Government Response to Recommendations by the Joint Select Committee on Australia's Immigration Detention Network.

NOVEMBER 2012

Preamble

The Australian Government welcomes the opportunity to respond to the report of the Joint Select Committee on Australia's Immigration Detention Network. The report was presented on 30 March 2012.

The Government has accepted (fully, in principle or partially) 26 of the 31 majority report recommendations made by the Committee. The Australian Government has progressed many of the recommendations. These include:

- the development of new infrastructure and improved security at immigration detention facilities, as well as strengthened contract management and improved quality and availability of training for staff. These measures were outlined in detail in the Minister for Immigration and Citizenship's report to parliament on 20 September 2012 on the implementation of the Hawke Williams Review.

- the Department of Immigration and Citizenship, in concert with its Detention Service Provider and Detention Health Service Provider, has reviewed psychological support programs in detention facilities, seeing a significant decrease in the incidents of attempted and actual self-harm in immigration detention facilities.

- the Attorney General has also recently announced the appointment of an independent reviewer to conduct primary and periodic reviews of adverse security assessments for those persons found to be owed protection but facing prolonged immigration detention due to visa ineligibility.

Since the release of the Committee's report a number of significant policy and legislative reforms related to Irregular Maritime Arrivals (IMAs) have taken place. On 28 June 2012, the Prime Minister announced the establishment of an independent expert panel to examine approaches to deterring asylum seekers from embarking on dangerous boat journeys to Australia. The Expert Panel on Asylum Seekers was led by Air Chief Marshal Angus Houston AC AFC (Ret'd), who was joined by Paris Aristotle AM and Professor Michael L'Estrange AO.

The Expert Panel made 22 recommendations, including measures to implement regional processing to safeguard Australian borders, avert loss of life at sea and offer consistency in affording protection to those in need. The Government endorsed, in principle, all 22 recommendations of the Expert Panel's report.

The Australian Government believes in strong policies and decisive action to prevent loss of life through dangerous irregular maritime passages and ensuring there is no advantage for those who seek to arrive in Australia by such means. The Government has simultaneously increased the opportunities for offshore resettlement in Australia by increasing the Humanitarian Program to a total of 20,000 places each year, making Australia the second highest humanitarian intake country in the world.

The Joint Select Committee on Australia's Immigration Detention Network conducted its inquiry and reported prior to these significant policy changes. As such, references to IMAs contained within the Committee's report, its recommendations and the Government's response pertain to IMAs who arrived in Australia prior to 13 August 2012.

The Government is grateful for the work the Committee has undertaken in respect to this important issue and for all those who contributed with their submissions and evidence to the Committee.

The Government's response to the recommendations made by the Committee follows.

Table 1 – Summary of Government Response to Recommendations

Majority Report Recommendations		Government Response	Page
1	The Committee recommends that the Department of Immigration and Citizenship continue to robustly contract manage Serco's obligation to provide appropriate activities for detainees.	Accepted	13
2	The Committee recommends that the Department of Immigration and Citizenship consider other accommodation or recreation options for detainees when the amenity of a facility is compromised due to construction or maintenance projects.	Accepted	13
3	The Committee recommends that the Department of Immigration and Citizenship conduct robust auditing of Serco staffing ratios and training, in line with the recommendations in the Comcare report and the Hawke-Williams review.	Accepted	23
4	The Committee reiterates the recommendation made by the Commonwealth Ombudsman that the Department of Immigration and Citizenship, conduct a review of the quality and management of incident reporting across immigration detention network, and also assess Serco's capacity to monitor its own compliance with the reporting guidelines.	Accepted	23
5	The Committee recommends that the Department of Immigration and Citizenship appoint an independent expert to inquire into the appropriate qualifications for Serco Client Service Officers and make appropriate amendments to its contract with Serco.	Accepted	9
6	The Committee recommends that the Department of Immigration and Citizenship effectively contract manage Serco's implementation of the Psychological Support Program Policy.	Accepted	10
7	The Committee recommends that the Department of Immigration and Citizenship work with Serco and the Detention Health Advisory Group to reform the Keep Safe policy to ensure it is fully consistent with the Psychological Support Program Policy, as soon as possible.	Accepted	10
8	The Committee recommends that the Department of Immigration and Citizenship ensure that Serco provides adequate Detention Health Advisory Group –endorsed mental health training to Serco officers who implement the Psychological Support Program Policy.	Accepted	10
9	The Committee recommends that Serco develop and implement improved proactive procedures to support staff following critical incidents.	Accepted	9
10	The Committee recommends that the Department of Immigration and Citizenship ensure Serco has appropriate procedures and training in place so that only where International Health and Medical Services personnel are not available can senior Serco managers participate in the secondary dispensing of medication.	Accepted	11
11	Consistent with the findings of the Hawke-Williams review, the Committee recommends that the government finalise a security protocol between Serco, the Australian Federal Police and local police in each state and territory.	Accepted	23
12	The Committee recommends that the Department of Immigration and Citizenship require Serco local managers to apply a consistent practice and procedure protocol to visits across the network, in accordance with the information provided on the department website.	Accepted	14

Majority Report Recommendations cntd.		Government Response	Page
13	The Committee recommends that the Department of Immigration and Citizenship continue to improve visitor facilities across the network.	Accepted	14
14	The Committee recommends that International Health and Medical Services staff be rostered on a 24 hour a day basis at all non-metropolitan detention facilities.	Not Accepted	11
15	The Committee recommends that the Department of Immigration and Citizenship assess, on a case by case basis, the need for International Health and Medical Services staff to be rostered on a 24 hour a day basis at metropolitan detention facilities.	Accepted	11
16	The Committee recommends that the Department of Immigration and Citizenship work with International Health and Medical Services to pilot regular mental health outreach services in detention facilities.	Accepted in principle	12
17	The Committee recommends that the Department of Immigration and Citizenship develop a transport capability to transfer detainees with non-acute injuries to remote hospitals.	Accepted	12
18	The Committee recommends that, as a matter of policy, the Department of Immigration and Citizenship accommodate detainees in metropolitan detention facilities wherever possible, in particular children and families, and those detainees with special needs or with complex medical conditions.	Accepted in principle	18
19	The Committee recommends that relevant legislation be amended to replace the Minister for Immigration as the legal guardian of unaccompanied minors in the immigration detention system.	Not Accepted	15
20	The Committee recommends that the Department of Immigration and Citizenship develop and implement a uniform code for child protection for all children seeking asylum across the immigration system.	Accepted in principle	16
21	The Committee further recommends that the Department of Immigration and Citizenship adopt Memoranda of Understanding with children's commissions or commissioners in all states and territories as soon as possible.	Accepted in principle	16
22	The Committee recommends that the Australian Government take further steps to adhere to its commitment of only detaining asylum seekers as a last resort and for the shortest practicable time, and subject to an assessment of non-compliance and risk factors, as enunciated by the New Directions policy.	Accepted	18
23	The Committee further recommends that asylum seekers who pass initial identity, health, character and security checks be immediately granted a bridging visa or moved to community detention while a determination of their refugee status is completed, and that all reasonable steps be taken to limit detention to a maximum of 90 days.	Partially accepted	19
24	The Committee recommends that the Department of Immigration and Citizenship be required to publish on a quarterly basis the reasons for the continued detention of any person detained for more than 90 days, without compromising the privacy of the individuals.	Not Accepted	19
25	The Committee recommends that the Department of Immigration and Citizenship consider revising and enhancing its system of quality control to oversee those Refugee Status and Assessment and Independent Merits Review processes still underway.	Accepted	21

Majority Report Recommendations cntd.		Government Response	Page
26	The Committee recommends that the Australian Government move to place all asylum seekers who are found to be refugees, and who do not trigger any concerns with the Australian Security Intelligence Organisation following initial security checks, and subject to an assessment of non-compliance and risk factors, into community detention while any necessary in-depth security assessments are conducted.	Partially Accepted	21
27	The Committee recommends that the Australian Government and the Australian Security Intelligence Organisation establish and implement periodic, internal reviews of adverse Australian Security Intelligence Organisation refugee security assessments commencing as soon as possible.	Accepted	22
28	The Committee recommends that the Australian Security Intelligence Organisation Act to be amended to allow the Security Appeals Division of the Administrative Appeals Tribunal to review the Australian Security Intelligence Organisation security assessments of refugees and asylum seekers.	Not Accepted	22
29	The Committee recommends that the Department of Immigration and Citizenship consider publishing criteria for determining whether asylum seekers are placed in community detention or on bridging visas.	Not Accepted	20
30	The Committee recommends that the Australian Government and the Department of Immigration and Citizenship seek briefing on control orders in use by the criminal justice system and explore the practicalities of employing similar measures for refugees and asylum seekers who are in indefinite detention or cannot be repatriated.	Accepted in Principle	20
31	The Committee recommends that the Department of Immigration and Citizenship continue to work towards implementing all of the recommendations made by the Hawke-Williams review, and that the Minister for Immigration and Citizenship report to the Parliament no later than 20 September 2012 on progress in implementing the review recommendations.	Accepted	24

