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ADDENDUM TO INVESTIGATION REPORT EVE00205473

INVESTIGATION REPORT — ADDENDUM

Investigation Number: EVE00205473

Background

1. This is an addendum to the report (dated 21 July 2011) of a Comcare investigation into the health and safety of federal workers, contractors and detainees at Immigration Detention Facilities (**IDFs**) controlled by the Department of Immigration and Citizenship (**DIAC**) (**the Report**).
2. The addendum sets out some minor amendments to the report. The amendments (which should be read with the report) provide clarification only, and do not alter the findings and conclusions contained in the report.

Amendments

3. The following paragraphs of the report to which the amendments relate are:
 - **Paragraph 50:** the amendment removes the reference to 'current' numbers at the CI Northwest Point Immigration Detention Centre and is amended to read:
50. The current Detention Services Contract between DIAC and Serco states, *"The Service Provider will ensure that the personnel levels at the Facilities are adequate to deliver the Services in accordance with this Contract."* It also provides capacity details for each centre, which are not complied with. As an example, as at 12 April 2011 the detainee numbers at the CI Northwest Point Immigration Detention Centre (IDC) is said to be over 1000; however the DIAC/Serco contract states, *"Northwest Point IDC has an operational capacity of 400 and a surge capacity of 800"*.

- **Paragraph 89:** the amendment reflects that DIAC sent a notification about the incident which occurred at Maribyrnong IDF on 5 July 2009 in which the attempted escape by a detainee resulted in injuries treated by surgery. The notification was received by Comcare on 19 July 2011, two days in advance of the Report being finalised. Paragraph 89 is amended to read:

89. Evidence confirms that DIAC continues to fail to notify Comcare of incidents within the required timeframe. DIAC has on a number of occasions advised of their preference to first of all confirm the extent of the incident before notifying Comcare. This decision-making process causes Comcare to often be alerted by the media (rather than DIAC) of DIAC's notifiable incidents. Recent examples include:

- In July 2011, the media reported an alleged incident at the Maribyrnong IDF as: '*an escape, attempted escape and injuries to a detainee*'. DIAC later confirmed to Comcare that a detainee had undergone surgery to treat injuries received in an attempted escape. DIAC also acknowledged that the matter should have been notified and subsequently notified it to Comcare on 19 July 2011. Serious personal injuries are required to be notified to Comcare within 24 hours of the employer becoming aware that the person has, or is likely to have suffered the injury.
- In July 2011, the media reported on an alleged incident at the Darwin IDF as: '*detainees protesting on detention centre rooftop*'. DIAC confirmed to Comcare that the protest had occurred.'

89. At the time of writing this report, Comcare had received notification of the former incident only. This notification was made some two weeks after the incident occurred, which is not within the legislatively prescribed timeframe.

4. The above amendments are the only amendments made to the Report.

847F

Rhonda Murray

Investigator appointed under section 40 of the *Occupational Health and Safety Act 1991*

5 August 2011



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21 July 2011

File Ref: EVE00205473

Mr Andrew Metcalfe
Secretary
Department of Immigration and Citizenship
6 Chan St
Belconnen ACT 2617

Dear Mr Metcalfe

**Investigation conducted under the *Occupational Health and Safety Act 1991*:
Immigration Detention Facilities.**

I am writing to advise you of the findings of an investigation conducted by Comcare into concerns about the occupational health and safety (OHS) of federal workers, contractors and third parties including detainees at Immigration Detention Facilities (IDFs) that the Department of Immigration and Citizenship (DIAC) controls. The investigation is now complete. A copy of the investigation report is attached.

The investigator concluded that there are a number of non-compliances evident nationally across all facilities which mean that DIAC is failing to comply with its duties under the *Occupational Health and Safety Act 1991* (the Act) and associated regulations (further details appear on the attached investigation report). The investigator has provided a number of recommendations in the attached report related to these non-compliances and does not believe at this stage that they warrant enforcement action.

Would you please provide to me by 22 August 2011, a plan addressing the action taken or proposed to be taken in relation to the recommendations contained in the investigation report and the expected date of completion of each outstanding action? This request is made under section 53(4) of the Act. Comcare reserves the right to review the implementation of the above action plan by DIAC.

If you have any questions, please contact Miss Rhonda Murray by telephone on (03) 9914 6336 or by email at rhonda.murray@comcare.gov.au.

