



**Australian Government**  

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**Department of Immigration and Border Protection**

**Attachment A**

**DECISION RECORD**

**Request Details**

FOI Request: FA 14/07/01175  
File Number: ADF2014/26350

**Scope of request**

*“I write seeking information under the Freedom of Information Act, specifically the KPMG report, audit 1, arising from its Review of Duty of Care to people in Immigration Detention - Incident Management.”*

**Documents in scope**

1. Internal Audit Report - Review of Duty of Care to People in Immigration Detention – Incident Response - 2 April 2014 (17pg).

**Authority to make decision**

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access documents or to amend or annotate departmental records.

**Information considered**

In reaching my decision, I have considered the following:

- The *Freedom of Information Act 1982*;
- Departmental files and/or documents (identified above); and
- The Australian Information Commissioner’s guidelines relating to access to documents held by government.

**Reasons for decision**

I have considered the files within the scope of your request and applied exemptions in part or in full to documents as detailed in the Schedule of Documents. You should read the schedule in conjunction with the exemptions below.

**22 Access to edited copies with exempt or irrelevant matter deleted**

*Scope*

*(1) This section applies if:*

*(a) an agency or Minister decides:*

- (i) to refuse to give access to an exempt document; or*
- (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and*

*(b) it is possible for the agency or Minister to prepare a copy (an **edited copy**) of the document, modified by deletions, ensuring that:*

*(i) access to the edited copy would be required to be given under section 11A (access to documents on request); and*

*(ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and*

*(c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:*

- (i) the nature and extent of the modification; and*
- (ii) the resources available to modify the document; and*

**people** our business

*(d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.*

*Access to edited copy*

*(2) The agency or Minister must:*

- (a) prepare the edited copy as mentioned in paragraph (1)(b); and*
- (b) give the applicant access to the edited copy.*

*Notice to applicant*

*(3) The agency or Minister must give the applicant notice in writing:*

- (a) that the edited copy has been prepared; and*
- (b) of the grounds for the deletions; and*
- (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.*

*(4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.*

### **Deletion of exempt or irrelevant material under s.22 of the FOI Act**

Section 22(2) of the FOI Act provides that, where an agency reaches the view that a document contains exempt information or material that is irrelevant to the request **and** it is possible for the agency to prepare an edited copy of the document with the irrelevant or exempt material deleted, then the agency must prepare such a copy.

This edited copy must be provided to the applicant. Further, the decision maker must advise the applicant in writing that the edited copy of the document has been prepared and of the reason(s) for each of the deletions in the document (s.22(3) of the FOI Act).

Exempt material is deleted pursuant to s.22(1)(a)(i) and irrelevant material is deleted pursuant to s.22(1)(a)(ii) of the FOI Act. The irrelevant material within the document relates to information not included in the scope and information outside of the specific date range within the scope of the request. Staff names have been redacted as being irrelevant to the scope.

### **45 Documents containing material obtained in confidence**

- (1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.*
- (2) Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:
  - (a) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or*
  - (b) an agency, the Commonwealth or Norfolk Island.**

For documents to be exempted either in full or in part under section 45 I must be satisfied that;

- the information is specific in nature and inherently confidential;
- the information was communicated and received on the basis of a mutual understanding of confidence;
- any disclosure of the information would amount to an unauthorised use of that information; and
- actual or threatened harm would flow from the misuse of the information.

In my opinion the documents in the schedule listed as exempt under this section contain information of a specific nature that is inherently confidential in that it is not widely known and was conveyed to the department by a third party on a basis of a mutual understanding that the information was confidential and would not be disclosed to any other party.

I therefore consider that disclosure of this information pursuant to your request under the FOI Act would be unauthorised and sufficient for the party who provided the information to found an action against this department for breach of confidence.

**47 Documents disclosing trade secrets or commercially valuable information**

- (1) *A document is an exempt document if its disclosure under this Act would disclose:*
  - (a) *trade secrets; or*
  - (b) *any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.*
- (2) *Subsection (1) does not have effect in relation to a request by a person for access to a document:*
  - (a) *by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or*
  - (b) *by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or*
  - (c) *by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.*
- (3) *A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.*

**Factors favouring disclosure**

I have considered the factors set out in s.11B(3) of the Act which were discussed above. In weighing up the public interest test, s.11B(3) of the FOI Act states that a decision maker **must** consider whether disclosure of the information would:

- (a) *promote the objects of the Act; or*
- (b) *inform debate on a matter of public importance; or*
- (c) *promote effective oversight of public expenditure; or*
- (d) *allow a person to access his or her personal information.*

The objects of the Act, set out in s.3(1) are to give the Australian community access to information held by the Government of the Commonwealth by providing, amongst other things, for a right of access to documents. The intention of Parliament is to promote Australia's representative democracy by increasing public participation in Government processes, with a view to promoting better-informed decision-making and increasing scrutiny, discussion, comment and review of the Government's activities

Factors weighing against release

The FOI Act does not contain any factors 'against' disclosure. However, the FOI Act states that, if the Australian Information Commissioner has issued Guidelines that set out factors weighing against disclosure, then the decision maker must also consider those factors when weighing the public interest (s.11B(5) FOI Act).

The AIC has since issued Guidelines that contain a non-exhaustive list of factors that a decision maker **must** consider when weighing whether it is contrary to the public interest to release 'conditionally exempt' information (paragraph 6.29 of the Guidelines).

The elements that weigh against disclosure are:

*Whether disclosure of the personal information could reasonably be expected to:*

*(k) harm the interests of an individual or group of individuals*

While release would promote the objects of the Act, I do not consider that it would inform debate on a matter of public importance. In addition, the release of the information is irrelevant to the effective oversight of public expenditure and would not facilitate you accessing your own personal information.

