Point, Meriton Suites)	Designated quarantine accommodation at BITA (see above) or dedicated floors at Meriton Suites		
CIIDC	Support compound or White compound (1)	Support compound or White compound (2 to 10)	Support compound or White compound (over 10)
Northern APOD	C Block or A Block (1)	C Block or A Block (2 to 5)	C Block and A Block or alternative APOD location (over 8)

As demonstrated in the table above, high-care accommodation units have been designated as a quarantine area at most immigration detention facilities. High-care accommodation units are primarily used and designed for single separation for behaviour management, and in some cases for health reasons.[120] The compulsory placement of individuals in these units requires authorisation from the ABF Detention Superintendent for periods of less than 24 hours, and by the more senior ABF Commander for periods exceeding 24 hours.[121]

The Commission has previously inspected the high-care accommodation units used at each facility.[122] Bedrooms in these units are sparse, with hard, fixed furniture, and contain a toilet and shower, with some separated by partitions (but not doors). They have limited natural light, and any windows are tinted so there is no view outside, and they cannot be opened. Bedrooms are generally monitored using closed-circuit television (CCTV) cameras, but the Commission does not know if the CCTV is used when a person is in quarantine.

The SPT has advised that the use of quarantine must not take the form of disciplinary solitary confinement.[123] The Commission considers that conditions in high-care accommodation units are prison-like, harsh and highly restrictive, and unsuitable for quarantine.

As a matter of urgency, Home Affairs and the ABF should investigate alternative, less restrictive options for separating people for quarantine purposes, and cease the use of high-care accommodation units.

Other compounds in the facility where people normally reside, and which contain outdoor areas and other shared facilities, could be used as a less restrictive alternative to high-care accommodation units. As outlined in Table 5, in some of the larger facilities, entire compounds are available for quarantine if needed. This suggests that these compounds could also be made available for use when there are lower numbers of people requiring quarantine.

The Commission acknowledges that immigration facilities have limited options for separating people, due to lack of appropriate facilities. However, as outlined in Section 3.1, in the absence additional infrastructure (or refurbished infrastructure) suitable for the separation of detainees for health reasons, steps may be taken by Home Affairs and relevant Ministers to reduce the number of people in immigration detention.

As well as relieving capacity pressures across the network and reducing the chance of COVID-19 spreading within individual facilities, this would increase the capacity in less restrictive parts of facilities available for quarantine purposes.

RECOMMENDATION 13

As a matter of urgency, the Department of Home Affairs and the Australian Border Force should cease the use of high-care accommodation units for quarantine purposes and use alternative, less restrictive options for quarantine.

International human rights standards require that people in immigration detention subject to single separation, including for health reasons, have adequate access to outdoor areas on a daily basis for exercise and other recreational activities, educational and recreational facilities and materials (such as books, computers, televisions), essential personal items such as clothing and toiletries and regular monitoring of physical and mental health by health staff.[124]

The CDNA Guidelines recognise that extended periods of isolation can result in distress and deteriorating mental health, and states that facilities should ensure mental health and social support services are available for detainees while in quarantine.[125]

Serco outbreak management plans state that those in quarantine are not permitted to leave the designated quarantine area (this could be a bedroom or a compound) unless they receive approval from the facility operations manager. They are also not able to participate in programs and activities (including access to any shared facilities), but Serco staff will provide personalised activities packs for the duration of quarantine. Serco staff also conduct welfare checks and headcounts in the quarantine areas. IHMS staff do not conduct regular observations for detainees in quarantine unless indicated for other clinical reasons.

The Commission requested information from Home Affairs on the availability and duration of access to areas outside of the bedroom during quarantine at each facility, but received no specific information in response to this question. Based on information available to the Commission, it appears that during quarantine people in immigration detention facilities have no or very limited access to outdoor areas or common rooms and may remain confined to their bedroom.

The Commission notes the Commonwealth Ombudsman's finding that in May and June 2020 detainees subject to quarantine at all facilities, except VIDC, were provided with access to personal mobile phones, DVD players, books/magazines and activity packs during their period of quarantine.[126]

The Commission has received reports of detainees subject to lengthy periods of quarantine of up to 14 days in bedrooms in the high-care accommodation units—in some cases without personal items such as clothing and toiletries, activities or facilities for education or recreation, or access to an outdoor area or common room. The Commission heard that these quarantine arrangements caused distress for some people, particularly for individuals with significant mental health issues.

- The Commission is concerned that people subject to quarantine in immigration detention facilities may:
- be confined to a bedroom for the duration of quarantine (up to 14 days and in some cases longer) with no or very limited access to an outdoor area
- not have access to personal items such as clothing and toiletries
- not have access to adequate activities or facilities for recreation
- not be regularly monitored by health staff or have access to adequate mental health or other supports.

The Department of Home Affairs, the ABF and detention service providers should ensure that minimum human rights standards are met during a person's quarantine.

RECOMMENDATION 14

The Department of Home Affairs, the Australian Border Force and detention service providers should ensure that people subject to quarantine arrangements have access to the following:

- **outdoor areas on a daily basis for exercise and other recreational activities**
- **educational and recreational facilities and materials**
- **essential personal items such as clothing and toiletries**
- **regular monitoring of physical and mental health by health staff.**

The Commission is especially concerned by reports of people with significant physical and/or mental health conditions being placed into 14-day operational quarantine in the 'high-care accommodation' units following discharge from hospital.

People returning from hospital to an immigration detention facility are likely to have significant vulnerabilities and health issues. The Commission considers that conditions in high-care accommodation, particularly over a 14-day period, may be especially harmful for such individuals. High-care accommodation units should not be used for people with significant physical and/or mental health conditions that require 14-day operational quarantine following discharge from hospital.

RECOMMENDATION 15

The Australian Border Force and detention service providers should not accommodate people with significant physical and/or mental health conditions, who are subject to 14-day operational quarantine following discharge from hospital, in 'high-care accommodation' units.

(b) Circumstances when quarantine is used

Quarantine should only be used on the basis of medical necessity, as assessed by health professionals, limited in time and subject to procedural safeguards.[127] Quarantine is by its nature restrictive, particularly for those who are already deprived of their liberty. It also may have adverse health impacts especially for those with existing mental health conditions.

(i) Medical quarantine

Home Affairs and its contractors require that a person in immigration detention be subject to 'medical quarantine' when assessed to be a 'suspect case', which is defined as anyone with symptoms consistent with COVID-19, including a fever or history of fever, or an acute respiratory infection (ARI).

This is consistent with the requirements in the CDNA Guidelines, which states that a detainee with an ARI, fever or other COVID-19 symptoms should be in a single room with their own bathroom facilities, if possible, while waiting for a diagnosis.[128]

IHMS is responsible for assessing whether a person in immigration detention is a 'suspect case' and, if required, ensuring the person is placed into quarantine and offered COVID-19 testing. If IHMS places or intends to place a person in quarantine, they must seek approval from the ABF Detention Superintendent by detailing reasons for quarantine in writing, but the procedure states that this process should not impede the commencement of quarantine.

Home Affairs advised that time limits for medical quarantine are generally set at 14 days.[129] The ABF confirmed that a person with symptoms consistent with COVID-19 will be subject to medical quarantine for 14 days, even if they receive a negative COVID-19 test result prior to completion of 14 days in quarantine.[130] Expert health advice provided to the Commission outlined that there is no need to continue to hold a person in 'medical quarantine' for the full 14-day period (as defined by Home Affairs) after they receive a negative COVID-19 test, any symptoms have resolved, and provided there are no epidemiological indicators.[131] Further to this, the relevant State or Territory PHU can advise on whether a person should be released from medical quarantine following receipt of a negative COVID-19 test.

Home Affairs also stated that daily reporting of individuals in medical quarantine occurs and alerts are sent to clinical teams when an individual is ready for review based on time in quarantine so as to only hold individuals in quarantine as long as clinically necessary. However, this is not reflected in policy or procedures reviewed by the Commission, which do not outline any time limits for quarantine nor any processes of medical review.

