Australian Human Rights Commission

Yongah Hill Immigration Detention Centre Inspection Report

APRIL 2024

Yongah Hill Immigration Detention Centre Inspection Report • April 2024

ISBN 978-1-925917-93-2

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Acknowledgements:

- President Rosalind Croucher.
- Australian Human Rights Commission staff: Darren Dick, Graeme Edgerton, Jodie Ball, Joanna Maxwell, Melissa De Abreu, and Lucy Connop.
- Independent medical consultant, Dr Emma Crampin, for her expertise, advice, and review of this report.
- Independent custodial environment consultant, Kieran Artelaris, for his expertise, advice, and review of this report.
- The Department of Home Affairs, the Australian Border Force, and contracted detention service providers, Serco and International Health and Medical Services, for their responses to requests for information and documents to inform this review.
- Current and former people in detention, civil society organisations, and networks, for sharing information to inform this review.

This publication can be found in electronic format on the Australian Human Rights Commission's website at **https://humanrights.gov.au/our-work/publications**.

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Design and layout: Dancingirl Designs
Cover image: Adobe Stock

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April 2024

Australian
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Commission

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Commissioner's Foreword

The vast majority of observations and recommendations made in this Inspection Report will come as no surprise to anybody who has been to an immigration detention centre, or read previous inspection reports published by the Australian Human Rights Commission. The same key concerns have been raised repeatedly for many years. This inspection report is no different in that respect.

For example, key recommendations regarding the use of closed detention as a last resort, use of force policies, the need for an independent review of healthcare, increased contact with status resolution officers, and access to educational opportunities were all issues raised by the Commission following our 2017 inspection of the Yongah Hill Immigration Detention Centre (YHIDC) – a full six years before this inspection visit.

A key observation that was made following the 2017 inspection was that while asylum seekers who arrived by boat had previously comprised the majority of people in detention, this was shifting with an increasing proportion of those detained being people whose visas had been cancelled on character grounds. At the time of the current inspection in May 2023, almost 60% of the people detained at the YHIDC had been detained for this reason.

The changing nature of the cohort detained in immigration detention centres is significant for a number of reasons. The Department of Home Affairs (Department) has repeatedly described an increase in critical incidents across the whole immigration detention network in recent years, and there has also been an increase in behaviours frequently associated with the prison system, including trafficking of drugs and other contraband, bullying and standover tactics, and violence. A majority of the people interviewed during this inspection of the YHIDC told us that they felt unsafe in detention.

We have made a number of observations and recommendations that relate directly to the safety concerns that were raised with us during our visit to the YHIDC. The most important of these is our conclusion that parts of the YHIDC are no longer fit for purpose, that staffing numbers need to be increased, and that search powers need to be reformed to ensure detention staff are able to effectively deal with the reportedly widespread drug and alcohol use.

Another key area of concern was the provision of health services, particularly mental health services and out-of-hours care. This is, again, a concern that has been regularly highlighted in previous Commission inspection reports across various immigration detention centres, and is something that needs to be comprehensively addressed as a matter of urgency.

There are 33 recommendations that we have made in this inspection report. The Department has considered these recommendations and in their response (which is published alongside this report) have accepted 14 recommendations (indicating that seven of these have already been addressed), partially agreed with six recommendations, and disagreed with seven recommendations. There are six further recommendations that the Department have indicated they are unable to accept because they require governmental consideration.

We would like to thank the Department for their response and their constructive engagement with the inspection report. In particular, it is positive to observe that in the time between our inspection visit and the publication of this report there has been tangible progress made with respect to a number of discrete issues that had been raised.

It is also important to note the impact of the recent High Court decision in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (which occurred after our inspection visit) and subsequent legislative reforms. The immediate impact can be seen in the initial release of 27 people from the YHIDC in November 2023, but the full impact of the decision on individuals, the immigration detention network, and the wider Australian community is still uncertain.

What is clear is that, in responding to the *NZYQ* decision, it is essential to ensure that community safety is not compromised, but also that the policy responses adopted are measured, proportionate, and anchored firmly in respect for the human rights of all concerned.

Lorraine Finlay
Human Rights Commissioner

April 2024

CHAPTER 1

1 | Introduction

Over the past thirty years, the Australian Human Rights Commission (Commission) has undertaken national inquiries into immigration detention,[1] thematic reports to highlight particular issues,[2] and periodic monitoring of detention facilities across the country.[3] The Commission has consistently expressed a range of concerns about aspects of Australia's immigration detention system and its compliance with Australia's international obligations.[4]

This report contains an overview of key observations and concerns arising from the Commission's inspection of the Yongah Hill Immigration Detention Centre (YHIDC) in May 2023. The report reflects conditions as they were at the time of the inspection.

The Commission acknowledges the contributions made by Mr Kieran Artelaris, Inspections and Research Officer with the Western Australian Office of the Inspector of Custodial Services (WA OICS) and Dr Emma Crampin, Deputy Chief Psychiatrist with the Western Australian Office of the Chief Psychiatrist, who respectively assisted with this inspection as an independent custodial environment consultant and health consultant. Mr Artelaris and Dr Crampin participated in the inspection visits and interviews alongside Commission staff and provided advice on issues relating to security management and training, health care and other medical issues concerning people in immigration detention. The Commission also acknowledges the civil society organisations that provided submissions prior to the inspection, and all of the individual staff at the Commission who assisted with these inspections.

The Commission also acknowledges the assistance provided by the Department of Home Affairs (Department), and Australian Border Force (ABF) in facilitating the Commission's inspection. The Commission team was assisted during the inspection by staff from the Department, ABF and detention service providers, and we are grateful for the assistance that was provided.

In accordance with the usual practice, the Commission provided a copy of this report to the Department on 2 February 2024 to provide an opportunity for response to the Commission's findings and recommendations prior to publication. The response from the Department was received on 8 April 2024 and has been published alongside this report.

CHAPTER

2

2 | Background – Immigration detention in Australia

Immigration detention is mandatory in Australia for all unlawful non-citizens.[5] Once detained, an unlawful non-citizen must remain in detention until either granted a visa or removed from Australia.[6]

However, following the High Court's decision in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs*[7], unlawful non-citizens cannot continue to be kept in immigration detention for the purpose of their removal from Australia once there is no real prospect of their removal becoming practicable in the reasonably foreseeable future.[8]

The detention of an unlawful non-citizen is not based on an individual assessment of the need for detention, or an assessment as to whether the individual concerned poses an unacceptable risk to the community. The Commission has previously recommended that closed immigration detention should only be used in circumstances where it is strictly necessary to manage unacceptable risks to the community.[9] Unlawful non-citizens subject to immigration detention are usually detained in purpose-built immigration detention centres, with seven being in operation as of April 2024.[10]

In some circumstances, individuals can be released from immigration detention centres into alternative, community-based arrangements. This may include release on short-term visas (such as a Bridging visa E) or a residence determination, where the Minister determines that a person may reside in a specified place rather than being held in a detention centre.[11] Both of these options involve the Minister exercising a legal power that is personal, non-compellable, and discretionary.

The Australian Government also operates an offshore processing regime, which involves transferring asylum seekers to third countries for their claims to be processed.[12] Regional processing arrangements were in place in Papua New Guinea until the end of 2021 and continue to operate in Nauru.

The Commission has consistently expressed concerns about Australia's offshore processing arrangements and emphasised that transferring asylum seekers to third countries does not release Australia from its obligations under international human rights law.[13]

2.1 Number of people in detention

The number of people in closed immigration detention has reduced dramatically over the last decade. The number of people in detention peaked at over 10,000 in July 2013, before declining to fewer than 2,000 in early 2015.[14]

This reduction was largely due to the release of large numbers of asylum seekers from closed detention into alternative community arrangements; and a decrease in the number of people entering detention following a significant decline in boat arrivals to Australia.

As of 31 December 2023, there were 872 people in detention. This comprised 824 men and 48 women.[15]

2.2 Length of detention

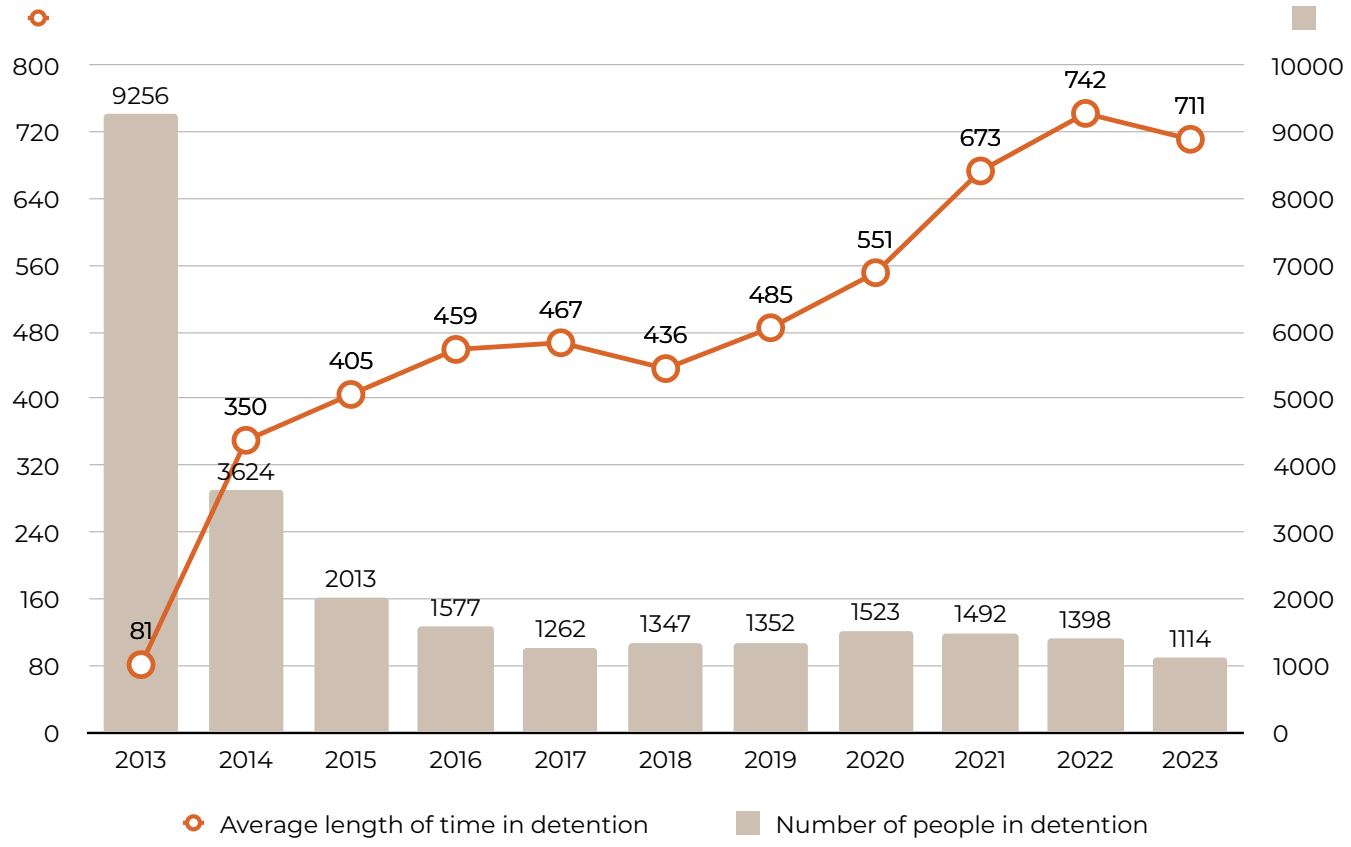
The Commission acknowledges that the average period in closed detention has continued to decline during 2023. As of 31 January 2023, the average period in detention reached 806 days – which is the highest ever recorded.[16] By 30 December 2023, the average period in detention had reduced to 625 days.[17]

This is still, however, far higher than in comparable jurisdictions. For example, in Canada the average length of detention was 15.7 days between 1 January and 31 March 2023.[18] In the United Kingdom in 2022, 48% of all people who left immigration detention had been detained for 7 days or fewer.[19]

The negative impacts of prolonged detention are substantial, with the following observations previously made by the Commission:[20]

> Prolonged closed detention is a risk factor for mental ill-health, as the negative impacts of immigration detention on mental health tend to worsen as the length of detention increases.[21] This is of particular concern in the current context, given the consistently high average length of detention in recent years, and the large number of people being held in closed detention facilities for prolonged periods.