### **Factors weighing against disclosure**

As discussed previously, the AIC has issued Guidelines that contain a list of factors weighing against disclosure, which must be considered under s.11B(5) of the Act.

I consider that these factors are relevant to the documents in question:

- could reasonably be expected to harm the interests of an individual or group of individuals

The document that is exempt in part under s.47(1)(b) contains commercially valuable information relating to KPMG methodologies and specialist industry knowledge. KPMG's analysis, details of issues are considered to be material by KPMG in reaching its conclusions and details of how KPMG reached those conclusions. Disclosure of this information could prejudice KPMG's ability to bid successfully for future engagements of this nature.

In my view the release of this information could be expected to diminish the information having a commercial value and, as such, is exempt under the provision of s.47(1)(b) of the FOI Act.

### **47C Public interest conditional exemptions—deliberative processes**

#### *General rule*

- (1) *A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:*
- (a) an agency; or*
  - (b) a Minister; or*
  - (c) the Government of the Commonwealth; or*
  - (d) the Government of Norfolk Island.*

#### *Exceptions*

- (2) *Deliberative matter does not include either of the following:*
- (a) operational information (see section 8A);*
  - (b) purely factual material.*

*Note: An agency must publish its operational information (see section 8).*

- (3) *This section does not apply to any of the following:*
- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;*
  - (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;*
  - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.*

The document that I have exempted in part under s.47C(1) contains matter that is in the nature of or relating to 'opinion, advice or recommendation' (termed 'deliberative matter') that are part of the

'deliberative processes' of the department's ongoing policy development relating to incident management and duty of care within the detention environment.

I have considered a number of factors in order to determine whether or not the release of the information would be reasonable or not in the specific circumstances of the case. Factors considered when applying the unreasonableness test include:

- whether disclosure of the information could reasonably be expected to harm the interests of an individual or group of individuals;
- whether disclosure of the information could reasonably be expected to prejudice the deliberative processes of the department;
- whether disclosure of the information could reasonably be expected to prejudice the function of the department to manage its portfolio;
- the degree to which release would contribute to a public purpose being achieved and/or shed light on the working of government.

I have taken into account the public interest in appropriately maintaining a confidential relationship between ministers and agencies so as to allow agencies and ministers the scope to explore and develop sensitive policy issues. In addition, I have also consulted with the relevant business areas within the department who have advised that a final policy position has not been finalised.

In my view, when all circumstances are considered, the release of information would be unreasonable in the circumstances as it would compromise the department policy development relating to incident management and duty of care within the immigration detention framework.

The FOI Act now provides that 'conditionally exempt' information must be released unless the decision maker reaches the view that release of the information would be 'contrary' to the public interest.

I am satisfied that the documents I have exempted under s.47C(1) contains information that would compromise the department policy development relating incident management and duty of care within the immigration detention framework and the disclosure would be contrary to the public interest. When assessing the public interest test, I have considered:

Factors in favour of disclosure:

- promote the objects of the Act;
- inform debate on a matter of public importance;
- reveal the reason for a government decision;
- enhance the scrutiny of government decision making;
- the extent to which the information is well known;

Factors against disclosure:

- whether disclosure of the information could reasonably be expected to harm the interests of an individual or group of individuals;
- whether disclosure of the information could reasonably be expected to prejudice the deliberative processes of the department;
- whether disclosure of the information could reasonably be expected to prejudice the function of the department to manage its portfolio;
- the degree to which release would contribute to a public purpose being achieved and/or shed light on the working of government

On balance, I am satisfied that the release of the deliberative material in the documents would be 'contrary to the public interest'.

Therefore, I am satisfied that the deliberative material in the documents is exempt from release under s.47C(1) of the Act

**47E Public interest conditional exemptions—certain operations of agencies**

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;*
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;*
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;*
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

*Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).*

The documents that are exempt under s47E(d) contain specific details regarding the department framework and management to incident reponse within the detention network. In my view, release of this information would have a substantive adverse effect of the proper and efficient conduct of the operations of the detention program and would be contrary to the public interest.

I have considered a number of factors in order to determine whether or not the release of the information would be reasonable or not in the specific circumstances of the case. Factors considered when applying the unreasonableness test include:

- the extent to which the information is well known;
- the availability of the information from publicly available sources;
- the degree to which release would contribute to a public purpose being achieved and/or shed light on the working of government;
- the nature of the information and whether disclosure would result in serious consequences;
- how the information was obtained; and
- the current relevance and age of the information.

In my view the release of the information regarding the evaluation of the department's duty of care and incident management processes used in relation to the operation of the detention network, would have a substantial adverse effect on the proper and effective conduct of the operations of the agency. As such it is partially exempt from the documents shown in the schedule under the provision on S47E(d) of the FOI Act.

The FOI Act now provides that 'conditionally exempt' information must be released unless the decision maker reaches the view that release of the information would be 'contrary' to the public interest.

I am satisfied that the documents I have exempted under s.47E(d) contains information that would compromise the operations of the detention network and the disclosure would be contrary to the public interest. When assessing the public interest test, I have considered:

Factors in favour of disclosure:

- promote the objects of the Act;
- inform debate on a matter of public importance;
- reveal the reason for a government decision;
- enhance the scrutiny of government decision making;
- the extent to which the information is well known;

Factors against disclosure:

- could reasonably be expected to compromise the operation of the detention network and have a substantial adverse effect on the proper and efficient conduct of the operations of an agency within the detention environment.

On balance, I am satisfied that release of the duty of care and incident management processes used in relation to the operation of the detention network would be contrary to the public interest and is therefore exempt under s47E(d) of the FOI Act. The benefit to the public resulting from disclosure is outweighed by the benefit of withholding the information.