Please direct your response to:

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Canberra ACT 2601

Yours sincerely,

s47F

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Encl: Final Investigation Report

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INVESTIGATION REPORT

Investigation Number: EVE00205473

Brief Overview

1. Comcare for some time has had concerns about the occupational health and safety (OHS) of federal workers, contractors and detainees at Immigration Detention Facilities (IDFs) that the Department of Immigration and Citizenship (DIAC) controlled. The concerns included the impact of work pressure and the risk of harm and mental stress.
2. In 2008, Comcare commenced an investigation into an attempted suicide of a detainee at the Perth IDF. In this investigation, Comcare focussed on contractual arrangements with IDF operators to ensure that DIAC's duty of care under the *Occupational Health and Safety Act 1991* (the OHS Act) was being met. At the conclusion of the investigation, Comcare recommended that, *"DIAC provides employees and contractors with clear and unambiguous policies and procedures to be followed while performing custodial care to detainees at risk of suicide and self harm"*.
3. In early 2010, Comcare entered into *Cooperative Compliance*¹ activities with DIAC in an attempt to resolve concerns about the unique factors at the Christmas Island (CI) IDF. By the end of 2010, the lack of cooperation exhibited by DIAC became such that a meeting between Comcare's senior executive and DIAC was held to flag Comcare's intentions of escalation.
4. Comcare's concerns increased with the adverse findings on similar issues in a number of independent reports on DIAC's management of detention facilities, for example, the Commonwealth and Immigration Ombudsman's February 2011 report on Christmas Island and the Australian Human Rights Commission May 2011 report on Villawood. Significant concerns were also raised in both the domestic and international media that warranted Comcare's attention.
5. In February 2011, Comcare investigators accompanied DIAC Canberra staff to CI. DIAC set Comcare an extremely tight itinerary that restricted Comcare's ability to conduct ad hoc conversations with people or undertake inspections outside DIAC's agenda.

¹ *Cooperative Compliance* is a targeted strategy to improve work health and safety compliance by working with employers that have been identified as requiring significant improvements.

This report has been prepared under section 53 of the Occupational Health and Safety Act 1991 (Cth) (the OHS Act) and is the property of the Safety, Rehabilitation and Compensation Commission (the Commission). Except as authorised by section 53 or another provision of the OHS Act, or otherwise required by or under statute, this report must not be published or reproduced without the written permission of the Commission.

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6. As a consequence of the tight itinerary, Comcare sought the documentation (Attachment A) they had hoped to gain during their visit. On leaving CI, DIAC advised Comcare that they were unable to provide the requested information because the DIAC hierarchy would not allow its release.
7. A meeting was later held between senior executive staff from DIAC and Comcare where documentation originally sought at CI was discussed. DIAC advised that it would consider providing the information but that it would take some time.
8. Comcare's concerns about DIAC's monitoring of and responding to health and safety issues at IDFs were mounting. Comcare engaged with relevant state and territory OHS regulators to identify OHS concerns and safety gaps. It was agreed that a joint visit to the seven IDFs identified as most critical be conducted.
9. On 25 March 2011, Comcare commenced an investigation under the OHS Act into DIAC's management of the health and safety of detainees at IDFs and the potential impact on the health and safety of DIAC employees and contractors at the following workplaces controlled by DIAC:
 - Christmas Island – Murray Road, North West Point, Christmas Island WA
 - Curtin – Curtin RAAF Base, Derby Highway, Derby WA
 - Inverbrackie – 100 Woodside-Nairne Road, Inverbrackie SA
 - Maribyrnong – 53 Hampstead Road, Maidstone Vic
 - Northern – Stuart Highway, Berrimah NT
 - Scherger – RAAF Base Scherger, Mission River Qld and
 - Villawood – 15 Birmingham Avenue, Villawood NSW.
10. The scope of the investigation was to verify that DIAC was complying with the broad overarching health and safety requirements of the OHS Act and the *Occupational Health and Safety (Safety Standards) Regulations 1994* (the OHS Regulations).
11. The DIAC Secretary, when advised about the commencement of the investigation, committed to work cooperatively with Comcare in every possible way to ensure that DIAC's obligations were met.
12. An IDF-specific verification checklist was used as a prompt for investigators. The checklist provided a consistent and systematic process for investigators to use as the basis of verifying DIAC's OHS obligations in respect to its: structures, policies, procedures and practices. This included their implementation in IDFs to determine whether they effectively supported the health and safety of employees, contractors and third parties in matters over which DIAC had responsibility under their duty of care in accordance with the legislation. At the request of DIAC, a template verification checklist is attached, should DIAC want to use it as the basis for future self-audits (Attachment B).
13. Joint visits between Comcare and state and territory OHS inspectors were conducted at the above-mentioned IDFs over a two week period in March and April 2011. State regulators issued a range of improvement notices at a number of IDFs.