Chart 1: Number of people in detention and average length of detention (during month of June 2013–2023)[22]



2.3 Reasons for detention

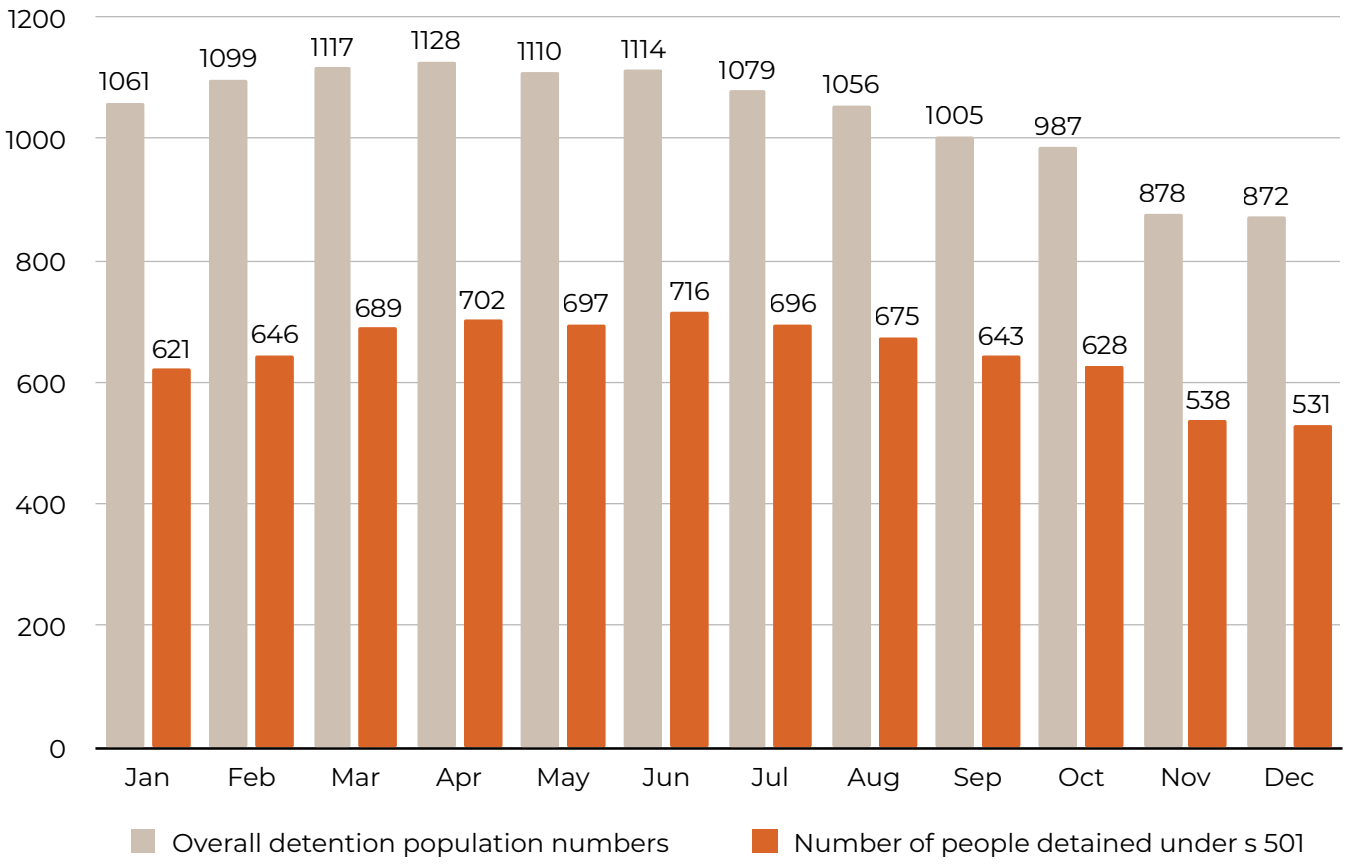
Historically, asylum seekers who arrived by boat have typically comprised the majority of people in closed immigration detention. Since the beginning of 2014, this group has progressively comprised a smaller proportion of the detention population.

At the same time, the number of people in detention due to cancellation of their visas has increased. This increase has been largely due to legislative amendments that broadened the scope of s 501 of the Migration Act.[23] Section 501 allows the Minister or their delegate to refuse or cancel a visa on the basis that a person does not pass the 'character test'. The legislative amendments introduced mandatory visa cancellations for people who have a 'substantial criminal record' or have committed a sexually based offence involving a child, and are serving a full-time term of imprisonment for an offence against an Australian law.[24]

The Department has reported that from the time this legislative amendment came into effect on 11 December 2014 until 31 March 2016, there had been 1152 mandatory cancellations under s 501(3A).[25] The Commonwealth Ombudsman commented in 2016 that it was 'apparent… that the number of persons subject to cancellation under s 501 was underestimated prior to the passage of the legislation'.[26]

Throughout 2023, people detained due to the cancellation of their visa under s 501 consistently comprised near to, and over, 60% of the overall detention population.[27]

Chart 2: Detention population total and by s 501 cancellation – January–December 2023[28]



As of 31 December 2023, the detained population was made up of the following groups:

- 531 people subject to visa cancellations under s 501
- 115 asylum seekers who arrived by boat
- 226 categorised as 'other' (including people whose visa was cancelled under other provisions, people who had overstayed their visa, unauthorised air arrivals, seaport arrivals and illegal fishers).[29]

2.4 Administration of the detention network

Since 1 July 2015, the ABF has been responsible for administering detention operations and removals; while the Department remains responsible for the overall policy framework for detention, as well as matters relating to visa processing, and status resolution. External contractors play a central role in the management of immigration detention facilities. Serco Australian Pty Limited (Serco) is the contracted detention services provider, responsible for the day-to-day running of the facilities including security and provision of services and activities. International Health and Medical Services (IHMS) is the contracted health services provider, responsible for providing onsite physical and mental health services to people in detention.

CHAPTER

3

3 | Inspection methodology

The Commission inspected YHIDC from 17 to 19 May 2023. The inspection was conducted by the Human Rights Commissioner, Lorraine Finlay, and four Commission staff. The team was also assisted by Dr Emma Crampin and Mr Kieran Artelaris.

The Commission engaged Mr Kieran Artelaris as an independent custodial environment consultant to participate in the inspection visit and provide advice on security management, staff training and issues relating to the safety of people detained. Mr Kieran Artelaris is a research and inspection officer with WA OICS. He has extensive experience working in the justice and corrections environment as a researcher, prison inspector, and in project work. Mr Artelaris has worked for WA OICS for over 15 years and in that time has participated in more than 50 inspections of custodial facilities, including 14 as the lead planner.

The Commission also engaged Dr Emma Crampin as an independent health consultant to participate in the inspection visit and provide advice on issues relating to the physical and mental health of people being detained. Dr Crampin is the Deputy Chief Psychiatrist for the Western Australian Office of the Chief Psychiatrist. Dr Crampin has an extensive knowledge of health standards, previous review experience, as well as a well-developed understanding of regional and rural settings within Western Australia.

Prior to the inspection, the Commission held consultations with a range of civil society organisations who engage directly with people currently and formerly detained at YHIDC, and written information was received from three such organisations.

During the inspection, the Commission team met with representatives from the Department, ABF, and contracted detention services providers, Serco and IHMS; conducted an inspection of the physical conditions of detention; and held interviews with people detained at YHIDC.

The Commission considered the evidence gathered during the inspection against human rights standards derived from international law that are relevant to immigration detention, as outlined in the section below.

The Commission's methodology reflects international guidelines for the conduct of detention inspections, including a core focus on prevention of harm.[30] This preventative approach necessitates consideration of root causes and risk factors for possible breaches of international human rights standards.

CHAPTER

4

4 | Relevant human rights standards

The following international human rights treaties, which Australia has ratified, contain obligations that are relevant to the conditions and treatment of people in immigration detention:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention relating to the Status of Refugees (Refugee Convention)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)
- Convention on the Rights of the Child (CRC)
- Convention on the Rights of Persons with Disabilities (CRPD).

Australia has a range of specific obligations that are applicable with respect to refugees and asylum seekers under the Refugee Convention.

Some key obligations relevant to conditions and treatment in immigration detention include those relating to: security of persons; humane treatment in detention; freedom from arbitrary detention; freedom from torture and other cruel, inhuman or degrading treatment or punishment; freedom of movement; right to privacy; freedom of religion; freedom of expression and association; right to the highest attainable standard of health; participation in cultural life; and protection of the family.

YHIDC is a high-security detention facility that is not used to detain children. As such, standards relating to the detention of children were not applicable to this inspection.

Further information about the relevant standards can be found in the Commission publication, *Human rights standards for immigration detention*.[31]

CHAPTER 5

5 | Yongah Hill Immigration Detention Centre

YHIDC is a high-security detention centre with a securitised perimeter including high fencing, anti-climb measures and other security features. It is located in the town of Northam in Western Australia, approximately 100 kilometres from Perth. It is designed to accommodate adult men.

YHIDC has six accommodation compounds. The Falcon and Hawk compounds are used to house people assessed as low to medium risk by centre staff. In addition, four high-security accommodation compounds (Cassowary, Eagle, Kingfisher, and Swan) have been in operation since December 2018. These compounds are used for people assessed as high or extreme risk by centre staff. YHIDC was initially designed to manage a low to medium risk detained population.[32]

People detained in these high-security compounds have more restricted access to shared spaces and facilities outside of their compounds, compared to those in the Falcon and Hawk compounds. The Swan compound is the most restrictive and is used to house people that have the highest risk rating as assessed by centre staff. Cassowary is used for people who, for various reasons, are assessed by centre staff to require protection from others.

YHIDC has an expansive, central outdoor area (called the 'Green Heart') that is used for recreation. It contains two full-size soccer fields, a large outdoor gym, two full-size basketball courts, and some gardening plots. There is also a large activity complex with various purpose-built facilities, such as a large kitchen for cooking classes, a woodwork studio, and an indoor gym.

YHIDC also has several smaller 'health care' compounds, located next to the medical facilities. These are used for people who have significant health care needs. YHIDC also has a 'high-care accommodation' unit used for single separation.

During the Commission's inspection in May 2023, there were 262 people detained at YHIDC.[33] As of December 2023, there were 170 people detained at YHIDC.[34]

CHAPTER 6

6 | Key issues and concerns

6.1 Safety concerns

People in immigration detention have a basic need for their safety and security to be protected while in detention. Australia must ensure that people detained have this basic need met to fulfil the obligations imposed by article 10(1) of the ICCPR to treat detained people with humanity and respect for the inherent dignity of the human person.

YHIDC accommodates an increasing proportion of people detained due to their visas being cancelled on character grounds under s 501 of the Migration Act. In the month of the Commission's inspection, 156 (or 59.5%) of the 262 people detained at YHIDC had been detained for this reason.[35] By December 2023, this cohort had increased to 65.9% (112) of the 170 people detained.[36] Despite changes in composition, the detention population at YHIDC remains varied and includes people with a range of risk profiles.

Those within the s 501 cohort at YHIDC have almost always come to immigration detention directly from the prison system. It is important to emphasise that there is significant variation among people whose visas have been cancelled under s 501 regarding the risk they pose to safety and security, and they should not be seen as a homogenous, high-risk cohort.[37] Nevertheless, as the s 501 cohort has increased, there has also been an increase in behaviours frequently associated with the prison system, including trafficking of drugs and other contraband, bullying and standover tactics, and gang-related violence.

The Department has repeatedly described an increase in critical incidents across the whole immigration detention network in recent years.[38] Statistics released by the Department through Senate Estimates demonstrate an upward trend in the number of critical incidents occurring between the 2018–2019 financial year to March 2023 (from 0.4 to 0.6 incidents per 1000 people detained).[39]

The Department attributes major disturbances mostly '…to illicit drugs, home brewed alcohol, and prescription medications infiltrating the IDN [Immigration Detention Network]'.[40] The Department also notes that '[m]anaging such a high-risk cohort within current infrastructure, which limits the ability to segregate diverse and vulnerable cohorts, puts pressure on operating capacity and can contribute to incidents'.[41]

In the Commission's 2017 inspection of YHIDC, many of the people spoken to 'indicated that they felt safe in detention … . However, a number of people did raise concerns about their safety, relating incidents in which they had felt threatened or intimidated by other people in detention'.[42]

During the Commission's 2019 inspection of YHIDC, a significant number of people 'reported that they were apprehensive about their physical safety and that they may be at risk of harm by others'.[43]

A majority of the people interviewed during this inspection disclosed that they feel very unsafe. Many disclosed that disagreements while people are intoxicated, standovers and drug debts were common reasons for violence in the centre and a source of significant anxiety and fear.

Most people referred to the 2022 incident where a detained man was stabbed to death over an alleged drug debt[44] when talking about their concerns within the centre. The Commission heard that because of the death, 'everyone' has a home-made weapon for self-defence.

This incident appears to have had a profound and persistent effect on both the people detained and staff alike, creating a collective sense of fear and anxiety about safety. Those who entered detention with existing trauma histories have found that the environment has exacerbated their pre-existing states of vigilance and hyperarousal. Staff also reported a higher level of assaults directly following the incident, which led to heightened staff fear, and requests for stab proof vests.

Statistics provided by the Department through Senate Estimates reveal that YHIDC has, over the past five years, received the second highest number (115) of complaints of assault, including allegations of assaults, made by people detained or by staff.[45] It is likely that the actual number of assaults is much higher with many going unreported due to fear of reprisal.

YHIDC and the immigration detention network more broadly, face significant challenges to providing a safe place of detention for detained people, as well as a safe working environment for staff. The detention environment itself (see mental health section) and, in particular, the infiltration of drugs and alcohol and related violence (see drug infiltration section) are creating an environment of heightened risk, and are causing significant harm to people.

As noted earlier, the immigration detention population includes people with a range of risk profiles, many of whom would not present any identifiable risk to community safety. Even among the s 501 cohort, there is a wide variation in the types of offences leading to a visa refusal or cancellation, and consequent detention. In some cases, the relevant offences are of a serious, violent nature. In others, the offences are less serious or non-violent (such as fraud, traffic violations and drug possession).

Where a person has no history of violent offending, it is less likely that a highly restrictive measure such as closed detention would be necessary to manage potential risks to the community. Nevertheless, even where serious offences have been committed, the individuals concerned will have completed their criminal sentences before being transferred to immigration detention. Indeed, had they been Australian citizens, these individuals would not have been subject to ongoing detention and would be permitted to live freely in the community.