Quarantine should only be required for the period necessary to control infection risk. The absence of clear policies and procedures to inform decisions to release a person from medical quarantine could result in people being held for longer than is necessary, or inconsistent approaches by facility staff. The Commission considers that relevant policies and procedures should provide a clear framework for decisions to release people from medical quarantine.

RECOMMENDATION 16

The Department of Home Affairs, the Australian Border Force and detention service providers should ensure that relevant policies and procedures contain a clear framework for decisions to release people from medical quarantine, including:

- **guidelines on the duration of quarantine based on what is medically necessary to control infection risk**
- **procedural safeguards to ensure that people are quarantined for the shortest duration needed for individual and public health**
- **consultation with the relevant State or Territory Public Health Unit where required.**

Facilities should request and receive COVID-19 test results as quickly as possible to ensure outbreak management strategies can be promptly implemented should there be a confirmed case. Test results are also relevant to inform decisions to release a person from quarantine, in combination with other factors such as rates of community transmission, epidemiology or other factors relevant to an individual. The prompt receipt of a test can assist to ensure that people are not subject to quarantine for longer than is medically necessary.

Home Affairs advised that all COVID-19 tests are marked as urgent and that IHMS has no oversight on the processing times. Wait-times can vary due to a variety of factors including the volume of community testing conducted. The Commission notes the Commonwealth Ombudsman's observation that 'periods of isolation are, in the event of a negative result, generally limited to 24 to 48 hours because of the quick turnaround on COVID-19 tests.'[132]

Based on the material reviewed by the Commission, it is unclear whether any processes or arrangements exist to ensure testing is requested without delay and that processing of test results for people in immigration detention facilities is prioritised. The Commission has no information that suggests there have been any delays requesting or receiving COVID-19 test results. However, as a high-risk setting for COVID-19, immigration detention facilities should have clear protocols that ensure testing occurs without delay, and that processing of testing results is prioritised.

For example, the *COVID-19 Plan for the Victorian Aged Care Sector* states that residential aged care facilities (RACFs) must ensure there are no delays in organising pathology testing for residents who meet the criteria to be tested for COVID-19, and outlines the required planning and steps that RACFs are required to take to ensure testing is carried out as soon as possible.[133] It also indicates that testing and transport of any tests to the laboratory should be prioritised as per Department of Health and Human Services directives.[134]

Home Affairs and IHMS should ensure that relevant policies and procedures contain clear protocols to ensure COVID-19 testing is requested and conducted as soon as possible. They should also work with relevant health departments to ensure that the transport and processing of tests from immigration detention facilities is prioritised.

RECOMMENDATION 17

The Department of Home Affairs and the relevant detention service provider should:

- **ensure that relevant policies and procedures contain clear protocols to ensure COVID-19 testing is requested and conducted as soon as possible.**
- **work with relevant federal, State and Territory health departments to ensure that the transport and processing of tests from immigration detention facilities is prioritised.**

(ii) Operational quarantine

A person may also be subject to 'operational quarantine' regardless of whether they have any symptoms. Home Affairs defines operational quarantine as the 14-day period where certain detainees arriving to an immigration detention facility, who do not have symptoms associated with COVID-19, are quarantined away from the general population.[135]

Operational quarantine can be used in respect of any person detained in a facility, whether they are commencing a period of detention in a particular facility or they are an existing detainee returning from an offsite appointment. Unlike medical quarantine discussed above, operational quarantine is not triggered by an individual having symptoms associated with COVID-19.

In the case of operational quarantine, a person is required to quarantine for 14 days, irrespective of screening, symptoms or testing. IHMS will review operational quarantine placements at the completion of the 14-day period, and all detainees must complete a medical COVID-19 screening before entry into the general population.

Documents provided to the Commission include an ABF 'operational notification', which outlines when operational quarantine is required for new arrivals and those returning to facilities from certain offsite activities. This is summarised in the table below.

Table 6: Operational quarantine requirements in immigration detention

Situation	Operational quarantine requirements
New arrivals to immigration detention from the Australian community	All placed in 14-day operational quarantine
New arrivals to immigration detention transferred from a prison	Placed in 14-day operational quarantine if: • released from prison with confirmed case(s) of COVID-19 • unable to confirm COVID-19 status of the correctional facility prior to transfer • spent less than 14-days in a correctional facility with no confirmed cases of COVID-19 prior to transfer. A person who has spent greater than 14 days in a correctional facility with no confirmed cases of COVID-19 prior to transfer may be placed in the general population.
Return to an immigration detention facility after an offsite activity (i.e., a medical appointment)	Returned to the general population, unless concern expressed otherwise
Return to an immigration detention facility after hospital discharge	After receipt of clinical handover from hospital, IHMS to advise ABF and Serco if cleared to re-enter general population or if 14-day quarantine required. When medical handover from the hospital is delayed, will be placed in operational quarantine pending IHMS advice.

The Commission has received reports that in some facilities, people have been subject to 14-day operational quarantine following offsite medical appointments or discharge from hospital, where it was unclear why quarantine was necessary—for example, there was very low or no community transmission, or the location they travelled to had not been identified as geographical hotspot.

In contrast, the Commission has also received reports from members of the public that Serco officers, who attend offsite activities for the purposes of transport and escort, continue to work in a facility following offsite activities while the person that they escorted, and who attended the same locations, has been placed in operational quarantine.

The CDNA Guidelines state that new or existing detainees, who have been in geographic areas with elevated risk of community transmission within the past 14 days should be quarantined until 14 days from when they were last in the area with community transmission.[136]

In some respects, Home Affairs and ABF policy and procedure adopt a stricter standard for quarantine than is required by the CDNA Guidelines. For example, all new arrivals to immigration detention from the Australian community are placed in 14-day operational quarantine, irrespective of whether they have been in geographic areas with elevated risk of community transmission within the past 14 days.

Expert health advice provided to the Commission confirmed that in the absence of other indicators (ie, symptoms or close contact), where a person arrives at an immigration detention facility from a prison with no confirmed COVID-19 cases, or from a geographical area with no or very low community transmission, 14-day quarantine may not be medically necessary.

The Commission accepts that operational quarantine will be necessary in some circumstances—such as where there is an elevated risk of community transmission in particular geographical areas. However, the Commission is concerned that policies and procedures in relation to operational quarantine are not sufficiently targeted to ensure it is only used when necessary for infection control.

For example, there is no requirement to consider the advice of relevant State and Territory government health departments in relation to rates of transmission in particular geographical areas or facilities to assess the risks of COVID-19 exposure.

By way of illustration, the Victorian Government Department of Health has issued detailed guidelines on admission and transfer to and from RACFs and hospitals. These guidelines clearly outline what steps should be taken and factors considered in all possible transfer and admission scenarios, across a sliding scale of COVID-19 risk exposure, including when there is a confirmed COVID-19 outbreak, concerns about community transmission, and low or no community transmission. Where there is low or no community transmission, these guidelines do not require people in RACF to be quarantined upon admission or transfer, provided they do not have any relevant COVID-19 symptoms.

The Commission considers that Home Affairs and ABF should revise operational quarantine policies and procedures to include a sliding scale of COVID-19 risk exposure to guide decisions about the necessity of operational quarantine in the situations identified in ABF operational notification (as outlined in Table 6). COVID-19 risks in the community should be assessed by reference to the advice of relevant State and Territory health departments. Unless other relevant risk factors are identified, where a person has arrived from a geographical location with no or very low community transmission or another closed facility with no confirmed COVID-19 cases, 14-day quarantine should not be required.

RECOMMENDATION 18

The Department of Home Affairs and the Australian Border Force should revise operational quarantine policies and procedures to include a sliding scale of COVID-19 risk exposure (such as confirmed COVID-19 outbreak, concerns about community transmission, and low or no community transmission) to guide decisions about the necessity of operational quarantine, with reference to advice from State and Territory government health departments in relation to local conditions.

