



**Australian Government**  
**Department of Immigration and Citizenship**

**Response to the Australian Human Rights Commission Statement on  
Immigration Detention at Christmas Island**

**Introduction**

The Department of Immigration and Citizenship (DIAC) welcomes the opportunity to respond to the Australian Human Rights Commission (AHRC) *Public Statement on Immigration Detention on Christmas Island*.

DIAC appreciates the AHRC's recognition of the significant efforts of staff and service providers supporting the management of clients at Christmas Island Immigration Detention Centre (IDC).

The AHRC has outlined a number of key issues related to Immigration Detention Christmas Island IDC. DIAC comments in response to these recommendations are outlined below.

In addition to the responses to Recommendations detailed in the attachment, DIAC refers the Commission to its previous comprehensive responses to reports on *Community arrangements for asylum seekers, refugees and stateless persons* (July 2012), *Immigration Detention at Curtin* (Sept 2011) and *Immigration Detention on Christmas Island* (2010) in relation to Recommendations 1, 2, 4, 5 and 6.

**Recommendation 1: The Australian Government should end the current system of mandatory and indefinite immigration detention. The need to detain should be assessed on a case-by-case basis taking into consideration individual circumstances. That assessment should be conducted when a person is taken into immigration detention or as soon as possible thereafter. A person should only be held in an immigration detention facility if they are individually assessed as posing an unacceptable risk to the Australian community and that risk cannot be met in a less restrictive way. Otherwise, they should be permitted to reside in the community while their immigration status is resolved.**

**Recommendation 2: The Australian Government should comply with its international human rights obligations by providing for a decision to detain a person, or a decision to continue a person's detention, to be subject to prompt review by a court. To comply with article 9(4) of the ICCPR, the court must have the power to order a person's release if their detention is not lawful. The lawfulness of their detention is not limited to domestic legality – it includes whether the detention is compatible with the requirements of article 9(1) of the ICCPR, which affirms the right to liberty and prohibits arbitrary detention.**

**Recommendation 3: The Minister for Immigration and Citizenship and DIAC should make the greatest possible use of community-based alternatives to holding people in immigration detention facilities, including for people who have arrived in Australia on or after 13 August 2012 and who are liable to transfer to a third country for processing of their protection claims.**

People who arrived as offshore entry persons on or after 13 August 2012 are subject to the 'no advantage' principle irrespective of whether they are taken to a regional processing country or a processed in Australia. People who are processed in Australia and are found to be owed protection will not be issued with a permanent Protection visa, until such time that they would have been resettled in Australia after being processed in our region.

Transfers to regional processing countries will continue, however in the coming weeks and months my department will begin transferring some people who arrived on or after August 13 into community detention or temporary bridging visas. People from this cohort will have no work rights and will receive only basic accommodation assistance, and limited financial support.

**Recommendation 4: The Australian Government should stop using Christmas Island as a place in which to hold people in immigration detention other than for the shortest possible periods of time. If people must be held in immigration detention facilities, they should be located in metropolitan areas.**

**Recommendation 5: The Australian Government should implement the outstanding recommendations of the report of the National Inquiry into Children in Immigration Detention, *A last resort*. These include that Australia's immigration detention laws should be amended, as a matter of urgency, to comply with the *Convention on the Rights of the Child*. In particular, the new laws should incorporate the following minimum features:**

- **There should be a presumption against the detention of children for immigration purposes.**
- **A court or independent tribunal should assess whether there is a need to detain children for immigration purposes within 72 hours of any initial detention (for example, for the purposes of health, identity or security checks).**
- **There should be prompt and periodic review by a court of the legality of continuing detention for immigration purposes.**
- **All courts and independent tribunals should be guided by the following principles:**
  - **detention of children must be a measure of last resort and for the shortest appropriate period of time**
  - **the best interests of children must be a primary consideration**
  - **the preservation of family unity**
  - **special protection and assistance for unaccompanied children.**

**Recommendation 6: The Australian Government should, as a matter of priority, implement the recommendations made by the Commission in *A last resort?* that:**

- **Australia's law should be amended so that the Minister for Immigration and Citizenship is no longer the legal guardian of unaccompanied children.**
- **An independent guardian should be appointed for unaccompanied children and they should receive appropriate support.**

**Recommendation 7: Immediate measures should be taken to reduce overcrowding in immigration detention facilities on Christmas Island. These should include:**

- **ensuring that people in detention on Christmas Island are transferred to the mainland as quickly as possible**
- **ceasing the practice of accommodating people in dormitory bedrooms in Education 3 Compound, and returning the compound to its original use as space for educational and recreational activities**
- **refraining from using other areas as accommodation**
- **ceasing the practice of accommodating people in tents in the Phosphate Hill immigration detention facility.**

The Department makes significant efforts to ensure periods of immigration detention on Christmas Island are minimised where appropriate. The transfer of clients from Christmas Island is dependent upon a range of factors, including:

- Completion of initial processing and health checks;
- The person's individual circumstances and availability for transfer to a regional processing centre;
- Facilities required to support the client's welfare;
- Operational requirements, including maintaining of good order and security of the immigration detention network and available capacity at particular sites.