While this inspection report makes several recommendations aimed at enhancing safety within YHIDC, it is important to stress that none are more important than ensuring that closed immigration detention is used only in exceptional circumstances. As the Commission has previously noted:

> Failing the character test under s 501 of the Migration Act should not lead necessarily to continued and prolonged immigration detention. Alternatives to detention should be

routinely considered for all people who have had their visa refused or cancelled under s 501, with conditions applied to mitigate risks as appropriate. Closed detention should only be used in exceptional circumstances where identified risks cannot be managed through less restrictive means.[46]

RECOMMENDATION 1:

The Government should replace the current system of mandatory immigration detention with a case-by-case assessment process that takes individual circumstances into consideration. Closed detention should only be used as a last resort in circumstances where all of the following elements are present:

a) detention is necessary and proportionate to an immigration purpose (for example, a brief period of immigration detention may be necessary to conduct health, security and identity checks before a visa is granted)

b) the person has been individually assessed as posing a risk of absconding or an unacceptable risk to the Australian community, and that risk cannot be managed in a less restrictive way

c) the necessity for continued detention is subject to periodic re-evaluation and judicial review, and

d) the duration of detention is subject to a maximum time limit.

Figure 1: Hawk compound

6.2 Infrastructure concerns

Due to the changing nature of the cohort and increase in violence-related incidents at YHIDC, the two lower security compounds, Hawk and Falcon, are no longer fit for purpose.

Each of these compounds can house up to 150 people and consist of 20 transportable units laid out in a grid. The Commission considers that the number of people housed in this layout is too difficult to manage safely, endangering the people detained and centre staff. The number of people within these compounds also makes it relatively easy for drug networks to be developed (see drug infiltration section).

The accommodation format results in very poor line of sight for detention security provider staff. The compound offices also provide staff with no view of the compound and increase the risk of centre staff being unable to respond to developments in a timely manner, unless alerted or constantly monitoring security cameras. The Commission also found the number of officers working within these compounds to be very low, with up to 150 people being supervised by only 2 to 3 officers at any one time.

Figure 2: Hawk compound accommodation outside

People in the Hawk and Falcon compounds informed the Commission about concerns that their accommodation could be easily compromised, and their privacy invaded. When asked about why people were unable to lock their rooms (as is the case in all other compounds), Serco and ABF staff advised that there was no practical reason for this other than that it was the way the centre was built. While consideration had been given to installing a swipe card system, the Commission was told that the cost was 'prohibitive'. Additionally, the condition of the transportable units was generally poor and rooms were small and cramped.

In contrast to the Hawk and Falcon compounds, the design and layout of the high-security compounds, Cassowary, Kingfisher, Swan and Eagle, was more functional. Swan and Kingfisher each have one wing of 10 rooms, while Cassowary and Eagle have two wings of 10 rooms each. Swan was the most restrictive compound and was used to accommodate people with the highest risk rating as assessed by centre staff. Cassowary was used for those who, for various reasons, required protection from the general population.

The staff office within these compounds has good lines of sight into the common areas of each wing and the recreation yard. Each compound is of manageable size – housing as few as 10 and no more than 30 to 40 people – and separated from other compounds by fences.

While the design and layout of these compounds was much better than the Hawk and Falcon compounds, the Commission noted in its 2019 inspections of the high security compounds that

> … infrastructure in these high-security compounds is harsh and prison-like and generally not appropriate for administrative detention. The compounds also do not offer adequate privacy, particularly due to the lack of bathroom doors, limited secluded spaces and the use of shared accommodation arrangements. The Commission observed that shower curtains had been installed in some compounds to provide some separation between bathrooms and sleeping quarters. Even with curtains installed, however, the Commission is concerned that this does not afford sufficient privacy under shared accommodation arrangements.[47]

However, these same concerns remained during this inspection. The inadequacy of the Hawk and Falcon compounds necessitate the requirement for compounds like the existing high security compounds but with modifications for a lower risk population. These modifications include but are not limited to:

- replacing bolted-down chairs and tables with unfixed furniture made of more comfortable materials, such as couches, armchairs, and chairs with back support
- ensuring suitable access to facilities for mobility impaired people, including building access
- installing doors to separate bathrooms from sleeping quarters
- installing beds with appropriate safety rails on the top bunk and secure storage facilities in bedrooms
- sufficient outdoor seating and gym equipment
- limiting shared accommodation arrangements to the extent possible.

RECOMMENDATION 2:

The Government should decommission the Hawk and Falcon compounds and replace them with multiple smaller compounds. These compounds should be similar in design to the existing high-security compounds but with modifications to reflect their designation as low-security compounds.

RECOMMENDATION 3:

Until such time as they are decommissioned, Serco and the Department should review the number of officers staffing the Hawk and Falcon compounds with the intention of increasing numbers to respond to the identified safety concerns.

Figure 3: YHIDC perimeter fences

6.3 Drug infiltration

Drug infiltration (including prescribed drug diversion) poses a significant risk to the health and safety of people in detention and staff alike. Many people are vulnerable to intimidation, may become caught up in drug and alcohol-fuelled violence and aggression, and may experience unreasonable

periods of self-isolation to avoid pressures to buy and use drugs.

As a consequence of the inability to control the trafficking of contraband, centre staff and people detained reported that drug and alcohol (home brew) use was widespread at the centre. A written submission provided to the Commission ahead of the inspection, also raised this same concern.

Interviews with people in detention and staff largely affirmed previous reporting by the Commonwealth Ombudsman that 'people enter immigration detention "clean" but either resume or commence taking illicit substances when detained'.[48] One person interviewed reported buying any drug he was offered, in an attempt to make himself feel less distressed about being in immigration detention. This was causing him significant financial problems and putting pressure on his family. Serco staff also reported that they were aware of a growing number of drug debts, because 'detainees tell us' and staff overhear things.

Centre staff have limited power to control the flow of contraband into the centre and do not have the type of legislative powers required to manage the behaviours typically associated with the prison system.

The Commission was told that contraband was being thrown over the fence line[49] and that, through developing good relationships with local police, there had been a number of arrests made as a result. Local police were also conducting proactive perimeter sweeps as a deterrent to this method of infiltration. While these actions and the arrests have made some impact, the influx of contraband through other means remains a more significant problem.

The Federal Court of Australia has affirmed that mobile phones cannot currently be taken from people detained in immigration detention.[50] The ability to arrange trafficking of contraband with contacts outside the centre has arguably become more easily facilitated because of this.[51]

The Commission recognises the risk management challenges that have arisen because of mobile phones being used by people detained in immigration detention, however, the significant benefits for the wellbeing of people in detention and their capacity to maintain contact with people outside detention need to also be recognised.[52] This was more significant during the suspension of visits because of COVID-19 lockdowns.[53]

The Commission has in the past stated that it considers any blanket prohibition on mobile phones in immigration detention would not be a necessary, reasonable, or proportionate response to the risks arising from their use.[54] Instead the Commission has stated:

> A more appropriate response would be to restrict or remove mobile phones on an individual basis, and only if the individual is found to have used their phone to conduct unlawful activity, or to carry out other forms of serious misconduct.[55]

Another method of infiltration described to the Commission was though centre mail. At the time of the inspection, court action affirming the right of detained people to order consumables from outside the centre through mail,[56] led to the centre receiving up to 128 kilograms of consumables three times per week. The Commission was told that the centre does not have the resources to effectively screen such a large quantity of goods. Nevertheless, significant contraband had been detected through the existing screening procedures. Subsequent to the inspection, this court decision was overturned by the Full Court of the Federal Court and the previous 'outside food

policy' (which required food brought by visitors to be commercially packaged and labelled and factory sealed) was held to be valid.

Finding contraband once it is within the centre also has its difficulties. The Migration Act only provides limited search powers. Essentially, centre staff can only conduct a personal search, or a room search based on a reasonable suspicion that a weapon or escape tool has been concealed. They have no power to search for illicit substances or other contraband. Following legal advice, staff have additionally been prohibited from conducting matrix searches (random room searches). The Commonwealth Ombudsman has noted that this change has 'considerably impacted security staff and ABF's ability to disrupt and detect drug trade and use'.[57]

The Commission recognises that, for the safety of everyone within the centre, staff should be provided with the authority to exercise a stronger range of search powers: specifically, where there is reasonable suspicion that drugs are being concealed, staff should also be given the authority to conduct targeted personal searches and room searches.

In utilising these powers, the Commission's *Human Rights Standards for Immigration Detention* stipulate that all searches conducted on people in detention, their accommodation, or personal effects (such as mail) by staff, respect the privacy of those detained and are therefore only conducted for sound security reasons and at reasonable times.[58]

The Commission also reiterates that, should enhanced search powers be made available to centre staff, any use of these powers should be adequately reported and 'should be periodically reviewed to identify and rectify any systemic improvements to the use of force in immigration detention'.[59]

RECOMMENDATION 4:

The Government should reform the search powers available to detention centre staff to allow for targeted personal searches and room searches to be conducted where there is reasonable suspicion that drugs are being concealed.

RECOMMENDATION 5:

The Department and Serco should review its operational instructions, policy guidance and centre staff training with a particular focus on reducing adverse impacts on the privacy and dignity of people subjected to searches.

Although facility staff had intelligence reports and anecdotal evidence to suggest that drug prevalence was high at the centre, there was no way to measure the scale of the problem accurately. Staff lacked the authority to carry out drug testing on people who were detained. In any event, drug testing, whether by blood, urine, or saliva sample, is an inherently intrusive process and inappropriate for the immigration detention environment. Wastewater testing, however, was a viable option because the centre sewerage operated in a closed system. It was not being utilised at the time of our inspection but should be considered as a way to determine the prevalence of drug use within the centre.

RECOMMENDATION 6:

The Department and Serco should implement wastewater testing to measure the prevalence of drug use within the centre.

As noted previously by the Commonwealth Ombudsman, '[d]rug infiltration and substance misuse is a multi-faceted and complex issue that cannot simply be resolved through tighter security controls and restrictions on people in detention'.[60]

The Commission agrees with this statement and notes that the above recommendations will not lead to any meaningful increase in safety without there also being a more significant investment in engaging more people in detention in alcohol and drug counselling, harm minimisation, access to treatment and rehabilitation, and further education to highlight and discourage risky behaviours associated with drug use (such as needle-sharing).

These investments alone are likely to have greater benefits for the behavioural management of the whole centre than enhanced search powers or drug prevalence testing. This is particularly important noting the largest proportion of s 501 cancellations and subsequent detention between 1 July 2018 and 30 June 2023 related to drug offences (22%) and was the primary category of offending.[61]

During the inspection, the Commission was advised that YHIDC had an alcohol and drug worker, and that opioid substitution was accessible. However, no specialist counselling is provided onsite to support the program. One person spoken to during the inspection told the Commission that he was on methadone and reported that he had to be taken to Perth for related appointments.

Minimal harm minimisation or addiction counselling appeared to be provided, nor were there any therapeutic groups being run with a specific alcohol and drug focus or individual rehabilitation services. YHIDC staff acknowledged that there were not enough demand reduction initiatives and reported that they would like to see more drug and alcohol programs being delivered.

The Commission has previously recommended that drug and alcohol rehabilitation be introduced 'as a core component of the health care services and activities delivered in immigration detention'.[62] The Commission has also noted that access to state-based services may vary from state to state and while some people in detention are able to access opioid substitution programs, these programs are not suitable for all drug users and do not provide holistic rehabilitation services.[63]

The Commission's view is that the current alcohol and drug service provision at YHIDC is inadequate for the level of need within the population and a more comprehensive program should be developed.

RECOMMENDATION 7:

The Department, Serco and IHMS should increase the provision of counselling, rehabilitation services and education to minimise harm and reduce demand for alcohol and other drugs within the detained population at the centre.

6.4 Meaningful activity

The staff at YHIDC highlighted the Program and Activities (P&A) schedule as an example of good practice, noting that it exceeds the minimum contracted hours required. Both the Commission and Commonwealth Ombudsman have, in the past, commended the efforts of Serco and the ABF to deliver a wide range of activities at YHIDC. For example, in 2022, the Commonwealth Ombudsman said the P&A schedule at YHIDC provided 'constructive and well-attended activities which provided detainees with a genuine opportunity for meaningful engagement'.[64]

Similarly, the Commission's 2019 *Risk Management in immigration detention* report suggested that YHIDC could provide a possible model to improve activities at other immigration detention centres.[65]

During this inspection, the Commission was told that YHIDC runs a seven-day-a-week schedule for P&A and has 17 dedicated staff. The P&A schedule includes education, outdoor activities, cooking, and music classes. There is a hairdresser three days a week. Volunteers attend YHIDC to deliver religious studies classes. Vocational skills delivered include woodwork, sewing and leatherwork.

The centre P&A infrastructure includes a range of dedicated facilities, a large canteen containing seating, televisions, and recreation equipment (such as pool tables), an art room, a workshop, a large purpose-built kitchen, classrooms, and a well-stocked library. A prayer room is also available. The Commission observed that these facilities were spacious, well-maintained, and well-equipped for activities.

People in detention are encouraged to participate in structured activities to receive points in exchange for items through the centre's canteen. The point system allows people to obtain a default minimum allocation of weekly points and receive additional points based on participation in structured P&A.

Serco management advised that engagement in P&A was good and that they understood that keeping people in detention occupied is important for behaviour management. They try to offer more activities as the need arises. Several people in detention confirmed that Serco was proactive in seeking their input to revise the P&A schedule and its offerings.

Figure 4: P&A activity board

While many people interviewed during this inspection reflected positively on the activities provided; a majority reported that they are unhappy that they lose access to programs they used to have in the prison system or in the community, such as anger management programs and other programs to learn skills that will be useful to them upon release.