3.9 Hotel APODs

Alternative places of detention (APODs) can be designated in locations such as hospitals, mental health facilities, aged care facilities and hotels. Given the limited space and facilities available in hotel APODs, restrictions on offsite appointments and excursions introduced in response to COVID-19 would be especially harsh and restrictive for people detained in hotel APODs.

The Commission has consistently found that hotels are not appropriate places of closed immigration detention, given their lack of dedicated facilities for exercise, recreation and activities and limited access to outdoor space, and recommended that they should only be used in exceptional circumstances and for very short periods.[137]

The Commission inspected two hotel APODs in Brisbane and Melbourne (Kangaroo Point Central Hotel and Apartments and Mantra Bell City) during inspections in the second half of 2019.[138] The Mantra Bell City is no longer in use—in December 2020 all people detained there were relocated to another hotel APOD in Melbourne, located at the Park Hotel in Carlton.[139] In addition to the Park Hotel, three other, long-term hotel APODs have been in use since the Commission's last inspections: the Best Western in Melbourne, the Meriton Suites in Brisbane and the Northern APOD located at the Mercure Darwin Airport Resort. The Commission has not yet inspected these hotel APODs.

Between January and March 2021, the ABF advised that 128 people detained in hotel APODs were released from closed detention, with 53 people remaining.[140] The Commission welcomes these releases.

Prior to the outbreak of COVID-19, people detained in hotel APODs could attend either BITA or MITA in order to access shared facilities and outdoors areas or access services such as programs and activities or the IHMS medical clinic.[141] However, Home Affairs advised that all excursions for people in hotel APODs to BITA have ceased, and that limitations have been put on escorts between hotel APODs and MITA. During the Commission's 2019 inspections, excursions from hotel APODs to MITA and BITA, which are larger, purpose-built facilities, offered the primary means for people detained at hotel APODs to access outdoor space and shared facilities for exercise, recreation and activities.

The Commission has received reports that some people detained in hotel APODs have not left the hotel floor on which they are detained for extended periods. While restrictions on offsite appointments may be necessary—for example, where there are high rates of community transmission—the Commission is concerned that they significantly worsen conditions of detention for people in hotel APODs, in circumstances where conditions were already inadequate and extremely restrictive. This further illustrates the unsuitability of hotel APODs for use as places of detention for ongoing periods.

Home Affairs and the ABF should decommission the use of semi-permanent hotel APODs for ongoing periods of closed detention, and ensure that hotels are only used as APODs in exceptional circumstances and for very short periods.

RECOMMENDATION 19

The Department of Home Affairs and the Australian Border Force should decommission the use of semi-permanent hotel APODs for ongoing periods of closed detention and ensure that hotels are only used as APODs in exceptional circumstances and for very short periods.

3.10 Visits

The suspension or restriction of visits may be necessary to prevent the introduction or spread of COVID-19 in an immigration detention facility. The CDNA Guidelines state that visitors to a detention facility can potentially transmit COVID-19 to detainees, and should be limited where possible, especially when community transmission is occurring.[142]

The CDNA Guidelines require all in-person visits at a facility to be suspended when there is high community transmission of COVID-19 or otherwise on direction from federal, State or Territory health authorities.[143] Otherwise visitors should be excluded on an individual basis where they do not meet COVID-19 screening requirements as outlined in Section 3.7. The CDNA Guidelines outline other measures that ensure the safety of visits such as access to adequate hygiene supplies for all visitors, introduction of appropriate barriers such as Perspex screens, limits on visitor numbers, and use of PPE.[144]

The suspension or restriction of in-person visits is a measure that significantly restricts the ability for people in immigration to maintain communication and meaningful relationships with family and friends, and also engage with professional visitors such as lawyers.[145] It may also adversely affect the health and well-being of people in immigration detention.

From 24 March 2020, the ABF temporarily ceased visits to all immigration detention facilities to ensure the safety of staff and detainees during COVID-19. This suspension of all visits across the detention network continued until 7 December 2020 when the ABF resumed in-person visits in a modified form where it was safe to do so.[146]

At the time of writing, visits had resumed in all States and Territories, except for Queensland, where visits had been temporarily suspended from 26 March 2021 due to new COVID-19 cases identified in the community.[147] The ABF states that visits are subject to change at short notice if an increased risk of COVID-19 is identified, and that they are following the advice of relevant State and Territory health authorities.

In addition to the COVID-19 screening outlined in Section 3.7, the ABF modified in-person visits to reduce the risks of COVID-19 transmission during this period. Some key measures included that: visits must be non-contact with physical distancing at all times and Perspex screens may be in use; the overall number of visits available has reduced; visits have been reduced to one hour per visit; and no group visits are permitted.[148]

From 29 March 2021, visits will transition to 'limited contact' visits, which allow a fist or elbow bump at the beginning and end of the visit; however, relevant physical distancing requirements must be followed at all other times.[149] The ABF informed the Commission that all Perspex screens have been removed from visit areas, and that visits have been expanded to all visitors including volunteers and members of community groups. The Commission welcomes the expansion of the visits program, and encourages Home Affairs to continue to relax restrictions, including in relation to physical contact during visits, as it is safe to do so and in line with relevant health advice.

The Commission considers that the ABF's current approach to visits, commenced in December 2020, complies with the CDNA guidelines and relevant human rights standards. However, prior to this, the Commission was concerned that a blanket approach to the suspension of all in-person visits at all immigration detention facilities across Australia was not necessary. At different points in time throughout 2020, it would have been possible to resume in-person visits at some facilities that were located in areas with no or very low community transmission of COVID-19.

As outlined above, the suspension of all in-person visits is a significant restriction on a person's human rights, with possible adverse impacts for health and well-being. Any decision to suspend all in-person visits at an immigration detention facility must be based on an assessment of local conditions and rates of COVID-19 transmission as well as advice from relevant State and Territory health authorities. The Department of Home Affairs and ABF should only suspend visits at a facility when community transmission is occurring, and other less restrictive measures are assessed by health experts as inadequate to manage the risks of COVID-19 transmission in a detention context.