Factors against disclosure:

- could reasonably be expected to compromise the operation of the detention network program and have a substantial adverse effect on the proper and efficient conduct of the operations of an agency within the detention environment.

On balance, I am satisfied that release of the evaluation of the department's duty of care and incident management processes used in relation to the operation of the detention network, would be contrary to the public interest and is therefore exempt in part under s47E(d) of the FOI Act. The benefit to the public resulting from disclosure is outweighed by the benefit of withholding the information.

The attached Schedule of Documents identifies documents where material has either been deleted as exempt information under the FOI Act or deleted as irrelevant to the scope of the request.



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5 December 2014



Australian Government

Department of Immigration and Border Protection

Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request: FA 14/07/01175  
File Number: ADF2014/26350

1. Internal Audit Report - Review of Duty of Care to People in Immigration Detention – Incident Response -2 April 2014

Pages	Description	Decision	Legislation
i	Table of Contents	Release in full	
ii	Milestones	Release w. exemption	s47E(d)
1-2	Executive Summary	Release w. exemption	s47C(1)
3-4	Objective, Scope and Approach	Release w. exemption	s47(1)(b)
5-7	Findings	Release w. exemption	s47C(1) s47E(d)
8-10	Post-incident review (PIR) process	Release w. exemption	s45(1)
11-13	Assurance activities	Release w. exemption	s47(1)(b)
14-16	Recording of incidents	Release w. exemption	s45(1)
17	Key stakeholders consulted during review	Release w. exemption	s22(1)(a)(ii) s47(1)(b)
18-19	Appendix A	Exempt in full	s47(1)(b)

## Attachment C – Extract of relevant legislation

### 22 Access to edited copies with exempt or irrelevant matter deleted

#### *Scope*

- (1) This section applies if:
  - (a) an agency or Minister decides:
    - (i) to refuse to give access to an exempt document; or
    - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
  - (b) it is possible for the agency or Minister to prepare a copy (an *edited copy*) of the document, modified by deletions, ensuring that:
    - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
    - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
  - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
    - (i) the nature and extent of the modification; and
    - (ii) the resources available to modify the document; and
  - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

#### *Access to edited copy*

- (2) The agency or Minister must:
  - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
  - (b) give the applicant access to the edited copy.

#### *Notice to applicant*

- (3) The agency or Minister must give the applicant notice in writing:
  - (a) that the edited copy has been prepared; and
  - (b) of the grounds for the deletions; and
  - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

### 45 Documents containing material obtained in confidence

- (1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.
- (2) Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:
  - (a) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or
  - (b) an agency, the Commonwealth or Norfolk Island.

### 47 Documents disclosing trade secrets or commercially valuable information

- (1) A document is an exempt document if its disclosure under this Act would disclose:
  - (a) trade secrets; or

- (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
- (2) Subsection (1) does not have effect in relation to a request by a person for access to a document:
  - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
  - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
  - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.

#### **47C Public interest conditional exemptions—deliberative processes**

##### *General rule*

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:
  - (a) an agency; or
  - (b) a Minister; or
  - (c) the Government of the Commonwealth; or
  - (d) the Government of Norfolk Island.

##### *Exceptions*

- (2) Deliberative matter does not include either of the following:
  - (a) operational information (see section 8A);
  - (b) purely factual material.

Note: An agency must publish its operational information (see section 8).

- (3) This section does not apply to any of the following:
  - (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
  - (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
  - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

#### **47E Public interest conditional exemptions—certain operations of agencies**

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

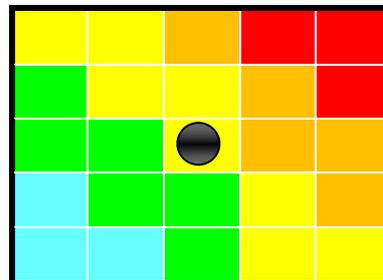


Australian Government

Department of Immigration and Border Protection

# Internal Audit Report

## Review of Duty of Care to People in Immigration Detention – Incident Response



Date: 2 April 2014

### CONTENTS

Milestones .....	ii
<b>1. EXECUTIVE SUMMARY .....</b>	<b>1</b>
1.1 Background.....	1
1.2 Summary of Findings .....	1
1.3 Recommendations .....	2
1.4 Areas for further investigation.....	2
<b>2. OBJECTIVE, SCOPE AND APPROACH .....</b>	<b>3</b>
2.1 Objective .....	3
2.2 Scope.....	3
2.3 Approach.....	3
<b>3. FINDINGS .....</b>	<b>5</b>
3.1 Thematic analysis of incidents occurring in detention .....	5
3.2 Post-incident review (PIR) process.....	8
3.3 Assurance activities.....	11
3.4 Recording of incidents.....	14
<b>4. KEY STAKEHOLDERS CONSULTED DURING THE REVIEW .....</b>	<b>17</b>
<b>APPENDIX A – IMPLEMENTATION OF THE PLANNING AND OPERATIONAL MANAGEMENT SYSTEM (POMS) .....</b>	<b>18</b>

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Department of Immigration and Border Protection  
 Duty of Care to People in Immigration Detention – Incident Response  
 Internal Audit Report



## Milestones

<b>Audit reference</b>	1
<b>Revised date report sent to DAC</b>	
<b>Work undertaken by</b>	KPMG

Milestone	Agreed completion date	Revised completion date
<b>Planning</b>	21 October 2013	21 October 2013
<b>Fieldwork</b>	2 December 2013	10 February 2014
<b>Final report with management comments to DAC secretariat</b>	7 February 2014	2 April 2014

