



Christmas Island immigration detention facilities

REPORT ON THE COMMONWEALTH AND IMMIGRATION
OMBUDSMAN'S OVERSIGHT OF IMMIGRATION PROCESSES ON
CHRISTMAS ISLAND
OCTOBER 2008 TO SEPTEMBER 2010

February 2011

Report by the Commonwealth and Immigration Ombudsman,
Allan Asher, under the *Ombudsman Act 1976*

REPORT NO. **02**|2011

Reports by the Ombudsman

Under the *Ombudsman Act 1976* (Cth), the Commonwealth Ombudsman investigates the administrative actions of Australian Government agencies and officers. An investigation can be conducted as a result of a complaint or on the initiative (or own motion) of the Ombudsman.

The *Ombudsman Act 1976* confers five other roles on the Commonwealth Ombudsman—the role of Defence Force Ombudsman, to investigate action arising from the service of a member of the Australian Defence Force; the role of Immigration Ombudsman, to investigate action taken in relation to immigration (including immigration detention); the role of Postal Industry Ombudsman, to investigate complaints against private postal operators; the role of Taxation Ombudsman, to investigate action taken by the Australian Taxation Office; and the role of Law Enforcement Ombudsman, to investigate conduct and practices of the Australian Federal Police (AFP) and its members. There are special procedures applying to complaints about AFP officers contained in the *Australian Federal Police Act 1979*. Complaints about the conduct of AFP officers prior to 2007 are dealt with under the *Complaints (Australian Federal Police) Act 1981* (Cth).

Most complaints to the Ombudsman are resolved without the need for a formal report. The Ombudsman can, however, culminate an investigation by preparing a report that contains the opinions and recommendations of the Ombudsman. A report can be prepared if the Ombudsman is of the opinion that the administrative action under investigation was unlawful, unreasonable, unjust, oppressive, improperly discriminatory, or otherwise wrong or unsupported by the facts; was not properly explained by an agency; or was based on a law that was unreasonable, unjust, oppressive or improperly discriminatory. A report can also be prepared to describe an investigation, including any conclusions drawn from it, even if the Ombudsman has made no adverse findings.

A report by the Ombudsman is forwarded to the agency concerned and the responsible minister. If the recommendations in the report are not accepted, the Ombudsman can choose to furnish the report to the Prime Minister or Parliament.

These reports are not always made publicly available. The Ombudsman is subject to statutory secrecy provisions, and for reasons of privacy, confidentiality or privilege it may be inappropriate to publish all or part of a report. Nevertheless, to the extent possible, reports by the Ombudsman are published in full or in an abridged version.

Copies or summaries of the reports are usually made available on the Ombudsman website at www.ombudsman.gov.au. Commencing in 2004, the reports prepared by the Ombudsman (in each of the roles mentioned above) are sequenced into a single annual series of reports.

ISBN 978 0 9870657 1 1

Date of publication: February 2011

Publisher: Commonwealth Ombudsman, Canberra Australia

© Commonwealth of Australia 2011

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Australian Government, available from the Attorney-General's Department.

Requests and enquiries concerning reproduction and rights should be addressed to the Commonwealth Copyright Administration, Copyright Law Branch, Attorney-General's Department, National Circuit, Barton ACT 2601, or posted at <http://www.ag.gov.au/cca>.

Requests and enquiries can be directed to the Director Public Affairs, Commonwealth Ombudsman, GPO Box 442, Canberra ACT 2601; email ombudsman@ombudsman.gov.au or phone 1300 362 072 (calls from mobiles charged at mobile phone rates). This report is available on the Commonwealth Ombudsman's website <http://www.ombudsman.gov.au>.

CONTENTS

EXECUTIVE SUMMARY	1
PART 1—BACKGROUND	3
PART 2—ISSUES.....	5
Cooperation and communication	5
The Non-statutory Refugee Status Assessment (RSA) Process	6
Processing times	7
Working with Interpreters	9
Complaints to the Ombudsman.....	11
Vulnerable Groups.....	12
Unaccompanied minors and children with their families.....	12
Torture and Trauma Survivors	13
Pressure on Services	14
PART 3— RECOMMENDATIONS	18
APPENDIX 1 – DIAC’S RESPONSE	19

EXECUTIVE SUMMARY

In September 2008, the Minister for Immigration and Citizenship requested, and the Commonwealth Ombudsman agreed, to take on an oversight role of the non statutory refugee assessment process for asylum seekers at the Christmas Island immigration detention facilities¹.

Ombudsman staff have since made eight visits to the Christmas Island immigration detention facilities and have observed all the processes conducted from the time asylum seekers are brought to the wharf at Flying Fish Cove until their refugee status is determined, and they are advised that the Minister will allow them to apply for a visa or that they are likely to be removed from Australia.

When visiting the island, Ombudsman staff have also taken the opportunity to undertake inspections of the immigration detention facilities and accept complaints from detainees.

In the period since our first visit in October 2008, there have been many changes affecting the processing of asylum seekers and the circumstances of the people detained on the island. Most obviously the number of people passing through the non-statutory process has grown significantly and this has adversely affected conditions of detention. In October 2008 there were only 31 people in detention. In June 2010, 2454 people were detained on Christmas Island, including 270 children. By 1 September 2010, this had further increased to 2603, significantly exceeding the detention capacity by more than 500 people.

The challenge that management of the Christmas Island detention facilities has posed for the Department of Immigration and Citizenship should not be underestimated. Impressions taken from our initial visit in October 2008 were that whilst the Department was clear about its own objectives, the planning process may not have given sufficient attention to co-ordination with and between other agencies, as well as internal to the Department itself. However, our office's experience has been that the Department has been responsive to comments made in the reports we have provided to them after each visit and been willing to accept advice, learn from mistakes and make improvements.