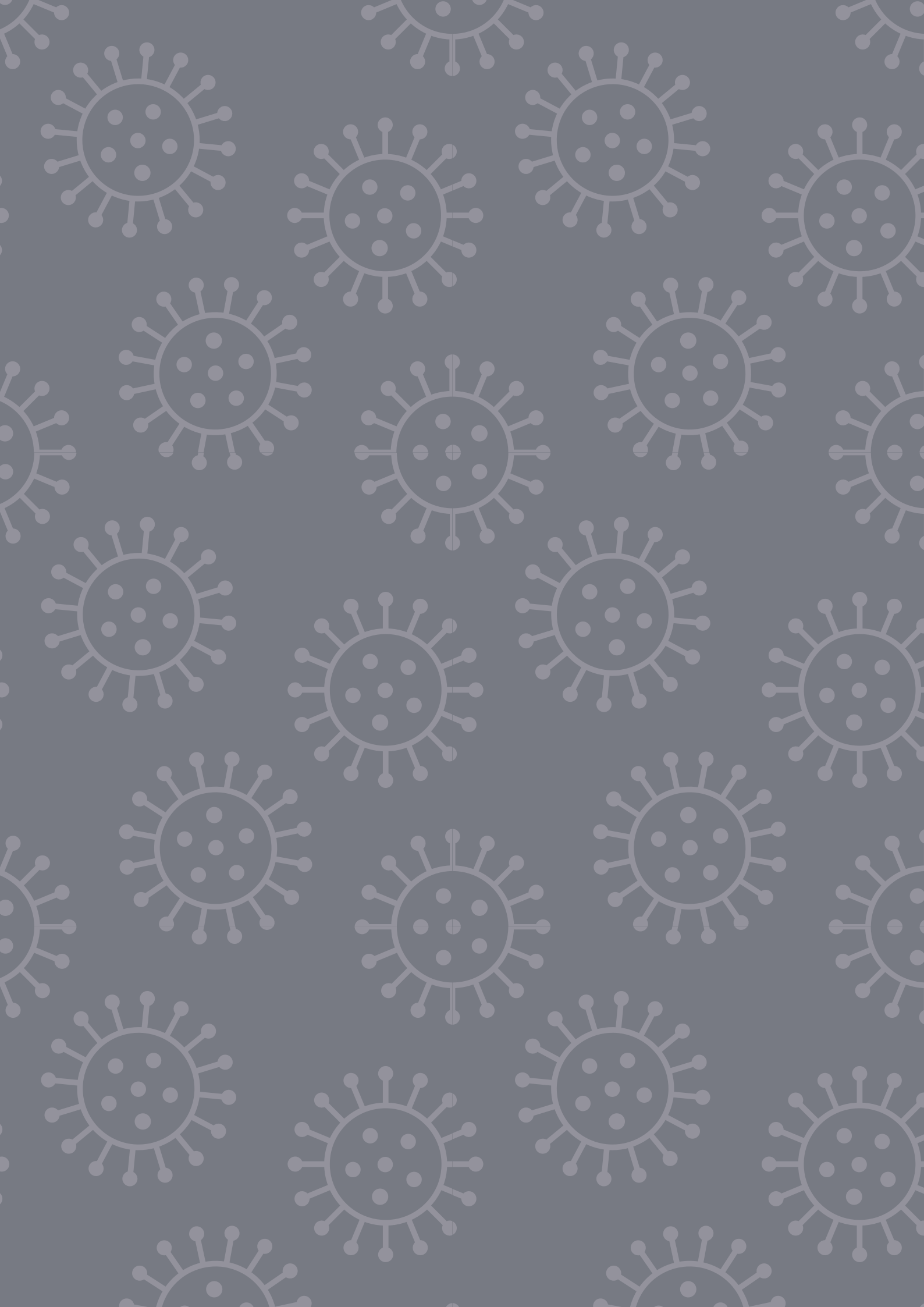
Since the temporary suspension of visits in March, the ABF provided each detainee with a $20 phone card each week to support ongoing contact with family and other supports via personal devices and will continue to do so while restrictions are in place.[150] The Commission welcomed this measure to assist people in detention to maintain contact with family, friends and other supports via other means while visits are limited. The ABF also advised that Skype is available for videoconferencing on some computers in each facility, and detainees may use this to contact family, friends and others.

The Commission understands that the provision of this $20 phone card will cease two weeks after the recommencement of limited contact visits at each facility.[151] While the provision of the $20 phone card was especially important while in-person visits were suspended, the Commission considers that such additional support may remain necessary for some people to maintain regular contact with family and friends even with the recommencement of in-person visits. For example, this may be the case for people detained on Christmas Island, where in-person visits are difficult, if not impossible, due to remoteness and other practical barriers (see Section 3.3), and for those with family overseas or interstate, who are unable to visit regularly and may continue to be prohibited from doing so due to COVID-19 travel restrictions (either domestic or international).

Home Affairs and the ABF should adopt a cautious approach to the rolling back of any measures directed to support people in immigration detention maintain meaningful contact with family, friends, and other supports. The Commission considers that the provision of weekly $20 phone cards should remain available, especially for individuals, who are unable to receive regular in-person visits from family, friends, and other supports such as lawyers.

RECOMMENDATION 20

The Department of Home Affairs and the Australian Border Force should ensure weekly $20 phone cards remain available for individuals who are unable to receive regular in-person visits from family, friends or other supports, such as lawyers.



Appendix – List of recommendations

Recommendation 1

The Department of Home Affairs and relevant Ministers should take urgent steps to significantly reduce the number of people in immigration detention facilities by releasing people into community-based alternatives to closed detention, such as community detention, unless an individual assessment identifies security risks that cannot be managed in the community.

The following groups should be prioritised for release from closed immigration detention:

- people assessed to be at risk of health complications if they contract COVID-19
- refugees and asylum seekers transferred from Nauru and PNG for medical assessment or treatment, and
- those accommodated in dormitory-style accommodation in low-medium security compounds.

Recommendation 2

The Department of Home Affairs and the Australian Border Force should consider the following principles when conducting capacity assessments for a facility:

- accommodation facilities should meet the requirements of health and human dignity[152]
- single occupancy bedrooms with private bathroom facilities are preferable
- addressing the specific needs and care requirements of individuals (for example, the care and accessibility requirements for persons with a disability or the requirements of a person at risk of health complications if they contract COVID-19).

Recommendation 3

The Department of Home Affairs and the Australian Border Force should review current capacity assessments of each facility to:

- apply proper consideration of the principles in Recommendation 2
- ensure bedroom arrangements comply with Recommendation 6.

The Department of Home Affairs and the Australian Border Force should report publicly on the findings and outcomes of this review.

Recommendation 4

The Department of Home Affairs and the Australian Border Force should ensure that the number of people detained in any facility should be no greater than the facility's operational capacity, or the number of people who can be accommodated while applying the principles in Recommendation 2, whichever is the smaller number of people.

Recommendation 5

As a matter of urgency, the Australian Government should decommission the use of all immigration detention facilities on Christmas Island, and implement more appropriate solutions to reduce the number of people in closed immigration detention as outlined in Recommendation 1.

Recommendation 6

The Department of Home Affairs and the Australian Border Force should limit bedroom occupancy levels to ensure:

- physical distancing of 1.5 metres between each person at all times
- at least four square metres per person in multi-occupancy bedrooms, excluding any sanitary facilities located in the bedroom
- sanitary facilities located in the bedroom are fully partitioned from the living and sleeping space.

Recommendation 7

The Australian Border Force and the relevant detention service provider should review current controlled movement policies to ensure only the minimum restrictions necessary to reduce COVID-19 risks are applied, and for the shortest duration possible.

Recommendation 8

The Department of Home Affairs and relevant Ministers should take steps to release people at risk of health complications from COVID-19 into community-based alternatives to closed detention unless an individual assessment identifies security risks that could not be managed in the community.

Where the release of an individual is not possible, the Department of Home Affairs and the Australian Border Force should offer the individual placement in a single bedroom with private bathroom facilities.

Recommendation 9

The Department of Home Affairs, the Australian Border Force and detention service providers should ensure that all staff working in immigration detention facilities receive training on all areas required by the CDNA guidelines. In accordance with expert health advice, training on the following areas should be prioritised:

- identifying symptoms and signs of COVID-19 and how to respond
- exposure risk levels for COVID-19 (including travel and contact with confirmed cases)
- actions required if staff experience COVID-19 symptoms
- personal hygiene and environmental and equipment (including workwear) cleaning requirements.

Recommendation 10

The Department of Home Affairs, the Australian Border Force and detention service providers should ensure that all facility staff can quickly and easily access all available training materials and up-to-date policies and procedures in relation to the management of COVID-19 risks.

Recommendation 11

The Department of Home Affairs, the Australian Border Force and detention service providers should ensure that:

- all signage and factsheets used to provide information to people in immigration detention in relation to COVID-19 are translated into relevant languages
- information sessions on COVID-19 are available at all immigration detention facilities.

Recommendation 12

The Department of Home Affairs, the Australian Border Force and detention service providers should ensure that all health questionnaires used to screen for COVID-19 in immigration detention facilities:

- identify all COVID-19 risk factors (both clinical and epidemiological) as outlined in current health advice and as assessed by State and Territory health authorities
- are regularly updated to reflect the most current expert advice.

Recommendation 13

As a matter of urgency, the Department of Home Affairs and the Australian Border Force should cease the use of high-care accommodation units for quarantine purposes and use alternative, less restrictive options for quarantine.

Recommendation 14

The Department of Home Affairs, the Australian Border Force and detention service providers should ensure that people subject to quarantine arrangements have access to the following:

- outdoor areas on a daily basis for exercise and other recreational activities
- educational and recreational facilities and materials
- essential personal items such as clothing and toiletries
- regular monitoring of physical and mental health by health staff.