Task	Planned date	Actual date	Variance (days)	Reason for variance
Commencement of planning stage	16 Sept 2013	16 Sept 2013		
Scoping meeting (draft audit plan based on high level scope)	17 Sept 2013	17 Sept 2013		
Draft plan to IA	9 Oct 2013	9 Oct 2013		
Draft plan to lead accountable	9 Oct 2013	9 Oct 2013		
Draft plan to DAC	Week of 14 Oct 2013			
Final DAC approval of plan (Completion of planning)	Week of 21 October 2013	Week of 21 October 2013		
Order Form approval	Week of 21 October 2013	11 Nov 2013	21	
Entry interview	Week of 21 October 2013	1 Nov 2013	11	
Commencement of fieldwork stage	Week of 21 October 2013	Week of 4 Nov 2013	14	
Completion of fieldwork	2 Dec 2013	Week of 10 Feb 2014	70	s. 47E(d)
Draft audit report to IA	11 Dec 2013	14 Mar 2014	90	
Draft audit report to lead accountable	16 Dec 2013	17 Mar 2014	88	
Solutions workshop (Exit interview)	17 January 2014	20 Mar 2014	62	
Amended draft audit report to lead accountable for management comments	24 January 2014	n/a		
Final draft report with management comments to audit manager	7 February 2014	7 April 2014	59	
Final draft report to DAC	28 Feb 2014	11 April 2014	42	

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## 1. Executive Summary

### 1.1 Background

Under the *Migration Act 1958 (Migration Act)*, unlawful non-citizens who are in Australia may be detained in immigration detention. This is in order to protect the Australian community from risks that may arise from the presence of unlawful non-citizens.

Legislative requirements of the Migration Act impose specific responsibilities on the department regarding duty of care of unlawful non-citizens detained in immigration detention facilities including, but not limited to, the health and wellbeing of detainees.

Duty of care is defined as ‘a legal obligation to exercise reasonable care to prevent a person from suffering reasonably foreseeable harm’. The Department of Immigration and Border Protection (the department / DIBP) is accountable for the duty of care to people in immigration detention, which is non-delegable. The department engages a service provider to operate immigration detention facilities throughout Australia, and as such, must seek assurances that duty of care requirements are being maintained at all times.

In addition to its requirement to provide duty of care under common law, the Department also has statutory obligations under the *Work Health and Safety Act 2011 (WHS Act)*. Under s 19(2) of the WHS Act, the department has a duty to take all reasonably practicable steps to ensure that detainees are not exposed to risks to their health and safety.

Incident response is an important element of duty of care, encapsulating those processes that provide the organised approach to addressing and managing the consequences of an event (i.e. incident). Whilst duty of care is pervasive to nearly all aspects of immigration detention, the scope of this review considered duty of care through an incident response lens.

### 1.2 Summary of Findings

Overall, we would consider the department’s framework and approach to incident response to be of ‘medium’ risk. With the exception of minor observations noted, this internal audit identified no evidence to suggest that incident response is not occurring as expected or in line with agreed processes. Incident response policies and procedures are well defined, supported by a training package, with manager supervision and review processes in place to ensure they are followed. Clear communication and reporting protocols are in place, with sample testing indicating they are largely complied with. Further, in comparison to previous relevant audit activity, it would appear that the department and the Detention Service Provider (DSP) have made improvements.

More broadly however, a holistic review and evaluation of incidents is not strong. By definition, incident response is reactive in nature. This combined with the department’s focus on individual incidents, e.g. via SitReps (situation reports) which are widely distributed on a daily basis, may have contributed to the department undertaking limited evaluative work over incidents. For example, despite a potentially rich information source being available in incident data<sup>1</sup>, only recently has any thematic or trend analysis been undertaken, with the reporting

<sup>1</sup> In the six month period considered in this audit, there were 6,251 incidents recorded (or 34 a day).

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protocols yet to be determined. Such analysis could provide insights into emerging issues or deviations from 'normal' performance at either the site or at the network level.

Similarly, despite the process being in place, post-incident reviews are largely ineffective in understanding the underlying driver / root-cause of incidents. As such, the department is not necessarily 'learning' from incidents, compromising the ability to make continuous improvement in the management of duty of care risks.

From a monitoring perspective, performance measures and assurance mechanisms over the DSP have not been aligned to risk areas – indeed, some of the findings outlined above (e.g. completion of post-incident reviews) may be contributed to by this. Accordingly, the department may not be receiving ongoing assurance that incidents are being appropriately responded to (incidents are generally discussed at the site level of a daily basis). Further, the misalignment of performance metrics, penalties and associated assurance activities to risk areas may lead to unexpected behaviours developing, noting that achievement of the desired outcomes may not necessarily be rewarded.

The recommendations raised in this internal audit, should if implemented, strengthen the framework in place over incident response and the broader management of duty of care risks.

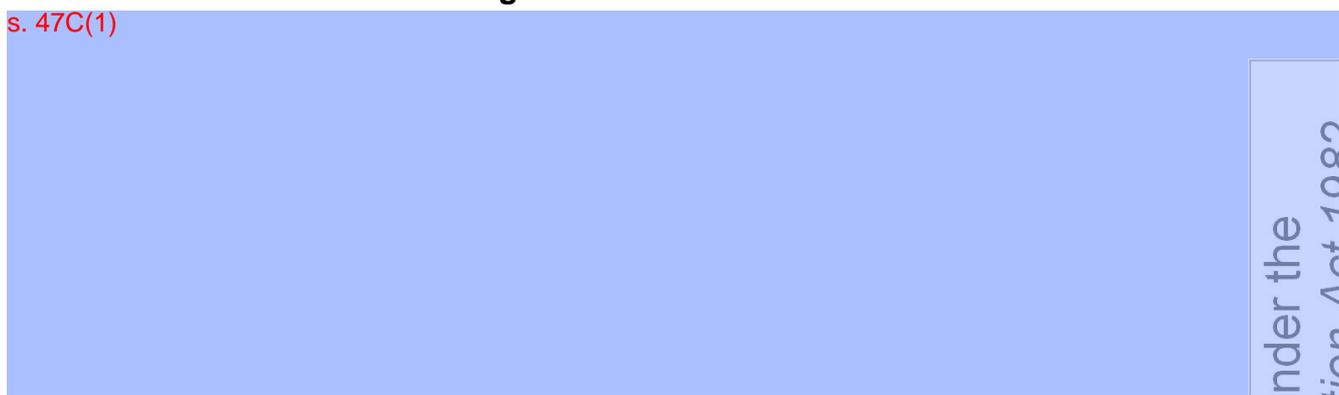
## 1.3 Recommendations

The total number of recommendations and their associated priority are detailed below.

