

# Joint Statement on the use of Hotels as Alternative Places of Detention

As the National Preventive Mechanism (NPM) for places of detention under control of the Commonwealth, the Office of the Commonwealth Ombudsman inspects immigration detention facilities, including Alternative Places of Detention (APODs), to identify and consider systemic issues or systems where there is a risk of torture or ill-treatment. The NPM's role is to monitor the treatment of people and the conditions of their detention and to make recommendations to government for improvement.

The Australian Human Rights Commission (the Commission) works to protect and promote human rights in Australia and internationally, including the rights of people in immigration detention. The Commission's work includes investigating complaints, conducting inquiries and reporting on issues concerning immigration detention and human rights.

Inspections undertaken in recent years by the Commonwealth NPM, and visits by the Commission, highlighted concerns with the long-term use of hotels or rooms within a hotel as an APOD, and the detrimental impact of this on people held in these facilities.

## What is an APOD

An APOD is a place of held immigration detention approved in writing by the Minister for Immigration or their delegate.<sup>1</sup> The Department of Home Affairs sometimes uses APODs to hold people with specific needs that cannot be catered for in an immigration detention centre. For example, an aged care facility or a hospital may be declared as an APOD.

However, a practice has also emerged for hotels to be used as APODs to house people where this does not stem from a specific need of the person being held, but for other reasons, such as relieving overcrowding in other immigration detention facilities.

As at 31 July 2022:

- there were 77 hotels approved as APODs under the Migration Act, with 7 in operation.
- the average length of time current individuals in detention have been accommodated in hotel APODs is 69 days.
- the longest continuous period of time an individual has been detained at a hotel APOD is 634 days.

The guidance below is based on key concerns the Commonwealth NPM has identified, and recommendations we have made, about hotel APODs in our [previous reports](#). These

<sup>1</sup> Subparagraph (b)(v) of the definition of 'immigration detention' in section 5(1) of the *Migration Act 1958* (Migration Act).

### Contact us

[ombudsman.gov.au](http://ombudsman.gov.au)  
1300 362 072

GPO Box 442  
Canberra ACT 2601

### The Commonwealth Ombudsman has offices in:

- » Adelaide
- » Brisbane
- » Canberra
- » Melbourne
- » Perth
- » Sydney

An APOD is a place of  
immigration  
detention approved in  
writing by the  
Minister for  
Immigration or their  
delegate

recommendations also reflect key concerns identified by the Commission during its recent inspections of hotel APODs, with the report from these inspections due to be released later this year.

## What is good practice in using hotel APODs?

### Hotel APODs should only be used for short-term detention

Hotel APODs may be suitable for short-term accommodation in specific circumstances, for example mandatory isolation for individuals with COVID-19. However, unlike facilities such as aged care, hotel APODs are not designed to promote the health and wellbeing of people accommodated there for longer periods. Hotels are short-term accommodation facilities. The design, infrastructure, and operations of hotels are not suited for detention of people for more than 4 weeks.

APODs should only be used for the shortest possible time. Prompt and thorough assessments into alternatives to held detention should be conducted in circumstances where the use of an APOD is being considered.

Both the Commonwealth NPM and the Commission have consistently expressed concerns about the ability of detention in hotel APODs to meet human rights standards in the long-term, including for adequate access to fresh air, exercise and other programs and activities.

Generally, a maximum period of 4 weeks' detention in a hotel APOD should provide enough time for the Department of Home Affairs to address the short-term needs of the person detained, and to identify suitable longer-term detention accommodation.

### People held in hotel APODs should have access to at least one hour of open-air exercise per day

International human rights standards provide for one hour of open-air exercise as a minimum standard of treatment for people in detention, including immigration detention.

Hotels are not always designed with open-air exercise facilities or with ease of access to fresh air, as patrons are not expected to be in their rooms or on the premises for most of the day. The Commonwealth NPM has observed that in many instances, people need to be transported via shuttle service from their hotel APODs to the nearest immigration detention or transit facility to get adequate access to open-air exercise and fresh air. There are practical limits on the number of people who can be transported for exercise purposes. The requirement to travel to another facility can also be a disincentive for people to access open-air exercise.

People held in hotel APODs should have access to at least one hour of open-air exercise per day.

### People held in hotel APODs should have access to meaningful programs and activities

People held in hotel APODs have a more limited range of programs and activities compared to people held in immigration detention and transit facilities. Again, to address these shortcomings, people may be transported from hotel APODs to the nearest immigration detention or transit facility to access a wider range of programs and activities.

APODs should only be used for the shortest possible time

Daily outdoor exercise of at least one hour, and an effective program of activities including educational, recreational, sporting, and cultural activities is essential to support the mental health and general wellbeing of people held in hotel APODs

People held in hotel APODs should have access to the same physical, recreational, and educational programs and activities as people held in immigration detention or transit facilities. These programs and activities must be meaningful, and access to them must be regular.

### People held in hotel APODs should have the same access to medical and welfare services as people held at other detention facilities

Access to medical and welfare services from hotel APODs can be a concern, particularly at hotel APODs where people are accommodated in individual rooms, with access either provided at a nearby detention facility or an offsite medical clinic. The Commonwealth NPM has observed that at some hotel APODs, access to medical and welfare services offsite requires people to be physically restrained during transit and, in some cases, during their consultation with the medical professional. The use of restraints on people accessing medical treatment risks exacerbating some medical conditions, especially mental health issues, and can reduce the willingness of people held in detention to seek medical treatment.

Medical and welfare services should be available on site at hotel APODs wherever possible. Where this is not possible, restraints should only be used as a last resort for people being transported to and from medical and welfare appointments. Whenever restraints are used, the use of force must be necessary in all the circumstances and for the shortest amount of time necessary.

These principles should also be applied when transporting individuals from APODs to other facilities where they can access open-air exercise and meaningful programs and activities. These measures minimise the risk of individuals being disincentivised from accessing these important rights and services.

### People's right to privacy should be respected in hotel APODs

The use of hotel APODs can significantly impact a person's privacy and result in a greater presence of security officers close to the people being held than at other detention facilities.

At some hotel APODs, security officers are placed within accommodation rooms or sit in an open doorway to each accommodation room, 24 hours a day, to monitor the activities of people held at the hotel. The Commonwealth NPM has observed people held in hotel APODs and medical staff interacting within hearing distance of security officers and other individuals. Both the Commonwealth NPM and the Commission are concerned this may breach the medical confidentiality of people in detention. In some circumstances, operating models at hotel APODs require staff to maintain line-of-sight of people in detention, including when they are washing or using the bathroom. People in detention are escorted by staff whenever they leave their room and, in some cases are physically restrained at this time.

Policies, procedures, and practices for the use of hotel APODs should respect the privacy of people held in these facilities.

People held in hotel APODs must have adequate access to medical and welfare services and retain their right to privacy

Policies, procedures, and practices for the use of hotel APODs should respect the privacy of people held in these facilities.

Iain Anderson  
Commonwealth Ombudsman

Lorraine Finlay  
Australian Human Rights Commissioner

More information is available at [ombudsman.gov.au](https://ombudsman.gov.au) and [humanrights.gov.au](https://humanrights.gov.au)