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14. At the commencement of each IDF visit, Comcare investigators provided an opening briefing to staff nominated by DIAC and highlighted the purpose of the investigation and laid a foundation of cooperation. The verification process included: physical inspections of the site and plant, conversations with detainees, and staff from both DIAC and Serco Australia Pty Ltd (Serco) (DIAC's contracted IDF management).
15. At the conclusion of each visit, Comcare debriefed staff to highlight in real-time any site-specific areas of concern as well as relevant findings across other IDFs visited.
16. During the Villawood visit in April 2011, significant and pressing health and safety issues were identified and an Improvement Notice (Attachment C) was issued. The notice focussed on:
 - 16.1. Villawood's lower level of security arrangements, and
 - 16.2. the lack of risk management concerning the transfer to Villawood of the group of 10 alleged ring-leaders from the March 2011 riots at CI.
17. Three additional investigations were also commenced by Comcare into an incident at the Scherger IDF as well as the death of a detainee at both the Scherger and Curtin IDFs. Findings of these additional investigations will be reported separately.

Conclusions

18. Comcare's investigation was conducted during a period of extraordinary demand on DIAC's facilities and challenging pressures on IDF systems and people. The investigation found that overcrowding consistently presented itself as the most prevalent health and safety concern to staff across IDFs. While Comcare acknowledges that DIAC systems were under enormous strain, the effects of overcrowding in IDFs placed the health and safety of DIAC staff, their contractors and detainees at risk.
19. Standards of OHS varied across IDFs, with Inverbrackie (Adelaide) having the highest standard at the time of the visits. This higher standard was attributed to the open plan layout of the facility, low level of physical security and that the predominant detainee group was families; including young children. Villawood IDF was assessed as the facility with the most serious risks.
20. A number of improvements based on feedback provided by investigators have since been observed in IDFs; these were particularly apparent at Villawood.
21. Key areas of non-compliance were evident across all facilities. Of particular concern was the lack of effective risk assessment of DIAC's systems of work.
22. A further area of non-compliance evident across all facilities was the lack of established local OHS leadership in operation. While fundamental OHS practices were seen to be in place, there was little evidence of local staff engaging in them. Instead evidence showed that 'Canberra' was seen to own OHS – not staff on the ground. DIAC's approach to controlling OHS through its corporate support processes is seen to disempower local leadership from taking ownership of health and safety outcomes; a consequence that can lead to avoidance behaviours.

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23. Based on the evidence gathered and the findings of fact below, I find that DIAC failed to comply with its health and safety obligations in the following five areas of significant risk across all IDFs in the period leading up to and during the Comcare investigation:

23.1. Risk Management

1.05(1) OHS Regulations

DIAC failed to have a documented site/role-specific risk assessment process across the IDFs or to ensure that Serco conducted effective risk assessment on its behalf. Such failure posed a risk to the health or safety of DIAC employees or contractors at work

23.2. Staffing Ratios

Section 16(2)(a) OHS Act

DIAC failed to have a staff/detainee ratio level identified and implemented. Nor did it have a system for ensuring that ratios are adjusted according to identified levels of risk. In doing so, it failed to take all reasonably practicable steps to provide a working environment (including systems of work) that was safe for DIAC employees and contractors (and without risk to their health)

23.3. Staff Training

Section 16(2)(e) OHS Act

DIAC failed to take all reasonably practicable steps to ensure that DIAC and Serco staff were sufficiently trained and therefore competent and confident in performing their required roles

23.4. Critical Incident Management

Sections 16(2)(a) and 16(2)(e) OHS Act

DIAC failed to take all reasonably practicable steps to protect the health and safety at work of DIAC employees and contractors by:

23.4.1. failing to ensure that effective critical incident management plans were in place to deal with high risk situations such as threatened suicide, detainee violence etcetera

23.4.2. failing to provide to the employees and contractors, in appropriate languages, the information, instruction, training and supervision necessary to enable them to perform their work in a manner that was safe and without risk to their health (specifically in relation to critical incidents)

23.5. Diversity of Third Parties i.e. detainees

Section 17 OHS Act

DIAC failed to take all reasonably practicable steps to ensure third parties i.e. detainees were not exposed to risk to their health and safety arising from the conduct from DIAC's undertaking by failing to identify and appropriately manage the diversity of detainees in areas such as: religion, culture, ethnic origin and individual needs.