Recommendation 15

The Australian Border Force and detention service providers should not accommodate people with significant physical and/or mental health conditions, who are subject to 14-day operational quarantine following discharge from hospital, in 'high-care accommodation' units.

Recommendation 16

The Department of Home Affairs, the Australian Border Force and detention service providers should ensure that relevant policies and procedures contain a clear framework for decisions to release people from medical quarantine, including:

- guidelines on the duration of quarantine based on what is medically necessary to control infection risk
- procedural safeguards to ensure that people are quarantined for the shortest duration needed for individual and public health
- consultation with the relevant State or Territory Public Health Unit where required.

Recommendation 17

The Department of Home Affairs and the relevant detention service provider should:

- ensure that relevant policies and procedures contain clear protocols to ensure COVID-19 testing is requested and conducted as soon as possible
- work with relevant federal, State and Territory health departments to ensure that the transport and processing of tests from immigration detention facilities is prioritised.

Recommendation 18

The Department of Home Affairs and the Australian Border Force should revise operational quarantine policies and procedures to include a sliding scale of COVID-19 risk exposure (such as confirmed COVID-19 outbreak, concerns about community transmission, and low or no community transmission) to guide decisions about the necessity of operational quarantine, with reference to advice from State and Territory government health departments in relation to local conditions.

Recommendation 19

The Department of Home Affairs and the Australian Border Force should decommission the use of semi-permanent hotel APODs for ongoing periods of closed detention and ensure that hotels are only used as APODs in exceptional circumstances and for very short periods.

Recommendation 20

The Department of Home Affairs and the Australian Border Force should ensure weekly $20 phone cards remain available for individuals who are unable to receive regular in-person visits from family, friends or other supports, such as lawyers.

Endnotes

1 At the time of writing, three Serco employees had tested positive for COVID-19 on separate occasions at different facilities. The ABF provided this information to the Commission during telephone briefings over the course of 2020.

2 See, eg, Commonwealth Ombudsman, *Statement by the Commonwealth Ombudsman Michael Manthorpe on the management of COVID-19 risks in immigration detention facilities* (Statement, July 2020).

3 This review does not consider all issues relevant to the management of COVID-19 risks in immigration detention. For example, cleaning measures, use of personal protective equipment (PPE), access to health care, and mental health impacts are not considered. Other emerging issues are not considered in detail, for example, access to vaccinations or the risks of increased international travel to Australia and the implications and management of these risks in immigration detention facilities. The Commission will continue to engage with Home Affairs and the ABF in relation to the management of COVID-19 risks in immigration detention and provide practical advice regarding relevant health risks and human rights.

4 See, eg, United Nations Office on Drugs and Crime et al, 'UNODC, WHO, UNAIDS and OHCHR joint statement on COVID-19 in prisons and other closed settings' (Joint Statement, 13 May 2020) <https://www.who.int/news-room/detail/13-05-2020-unodc-who-unaids-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings>; Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>; 'What you need to know about coronavirus (COVID-19)', *Department of Health (Cth)* (Web Page, 22 May 2020) <https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/what-you-need-to-know-about-coronavirus-covid-19#who-is-most-at-risk>.

5 'What you need to know about coronavirus (COVID-19)', *Department of Health (Cth)* (Web Page, 22 May 2020) <https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/what-you-need-to-know-about-coronavirus-covid-19#who-is-most-at-risk>.

6 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 13 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.

7 World Health Organisation, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention* (Interim guidance, 8 February 2021) 1 <https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/publications-and-technical-guidance/vulnerable-populations/prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention/preparedness,-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention-interim-guidance,-8-february-2021-produced-by-whoeurope>.

8 World Health Organisation, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention* (Interim guidance, 8 February 2021) 2 <https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/publications-and-technical-guidance/vulnerable-populations/prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention/preparedness,-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention-interim-guidance,-8-february-2021-produced-by-whoeurope>.

9 World Health Organisation, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention* (Interim guidance, 8 February 2021) 5-6 <https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/publications-and-technical-guidance/vulnerable-populations/prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention/preparedness,-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention-interim-guidance,-8-february-2021-produced-by-whoeurope>.

10 Australasian Society for Infectious Diseases and the Australian College of Infection Prevention and Control, 'ASID ACIPC Joint Statement: COVID-19 and detainees – recommendation for action' (Joint Statement, 19 March 2020) <https://www.asid.net.au/groups/covid-19/covid-19-media>.

11 Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019* (Report, December 2020) <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>.

12 Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019* (Report, December 2020) 12 <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>.

13 Home Affairs provided the information and documents requested by the Commission in two tranches on 12 August and 28 September 2020. On 13 November 2020, the Commission requested further information and documents, and Home Affairs provided responses on 13 January, 25 February and 12 March 2021.

14 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.

15 *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12.

16 United Nations Human Rights Committee, *General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add. 13 (26 May 2004) [6].

17 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-

and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.

18 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 2 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.

19 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 6-7 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.

20 'Immigration Detention Statistics', *Department of Home Affairs* (Webpage), <https://www.Homeaffairs.Gov.Au/Research-and-Statistics/Statistics/Visa-Statistics/Live/Immigration-Detention>.

21 'Immigration Detention Statistics', *Department of Home Affairs* (Webpage), <https://www.Homeaffairs.Gov.Au/Research-and-Statistics/Statistics/Visa-Statistics/Live/Immigration-Detention>. The Commission notes that the information provided by Home Affairs in relation to length of time in immigration detention facilities (as presented in Figure 2) is a point in time average.

22 Commonwealth Ombudsman, *Statement by the Commonwealth Ombudsman Michael Manthorpe on the management of COVID-19 risks in immigration detention facilities* (Statement, July 2020) 5.

23 'Immigration Detention Statistics', *Department of Home Affairs* (Webpage), <https://www.Homeaffairs.Gov.Au/Research-and-Statistics/Statistics/Visa-Statistics/Live/Immigration-Detention>.

24 'Immigration Detention Statistics', *Department of Home Affairs* (Webpage), <https://www.Homeaffairs.Gov.Au/Research-and-Statistics/Statistics/Visa-Statistics/Live/Immigration-Detention>;Department of Home Affairs, Answer to question on notice, Portfolio question number LCCBE20-356, 2020-21 Budget estimates, Legal and Constitutional Affairs Committee <https://www.aph.gov.au/api/qon/downloadattachment?attachmentId=02d82c70-baf0-4c0c978e-07e455851733>.

25 'Immigration Detention Statistics', *Department of Home Affairs* (Webpage), <https://www.Homeaffairs.Gov.Au/Research-and-Statistics/Statistics/Visa-Statistics/Live/Immigration-Detention>.

26 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.

27 Department of Home Affairs, 'Immigration detention statistics for 28 February 2021', *Visa statistics* (Webpage, 14 April 2021) <https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/immigration-detention>.

28 Department of Home Affairs, 'Immigration detention', Visa statistics (Webpage, 9 December 2020) <https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/immigration-detention>.

29 GOV.UK, 'Immigration detention', Returns and detention datasets, (Statistical dataset, 26 November 2020) <https://www.gov.uk/government/statistical-data-sets/returns-and-detention-datasets>.

30 'COVID-19 Measures at Immigration Holding Centres', Public Safety Canada, (Parliamentary Committee Notes, May 2020) <https://www.publicsafety.gc.ca/cnt/trnsprnc/brfng-mtrls/prlmntry-bndrs/20200831/032/index-en.aspx>.

31 U.S. Immigration and Customs Enforcement, 'Detention Statistics', Detention Management (Statistics, 13 November 2020) <https://www.ice.gov/detention-management>.

32 Home Office, 'Statistics relating to COVID-19 and the immigration system, May 2020', *Official Statistics* (Statistical report, 28 May 2020) <https://www.gov.uk/government/statistics/statistics-relating-to-covid-19-and-the-immigration-system-may-2020>.