Coalition Members and Senators Dissenting Report Recommendations	Government Response	Page
Coalition Recommendation 1: Restore the Coalition's proven border protection regime Coalition Members and Senators recommend that the Government restore the proven measures of the Howard Government, abolished by the Rudd and Gillard Governments, to once again deter illegal boat arrivals to Australia, including, but not restricted to the following measures: • Restoration of the Temporary Protection Visa policy for IMAs • Re-establishment of offshore processing on Nauru for all new IMAs by reopening the taxpayer funded processing centre on Nauru; and • Restoration of the policy to return boats seeking to illegally enter Australian waters, where it is safe to do so.	Not Accepted	25
Coalition Recommendation 2: Coalition Members and Senators recommend that the Australian Government finalise the memorandum of understanding between DIAC, the AFP and state/territory police forces and reach a binding agreement that clearly stipulates who is responsible for policing and responding to incidents at Australian Immigration Detention Centres.	Accepted	26
Coalition Recommendation 3: Coalition Members and Senators recommend that the AFP and State/Territory police are funded adequately in order to carry out their regular operational policing responsibilities along with policing the immigration detention centres and responding to incidents.	Accepted	26
Coalition Recommendation 4: Coalition Members and Senators recommend that the Australian Government ensure that security infrastructure, including CCTV cameras, security fences and other essential security elements be operational, ready and be of a high standard of functionality and that DIAC, with assistance from Serco, is to undertake a review of infrastructure (including security infrastructure) across the broader immigration detention network.	Accepted	26
Coalition Recommendation 5: Coalition Members and Senators recommend that the Australian Government seek advice on amendments and addition to the regulations under the Migration Act to clarify the responsibilities and powers of persons who operate detention centres around the limits on their obligations and powers in relation to use of force, to ensure the good order and control of immigration detention facilities**.**	Accepted	27
Coalition Recommendation 6: Coalition Members and Senators recommend that a minimum quota of 11,000 places of the 13,750 permanent places for the Refugee and Humanitarian program be reserved for offshore applicants, in parallel with the introduction of Temporary Protection Visas for all IMAs.	Not Accepted	27

Recommendations by Senator Hanson-Young for the Australian Greens	Government Response	Page
Senator Hanson-Young Recommendation 1: *Migration Act* to be amended to ensure that a time limit on detention, preferably 30 days, is adhered to, over which time initial health, identity and security checks can be conducted to ensure there is no risk to the community.	Not Accepted	28
Senator Hanson-Young Recommendation 2: Detention beyond the legislated time limit must be justified before a court and subject to periodic review by the court from that point, with the onus on the Department of Immigration to make the application and show why extended detention is necessary for that individual.	Not Accepted	28
Senator Hanson-Young Recommendation 3: Remote and isolated detention centres should be decommissioned.	Not Accepted	28
Senator Hanson-Young Recommendation 4: The best interests of the child should be enshrined in the *Migration Act* as the paramount in decisions regarding the accommodation of all children.	Not Accepted	29
Senator Hanson-Young Recommendation 5: *Migration Act* to be amended to remove any mandatory detention of children.	Not Accepted	29
Senator Hanson-Young Recommendation 6: *Migration Act* to be amended to place time limits on children and their families being accommodated in low security family appropriate facilities prior to being moved into the community.	Not Accepted	30
Senator Hanson-Young Recommendation 7: Children should not be subject to ASIO security checks beyond the standard security checks used at airports (i.e. checks against the Central Movement Alert List).	Not Accepted	30
Senator Hanson-Young Recommendation 8: All asylum seeker children of school age (early childhood, primary and secondary) must be given access to local schooling.	Not Accepted	30
Senator Hanson-Young Recommendation 9: Children should only be housed in facilities where all service providers and officers who interact with them have obtained a Working with Children check.	Accepted	31
Senator Hanson-Young Recommendation 10: IAAAS funding to be expanded to cover independent psychological and psychiatric reports.	Not Accepted	31
Senator Hanson-Young Recommendation 11: Relevant legislation to be amended to ensure that detainees have access to a fair and independent review of a negative ASIO security assessments, with appropriate disclosure of the grounds of the adverse security findings regardless of whether judicial or merits review, and with flexible options for protecting national security on a case-by-case basis.	Partially Accepted	31
Senator Hanson-Young Recommendation 12: Appointment of a special advocate to conduct reviews of negative ASIO assessments where there is concern maintaining confidentiality of sensitive material.	Partially Accepted	32
Senator Hanson-Young Recommendation 13: Legal assistance should be funded at all stages of resolution of people's immigration status, including increased resources for Legal Aid Commissions and IAAAS agents for merits or judicial review.	Not Accepted	32

Senator Hanson-Young Recommendation 14: Where an interview is to be conducted between the Department of Immigration and a minor that will have ramifications on visa assessment, there must be a legal advocate present or an accredited Independent Third Person present.	Accepted	32
Senator Hanson-Young Recommendation 15: People on community detention or bridging visas must be able to make use of public provision of health services and access public referral services.	Partially Accepted	33
Senator Hanson-Young Recommendation 16: Families and unaccompanied minors who are placed on bridging visas should be automatically also placed on the Community Assistance Support program.	Not Accepted	34
Senator Hanson-Young Recommendation 17: All asylum seekers on bridging visas should be provided with Commonwealth certified photo identification.	Accepted	34
Senator Hanson-Young Recommendation 18: All people on bridging visas should have work rights.	Partially Accepted	34

RESPONSE TO MAJORITY REPORT RECOMMENDATIONS

DIAC's contract with Serco

Recommendation 5
The Committee recommends that the Department of Immigration and Citizenship appoint an independent expert to inquire into the appropriate qualifications for Serco Client Service Officers and make appropriate amendments to its contract with Serco.

Accepted
The Government considers that appropriate training and qualification of the Detention Service Provider (Serco) staff is fundamental to the delivery of appropriate services to people in detention.

The Department of Immigration and Citizenship (DIAC) and Serco are currently consulting about the ongoing roles and responsibilities of Serco Client Services Officers in the immigration detention network. Once this consultation is finalised an independent expert will be appointed to inquire into the appropriate qualifications for Serco Client Service Officers.

Recommendation 9
The Committee recommends that Serco develop and implement improved proactive procedures to support staff following critical incidents.

Accepted
The Government considers that appropriate staff support is fundamental to the efficient delivery of effective services to people in detention by the Detention Service Provider (Serco).

The Department of Immigration and Citizenship (DIAC) has recommended that Serco develop and implement improved proactive procedures within its current Employee Assistance Program (EAP) to support staff following critical incidents.

Enhanced mental health awareness and mental health policy training (including Psychological Support Program) is also currently being delivered by DIAC and International Health and Medical Services across the detention network to Serco staff. As of 1 September 2012 approximately 975 Serco staff had attended the training.

Provision of health services to people in detention

Recommendation 6
The Committee recommends that the Department of Immigration and Citizenship effectively contract manage Serco's implementation of the Psychological Support Program Policy.

Accepted
See response to Recommendation 7 below.

Recommendation 7
The Committee recommends that the Department of Immigration and Citizenship work with Serco and the Detention Health Advisory Group to reform the Keep Safe policy to ensure it is fully consistent with the Psychological Support Program Policy, as soon as possible.

Accepted
The Government has a comprehensive health framework and service delivery strategy for people in immigration detention. The provision of health services, in particular mental health services, is subject to regular review and improvement.

The Psychological Support Program policy (PSP policy) for the prevention of self-harm in immigration detention was developed by the Department of Immigration and Citizenship (DIAC) in consultation with the Detention Health Advisory Group (DeHAG).

DIAC, its Detention Service Provider (Serco), and Detention Health Service Provider, International Health and Medical Services, (IHMS) have aligned all policies and procedures related to the implementation of the PSP policy and Serco's "Keep Safe Procedure" (Keep Safe).

DIAC consulted DeHAG in revising the Serco Keep Safe policy and their feedback was incorporated. The revised policies and procedures were rolled-out across the immigration detention network at the end of July 2012.

In addition, DIAC commissioned the IPSOS Social Research Institute to undertake an evaluation of the implementation of the PSP. The final report was delivered to DIAC in August 2012.

Recommendation 8
The Committee recommends that the Department of Immigration and Citizenship ensure that Serco provides adequate Detention Health Advisory Group –endorsed mental health training to Serco officers who implement the Psychological Support Program Policy.

Accepted
All Detention Service Provider services staff are required to undertake mental health awareness training as part of their induction training and at least every two years thereafter.