Extreme	High	Medium	Low / Business Process Improvements (BPIs)
-	-	3	1

## 1.4 Areas for further investigation

s. 47C(1)



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## **2. Objective, scope and approach**

### **2.1 Objective**

The objective of this internal audit was to assess the processes in place regarding duty of care to detainees in the detention environment; to identify, report and analyse incidents; and to monitor resolution of root causes identified through actions plans.

### **2.2 Scope**

This internal audit examined and assessed processes in place for duty of care and incident management at three Immigration Detention Facilities<sup>2</sup> (IDFs) for the period of six months between 13 May 2013 and 12 November 2013. The internal audit included a review of:

- how the department ensures that key service providers meet their duty of care obligations to detainees under the current contract in place, and under the WHS Act;
- key risks relating to the duty of care and incident management processes;
- documentation and implementation of duty of care and incident management processes; and
- a sample of incidents to determine compliance with incident management processes, as well as the timely resolution of remedial actions arising from incidents.

The following elements were considered out-of-scope:

- immigration residential housing;
- community detention;
- unaccompanied minors; and
- DIBP staff and service provider staff.

s. 47(1)(b)

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<sup>2</sup> The three facilities selected included; Villawood Immigration Detention Centre (VIDC), Maribyrnong Immigration Detention Centre (MIDC) and the Melbourne Immigration Transit Accommodation (MITA).

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Department of Immigration and Border Protection  
Duty of Care to People in Immigration Detention – Incident Response  
Internal Audit Report



s. 47(1)(b)



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### 3. Findings

#### 3.1 Thematic analysis of incidents occurring in detention

##### Context

The department's primary concern with respect to incidents occurring in detention is to ensure that duty of care requirements are met. Various incident management guidelines and documented protocols are in place. These dictate the response, which will differ depending on the nature of the incident. These protocols are well known to Serco staff, with varying degrees of oversight from Serco and DIBP in place.

All incidents are required to be logged in the CCMDS Portal as per the incident management guidelines, which provide the Department with significant data relating to the frequency, timing and occurrence of incidents at each facility.

##### Discussion of audit findings

By its nature, incident management is largely reactive to circumstances as they occur. Whilst measures can (and are) put in place to reduce the likelihood of an incident occurring, reporting and analysis of incidents is tactical in nature and largely at the individual incident level<sup>3</sup>. DIBP and service providers (e.g. Serco, IHMS) undertake limited analysis of historical incidents to understand trends or exceptions in incident data. Such analysis could provide insights into emerging issues or deviations from 'normal' performance at either the site or network level, e.g. analysis of historical data may highlight heightened risk within a centre (among other things) and allow for further preventative and proactive measures to be put in place.

s. 47E(d)

Noting that this reporting mechanism is new and are not yet embedded, there are some important elements that have not yet been addressed:

- Understanding the purpose and usage of reports, e.g. how they should be considered and utilised by recipients (centre managers).
- Determining appropriate performance metrics to assess whether the new reporting is resulting in improved duty of care (e.g. through a reduction in incidents).
- Other elements such as frequency of reporting and distribution.

The Department is aware of some of these gaps, and is cognisant of the importance of addressing them as soon as practical.

s. 47C(1)

<sup>3</sup> Incident information is reported to a number of staff across the Department based on a classification of severity.

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Duty of Care to People in Immigration Detention – Incident Response  
Internal Audit Report



s. 47C(1)

## Risk exposure

- Current incident reporting and analysis may not be sufficient to assist the Department and service providers to manage incidents most effectively.
- In the absence of well-defined reporting structures, the value of trend / theme analysis reports may not be fully realised.

## Recommendation

### Finding 1 (Medium risk)

Historically, the department has undertaken limited trend or thematic analysis of incidents. Some recent advances have been made in this area, where some trend analysis of certain analysis at the site level is prepared and disseminated. These reports are not yet embedded and utilised broadly.

Additionally, there is opportunity to undertake more detailed analysis of incident to more broadly understand themes, emerging issues, and/or trends.

### Recommendation 1

To ensure that the recently implemented reports of thematic analysis of incidents are properly utilised and have appropriate rigour into the future, the department should address the following elements:

- Providing guidance around expected usage and value of the reports;
- Determining an appropriate metric (ideally simple to capture) in order to assess whether the new reports are providing business benefit (e.g. through a reduction in incidents);
- Determining the frequency and distribution of reporting; and
- Implementing a feedback loop to ensure reports are value-adding and tailored to the needs of users.

As a medium to long-term consideration, DIBP should also look to expand analysis reporting of incidents to better understand themes, emerging issues, and/or trends. Ideally this would capture incidents from both the DSP and health services provider.

To avoid duplication of effort, it is suggested that any analysis is done in consultation with service providers.