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Recommendations

24. I recommend that DIAC focus on developing OHS policy at the national level and invest in local leaders for their engagement and effective localised implementation of OHS policy and practice in order to maximise consistency while at the same time encouraging local leadership to own their OHS problems and solutions.
25. I recommend that the current level of DIAC's reporting of notifiable incidents to Comcare be further explored by DIAC to:
 - 25.1. identify whether recent significant increases are caused by an actual increase in the number of incidents or an increase in the number of incidents being reported
 - 25.2. ensure that DIAC can be satisfied that all notifiable incidents are captured and notified.
26. I recommend that the best-practice positive behaviours (of Serco in particular) being implemented in an IDF (CI in particular) be identified by DIAC and considered for implementation at other IDFs (see paragraphs 78 and 79 below).
27. I recommend that a comprehensive risk assessment process that accords with AS/NZS 4801:2001 and AS/NZS 4360:2004 be conducted to assess and manage the risks to staff, contractors, detainees and visitors to IDFs associated with the conduct of DIAC's detention of asylum seekers and addresses:
 - 27.1. documenting a staff/detainee ratio to identify adequate staff/detainee levels and coping strategies should the ratio be unachievable
 - 27.2. the effectiveness of the current risk assessment methodology used to determine the individual level of risk of each Irregular Maritime Arrivals (IMAs) at the time of entering Australia
 - 27.3. the necessary training needs specific to each IDF role and that the identified training requirements be reflected in duty statements
 - 27.4. critical incident planning across all IDFs, and
 - 27.5. the management of overcrowding.
28. I recommend that a staff awareness campaign be conducted to emphasise:
 - 28.1. DIAC's OHS policies and procedures to highlight their existence and how they should be applied on the ground at each individual IDF
 - 28.2. OHS responsibility of DIAC staff in respect of DIAC's responsibilities to its contractors and detainees.
29. I recommend that the differences between detainees, whether they be cultural, racial, religious or their personal stage in detention, be further explored by DIAC and considered when accommodating them.

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Findings of Fact

30. The conclusions listed above are based on the following findings of fact:
31. I find that DIAC was an employer (as defined by section 5 of the OHS Act) at the time of the investigation.
32. I find that as an employer, DIAC must take all reasonably practicable steps to protect the health and safety of employees, contractors and third parties i.e. detainees in accordance with section 16(1) of the OHS Act.
33. I find that as an employer, DIAC must provide a working environment that is safe for both the physical health and the psychological wellbeing of DIAC employees and (subject to some limitations) contractors such as Serco in accordance with section 16(1) of the OHS Act.
34. I find that as an employer, DIAC also has a general duty to take all reasonably practicable steps to ensure that third parties, including detainees, are not exposed to a risk to their health and safety arising from any activity done in the course of DIAC's business in accordance with section 17 of the OHS Act.
35. I find that as an employer, DIAC failed, in relation to the five matters summarised in paragraph 23 of this report, to take all reasonably practicable steps to protect the health and safety of its employees, contractors and third parties such as detainees in the period leading up to and including the conduct of this investigation.
36. I find that DIAC retains a high level of control over the manner in which and the arrangements in place for the management of detainees by Serco.
37. I find that as an employer, DIAC must notify Comcare of injuries, illnesses or diseases that meet the notification criteria required by section 68 of the OHS Act.
38. I find that there is level of under-reporting of notifiable incidents in accordance with s68 of the OHS Act.
39. I find no evidence that the positive behaviours (by Serco staff in particular) in one IDF (see paragraphs 78 and 79 below) are being identified by DIAC and considered for uniform implementation at other IDFs.
40. I find no evidence of a comprehensive risk assessment process consistent with AS/NZS 401:2001 and AS/NZS 4360:2004 that assesses and manages the risks to staff, contractors, detainees and visitors to IDFs, associated with the conduct of DIAC's operations in the detention and management of immigration detainees.
41. I find that the rudimentary risk assessment methodology used to determine the individual level of risk of IMAs entering Australia is inadequate (see paragraphs 61 to 63 below).
42. I find that DIAC staff are generally unaware of their OHS responsibilities as employees under s21 of the OHS Act in respect to themselves, their colleagues, contractors, detainees and visitors. They are also generally unaware of their role in implementing DIAC's duties under section 16(1) of the OHS Act and instead see the DIAC National Office as being solely responsible.
43. I find that DIAC has not made its staff sufficiently aware of DIAC OHS policies and procedures and how they should be applied on the ground at each individual IDF.