A joint International Health and Medical Services (IHMS) and Department of Immigration and Citizenship (DIAC) team is delivering mental health awareness and mental health policy training (including Psychological Support Program) across the detention network to staff from Serco, IHMS and DIAC. This training is endorsed by the Detention Health Advisory Group. As of 1 September 2012 approximately 975 Serco staff had attended the training.

Recommendation 10
The Committee recommends that the Department of Immigration and Citizenship ensure Serco has appropriate procedures and training in place so that only where International Health and Medical Services personnel are not available can senior Serco managers participate in the secondary dispensing of medication.

Accepted
The Detention Service Provider (Serco) has a procedure in place entitled Secondary Dispensing of Medication that sets out its contractual requirement and safe practice guidelines to assist in the administration of medications to clients when there are no Detention Health Service Provider, International Health and Medical Services (IHMS), personnel on site.

In addition the Department of Immigration and Citizenship (DIAC) is progressing a review of medication management in immigration detention facilities. This review will be undertaken by a suitably qualified and experienced organisation. The recommendations of the review will be used to inform DIAC in future policy and procedural development, and contractual management in matters relating to medication management, including secondary dispensing of medication.

Recommendation 14
The Committee recommends that International Health and Medical Services staff be rostered on a 24 hour a day basis at all non-metropolitan detention facilities.

Not Accepted
All people in immigration detention are provided access to health care at a standard generally comparable to the health care available to the Australian community and consistent with the duty of care owed to people in immigration detention. Health care services are provided by qualified health professionals and take into account the diverse and potentially complex health care needs of people in immigration detention.

The Department of Immigration and Citizenship (DIAC) acknowledges that it is appropriate to provide 24 hour onsite medical staffing at certain non-metropolitan detention facilities.

At present the Detention Health Service Provider, International Health and Medical Services, (IHMS) provides onsite services 24 hours a day at Christmas Island, Curtin, Scherger, Wickham Point and Yongah Hill Immigration Detention Centres.

DIAC is considering, on a case by case basis, whether it is appropriate to provide 24 hour medical staffing at other non-metropolitan facilities. Factors that are part of the consideration process include the availability and proximity of external medical services including hospitals.

Recommendation 15
The Committee recommends that the Department of Immigration and Citizenship assess, on a case by case basis, the need for International Health and Medical Services staff to be rostered on a 24 hour a day basis at metropolitan detention facilities.

Accepted
The Department of Immigration and Citizenship is assessing, on a case by case basis, the need for 24 hour a day medical staffing at metropolitan detention facilities. Factors that are part of the consideration process include the availability and proximity of external medical services including hospitals.

Recommendation 16
The Committee recommends that the Department of Immigration and Citizenship work with International Health and Medical Services to pilot regular mental health outreach services in detention facilities.

Accepted in Principle
Mental health care and support services for people in immigration detention are provided by general practitioners, mental health nurses, psychologists, counsellors and psychiatrists. This care is provided or co-ordinated by the Detention Health Services Provider, International Health and Medical Services (IHMS).

Since the implementation of the Bridging visa program enabling Irregular Maritime Arrivals who meet identity, health, character and security requirements to live in the community while their claims for protection are being processed, the self-harm rates for the population in detention have significantly reduced.

The Department of Immigration and Citizenship will consult with its service providers about the feasibility of IHMS providing mental health outreach services in detention facilities once the review of Psychological Support Program policy is completed (see recommendation 7 for further details).

Recommendation 17
The Committee recommends that the Department of Immigration and Citizenship develop a transport capability to transfer detainees with non-acute injuries to remote hospitals.

Accepted
A number of Immigration Detention Facilities (IDFs) are located in remote communities.
The Government is committed to ensuring that health care is delivered to people in immigration detention in a manner that minimises the impact on local health resources.

The Detention Health Service Provider, International Health and Medical Services (IHMS), is contracted to provide a comprehensive range of health services to those in immigration detention. These services include primary and mental health services.

Local ambulance services are only used for critical injuries or as a last resort when no other transport resources are available. IHMS is responsible for determining whether an injury or medical condition is critical or non-critical.

A range of regional-specific arrangements to address transport arrangements for clients in immigration detention are in place or are being negotiated; for example, the Department of Immigration and Citizenship is negotiating with the Northern Territory Government to provide additional resources to ambulance services, so that ambulance service provision to IDFs will have minimal impact on the local community.

Other strategies implemented or under consideration at various facilities across the network include the Detention Services Provider (Serco) having a dedicated vehicle for non-emergency hospital transports and the extension of IHMS clinic hours.

Reforms to the existing network

Recommendation 1
The Committee recommends that the Department of Immigration and Citizenship continue to robustly contract manage Serco's obligation to provide appropriate activities for detainees.

Accepted
The Government recognises the importance of providing a program of meaningful activities for clients in immigration detention.

The Detention Service Provider (Serco) is contracted to develop, manage and deliver structured and unstructured programs and activities (Programs and Activities) designed to provide educational and recreational opportunities, as well as meaningful activities that enhance the mental health and wellbeing of individuals in immigration detention.

Clients in immigration detention have access to a wide range of services and activities including access to the internet, libraries, religious activities, sports facilities, excursions and educational classes.

Since the Serco contract was first executed, there has been significant change in the immigration detention environment including a significant increase in the number of irregular maritime arrivals as a proportion of the total population in immigration detention and a more diverse client composition that includes families, unaccompanied minors and a range of status resolution pathways. The range of types of accommodation and detention facilities across Australia has also increased.

The Department of Immigration and Citizenship (DIAC) is working with Serco to improve the quality and appropriateness of Programs and Activities delivered in the current immigration detention environment.

At the beginning of 2012, Serco appointed a national senior manager focused on introducing more meaningful Programs and Activities. DIAC has also established a Programs and Activities Framework to provide further guidance to its service providers on the development of an enhanced Programs & Activities operating model.

The programs and activities delivered at each facility are monitored against contractual requirements on a monthly basis.

Recommendation 2
The Committee recommends that the Department of Immigration and Citizenship consider other accommodation or recreation options for detainees when the amenity of a facility is compromised due to construction or maintenance projects.

Accepted
The expansion of the immigration detention network during 2011 and 2012 has enabled more flexibility in the use of facilities and placement of clients across the network.

The Department of Immigration and Citizenship works closely with contractors and service providers to manage the impacts of construction and maintenance work at immigration detention facilities where this temporarily reduces the amenity of a facility.

For example, the redevelopment of Villawood Immigration Detention Centre will be completed in stages. While the detention centre will remain operational during the redevelopment, the managing contractor has prepared a staging plan to support the security, amenity and safety of the centre for the life of the project.

In addition, the Detention Services Contract requires Serco to develop, manage and deliver both structured and ‘unstructured’ programs and activities, including ‘supervised external excursions’.

When the amenity of a facility is compromised due to construction or maintenance projects, a flexible schedule that allows for a higher proportion of ‘unstructured’ activities and ‘supervised external excursions’ will be utilised.

Recommendation 12
The Committee recommends that the Department of Immigration and Citizenship require Serco local managers to apply a consistent practice and procedure protocol to visits across the network, in accordance with the information provided on the department website.

Accepted
The Department of Immigration and Citizenship (DIAC) is working with the Detention Service Provider (Serco) to apply consistent practice and procedure protocols to visits across the network.

DIAC has requested that Serco senior management issue reminders to local site managers regarding the importance of a consistent approach and strict adherence to visitor protocols, as outlined on DIAC’s website.

In addition, DIAC is undertaking an internal Quality Assurance Review of the process. The objectives of the review include:

- establishing whether procedures and practices in managing visits are efficient, effective and consistent across all immigration detention facilities
- establishing whether DIAC’s and Serco’s procedural advice and training provide adequate support to staff managing visits processes
- improving service delivery.

The review is scheduled to be finalised by end of November 2012.

Recommendation 13
The Committee recommends that the Department of Immigration and Citizenship continue to improve visitor facilities across the network.

Accepted
The Department of Immigration and Citizenship (DIAC) has recently completed upgrades to the visitor areas of the Melbourne Immigration Transit Centre, Sydney Immigration Residential Housing facility and Villawood Immigration Detention Centre (VIDC). A new visitor area is currently being developed at the Curtin Immigration Detention Centre.

Visitor areas have been incorporated in the design of both Wickham Point and Yongah Hill. As part of the VIDC redevelopment, an indoor/outdoor visits area forms part of the works and will be completed in July 2013.

As acknowledged in the Committee’s report, DIAC is working to improve visitor amenities at immigration detention facilities and has already implemented much of this work.

Children in detention

Recommendation 19
The Committee recommends that relevant legislation be amended to replace the Minister for Immigration as the legal guardian of unaccompanied minors in the immigration detention system.

