

ANNEXURE 1 - SCHEDULE 3: IMMIGRATION DETENTION STANDARDS, PERFORMANCE MEASURES AND THE PERFORMANCE LINKED FEE MATRIX

PRINCIPLES UNDERLYING CARE AND SECURITY

The principles listed below underpin the provision of immigration detention services and the standard of care to be provided. The actions of the Services Provider must be guided by these principles.

- Immigration detention is required by the Migration Act 1958 (Migration Act). It is administrative detention, not a prison or correctional sentence.
- While ultimate responsibility for immigration detainees remains with the Department of Immigration and Multicultural Affairs (the Department) at all times, the Services Provider is to exercise a duty of care to those immigration detainees to whom it is contracted to provide all that is required by way of care and security.
- As a contractor of the Department and in its delivery of detention services, the Services Provider is to:
 - comply with all relevant legislation;
 - comply with Departmental policies, instructions, directions and procedures, provided they are lawful;
 - provide all services lawfully, efficiently and in accordance with industry best practice and the Immigration Detention Standards; and
 - refer to the Department any issue relating to the migration status of a detainee and any request for access to legal advice.
- The detention, security and care of the detainees by the Services Provider are to be consistent with relevant Commonwealth and State/Territory law.
- Australia's international obligations, such as those relating to human rights, inform the approach to delivery of the detention function.
- Respect for and the dignity of immigration detainees is to be observed and maintained in culturally, linguistically, gender and age appropriate ways.
- Due diligence is to be exercised in the care and maintenance of public assets.

Detention services and their delivery are subject to an external scrutiny and accountability framework which includes the Parliament and a number of statutory authorities such as the Commonwealth Ombudsman, Privacy Commissioner and the Human Rights and Equal Opportunity Commission.

STANDARDS

The following outcome Standards relate to the quality of care and quality of life expected in immigration detention facilities in Australia.

These Standards must be met in all circumstances except where it is demonstrated that the security and good order of the immigration detention facility would otherwise be compromised.

The Services Provider is to undertake a continuous evaluation of the needs* of detainees and adjust delivery of services, accommodation and facilities to reflect the changing needs* of individual detainees and of the detainee population as a whole.

NOTES

Immigration detention is defined in section 5(1) of the Migration Act 1958 (the Migration Act) as being in the company of, and restrained by, an officer or another person as directed by the Secretary of the Department or being held by or on behalf of an officer in:

- a detention centre established under the Act;
- a State or Territory prison or remand centre;
- a police station or watch house;
- a vessel; or
- another place approved by the Minister in writing.

Any reference in this document to a **detainee** means an **immigration detainee**.

Any reference in this document to a **detention facility** or **facility** means an **immigration detention facility** or an **immigration detention centre**. These terms comprise Immigration Detention Centres (IDC), Immigration Reception and Processing Centres (IRPC), and the Port Augusta Residential Housing Centre (RHC).

The acronyms **IDC** and **IRPC** are also used individually to describe Immigration Detention Centres and Immigration Reception and Processing Centres respectively.

Terms which are marked with an asterisk (*) denote terms discussed in the Definitions section of the Immigration Detention Standards document.

PART 1 General

1.1 Lawfulness of detention

- 1.1.1 Persons are held in immigration detention* according to advice from the Department about their status under the Migration Act 1958.
- 1.1.2 Every place of detention* is an approved place of detention under the Migration Act 1958.
- 1.1.3 When not in an approved place of detention, every detainee remains in the company of an officer* or another person directed by the Secretary of the Department.

1.2 Administrative detention

- 1.2.1 Detainees have as much freedom of movement, association, and individual expression as possible within an administrative detention environment, subject to:
 - the security and good order of the detention facility and the safety of all those within it; and
 - the integrity of the visa assessment processes.

1.3 Duty of care

- 1.3.1 The day-to-day care needs* of detainees are met.
- 1.3.2 A secure and safe detention environment is established and maintained.

1.4 Fundamental principles

1.4.1 Dignity

- 1.4.1.1 Each detainee is treated with dignity and in a humane manner, and is accorded respect; and the individuality of each detainee is recognised and acknowledged.
- 1.4.1.2 Detainees are not subjected to discrimination on any ground, including race, colour, gender, sexual preference, language, religion, political or other opinion, national or social origin, property, birth or other status, or disability.

1.4.2 Privacy* – personal and information privacy

- 1.4.2.1 Each detainee is afforded as much personal privacy as is reasonably practicable; in particular, each detainee can undertake personal activities, such as bathing, toileting and dressing in private.
- 1.4.2.2 Personal information about detainees is collected, used, modified, stored, accessed, disseminated and disposed of in accordance with relevant provisions of Commonwealth law, such as the Privacy Act 1988, Freedom of Information Act 1982, and Archives Act 1983.

Personal information about a detainee is not collected, used, or retained beyond that which is reasonably required for the detention of that detainee and for his or her effective care, supervision and management while in detention.

- 1.4.2.3 The Department's Manager is notified of any request, at the time of the request, for personal information about a detainee, including where disclosure is required by law.
- 1.4.2.4 Personal information from a detainee's file is made available to the detainee on request, except where the disclosure of the information is considered to endanger the

life or physical safety of a detainee, or is prejudicial to the security or good order of the facility, or where the information comprises medical records not usually provided to a detainee.

The Department's Manager is advised within one day of any instance where a detainee is denied a request for information from his or her file.

1.4.3 Cultural awareness

1.4.3.1 Detainees can practice and express their own culture and beliefs, subject to the law and to the good order and security of the detention facility and the safety of all those within it.

1.4.3.2 Detainees are encouraged to understand that they have reciprocal obligations to respect the rights of others, including staff and other detainees, to express their own culture and beliefs.

1.4.3.3 All staff have an understanding of and are responsive to the cultural diversity, social and religious differences of detainees and how these may affect behaviour in the detention environment.

1.4.4 Provision of information

1.4.4.1 Detainees are provided with current, accurate and comprehensive information relevant to their detention in a language and in terms they understand.

