

Statement by the Commonwealth Ombudsman Michael Manthorpe on the management of COVID-19 risks in immigration detention facilities

Background

The Office of the Commonwealth Ombudsman undertakes a range of activities pertaining to immigration detention. We have, for many years, undertaken inspections of immigration detention facilities and made findings and recommendations to the Department of Home Affairs (the department) and its predecessors about this work. We receive and investigate complaints from immigration detainees. Under s 486O of the *Migration Act 1958*, we consider the individual cases of people who have been detained for longer than two years to provide reports and, where appropriate, recommendations to the relevant Minister.

In the context of Australia's 2017 ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT), the Office fulfils the role of National Preventive Mechanism for immigration detention facilities. In that context, we have commenced more detailed public reporting on our activities and findings in this area. The first such report, which related to inspection activity in the first half of 2019 was released earlier this year and can be found [here](#). A further report about inspections that took place in the second half of 2019 will be released in the coming weeks.

The COVID-19 pandemic presents particular risks in detention environments, but also challenges for inspection bodies.

The Office's work regarding COVID-19

We have been actively monitoring the department's response to the COVID-19 pandemic including its infection control measures across the immigration detention network. The department has implemented strategies across the network, which are informed by the [CDNA Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia](#) (the CDNA Guidelines). The Office's monitoring of immigration detention facilities at this time is particularly focussed on how these guidelines are adhered to by facilities in practice.

We are also investigating a number of individual complaints from detainees. This work is ongoing and is not the subject of this statement.

We have recently resumed limited physical visits to immigration detention facilities. Each visit is carefully managed by working closely with stakeholders, balancing the requirement to do no harm while still maintaining oversight of conditions and treatment in detention. Our measured approach and gradual return to a greater physical presence on site is intended to allow us to identify any emerging problems. We can and will physically inspect any facility if our monitoring activities show it is required, and the risks to staff and detainees of entering a facility can be appropriately managed.

Between Friday 22 May 2020 and Thursday 11 June 2020, staff from the Office visited the Brisbane Immigration Transit Accommodation (BITA), Melbourne ITA (MITA), Yongah Hill Immigration Detention Centre (YHIDC), Adelaide ITA (AITA), Villawood IDC (VIDC) and Perth IDC (PIDC).

Based on our observations at these facilities, we are broadly satisfied with the department's implementation of site-level strategies to prevent, and respond to COVID-19 and its adherence to the CDNA Guidelines. However, we identified issues at some of the facilities which are detailed further below. In this context, we particularly caution against complacency in the application of the CDNA Guidelines. Notwithstanding the positive developments in Australia's health situation, the threat posed by COVID-19 remains and is likely to do so for some time, particularly in closed environments.

The Office will seek to gain assurance about the operation of other facilities in the immigration detention network in the coming months, and may issue further statements about this work as appropriate.

Consumables

The department advised that, like many in the community, during the initial weeks of the COVID-19 pandemic it had difficulty obtaining consumable stocks such as personal protective equipment (PPE) and hand hygiene products. However, the department advised it now has sufficient supplies of consumables across the network and is continuing to increase its stockpiles so it is well placed to respond in the event of an outbreak.

Screening

The Office sighted the additional screening measures in place at all facilities visited, including temperature checks for all persons entering/exiting the facilities. At the BITA, YHIDC and VIDC the Office noted that, in addition to the use of hand-held non-contact thermometers for temperature checks, a computer based thermal imaging camera was used to obtain a second temperature reading.

Overall, the screening mechanisms in place were satisfactory. However, at the YHIDC we noted that there was no oversight of persons exiting the premises and at the VIDC people exiting the centre were not screened unless they intended to return the next day. The Office notes that this is inconsistent with ABF Operational Notification (ON2020-16) *Temperature triaging for all persons entering or exiting an IDF*, which requires temperature checks for all persons entering or exiting an immigration detention facility.

Given the department's clear efforts to prevent COVID-19 entering the detention network, this lapse is concerning as staff would not be aware, and could not act, if a person had developed a fever or other symptoms during their time at the centre.

Recommendation 1

The Ombudsman recommends the department takes action to ensure network-wide compliance with ON2020-16, which requires that all people entering or exiting an immigration detention facility are subject to temperature checks.

Education and signage

Upon entry, and throughout both the facilities, we observed signage to convey key messages to all staff, detainees and visitors about the actions the facility is taking to protect them and explaining what they can do to protect themselves. This signage was generally that issued by the Department of Health, which is also being used by other government agencies and in the community. The Office also confirmed that signage and information was available in multiple languages to optimise accessibility.

Hygiene, testing and isolation

Adequate hand washing supplies were seen to be available through the facilities, and additional cleaning supplies have been made available to detainees to maintain their own personal hygiene. International Health and Medical Services (IHMS) has been providing education and messaging to detainees about looking out for COVID-19 symptoms and how to report for testing.