Not Accepted
The *Immigration (Guardianship of Children) Act 1946* (IGOC Act) provides that the Minister for Immigration and Citizenship (the Minister) is the guardian of certain unaccompanied non-citizen minors who arrive in Australia with the intention of becoming permanent residents. This includes, but is not limited to, unaccompanied minors within the immigration detention system.

The Minister's guardianship responsibilities are delegated to officers within state and territory child welfare agencies and/or certain Departmental officers.

As part of deliberations on addressing the perceived conflict of interest between the Minister's responsibilities as guardian under the IGOC Act and his other powers and duties under the Migration Act 1958, the Department of Immigration and Citizenship (DIAC) has engaged the services and expertise of a consultant who has extensive experience in the field of children's issues. DIAC is currently taking advice on options and proposals to use the IGOC Act in a more effective way to further the best interests of children within its scope.

The government is committed to ensuring the needs of unaccompanied minors are met, and is focusing on reviewing and updating existing programs, policies and procedures that directly impact upon the wellbeing of these children.

Key initiatives being progressed by DIAC to improve the day-to-day wellbeing and experience of minors include:

- delivering on the government's commitment to moving unaccompanied minors not subject to the new legislative amendments for regional transfer arrangements into community-based accommodation as a matter of priority – as at COB 1 July 2012, the Minister had approved 4112 clients for residence determination including 1918 children (823 unaccompanied minors), since the announcement to expand the community detention program on 18 October 2010;

- the development and implementation of the Refugee Youth Support Pilot, to test new models of settlement services for older unaccompanied minors that recognises their ability, in most cases, to quickly transition to independent living, with a view to implementing more tailored settlement service models for unaccompanied minors within the next 12 months;

- the development of a more consistent national approach to the care of unaccompanied minors who have been granted protection visas. This is a joint initiative with the Community and Disability Services Ministers' Advisory Council. A sub-committee of this advisory council has been created to facilitate discussion specifically on guardianship issues, and work towards improved national consistency of guardianship policies and procedures for unaccompanied minors. Membership includes representation from each state and territory child welfare agency, DIAC and the Department of Families, Housing, Community Services, and Indigenous Affairs;

- amendments to the *Immigration (Guardianship of Children) Regulations 2001* to strengthen day-to-day care arrangements by custodians;

- the review and update of various policy and procedure manuals and training materials, including the Community Detention Operational Framework, to ensure clear and appropriate guidance on guardianship issues; and

- the development of a revised framework on programs and activities for immigration detention facilities which would enhance health and wellbeing of minors. The *Immigration (Guardianship of Children) Act 1946* (IGOC Act) provides that the Minister for Immigration and Citizenship is the guardian of certain unaccompanied non-citizen minors who arrive in Australia with the

intention of becoming permanent residents; this includes unaccompanied minors within the immigration detention system.

Recommendation 20
The Committee recommends that the Department of Immigration and Citizenship develop and implement a uniform code for child protection for all children seeking asylum across the immigration system.

Accepted in Principle
The Australian Government recognises that children are a vulnerable group and has policies, procedures and programs in place to address this.

The Department of Immigration and Citizenship (DIAC) requires that its employees and service providers immediately refer any suspicion or allegation relating to child welfare covered by mandatory reporting laws to the relevant state or territory welfare authority.

There is currently no single national framework setting out the requirements for working with children checks or police checks, as each state and territory has their own requirements and procedures. However, as part of the National Framework for Protecting Australia's Children, the Commonwealth and states and territories are working towards enhancing national consistency in working with children checks. DIAC delivers services to clients across Australia and it is desirable to have a nationally consistent approach to screening of DIAC personnel. To this end, and in anticipation of more uniform working with children screening processes across Australia, DIAC is currently developing a policy requiring appropriate nationally consistent checks for all DIAC personnel who work with children in vulnerable circumstances.

The *Privacy Act 1988* governs DIAC's ability to provide government agencies with personal information to facilitate a child's care and protection outside of mandatory reporting laws. In some instances, state law binds the Commonwealth. This allows for the lawful disclosure of personal information to a state or territory child protection agency on a case by case basis, however, this is not consistent across all states and territories.

To broaden the circumstances in which we can lawfully share relevant public information with state and territory child protection agencies, DIAC is developing a Public Interest Determination proposal for consideration by the Information Commissioner. If agreed to, DIAC could disclose information to certain state and territory governments to facilitate a child's care and protection in certain circumstances, such as if there is a threat to their life, health or welfare.

DIAC is currently exploring the best way to facilitate the sharing of this information in the event that the Public Interest Determination is agreed by the Information Commissioner. Options may include:

- becoming a party to the Information Sharing Protocol between the Commonwealth and the eight State and Territory Child Protection Agencies, or
- signing protocols with each State and Territory Child Protection Agency.

Recommendation 21
The Committee further recommends that the Department of Immigration and Citizenship adopt Memoranda of Understanding with children's commissions or commissioners in all states and territories as soon as possible.

Accepted in Principle
As state and territory child welfare agencies are responsible for investigating concerns about child welfare, it would be more appropriate for protocols to be established with those agencies rather than with children's commissioners. This approach is consistent with the advice provided to the JSC by the Australian Children's Commissioners and Guardians.

The Department of Immigration and Citizenship (DIAC) is currently exploring ways to improve its ability to work more cooperatively with state and territory child protection agencies, outside mandatory reporting requirements.

The *Privacy Act 1988* governs DIAC's ability to provide government agencies with personal information to facilitate a child's care and protection outside of mandatory reporting laws. In some instances, state law does bind the Commonwealth, allowing for the lawful disclosure of personal information to a state or territory child protection agency on a case by case basis, however, this is not consistent across all states and territories.

To broaden the circumstances in which we can lawfully share relevant information with state and territory child protection agencies, DIAC is developing a Public Interest Determination proposal for consideration by the Information Commissioner which, if agreed, would enable DIAC to disclose information to state and territory child welfare agencies to facilitate a child's care and protection in certain circumstances, such as if there is a threat to their life, health or welfare.

DIAC is currently exploring the most effective mechanism to outline agreed protocols with state and territory governments on the sharing of information for child protection matters, in the event that the Public Interest Determination is agreed by the Information Commissioner. DIAC is consulting with states and territories on this issue as part of the sub-committee on unaccompanied humanitarian minors established under the Community and Disability Services Ministers' Advisory Council.

Possible options under consideration include:

- Becoming a party to the Information Sharing Protocol between the Commonwealth and the eight State and Territory Child Protection Agencies, which has formally established processes to facilitate the sharing of information to assist child protection agencies where there are concerns about a child's welfare; and/or
- Signing separate protocols with each State and Territory Child Protection Agency.

Reforms to detention policy

Recommendation 18
The Committee recommends that, as a matter of policy, the Department of Immigration and Citizenship accommodate detainees in metropolitan detention facilities wherever possible, in particular children and families, and those detainees with special needs or with complex medical conditions.

Accepted in principle
Decisions regarding placement of people across the immigration detention network are made by the Department of Immigration and Citizenships (DIAC) in consultation with the Detention Service Provider (Serco) and the Detention Health Service Provider (IHMS).

Placement decisions take into account individual client circumstances, such as family composition, age and gender, immigration status, individual security risks and ongoing health issues, as well as broader operational requirements such as accommodation availability and the security and good order of the facility.

While recent expansion of the immigration detention network has resulted in an increase in accommodation options in metropolitan locations, at this time, there is insufficient accommodation across these sites to enable all clients to be located at a metropolitan facility.

Regardless of where a client is placed within the network, all people have access to a broad range of health, support and services.

The immigration detention network will continue to be used in a flexible way to manage changes in the client composition. DIAC has designated some sites to assist with the management of clients that have particular care needs, such as children and people who require ongoing access to specialist health care or have physical disabilities.

Recommendation 22
The Committee recommends that the Australian Government take further steps to adhere to its commitment of only detaining asylum seekers as a last resort and for the shortest practicable time, and subject to an assessment of non-compliance and risk factors, as enunciated by the New Directions policy.

Accepted
Government policy is that all unauthorised arrivals are subject to mandatory detention for the management of any health, identity or security risks to the community. This is in contrast to those who arrive in Australia lawfully and have been assessed during the visa application process in relation to matters such as identity, security, bona fides and health.

Ongoing Department of Immigration and Citizenship, and Commonwealth Ombudsman reviews consider the appropriateness of a person's detention, their detention arrangements and other matters relevant to their ongoing detention and case resolution.

Significant reforms in the use of community placement options for irregular maritime arrivals (IMAs) whose immigration status has not been resolved have been introduced. This includes the expanded use of community detention announced jointly by the Prime Minister and Minister for Immigration and Citizenship (the Minister) in October 2010 and expanded use of Bridging E visas announced by the Minister in November 2011. This is to progressively allow people who satisfy health, identity and security requirements to be considered on a case by case basis for release from detention while their protection claims are assessed.