1.4.4.2 Detainees have access, appropriate to their processing status, to television, radios and videos, and to newspapers and magazines in languages used by most groups among the detainee population.

PART 2 Detainees

2.1 Reception

2.1.1 Briefing of detainees

2.1.1.1 Detainees are made aware, in a language and in terms they understand, of:

- the operations of the detention facility including but not limited to:
- the guidelines for residing at the facility;
- the facilities available;
- complaints mechanisms;
- procedures for the management of personal property; and
- respective roles and responsibilities of the Services Provider and the Department; and
- the expectations of their behaviour as set out in the Code of Conduct, including but not limited to:
- understanding and complying with Australian law, in particular in relation to their actions while in detention; and
- their obligations to respect the diversity of culture and beliefs among persons (such as other detainees and staff) at the facility, to treat them with dignity, and accord them respect.

2.1.2 Detainee property

2.1.2.1 Subject to:

- the good order and security of the detention facility and the safety of all those within it;
- detainees' own preference; and
- relevant provisions of Commonwealth or State/Territory law;

detainees are able to retain personal property with them in detention, with the exception of certain items which include but are not limited to money, valuables, documents, and particular items of clothing and other personal effects.

2.1.2.2 Property retained by the Services Provider is properly recorded, safely stored, maintained and returned, on a detainee's transfer, release or removal, or in any instance in which property is lost or stolen appropriate restitution is made, according to the Property Protocol approved by the Department.

2.1.2.3 Detainees know how their property which has been retained is managed and under what circumstances they may access it.

2.1.2.4 Where a detainee brings into the detention facility any drugs or medicine, The Detention Health Services Provider is contacted and determines how these items will be managed.

2.1.2.5 With respect to property retained with them, detainees:

- have access to secure storage for their personal use;
- are informed of the need to respect other detainees' personal property;
- can expect that their personal effects will not be used by others in the detention facility without their consent; and

are assisted, on transfer, release or removal, to identify and take with them such personal property.

2.1.2.6 Where there is an accusation or suspicion of theft of detainee property by another detainee, the Services Provider manages the incident.

2.1.3 Detainee records

2.1.3.1 A permanent, current and comprehensive record of each detainee is created and maintained in each facility and, as accurately as possible, includes but is not limited to such personal information as:

- full name, date of birth and citizenship, including assumed names and aliases;
- photographic and biometric identity, including fingerprints ;
- reasons and authority for detention;
- date and time of admission, transfer (including between and within facilities), removal or departure;
- in cases of emergency, person to be contacted either in Australia or overseas;

- any incidents* involving the detainee, including any use of restraints, and in serious incidents the outcome of any investigations conducted;
- searches to which the detainee and his/her possessions have been subject;
- any period of observation including any activities of a detainee and actions of the Services Provider and any formal observations;
- welfare records;
- dietary requirements;
- religious beliefs, ethnicity, language(s);
- visitors;
- where appropriate, special care needs and individual management;
- security assessment and
- Detainee Care Plans, if applicable.

2.1.3.2 The Department has full access to all detainee records at any time.

2.1.4 Allocation of accommodation, including in separation detention

2.1.4.1 Detainees have access to safe and secure accommodation.

2.1.4.2 To the extent practicable and subject to the good order and security of the detention facility and the safety of all those within it, detainees have access to accommodation which recognises the special needs of particular groups, including but not limited to families, unaccompanied minors / women / men and persons who are ill and/or have a disability.

2.1.4.3 Effective separation detention is maintained in accordance with the Department's requirements.

2.2 Care needs

2.2.1 Health

2.2.1.1 General

Not used

2.2.1.2 Public health and quarantine

2.2.1.2.1 Any risks to public health in the detention environment are managed in accordance with Commonwealth and State/Territory public health and quarantine laws and regulations and, as a result, minimised.

2.2.1.2.2 The provisions of any agreed Protocol between the Department and health authorities relating to health processing of unauthorised boat arrivals are adhered to.

2.2.1.2.3 Detainees quarantined for health reasons can expect to be afforded the same rights and privileges as other detainees so long as the health of others in the facility is not jeopardised.

2.2.1.2.4 Not used

2.2.1.3 Individual health

Not used

2.2.1.4 Hygiene – personal

2.2.1.4.1 Detainees are informed of their responsibilities with regard to personal hygiene.

2.2.1.4.2 Detainees have access to information, services and safe, secure facilities appropriate to their age, gender, family circumstances, linguistic/cultural background and physical/mental disability to enable them to maintain their personal hygiene.

2.2.1.5 Hygiene – clothing, footwear and bedding*

2.2.1.5.1 Where detainees do not have their own clothing or footwear, they have access to adequate supplies which appropriately address their needs.

2.2.1.5.2 Where detainees do have their own clothing or footwear, the Services Provider supplements to appropriately address their needs.

2.2.1.5.3 Detainees have access to adequate supplies of bedding (including beds, mattresses, mattress covers, pillows, blankets) and linen (including sheets, pillow-cases, towels). These items are clean and serviceable when issued to detainees on arrival at a facility.

The Services Provider maintains bedding in a clean and serviceable condition as required during a detainee's residence.

2.2.1.5.4 Detainees:

- are informed of their responsibilities with regard to maintaining their personal clothing and linen in a state which is clean and fit for use; and
- have access to information, services, equipment and facilities appropriate to their age, gender, family circumstances, and linguistic/cultural background to enable them to keep their personal clothing and linen clean and fit for use.

2.2.2 Food and beverages

2.2.2.1 Taking account of cultural requirements and the institutional setting, detainees are provided with a choice of food that is:

- nutritional,
- adequate for health and well-being,
- dietary specific where required, for example, for religious or medical reasons;
- stored, prepared and transported according to relevant laws, regulations and standards; and
- in sufficient quantities.

2.2.2.2 Detainees have access to fresh drinking water at all times.

2.2.2.3 The special food requirements of infants are met and milk is available for detainee infants and children at all times.