One person said that he just went to the gym and walked around all day. He said that there was more to do in prison which allowed him to constantly keep busy. Several others informed the Commission that because they were not working towards qualifications, they did not see any point in participating in activities.

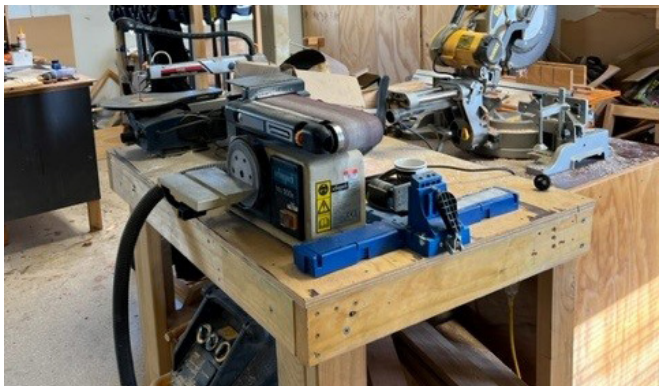


Figure 5: Woodwork room

The Commission does not consider these comments as reflective of the dedication of Serco staff at the centre to provide engaging and responsive P&A. At present, people in immigration detention are not able to participate in activities that constitute work or leads to a qualification or certification. Both Serco and ABF acknowledged that being able to provide qualifications 'would be a huge improvement'.

The Commission has repeatedly stated in its inspection reports that there is a need to provide P&A in immigration detention that is sufficiently meaningful to prevent boredom and to provide structure and routine.[66] The Commission's 2019 *Risk Management in immigration detention* report stated:

> The Commission is concerned that the boredom, frustration and lack of engagement arising from the limitations of the current activities program may contribute to the level of tension in immigration detention facilities, with implications for safety and security.[67]

The importance of meaningful activity extends beyond centre safety to community safety. It is a well understood and evidenced fact within the prison system that '[t]he effective use of a person's time in custody has significant impacts on future prospects, particularly regarding reducing recidivism'.[68]

The NSW Inspector of Custodial Services has remarked that,

> Given rates of reoffending and the focus on the rehabilitation and reintegration of offenders in modern correctional environments, there is a significant body of research on the approaches that most effectively reduce reoffending and support ex-inmates post-release. Generally, this research supports a role for in-custody programs, employment and education in strategies to reduce reoffending.[69]

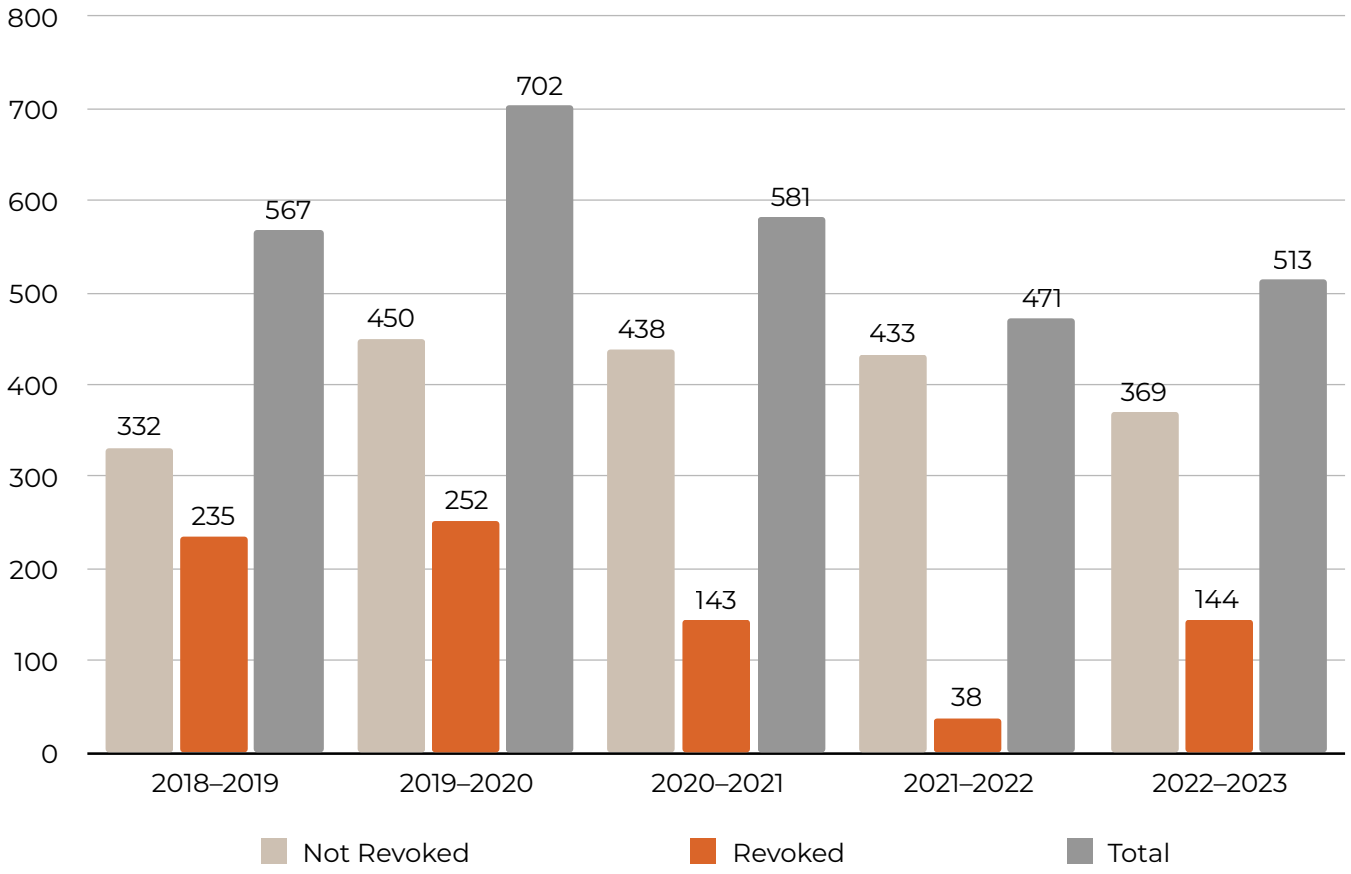
The current limitations on activities leading to qualification or certification, particularly for the largely ex-prison population, is at odds with this established research.

If the intention of detaining someone on character grounds is to ensure that non-citizens do not pose a risk to the Australian community, then significantly more work needs to be done to deliver programs within immigration detention that lead to reduced reoffending.

As the Department's own statistics show, a not insignificant number of people detained on character grounds are eventually released and resume their lives in the community (29% between 1 July 2018 and 30 June 2023).[70] Additional people may be released following merits review (for example, approximately 19% of s 501 review decisions were set aside or varied in 2015-2016, 28% in 2016–2017 and 22% in 2017 to 31 March 2018).[71]

The Department has reported through Senate Estimates that between 1 November 2021 and 31 October 2023, 682 people detained under s 501 were released from closed detention.[72] Given this, the Department must do more to prepare people for the possibility of release.

Chart 3: Revocation following Character Cancellation[73]



RECOMMENDATION 8:

The Department should, in consultation with facility staff and people in detention, review its policy on access to recognised programs of study and vocational training in immigration detention; with a view to enhancing opportunities for rehabilitation and reintegration.

Figure 6: Basketball court and outside gym

CHAPTER 7

7 | Health Services

IHMS is contracted by the Department to provide primary and mental health care services in Australia's immigration detention facilities. The IHMS health service in each facility is 'nurse-led': nurses triage all requests for health care; all appointments are initially made with a nurse; nurses undertake health assessments, planning of health care, delivery of treatments, ongoing monitoring of treatment and management of medicines; and the service is led by managers and team leaders who are also nurses.

7.1 Staffing

IHMS has 15 staff at YHIDC which includes general nurses, mental health nurses, and general practitioners. Only one staff member is locally engaged, and most staff fly in from the east coast, for a maximum period of 3 months.

Interviews with people in detention revealed a general mistrust in IHMS because of this frequent change in staffing. People in detention also described problems with continuity of their care and loss of information because of staffing changes. For example, one person disclosed that they were informed that they required an ultrasound by a general practitioner, but were then told there was 'nothing in the system' about booking the ultrasound at the next appointment, three months later.

The Commission acknowledges an observation previously made by the Commonwealth Ombudsman that 'there is difficulty in recruiting and maintaining detention centre staff due the nature of the work and remote locality, particularly for Yongah Hill ...'.[74] Nevertheless, more effort should be made to ensure consistency among IHMS staffing given the comments about mistrust of the health service.

RECOMMENDATION 9:

The Department and IHMS should make further efforts to attract and retain locally engaged health staff at the centre. Where this is not possible, IHMS should review their contracting arrangements to ensure there is a greater level of consistency in the staffing personnel at the centre.

7.2 Screening on reception and transfer of records

IHMS staff advised the Commission that a standardised assessment form was completed whenever anyone was received at the centre. The Commission was told that the assessment included comprehensive alcohol and other drugs screening, as well as screening for mental health issues and cognitive impairments.

As recently highlighted by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, screening may have an 'immediate benefit by identifying the person's support needs while in prison or detention, as well as longer term benefits in identifying the supports and services they require upon the person's release from custody'.[75]

RECOMMENDATION 10:

The Department and IHMS should ensure that every initial assessment includes a robust assessment of mental health and cognitive disability, as well as screening for neurodevelopmental disability to identify support needs.

RECOMMENDATION 11:

Where a screening assessment identifies a significant mental impairment, cognitive disability or neurodevelopmental disability, this should prompt an assessment by the Department and IHMS of the decision-making supports that may be required by that person.

RECOMMENDATION 12:

The Government should support and provide resourcing to the Department to liaise with state and territory corrective services, youth justice departments and justice health agencies in the development of national practice guidelines for screening in custody, as recommended by the Disability Royal Commission.[76]

IHMS informed the Commission that timely medical handovers had improved for incoming transfers directly from the prison system. If records did not accompany the incoming detained person, IHMS were usually able to access them within 8 hours. Early access to medical information enabled IHMS staff to prepare medications and ensure minimal disruption to continuity of care. The Commission was pleased to hear of this improvement noting that service interruptions have been observed in the past because of this issue.[77]

7.3 Accessing health care services

People in detention can request medical assistance through filling in a medical request form. Forms are collected daily and triaged for appointments. Based on what is written on the form, there is an initial paper-based triage, then a face-to-face triage with a nurse. The targeted response time for this is 72 hours, however, urgent cases can be seen on the day or within 24 hours. IHMS staff told us they received up to 9 medical request forms per day.

All forms seen at various locations during the inspection were in English only. It is unclear what support is offered to people who are unable to communicate their needs in English or who have poor written English skills. Neither was it apparent how accurately most people in detention were able to describe their medical issues to generate an appropriate triage response.

IHMS staff informed the Commission that, in addition to the medical request forms, they were also very responsive to concerns raised by security or welfare staff about people who appeared unwell but had not completed a form.

Nevertheless, we were advised by IHMS that there was a 50% non-attendance rate for face-to-face triage appointments. This suggests that the current model is not efficient or effective.

Additionally, people in immigration detention cannot access mental health services and torture and trauma counselling without being triaged by a non-mental health clinician, meaning that they have to tell their story at least twice. One of the written submissions received by the Commission stated that accessing torture and trauma counselling was particularly 'problematic for clients who do not wish to engage with IHMS.'

One person interviewed told the Commission that he had a long history of severe depression and needed to see a psychiatrist but had to see the nurse and then the general practitioner first. As they did not make the onward referral to the psychiatrist, he was unable to access any mental health care. Another person reported that they had not been able to access psychology. He reported that he had a history of depression and had made a serious suicide attempt in the past. He said that he wanted talking treatment but instead the general practitioner offered an increase in medication, which he did not want.

Requiring people in detention to see a general nurse and then a general practitioner before they can access a specialist mental health or torture and trauma service does not meet the standard offered by public community mental health services. It also requires a detained person to tell their story multiple times to access care, which is not best practice from a therapeutic perspective.

RECOMMENDATION 13:

The Department and IHMS should review the efficiency of the current health services referral and triage procedures within immigration detention. This review should include examining the accessibility of the procedures and whether the mental health and torture and trauma referral system aligns with community mental health service standards and best practice.

7.4 Out of hours health care services

Onsite health services at YHIDC are provided at the medical clinic from 9:00am–5:00pm Monday to Friday. There are no health services on site out of hours, except for medication rounds. The clinical staff providing the medication rounds out of hours do not offer consultations for other matters.

Outside of the medical clinic's operating hours, Serco staff can call the Health Advice Service (HAS), a nurse-led phone advice service based in Sydney, if required. The HAS staff triage urgent calls, decide whether hospitalisation is required (and then arrange an ambulance if needed) or, in less urgent circumstances, can decide whether IHMS onsite can follow up the next day. The HAS also has access to a doctor for prescriptions.

Access to the HAS is facilitated through Serco staff only and people detained cannot make direct contact. HAS staff may speak to the detained person on the phone; however, the HAS does not offer telehealth. Centre staff can also request external emergency medical assistance outside of the HAS whenever this is required.

The staff offering the HAS service do not necessarily have site specific knowledge of YHIDC and its reliance on a partly volunteer ambulance service and a small rural hospital in Northam, which itself has very limited facilities.