We have observed and made in all six recommendations on a number of issues core to the effective and appropriate operation of the Christmas Island detention facilities. Additional to improving cooperation and communication amongst agencies, we made recommendations to DIAC for a thorough review of the non-statutory Refugee Status Assessment (RSA) process as well as the processes for relocation of persons with a positive assessment to more appropriate community detention. Recommendation is also made on the appropriate numbers and use of interpreters, which has over time been a matter contributing to anxiety amongst detainees.

The vexing issue of unaccompanied minors or families with children is one of key concern to this office. The Ombudsman welcomes recent announcements about changed procedures that will facilitate processing of their claims on the Australian mainland. It is our office's view that pending the outcome of RSA claims and security

¹ Christmas Island detention facilities comprise the Christmas Island (North West Point) Immigration Detention Centre (IDC) and the Alternative Places of Detention at Phosphate Hill.

Commonwealth and Immigration Ombudsman—DIAC: Christmas Island IDC: Oversight of Immigration Processes October 2008 - September 2010

clearances, that they (families and children) should be placed in community detention.

The Ombudsman's office has noted the clearance of the heavy backlog of torture and trauma cases requiring professional attention. Nevertheless, with the increasing number of detainees, tremendous pressure remains on the facilities and resources available at the Christmas Island detention facilities. Our office continues to receive complaints about a variety of issues, including processing delays and detention times, and the lack of services and facilities. We have recommended the expedition of movement of detainees to the Australian mainland so as to address overcrowding, as well as the need to address the shortage of facilities and services, in particular mental health services.

Based on observations during the past two years, Ombudsman considers that the Department has on the whole managed the operation as well or better than could be expected. However, the Ombudsman considers that the stage has been reached where the current scale of operations on Christmas Island is not sustainable. At the time of this report, people detained at the Christmas Island detention facilities were 2757, a further increase from that in September 2010 and in excess of the operation's Contingency Accommodation Capacity (CAC)² of 2584. The Christmas Island detention facilities have a nominal operation capacity of 744. Simply put, there are too many people detained at the combined Christmas Island immigration detention facilities.

Whether the solution is to make use of facilities on the Australian mainland is a policy decision for Government to make. However, the Ombudsman is concerned that attempting to manage more facilities by utilising the existing level of resources in geographically diverse areas potentially brings with it other problems not least of which is ensuring the presence of adequate infrastructure and mental health services.

² Contingency Accommodation Capacity (CAC) includes nominal operation capacity, supplemented by other accommodation options including the use of marquee dormitories or tents.

PART 1—BACKGROUND

1.1 In September 2008, the Minister for Immigration and Citizenship requested, and the Commonwealth Ombudsman agreed, to take on an oversight role of the non statutory refugee assessment process for asylum seekers at Christmas Island. This role is undertaken under the own motion power provided for in the *Ombudsman Act 1976*. It was envisaged that the Ombudsman would look at the fairness and efficiency of the non statutory review process, including independent review of decisions on refugee status, would investigate complaints, examine the timeliness of both the primary assessment and review processes, and examine the management of vulnerable groups such as children and disabled asylum seekers. The Ombudsman also understood that he could look at any other aspects of the process, including inspection of the detention centre facilities and services.

1.2 This oversight role complemented functions already performed by the Ombudsman under the Ombudsman Act, such as the inspection of immigration detention facilities. Following the Minister's announcement of the New Immigration Detention Values on 29 July 2008, the Ombudsman had also agreed to review the circumstances of people who had been held in immigration detention for six months or more but were not yet covered by the statutory requirement for review under s 486O of the *Migration Act 1958*.

1.3 Ombudsman staff have made eight visits to Christmas Island since October 2008 and have observed all the processes conducted from the time asylum seekers are brought to the wharf at Flying Fish Cove until their refugee status is determined and they are advised that the Minister will allow them to apply for a visa or that they are likely to be removed from Australia. Ombudsman staff have met with staff of the Department of Immigration and Citizenship (DIAC) on the island, staff from the other government agencies involved, asylum seekers and their legal representatives, as well as members of the Christmas Island community and organisations such as the local medical centre, Australian Red Cross, and Life without Barriers, involved in providing detainee services and support. While away from the island, Ombudsman staff have maintained regular contact with DIAC officers on the island and in DIAC's National Office in Canberra and have dealt with complaints lodged by Christmas Island detainees. We have also consulted with other oversight agencies such as the UN Commissioner for Refugees and the Australian Human Rights Commission.

1.4 Following each visit, the practice of the Ombudsman has been to provide the DIAC Secretary with his observations, noting issues of concern and suggesting changes in processes and procedures.

1.5 Although the central focus of each visit has been the non-statutory refugee assessment and review process, Ombudsman staff have used their presence on the island to examine detention conditions, deal with complaints from detainees about detention conditions and the refugee status assessment process, and interview people who have been detained for more than six months. At the time the Ombudsman agreed to undertake six month reviews it was not expected that review of six month detention cases would have much application to Christmas Island. This was particularly the case because the detainee numbers were low. However, increased numbers of people and delays in obtaining security clearances have meant that now most six month reviews relate to Christmas Island detainees.

Commonwealth and Immigration Ombudsman—DIAC: Christmas Island IDC: Oversight of Immigration Processes October 2008 - September 2010

1.6 In the period since the first visit by Ombudsman staff in October 2008, there have been many changes affecting the processing of asylum seekers and the circumstances of people detained on the island. Most obviously the number of people passing through the non-statutory process at any time has grown significantly and this has adversely affected conditions of detention. A change to Serco as the provider of detention services on the island complicated operations, but fortunately occurred before the number of people in detention rose steeply in late 2009. In October 2008 it was reasonable to describe Christmas Island as primarily a processing centre rather than a detention centre along the lines of Villawood and Maribyrnong. By the end of 2009 many of the detainees were no longer active participants in the processing of their asylum claims and were waiting for clearances by other agencies. For them, Christmas Island IDC and the Alternative Places of Detention at Phosphate Hill were indistinguishable from other detention centres. The processing function will be increasingly less associated exclusively with Christmas Island as asylum seekers at various stages of the process are transferred to onshore detention facilities.