2.2.3 Special care needs, including detainees with special illnesses and conditions

2.2.3.1 General

2.2.3.1.1 The special care needs of detainees are identified, assessed and responded to.

Detainees with special care needs may include but are not limited to the following:

- elderly detainees, whether accompanied or unaccompanied;
- minors, in particular unaccompanied minors*;
- expectant mothers;
- women, whether accompanied or unaccompanied;
- detainees with serious health problems;
- detainees in need of psychiatric or psychological treatment;
- detainees at risk of self-harm;
- long-term detainees;
- victims of torture and trauma; or
- detainees with a physical/mental disability.

2.2.3.1.2 The Services Provider is not responsible for the provision of health services (which are provided by the Health Services Provider) and psychological and counselling services (which are provided by the P&OC Services Provider).

2.2.3.1.3 Detainees with physical disabilities have access to equipment and facilities which meet statutory requirements.

2.2.3.2 Minors – including babies, infants and unaccompanied minors*

2.2.3.2.1 The safety, care, welfare and well-being of detainee children, in particular unaccompanied minors, are managed effectively and appropriately in accordance with:

- their age, family circumstances, gender, background (cultural, linguistic, religious), personal history and physical/mental health,
- the law,
- relevant Memoranda of Understanding and other agreements agreed between the Department and State/Territory agencies, and
- relevant Departmental procedures or instructions.

2.2.3.2.2 While parents remain responsible for the health and welfare of their children, they are assisted, where necessary, to care for their children, including through but not limited to:

- the provision of training in parenting and life skills*, and
- the development and implementation of an individual care plan* for their children.

2.2.3.2.3 Suitable care arrangements are made for children when parent(s) are absent from the detention facility, including but not limited to the absence of an expectant mother while she is giving birth.

2.2.3.2.4 In the provision of services to minors, including unaccompanied* minors, the Services Provider draws on the advice of relevant State/Territory agencies, as appropriate.

2.2.3.3 Ante-natal, obstetric and post-natal services and facilities

2.2.3.3.1 Not used

2.2.3.3.2 Facilities, equipment and professional support are available to enable a detainee parent to care for a nursing infant.

2.2.3.3.3 Not used

2.2.3.4 Self-harm

2.2.3.4.1 The potential for detainees to self-harm is minimised, to the fullest extent possible.

2.2.3.4.2 Not used

2.2.3.4.3 Detainees whose movements are restricted because they are a danger to themselves:

- have an effective Detainee Care Plan in place;
- have access to open air, subject to the security and good order of the detention facility and the safety of those within it;
- are provided with adequate supervised exercise periods on a daily basis.

2.2.3.5 Hunger strikes*

2.2.3.5.1 Hunger-striking detainees are provided with care consistent with the law and commensurate with their needs.

2.2.3.5.2 Not used

2.2.4 Serious injury, illness or death, including notification

2.2.4.1 A detainee who sustains serious injury or becomes seriously ill while in detention is provided with a level of care commensurate with their condition, noting that the actual provision of medical services is the responsibility of the Health Care Services Provider.

2.2.4.2 The Department is notified immediately in all instances where a detainee sustains serious injury or dies. The Department is provided within 12 hours with any information the Services Provider holds about the detainee's next of kin or other appropriate person / agency to enable contact to be made with them.

2.2.4.3 The police are advised immediately of any death within a detention facility. The Services Provider follows any procedures that are required.

2.2.4.4 Where information is received about the serious injury, illness, or death of a detainee's near relative or member of his or her extended family (as defined by cultural values), whether that relative or family member be in detention, in the

Australian community or overseas, arrangements are to be made for the detainee to be advised as soon as possible and in an appropriate and caring manner.

2.3 Release and Removals

2.3.1 Persons are released or removed from immigration detention according to advice from the Department about their status under the Migration Act 1958.

PART 3 Education and other activities

3.1 Education

3.1.1 Children

3.1.1.1 School-age detainee children, including unaccompanied* minors, have access to and are encouraged to participate in educational services appropriate to their age, intellectual and English-language abilities. Such services:

- may be provided in a detention facility or by the children's participation in educational services in the community;
- are provided by appropriately qualified staff;
- are consistent, as far as possible, with State/Territory curricula, taking into account the temporary nature of detention and the special needs of individual children;
- recognise the special cultural, religious and linguistic needs of detainee children and any literacy, cognitive or other learning needs they may have; and
- include educational material of an adequate variety, quantity and quality to assist children in their learning, taking into account the numbers and profile of children in detention at any given time.

3.1.1.2 School-age children have access to a range of after-school and school holiday programs and materials of an adequate variety, quantity and quality to assist in their development of age-appropriate learning and socialisation skills, taking into account the number and profile of children in detention at any given time.

3.1.1.3 Pre-school detainee children have access to early childhood development activities.

3.1.1.4 Recognising that parents remain responsible for their children, parents are encouraged to allow their children access to the educational services available and provided with adequate information about educational requirements and practices in the Australian community.

3.1.2 Adults

3.1.2.1 Adult detainees have access to and are encouraged to participate in a range of life skills* (including English language) activities appropriate in the context of the Australian multicultural way of life.

3.1.2.2 Resources of an adequate variety, quantity and quality are available to assist adults in such activities.

3.2 Sporting, recreational and leisure activities*

3.2.1 Detainees have access at reasonable times to age, gender, and culturally appropriate sporting, leisure and recreational activities, both active and passive, and

to equipment/materials in support of these activities, subject to the security and good order of the detention facility and the safety of those within it.

Detainees are encouraged to make use of the activities and equipment/materials available to them. Detainees have access to equipment/materials of an adequate variety, quantity and quality. The activities and equipment/materials:

- are appropriate to the needs of and the number and profile of the detainee population at any given time; and
- make appropriate use of available space and amenities.

3.2.2 Children's particular developmental needs for sporting, leisure, recreational and play activities, equipment, materials, space and amenities are met.

3.2.3 Detainees have unlimited access to open air, subject to the security and good order of the detention facility and the safety of all those within it.