Many people the Commission spoke to advised that the out of hours service does not offer anything substantive, and that any medication prescribed takes a long time to arrive. Some reported that pain relief might be paracetamol, but there was only one dose given per request, so if pain continued, they could not access further medication. One man interviewed told the Commission that he had dislocated a finger, leaving him in severe pain, and was not offered any pain relief before he arrived at the hospital, which took 3 hours.

The Commission is concerned that the lack of access to healthcare out of hours presents a very significant risk to people detained. A general nurse-led phone line does not provide an adequate substitute and cannot be expected to respond to a major medical emergency or a mental health crisis.

These concerns have also been raised by the Coroner's Court of Western Australia.[78] The Deputy State Coroner has noted '…a phone advice service after hours is a poor replacement, given the known high prevalence of mental health issues in detention facilities, as observed in other inquest hearings'.[79]

RECOMMENDATION 14:

The Government and the Department must urgently address the lack of on-site healthcare out of hours in immigration detention and return to a 24/7 staffing model.

RECOMMENDATION 15:

The Department and IHMS must ensure that there is consistent, timely access to pain relief and other urgent/unplanned medication needs at the centre across the whole out of hours and weekend period.

7.5 Emergency healthcare

The Commission is concerned about the inadequacy of emergency healthcare arrangements, particularly outside of clinic hours. As noted in the section above, there is no clinician on site outside of clinic hours whose role it is to see and assess urgent referrals or deal with emergencies. Neither is telehealth accessible, which is a well-established modality.

A reliance on Serco staff to provide first aid in a life-or-death situation is unlikely to be sufficient to prevent a poor outcome for a detained person and is also an occupational health and safety issue given the trauma associated with a failed resuscitation attempt by non-healthcare staff.

As has been noted earlier in this report, many people in detention spoke to the Commission about the aftermath of the fatal stabbing in 2022, with direct accounts suggesting that the ambulance took 1 to 2 hours to arrive, by which time the victim was deceased. There were reportedly no healthcare staff on site at the time.

Senior Serco staff told the Commission that it took 20 minutes for the ambulance to arrive after the stabbing, but that the period where Serco staff, with their very basic training, had to attempt to manage the emergency situation was extremely stressful and distressing for the staff involved. There does not appear to have been a significant change to the emergency healthcare arrangements following this event.

In relation to emergency capabilities, the Commission was advised that IHMS staff have Basic Life Support capabilities, and that Serco staff are provided with annual First Aid/CPR training. The Commission observed, however, that there are no alarm systems or panic buttons for detained people to summon help in a health emergency and, as noted earlier regarding the Falcon and Hawk compounds, not all accommodation is in line of sight.

The Commission was told that the ambulance service in the area is a part volunteer rural St John Ambulance service. IMHS reported that it includes a paramedic. However, both staff and people detained told the Commission that it can take some time for the ambulance to arrive after they are called. Serco staff additionally told the Commission that the ambulance crew does not enter the compound. Consequently, stretchers have been purchased for staff to convey a detained person to meet the ambulance.

The nearest hospital to the centre is the Northam Hospital, which is a small country hospital with limited capacity. The hospital has an emergency department and can offer simple investigations, such as x-rays and blood tests. IHMS staff reported that they were aware that the hospital is unable to effectively manage complex cases and that any tertiary/ subspeciality level care requires transfer to Perth. During the inspection, the Commission was advised that 5 people had already been transferred to the hospital that week, mainly for x-rays.

The Commission was told that constructive attempts to strengthen the relationship with the Northam Hospital were being made through the Director of Nursing position. The Commission was told the relationship between the centre and the hospital was generally positive. However, another account indicated that the relationship was strained.

RECOMMENDATION 16:

The Department and IHMS should ensure that people detained at the centre have consistent access to clinical staff, including both nursing and medical staff with Emergency Department level competencies and experience. At the very least, if there are periods when this is not possible on site, it should be accessible through telehealth.

RECOMMENDATION 17:

The Department and IHMS should develop retrieval options for emergencies (e.g. trauma) at the centre, in addition to the local St Johns Ambulance service. This should include when rapid access directly to a tertiary Emergency Department in Perth is required.

RECOMMENDATION 18:

There should be high level (executive level) liaison on a regular basis between IHMS central office and the WA Country Health Service (Northam Hospital), St John of God (Midland Hospital), and St Johns Ambulance to ensure that there are clear service level agreements and pathways in place.

Figure 7: IHMS medical resuscitation bay

7.6 Specialist health care services and external appointments

Allied health and specialist appointments are managed by a combination of regular onsite visits and external appointments. A visiting physiotherapist attends the centre weekly, a sonographer fortnightly, and an optometrist quarterly. The dental service is also provided by a visiting local dentist. IHMS advised the Commission that they were sourcing a visiting podiatrist. Services for people requiring specialist or intensive treatment are also delivered through arrangements with hospitals in Perth and elsewhere.

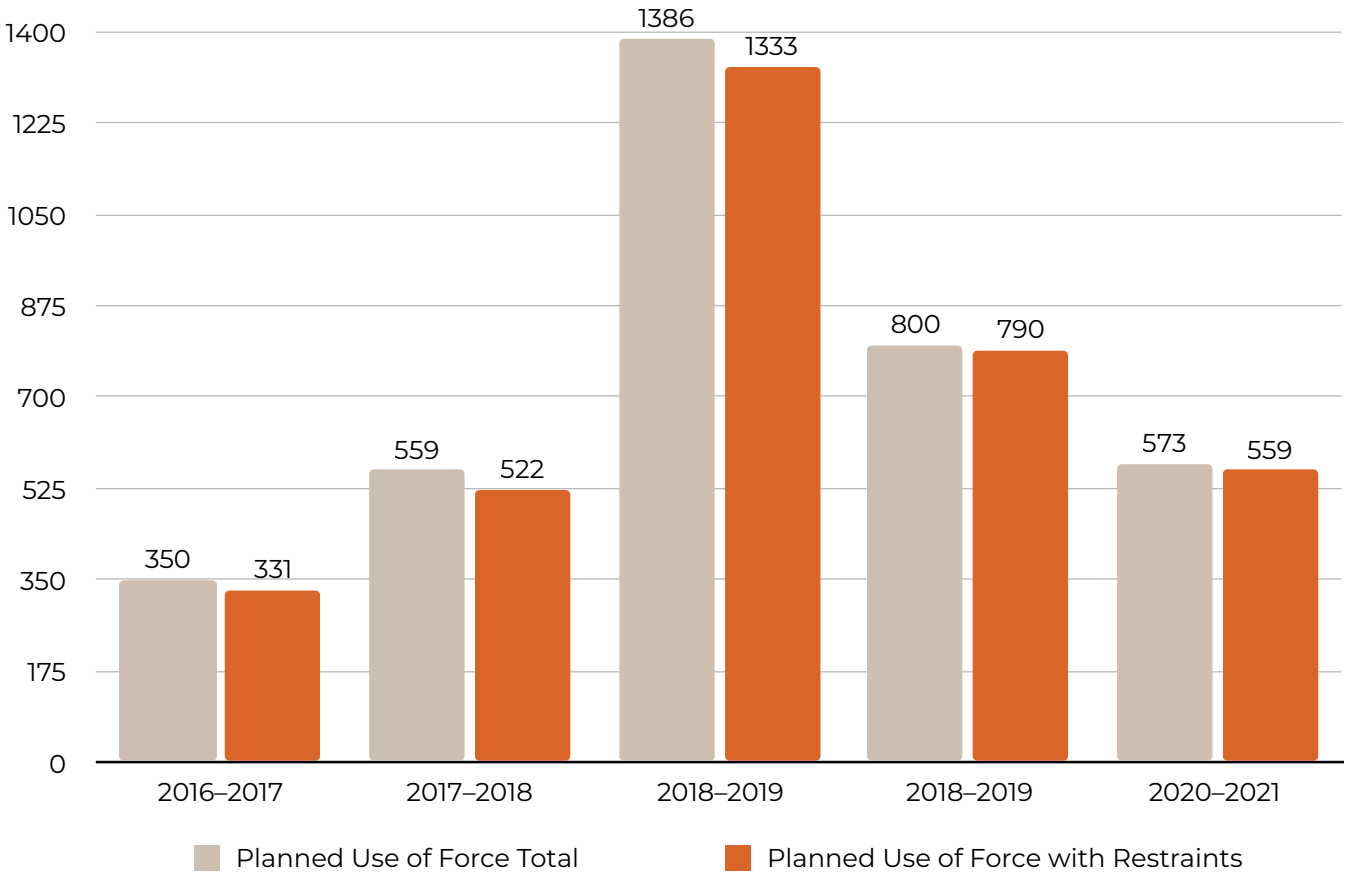
In relation to attending external medical appointments, several people described being required to wear handcuffs when attending some appointments but not for others. The inconsistency of this practice and its impacts have already been raised in several of the Commission's past inspections.[80] Serco told the Commission that restraints are not necessarily used for every transfer or movement and that a choice was often made between mechanical restraints or enhanced escort, which involves more staff.

One of the written submissions received by the Commission noted that 'the use of handcuffs and other restraints discourages attendance at offsite medical and mental health appointments, potentially exacerbating existing health conditions and delaying diagnosis of others. It also further harms the mental health of detainees, many of whom are already suffering the adverse effects of prolonged detention'.

While the Commission recognises that there may be a legitimate need to use physical restraints in certain circumstances, it is also important to acknowledge that the use of restraints may risk exacerbating some medical conditions (particularly mental health issues) and is particularly problematic with respect to individuals who have previously been victims of torture and trauma.

Many people at YHIDC described the ordeal of being handcuffed as confronting and one person described the experience as extremely distressing due to his previous trauma experience, stating he would become very unwell during the journey as a result.

Chart 4: Planned use of force incidents involving restraints at YHIDC[81]



In the Commission's 2023 report into the *Use of Hotels as Alternative Places of Detention*, the Commission emphasised that:

> One factor that does not routinely form part of the existing risk assessment is the impact that *not* being escorted outside of the detention facility may have on the health or wellbeing of the individual detainee. For example, non-attendance at a medical appointment… may negatively impact upon an individual's physical or mental health.[82]

RECOMMENDATION 19:

The Department and Serco should ensure that all its use of force policies, guidelines, decision-making documentation and training clearly state that the use of handcuffs or other restraints when accessing external healthcare appointments should be recognised to cause harm and should be avoided as far as possible.

RECOMMENDATION 20:

The Procedural Instruction relating to the use of force should be amended to require that the impact that not being escorted outside of a detention centre may have on the health or wellbeing of the individual be considered as a mandatory factor in the risk analysis prepared when seeking approval for a planned use of force.

7.7 Medication management

Medication is dispensed twice a day, with separate pharmacies for the general population and high-risk areas. Some people detained are given blister packs of their medications for a longer period to self-administer. Two IHMS staff are present for each medication dispensing time and a record is kept of any person who fails to collect their medication. This practice was implemented after a coronial inquiry found that a detained person had suffered a fatal seizure due to not taking his epilepsy medication in 2015.[83]

The Commission observed a medication round and found a group waiting outside to come into the dispensing area, usually proceeding into the area in twos. The Commission observed privacy in the dispensing area to be minimal.

People who are detained must be observed taking the medication while in the dispensary, however there are no powers to check if the medication has been swallowed. As a result, the Commission was told that there is a high level of drug diversion occurring at YHIDC. Quetiapine and Pregabalin are amongst the commonly diverted drugs. This has contributed to the issue of drug and substance abuse (see drug infiltration section).

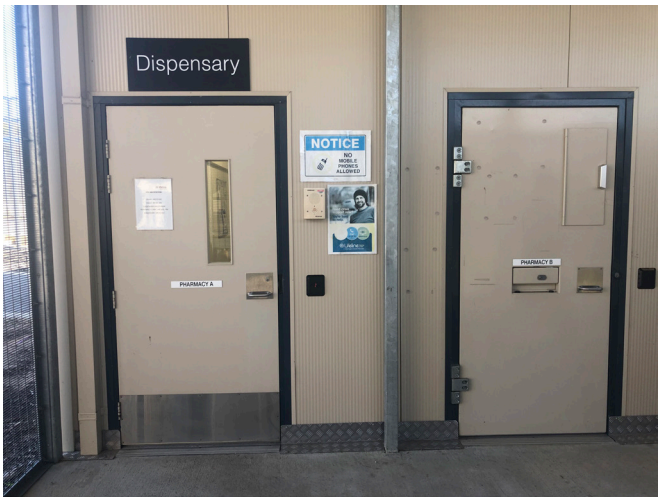


Figure 8: IHMS medical dispensary

RECOMMENDATION 21:

IHMS should review its practices at the centre, with a view of improving privacy within the dispensing area.

7.8 Physical health

As noted in the Commission's 2017 inspection, the change in cohort has led to 'a change in medical presentations',[84] including substance abuse issues and higher rates of metabolic disorders such as diabetes within the detained population. While the Commission did not have access to any data or information about common presentations, interviews with staff and people in detention provided anecdotal evidence to support this continued observation. In addition to medical conditions, the Commission was told that there

is also a high rate of injuries requiring hospital attendance.

Significantly, many of the people interviewed reported that their health had deteriorated during their time in detention, which they attributed to both the conditions of detention and inadequate access to health treatment. For example, many people stated they were waiting between two to eighteen months for dental treatment. Another person described attending the emergency department multiple times for high blood sugar yet not being able to access an appropriate diet to manage his condition.

Two of the written submissions raised concerns about unexplained delays or denial of access to medical treatment or allied health supports. These submissions indicated that, in the face of significant attempts to advocate for appropriate healthcare, many people in detention feel a loss of hope, experience a sense of withholding or inadequacy of treatment as punitive; and consequently, an exacerbation of and failure to diagnose many serious conditions, including psychosocial disabilities.