Due to the health requirement to separate clients as a group upon arrival at Christmas Island and to minimise any chance of the spread of infectious disease, the utilisation of the Education 3 compound for temporary client accommodation has become a necessity given the operational tempo. The department and the detention service provider continue to ensure appropriate access to programs, activities and education services and resources. Where there is no operational requirement to maintain the Education 3 dorm facilities they will be immediately returned to their original purpose.

The utilisation of marquees to accommodate clients at the Phosphate Hill Alternative Place of Detention (APOD) is a temporary accommodation arrangement, allowing initial separation and processing and usually would be utilised for a maximum of forty-eight (48) to seventy-two (72) hours. There has been infrastructure funding approved to build more permanent structures in the Bravo Compound which will negate the need to utilise marquees where capacity allows.

**Recommendation 8: DIAC should ensure that all people in detention are provided with adequate access to mental health services. Immediate steps should be taken to review the capacity of mental health services to meet the apparently increased level of demand.**

The Health Service Provider's (IHMS) staffing levels on Christmas Island are linked to the size of the detention population and the specific health services required to be delivered. These needs are continually monitored and where any service delivery issues arise, action is taken to address these issues.

**Recommendation 9: DIAC should ensure that all people in detention have adequate access to communication facilities. This should include:**

- **ensuring that all people in detention are provided with adequate access to telephones and that they can make and receive calls in privacy**
- **increasing the number of internet terminals in each of the detention facilities.**

The Department, through its DSP, provides access to canteen purchases for clients where they can purchase telephone cards and contact relatives at home. Additionally, all clients are provided with an ALIVE call upon arrival to Christmas Island to enable a call to a nominated person advising that they have arrived safely.

The Department enables calls to legal advisors and other representatives to occur in a private interview room on Christmas Island.

The Department regularly reviews infrastructure facilities across the immigration detention network and any feedback regarding service access is considered.

**Recommendation 10: DIAC should ensure that all school aged children detained on Christmas Island have adequate access to education. This should include:**

- **ensuring that all primary school age children have access to education equivalent to that provided to children in the Australian community**
- **ensuring that all secondary school age children have access to appropriate education delivered by trained teachers.**

The department is committed to ensuring that children in immigration detention facilities have access to education in line with community standards and jurisdictional requirements, either through education services provided by its detention services provider or, where agreed with the state or territory education authority, at local public schools.

Following initial health checks and immunisations, school-age children are enrolled in the Christmas Island District School, subject to availability of school resources and the period of time they are expected to be accommodated on Christmas Island. The unprecedented number of arrivals this year has increased pressure on the availability of these resources.

The department is working with the detention services provider and Christmas Island District School to investigate options of expanding access to classes particularly over the summer break period. The department will also be working with the Shire to investigate options for summer programs for all minors in our detention facilities. Whilst the aim of the exercise will be to expand access to these services, there may not be capacity for all minors and the detention services provider is expected to provide a suitable program ensuring the needs of all minors are met.

The department continues to facilitate the transfer of children off Christmas Island to other facilities at the earliest opportunity after initial processing.

**Recommendation 11: DIAC should ensure that all people in immigration detention have access to appropriate educational facilities, including ESL classes.**

The DSP provides access to educational activities which include English as a second language (ESL) classes on Christmas Island. All clients have access to ESL classes delivered by qualified ESL teachers. Clients may attend beginner, intermediate and advanced classes every weekday.

As part of the current improvements to the delivery of programs and activities, the department is working with our service providers to improve the delivery of ESL classes. This includes ensuring a good availability of classes with suitable student-teacher ratios. Additionally, ESL classes are augmented by client facilitated classes that make use of teaching materials and equipment. Such classes are popular with clients, as they are able to learn in their own language. Clients leading these classes are awarded additional IAP points in recognition of their skills and leadership qualities and to ensure they are not prevented from earning their full IAP entitlement.

**Recommendation 12: DIAC should ensure that all people in immigration detention are provided with adequate access to a range of recreational facilities and activities.**

The department and its service providers recognise the importance of providing a program of meaningful activities for people in detention.

The DSP is contracted to provide access to recreational facilities and activities which also include an educative component, for example, the ESL classes referred to in the response to recommendation 11.

The Programs and Activities schedule is developed in consultation with clients to ensure that the range of activities or programs reflects the diverse interests and needs of the clients. The department has a strong contract management team on Christmas Island who works closely with the DSP to review all activity and excursion plans against contractual requirements.

The department is actively working with service providers to revamp the programs and activities delivered in all onshore immigration detention facilities and will continue to work closely with the service providers to ensure the provision of varied and appropriate programs to clients.

**Recommendation 13: DIAC should ensure that all people in detention have access to regular external excursions from immigration detention facilities.**

Clients on Christmas Island have a number of excursion opportunities available to them which are offered as part of the more complete schedule of programs and activities, as well as the various processes required to enable their transfer to another location.

Some of the excursion activities available include: Island tours, Church services, Mosque services, swimming, football, cycling and other sports. Additionally, there are volunteer opportunities for people including a recent restoration project at the Tai Jin House and volunteering with Christmas Island National Parks to reforest mining areas and also work with endangered species. These projects enable clients to develop or maintain their skills as well as interact with people from the local community.

Despite the increased operational tempo on Christmas Island, the department and the DSP are committed to delivering sufficient activities, educational services and excursions to the clients in their care.

The department is actively working with service providers to revamp the programs and activities delivered in onshore immigration detention facilities. Part of this process will involve continuing to improve the range and the quality of excursions available to clients.