3.2.4 Detainees whose movements are restricted for management reasons have :

- access to open air, subject to the security and good order of the detention facility and the safety of those within it; and
- adequate supervised exercise periods are scheduled on a daily basis.

3.3 Self-help Programs

3.31 Subject to the security and good order of the detention facility and the safety of all those within it, detainees aged 15 and over have the opportunity to engage voluntarily in useful and meaningful activities so that they may contribute to the care of themselves and of the detainee community.

Detainees who voluntarily participate in activities which contribute to the good order and functioning of the detention facility have access to merit points which can be exchanged in those facilities for additional goods and services.

3.3.2 Detainees are not subjected to forced or compulsory labour.

3.4 Religion

3.4.1 Subject to the good order and security of the facility and the safety of all those within it, detainees are able to practice the religion of their choice on an individual or communal basis, including through access at reasonable times to:

- a qualified religious representative approved by the Department;
- appropriate religious books and materials; and
- communal areas where religious activities including celebrations, feasts and worship may be undertaken, making flexible and practical use of available space.

PART 4 Communication and visits

4.1 General

4.1.1 Detainees are informed of:

- the services available to them in detention;

- their rights and obligations during their residence at the facility;
- complaints mechanisms;
- life in multicultural Australia;
- the rule by law in Australia; and
- any other pertinent matters;

through the use of effective information, communication and consultative strategies and mechanisms which are responsive to the changing profile and needs of the detainee population.

Refer also 2.1.1 Briefing of detainees.

- 4.1.2 Detainees are not informed of matters which are expressly excluded from the Services Provider's responsibilities.

Refer also 10.1 Limitations on responsibilities of the Services Provider.

- 4.1.3 Detainees and persons seeking to enter detention facilities are informed of the conditions of entry, including the need for visitors to establish their bona fides* prior to entry and the provisions of section 252G* of the Migration Act 1958.

4.2 Detainees not in separation detention*: communication and visits

4.2.1 Contacts (other than visits)

- 4.2.1.1 Detainees are able to maintain a reasonable level of contact with their relatives, friends and community contacts, subject to the good order and security of the detention facility or except where a detainee's movement in the facility is restricted for management reasons.

- 4.2.1.2 Detainees have reasonable access to facilities to communicate with the diplomatic and consular representatives of the country to which they belong or with their legal representatives.

4.2.2 Personal visits

- 4.2.2.1 Detainees are able to receive visits from relatives, friends, community (including religious) contacts or their diplomatic, consular or legal representatives, subject to:

- the good order and security of the detention facility;
- the safety of all those within it;
- the protection of the dignity and privacy of all detainees;
- the restrictions of a detainee's movements for management reasons; and
- the agreement of detainees.

- 4.2.2.2 At the request of a detainee, access by that detainee is facilitated to visits by:

- the Human Rights and Equal Opportunity Commission (HREOC);
- the Commonwealth Ombudsman; and
- the Australian Red Cross, and other organisations or groups as determined by the Department.

4.2.3 Other visits

4.2.3.1 Visitors other than personal visitors are admitted, subject to:

- the good order and security of the detention facility;
- the safety of all those within it;
- the protection of the dignity and privacy of detainees; and
- appropriate prior Departmental approval.

4.2.3.2 Visits by and at the request of the Commonwealth Ombudsman and the Human Rights and Equal Opportunity Commission (HREOC) for the purposes of investigations are facilitated by the Department and the Services Provider.

4.2.4 Telephones and correspondence

4.2.4.1 Once through initial processing stages and subject to the good order and security of the facility, detainees are able to communicate at their own cost with family, friends, diplomatic, consular and other representatives through access to telephones, faxes, and mail.

4.2.4.2 Where detainees do not have sufficient funds, they are provided with reasonable access to means of communicating with family and diplomatic, consular or legal representatives.

4.2.4.3 Detainees can expect that written communications from them or addressed to them are not opened, read or prevented from reaching them, subject to the good order and security of the facility and the safety of those within it.

4.3 Detainees in separation detention*: communication and visits

4.3.1 Detainees are able, on arrival and subject to the Department's approval, to communicate by letter or fax to an overseas address to confirm safe arrival in Australia.

4.3.2 In order to protect the integrity of Australia's visa assessment process, detainees in separation detention do not, except with the Department's approval:

- have contact with detainees not in separation detention;
- receive personal visits or have community contacts;
- have access to telephones/faxes for incoming or outgoing calls/messages; or
- have access to incoming mail.

However, visits and communication between detainees in separation detention and the Commonwealth Ombudsman or Human Rights and Equal Opportunity Commission are in accordance with the standards applying to other detainees. See 4.2.2.2 and 4.2.3.2.

4.4 Communicating in languages the detainees understand

4.4.1 Detainees and the Services Provider effectively communicate with each other through the application by the Services Provider of appropriate communication strategies, taking into account:

- the languages detainees understand;

- the particular circumstances in which the communication is taking place; and
- the special needs of illiterate or hearing and/or visually impaired detainees.

4.4.2 Where the use of an interpreter or translator * is assessed as necessary, that interpreter or translator is appropriately trained, qualified and accessible.

PART 5 Facility

5.1 Infrastructure and equipment

5.1.1 Taking into account ownership, and to ensure the integrity and amenity of the detention environment and the safety and well-being of persons within it, the infrastructure, facilities, grounds and equipment are maintained in a safe, useable and hygienic condition:

- compliant with relevant Commonwealth, State and Territory legislation and local authorities by-laws relating but not limited to health, hygiene, vermin control, waste disposal and the protection of the environment;
- compliant with the Maintenance Performance Standards of Schedule 5B of the Detention Services Contract.

5.1.2 Kitchen, food storage and transport, waste disposal, dining, sanitary and ablution facilities are maintained according to relevant Commonwealth, State and Territory legislation relating but not limited to health, hygiene, vermin control waste disposal and protection of the environment.