Noting that detainees may be reluctant to self-report with the knowledge that they will be isolated during testing, facility staff at most facilities have clearly messaged to detainees that they are able to access personal effects and entertainment during periods of medical isolation. The Office confirmed that medically isolated detainees, at all facilities except VIDC, are provided with access to personal items including personal mobile phones, DVD players, books/magazines and activity packs during their period of medical isolation. We also noted that periods of isolation are, in the event of a negative result, generally limited to 24-48 hours because of the quick turnaround on COVID-19 test.

The Office was advised that, initially, high care accommodation (HCA) at YHIDC was used for medical isolation purposes without any adjustment. However, staff at YHIDC subsequently ensured detainees were able to access personal items and entertainment, and increased communication to detainees about the use of medical isolation to alleviate existing concerns and fears.

Conversely, the Office identified that VIDC was using HCA for medical isolation in the same way it uses HCA for behavioural management, in that detainees were not provided with personal items, entertainment or activity packs for the duration of their stay. We provided feedback to the department about this practice and, subsequent to our visit, the department advised it had implemented arrangements at VIDC for detainees in medical isolation to access additional entertainment and engagement options.

Health care

The Office notes that, although the provision of health care to detainees in immigration detention has been impacted by COVID-19, it remains broadly comparable to the standard of health care that is available in the wider community. The main impact of the pandemic at this point was the cessation of non-urgent off-site medical appointments, primarily specialist appointments. However, we noted there was an increase in the provision of telehealth services to replace these appointments.

Monitoring and assurance

The Office was advised that the department has undertaken two desktop reviews across the network to test responses to an identified outbreak of COVID-19. However, it did not appear the department had undertaken, or planned to undertake on site visits to test service provider adherence with Outbreak Management Plans.

While the Office will continue to monitor the department’s approach to preventing and managing COVID-19, given the seriousness of the COVID-19 pandemic this should not be the only mechanism for testing adherence to the appropriate measures. In particular, we consider the department should be regularly reviewing its staff’s and service providers’ day to day compliance with the measures set out in Outbreak Management Plans. This is particularly important given the department engages several providers to deliver services on its behalf and we know that, in outsourcing arrangements it can be easy for silos or gaps in responsibility to form between providers, with the result that lapses can occur if unchecked. In the current circumstances even a small lapse could result in very serious consequences.

Recommendation 2

The Ombudsman recommends the department implements an assurance program, to monitor its staff’s and contracted providers’ compliance with Outbreak Management Plans and operational notifications and provide guidance on areas for improvement.

[Detainees at high risk if exposed to COVID-19](#)

In line with the CDNA guidelines, at the commencement of the pandemic the department identified detainees within the network whose existing health or medical conditions would make them particularly vulnerable if exposed to COVID-19. IHMS staff have participated in tailored talks and/or scenario based exercises to support their management of high risk detainees. IHMS doctors and nurses also conducted a baseline consultation for the high risk detainees and provided them with education about looking after their health and minimising their risk of exposure to COVID-19. Additionally, in recognition of increased risk of mental health episodes and anxiety relating to the COVID-19 pandemic, IHMS conducted clinics with detainees considered to be at higher risk, in an attempt to ease fears. All high risk detainees are generally monitored weekly, and those on medication can be reviewed up to twice daily.

Across the network, high risk detainees have generally been offered placements in alternate compounds with other high risk detainees, although some detainees have declined the offer and remain in their current shared accommodation placements. For example, the majority of the high risk cohort within the MITA have been moved to another compound with single rooms. These placements were not compulsory and some high risk detainees preferred to remain in their current (shared) accommodation.

[Social distancing arrangements—common areas](#)

In the absence of an outbreak, the CDNA Guidelines do not specifically require that compounds are grouped (cohorted) or that cleaning takes place between different cohorts accessing communal areas. However, we were pleased to note that in most instances these arrangements were, in fact, in place across the immigration detention network.

The operating model within the BITA, MITA and VIDC is such that the compounds are cohorted and there is no mixing of cohorts. The Office was able to observe good examples of social distancing between both the detainees and the staff working in both facilities. As a general observation, both detainees and staff were complying with the guidelines where possible.

However, YHIDC only separates the security high risk compound from the other compounds and has not implemented compound separation or cohorting measures in response to COVID-19. As a result, detainees from different compounds are able to use the same facilities (including dining, gym, programs and activities) at the same time. This is inconsistent with the approach in other facilities and arguably places those detainees at an increased risk of a facility wide outbreak if COVID-19 enters YHIDC.

We are satisfied that there is sufficient information, guidance, education and signage to ensure detainees are aware of the need to maintain social distancing. The Office notes that the ABF provided detainees with twice weekly messaging about social distancing at the beginning of the pandemic, and now continues to do so on a weekly basis and additionally, if required.