These observations broadly align with the concerns raised during the Commission's 2017 inspection:

> Some felt that their health issues had not been taken seriously by medical staff, their appointments had been rushed or their concerns had not been satisfactorily addressed … Some claimed that they had experienced delays in receiving treatment, including for serious or painful health and dental issues. A small number of people alleged that their health issues had initially been misdiagnosed, and they had consequently endured considerable pain and discomfort before receiving an accurate diagnosis and appropriate treatment.[85]

RECOMMENDATION 22:

The Department should establish an independent review of healthcare at the centre, with a view to assessing the standard of care currently provided and proposing measures to address any identified deficiencies.

7.9 Mental health

The mental health service consists of mental health nurses, with access to a psychiatrist from an external provider, one day a week by telehealth. Staff reported that services are primarily delivered through telehealth due to the relatively remote location of the centre. A visiting psychologist also attends the centre. The service can manage depot anti-psychotics (medication for psychosis given by intramuscular injection usually on a monthly to 3 monthly basis) but the Commission was told that it was unable to manage Clozapine (a medication for treatment-resistant schizophrenia).

The Association for Services to Torture and Trauma Survivors (ASeTTS) has an office in the clinic from which it provides specialist torture and trauma rehabilitation services three times a week. This is facilitated with a high level of consistency by the same counsellor. Several people interviewed said that they trusted and valued the ASeTTS counsellor. However, one person stated they declined counselling because they felt it would not help their 'visa case'.

Based on the Commission's interviews with people detained and staff, as well as written submissions, it appears that some degree of mental health concern is almost universal among the detained population. Many people also expressed concerns around delays in accessing mental health appointments, sometimes they would submit their request forms and allege that IHMS would insist they never received them.

Many of the people who spoke to the Commission from the s 501 cohort related their history of mental illness and/or substance use. These mental health issues or substance use issues then continued through their time in prison and immigration detention. One person disclosed that his offence had occurred because he developed an alcohol issue after a family break up, and 'got into a fight' while intoxicated. Another had offended due to his alcohol use at the time; and yet another said that his offence occurred in the context of a suicide attempt.

Notwithstanding the change in population profile, many of the people spoken to had originally come to Australia seeking asylum and had very significant trauma histories, so any assumption that the mental health profile of the population has significantly changed with the increased s 501 cohort may not be correct.

Most of the people spoken to relayed details of their mental health diagnosis, past and current treatments, and histories of trauma. Some of the detained men also appeared likely to have cognitive disabilities, including intellectual disability and acquired brain injury, and they may require supports to engage in the legal process.

It appears common for people detained at YHIDC to concurrently have a history of trauma, mental health concerns, and substance use, as well as possibly cognitive impairment and neurodevelopmental disability. This is then exacerbated by the extreme distress and uncertainty of the experience of immigration detention, particularly where the period of detention is also indefinite and with an uncertain outcome.

This is therefore a population with a rate of severe, complex, comorbid mental health and substance use issues that is very high, and significantly higher than the general population.

This is also a population that lacks access to the usual family, social, community and other informal supports that people rely on to alleviate mental distress. Many of the people spoken to told the Commission about their separation from families who were unable to visit. Some told of family break downs, separation, and loss of contact with their children, some of whom were now in state or extended family care far away from their fathers.

The structural and operational processes of the centre also do not necessarily support mental wellbeing. For example, people interviewed reported the following as affecting their day-to-day level of distress:

- lack of meaningful day to day activity, feeling purposeless
- difficulties accessing resources to manage their legal processes, increasing their fear and anxiety about its resolution
- problems sleeping due to lack of sufficient daytime activity, room sharing, unstable bunk beds, mouldy or too short mattresses, and 4am headcount checks
- lack of privacy in rooms
- lacking agency and having to rely on decisions from Serco staff, which may be experienced as arbitrary and inconsistent
- threat of sudden movement to another centre
- use of handcuffs for transport to appointments
- some reports claiming bullying, provocation, or aggressive behaviour from staff

- fear of other detained people and adoption of safety behaviours to try and minimise risk of harm from others.

From a service planning point of view, it should therefore be assumed that the vast majority (if not all) people detained require primary care level mental health support, and a high number would be accessing secondary mental health services if they were living in the community.

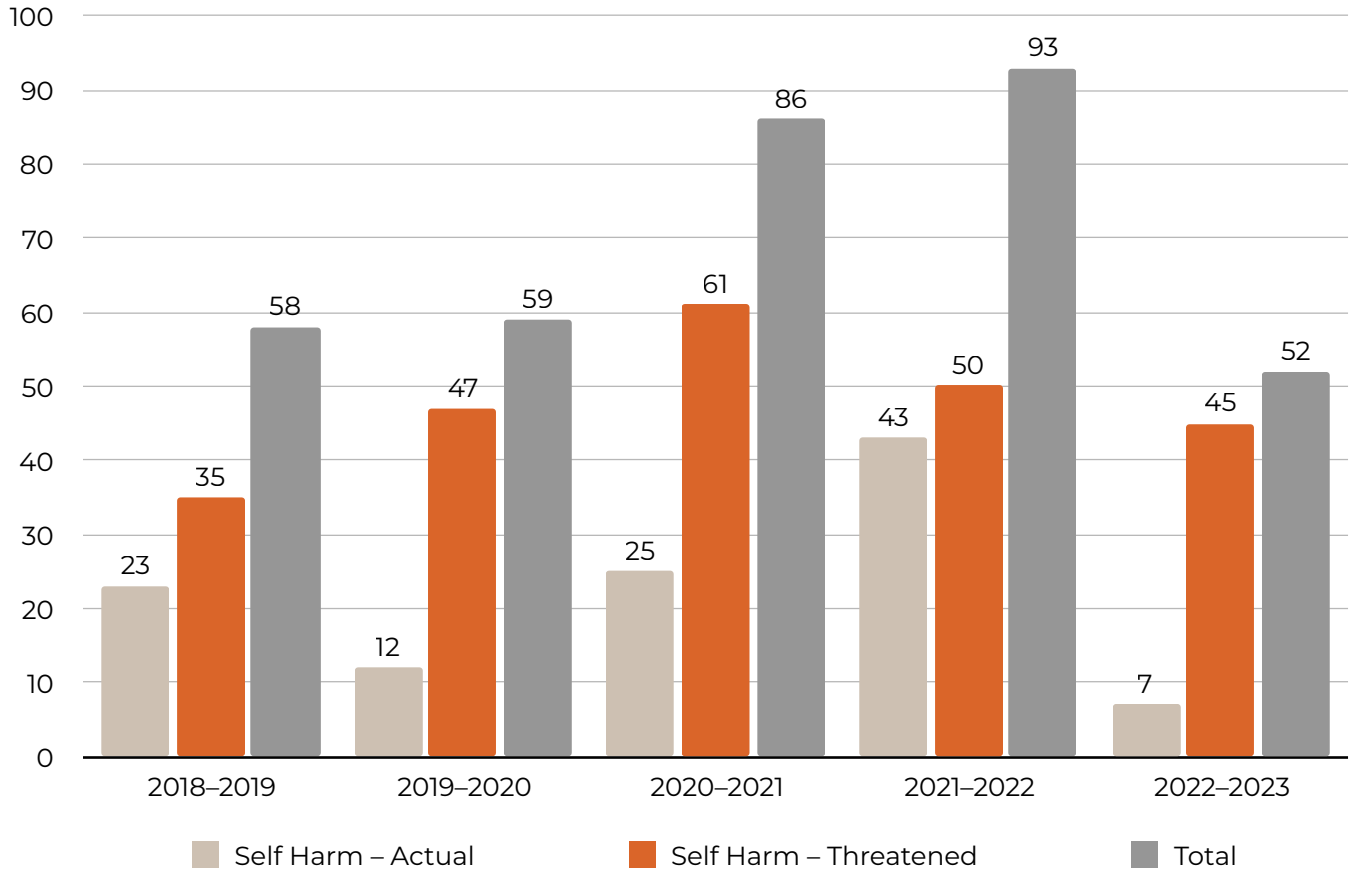
This observation is also supported by evidence provided by the Department through Senate Estimates, which provides that between 1 January 2018 and 31 August 2023 there were 7,322 people in immigration detention who had engaged in mental health counselling and 597 who had received specific torture and trauma counselling.[86] Previous evidence provided through Senate Estimates, however, states that between 1 January 2018 and 31 December 2022 there were 2,283 people engaged in mental health counselling and 692 who had received torture and trauma counselling.[87] The reason for this discrepancy is unclear.

People are often very unwell and distressed before they are taken to the emergency department for their mental health concerns. There is no ability to provide involuntary or compulsory treatment at the centre. For urgent mental health assessments, the Northam Hospital only has a part time mental health nurse in their emergency department, and access to mental health telehealth the remainder of the time.

The nearest inpatient mental health unit is at St John of God (SJOG) Midland Hospital, which is over an hour away. If an inpatient admission is required, there may be a further delay in the emergency department at SJOG Midland Hospital before admission to a ward. The Commission was told that, once admitted at SJOG Midland Hospital, Serco staff 'hand over' to the site's security guards, but still must remain while the person is in hospital. The relationship with the SJOG mental health team was described as challenging although with some recent improvement.

Figure 9: HCA external entrance

Chart 5: Incidents of self harm at YHIDC[88]



With the level of symptomatology and lack of community supports, self-harm, suicidal behaviour, mental ill-health related behavioural disturbance and aggression are predictably common at the centre. Operational systems therefore need to be designed to minimise risks of harm to self and others, and health services need to be designed to adequately respond to identified needs.

RECOMMENDATION 23:

The Department and IHMS should review and ensure that planning for mental health service provision recognises the very high level of morbidity in the current detention population, and the need for an assertive case management and crisis response-based model, rather than a clinic-based model alone.

RECOMMENDATION 24:

Given the very high mental health morbidity, the Government and Department must ensure out-of-hours mental health clinicians are available to respond to mental health crises either in person or by telehealth if it is not practicable to have them on site.

RECOMMENDATION 25:

The Government should establish and resource an independent body to monitor the provision of mental health services in immigration detention.

7.10 COVID-19 response

The Communicable Diseases Network Australia (CDNA) recognises that:

> Correctional and detention facilities are challenging environments and carry additional risk for COVID-19 seeding and transmission and outbreak management, compared with the wider community. This is due to the close living environment, the challenges of security requirements, the physical and mental-health vulnerabilities of detainees, and inflexible infrastructure.[89]

Figure 10: HCA smoke room/outdoor area

During the inspection, the Commission observed that the risk of COVID-19 had been managed relatively successfully at YHIDC, without any serious medical morbidity.

The Commission was told that the centre was prepared to activate an outbreak management team if cases reached a certain number and that a positive relationship had been developed with the state Department of Health which was overseeing the state-wide pandemic response.

The centre had adopted risk mitigation policies including the requirement for staff and visitors to wear masks within the compounds or visiting area. Both staff and visitors were also required to be double vaccinated and, up until 12 May 2023, everyone was required to undertake daily rapid antigen testing before entering the centre. The centre was largely unaffected by the prolonged pause on social visits that most other centres experienced. However, wider border closures in Western Australia restricted interstate visits.

At the time of the inspection, around 60-65% of people detained at the centre had been vaccinated.

The Commission was told that people in detention were regularly offered consultations on vaccination and that all new arrivals were consulted.

New arrivals at YHIDC were still required to enter a period of operational quarantine at the time of the inspection. The Commission was told that people were required to spend five days in quarantine and must test negative three times before joining the general population.

One of the written submissions received prior to the inspection raised concerns with the use of High Care Accommodation (HCA) at YHIDC for quarantine, alleging that people are 'reluctant to report COVID-19 symptoms as they do not wish to be placed in solitary confinement'.

The CDNA guidelines support this assertion, stating that '[l]engthy and restrictive quarantine arrangements should be avoided as they have been shown to have unintended consequences, in that they discourage detainees to disclose themselves or others as close contacts'.[90]

At the time of the inspection, the Commission observed that two people were being quarantined in the High Care Accommodation (HCA) and, toward the end of the inspection, a group that had been transferred from detention facilities on the east coast was placed in the Eagle compound for operational quarantine.

Figure 11: HCA toilet with partition

HCA contains a series of single-occupancy bedrooms with hard, fixed furniture. Bathrooms have stainless steel fittings and are located within the room and contain a toilet and shower, separated by partitions. The Commission observed that the HCA had limited natural lighting and the rooms are constantly monitored via CCTV. The HCA also contained small common areas with seating and basic kitchen and laundry facilities.

The Commission was informed that people within the HCA are allowed out of their rooms every two hours for a smoke break. Non-smokers can also request time out of their room. Those within the HCA also come out of rooms for meals in the common area.

The Commission acknowledges that quarantine—when undertaken appropriately, as a proportionate response to a specific, identified threat—can be justified in preventing COVID-19 in immigration detention facilities. However, as noted in its 2021 *Management of COVID-19 risks in immigration detention* review, '[t]he Commission considers that conditions in high-care accommodation units are prison-like, harsh and highly restrictive, and unsuitable for quarantine'.[91]

RECOMMENDATION 26:

The Department should cease the use of high-care accommodation at YHIDC for quarantine purposes and use alternative, less restrictive options for quarantine as it does for group transfers.