PART 6 Security and order

6.1 General security

6.1.1 Detention facilities are secure.

6.1.2 The security of all those within detention facilities, including detainees, staff, visitors and sub-contractors, is assured.

6.1.3 The security of detainees during transfers or escorts to other locations is assured.

6.2 Operational procedures

6.2.1 Comprehensive, accurate and current operational procedures are developed and maintained by the Services Provider which:

- are lawful;
- are consistent with contractual obligations, including the Statement of Requirements;
- cover the operation of the detention facilities, the management of detainees and the provision of services to detainees;
- accord with the requirements of the Immigration Detention Standards;
- are approved by the Secretary of the Department; and
- remain current and effective and fully implemented.

6.3 Contingency and emergency plans

6.3.1 Detailed contingency and emergency plans are in place at each facility, both for situations pertaining to the security and good order of the facility and for State/Territory emergencies.

6.4 Obeying laws, orders and directions, including conflict resolution

6.4.1 In the interests of the security and good order of the facility and the safety and management of detainees, detainees comply with all reasonable orders and directions.

6.4.2 Non-compliance, uncooperative behaviour or conflict are addressed as far as practicable through communication, negotiation and conflict resolution.

6.4.3 Collective, corporal, cruel, inhumane or degrading treatments and punishments are not used.

6.4.4 Detainees are informed that, if they commit a criminal act, they can expect to be charged according to State/Territory/Commonwealth law and, if convicted, may be transferred to a correctional facility.

6.4.5 Where a potential criminal act is suspected, the Services Provider takes appropriate action.

6.4.6 As a result of non-compliance with orders and directions, detainees may:

- be transferred to another part of the facility;
- have their movements within the facility restricted; or
- be transferred to another place of detention.

6.4.7 Force is used as a measure of last resort and only where all other control methods have failed or have been assessed as inadequate. Only such force as is reasonably necessary and proportionate in the particular circumstances to resolve the situation is used.

6.4.8 Staff do not carry or use firearms. For riot control or other security incidents, detention officers appropriately trained and authorised are permitted to use emergency response equipment.

6.4.9 Only such instruments of restraint are used as are reasonably necessary and proportionate in the particular circumstances to resolve the situation.

6.4.10 Instruments of restraint are never used as punishment.

6.5 Screening and searches of detainees

6.5.1 Screening and searches of detainees are conducted according to the law, Ministerial directions, and operational procedures.

6.5.2 Items seized and retained in the course of screening or searching a detainee are handled according to the law.

6.5.3 In the interests of the security and good order of the facility and the safety of all those within it, random searches are conducted of detainee accommodation.

6.5.4 Except where the good order and security of the facility may be in jeopardy, including but not limited to the risk of an escape attempt, random searches of detainee accommodation are not conducted during sleeping hours*.

6.6 Contraband*

6.6.1 Items that pose a direct and immediate threat to the security and good order in and of the facility, are unlawful, or have the potential to create dangerous or unsanitary conditions are not permitted.

6.7 Transport of detainees

6.7.1 Safe and dignified and timely transport is provided when a detainee is moved to or from detention, including when he or she is to be removed from Australia.

6.7.2 Instruments of restraint during transport are used only when reasonably necessary and proportionate to the circumstances.

6.8 Assaults*

6.8.1 Detainees and staff are informed of the law pertaining to assault, including sexual assault, the consequences of infringing the law, and avenues for reporting allegations of assault.

6.8.2 Detainees are protected from assault by:

- other detainees;
- detention officers; and
- others.

6.8.3 Any allegations or reasonable suspicions of assault, including sexual assault, are dealt with promptly, including through referral to the appropriate authorities, in accordance with the law and relevant Memoranda of Understanding with State/Territory agencies, and to the Department's Manager.

6.8.4 Any allegations or reasonable suspicions of assault, including sexual assault, of minors are referred promptly to the appropriate authorities, in accordance with the law and relevant Memoranda of Understanding with State/Territory agencies, and to the Department's Manager.

6.8.5 Not used.

6.8.6 When detainees wish themselves to report an alleged assault to police or other authorities, they have access to facilities to enable them to make such a report.

6.8.7 Every effort is made to ensure that a detainee alleging assault by another person is protected from retaliation, intimidation or further injury.

PART 7 Staff

7.1 Competency requirements

7.1.1 The numbers and mix of staff in a detention facility are appropriate to the delivery of services in an administrative detention environment and take into account the number and profile of the detainee population.

7.1.2 Staff behave in a tolerant, respectful and culturally sensitive manner.

- 7.1.3 The qualifications, competencies, registration, accreditation and authorisation of staff are appropriate to their specific tasks, roles, and responsibilities.
- 7.1.4 All staff are of good character and conduct, and have the appropriate physical and psychological fitness to perform their duties to the required standards.
- 7.1.5 All staff have the communication, counselling, negotiation and conflict resolution skills necessary to the performance of their duties.
- 7.1.6 All staff abide by a Code of Conduct approved by the Department.

7.2 Training

- 7.2.1 All staff are trained or provided with access to training programs or other training, approved by the Department, to enable them to operate effectively:
- in an administrative detention environment;
 - relevant to the specific duties they are assigned; and
 - in a context where the number and profile of the detainee population change over time.

PART 8 Complaints mechanisms

8.1 Complaints mechanisms

- 8.1.1 Detainees are informed of their rights and are able to comment on or complain without hindrance or fear of reprisal:
- about any matter relating to the conditions of detention to the Services Provider, the Department, HREOC or the Commonwealth Ombudsman; or
 - in the case of a suspected criminal offence, to the police; or
 - in the case of suspected child abuse, to the relevant State/Territory welfare agency.
- 8.1.2 Complaints by detainees are forwarded to the relevant agency in a timely fashion and, where appropriate, according to the law.
- 8.1.3 Material advising of the right to complain to HREOC and the Commonwealth Ombudsman is displayed prominently throughout the facilities at all times and is also available to detainees on request.