1.7 The challenge that management of the Christmas Island operation has posed for DIAC should not be underestimated. For the past two years, the Ombudsman considers that the Department has on the whole managed the operation as well or better than could be expected. DIAC has been careful to ensure that its staff, follow procedures and that its decisions are largely fair and consistent. At the same time it has been flexible, responsive and willing to accept advice, learn from mistakes and make improvements.

1.8 However, the Ombudsman considers that the stage has been reached where the current scale of operations on Christmas Island, as very remote from the mainland, and supporting infrastructure and services, is not sustainable. At the time of this report, people detained at the Christmas Island detention facilities were 2757, a further increase from that in September 2010 and in excess of the operation's Contingency Accommodation Capacity (CAC)³ of 2584. The Christmas Island detention facilities have a nominal operation capacity of 744. Simply put, there are too many people detained at the combined Christmas Island immigration detention facilities.

1.9 Whether the solution is to make use of facilities on the Australian mainland is a policy decision for Government to make. While making no comment on that policy, the Ombudsman is concerned that attempting to manage more facilities by utilising the existing level of resources in geographically diverse areas potentially brings with it other problems not least of which is the provision of adequate mental health services.

³ Contingency Accommodation Capacity (CAC) includes nominal operation capacity, supplemented by other accommodation options including the use of marquee dormitories or tents.

PART 2—ISSUES

Cooperation and communication

2.1 When we first visited the island in October 2008 it was evident that DIAC had put a considerable effort into planning the operation and was clear about its own broad objectives. However, the planning process may not have given sufficient attention to the complexities arising from the involvement of the other agencies, each of which had its own objectives and resource requirements. We observed instances of poor co-ordination between agencies and within DIAC itself, resulting in protracted and consecutive interviews of detainees, sometimes well into the night, disrupted medical appointments, booking conflicts for interpreters, and failure to share information relevant to more than one agency. In its response to our observations after our October 2008 visit to the island, DIAC acknowledged that cross-agency co-ordination needed improvement.

2.2 Logistics at the beginning of the Christmas Island operation were a particular problem. DIAC staff were working without enough computers, copiers and fax machines and many processes were recorded on paper by hand. Initially, lawyers and migration agents representing the asylum seekers also lacked access to a printer and faced delays in gaining access to their clients. Until the North West Point detention centre was opened in December 2008, detainees and interpreters had to be transported from Phosphate Hill to another location several kilometres away for interviews, which was time consuming and limited the number of interviews that could be conducted each day. A shortage of interpreters resulted in further delays. With the opening of the immigration detention centre (IDC) at North West Point, DIAC staff and detainee agents obtained better access to phones, computers, faxes, printers and interview rooms. The deployment of more interpreters and the creation of an interpreter pool to be used by all agencies enabled immigration and other processes to proceed much faster and reduced the strain on both detainees and staff.

2.3 In June 2009 Commonwealth agencies agreed on a streamlining of the Refugee Status Assessment (RSA) process, to shorten interviews and minimise duplication of questioning from agency to agency. By our fourth visit in September 2009 there appeared to be no systemic problems in co-ordination between agencies. This was also the impression from our subsequent visits. The deficiencies in cross-agency co-ordination noted at the time of our first visit had thus been recognised quickly and resolved within a matter of months.

2.4 Perhaps the most significant contribution to the improved administration of Christmas Island operations has been the creation of six month postings for key DIAC positions and other agency staff. This was announced by DIAC in the context of the streamlining initiative in June 2009. DIAC had previously operated a three weekly rotation of staff, which resulted in a lack of continuity in DIAC's knowledge and contributed to breakdowns in communication with contractors and other agencies. External stakeholders also complained about the need to repeat information about their roles and processes to successive rotations of staff, causing frustration and inefficiency. Six month postings have overcome these problems. More productive working relationships have been established and detainees are not exposed to a rapid and unsettling turnover of case managers.

2.5 Another reason for improved commitment and coordination has been a large increase in the number of case managers on the island as numbers in detention have risen. At the time of our first visit to Christmas Island there were four case managers looking after about 800 detainees. This had increased to 18 case managers by February 2010 and to 27 by end August 2010. This is a positive development as the case manager role is critical in enabling DIAC to effectively manage client welfare needs, distribute information and maintain morale in the detention facilities.

The Non-statutory Refugee Status Assessment (RSA) Process

2.6 The non-statutory Refugee Status Assessment (RSA) process was intended to be more transparent and fair than the process previously used for asylum seekers who arrived by boat and were detained offshore. As the Minister announced on 29 July 2008, *'Henceforward, asylum seekers will receive publicly funded advice and assistance, access to independent review of unfavourable decisions and external scrutiny by the Immigration Ombudsman.... These measure will build on strengthened procedural guidance for departmental decision-makers'*. Accordingly, claimants would be provided with a migration agent or lawyer to assist them to prepare their refugee claims, there would be independent merits review of a decision by DIAC not to recognise a person as a refugee, and there would be greater procedural guidance for DIAC decision makers and the independent reviewers. Previously the process had been largely oral, relying on recorded interviews which were later considered by a senior officer in DIAC National Office. There was no system of merits review, let alone independent review, and no provision for submitting a written claim or for obtaining expert assistance during the process.