CHAPTER 8

8 | Treatment of people in detention

8.1 General security

There are 430 cameras throughout YHIDC, and body-worn cameras are present in all compounds. Each camera is checked every 12 hours to ensure they are operational, and broken cameras are reportedly attended to within 24 hours. Serco told the Commission that they can generally get approval for additional cameras whenever a need is identified. Footage obtained is kept for a period of 28 days and, in the event of an incident, footage is uploaded to 'evidence.com'. During the inspection, the Commission witnessed the security footage for the general population and the high security areas. Cameras appear to have extensive coverage and were all in working order when inspected. There are no cameras inside bedrooms, except in the HCA. In those rooms, there is a privacy screen for the shower and toileting.

During the inspection, the Commission met with the Emergency Response Team (ERT). Whilst the centre has 25 ERT officers in total, centre coverage comprised of six officers per shift - two located in the high security areas. ERT are responsible for supervising and responding to any incidents that occur within the compounds. They are also increasingly involved in status resolution interviews or other meetings that may escalate, as a safety measure to fellow staff. This poses a considerable drain on ERT's time within the compounds and has meant that there were not enough ERT staff for centre coverage.

The Commission was advised by Serco and ABF that some interview rooms were being equipped with a safety partition to lessen the need for ERT to be present and provide greater safety to the status resolution staff. the Commission observed the installation of these partitions taking place during the inspection.

Serco also advised that there were plans to increase the number of ERT staff to eight officers per shift, with further recruitment ongoing. There was consensus among all staffing groups spoken to that the ERT presence was good for staff morale and contributed to a sense of safety.

In relation to training, the ERT team advised that they lacked breathing apparatus (BA) training, which would allow them to enter smoke-filled environments in the event of fire. As it stands, the centre is dependent on local fire and emergency services. Due to its regional location, local fire and emergency services are staffed by volunteers. The volunteer fire service does not enter a compound unless it is cleared of all people. If a compound was full of smoke, centre staff would be unable to safely enter to clear anyone who had not left the compound.

The Commission considers this to be a significant gap that needs to be urgently addressed; particularly as there has been a history of fires being lit during disturbances and the centre has been threatened by bushfire. The Commission considers the provision of BA training to the ERT team to be a necessity.

RECOMMENDATION 27:

The Department and Serco should provide breathing apparatus training to the centre's Emergency Response Team.

8.2 Relationships with staff

Most people interviewed told the Commission that, generally, they had not encountered any problems with Serco staff or other staff within the centre. One person interviewed said that staff at YHIDC were far better than at other centres. However, there were a few people who felt they had been harassed or intimidated by staff. They told the Commission that they were afraid of speaking out about it because they are allegedly threatened with having points deducted from them (points can be used to make purchases within the centre). Some people also disclosed that, if they reported incidents between themselves and staff, they felt nothing ever came of it.

When asked about staff training needs to support the detained population, Serco management advised that there had been recent changes to address an identified need for more mental health training. Despite this, one detained person interviewed explicitly stated that Serco staff needed 'more mental health awareness.' In one of the written submissions received, the Commission was additionally told that

> [clients] … repeatedly voiced concerns that Serco Officers do not understand their trauma and experiences and that this contributes to their sense of distress. A number of clients have reported that they have been required to repeatedly explain their trauma to Serco Officers, and explain why they cannot participate in certain activities that trigger a trauma response.

The Commonwealth Ombudsman has also previously observed that the centre's

> … detention service officers do not have the training or skills to provide a mental health response to detainees exhibiting mental health vulnerabilities or in crisis. The consequence of limited IHMS availability, particularly after hours, results in a security-focused response rather than the required mental health response to detainees presenting with mental health vulnerabilities.[92]

Given the significant rate of severe, complex, comorbid mental health and substance use issues (see mental health section), it is essential to provide centre staff with adequate and ongoing training in this area.

RECOMMENDATION 28:

The Department, IHMS and Serco staff working in the centre should be provided with adequate and ongoing mental health training and specific training regarding trauma, its impacts and working with traumatised people.

RECOMMENDATION 29:

The Department, IHMS and Serco should ensure a Trauma Management Plan should be developed for everyone who has experienced torture and trauma. This plan should form part of the existing Individual Management Plan that guides the collaborative work and approach of staff in the centre.

Many people interviewed said that they were unhappy with the interactions, or lack of interactions, they had with status resolution staff. Many disclosed that status resolution 'does not help and provides no updates', and another remarked that they only give 'no' answers. One person spoken to said that, on the day of interview, that he had just had his first in person interview with status resolution since being detained almost two years ago.

Figure 12: Interview rooms

In the Commission's 2017 inspection, it heard similar concerns and reported that

> some commented that the assistance provided by their case managers [as they were commonly known at that time] was very limited or not helpful in resolving their situation. Several people expressed confusion about the case management process, with some indicating that they did not know who their case manager was or how to contact them.[93]

In the 2019 inspections, those same concerns were repeated, and the Commission was told that 'about half of the population [at YHIDC] are managed by a status resolution officer locally with access to face to-face contact. However, the other half are managed remotely by phone with no access to face-to-face contact.'[94]

The role of status resolution is to assist people in resolving their immigration status. Status resolution provide different levels of service to different groups of people in detention based on assessment of the cohort type and achievable practical outcomes. Status resolution options may include applying for a substantive visa, appealing a visa cancellation, or voluntarily returning to one's country of citizenship. Status resolution officers also refer people for possible release from detention into alternative community arrangements. Status resolution staff previously provided assistance with resolving welfare concerns for people in detention, but no longer fulfil this role.

Almost everyone spoken to said that they would prefer to have more face-to-face interactions with their status resolution officer. Other centre staff from Serco, IHMS and ABF also consistently told the Commission that they were repeatedly asked visa related questions due to the lack of a visible presence of status resolution staff. They were also significantly concerned that the remote management model that is currently in place, was not conducive to developing positive relationships with people in detention.

Status resolution management told the Commission that there are 3 to 4 staff onsite every day (at the time of the 2019 inspection, there were 9 onsite every day)[95] though most staff worked remotely and across the two centres within Western Australia and Christmas Island. Status resolution management also expressed concern about staff personal safety during interviews with the high-risk cohort and wanting non-contact rooms or the presence of ERT staff.

The Commission notes that this issue was being addressed during the inspection, with the installation of partitions in two interview rooms (see general security section). Notwithstanding these concerns, some individual status resolution officers told the Commission that they wanted to conduct more face-to-face interviews. Many other centre staff also said that they interacted with people in detention daily, were subject to the same safety concerns, and could not understand the reluctance of the status resolution service staff.

In the 2019 inspection, the Commission made the following observation which, given the above observations, requires repeating:

> People in immigration detention are a particularly vulnerable cohort, and many face difficulties articulating their needs or understanding complex processes. As a result, the Commission considers that unnecessary barriers to the delivery of services should be eliminated. This includes ensuring that all people in immigration detention have the opportunity for regular, face-to-face contact, initiated by a status resolution officer. This would assist individuals understand their options, reduce some uncertainty and ensure status resolution officers are aware of a person's individual circumstances. This should occur irrespective of any legal developments in a person's case.[96]

RECOMMENDATION 30:

The Department should ensure that all people in immigration detention have the opportunity for regular, face-to-face contact with status resolution officers, including provision of adequate resourcing for this.

8.3 Use of force – spit hoods

The use of spit hoods in immigration detention was specifically considered during this inspection. The Commission has long held the view that the use of spit hoods in immigration detention and elsewhere is 'clearly a method of restraint that is degrading' and that their use is 'contrary to the right to be treated with humanity and with respect for the inherent dignity of the human person'.[97]

Spit hoods are restraint devices designed to prevent a person from spitting or biting other people. Their use has been the subject of considerable debate in the Australian community, and they have been removed in some Australian jurisdictions through operational bans or in the case of South Australia and New South Wales, legislation.[98]

In April 2023, the Australian Federal Police (AFP) announced that it would no longer use spit hoods after finding that the 'risk of using spithoods outweighed the benefits of their use, given they are ineffective in protecting against transmissible diseases'.[99]

In August 2023, the United Nations Special Rapporteur on Torture made the case for the prohibition of spit hoods in her report on the global trade in equipment that can inflict torture and other cruel, inhuman or degrading treatment or punishment.[100] The Special Rapporteur remarked spit hoods 'carry serious risk of causing anxiety, agitation, acute distress and disorientation to the detainees and can trigger other adverse reactions such as panic'.[101]

These comments from the Special Rapporteur come almost a year after Australia was cautioned by the UN Committee Against Torture, that 'the use of spit [hoods] was an archaic practice that amounted to ill-treatment'.[102] The UN Committee Against Torture then recommended that Australia 'take all necessary measures to end the use of spit hoods in all circumstances across all jurisdictions'.[103]

During the inspection, the Commission was told by Serco and ABF that the spit hood was seldomly used within YHIDC. The Commission did not receive any information about their use from people detained, nor was it raised as a concern in the written submissions received.

Evidence provided by the Department through Senate Estimates supports the claim of the low use of spit hoods. For example, there were reportedly no uses of spit hoods between 1 July 2021 and 31 December 2022,[104] and fewer than five incidents between 1 July 2022 and 31 March 2023.[105] The Commonwealth Ombudsman however has reported that between 1 July 2021 to 30 June 2022 there 'were 5 reported incidents of spit hood use within the immigration detention network'.[106] The reason for this discrepancy is unclear to the Commission.

The spit hood approved for use within the immigration detention network at the time of the inspection was the 'The TranZport Hood' manufactured by The Safariland Group.[107] This device was the same one used by the AFP prior to their operational ban.[108]

A few months after the inspection, the Commission became aware that, following an internal review finalised in May 2023, the Department directed the use of spit hoods within the immigration detention network be ceased from 1 July 2023.[109]

The Commission welcomes this operational ban and commends the Department on this decision. However, in relation to a similar operational ban, the Northern Territory Ombudsman made the following observation in its most recent spit hood investigation:

> An administrative policy change sends a strong message to members about the direction the organisation currently wishes to take. However, the disadvantage with this approach is that subsequent social pressures or changes in key leadership roles have the potential to result in rapid reversal.[110]

RECOMMENDATION 31:

The Government should introduce legislation to ban the use of spit hoods in immigration detention.

Figure 13: Kingfisher compound gym

Figure 14: Kingfisher compound

Figure 15: Soccer field

CHAPTER 9

9 | Conditions of detention

9.1 Accommodation and shared spaces

Concerns regarding the accommodation and shared areas in the Hawk and Falcon compounds are set out in the infrastructure concerns section of this report. The Commission observed that the bedrooms in these compounds were shared by up to two people and contained a bunk bed, a small fridge, a television, and storage for personal belongings. Bedrooms were equipped with ensuite bathrooms. These accommodation units were small and cramped.

The Hawk and Falcon compounds had shared laundry facilities, an indoor common area which contained a kitchenette, seating and a television, and outdoor common areas which included small gardens, outside kitchenette, and landline telephones.

Serco staff within these compounds carry a master key that grants access to every bedroom. This means that, whenever an individual wants to access their room, staff are required to open it. The Commission observed almost constant approaches to staff requesting them to open doors. As stated earlier in the report, people in detention consistently reported that locks are easily compromised, and they are wary of leaving valuable goods in their rooms.

The high security compounds, Swan, Eagle, Kingfisher, and Cassowary; each contain a kitchen/living room area, tables and chairs that are bolted to the ground and televisions encased in a plastic box. The bedrooms within these compounds have bunk beds with attached shower and toilet facilities and a wall mounted television. Each high security compound has a laundry room and a gym room with a number of weight machines and free weights.

Figure 16: Hawk compound accommodation

Figure 17: Hawk compound accomodation ensuite

During the inspection, the Commission was notified by people in detention and by staff, and also witnessed, that the centre was experiencing a mice plague. Importantly, the Commission was informed that this was because of the centre's rural location within Western Australia's Wheatbelt and that this is an issue in the general region, and not just centre-specific.

There was evidence of mice within the general population shared common area, and several people complained about the problem during interviews. In meetings with Serco and ABF, staff were acutely aware of the problem and continued to engage in mice baiting fortnightly and providing plastic containers to people in detention for in room food storage.

Figure 18: Swan compound shared kitchen

9.2 Food provision

Continental breakfast supplies, such as bread, cereals, spreads, and milk are available in shared kitchen areas of each compound. Cooked lunches and dinner are prepared and available daily in a canteen within the main complex.

Some of the people interviewed provided negative feedback regarding food, indicating that it was of a low quality and sometimes lacked dietary requirements. One person, however, said that the food was much better than that in the prison system. Serco said that food complaints had decreased significantly since the food policy change which allowed people, at the time of the inspection, to order consumables from outside of the centre.

Figure 19: Falcon compound shared mess

9.3 Facilitating visits

Visits at YHIDC take place in a dedicated visiting area that is shared by people from all compounds. Private interview rooms are also available to allow people to access legal advice and assistance. A small room next to the visiting area has been set up for children and the Commission observed that it was sparsely furnished with limited toys.

Figure 20: Visitor rooms

Each person in detention is allowed two visitors per session, with a maximum of four visits occurring concurrently per session. Serco and ABF informed the Commission that there are rarely more than three people receiving visits per session on weekends and fewer on weekdays.

Several people interviewed reported that they received visits from friends and community groups and provided positive feedback on these visits. More, however, indicated that they had not received visits while at YHIDC, with some noting that the relative remoteness of the facility (as compared to facilities in metropolitan areas) made it more difficult for people to receive visits.

A significant number of people reported that their family members (including partners and children) and friends live interstate. Some raised concerns about their placement at the centre, questioning the reason they had not instead been detained in facilities in their home cities where they could maintain contact with their relatives and friends.