Recommendation 23
The Committee further recommends that asylum seekers who pass initial identity, health, character and security checks be immediately granted a bridging visa or moved to community detention while a determination of their refugee status is completed, and that all reasonable steps be taken to limit detention to a maximum of 90 days.

Partially Accepted
To support the integrity of Australia's immigration program, all unauthorised arrivals will be subject to mandatory detention for the management of any health, identity or security risks to the community.

The Government is committed to minimising the length of time a person is subject to immigration detention. The period of time a person is detained is dependent on assessment of risk factors and varies according to individual circumstances. Immigration detention is subject to regular review but is not time limited.

Significant reforms in the use of community placement options for irregular maritime arrivals (IMAs) whose immigration status has not been resolved have been introduced. This includes the expanded use of community detention announced jointly by the Prime Minister and Minister for Immigration and Citizenship in October 2010 and expanded use of Bridging E visas announced by the Minister in November 2011. This is to progressively allow people who satisfy health, identity and security requirements to be considered on a case by case basis for release from detention while their protection claims are assessed.

Expanded community-based detention arrangements (formally known as residence determination) for IMAs has also enabled significant numbers of unaccompanied minors and vulnerable family groups to be relocated from immigration detention facilities to community-based accommodation.

The Department of Immigration and Citizenship is continuing to work on moving significant numbers of children and vulnerable family groups out of immigration detention facilities and into community-based accommodation.

The Government has not prescribed timeframes for the transfer of IMAs to community-based accommodation as placement is at the discretion of the Minister for Immigration and Citizenship, and will only occur once a client has satisfied health, identity and security requirements. However, the Government is committed to moving children into the community as soon as possible.

IMAs who are not eligible for community placement because they present risks to the community in terms of identity, security or character concerns will remain in facility-based detention.

Recommendation 24
The Committee recommends that the Department of Immigration and Citizenship be required to publish on a quarterly basis the reasons for the continued detention of any person detained for more than 90 days, without compromising the privacy of the individuals.

Not Accepted
The Immigration Detention Statistics Summary, published by the Department of Immigration and Citizenship (DIAC) on a monthly basis, provides a breakdown of the length of time people are held in immigration detention facilities.

Reasons why people are required to remain in immigration detention beyond 90 days vary depending on a wide range of individual circumstances. For privacy reasons it would be inappropriate to publish this information.

Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the type of accommodation and services provided, are subject to regular review, including by the Commonwealth Ombudsman.

Recommendation 29
The Committee recommends that the Department of Immigration and Citizenship consider publishing criteria for determining whether asylum seekers are placed in community detention or on bridging visas.

Not Accepted
Under the *Migration Act 1958* (the Act) the only powers that can be used to allow an Irregular Maritime Arrival (IMA) to live in the community (residence determination) or to grant an IMA a Bridging visa are non-compellable powers that can only be exercised by the Minister of Immigration and Citizenship (the Minister) personally, if the Minister thinks it is in the public interest to do so. As such, there are no set criteria as it is for the Minister to decide what is in the public interest.

The Department of Immigration and Citizenship's (DIAC) case managers recommend suitable placement options for clients in immigration detention on a case by case basis. These are referred to the Minister for his consideration, however the Minister is not bound to accept these referrals.

Recommendation 30
The Committee recommends that the Australian Government and the Department of Immigration and Citizenship seek briefing on control orders in use by the criminal justice system and explore the practicalities of employing similar measures for refugees and asylum seekers who are in indefinite detention or cannot be repatriated.

Accepted in principle
Where persons found to be owed protections are not eligible for a visa due to an adverse security assessment, the Government will continue to explore the possibility of third country resettlement for the individual.

The Government has been briefed on the control order regime under the *Criminal Code Act 1995*. Control orders are only available where a person has trained with a terrorist organisation listed under the Criminal Code or where a control order would substantially assist in preventing a terrorist act. The conditions attached to the control order must each be necessary to protect the community from a terrorist act. These are high legal thresholds, and it is not expected that Criminal Code control orders would be readily available.

The Government is responsible for the protection of national security, and any options that might involve release of persons with adverse security assessments into the community raise complex issues that would need to be carefully considered.

Reforms to processing of protection claims and security assessments

Recommendation 25
The Committee recommends that the Department of Immigration and Citizenship consider revising and enhancing its system of quality control to oversee those Refugee Status and Assessment and Independent Merits Review processes still underway.

Accepted
The Government is committed to ensuring rigorous decision making for refugee status determinations so that sound, defensible decisions are made in accordance with relevant law, Australia's international obligations and government policy.

As of 24 March 2012 all primary refugee processing occurs through a single onshore Protection visa (PV) process. This process applies to Irregular Maritime Arrivals (IMAs) arriving on or after 24 March 2012 and before 13 August 2012, and to all those IMAs who had not had a primary interview before 24 March 2012.

The Department of Immigration and Citizenship (DIAC) has had in place a formal Quality Assurance (QA) framework for primary refugee decision making since September 2010. The purpose of this framework is to identify opportunities to improve the quality of primary refugee status decision making, based on the findings from a methodical and structured arm's length review of finalised decisions.

This framework has been used to assess the quality of decisions within the Refugee Status Assessment (RSA) and Protection Obligations Evaluation (POE) processes, and for the current single onshore PV process. There are no longer any RSA processes underway.

Between September 2010 and December 2011, six QA reviews were undertaken. This includes two RSA QA reviews, one POE QA review and three PV QA reviews.

These reviews assessed the consideration of the key components in determining refugee status, including:

- the use of country of origin information to support findings
- the identification of the correct Convention ground/s
- the correct consideration of the key components within the Refugee Convention, such as 'persecution' and 'well-founded fear'
- the assessment of credibility.

Findings from these reviews have indicated steady improvements across most of the quality measures. They have also provided an evidence base for continued investment in remedial action, including targeted training, strengthened supervisor arrangements and strengthened procedures.

DIAC will continue to refine and strengthen its QA framework and its supporting tools to ensure that QA and QC findings are accurate and to enable continuous improvement.

Recommendation 26
The Committee recommends that the Australian Government move to place all asylum seekers who are found to be refugees, and who do not trigger any concerns with the Australian Security Intelligence Organisation following initial security checks, and subject to an assessment of non-compliance and risk factors, into community detention while any necessary in-depth security assessments are conducted.

Partially Accepted
The Government has not prescribed timeframes for the transfer of IMAs to community-based accommodation as placement is at the discretion of the Minister for Immigration and Citizenship, and will only occur once a client has satisfied health, identity and security requirements.

The period of time a person is detained is dependent on assessment of risk factors and varies according to individual circumstances. IMAs who are not eligible for community placement because they present risks to the community in terms of identity, security or character concerns will remain in facility-based detention.

Recommendation 27
The Committee recommends that the Australian Government and the Australian Security Intelligence Organisation establish and implement periodic, internal reviews of adverse Australian Security Intelligence Organisation refugee security assessments commencing as soon as possible.

Accepted
The Government has announced that it will establish a mechanism for periodic and primary review of adverse security assessments furnished to the Department of Immigration and Citizenship in relation to all persons found to be owed protection who remain in prolonged immigration detention.
The Independent Reviewer of Adverse Security Assessments will provide regular 12 month periodic review of adverse security assessments for people owed protection who remain in immigration detention.

The Government notes that periodic review of Australia Security Intelligence Organisation (ASIO) security assessments would, ordinarily, be an unusual requirement. A security assessment is ASIO's security related advice to a Commonwealth Agency on an individual at the time it is furnished. The security advice can include a recommendation that the Agency take or refrain from taking specific prescribed administration action on security grounds (for example, in relation to the grant of a protection visa). It is open to ASIO to furnish a further security assessment where security-related changes in the person's circumstances are assessed by ASIO to support the provision of further security advice. It would not ordinarily be appropriate to periodically review security assessments (being advice given at a particular time). However, in circumstances where the practical outcome of an adverse security assessment is prolonged immigration detention (due to visa ineligibility), periodic review will provide a basis for the regular review of the security grounds underpinning detention.

Other factors that have a bearing on the person's ongoing detention will also be kept under review. This includes the circumstances that form the basis of the protection obligations and options for third country re-settlement.

Recommendation 28
The Committee recommends that the Australian Security Intelligence Organisation Act be amended to allow the Security Appeals Division of the Administrative Appeals Tribunal to review the Australian Security Intelligence Organisation security assessments of refugees and asylum seekers.

Not Accepted
The Government agrees with establishing a review mechanism for persons found to be owed protection who receive adverse security assessments, but rather than extending the Administrative Appeal Tribunal's jurisdiction, the Government has established an alternative review mechanism. The Government has appointed an independent reviewer to conduct efficient and cost effective reviews of adverse security assessments furnished to the Department of Immigration and Citizenship in relation to all persons found to be owed protection who remain in prolonged immigration detention.