2.7 The objectives set out by the Minister have largely been achieved by DIAC.

2.8 At the time of our first visit in October 2008 draft procedures for Offshore RSA Processing had just been prepared, drawing on the procedures for on-shore processing. The Ombudsman's office provided comments on the draft procedures shortly after that visit. Following implementation of the new procedures DIAC officials identified the structure and timing of interviews, the management of unaccompanied minors and the use of interpreters as aspects of the process needing more work. These issues and the task of keeping claimants informed about the RSA process, remained ongoing problems. In December 2009, DIAC published Client Information Sheets to provide asylum seekers with written information about the refugee claims process, responding to another ongoing problem of the difficulty faced by detainees in understanding the RSA process and the significance of each step as they moved towards acceptance or rejection of their request for refuge in Australia.

2.9 A concern brought to our attention during our June 2010 visit was variation both in the conduct of RSA interviews and in what research information an RSA interviewer would accept or reject for detainees from the same country of origin. This concern suggests a need for better training of RSA interviewers so as to promote consistency in outcomes.

2.10 One issue that will require continuing close supervision is the quality of personnel selected to perform independent merits review of refugee status assessment decisions. Until recently, the absence of judicial review by Australian courts, close monitoring of the conduct of reviews is essential to minimise inconsistency and inequity in review decisions.⁴ We understand that many personnel

⁴ The High Court decided in its judgment handed down on 11 November 2010 that people who applied for asylum in Australia from an offshore excise place have a right to judicial

used to conduct the independent reviews have experience working at the Refugee Review Tribunal and we view this as a positive step.

Processing times

2.11 One aspect of the processing framework which has been difficult to maintain is the policy requirement that RSA claims be processed within 90 days. DIAC has been meeting this target for the majority of asylum seekers. However, delays of many months in obtaining security clearances, particularly for Tamils, has made less meaningful the achievement of the target time for DIAC to make a decision on refugee status. The Ombudsman has received many complaints about delay in processing claims for asylum but the delay is rarely in the assessment of refugee status. It is rather in the security clearance process that must be completed before a submission is put to the Minister to allow the person to apply for a protection visa. More recently, however, we have received an increasing number of complaints about delay in arranging review hearings and in issuing review decisions, as the number of review applications increases. There is no doubt that protracted waiting times raise on-island tensions. This is especially so when people who arrived on the same boat get an outcome earlier.

2.12 Previously, it had been the case that where DIAC assesses that a person qualifies for refugee status, it did not notify the person of this assessment where other checks had not been completed. On the other hand, if the outcome of the assessment was negative, the person was told immediately so as to enable them to apply for an independent merits review (IMR) of the assessment. If the outcome of the review was positive, the asylum seeker was informed notwithstanding it might still take considerable time before clearances could be obtained. We raised this obvious inconsistency in DIAC's practice with them.

2.13 During our June 2010 visit, we were informed by DIAC that it had been decided as a matter of principle that people should be advised if their claim to refugee status had been accepted following the RSA interview. How the advice should be managed was still under consideration, including the timing of the advice and its content. We regard the decision in principle as a welcome development, it being consistent with the position taken if there is a positive outcome from an IMR.

Ombudsman Recommendation 1

DIAC should conduct a thorough review of the RSA assessment processes with a view to introducing initiatives which will improve the overall timeliness of such assessments. The review to include reconsideration of the timing and processing of security clearances for successful RSA applicants.

DIAC response:

The security assessment process undertaken by the Australian Security Intelligence Organisation (ASIO) and the Refugee Status Assessment process undertaken by DIAC are two quite separate processes. In some instances, similar timeframes may be achieved in finalising security assessments and RSA cases which means clients can move to visa application without undue delay. In other instances this will not be achievable.

review. (See *Plaintiff M61/201E v Commonwealth of Australia and Plaintiff M69 of 2010 v Commonwealth of Australia* [2010] HCA 41.)

The timing for the completion of security assessments varies from case to case, depending on individual circumstances. Some cases, therefore, may be more complex than others and this can contribute to extended timeframes for finalising security assessments.

Because assessments are treated individually and undertaken on a case-by-case basis, there is no single timeframe within which the checks can be completed. Whether people arrive together on a boat or whether they arrive individually, their cases are still treated on a case-by-case basis depending on their individual circumstances.

While the Department cannot provide a definitive timeframe for completion of security assessments, we regularly liaise with ASIO on caseload management, follow up on specific cases to ensure they are being progressed, and escalate cases of concern.

DIAC is also taking steps to ensure that RSA processing continues to be done in a timely way. DIAC is currently recruiting and training more RSA case officers so that asylum seeker claims can be processed as quickly as possible. DIAC has also taken steps to strengthen the guidance provided to decision-makers so that they are able to assess cases more efficiently and effectively. This has been done through updates to the RSA Procedures Manual and the Credibility Assessment Guidelines. Further guidelines on assessing Country of Origin information are currently being drafted, which will further assist departmental officers to finalise cases in a timely manner.

We appreciate that RSA processing and security clearance processes are two separate processes and that the time taken to complete each process in respect of each person will differ. The Ombudsman welcomes DIAC's response that is suggestive current RSA processing standards are at least being maintained, if not improved. However, this will count for nought if there is no corresponding improvement in timeliness of security clearances. For this reason we remain of the view that it can be instructive to periodically undertake a holistic review that considers both processes.

Ombudsman Recommendation 2

DIAC should examine means by which a person who has received a positive Refugee Status Assessment can in a timely manner be released from immigration detention on Christmas Island. Such means could include placing the person in community detention on the Australian mainland subject to strict reporting conditions. A community detention strategy could also be considered for any person in similar circumstances who has been detained in an immigration detention facility on the mainland.

DIAC response:

The Department notes comments in the report in relation to appropriate accommodation options for IMA clients on a positive pathway. People in immigration detention are managed in accordance with the Government's Immigration Detention Values. These values ensure that clients are, as a matter of course, accommodated in the most appropriate lodging available on Christmas Island or the Australian mainland until their processing is finalised.