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**Management response**

**Agree**

*Description of Action* The process of developing IDF Risk Indicators Analysis reports was undertaken to provide facility managers with a tool to understand broader trends in three incident categories as a ‘snapshot’ over a period of months, as opposed to situational incident awareness at any given time. However, it is acknowledged that as this project matures further, it is likely that there will be additional options identified for use of the data that allow different analysis to be undertaken. Potential value-adding capability can be incorporated through the inclusion of ratio analysis; this will be investigated further, along with any further suggestions provided.

At this point, it would be inappropriate for Detention Security, Risk and Liaison Section to provide any expectations on usage of the reports whilst the project continues to mature; for the same reasons, the reports are not presently expected to either report on or assess any reduction in the number of incidents. Nonetheless, it is agreed that this may form part of data analysis as the reporting governance processes evolve, and feedback is received in relation to future iterations of the reports.

s. 47E(d)



*Area responsible for Implementation:* Detention Security, Risk and Liaison Section, Detention Operations Branch

*Implementation date:* 1 June 2014



### 3.2 Post-incident review (PIR) process

#### Context

Post incident review is a well established step in incident response frameworks, with a view of understanding the nature of the incident and taking steps to prevent it from occurring again (where possible). As per the Incident Management Guidelines, a post-incident review (PIR) is undertaken by the Detention Services Provider (DSP, currently Serco) for every incident classified as *Critical* or *Major* (as well as 10% of *Minor* incidents). The objective of the PIR process is to understand the underlying cause(s) or contributing factors that may have led to the incident, which may assist in preventing a similar incident from occurring in future.

Each PIR is required to be provided to the department within 7 days of the incident and are then discussed between Serco and the onsite departmental Regional Manager. Where appropriate, Serco should make recommendations in the PIR to reduce the risk of the incident occurring in the future. This may include changes to processes, procedures or training requirements. Recommendations, where agreed, are escalated to the Weekly Departmental Review and tracked through to completion.

#### Discussion of audit findings

##### *Value of the PIR process*

As being executed, it is not evident that the department is extracting value from the PIR process, particularly in comparison to the level of effort currently required.

From our sample testing, PIRs largely focused on review of how the incident was recorded, with limited analysis of the incident itself<sup>5</sup> or recommendations to enhance processes. In some cases, further analysis would have been of benefit to better understand the incident and to prevent it occurring in future. Further, at all sites visited, feedback from DIBP staff indicated that the current PIR process is of limited value, with extra analysis by the Department required to understand ‘root-cause’. It does not appear that this has been communicated back to Serco.

s. 45(1)

More broadly, noting the volume and nature of major incidents (2,204 in 6 months), it may be appropriate to reconsider the PIR process, whereby they are only required in certain circumstances (e.g. as requested by DIBP or for particular categories).

Whilst the finding highlights weaknesses in the PIR process, it does provide the department with some assurance that incident reports are providing an accurate record of events. The risk is also somewhat managed through daily site meetings between DIBP and providers.

<sup>5</sup> This is indeed the formal PIR process at Villawood Immigration Detention Centre. A separate post-incident analysis occurs on an ad-hoc basis or where requested (e.g. from the Minister) to undertake further analysis, which may involve consideration of root-cause. This process is not clearly defined.

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## Lessons learnt through incident review

Lessons learnt, if captured effectively via the PIR process (or otherwise), would enable DIBP to review specific arrangements not just at the site level, but across the detention network to ensure that risks are appropriately managed. Noting the largely tactical view of incidents, there is not a formal process to capturing lessons learnt and disseminating this throughout the network.

For example, incidents were observed where further analysis may have identified matters of relevance to the broader network, e.g. incidents where contraband or improvised weapons were identified did not consider how the detainee came in possession of the item and if this was due to weaknesses in security controls. This type of analysis may assist the DSP and DIBP to understand how a similar incident could be prevented in future.

An example where this occurred was noted at VIDC following an incident where a detainee mattress caught on fire. Analysis of the incident indicated that all mattresses purchased in future should be flame retardant to minimise this risk into the future.

Whilst not yet fully embedded, DIBP has advised that Serco has implemented a *lessons learned* database to capture and report on incidents.

## Risk exposure

- In the absence of a consistently applied PIR process, the Department and may not be able to effectively identify areas for improvement or remediation.
- The current PIR process does not give assurance to the department that incident response responsibilities are being discharged appropriately and in accordance with the DSP's approved policies and procedures.
- The quality of information from the PIR process may not allow DIBP to appropriately identify lessons learnt from incidents. Continuous improvement in managing duty of care risks could therefore be compromised.

## Recommendation

### Finding 2 (Medium risk)

The department is not extracting value from the PIR process as being executed. The current PIR does not analyse the underlying driver of an incident, which may enable the department and / or service provider to take appropriate remedial action or broader corrective actions into the future.

### Recommendation 2

DIBP should strengthen the PIR process to ensure it is an appropriate mechanism to assess the underlying driver / root-cause of an incident. Elements to be considered include:

- Providing clarity of the purpose of the PIR;
- Criteria for incidents that may trigger a PIR (category, rating, etc). A PIR should ideally only be conducted where further analysis is required;
- Who is the most appropriate party to conduct the PIR (e.g. service provider or DIBP);
- Ensuring there is an appropriate link from the PIR back to business practices, so that any follow-up or learnings are appropriately captured, actioned and / or disseminated. This could be at the detainee, site or network level.