33 Immigration Law Practitioners Association, 'Letter from Home Office 29.04.20', *Correspondence between the Home Office and the President of the FtT(IAC)* (Letter, 6 May 2020) <https://ilpa.org.uk/correspondence-between-the-home-office-and-the-president-of-the-fttiac/>.

34 Immigration Removal Centres (IRCs) are the equivalent to closed immigration detention facilities in Australia.

35 House of Commons Home Affairs Committee, *Home Office preparedness of COVID-19 (Coronavirus): institutional accommodation* (Home of Commons Paper No 562, Fourth Report of Session 2019-21) 38 <https://committees.parliament.uk/publications/2171/documents/20132/default/>.

36 House of Commons Home Affairs Committee, *Home Office preparedness of COVID-19 (Coronavirus): institutional accommodation* (Home of Commons Paper No 562, Fourth Report of Session 2019-21) 37-38 <https://committees.parliament.uk/publications/2171/documents/20132/default/>. The First-tier Tribunal (Immigration and Asylum) handles applications for immigration bail from people being detained in IRCs.

37 'COVID-19 Measures at Immigration Holding Centres', *Public Safety Canada*, (Parliamentary Committee Notes, May 2020) <https://www.publicsafety.gc.ca/cnt/trnsprnc/brfng-mtrls/prlmntry-bndrs/20200831/032/index-en.aspx>.

38 'COVID-19 Measures at Immigration Holding Centres', *Public Safety Canada*, (Parliamentary Committee Notes, May 2020) <https://www.publicsafety.gc.ca/cnt/trnsprnc/brfng-mtrls/prlmntry-bndrs/20200831/032/index-en.aspx>.

39 'ICE Guidance on COVID-19', *U.S. Immigration and Customs Enforcement*, (Webpage, 10 December 2020) <https://www.ice.gov/coronavirus>.

40 'ICE Guidance on COVID-19', *U.S. Immigration and Customs Enforcement*, (Webpage, 10 December 2020) <https://www.ice.gov/coronavirus>.

41 'ICE Guidance on COVID-19', *U.S. Immigration and Customs Enforcement,* (Webpage, 10 December 2020) <https://www.ice.gov/coronavirus>. See also U.S. Immigration and Customs Enforcement, *Enforcement and Removal Operations COVID-19 Pandemic response Requirements* (Version 5.0, 27 October 2020) 19 <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>.

42 'ICE Guidance on COVID-19', *U.S. Immigration and Customs Enforcement*, (Webpage, 10 December 2020) <https://www.ice.gov/coronavirus>.
43 U.S. Immigration and Customs Enforcement, 'Detention Statistics', *Detention Management* (Statistics, 13 November 2020) <https://www.ice.gov/detention-management>.
44 U.S. Immigration and Customs Enforcement, 'Detention Statistics', *Detention Management* (Statistics, 13 November 2020) <https://www.ice.gov/detention-management>.
45 Australasian Society for Infectious Diseases and the Australian College of Infection Prevention and Control, 'ASID ACIPC Joint Statement: COVID-19 and detainees – recommendation for action' (Joint Statement, 19 March 2020) < https://www.asid.net.au/documents/item/1868>; 'Australian doctors call for refugees to be released amid coronavirus fear', *SBS News* (online, 2 April 2020) <https://www.sbs.com.au/news/australian-doctors-call-for-refugees-to-be-released-amid-coronavirus-fears>; The Royal Australian and New Zealand College of Psychiatrists, 'Immigration detention centres a significant COVID-19 risk' (Statement, 17 April 2020) <https://www.ranzcp.org/news-policy/news-archive/news-archive-2020/immigration-detention-centres-a-significant-covid>.
46 See, eg, United Nations Office on Drugs and Crime et al, 'UNODC, WHO, UNAIDS and OHCHR joint statement on COVID-19 in prisons and other closed settings' (Joint Statement, 13 May 2020) <https://www.who.int/news-room/detail/13-05-2020-unodc-who-unaids-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings>; Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to State parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc CAT/OP/10 (7 April 2020, adopted 25 March 2020) <https://undocs.org/CAT/OP/10>; Inter-Agency Standing Committee, *COVID-19: Focus on Persons Deprived of their Liberty* (Interim Guidance, 27 March 2020) <https://interagencystandingcommittee.org/other/iasc-interim-guidance-covid-19-focus-persons-deprived-their-liberty-developed-ohchr-and-who>.
47 United Nations Office on Drugs and Crime et al, 'UNODC, WHO, UNAIDS and OHCHR joint statement on COVID-19 in prisons and other closed settings' (Joint Statement, 13 May 2020) <https://www.who.int/news-room/detail/13-05-2020-unodc-who-unaids-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings>.
48 Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to State parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc CAT/OP/10 (7 April 2020, adopted 25 March 2020) <https://undocs.org/CAT/OP/10>.
49 See, eg, United Nations Office on Drugs and Crime et al, 'UNODC, WHO, UNAIDS and OHCHR joint statement on COVID-19 in prisons and other closed settings' (Joint Statement, 13 May 2020) <https://www.who.int/news-room/detail/13-05-2020-unodc-who-unaids-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings>; United Nations Office on Drugs and Crime, *COVID-19 preparedness and responses in prisons* (Position Paper, 31 March 2020) <https://www.unodc.org/documents/justice-and-prison-reform/UNODC_Position_paper_COVID-19_in_prisons.pdf>.
50 Commonwealth Ombudsman, *Statement by the Commonwealth Ombudsman Michael Manthorpe on the management of COVID-19 risks in immigration detention facilities* (Statement, July 2020) 5-6.
51 Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019* (Report, December 2020) 144; Australian Human Rights Commission, *Risk Management in Immigration Detention* (Report, 2019) 67; Australian Human Rights Commission, *Inspection of Brisbane Immigration Transit Accommodation* (Report, 2017) 23; Australian Human Rights Commission, *Inspection of Christmas Island Immigration Detention Centre* (Report, 2017) 33; Australian Human Rights Commission, *Inspection of Maribyrnong Immigration Detention Centre* (Report, 2017) 28; Australian Human Rights Commission, *Inspection of Perth Immigration Detention Centre* (Report, 2017) 20; Australian Human Rights Commission, *Inspection of Villawood Immigration Detention Centre* (Report, 2017) 27.
52 Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019* (Report, December 2020) 147 <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>.
53 Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019* (Report, December 2020) 91 <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>.
54 See, eg, Ella Archibald-Binge and Raveen Hunjan, 'While dozens of medevac detainees were released from detention, others have been left behind' *ABC* (online, 18 February 2021) <https://www.abc.net.au/news/2021-02-18/medevac-detainees-released-detention-asylum-seekers-left-behind/13164230>.
55 The ABF conveyed this information to the Commission during a telephone briefing on 29 March 2021.
56 Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to State parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc CAT/OP/10 (7 April 2020, adopted 25 March 2020) 3 <https://undocs.org/CAT/OP/10>.
57 Australian Human Rights Commission, *Human Rights Standards for Immigration Detention* (Report, 2013) 52 <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/human-rights-standards-immigration-detention>.
58 Australasian Society for Infectious Diseases and the Australian College of Infection Prevention and Control, 'ASID ACIPC Joint Statement: COVID-19 and detainees – recommendation for action' (Joint Statement, 19 March 2020) < https://www.asid.net.au/documents/item/1868>.
59 Australian Human Rights Commission, *Human Rights Standards for Immigration Detention* (Report, 2013) 52 <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/human-rights-standards-immigration-detention>.
60 The surge level capacity is where a facility may, in exceptional circumstances need to accommodate population numbers over its operational capacity to a limit.
61 The 2020 capacity figures provided by Home Affairs did not distinguish between operational and surge capacity.