Implementation of Hawke–Williams Recommendations

Recommendation 3
The Committee recommends that the Department of Immigration and Citizenship conduct robust auditing of Serco staffing ratios and training, in line with the recommendations in the Comcare report and the Hawke-Williams review.

Accepted
The Department of Immigration and Citizenship (DIAC) ensures that the performance of the Detention Service Provider (Serco) is rigorously monitored. Monthly performance reviews are conducted and Serco is subject to penalties or sanctions where it does not meet the standards set out in the Detention Services Contract.

Staffing
Serco staff ratios for immigration detention centres and other facilities are not mandated. However, the Detention Services Contract requires that Serco ensures that personnel levels at facilities are adequate to deliver the required services.

DIAC and Serco work together to plan and manage staff capability, consistent with changes to client and centre risk profiles and service delivery demands.

Training
Serco must ensure that all its personnel are trained and qualified in accordance with the Detention Services Contract and related state and territory law.

Serco is required to maintain a national training database with records of training undertaken by its staff. Using this information as a basis, Serco provides quarterly reports to DIAC and retains, at each immigration detention site, details of training undertaken by rostered staff. Further work is underway to enhance record keeping in this area.

Serco has advised that a complete audit of qualifications has been undertaken, and it is improving its performance in this area. DIAC commenced a review of qualification, certification and storage of Serco staff records in May 2012.

Recommendation 4
The Committee reiterates the recommendation made by the Commonwealth Ombudsman that the Department of Immigration and Citizenship, conduct a review of the quality and management of incident reporting across immigration detention network, and also assess Serco's capacity to monitor its own compliance with the reporting guidelines.

Accepted
The Department of Immigration and Citizenship completed a review of the quality, accuracy and timeliness of incident reporting and post-incident reviews, in relation to the Detention Service Provider (Serco's) contractual obligations, at the end of June 2012.

Recommendation 11
Consistent with the findings of the Hawke-Williams review, the Committee recommends that the government finalise a security protocol between Serco, the Australian Federal Police and local police in each state and territory.

Accepted
On behalf of the Government, the Department of Immigration and Citizenship (DIAC) is negotiating a Memorandum of Understanding (MoU) with the Australian Federal Police (AFP) and state and territory law enforcement agencies for the provision of policing services to immigration detention facilities (IDFs).

The MoU formalises arrangements currently in place and also enables state and territory law enforcement agencies to build adequate capability and capacity to respond to incidents at IDFs without impacting on the provision of policing services to the local community.

Individual state and territory specific annexures will sit under the MoU. These annexures enable the jurisdictions in a position to sign onto the agreement, in advance of others, to do so. It also allows the agreements to be tailored to the specific requirements of each jurisdiction.

The Detention Service Provider (Serco) is not a party to the MoU. However, its roles and responsibilities when responding to an incident are clearly articulated within an Implementation Protocol which is attached to the MoU. Serco has been closely consulted on this protocol.

Recommendation 31

The Committee recommends that the Department of Immigration and Citizenship continue to work towards implementing all of the recommendations made by the Hawke-Williams review, and that the Minister for Immigration and Citizenship report to the Parliament no later than 20 September 2012 on progress in implementing the review recommendations.

Accepted

The Department of Immigration and Citizenship (DIAC) has worked to implement the recommendations made by the Independent Review into the Incidents at the Christmas Island and Villawood Immigration Detention Centres as a matter of priority. The majority of the recommendations have been implemented and, in many instances, DIAC has gone beyond its stated commitments in order to comprehensively address the broader issues raised by the Review and to facilitate improvements across the detention network.

The implementation of these measures has resulted in significant improvements in the management of clients, infrastructure and service providers in the immigration detention network. DIAC has developed new infrastructure and enhanced security at existing facilities, significantly developed its critical incident management response capabilities, improved the quality and availability of training to staff, strengthened contract management and put in place broader incident prevention strategies.

The Minister for Immigration and Citizenship reported to the Parliament on the progress made implementing the Review recommendations on 20 September 2012.

Coalition Members and Senators Dissenting Report Recommendations

Coalition Recommendation 1
Restore the Coalition's proven border protection regime Coalition Members and Senators recommend that the Government restore the proven measures of the Howard Government, abolished by the Rudd and Gillard Governments, to once again deter illegal boat arrivals to Australia, including, but not restricted to the following measures:

- *Restoration of the Temporary Protection Visa policy for IMAs*
- *Re-establishment of offshore processing on Nauru for all new IMAs by reopening the taxpayer funded processing centre on Nauru; and*
- *Restoration of the policy to return boats seeking to illegally enter Australian waters, where it is safe to do so.*

Not Accepted
Following the parliamentary impasse on the *Migration Legislation Amendment (The Bali Process) Bill 2012*, the Prime Minister announced on 28 June 2012, the establishment of an independent expert panel to examine approaches to deterring asylum seekers from embarking on dangerous boat journeys to Australia. The Expert Panel on Asylum Seekers was led by Air Chief Marshal Angus Houston AC AFC (Ret'd), who was joined by Paris Aristotle AM and Professor Michael L'Estrange AO.

The Expert Panel made 22 recommendations, including that a number of principles should shape Australian policy making on asylum issues. The key principle is the implementation of a strategic, comprehensive and integrated policy approach that establishes short, medium, and long-term priorities for managing asylum and mixed migration flows across the region. The Expert Panel also clearly articulated that there are no quick or simple solutions to the policy dilemmas surrounding asylum issues.

The Australian Government endorsed, in principle, all 22 recommendations of the Expert Panel's report.

In accordance with recommendation 7 of the Expert Panel's report, the Government introduced legislation to support the transfer of people to regional processing centres, which received Royal Assent on 17 August 2012. The Government is now working with the governments of Nauru and Papua New Guinea to establish regional processing centres in those countries (in line with recommendations 8 and 9 of the Expert Panel's report).

The Expert Panel also recommended that the Government "continue to develop its vitally important cooperation with Malaysia on asylum issues" and that the Malaysia Arrangement should "be built on further, rather than being discarded or neglected". Accordingly, the Government remains committed to the Malaysia Arrangement as it provides a genuinely effective approach to deterring people from taking dangerous boat journeys, while also providing durable solutions to genuine refugees who have been in Malaysia for many years.

The Expert Panel noted that it is currently not possible to effectively, lawfully or safely turn back irregular vessels carrying asylum seekers to Australia. The Panel's report also noted that public statements by a number of senior Indonesian Government officials indicate that Indonesia's reaction to a turnback policy is likely to be negative. The Government will not turn back boats on the high seas at this time as it is neither safe nor viable.

The Expert Panel did not recommend reintroducing Temporary Protection Visas.

Coalition Recommendation 2
Coalition Members and Senators recommend that the Australian Government finalise the memorandum of understanding between DIAC, the AFP and state/territory police forces and reach a binding agreement that clearly stipulates who is responsible for policing and responding to incidents at Australian Immigration Detention Centres.

Accepted
On behalf of the Government, the Department of Immigration and Citizenship is negotiating a Memorandum of Understanding (MoU) with the Australian Federal Police (AFP) and state and territory law enforcement agencies for the provision of policing services to immigration detention facilities.

See the response to recommendation 11 for further details.

Coalition Recommendation 3
Coalition Members and Senators recommend that the AFP and State/Territory police are funded adequately in order to carry out their regular operational policing responsibilities along with policing the immigration detention centres and responding to incidents.

Accepted
The Department of Immigration and Citizenship is working closely with the Australian Federal Police and individual state and territory law enforcement agencies to put in place Memorandums of Understanding with regard to the provision of policing services to immigration detention facilities. As part of these agreements, provisions have been (where signed) or will be (negotiations are ongoing) included to ensure state and territory enforcement agencies are appropriately funded so the delivery of such services does not impact on regular police operations.

See the response to recommendation 11 for further details.

Coalition Recommendation 4
Coalition Members and Senators recommend that the Australian Government ensure that security infrastructure, including CCTV cameras, security fences and other essential security elements be operational, ready and be of a high standard of functionality and that DIAC, with assistance from Serco, is to undertake a review of infrastructure (including security infrastructure) across the broader immigration detention network.

Accepted
The Department of Immigration and Citizenship (DIAC) and the Detention Service Provider (Serco) continually monitor the security infrastructure of immigration detention centres across the network to ensure that infrastructure is functional and fit for purpose.

DIAC ensures that appropriate security is in place and consistent with the security risk of the clients accommodated at the facility. Physical infrastructure upgrades and security improvement works are being implemented at a number of sites across the immigration detention network.