PART 9 Monitoring and reporting

9.1 Monitoring and reporting

- 9.1.1 The Services Provider monitors on a continuous basis service delivery to standards set out in these Immigration Detention Standards.
- 9.1.2 All breaches of these Immigration Detention Standards are reported by the Services Provider to the Department.
- 9.1.3 Any incident or occurrence which threatens or disrupts the good order, safety and security of the facility, or the health, safety or welfare of those within it is reported by the Services Provider to the Department.

9.1.4 The Department has full access to data and records for monitoring and accountability purposes.

PART 10 Responsibilities of the Services Provider

10.1 Limitations on the responsibilities of the Services Provider

10.1.1 The Services Provider is not responsible in any way for advice, consultation or decision-making about:

- a person's immigration status;
- any processing in relation to a person's immigration status; or
- a person's removal from Australia.

10.1.2 While the Services Provider may negotiate with relevant institutions for day-to-day operational arrangements for the provision of services to detainees, it is not responsible for conducting negotiations with Commonwealth agencies or State or Territory governments with a view to establishing protocols, Memoranda of Understanding, or other such agreements.

10.1.3 The Services Provider is not responsible for conducting negotiations with foreign governments.

SERIOUS INCIDENTS

Incident Description
Determination by a Coroner that the Death (other than by natural causes) of a Detainee, a Staff Member (as a result of work related to this contract), or another person, eg. a Visitor at, or as a result of presence at, a facility, is due or partly due to a failure on the part of the Services Provider to properly exercise its Duty of Care.
Escape of a Detainee that is classified as being a high risk client or extreme risk client when that person is either in the care of the Services Provider for escort purposes in any place (including a detention facility), or in accommodation intended for the use of high or extreme risk clients respectively.
Escape of any other Detainee (except from those originating from an RHC).
Riot or Hostage Situation, where an independent review commissioned by the Contract Administrator determines that the Services Provider contributed materially to the development of the situation.
Serious damage to a Detention Facility caused or contributed to by Detainees, including fire, resulting in a Review under clause 9.4 or a determination of the Contract Administrator under clause 9.4.5, where the Review or determination finds that the Services Provider failed to take steps that it could reasonably have been expected to have taken to avoid or minimise the Event, circumstances or occurrences that resulted in the serious damage.

ANNEXURE 1- SCHEDULE 3: DEFINITIONS

DEFINITIONS

NOTES

These terms and definitions should be read in conjunction with the Immigration Detention Standards.

“assault” means the threat of and/or actual physical harm caused by one person or persons to another. Assault is both a criminal offence and a tort (or civil wrong), the remedy for which would be damages. It is often used loosely as synonymous with or including “battery”. While the precise definitions vary according to jurisdictions, the various forms of assault include:

- “common assault” means a threatened or actual assault of another that is not as serious as aggravated assault. It is a criminal offence punishable by a fine or imprisonment“;
- “aggravated or serious assault” means an assault that is more vicious or serious than a common assault and includes aggravating circumstances such as being armed with a weapon, inflicting bodily harm, assaulting someone in the company of others, assaulting a child or elderly person. It incurs a heavier penalty than “common assault”; and
- “sexual assault” means sexual contact with another person without that person’s consent. It is a criminal offence and, where children are concerned, the consent of a child is no defence.

“bedding” means beds, mattresses, mattress covers, pillows, and blankets issued by the Services Provider for use by detainees while in detention. These items are clean and serviceable when issued, and the Services Provider is obliged to keep them clean and fit for use during a detainees’ residence.

“bona fides” describes any honest or sincere intention, including through the provision of documentary evidence of acceptability.

“child/children” any reference to a child or children is synonymous with any reference to a minor or minors.

“contraband” includes what is commonly termed “hard contraband” and “soft contraband”.

Hard contraband means any inherently dangerous item, such as a weapon or tool of violence, the presence of which presents an immediate physical threat in or to the facility or to any person within the facility. According to the Migration Legislation Amendment (Immigration Detainees) Act 2001 (section 197B), a weapon includes:

- a thing made or adapted for use for inflicting bodily injury; or
- a thing where the detainee who has the thing intends or threatens to use the thing, or intends that the thing be used, to inflict bodily injury.

Soft contraband comprises items that do not necessarily pose a direct and immediate threat to individual safety but have the potential to threaten the good order and security of the facility and the safety of detainees or create dangerous and/or

unsanitary conditions. In the detention environment, alcohol, cameras and mobile phones are such items.

“critical incident” means an incident or event which critically affects the good order and security of the facility or where there is serious injury or threat to life. Such incidents should be reported orally and by written report within established timeframes. See Attachment A for detail on what constitutes a critical incident and reporting timeframes.

“disturbance” means any incident that disrupts the good order, security or operation of a detention facility and includes but is not limited to riots, hunger strikes, refusals to take sustenance, sit-ins, self-mutilations, and any form of protest.

“educational services” means pre-school, school and high-school curriculum-based programs, focusing on English as a second language and taking into account the children’s variable lengths of stay in detention. As far as possible, such programs should be in line with local education authority standards and provided by qualified teachers either within the detention facility or, if appropriate and within the requirements for continued detention, at local schools.

It also includes providing adults with literacy and English language training.

“emergency response equipment” comprises straight baton, specialist equipment (radio etc), riot helmet, riot shield, and physical restraints (e.g. flexicuffs, restraining belt etc).

“hunger-strike” means voluntary starvation or a persistent refusal to take sustenance, as a protest, for example, against a political issue, a decision about a person’s immigration status, detention per se, allegations of mistreatment etc.

“immigration detainee” means, under subsection 5(1) of the Migration Act 1958, a person who is taken into immigration detention; or kept, or caused to be kept, in immigration detention, and includes taking such action and using such force as are reasonably necessary to do so. Any reference to a detainee in this document means an immigration detainee.