As the Ombudsman would be aware, the Minister has recently announced his intention to use existing powers under the Migration Act to progressively place significant numbers of unaccompanied minors and vulnerable families in residence determination arrangements.

These arrangements will be rolled out progressively in partnership with community organisations over the coming months and should provide more suitable longer term accommodation for this group of clients.

Community detention is however not possible to facilitate on Christmas Island at present, due to the lack of suitable accommodation resulting from the increased number of irregular maritime arrivals.

Ombudsman comment on DIAC response:

We note the recent announcements made by the Immigration Minister. However, we see this very much as a first step and we again urge serious consideration to be given to relocating any person who has received a positive Refugee Status Assessment from Christmas Island to the Australian mainland.

Working with Interpreters

2.12 There have been essentially two problems relating to interpreters. The problem which was apparent at the beginning of the Christmas Island operation was the shortage of interpreters in required languages. There was one case of a Sinhalese interpreter being used to interpret for a group of Tamils despite the inadequacy of her interpretation having been apparent when she had been used to interpret for Tamils a short time before. There were also problems with competing demands for interpreters from the agencies working on the island. These problems have been largely ironed out. During our February 2010 visit the interpreter pool co-ordinated by DIAC functioned efficiently and competing demands were resolved quickly. The increase in detainee numbers on the island and DIAC's need to provide interpreter services at onshore detention facilities as the Christmas Island detainees are moved to the mainland has nevertheless put interpreter resources under renewed strain. By the time of our visit in June 2010 the strain on interpreter services was most visible. In that there was no capacity for interpreters on the island to be used to translate any complaints that detainees sought to make. We understand that the service provider has had to resort to arranging for complaints to be translated offsite with DIAC then paying for this.

2.13 One ongoing issue related to the availability of interpreters has been the use of Dari speakers as Hazaragi interpreters. There was a tendency among staff to dismiss this issue as a manifestation of ethnic tension. However, the assumption that any Dari speaker would be capable of interpreting for Hazaragi speakers appeared to be misplaced. There had been at least one case where a Hazaragi speaker had been deprived of proper medical care because the Dari interpreter and the patient were unable to communicate with each other.

2.14 The second problem has been the manner in which interpreters have been used. This is largely a matter of staff training and it affects not only DIAC staff involved in day to day contact with detainees, but also RSA interviewers and reviewers. At one IMR hearing we observed that the interpreter was not used when the detainee's agent put forward and discussed certain claims with the reviewer. The reviewer did attempt to summarise these claims back to the client using the

Commonwealth and Immigration Ombudsman—DIAC: Christmas Island IDC: Oversight of Immigration Processes October 2008 - September 2010

interpreter but the summary was incomplete. We raised this issue with DIAC's Onshore Protection Branch to highlight the need for all communication to be conducted through the interpreter where the client does not speak English.

2.15 There was another case where interpreters were not used when detainees were transported to the hospital for appointments. Indian Ocean Territories Health Services (IOTHS), which operates the hospital, said this had caused some detainees to become distressed as they were loaded onto a bus and taken away from the detention facilities without knowing where they were going and why. We were told that IOTHS had suggested that DIAC arrange for translated notices to be produced that explain to clients when they are being taken to the hospital. In August 2010 we observed a number of interpreters at the clinic at North West Point assisting detainees.

2.16 We also noted instances over a number of visits where interpreters were used to perform tasks that DIAC staff should have been performing themselves through an interpreter, such as explaining procedures to detainees or organising movement of detainees from one place to another. There were also some instances where interpreters took it upon themselves to provide advice to detainees and were not corrected by DIAC staff.

Ombudsman Recommendation 3

DIAC should ensure that adequate numbers of accredited interpreters are available on Christmas Island to meet the needs of detainees, in relation to the processing of refugee claims and also in relation to the provision of support services such as medical assistance.

DIAC response:

In line with the Access and Equity framework and best practice principles outlined in the Commonwealth Ombudsman's own motion report into the Use of Interpreters, the Department provides all IMAs with access to interpreting services.

The availability of interpreters to support IMA operations and processing remains a challenge that is spread across Christmas Island and other immigration detention facilities on the mainland.

Interpreters are sourced primarily through the Department's Translating and Interpreting Service (TIS) National, and supplemented by panel arrangements with commercial providers.

The Department continues to pursue a range of strategies to address interpreter supply shortages and limit impacts on processing timeframes. These include:

- *intensive recruitment strategies;*
- *prioritising on-site interpreters for sensitive, lengthy or complex interactions (for example, Refugee Status Assessment interviews) and supplementing other services with telephone interpreting, where possible, for which there is an additional pool of available interpreters;*
- *establishment of an external on-site interpreting services panel to supplement the TIS National interpreting pool; and*

- *improvements to departmental processes to support more efficient use of interpreter resources.*

The Department is also exploring ways to overcome a range of infrastructure and technical challenges in the use of telephone and video interpreting for IMA clients in some facilities. These include time lags, line dropouts, video quality and bandwidth. The Department is working to resolve these issues.

Ombudsman comment on DIAC response:

We note the steps being taken by DIAC.

Complaints to the Ombudsman

2.17 The Ombudsman's office initially experienced delays in obtaining responses from DIAC to complaint investigations, which hindered the prompt resolution of complaints. However, timeliness of DIAC responses has improved in 2010. DIAC staff have also provided briefings to our office on a number of issues relating to Christmas Island IDC and our oversight role, which has facilitated resolution of issues.

2.18 The Ombudsman has received complaints from detainees and their representatives about a range of matters including:

- lack of information about the RSA process (prior to the publication of client information sheets in December 2009)
- delays in RSA or IIMR processing
- procedural fairness in the IMR process
- length of time spent in detention
- confusion about the guardianship of unaccompanied minors
- access visits and contact between relatives detained in separate places on Christmas Island
- waiting times and access to dental, medical and mental health services, including torture and trauma counselling
- the availability and use of interpreters
- overcrowding and access to basic services
- cleanliness and hygiene standards in detention facilities
- lack of community detention
- access to educational and recreational facilities.