In addition to modifications to the physical security infrastructure, a number of changes have been made to enhance security through operational arrangements across the detention network.
This includes more regular checks of the security infrastructure and closer monitoring of client risks identified through internal intelligence activities.

Coalition Recommendation 5
Coalition Members and Senators recommend that the Australian Government seek advice on amendments and addition to the regulations under the Migration Act to clarify the responsibilities and powers of persons who operate detention centres around the limits on their obligations and powers in relation to use of force, to ensure the good order and control of immigration detention facilities.

Accepted
The Minister for Immigration and Citizenship is seeking advice to determine whether there is a need to amend the *Migration Act 1958* and regulations to allow the use of reasonable force to maintain the good order of an immigration detention facility where reasonable belief exists regarding a direct threat to the physical safety of an officer, a detainee or a third party.

The Department of Immigration and Citizenship is also well advanced in the negotiation of a Memorandum of Understanding (MoU) with the Australian Federal Police and state and territory law enforcement agencies for the provision of policing services to immigration detention facilities.

The Detention Service Provider (Serco) is not a party to the MoU. However, its roles and responsibilities when responding to an incident are clearly articulated within an Implementation Protocol attached to the MoU.

Coalition Recommendation 6
Coalition Members and Senators recommend that a minimum quota of 11,000 places of the 13,750 permanent places for the Refugee and Humanitarian program be reserved for offshore applicants, in parallel with the introduction of Temporary Protection Visas for all IMAs.

Not Accepted
On 23 August 2012, the Prime Minister and the Minister for Immigration and Citizenship announced that in response to the recommendations of the Expert Panel on Asylum Seekers, that the Humanitarian Program would be increased immediately to 20 000 places. The expanded Program will continue to provide places for both people resettled from overseas and those already in Australia who have sought protection.

The expanded Program provides 6250 additional places (a 45 per cent increase) and is the biggest boost to Australia's refugee intake in 30 years.

Recommendations by Senator Hanson-Young for the Australian Greens

Senator Hanson-Young Recommendation 1
Migration Act to be amended to ensure that a time limit on detention, preferably 30 days, is adhered to, over which time initial health, identity and security checks can be conducted to ensure there is no risk to the community.

Not Accepted
The Government is committed to treating asylum seekers and refugees humanely and fairly while managing risks to the Australian community. Immigration detention of all unauthorised people arriving at the border is mandatory for the purpose of determining any health, identity or security risk they may present.

While the Government expects the Department of Immigration and Citizenship to resolve all matters associated with determining a person's immigration status as quickly as possible, it does not support the introduction of a mandatory timeframe for the release of individuals from immigration detention.

Senator Hanson-Young Recommendation 2
Detention beyond the legislated time limit must be justified before a court and subject to periodic review by the court from that point, with the onus on the Department of Immigration to make the application and show why extended detention is necessary for that individual.

Not Accepted
The Government's intention is that immigration detention be for the shortest period possible while appropriately managing risks to the Australian community.

Ongoing reviews by the Department of Immigration and Citizenship and the Commonwealth Ombudsman consider the appropriateness of the person's detention, their detention arrangement and other matters relevant to their ongoing detention and case resolution.

A person in immigration detention may seek merits or judicial review of most visa decisions that result in them becoming unlawful and liable for detention. They may also seek judicial review on the lawfulness of their detention with the Federal or High Courts.

Given the availability of merits and judicial review as outlined above and the broader use of residence determination (community detention) arrangements and Bridging visas transitioning irregular maritime arrivals into the community, the Government does not support periodic review of immigration detention by the courts.

Senator Hanson-Young Recommendation 3
Remote and isolated detention centres should be decommissioned.

Not Accepted
The expansion of the immigration detention network in 2011 and 2012 has provided the Government with a range of flexible options to accommodate people required to be taken into immigration detention to manage community or program risks. The Government continually monitors immigration detention accommodation requirements and makes adjustments as required.

Senator Hanson-Young Recommendation 4
The best interests of the child should be enshrined in the Migration Act as the paramount in decisions regarding the accommodation of all children.

Not Accepted
Consistent with Australia's obligations as a party to the *Convention on the Rights of the Child 1989*, the best interests of the child are a primary consideration in the Government's engagement with children. This includes consideration of the child's individual circumstances and the welfare of the child, as well as other factors, such as maintaining family unity and access to education. As such, the Government does not regard the recommended changes to the *Migration Act 1958* (Migration Act) as necessary.

In accordance with section 4AA of the Migration Act, and the Key Immigration Detention Values announced by the Government in July 2008, children are not held in immigration detention centres. Outside of community-based detention arrangements, minors are accommodated at low-security sites, such as immigration transit accommodation and immigration residential housing, or other alternative places of detention, which includes commercial accommodation such as motels.

Senator Hanson-Young Recommendation 5
Migration Act to be amended to remove any mandatory detention of children.

Not Accepted
The Government firmly believes that the best place children can be supported during immigration processing is in the community and high priority is given to moving unaccompanied minors, children and their families into community-based accommodation wherever possible.

There will, however, always be a period of time after their unauthorised arrival in Australia when children and their parents and carers will be detained while identity, health and security checks are undertaken. There will also be a small number of children who may not be able to be placed in the community due to particular risks associated with their parents or carers. Children, including unaccompanied minors, are accommodated in alternate places of immigration detention and not in immigration detention centres. Children and young people in immigration detention are processed as a matter of priority to resolve their immigration status as quickly as possible.

The Government considers that this measured approach strikes a balance between operating a migration program with integrity while protecting the welfare of children.

Senator Hanson-Young Recommendation 6
Migration Act to be amended to place time limits on children and their families being accommodated in low security family appropriate facilities prior to being moved into the community.

Not Accepted
The transfer of unaccompanied minors and children with families from held immigration detention to community detention or a Bridging visa is a Government priority.

Before a child or family can be transferred from a detention facility into the community, mandatory health, identity and security checks must be completed, suitable housing be sourced, and in the case of unaccompanied minors, appropriate carer arrangements must be put in place.

The Department of Immigration and Citizenship continues to transfer significant numbers of children and vulnerable family groups who arrived as Irregular Maritime Arrivals before 13 August 2012 out of immigration detention facilities and into community-based accommodation as soon as they have completed mandatory health, identity and security checks.

While the Government expects that eligible children will be transferred into a community option as quickly as possible, it does not support the introduction of a mandatory timeframe for the placement of children and their families in community-based accommodation.

Senator Hanson-Young Recommendation 7
Children should not be subject to ASIO security checks beyond the standard security checks used at airports (i.e. checks against the Central Movement Alert List).

Not Accepted
The Government's responsibility is to ensure that Australia's security is not compromised.
The Australian Security Intelligence Organisation (ASIO) rarely conducts security assessments on minors, but this option must remain open where security concerns are identified. Where asylum seekers arrive without documentation it may be difficult to establish conclusively whether a person is a minor. It is also important to recognise that minors may occasionally be involved in activities of security concern and make provision for such situations.

ASIO has a range of policies and procedures in place to address the particular circumstance of dealing with minors, including additional authorisation and internal oversight. External oversight is maintained by the Inspector-General of Intelligence and Security.

Senator Hanson-Young Recommendation 8
All asylum seeker children of school age (early childhood, primary and secondary) must be given access to local schooling.

Not Accepted
The Government is committed to ensuring that children accommodated in immigration detention facilities and under community-based detention arrangements have access to education in line with community standards and relevant State and Territory laws.

The Department of Immigration and Citizenship (DIAC) arranges for children housed in alternate places of detention to have access to education facilities either through education services provided by its Detention Service Provider (Serco) or where agreed with a state or territory government education authority through public education in the local community.

Where clients are placed into community detention, DIAC has arrangements in place to enrol children in local schools. Children in community detention arrangements who are four years of age (below compulsory school age) may participate in an early childhood education program. For those asylum-seeker children who are not in detention, schooling is a matter for the relevant State or Territory government.

Senator Hanson-Young Recommendation 9
Children should only be housed in facilities where all service providers and officers who interact with them have obtained a Working with Children check.

Accepted
The Government requires the Detention Service Provider (Serco) to meet state and territory child protection laws including working with children checks and mandatory reporting requirements. Serco also works proactively with the Department of Immigration and Citizenship (DIAC) to maintain a child safe environment.

DIAC ensures that child protection provisions for all external contracts are accountable through reporting and auditing mechanisms. As a minimum, all new contracts with service providers must include a clause that meets the child protection legislative requirements in the state or territory in which they operate.

There is currently no single national framework setting out the requirements for working with children checks or police checks, as each state and territory has their own requirements and procedures. However, as part of the National Framework for Protecting Australia's Children, the Commonwealth and states and territories are working towards enhancing national consistency in working with children checks. DIAC delivers services to clients across Australia and it is desirable to have a nationally consistent approach to screening of DIAC personnel. To this end, and in anticipation of more uniform working with children screening processes across Australia, DIAC is currently developing a policy requiring appropriate nationally consistent checks for all DIAC personnel who work with children in vulnerable circumstances.