“immigration detention” is defined in section 5(1) of the Migration Act 1958 as:

- (a) being in the company of, and restrained by:
 - (i) an officer; or
 - (ii) in relation to a particular detainee - another person directed by the Secretary to accompany and restrain the detainee; or
- (b) being held by, or on behalf of, an officer:
 - (i) in a detention centre established under this Act;
 - (ii) in a prison or remand centre of the Commonwealth, a State or a Territory; or
 - (iii) in a police station or watch house; or
 - (iv) in relation to a non-citizen who is prevented, under section 249, from leaving a vessel – on that vessel; or
 - (v) in another place approved by the Minister in writing;

but does not include being restrained as described in subsection 245F(8A), or being dealt with under paragraph 245F(9)(b).

Subsections 189(1) and (2) make it mandatory for an officer to take into immigration detention a non-citizen who is in, or is seeking to enter, the migration zone at other than an excised offshore place. Subsections 189(3) and (4) make it discretionary for an officer to take into immigration detention a non-citizen who is in, or is seeking to enter, an excised offshore place.

If a person is taken into immigration detention under any of the powers exercisable under section 189, the person must be kept in immigration detention until they are removed from Australia or are granted a visa.

Section 198A provides a new power to take an unlawful non-citizen in an excised offshore place from Australia to a declared country in certain circumstances and clarifies that this does not amount to immigration detention. An excised offshore place includes Christmas, Cocos (Keeling) and Ashmore and Cartier Islands. There is a power for additional places to be created by amendment to the Migration Regulations.

“incident” includes but is not limited to an activity in a facility which threatens, or has the potential to threaten or harm individuals, the welfare of detainees or the good order, safety or security of the facility or the success of escort/transfer/removal activities, or which may impact on immigration processing. See also “critical incident”, “major incident” and “minor incident”.

“incident report” means a report on incidents. Incident reports will conform to a format and standard established by the Department. Incidents are categorised as critical, major and minor.

“individual Detainee Care Plan” means a Detainee Care Plan developed for a detainee with special care needs to ensure that those needs are identified, assessed, recorded accurately, addressed, indicated to staff in contact with that detainee, and met on a consistent basis so as to enhance the detainee’s quality of life, individual development and social integration.

“instruments of restraint” generally speaking, fall into two broad categories: mechanical and chemical. Depending on the circumstances, they may include flexi-cuffs, restraining belts, batons, riot shields, tear gas and water cannon.

“interpreters and translators” qualified interpreters and translators means interpreters and translators who are accredited and recognised by the National Accreditation Authority for Translators and Interpreters Ltd (NAATI).

“NAATI” means the National Accreditation Authority for Translators and Interpreters Ltd. It is a national standards body owned by the Commonwealth, State and Territory Governments of Australia, which sets and monitors standards of translation and interpreting (T&I) in Australia by accrediting translators and interpreters at a number of levels of competence. All government Translation and Interpreting services require translators and interpreters to be NAATI-accredited. NAATI is also an advisory body, producing annually a national directory of accredited and recognised interpreters and translators which enable agencies, businesses and government organisations to locate suitably qualified interpreters and translators.

“life skills programs/activities” generally speaking, means programs aimed at providing individuals with the basic means to improve their lives and strengthen their families and communities, and to encourage their effective participation in a democratic society.

In the context of the detention environment, life skills programs seek to enhance adult detainees’ knowledge of, and ability to cope with, their residence in detention and the expectations of behaviour in multicultural Australia. They may include but would not be limited to information awareness sessions and/or practical classes on:

- the rule by law in Australia, including such aspects as anti-discrimination law, equal opportunity, sexual harassment, and criminal offences such as assault;
- health education, including nutrition, personal and dental hygiene, communicable diseases, childhood diseases, female genital mutilation and physical fitness;
- parenting, including pregnancy, neo- and post-natal care, childcare, single parenting;
- first aid;
- communication, including English language and adult literacy; and/or
- arts and crafts.

Life skills programs are not professional career or trade courses.

“linen” means sheets, pillow-cases and towels issued by the Services Provider for detainees’ personal use while in detention. These items are clean and serviceable when issued, and detainees are obliged to keep these items clean and fit for use during their residence. Refer also to “bedding”.

“major incident” means an incident or event which seriously affects the good order, safety and security of the facility or the welfare of detainees or which threatens the success of escorts, transfers, or removal activities. These should be reported by the Services Provider to DIMA as soon as possible orally and in writing within specified timeframes. See Attachment A for detail on what constitutes a major incident and reporting timeframes.

“minor incident” means an incident or event which affects the good order, safety and security of the facility or the welfare of detainees which threatens the success of escorts, transfer, or removal activities though to a lesser degree than a major incident. A written report is to be provided by the Services Provider to DIMA within specified timeframes. See Attachment A for detail on what constitutes a critical incident and reporting timeframes.

“minor/minors” any reference to a minor or minors is synonymous with any reference to a child or children.

“needs of detainees” means providing a level of services essential to meet, in the first instance, security and, welfare, accommodation, food, clothing, and information requirements of the detainees and, where necessary and appropriate, additional such requirements. It does not include the wishes, desires or requests of detainees which are prohibited under law or inappropriate either to the detention environment or to the level of care determined by these Immigration Detention Standards.

“new private sector provisions” means the new provisions in the Privacy Act 1988 (Cth) (introduced by the Privacy Amendment (Private Sector) Act 2000) which regulate the way many private sector organisations collect, use, keep secure and disclose personal information. These new provisions apply to organisations with an annual turn-over of more than \$3 million and all health service providers, and to certain organisations with an annual turn-over of less than \$3 million, including those who are contracted service providers for a Commonwealth contract.

Schedule 3 of the Privacy Act sets out ten (10) National Privacy Principles (NPP) which are legally binding about how organisations must handle personal information. The NPPs cover collection (NPP 1), use and disclosure (NPP 2), data quality (NPP 3), data security (NPP 4), openness (NPP 5), access and correction (NPP 6), identifiers (NPP 7), anonymity (NPP 8), transborder flow of information (NPP 9) and sensitive information (NPP 10).