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## Management response

### Agree

Description of Action	<p>1) Under the quality assurance process implemented in 2012 following the Hawke-Williams review, all IDFs were following a process of recording reviews of all incidents occurring at facility sites, from the day to day minor incidents to the major and critical incidents for which written investigative Post Incident Reviews are contractually required. Under the program of Incident Reporting Management and Response, this included following up on recommendations and implementation of mitigation actions agreed by DIBP and ensuring appropriate records were maintained. Detention Operations Branch will review compliance with these processes, clarify with the DSP and DIBP facility staff the role of the PIR, and work with facility based staff to improve linkages between agreed PIR recommendations and actions at facility and network levels.</p> <p>2) The Detention Services provider is considered the most appropriate party to conduct the PIR, at least initially. DIBP, however, can and sometimes does conduct an independent review of incidents as appropriate.</p> <p>3) A recent initiative to improve the link between PIRs and business practice is the lessons learned database of incidents maintained by the Detention Services Provider. This report consolidates and monitors all reported incidents, including recommendations, and is presented and discussed at every monthly governance meeting.</p>
Area responsible for Implementation:	<p>1) Detention Operations Branch</p> <p>2) Detention Services Management Branch</p>
Implementation date:	Program of work to begin by end April 2014, complete by 30 June 2014



### 3.3 Assurance activities

#### Context

The Department performs assurance activities to gain comfort that service providers (e.g. Serco, IHMS) are achieving the desired level of performance agreed in the contract. Where service providers are unable to satisfy the department that minimum contractual requirements have been met, abatements are available, which effectively reduce the overall fee paid.

Assurance activities include:

- Joint Facility Audit Team (JFAT); coordinated on a monthly basis at Immigration Detention Centres (IDCs) over the detention service provider.
- Joint Site Audit Team (JSAT), which are organised on a quarterly basis at other immigration facilities over the detention service provider.
- Health Services Contract Monitoring Program over the health services provider.

Generally, the process requires the provider to comment on their performance against predetermined performance metrics, which are then reviewed by the department and any variances negotiated.

#### Discussion of audit findings

With respect of incidents and specifically incident response, contract performance metrics and associated assurance activities are linked purely to timeliness of incident reporting, rather than the broader risks of incident response and associated aspects that relate to the provision of duty of care to people in immigration detention.

Recent reviews of the performance management framework have made similar observations. For example in the 2012-13 audit of *Individual Management Services Provided to People in Immigration Detention*, the ANAO, among other things, made the following observations:

*Limitations of the current framework include that:*

- *metrics do not accurately reflect areas of risk;*
- *metrics focus on the process used for the operation of the contract as opposed to the outcome required by DIAC (DIBP);*

...

*Also, there is little relationship between the risk assessment of particular breaches, in terms of impact on detainees, and the associated financial penalties.*

The subsequent recommendation, accepted by the department, was to strengthen the performance management framework provider under the contracts, and in particular the metrics used to evaluate the service provider's performance.

Whilst the recommendation has been considered complete by the department<sup>6</sup>, the associated *Joint Services Delivery Assurance Framework (JSDAF)*, which will inform assurance activities, is not yet complete. The JSDAF will aim to provide an improved performance management methodology for ensuring quality service delivery across the network. At this point, it is not clear whether this will extend to the health services contract.

<sup>6</sup> This recommendation will be followed-up in the current audit activity over implemented recommendations.

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Internal Audit observed the JFAT process, with respect of incident response, it does not align closely with key risk areas.

## Risk exposure

- Where there is a misalignment between performance metrics and desired performance, there is a risk that unexpected behaviours may develop (i.e. actions are taken to meet performance criteria rather than achieve desired outcomes). This may lead to undesirable outcomes in respect of incident response and detainee duty of care.
- The current processes provided the department with limited ongoing assurance that incidents are being appropriately responded to by the DSP.

## Recommendation

### Finding 3 (Medium risk)

Current formal assurance mechanisms in place over incidents are not appropriate to provide the department with comfort that providers are meeting their duty of care obligations. Moreover, the nature of performance metrics relating to incidents could drive unwanted and perverse behaviour from providers.

### Recommendation 3

The department should continue with the rollout of the performance management framework and development of the Joint Services Delivery Assurance Framework, ensuring that assurance activities are appropriately targeted towards areas of risk and agreed performance with service providers. Importantly, this will ensure that performance is aligned with and incentivised toward achieving the desired outcomes.

After a suitable period of time, it may be appropriate to evaluate / assess the operation of both the performance management framework and Joint Services Delivery Assurance Framework to determine whether they are appropriately targeted and are providing benefit to the department.

Over the medium to longer-term, it may also be appropriate to apply these frameworks to the health services provider.

## Management response

### Agree

Description of Action The actions required to address the recommendation include:

s. 47(1)(b)

A Review of the Detention Risk Assessment Tool (DRAT) and alignment with the Joint Facility Audit Team (JFAT) to integrate

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Department of Immigration and Border Protection  
Duty of Care to People in Immigration Detention – Incident Response  
Internal Audit Report



assessment of risk at facilities with measurement of service provider performance and further reduce the administrative burden on departmental staff. This work has commenced and is currently with the network staff for consultation and feedback.

Continue the development of the Joint Service Delivery Framework (JSDAF) and associated analytical tools, guidance notes and instruction sheets. This will commence following feedback on the DRAT process to ensure that the analytical tools are practical and appropriate for easy use in a facility environment. Development of the JSDAF philosophy is substantially complete and is being reviewed by various stakeholders. Following their feedback development of all aspects of the JSDAF will be finalised.

The JSDAF has been included in the tender documentation for both the Service Delivery and Health Services contract and will form part of the performance management framework for those contracts. The analytical tools, guidance notes and instructions sheets will be completed prior to contract execution.

Area responsible for Implementation: Detention Services Management Branch

Implementation date: Implementation of the risk based performance management methodology to be completed by December 2014.



### 3.4 Recording of incidents

#### Context

In the event that an incident occurs within an immigration detention facility, the DSP is required to verbally advise the department of major and critical incidents (within agreed timeframes), and also provide a summary of the incident in the CCMDS Portal (the Portal) as part of the overall incident response process. A category is attached to each incident from a predetermined list for reporting and escalation purposes, as dictated by the Incident Reporting Guidelines (Reporting Guidelines).