Senator Hanson-Young Recommendation 10
IAAAS funding to be expanded to cover independent psychological and psychiatric reports.

Not Accepted
The Immigration Advice and Application Assistance Scheme (IAAAS) provides publicly funded, free independent advice and assistance to asylum seekers, including Irregular Maritime Arrivals, for the processing of their refugee claims.

Under the IAAAS Deed of Agreement, IAAAS providers receive funding based on the category of the service provided. IAAAS providers have the discretion to seek independent psychological and psychiatric reports if they determine this would assist the client's application. However, any costs associated with the provision of these reports must be absorbed within the existing funding.
The Government does not support expanding the funding arrangements.

Senator Hanson-Young Recommendation 11
Relevant legislation to be amended to ensure that detainees have access to a fair and independent review of a negative ASIO security assessments, with appropriate disclosure of the grounds of the adverse security findings regardless of whether judicial or merits review, and with flexible options for protecting national security on a case-by-case basis.

Partially Accepted
The Government agrees with establishing a review mechanism for persons found to be owed protection who receive adverse security assessments, but rather than extending the Administrative Appeal Tribunal's jurisdiction, the Government has established an alternative review mechanism. The Government has appointed an independent reviewer to conduct efficient and cost effective reviews of adverse security assessments furnished to the Department of Immigration and Citizenship in relation to all persons found to be owed protection who remain in prolonged immigration detention.

When an eligible person makes a request for independent review, the Australian Security Intelligence Organisation will provide an unclassified written summary of reasons for the decision to issue an adverse security assessment to the Independent Reviewer on the basis that it will be provided to the eligible person. The reasons will include information that can be provided to the eligible person to the extent able without prejudicing the interests of security.

Senator Hanson-Young Recommendation 12
Appointment of a special advocate to conduct reviews of negative ASIO assessments where there is concern maintaining confidentiality of sensitive material.

Partially Accepted
The Government agrees with establishing a review mechanism for persons found to be owed protection who receive adverse security assessments, and has appointed an independent reviewer to conduct efficient and cost effective reviews of adverse security assessments furnished to the Department of Immigration and Citizenship in relation to all persons found to be owed protection who remain in prolonged immigration detention. This mechanism will take into account the need to afford appropriate procedural fairness, while also protecting sensitive national security information, and applicants will be entitled to legal representation. The Government does not consider it necessary for special advocates to conduct the review of negative Australian Security Intelligence Organisation assessments.

Senator Hanson-Young Recommendation 13
Legal assistance should be funded at all stages of resolution of people's immigration status, including increased resources for Legal Aid Commissions and IAAAS agents for merits or judicial review.

Not Accepted
Under the National Partnership Agreement on Legal Assistance Services, migration, where assistance is not available from services funded by the Department of Immigration and Citizenship, is a Commonwealth legal aid service priority. Eligibility criteria apply to grants of legal aid, and include merits and means tests. The Government continues to monitor the migration litigation workload.

Senator Hanson-Young Recommendation 14
Where an interview is to be conducted between the Department of Immigration and a minor that will have ramifications on visa assessment, there must be a legal advocate present or an accredited Independent Third Person present.

Accepted
The Government already provides this type of support to minors through the Immigration Advice and Application Assistance Scheme (IAAAS) and the presence of independent observers.

<u>Immigration Advice and Application Assistance Scheme</u>

The IAAAS provides publicly funded, free independent advice and assistance to asylum seekers, including Irregular Maritime Arrivals (IMAs), for the processing of their refugee claims.

IAAAS service providers are registered migration agents or officers of Legal Aid Commissions with experience in protection visa legislative, policy and procedural requirements. They are assigned to asylum seekers prior to the commencement of the assessment of their claims.

Under the terms of the contractual arrangements between the Department of Immigration and Citizenship (DIAC) and the IAAAS service providers, the service providers have a responsibility to help their clients with the completion and submission of visa or protection obligations determination applications. This includes accompanying their clients to departmental interviews, liaising with DIAC, providing advice on immigration matters, explaining outcomes of applications and providing information and advice on further options available in the event of a refusal decision.

When IAAAS service providers are providing assistance to minors, DIAC has issued a general instruction that the service provider should act in the best interest of the child.

IAAAS assistance is also available at the merits review stage, but is not available to those seeking judicial review or ministerial intervention.

In the case of IMAs in immigration detention in remote locations, DIAC also funds travel for the IAAAS service provider to attend an initial meeting and interview with their clients soon after referral, and

ensures appropriate interpreters are available to support all interactions between the IAAAS service provider and their client.

Legal Assistance for Judicial Review

While the Minister for Immigration and Citizenship does not personally provide legal assistance for judicial review to unaccompanied minors for whom he is guardian, they receive information to assist them to seek legal assistance, including accessing Legal Aid Services.

Independent observers

DIAC engages independent observers to attend formal interviews and, at DIAC's discretion, informal meetings and discussions between unaccompanied minors and DIAC and/or other agencies, where concern exists regarding the adult relative's understanding of processes and capability of acting in the best interest of the minor with regards to their physical and emotional wellbeing.

DIAC gives consideration to the ongoing presence of an independent observer for a person who has recently turned 18, particularly where there are concerns regarding the person's level of maturity or level of comprehension of the process.

The role of the independent observer is to act in the best interest of a minor and ensure that DIAC's and other agencies' treatment of a minor during certain immigration processes is fair, appropriate and reasonable.

Senator Hanson-Young Recommendation 15
People on community detention or bridging visas must be able to make use of public provision of health services and access public referral services.

Partially Accepted
Unlawful non-citizens in community detention (CD) have access to health services commensurate with the Australian community and those living in the community on a Bridging visa with the permission to work, have access to Medicare services.

The health needs of clients in CD are co-ordinated by the Department of Immigration and Citizenship's (DIAC) contracted health services provider, International Health and Medical Services (IHMS), through a network of community-based providers.

Health services in CD include:

- IHMS cards to facilitate clients' access to IHMS-approved GPs, specialists and pharmacists in the community; and
- access to a range of health services that includes GPs, specialists, allied professionals and pharmacists.

IMAs granted Bridging visas with permission to work have access to Medicare.

The government recognises that some people who are resolving their immigration status in the community while on a Bridging visa and have vulnerabilities that impede resolution of their status may require assistance to address those vulnerabilities. This assistance may be provided through the Community Assistance Support program or Asylum Seeker Assistance Scheme. These programs facilitate access to basic medical services equivalent to those provided under Medicare and the Pharmaceutical Benefits Scheme.

Senator Hanson-Young Recommendation 16
Families and unaccompanied minors who are placed on bridging visas should be automatically also placed on the Community Assistance Support program.

Not Accepted
The Department of Immigration and Citizenship's (DIAC) case management service assists clients who hold Bridging visas to understand their immigration position and work towards gaining a timely resolution of their immigration status. Case managers assess whether a client has support needs and are eligible for the Community Assistance Support (CAS) program, and will refer a client to CAS if necessary.

The CAS program provides access to community-based services that provide health and wellbeing support. In the event that a family is placed in the community on a Bridging visa, their needs would be assessed by their case manager and a decision made as to whether they should be referred into CAS.

Senator Hanson-Young Recommendation 17
All asylum seekers on bridging visas should be provided with Commonwealth certified photo identification.

Accepted
The Department of Immigration and Citizenship (DIAC) has commenced work on the development of a secure "Evidence of Immigration Status (EIS)" card for all humanitarian entrants and protection visa applicants who are granted a Bridging visa.

The EIS will standardise the documentation provided to these clients, strengthen the bond between the card and the card holder and prevent misuse through enhanced security features and use of biometric data. The cards will contain security features that are commensurate with standards articulated in the whole-of-government National Identity Security Strategy.

The Secure Card Project is prioritised for implementation in April 2013.

Senator Hanson-Young Recommendation 18
All people on bridging visas should have work rights.

Partially Accepted
A Bridging visa is granted to a person to allow them to remain in the community while they resolve their immigration status.

In many cases the appropriate resolution of status for a Bridging visa holder will be departure from Australia. In such circumstances, providing permission to work may encourage individuals to resist departure or encourage frivolous applications for substantive visas, even those which do not themselves confer the permission to work, in the expectation of delivering work rights while they await an outcome. Granting of work rights may also encourage people on substantive visas without work rights to overstay in the hope of being granted a Bridging visa with work rights.

Nonetheless, it is already possible for Bridging visa holders who have compelling reasons to be granted work rights. For example, the Prime Minister and Minister for Immigration and Citizenship jointly announced in November 2011, the expanded use of Bridging E visas with work rights for Irregular Maritime Arrivals.