Social distancing arrangements—accommodation compounds

The Office notes that there are different accommodation sizes and occupancy rates across compounds at all facilities. The MITA has spread detainees across compounds as much as possible and is utilising single rooms where possible for those at high risk regarding COVID-19.

Based on the department's assessment, accommodation rooms at most immigration detention facilities, except some rooms in the BITA, provide four square meters per person based on occupancy levels and total room size. However, most rooms are configured with bunk beds and shared bathroom facilities both of which impact on detainees' capacity to practise effective social distancing.

Detainee numbers

The department advises that the numbers of people in immigration detention centres (IDC), immigration transit accommodation (ITA) and alternative places of detention (APOD) have increased during the period of COVID-19 restrictions.

This is because the number of incoming detainees (usually visa cancellations, some of whom are foreign nationals who have been released from prison, or people identified living unlawfully in the community) has outnumbered those exiting detention, primarily because the department has been unable to facilitate the normal rate of international removals due to COVID-19.

Ordinarily, there are two ways in which a person can be released from held detention—either they are removed from Australia, or they are granted a community placement or some form of visa. The first of these two options can be very challenging in normal circumstances because, for example, some countries will not accept the return of their nationals other than voluntarily, or are otherwise very slow to cooperate. If the first of these two options is now more impractical because of international border closures, there is a risk that upward pressure on numbers in detention will continue in the medium term. This will make adherence to the CDNA Guidelines harder and increase the risk should the COVID-19 virus occur in one of the facilities.

During the period of our visits the department conducted two 'network balancing' operations by transferring detainees from the BITA and the MITA to YHIDC. However, these facilities and VIDC are approaching capacity.

In recent months it has become evident that COVID-19 will be with us for a considerable period of time, and as a community we need to adapt to that reality. Adaptation needs to be sustainable. At this stage, COVID-19 has been kept out of immigration detention facilities and we commend the department for implementing strategies that have contributed to this goal.

However, it has also become apparent in other residential settings that just one mishap can lead to a serious outbreak in facilities where large numbers of people are housed in close proximity to one another. For example, a person without symptoms could innocently bring the virus into a facility without their knowledge. There is also a risk of complacency, i.e. firm measures and practices in place today could unintentionally weaken if infection rates in the wider community remain low or as other pressures or issues arise in the months to come.

All this being so, we consider that it would be highly desirable for fewer people to be held in immigration detention.

We continue to consider individual cases of long term detention and to make recommendations that the Minister and the department expedite the resolution of certain detainees' statuses. Wherever it is possible and reasonable, and having regard to risks to the community, our recommendations typically align with the principal that people should be placed in the community while that process is completed. We are mindful that ministerial powers to release detainees are non-compellable, and decisions are entirely at the Minister's discretion. However, we will continue to make recommendations about individual long term detention cases, particularly if the people concerned have underlying health issues that place them at high risk of COVID-19, and particularly if it appears that the status resolution process is likely to be protracted.

Recommendation 3

The Ombudsman recommends the department works with the relevant ministers to reduce the numbers of people held in immigration detention facilities, with a particular focus on achieving effective social distancing in the facilities, and with particular regard to detainees with underlying health issues that may render them susceptible to any outbreak of COVID-19.

Department's response

The Australian Border Force (ABF) and its service providers are focused on maintaining the health and safety of people in its immigration detention facilities, including alternative places of detention, by making every effort to prevent the entry of COVID-19 into immigration detention facilities. We welcome the resumption of site visits by the Commonwealth Ombudsman's officers.

The ABF has implemented the COVID-19 controls in accordance with the [CDNA Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia](#) which recognise settings such as detention can make social distancing difficult in all circumstances. The ABF assess that social distancing is physically achievable in most circumstances, noting that individuals are required to personally practice social distancing principles. In this context the suite of personal hygiene practices, cleaning, cessation of non-essential personnel all contribute to achieving a COVID-safe detention environment.

The ABF with its service providers, implemented COVID-19 controls very quickly as the COVID-19 pandemic escalated in Australia throughout March and April 2020, and have continued to formally review and improve practices. The ABF note the few instances of inconsistent application of the Operational Notice observed by the Ombudsman's Office, and have already addressed any ambiguity in the Notice, and established further assurance and audit processes.

The ABF will continue to monitor and adjust its COVID-19 response arrangements to the prevailing advice provided through updated CDNA guidelines.

The Ministerial Intervention powers are non-compellable, meaning portfolio Ministers are under no obligation to exercise or to consider exercising these powers in any case. The Ministerial Intervention guidelines establish the types of cases that should or should not be referred for ministerial consideration. Cases are only referred for ministerial consideration if they are assessed by the Department of Home Affairs as meeting the guidelines. The Department of Home Affairs is continuing to assess cases against the Ministerial Intervention guidelines. Cases are assessed based on their own individual circumstances, including any health issues, character or other adverse information, and the person's immigration pathway.