ABF and Serco advised that, while efforts were made to keep people in close proximity to their relatives and friends, capacity issues in the eastern state centres frequently resulted in the need to transfer people to YHIDC.

Figure 21: Non contact visitor rooms

RECOMMENDATION 32:

The Department should accommodate people in immigration detention as close as possible to family members and friends living in the Australian community.

9.4 Access to computers

Desktop computers were in a dedicated room in the main complex and within each of the high security compounds. Several of the people interviewed in Hawk and Falcon expressed frustration over the lack of computer access. The Commission inspected the computer room that was available for general population and observed that there were several computers out of service and all still operating on a Windows 7 system.

The lack of computer access has significant impacts on a person's ability to receive or send important documents regarding their visa applications or court cases.

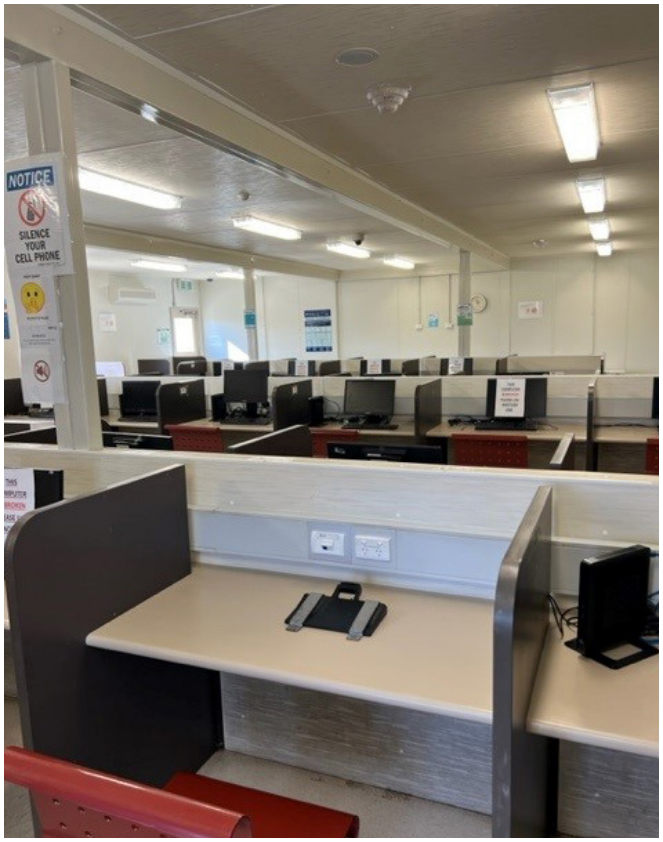


Figure 22: computer room

RECOMMENDATION 33:

The Department and Serco should explore options for providing additional computer terminals in the YHIDC accommodation compounds and common areas, ensure their regular maintenance and update their operating system.

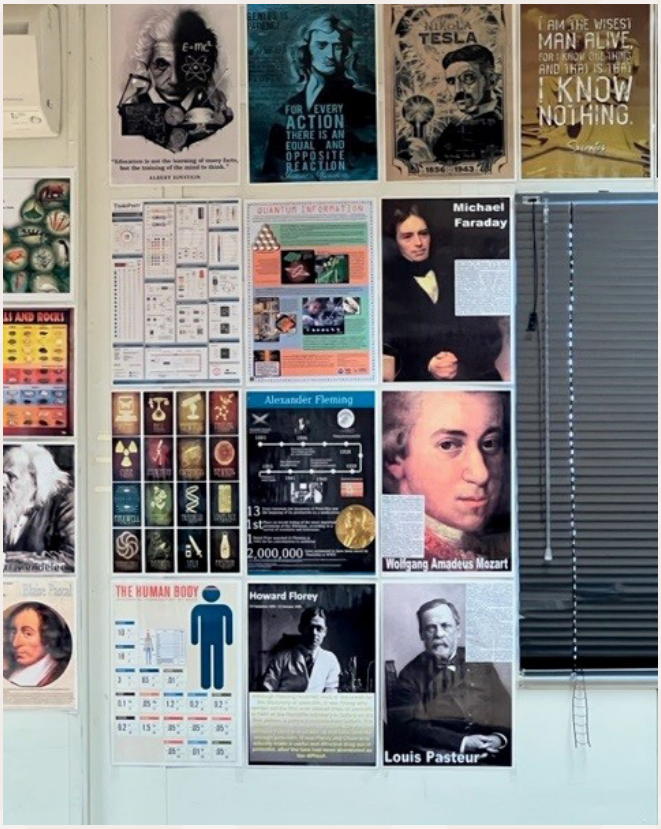


Figure 23: poster display in one of the activity rooms

Figure 24: Swan compound accommodation

Figure 25: Falcon compound accommodation

Figure 26: Falcon compound shared laundry

Figure 27: Swan compound

CHAPTER 10

10 | Recommendations

Key Issues and Concerns

Recommendation 1: The Government should replace the current system of mandatory immigration detention with a case-by-case assessment process that takes individual circumstances into consideration. Closed detention should only be used as a last resort in circumstances where all of the following elements are present:

a) detention is necessary and proportionate to an immigration purpose (for example, a brief period of immigration detention may be necessary to conduct health, security and identity checks before a visa is granted)

b) the person has been individually assessed as posing a risk of absconding or an unacceptable risk to the Australian community, and that risk cannot be managed in a less restrictive way

c) the necessity for continued detention is subject to periodic re-evaluation and judicial review, and

d) the duration of detention is subject to a maximum time limit.

Recommendation 2: The Government should decommission the Hawk and Falcon compounds and replace them with multiple smaller compounds. These compounds should be similar in design to the existing high-security compounds but with modifications to reflect their designation as low-security compounds.

Recommendation 3: Until such time as they are decommissioned, Serco and the Department should review the number of officers staffing the Hawk and Falcon compounds with the intention of increasing numbers to respond to the identified safety concerns.

Recommendation 4: The Government should reform the search powers available to detention centre staff to allow for targeted personal searches and room searches to be conducted where there is reasonable suspicion that drugs are being concealed.

Recommendation 5: The Department and Serco should review its operational instructions, policy guidance and centre staff training with a particular focus on reducing adverse impacts on the privacy and dignity of people subjected to searches.

Recommendation 6: The Department and Serco should implement wastewater testing to measure the prevalence of drug use within the centre.

Recommendation 7: The Department, Serco and IHMS should increase the provision of counselling, rehabilitation services and education to minimise harm and reduce demand for alcohol and other drugs within the detained population at the centre.

Recommendation 8: The Department should, in consultation with facility staff and people in detention, review its policy on access to recognised programs of study and vocational training in immigration detention; with a view to enhancing opportunities for rehabilitation and reintegration.

Health Services

Recommendation 9: The Department and IHMS should make further efforts to attract and retain locally engaged health staff at the centre. Where this is not possible, IHMS should review their contracting arrangements to ensure there is a greater level of consistency in the staffing personnel at the centre.

Recommendation 10: The Department and IHMS should ensure that every initial assessment includes a robust assessment of mental health and cognitive disability, as well as screening for neurodevelopmental disability to identify support needs.

Recommendation 11: Where a screening assessment identifies a significant mental impairment, cognitive disability or neurodevelopmental disability, this should prompt an assessment by the Department and IHMS of the decision-making supports that may be required by that person.

Recommendation 12: The Government should support and provide resourcing to the Department to liaise with state and territory corrective services, youth justice departments and justice health agencies in the development of national practice guidelines for screening in custody, as recommended by the Disability Royal Commission.

Recommendation 13: The Department and IHMS should review the efficiency of the current health services referral and triage procedures within immigration detention. This review should include examining the accessibility of the procedures and whether the mental health and torture and trauma referral system aligns with community mental health service standards and best practice.

Recommendation 14: The Government and the Department must urgently address the lack of on-site healthcare out-of-hours in immigration detention and return to a 24/7 staffing model.

Recommendation 15: The Department and IHMS must ensure that there is consistent, timely access to pain relief and other urgent/ unplanned medication needs at the centre across the whole out of hours and weekend period.

Recommendation 16: The Department and IHMS should ensure that people detained at the centre have consistent access to clinical staff, including both nursing and medical staff with Emergency Department level competencies and experience. At the very least, if there are periods when this is not possible on site, it should be accessible through telehealth.

Recommendation 17: The Department and IHMS should develop retrieval options for emergencies (e.g. trauma) at the centre, in addition to the local St Johns Ambulance service. This should include when rapid access directly to a tertiary Emergency Department in Perth is required.

Recommendation 18: There should be high level (executive level) liaison on a regular basis between IHMS central office and the WA Country Health Service (Northam Hospital), St John of God (Midland Hospital), and St Johns Ambulance to ensure

that there are clear service level agreements and pathways in place.

Recommendation 19: The Department and Serco should ensure that all its use of force policies, guidelines, decision making documentation and training clearly state that the use of handcuffs or other restraints when accessing external healthcare appointments should be recognised to cause harm and should be avoided as far as possible.

Recommendation 20: The Procedural Instruction relating to the use of force should be amended to require that the impact that not being escorted outside of a detention centre may have on the health or wellbeing of the individual be considered as a mandatory factor in the risk analysis prepared when seeking approval for a planned use of force.

Recommendation 21: IHMS should review its practices at the centre, with a view of improving privacy within the dispensing area.

Recommendation 22: The Department should establish an independent review of healthcare at the centre, with a view to assessing the standard of care currently provided and proposing measures to address any identified deficiencies.

Recommendation 23: The Department and IHMS should review and ensure that planning for mental health service provision recognises the very high level of morbidity in the current detention population, and the need for an assertive case management and crisis response-based model, rather than a clinic-based model alone.

Recommendation 24: Given the very high mental health morbidity, the Government and Department must ensure out of hours mental health clinicians are available to respond to mental health crises either in person or by telehealth if it is not practicable to have them on site.

Recommendation 25: The Government should establish and resource an independent body to monitor the provision of mental health services in immigration detention.

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Treatment of people in detention

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Recommendation 30: The Department should ensure that all people in immigration detention have the opportunity for regular, face-to-face contact with status resolution officers, including provision of adequate resourcing for this.

Recommendation 31: The Government should introduce legislation to ban the use of spit hoods in immigration detention.

Conditions of detention

Recommendation 32: The Department should accommodate people in immigration detention as close as possible to family members and friends living in the Australian community.

Recommendation 33: The Department and Serco should explore options for providing additional computer terminals in the YHIDC accommodation compounds and common areas, ensure their regular maintenance and update their operating system.

Endnotes

1 Human Rights and Equal Opportunity Commission, Those Who've Come across the Seas: Detention of Unauthorised Arrivals (1998) <https://humanrights.gov.au/sites/default/files/document/publication/h5_2_2.pdf>; Human Rights and Equal Opportunity Commission, A Last Resort? National Inquiry into Children in Immigration Detention (2004) <https://humanrights.gov.au/sites/default/files/document/publication/alr_complete.pdf>; Australian Human Rights Commission, The Forgotten Children: National Inquiry into Children in Immigration Detention (2014) <https://humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf>.

2 See, for example, Australian Human Rights Commission, Management of COVID-19 risks in immigration detention (2021) <https://humanrights.gov.au/sites/default/files/document/publication/ahrc_covid-19_immigration_detention_2021.pdf>.

3 Reports from previous inspections of immigration detention facilities can be found on the Commission's website at <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications>.

4 See, for example, Australian Human Rights Commission, Asylum Seekers, Refugees and Human Rights: Snapshot Report (2013) <https://humanrights.gov.au/sites/default/files/document/publication/snapshot_report_2013.pdf>; Australian Human Rights Commission, Asylum Seekers, Refugees and Human Rights: Snapshot Report 2nd ed, 2017) <https://humanrights.gov.au/sites/default/files/document/publication/AHRC_Snapshot%20report_2nd%20edition_2017_WEB.pdf>.

5 *Migration Act 1958* (Cth), ss 189.

6 *Migration Act 1958* (Cth), s 196; *AJL20 v Commonwealth* (2021) 273 CLR 43 at [49] (Kiefel CJ, Gageler, Keane and Steward JJ).

7 *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37.

8 *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37. [60–61].

9 Australian Human Rights Commission, Submission to the Committee Against Torture (October 2022), 45 <https://humanrights.gov.au/sites/default/files/submission_to_the_committee_against_torture_2022_0.pdf>; Australian Human Rights Commission, Risk Management in Immigration Detention (2019), 68 <https://humanrights.gov.au/sites/default/files/document/publication/ahrc_risk_management_immigration_detention_2019.pdf>.

10 The Department website lists these as the Adelaide Immigration Detention Centre, Brisbane Immigration Detention Centre, Melbourne Detention Centre, North West Point (Christmas Island) Immigration Detention Centre, Perth Immigration Detention Centre, Villawood Immigration Detention Centre and Yongah Hill Immigration Detention Centre <https://www.abf.gov.au/about-us/what-we-do/border-protection/immigration-detention/detention-facilities>.

11 *Migration Act 1958* (Cth), s 197AB.

12 *Migration Act 1958* (Cth), Part 2, Division 8, Subdivision B.

13 See, for example, Australian Human Rights Commission, Submission to the Committee Against Torture (October 2022), 12 [49] <https://humanrights.gov.au/sites/default/files/submission_to_the_committee_against_torture_2022_0.pdf>.

14 Department of Immigration and Citizenship, Immigration Detention Statistics Summary (31 July 2013) 3–4. <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-july2013.pdf>; Department of Immigration and Border Protection, Immigration Detention and Community Statistics Summary (28 February 2015), 3, 5 <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-feb2015.pdf>.

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