“officer” means, under section 5(1) of the Migration Act 1958 (this Act):

- an officer of the Department, other than an officer specified by the Minister in writing for the purposes of this definition; or
- a person who is an officer for the purposes of the Customs Act 1901, other than such an officer specified by the Minister in writing for the purposes of this definition; or
- a person who is a protective service officer for the purposes of the Australian Protective Service Act 1987, other than such a person specified by the Minister in writing for the purposes of this definition; or
- a member of the Australian Federal Police or of the police force of a State or an internal Territory; or
- a member of the police force of an external Territory; or
- a person who is authorised in writing by the Minister to be an officer for the purposes of this Act; or
- any person who is included in a class of persons authorised in writing by the Minister to be officers for the purposes of this Act, including a person who becomes a member of the class after the authorisation is given.

“place of detention” means, according to section 5(1) of the Migration Act 1958:

- a detention centre established under the Migration Act 1958; or
- a prison or remand centre of the Commonwealth, a State or a Territory; or
- a police station or watch house; or
- in relation to a non-citizen who is prevented, under section 249, from leaving a vessel - that vessel; or
- another place approved by the Minister in writing.

“privacy” includes personal and information privacy. Article 17 of the ICCPR states that “No one shall be subjected to arbitrary or unlawful interference with his privacy. Everyone has the right to the protection of the law against such interference or attacks.”

Privacy includes things or matters:

- relating to or affecting a particular person or a small group of persons;
- confined to or intended only for the person or persons immediately concerned;
- which are confidential; or
- which are not open or accessible to people in general.

Privacy includes, to the extent possible without compromising the good order and security of the facility, respecting the privacy of detainees' living area, specially sleeping quarters and bathrooms.

“profile” means profile of the detainee population i.e. the composition or mix of the detainee population, including such elements as gender, age, ethnicity, culture, language, and immigration status

“punishment” includes such acts as corporal punishment (i.e. the striking of a person's body), and cruel, inhumane, or degrading punishments (ie by placement in a dark cell, reduction of diet, sensory deprivation).

None of these acts is permitted in the detention environment.

“recreation and leisure activities/program” means opportunities for detainees to use their time in detention in an effective, constructive and beneficial way, such as by access to indoor and outdoor exercise/sport, sporting equipment, games, outings, reading material, television, videos, craft activities, and English language tuition.

“safe” means free from danger, injury and/or physical or mental intimidation.

“section 252G” means section 252G of the Migration Act 1958 (introduced by the Migration Legislation Amendment (Immigration Detainees) Act 2001) which provides that officers at detention facilities may request persons seeking to enter these facilities – which may include detainees, staff, sub-contractors or visitors – to walk through screening equipment and to allow things in their possession to pass through screening equipment or to be examined by X-ray. These screening arrangements are similar to those existing at airports and are not intrusive. Additionally, an authorised officer can request a person seeking to enter the centre to allow closer inspection of any items in their possession or to leave items at the entrance to the centre for the duration of their visit. Items the possession of which is unlawful under a Commonwealth law or in the State or Territory in which the detention centre is located may be retained. Persons who do not comply with these measures may be refused entry to the detention facility.

“separation detention” Provision is made for periods of separation detention for some detainees on initial arrival at a facility. Separation detention is an area or areas in a detention facility in which new arrivals are kept separate from other detainees. Separation detention is a management tool through which the integrity of Australia's visa determination process is maintained. Effective separation detention provides the Department with the assurance that any claims by unlawful non-citizens to remain in Australia are put forward by detainees without the embellishment or coaching of others.

While in separation detention, detainees are to have reasonable access to the full range of detention facilities and services, including food, health, welfare and

recreation. For services, such as medical or educational services, that are usually only available in other areas of the detention centre, arrangements are made to ensure that such services are available to detainees without breaching the requirements of separation detention.

In separation detention, detainees are not permitted to make telephone calls or correspond with people in the Australian community. They are, however, provided with reasonable facilities, upon request, to access legal advice, UNHCR, the Red Cross, and Consular personnel. Any attempt by a detainee in separation detention to make contact with the Commonwealth Ombudsman or the Human Rights and Equal Opportunities Commission (HREOC), is to be facilitated. Detainees have ready access to Departmental staff and the assistance of the centres' medical staff. They are also permitted some contact with relatives overseas to notify them of their safe arrival in Australia.

The Migration Act 1958 does not impose an obligation on the Department to provide access to legal advice or visa assistance unless specifically requested by the detainee (ss.193(2) and 256). However, if detainees are assessed as raising information or claims which prima facie may engage Australia's protection obligations or as being eligible to make another visa application, arrangements are put in place to provide them with migration agent advice. Should they then apply for a Protection Visa, this publicly funded assistance continues in relation to that application.

“sleeping hours” generally means the hours between 2300 and 0500 (that is, between 11 o'clock at night and 5 o'clock in the morning), although climatic conditions and religious requirements may affect these times.

“substantiated instance” means a demonstrably true or evident example of an occurrence or event. A “substantiated instance” may be deemed to be such where DIMIA's own investigations reveal that a particular performance measure has not been met to the required standard following, for example, an unfavourable HREOC or Ombudsman investigation, advice from a State or Territory government agency, a successful prosecution, or through any means where there is sound, corroborative evidence that a particular event, identified as a performance measure, occurred and for which there are no mitigating factors.

“unaccompanied minors” are children who are under 18 years of age and who meet the requirements of the Immigration (Guardianship of Children) Act 1946 (the IGOC Act), that is, non-citizen children who enter Australia intending to become permanent residents but who are without the care of a parent, relative over 21, or intending adoptive parent. As guardian of these children, the Minister is legally responsible for ensuring they receive appropriate welfare and care.

The IGOC Act empowers the Minister to delegate his powers to any officer or authority of the Commonwealth or of any State or Territory and he has delegated powers to various officers of the State or Territory department responsible for child welfare services.

The provision of detention services to unaccompanied minors should take into account any linkages the child may have formed during the journey to Australia with members of his or her extended family or other care-givers.

“unsolicited mail” means mail delivered to a person that has not been requested by that person or that is not addressed to a particular person.