2.19 We have sought to deal with most complaints while Ombudsman staff have been on the island. Where complaints have been unable to be dealt with on the spot or have been lodged between Ombudsman visits, we have had difficulty in contacting complainants because of the time difference, remoteness and poor communications with the detention facilities on the island. This has not improved significantly in almost two years.

Vulnerable Groups

Unaccompanied minors and children with their families

2.20 The management of unaccompanied minors under the *Immigration (Guardianship of Children) Act 1946* (the IGOC Act) was a major issue on our early visits to the island. There were two problems. Under s 6 of the IGOC Act 1946 the Minister is the guardian of a non-citizen child who arrives in Australia not in the care of, or to join a parent or relative over 21. The Minister was able to delegate this function to a Commonwealth or State officer or authority, but had not done so in respect of persons arriving at Christmas Island. This meant that no-one except the Minister himself had authority to make the decisions on health and welfare matters that a parent would make on behalf of a child. By the second visit it was understood that a delegation had been made to two DIAC officers on the island. However both officers were absent from the island during our third visit in January 2009, defeating the practical purpose of the delegation. A delegation to a number of officers was finally issued in August 2009, clarifying the issue of legal responsibility.

2.21 The conflict between the responsibility of the Minister to act in the best interests of the child, and his responsibility to implement government policy on border security was not resolved by the appointment of delegates. There remained a need to appoint persons who could protect the interests of the child in its dealings with immigration authorities and who were not involved in decisions on immigration status.

2.22 After seeking legal advice, DIAC acknowledged our concerns and arranged to bring a number of persons to the island, to act as 'independent persons' and protect the interests of unaccompanied minors during interviews and other processes. Subsequently, we observed a significant improvement in the way DIAC managed unaccompanied minors. On our fifth visit the private agency responsible for providing independent persons said that it was satisfied with DIAC's handling of the unaccompanied minors issue. We expect that further improvements will result from the DIAC review of key issues and risks associated with the management of children under the *Immigration (Guardianship of Children) Act 1946*.

2.23 We had previously recommended that, given the difficulty of obtaining accommodation on the island for community detention, unaccompanied minors should be moved to the mainland where they can be accommodated in the community. DIAC has begun moving to the mainland those detainees regarded as eligible for less restrictive detention. Although transfer to the mainland may resolve the issue of detention accommodation, we consider that arrangements for suitable schooling and the availability of independent persons must be established at new locations such as Port Augusta.

2.24 Children who arrive on Christmas Island with their families are also detained at the IDC for processing. Primary school age children attend school. DIAC has advised that they are moved to community detention on the Australian mainland as a priority. However, this does not occur immediately.

Ombudsman Recommendation 4

DIAC should process any unaccompanied minors or families with children on the Australian mainland. Pending the outcome of their Refugee Assessment Status claims and security clearances, they should be placed in community detention.

DIAC response:

Families and unaccompanied minors are given priority in relation to all processing.

As noted in the Department's response to Recommendation 2, all persons in immigration detention are managed in accordance with the Government's Immigration Detention Values. These values ensure that clients are, as a matter of course, accommodated in the most appropriate lodging available on Christmas Island or the Australian mainland until their processing is finalised.

The Minister recently announced his intention to use existing powers under the Migration Act to progressively place significant numbers of unaccompanied minors and vulnerable families in residence determination arrangements. These arrangements will be rolled out progressively in partnership with community organisations over the coming months and should go a large way to providing suitable longer term accommodation for this group of clients.

Ombudsman comment on DIAC response:

We note and welcome the Minister's recent announcement.

Torture and Trauma Survivors

2.25 The draft community detention guidelines (Minister's Residence Determination Power under s 197AB and s 197AD of the *Migration Act 1958*) note that the Minister will give priority to considering children and their accompanying family members and survivors of torture and trauma. However, the very limited availability of accommodation on Christmas Island has meant that only a handful of survivors of torture and trauma, have been considered for community detention. Most have remained in confined detention. This has been a long standing concern for our office which we have raised many times with DIAC and the Minister. DIAC has transferred some detainees approved for community detention to the Australian mainland, but few, if any, of these appear to have been placed in community detention and instead remain in confined detention.

2.26 At our February 2010 visit IOTHS reported that it had cleared the heavy backlog of torture and trauma cases requiring professional attention. This is a major achievement.

Pressure on Services

2.29 When Ombudsman staff visited the island after the first two boats arrived in October 2008 there were only 31 people in detention. By September 2009 this number had reached 700. As at 25 June 2010, there were 2454 people detained on Christmas Island and by 1 September 2010 this had further increased to 2603 people.

2.30 By the time of our February 2010 visit the increasing number of detainees on Christmas Island appeared to have resulted in reduced access to recreational and educational services. This included a shortage of computers required by detainees to prepare their case and at Phosphate Hill more limited access to green space for outdoor recreation. Plans to increase green space at Phosphate Hill had been shelved because of the need to continue using the intended space for accommodation. The number of telephones at North West Point in particular has been an ongoing problem and appeared also to be a problem at Phosphate Hill, although this may have been due also to poor control over phone use. By end August 2010, the problem of the lack of adequate phones, computers and internet access by detainees remained. For example, at the North West Point facility, only 25 computers were available for the use of 1600 to 1800 men. We were advised that queues form to access these services and not surprisingly, frustrations often mount.