DIBP has a separate process for internal reporting (and where appropriate external reporting) of incidents. These are defined within the Duty Phone Guidelines and established SitRep (situation report) distribution lists. Being a somewhat cumbersome process, DIBP is implementing the *Planning and Operational Management System* (POMS) to workflow parts of the SitRep process. Refer to Appendix A for a high-level assessment of key project management criteria relating to the system implementation.

#### Discussion of audit findings

The following finding details issues noted in respect of incident reporting. Overall, and with the exception of the matters detailed below, the quality of incidents entered in the Portal by the DSP was found to be fairly consistent with the agreed Reporting Guidelines.

##### *Inconsistent use of categories*

From sample testing and high-level review of incident data, the following are examples where inconsistent reporting of incidents was noted:

- *Use of Observation Room > 24 hours* (major incident): Of the 162 incidents in the sample period, 153 of these were from VIDC. This was due to VIDC recording all 'airport turnarounds' as an incident. These relate primarily to Compliance clients, where the individual is held for a temporary period whilst awaiting a flight back to their country or origin.

Noting these activities are BAU in nature, it is not evident what the purpose of reporting these is, noting it requires effort by the DSP (via the incident report and PIR process) and the Department (internal reporting and escalation). MIDC has similar arrangements in place to accommodate 'airport turnarounds', however an incident is not recorded for these.

- *Media categories*: two media categories exist, *media – unauthorised presence* (major incident) and *media – approach staff / clients* (minor incident). These are used somewhat interchangeably.
- *Assault; accident / injury; abusive / aggressive behaviour categories*: whilst not widespread, these categories were not always used in a consistent manner. This is not necessarily surprising as there are some similarities between these categories and an incident does not necessarily 'neatly' fit into a single category.

s. 45(1)

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s. 45(1)

## Classification of contraband

Within the Reporting Guidelines, the detection of contraband (possessed by either a detainee or visitor) is classified as a *minor* incident. Whilst this is generally appropriate (most contraband is for small amounts currency), some could be considered to be more serious, e.g. narcotics, drug paraphernalia or large sums of currency, which may indicate something of concern, e.g. an escape attempt.

A single category having more than one classification in the Portal is not unprecedented as an assault can be either *minor* or *major* depending on the nature of the incident. Alternatively, for more serious contraband finds it could be appropriate to trigger a PIR or further analysis to understand how they were obtained (notwithstanding current issues in the PIR process).

## Risk exposure

- By ensuring consistent use of categories for incident reporting, the department be in a better position to perform trend analysis across the detention network.
- By classifying all contraband incidents as Minor, the department may not be able to distinguish instances where more serious contraband is located by Serco.

## Recommendation

### Finding 4 (Low risk)

A number of minor matters were noted in the way in which incidents are recorded.

### Recommendation 4

To improve incident reporting, the Department should address the following matters:

- Agree a position on the *Use of Observation Room > 24 hours* incident category with respect of airport turnaround (i.e. should / shouldn't they be recorded as incidents). This should be communicated to the DSP.
- Perhaps as informed by trend reporting (see finding 1), undertake analysis of incident reporting between sites to determine if it is being done in a consistent manner.
- Undertake further analysis of 'contraband' incidents and the broader risk of contraband to determine what changes should be made to reporting and analysis of this incident. This may include a separate *major* category and / or criteria to trigger a PIR (also see finding 2).

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Department of Immigration and Border Protection  
Duty of Care to People in Immigration Detention – Incident Response  
Internal Audit Report



### Management response

#### Agree

**Description of Action** The operational position is that airport turnaround cases being placed in the Observation Room > 24 hours should not be reported as an incident and the inconsistency between MIDC and VIDC is noted. There are historical management practices and procedures that have led to the DSP at VIDC reporting such occasions of use and this relates to the hardened nature of the secure building (The Murray Unit) and previously agreed approaches to ensuring each use was documented for approval and review purposes. Under the current redevelopment program for VIDC a new building will be used for airport turnaround cases which will not require recording as a Use of Observation Room > 24 hours incident.

The issue of consistency of reporting between sites will be reviewed and an analysis of 'contraband' incidents will be undertaken.

**Area responsible for Implementation:** Detention Operations Branch

**Implementation date:** Mid-May 2014 for new building use, end June for analysis of consistency and contraband incidents.

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 Duty of Care to People in Immigration Detention – Incident Response  
 Internal Audit Report



### 4. Key stakeholders consulted during the review

Ref.	Name	Position	Purpose
s. 22(1)(a)(ii)		First Assistant Secretary, Status Resolution Services Division	s. 47(1)(b)
		First Assistant Secretary, Detention Infrastructure & Services Division	
		First Assistant Secretary, Risk, Fraud and Integrity Division	
		Assistant Secretary, Detention Operations Branch	
		Assistant Secretary, Detention Services Management Branch	
		Assistant Secretary, Detention Health Services Branch	
		Assistant Secretary, Detention Infrastructure Branch	
		A/g Assistant Secretary, Detention and Services Policy Branch	
		A/g Assistant Secretary, Detention Operations Branch	
		Director, Detention Services Management Branch	
		Director, Programme Delivery Branch	
		Director, Intelligence, Risk and Planning Branch	
		Director, Finance and Performance, Detention Services Management Branch	
		Director, Detention Operations Villawood Immigration Detention Centre	
		A/g Director, Detention Intelligence Branch	
	Centre Manager, Melbourne Immigration Transit Accommodation		
	Centre Manager, Maribyrnong Immigration Detention Centre		

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