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44. I find that the differences between detainees and their associated needs, whether they be: cultural, racial, religious or their personal stage in detention are not sufficiently identified by DIAC to ensure that they are taken into consideration so that the current levels of tension might be reduced.
45. I find that the staff/detainee ratio is not sufficiently risk assessed and documented to identify and ensure adequate levels of staffing at all times.
46. I find that the current levels of DIAC staff training are insufficient and not targeted to the particular requirements of roles.
47. I find that the current levels of critical incident planning for DIAC or Serco staff are insufficient.

Reasons for Findings of Fact

48. I made the findings of fact listed above because:

Overcrowding and Staffing Ratios

49. The most common concern raised by DIAC and Serco staff as well as detainees was the significant levels of overcrowding at most centres. The increase in numbers of IMAs fluctuates and the overcrowding has been exacerbated by detainee accommodation and DIAC buildings being destroyed during the recent CI and Villawood riots. DIAC is currently exploring other accommodation options to address the current and potential future levels of overcrowding. In the meantime the health and safety of DIAC staff, their contractors and third parties including detainees, may be at risk.
50. The current Detention Services Contract between DIAC and Serco states, *"The Service Provider will ensure that the personnel levels at the Facilities are adequate to deliver the Services in accordance with this Contract"*. It also provides capacity details for each centre, which are not complied with. As an example, the current detainee numbers at the CI Northwest Point Immigration Detention Centre (IDC) is said to be over 1000; however the DIAC/Serco contract states, *"Northwest Point IDC has an operational capacity of 400 and a surge capacity of 800"*.
51. What the contract fails to provide is any guidance on staff/detainee ratios.

Legislative Obligations

52. DIAC must take all reasonably practicable steps to protect the health and safety of employees, contractors and third parties in accordance with the OHS Act. The OHS Act provides for a number of general duties that aim to protect the health, safety and welfare of DIAC employees and contractors at work as well as that of other persons at or near DIAC workplaces, including IDFs.
53. DIAC has a general duty to take all reasonably practicable steps to protect the health and safety of its employees and contractors under section 16 of the OHS Act. This includes ensuring that DIAC provides a working environment that is safe for both the physical health and the psychological wellbeing of DIAC employees and (subject to some limitations) contractors such as Serco and International Health Management Services (IHMS) staff. The duty also extends to providing safe systems of work, plant and any necessary information, instruction and training.

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54. Under section 17 of the OHS Act, DIAC also has a general duty to take all reasonably practicable steps to ensure that third parties, including detainees, are not exposed to a risk to their health and safety arising from any activity done in the course of DIAC's business. Similarly, this duty extends to the protection of physical and psychological health and safety.
55. Under section 68 of the OHS Act, DIAC is required to notify Comcare of accidents and dangerous occurrences that meet the notification criteria. The Notification Decision Flowchart (Attachment D) provides further details.
56. Although the management of detainees is contracted to Serco at the IDFs, the contract in place indicates that DIAC retains a very high level of control over how that management takes place and associated arrangements.

Risk Management

57. Comcare was unable to identify any site-specific risk management procedures. DIAC Canberra staff accompanying the investigators on their IDF site visits during the investigation provided Comcare with a number of general risk policies; however local DIAC staff were unaware of the existence of the policies.
58. The lack of effective risk assessment of DIAC's systems of work was of particular concern, for example, the focus of the Improvement Notice issued to DIAC at Villawood was the obvious risk associated with transferring the group of alleged ringleaders of the CI riots to Villawood. Less than three weeks after the group transfer, riots occurred at Villawood. While it is acknowledged that the alleged CI ringleaders were not involved in the Villawood riots, there were clear indicators (that Villawood staff advise were present at the time) that the riots were reasonably foreseeable. Despite the apparent clear indications, no critical incident plans were in place for staff to follow, should such a situation occur.
59. The inherent risk of not having a site-specific risk assessment is that staff are likely to be unaware that certain equipment, processes or training is required to reduce the level of risk to an acceptable level. s37(2)(c)



60. Based on information received from DIAC and Serco staff, Comcare had concerns about two particular areas of the detainee-specific risk assessment process:

Risk Assessment of Incoming IMAs

61. The first area of concern relates to the risk assessment process used to assess the individual risk level of IMAs when they first seek asylum in Australia. Serco and DIAC staff advised that all incoming IMAs are initially rated at the 'Low risk level' unless something adverse is known about the asylum seeker.
62. Serco staff, who are left to manage the IMAs once they are detained, raised concerns about the rationale behind this hard and fast risk assessment process. Staff suggested that IMAs should, as a matter of course, be initially rated at the High level until more is known that would warrant reducing the level of risk.