2.31 The response to the pressure on services was mixed at the time of our visit in February 2010. The new Lilac compound had been established with its own services which appeared to be satisfactory, while marquees had been erected in the main North West Point compound to accommodate recent arrivals. There was a cleaning problem with the marquee toilet facilities at North West Point which suggested that a more rigorous approach to hygiene was needed, particularly given the increased risk of outbreaks of disease as crowding increased. Hygiene problems were noted in toilet facilities at Bravo compound as well. In the older compounds within North West Point toilet and washing facilities had not been increased in step with the increased number of residents. The IOTHS noted that tracking infectious diseases had become more difficult as facilities became more crowded.

2.32 We observed during our June 2010 visit that the basic problem of mud and dirt being tracked into the tents and toilets at North West Point still existed although the toilets were being cleaned more frequently. However, the cleanliness of toilets and the frequency of their cleaning was the subject of a number of complaints from detainees in the various compounds at Phosphate Hill. By end August 2010, footpaths and raised levees had been constructed in order to stop the rain from coming into the accommodation areas. Nevertheless, the fact remains that whilst DIAC and the service provider have sought to manage as best they can, they have been operating one detention facility attached to North West Point in the midst of a construction site. Quite simply this should not occur.

2.33 Activities have been promoted by DIAC and Serco as important in maintaining morale and ameliorating detention depression. At the time of our February 2010 visit, excursions on Christmas Island were no longer taking place, except for religious visits, and there appeared to be heavy reliance on volunteer groups to provide educational and other programs. There were complaints that the English language tuition by volunteer groups was unstructured and unplanned. Generally there was little evidence of planning and co-ordination or of particular expertise in planning and conducting activity programs.

Commonwealth and Immigration Ombudsman—DIAC: Christmas Island IDC: Oversight of Immigration Processes October 2008 - September 2010

2.34 The situation had markedly improved by the time of our June 2010 visit. Work being done by the new Activities officer at North West Point IDC was impressive. A varied program of activities was in train, involving a wide range of physical activities, as well as activities such as computer classes and 'Australia' classes. Religious groups had been given space to meet. Further activities such as an art competition and gardening were planned. The volunteer group, Australian League of Immigration Volunteers (ALIV) continued to maintain an active presence, providing activities and classes to detainees but were now using trained ESL teachers and was being required to submit lesson plans for its English lessons.

2.35 By June 2010, another welcome development has been the readiness to engage detainees to provide instruction and services to the detainee population. In Phosphate Hill we observed English lessons being conducted by an English speaking detainee, followed by further lessons conducted by ALIV. We were informed that the library at North West Point has a substantial collection of books, magazines and DVDs, and was now using detainees to run its loans program. Detainees were involved in the running of some sporting activities. Although more attention may need to be given to ensuring that the people involved in some skilled activities such as gym instruction have appropriate qualifications, overall, it seemed that involving detainees in leading these activities generated a sense of ownership and responsibility and had a positive effect on morale and good order.

2.36 Not surprisingly, medical and dental services have come under increasing pressure as the detainee population has grown.

2.37 The intermittent nature of dental services had been a longstanding problem on the island and it had been hoped that this would be ameliorated by a mobile dental unit due that was due to begin operation in May 2010. By June 2010, although we understand that a dentist and nursing staff were ready to start work, nothing had progressed. By the time of our eighth visit, we were told that the mobile unit would be operational within two weeks. We were also told that a dentist would be flying in from the Villawood Immigration Detention Centre to work for the next month or so to work towards removing the backlog of detainees requiring treatment.

2.38 Medical services appear to be coping, but the capacity of the IOTHS facilities, being very limited and more suited to a primary health care role, are clearly not sufficient for the detention population as it now stands. Although DIAC has increasingly and prudently resorted to evacuating more serious cases to Perth, we remain uncertain as to whether specialist medical needs of patients are being made provided at a standard commensurate with standards at mainland detention centres.

2.39 Mental health staffing has increased and by end August 2010 comprised seven mental health nurses, four team leaders and four psychologists. However, we have strong doubts about the adequacy of the accommodation available to treat detainees. For example, at North West Point there is only one interview room and some consultations are held outside and in corridors. The demand on the service, however, is 20 to 50 consultations a day with medications being dispensed to an additional 70 to 80 detainees.

2.40 On 18 April 2010, the Government announced measures to ease congestion at the Christmas Island immigration detention facilities including re-opening the Curtin Immigration Detention Centre in Western Australia and transferring detainees to immigration facilities in other states and territories. More recently, the Government has announced that the facility at Curtin will be expanded to take greater detainee numbers and use is now being made of Scherger Air Base in Far North Queensland.

However, there is no guarantee that new arrivals will not keep pace with or exceed the number removed.

Ombudsman Recommendation 5

DIAC should expedite the movement of as many detainees as possible from Christmas Island to the Australian mainland so as to address the current situation of overcrowding on Christmas Island.

DIAC response:

It is Government policy that all IMAs are initially processed on Christmas Island. All clients are managed in accordance with the Government's Immigration Detention Values which ensure that people are treated fairly and humanely and any claims for asylum are assessed as expeditiously as possible.

The Australian Government has a variety of flexible accommodation options available for use on Christmas Island to manage this process. Irregular maritime arrivals and crew can, as necessary, be transferred to suitable accommodation options on the Australian mainland.

Families with children will not be held in immigration detention centres either on Christmas Island or the Australian mainland. Instead, these clients and other vulnerable groups are promptly placed in alternative detention on the mainland.

As the Ombudsman would be aware the Government has announced the establishment of new detention accommodation on mainland Australia. A facility at Scherger commenced operating October 2010, and facilities at Inverbrackie in South Australia, and Northam in Western Australia will be developed. The identification of sites for additional accommodation follows extensive investigation by the Department on a range of options around Australia.

The Department will cease using short-term accommodation such as tents and hotels for immigration detention accommodation and activate these new sites as soon as possible. The Department believes that this will ameliorate overcrowding on Christmas Island.