62 Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019* (Report, December 2020) 20 <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>.
63 The total population across all immigration detention facilities, including offsite hotel APODs, over the course of the Commission's 2019 inspection was around 1,300 people.
64 Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019* (Report, December 2020) 20 <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>.
65 Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019* (Report, December 2020) 90-91 <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>.
66 Australian Human Rights Commission, Inspections of Australia's immigration detention facilities 2019 (Report, December 2020) 20 <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>.
67 Dormitory-style accommodation contain bedrooms with more than one set of bunk beds and may accommodate between four to 10 people in one bedroom, and shared bathrooms and toilets are contained outside of bedrooms and shared between large numbers of people. For more information see Section 3.8(a) of Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019* (Report, December 2020) <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>.
68 Australian Border Force, 'Statement regarding Christmas Island' (Media Release, 4 August 2020) <https://newsroom.abf.gov.au/releases/statement-regarding-christmas-island>.
69 Evidence to Senate Select Committee on COVID-19, Parliament of Australia, Canberra, 18 August 2020, 11, 34 (Mr Michael Outram, Commissioner, Australian Border Force).
70 The ABF conveyed this information to the Commission during a telephone briefing on 29 March 2021.
71 Australian Human Rights Commission, 'Statement on Christmas Island' (Statement, 5 August 2020) <https://humanrights.gov.au/about/news/media-releases/statement-christmas-island-immigration-detention>.
72 The Commission did not inspect the CIIDC during its most recent inspections of immigration detention facilities in 2019. This is because during the Commission's planning for inspections in the second half of 2019, these facilities had only recently been re-opened and nobody was detained there. Shortly prior to the Commission's inspection of facilities in Melbourne from 9 to 12 September, two children, aged two and four years old, were transferred to an immigration detention facility on Christmas Island with their parents from the Broadmeadows Residential Precinct (BRP), an 'alternative place of detention' adjacent to MITA. Please see Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019* (Report, December 2020) section 3.1 (d). The ABF informed the Commission that this family is being detained at the Phosphate Hill APOD on Christmas Island, which is about 15 km from the CIIDC.
73 Australian Human Rights Commission, *Inspection of Christmas Island Immigration Detention Centre: 23-25 August 2017* (Report, 20 November 2018) <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/australian-human-rights-commission-inspection-1>.
74 The ABF conveyed this information to the Commission during a telephone briefing on 3 September 2020.
75 Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019* (Report, December 2020) 125 <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>.
76 The ABF conveyed this information to the Commission during a telephone briefing on 29 March 2021.
77 Communicable Diseases Network Australia, CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia (Guidelines, Version 3.1, 12 August 2020) 15 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.
78 See, eg, 'Physical distancing for coronavirus (COVID-19)', Australian Government Department of Health (Webpage, 23 September 2020) <https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/how-to-protect-yourself-and-others-from-coronavirus-covid-19/physical-distancing-for-coronavirus-covid-19>; 'Australian Health Protection Principal Committee (AHPPC) advice to National Cabinet on 24 March 2020', Australian Government Department of Health (Statement, 25 March 2020) <https://www.health.gov.au/news/australian-health-protection-principal-committee-ahppc-advice-to-national-cabinet-on-24-march-2020-0>.
79 Commonwealth Ombudsman, *Statement by the Commonwealth Ombudsman Michael Manthorpe on the management of COVID-19 risks in immigration detention facilities* (Statement, 1 July 2020) 4.
80 Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Living space per prisoner in prison establishments: CPT standards*, Doc No CPT/Inf (2015) 44, 15 December 2015, 3.
81 Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Living space per prisoner in prison establishments: CPT standards*, Doc No CPT/Inf (2015) 44, 15 December 2015, 3.
82 Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019* (Report, December 2020) Section 3.8(a) <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>.
83 Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019* (Report, December 2020) 88 <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>.

84 Commonwealth Ombudsman, *Statement by the Commonwealth Ombudsman Michael Manthorpe on the management of COVID-19 risks in immigration detention facilities* (Statement, 1 July 2020) 5.
85 Commonwealth Ombudsman, *Statement by the Commonwealth Ombudsman Michael Manthorpe on the management of COVID-19 risks in immigration detention facilities* (Statement, 1 July 2020) 5.
86 Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019* (Report, December 2020) 105-106 <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>.
87 Commonwealth Ombudsman, *Statement by the Commonwealth Ombudsman Michael Manthorpe on the management of COVID-19 risks in immigration detention facilities* (Statement, 1 July 2020) 4.
88 The facility outbreak management plans define a potential COVID-19 outbreak as two or more cases of ARI in detainees or staff of a detention facility within 3 days (72 hrs) OR enough is known about disease to tailor measures to specific needs, numerous person to person transmission detected in Australia, number of cases under investigation escalates quickly, cases are identified proximate to Detention network (eg staff/detainee identified as having been in close contact with confirmed case).
89 Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019* (Report, December 2020) Section 3.8(e) <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>; Australian Human Rights Commission, *Risk Management in Immigration Detention* (Report, 2019) Section 3.4(a); Australian Human Rights Commission, *Inspection of Maribyrnong Immigration Detention Centre* (Report, 2017) 17; Australian Human Rights Commission, *Inspection of Melbourne Immigration Transit Accommodation* (Report, 2017) 15 – 16; Australian Human Rights Commission, *Inspection of Christmas Island Immigration Detention Centre* (Report, 2017) 17 – 19.
90 The Commission considers that the high-security compounds at MITA, YHIDC and BITA are harsh and restrictive ad do not offer appropriate conditions of administrative detention, and that conditions at the Melbourne and Brisbane hotel APODs are extremely restrictive and lack sufficient outdoor space and facilities for exercise, recreation and activities.
91 The facility outbreak management plans define a confirmed COVID-19 outbreak as a single confirmed case of COVID-19 in an inmate/detainee or staff member of a correctional or detention facility.
92 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 9 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>; 'Advice for people at risk of coronavirus (COVID-19)', *Department of Health* (Web Page, 1 February 2021) <https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/advice-for-people-at-risk-of-coronavirus-covid-19>.
93 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 9 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>; 'Advice for people at risk of coronavirus (COVID-19)', *Department of Health* (Web Page, 1 February 2021) <https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/advice-for-people-at-risk-of-coronavirus-covid-19>.
94 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 26 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.
95 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 26 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.
96 At the time of the Commission's request for information and documents to Home Affairs dated 15 July 2020, the CDNA guidelines outlined that people at risk of complications from COVID-19 included the following groups: people who are 70 years and older; 65 years and older with chronic medical conditions; Aboriginal and Torres Strait Islander people 50 years and older with one or more chronic medical conditions; people with compromised immune systems; and people who have pre-existing comorbid conditions. The list of people at risk of severe COVID-19 outlined in the CDNA guidelines are regularly updated based on emerging evidence.
97 UK Home Office, *Guidance for Immigration Removal Centres (IRCs), Residential Short-term Holding Facilities (RSTHFs) and escorts during the COVID-19 pandemic* (Guidance, Version 4.0, 30 November 2020) 10 <https://www.gov.uk/government/publications/coronavirus-covid-19-immigration-removal-centres>.
98 UK Home Office, *Immigration Act 2016: Guidance on adults at risk in immigration detention* (Statutory guidance, July 2018) <https://www.gov.uk/government/publications/adults-at-risk-in-immigration-detention>; UK Home Office, *Adults at risk in immigration detention* (Guidance, Version 5.0, 6 March 2019) <https://www.gov.uk/government/publications/offender-management>.
99 House of Commons Home Affairs Committee, *Home Office preparedness of COVID-19 (Coronavirus): institutional accommodation* (Home of Commons Paper No 562, Fourth Report of Session 2019-21) 39-43 <https://committees.parliament.uk/publications/2171/documents/20132/default/>.

100 World Health Organisation, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention* (Interim guidance, 8 February 2021) 14 <https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/publications-and-technical-guidance/vulnerable-populations/prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention/preparedness,-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention-interim-guidance,-8-february-2021-produced-by-whoeurope>.