Ombudsman comment on DIAC response:

The opening of additional facilities on the Australian mainland to accommodate detainees should go some way to addressing the current overcrowding situation on Christmas Island. However, any improvement will obviously be short lived if neither the rate nor numbers of IMAs arriving by boat falls. Furthermore, detaining IMAs in remote locations on the Australian mainland can be expected to raise similar problems.

Ombudsman Recommendation 6

DIAC should address a shortage of facilities on Christmas Island as a matter of urgency so as to provide appropriate services for detainees requiring health services, especially those relating to mental health.

DIAC response:

The Department notes the comments in the report in relation to the provision of appropriate services to IMA clients. As the Ombudsman would be aware DIAC has been working with relevant stakeholders to ensure clients on Christmas Island are able to access appropriate facilities in order to obtain health and other services while they are in immigration detention.

In relation to the mobile dental van, DIAC is awaiting final certification of the radiation equipment (X -Ray machine) from Australian Radiation Protection and Nuclear Safety Agency (ARPANSA). The department is working towards resolving this issue in the very near future.

DIAC has also identified a suitable building that will be refurbished and installed at the Christmas Island Hospital that will be used for off-site counselling for mental health clients.

Ombudsman comment on DIAC response:

We note the response and will continue to observe in future inspections of Christmas Island immigration detention facilities as to whether there has been an improvement in the adequacy.

PART 3— RECOMMENDATIONS

WE RECOMMEND THAT DIAC SHOULD:

1. Conduct a thorough review of the RSA assessment processes with a view to introducing initiatives which will improve the overall timeliness of such assessments. The review to include reconsideration of the timing and processing of security clearances for successful RSA applicants.
2. Examine means by which a person who has received a positive RSA can in a timely manner be released from immigration detention on Christmas Island. Such means could include placing the person in community detention on the Australian mainland subject to strict reporting conditions. A community detention strategy could also be considered for any person in similar circumstances who has been detained in an immigration detention facility on the mainland.
3. Ensure that adequate numbers of accredited interpreters are available on Christmas Island to meet the needs of detainees, in relation to the processing of refugee claims and also in relation to the provision of support services such as medical assistance.
4. Process any unaccompanied minors or families with children on the Australian mainland. Pending the outcome of their RSA claims and security clearances, they should be placed in community detention.
5. Expedite the movement of as many detainees as possible from Christmas Island to the Australian mainland so as to address the current situation of overcrowding on Christmas Island.
6. Address a shortage of facilities on Christmas Island as a matter of urgency so as to provide appropriate services for detainees requiring health services, especially those relating to mental health.

We will continue to monitor the progress of implementation of recommendations, as part of the Ombudsman's ongoing oversight role. DIAC has been requested to provide a report to the Ombudsman within 3 months of the date of this report, on how they are implementing the recommendations.

APPENDIX 1 – DIAC’S RESPONSE

On 29 September 2010, the Acting Deputy Ombudsman sent a draft report of this investigation to the Department of Immigration and Citizenship, and invited comments. The then First Assistant Secretary, Community and Detention Services Division, Ms Jackie Wilson, replied on 15 November 2010. A copy of the covering letter is set out on the following page. DIAC also provided some introductory comments as well as a detailed response to each of the six recommendations. The introductory comments are set out below. DIAC’s detailed responses to each of the recommendations are set out in full in Part 2 of this report.

The Department of Immigration and Citizenship (DIAC) welcomes the report of the Commonwealth and Immigration Ombudsman (the Ombudsman) in its oversight role of immigration process on Christmas Island for the two year period between 2008 and 2010.

The Department would like to thank the Commonwealth and Immigration Ombudsman for undertaking this report and for their valuable role in providing independent oversight of Australia’s immigration detention system.

The Department appreciates the Ombudsman’s comments that the Department has managed its responsibilities in relation to Irregular Maritime Arrival (IMA) clients in a better than expected way, given the significant increase in client numbers.

The increase in IMAs has presented a number of challenges for the Department and its contracted service providers. DIAC is proud of the way its staff on the ground has continued to manage operations in a professional and humane manner, and feedback from oversight agencies such as your office is important to help us address any concerns and improve our management arrangements.

Commonwealth and Immigration Ombudsman—DIAC: Christmas Island IDC: Oversight
of Immigration Processes October 2008 - September 2010



Australian Government
Department of Immigration and Citizenship

15 November 2010

Ms Diane Merryfull
Acting Deputy Commonwealth and Immigration Ombudsman
GPO Box 442
Canberra ACT 2601

Dear Ms Merryfull

*Report on the Commonwealth and Immigration Ombudsman's Oversight of Immigration
Processes on Christmas Island October 2008 to September 2010*

Thank you for your letter of 29 September 2010 to the Secretary, Mr Andrew Metcalfe, in which you provided the *Report on the Commonwealth and Immigration Ombudsman's Oversight of Immigration Processes on Christmas Island October 2008 to September 2010*.

I wish to thank you for giving the Department of Immigration and Citizenship (DIAC) the opportunity to respond to the report's observations and recommendations before it is finalised.

I have attached DIAC's response to your report and am grateful that you have prefaced your report with the acknowledgement that, despite the numerous challenges underpinning Irregular Maritime Arrival (IMA) operations, the Department has managed the process as well or better than could be expected.

I would also like to thank the Office for its valued input and acknowledge the Ombudsman role in providing independent oversight of Australia's immigration detention system.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Wilson'.

Jackie Wilson
First Assistant Secretary
Community and Detention Services Division

Telephone: 02 6264 1659
Fax: 02 6264 1100

Celebrating 65 years of nation building in 2010

people our business

6 Chan Street Belconnen ACT 2617
PO Box 25 BELCONNEN ACT 2616 • Telephone: 02 6264 1111 • Fax: 02 6225 6970 • www.immi.gov.au