101 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 12 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.

102 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 12 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.

103 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 12-13 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>. It states that topics for staff education and training should include:

- Symptoms and signs of COVID-19
- Exposure risk levels for COVID-19, including travel and contact with confirmed cases
- Vulnerable populations at higher risk of severe illness
- Personal hygiene, particularly hand hygiene, sneeze and cough etiquette
- Appropriate use of PPE such as gloves, gowns, eye protection and masks, including how to don and doff PPE correctly
- Actions on experiencing symptoms of COVID-19 (do not work or visit a correctional or detention facility and seek testing for COVID-19)
- Handling and disposal of clinical waste
- Processing of reusable equipment
- Environmental cleaning
- Adequate cleaning of transport vehicles
- Safe laundering of linen
- Food handling and cleaning of used food utensils.

104 Commonwealth Ombudsman, *Statement by the Commonwealth Ombudsman Michael Manthorpe on the management of COVID-19 risks in immigration detention facilities* (Statement, 1 July 2020) 4.

105 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 12 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.

106 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 12, 17 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.

107 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 16 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.

108 World Health Organisation, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention* (Interim guidance, 8 February 2021) 16 <https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/publications-and-technical-guidance/vulnerable-populations/prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention/preparedness,-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention-interim-guidance,-8-february-2021-produced-by-whoeurope>.

109 World Health Organisation, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention* (Interim guidance, 8 February 2021) 16 <https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/publications-and-technical-guidance/vulnerable-populations/prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention/preparedness,-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention-interim-guidance,-8-february-2021-produced-by-whoeurope>.

110 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 14 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.

111 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 14, 38 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.

112 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 16 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.

113 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 14 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.

114 Commonwealth Ombudsman, *Statement by the Commonwealth Ombudsman Michael Manthorpe on the management of COVID-19 risks in immigration detention facilities* (Statement, 1 July 2020) 2.

115 For example, epidemiological indicators include: whether a person is a close contact with a confirmed case, has travelled internationally, has been a passenger or crew member on a cruise ship, healthcare, is an aged or residential care worker with direct patient contact, and people who have lived in or travelled through a geographically localised area with elevated risk of community transmission (as defined by State and Territory public health authorities.

116 Department of Health, *Coronavirus disease 2019 (COVID-19) CDNA National Guidelines for Public Health Units* (Guidelines, Version 4.3, 4 March 2021) <https://www1.health.gov.au/internet/main/publishing.nsf/Content/cdna-song-novel-coronavirus.htm>.

117 Home Affairs defines a 'suspect case' as anyone with symptoms consistent with COVID-19, including a fever or history of fever, or an acute respiratory infection (ARI).

118 The ABF conveyed this information to the Commission during a telephone briefing on 29 March 2021.

119 High-care accommodation units are primarily used and designed for single separation for behaviour management, and in some cases for health reasons.

120 For further information on high-care accommodation see Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019* (Report, December 2020) section 3.8 (f) <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>.

121 Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019* (Report, December 2020) 119-120 <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>.

122 Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019* (Report, December 2020) Section 3.8(f) <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>; Australian Human Rights Commission, *Risk management in immigration detention* (Report, June 2019) Section 3.3 (d) <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/risk-management-immigration-detention-2019>; Australian Human Rights Commission, *Inspection of Christmas Island Immigration Detention Centre* (Report, 2017) Section 3.1(g) <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/australian-human-rights-commission-inspection-1>.

123 Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to State parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc CAT/OP/10 (7 April 2020, adopted 25 March 2020) 3 <https://undocs.org/CAT/OP/10>.

124 Australian Human Rights Commission, *Human Rights Standards for Immigration Detention* (Report, 2013) 16.

125 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 31 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.

126 Commonwealth Ombudsman, *Statement by the Commonwealth Ombudsman Michael Manthorpe on the management of COVID-19 risks in immigration detention facilities* (Statement, 1 July 2020) 3.

127 Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to State parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc CAT/OP/10 (7 April 2020, adopted 25 March 2020) 3 <https://undocs.org/CAT/OP/10>.

128 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 25 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.

129 Home Affairs notes that the timeline for a positive case in isolation would be dependent upon the course of the individual's disease, and they would be released from isolation when cleared by the relevant State or Territory Public Health Unit.

130 The ABF conveyed this information to the Commission during a telephone briefing on 29 March 2021.
131 For example, in the 14 days prior to the onset of illness the person was a close contact with a confirmed case, an international traveller or in an area with an elevated risk of community transmission (as defined by public authorities).
132 Commonwealth Ombudsman, *Statement by the Commonwealth Ombudsman Michael Manthorpe on the management of COVID-19 risks in immigration detention facilities* (Statement, 1 July 2020) 3.
133 Department of Health and Human Services (Victoria), *Coronavirus Plan for the Victorian Aged Care Sector* (Version 5, 6 November 2020) 24 <https://www.dhhs.vic.gov.au/aged-care-sector-coronavirus-disease-covid-19>.
134 Department of Health and Human Services (Victoria), *Coronavirus Plan for the Victorian Aged Care Sector* (Version 5, 6 November 2020) 24 <https://www.dhhs.vic.gov.au/aged-care-sector-coronavirus-disease-covid-19>.
135 The Commission requested some information from the ABF in relation to operational quarantine, and Home Affairs provided a written response to this request on 27 November 2020.
136 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 15-17 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.
137 Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019* (Report, December 2020) 83-42 <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>; Australian Human Rights Commission, *Risk management in immigration detention* (Report, June 2019) 35-36 <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/risk-management-immigration-detention-2019>.
138 Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019* (Report, December 2020) Section 3.7 <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>.
139 Luke Henriques-Gomes, 'Refugees and asylum seekers moved from Mantra hotel in Melbourne', *The Guardian* (online, 17 December 2020) <https://www.theguardian.com/world/2020/dec/17/refugees-and-asylum-seekers-moved-from-mantra-hotel-in-melbourne>.
140 The ABF conveyed this information to the Commission during a telephone briefing on 23 March 2021.
141 Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019* (Report, December 2020) Section 3.7 <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/inspections-australias-immigration-detention>.
142 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 16 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.
143 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 31 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.
144 Communicable Diseases Network Australia, *CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* (Guidelines, Version 3.1, 12 August 2020) 16, 31 <https://www.health.gov.au/resources/publications/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia>.
145 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 17(1), art 23(1).
146 'COVID-19: Important information for visitors to an immigration detention facility', *Australian Border Force* (Web Page, 16 February 2021) <https://www.abf.gov.au/about-us/what-we-do/border-protection/immigration-detention/visit-detention>.
147 'COVID-19: Important information for visitors to an immigration detention facility', *Australian Border Force* (Web Page, 29 March 2021) <https://www.abf.gov.au/about-us/what-we-do/border-protection/immigration-detention/visit-detention>.
148 'COVID-19: Important information for visitors to an immigration detention facility', *Australian Border Force* (Web Page, 16 February 2021) <https://www.abf.gov.au/about-us/what-we-do/border-protection/immigration-detention/visit-detention>.
149 'COVID-19: Important information for visitors to an immigration detention facility', *Australian Border Force* (Web Page, 29 March 2021) <https://www.abf.gov.au/about-us/what-we-do/border-protection/immigration-detention/visit-detention>.
150 'COVID-19: Important information for visitors to an immigration detention facility', *Australian Border Force* (Web Page, 16 February 2021) <https://www.abf.gov.au/about-us/what-we-do/border-protection/immigration-detention/visit-detention>.
151 'COVID-19: Important information for visitors to an immigration detention facility', *Australian Border Force* (Web Page, 29 March 2021) <https://www.abf.gov.au/about-us/what-we-do/border-protection/immigration-detention/visit-detention>.
152 Australian Human Rights Commission, *Human Rights Standards for Immigration Detention* (Report, 2013) 52 <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/human-rights-standards-immigration-detention>.

Australian Human Rights Commission
www.humanrights.gov.au