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63. s37(2)(c)



Individual Risk Assessment Documentation IMAs

64. The second area of concern relates to the individual risk assessment documentation of detainees where clear evidence was found of information having been cut and pasted from other detainees' records, with part of the previous detainee's details still in place. In addition, staff advised that the detainee's risk profile is not, as a matter of course, transferred with the detainee to the next IDF.

Critical Incident Management

65. Comcare was unable to identify any holistic or site-specific critical incident management procedures in existence. Critical incidents are not unheard of occurrences at IDFs. With riots, detainees self-harming, escapes and the like, Comcare is concerned that there are no established procedures or training on how DIAC or Serco staff on the ground are to manage these types of situations.

Staff Training

66. Both DIAC and Serco staff across all IDFs cited staff training as being significantly deficient. Many DIAC staff deployed to remote locations such as CI highlighted that their pre-deployment training fell well short of meeting their personal and professional needs, for example, pre-deployment training was of a generic nature with little to no information specific to their new location.
67. Serco staff also advised investigators that they did not feel sufficiently trained to do their role, for example, what to do in case of an evacuation and the expected response to a riot or a detainee self-harming.
68. DIAC staff also raised concerns about role-specific training not being identified as a job requirement for certain roles with significant responsibility, for example, those in senior roles needing critical incident management training.

Culture within IDFs

69. The culture in each IDF is different, but is commonly one where the majority of staff are committed to their role and well aware of the importance of their role and their impact on the workplace. While there was little evidence that staff were aware of OHS policies and procedures, Comcare recognises that staff in general were seen to be working well and doing what was expected of them. In the more remote IDFs, such as CI, it was readily apparent that the staff of DIAC and Serco work together as a community both within and outside of the IDF.

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Responsibility at the IDFs

70. A consistent concern identified at each IDF was the lack of understanding by DIAC staff of their OHS responsibilities on the ground. When asked about safety or the wellbeing of detainees, DIAC staff consistently replied that the responsibility for detainees was with Serco. Furthermore, when DIAC staff were asked about OHS policies and procedures, for example, how to manage risks or critical incidents, the usual response was, "Canberra looks after that".
71. The majority of DIAC staff at IDFs were unable to put their hands on or explain the contents of a policy or necessary practice when asked. A consequence of this lack of awareness and/or understanding of policies is that staff are generally unable to assist DIAC to roll out national policies at the local level. Staff are also not sufficiently familiar with their individual OHS responsibilities as employees.
72. This approach was seen by Comcare investigators as a significant contributor to local leaders not accepting responsibility for OHS. It was also seen as a cause for local leaders not having engaged with or rolled out national OHS policies and practices and therefore weakening the health and safety on the ground at each facility.
73. At some IDFs, OHS improvements were being implemented while Comcare investigators were at the facility, for example, the list of Health and Safety Representatives at the Darwin IDF was placed on the noticeboard during the day of the Comcare visit.

Differences at IDFs

74. A significant difference in DIAC and Serco staff responsibilities at IDFs is that DIAC staff deliver the outcomes of visa applications to detainees. Delivering a 'negative hand-down' i.e. when a visa application has been disallowed, can and does lead to animosity being directed by detainees towards DIAC staff. The planning before delivering a negative hand-down is extensive and takes into account the mental health of the detainee and more often than not, involves IHMS to assist in the OHS needs of detainees and staff.

Christmas Island

75. When first visiting CI in February 2011, Comcare investigators noted the high level of tension felt at the facility. There seemed a reluctance of detainees to engage with staff, whether they were Serco, DIAC or Comcare investigators.
76. During the CI riots in March 2011, it was reported and confirmed by the Australian Federal Police (AFP) that at the time of rioting, detainees pushed Serco staff into rooms to protect them and went about burning DIAC buildings. Serco staff seemed well aware of the protection offered to them by detainees. However, the DIAC staff spoken to seemed unaware that DIAC buildings had been targeted and that DIAC staff may be at greater risk.
77. In April 2011, when Comcare investigators returned to CI, there was still evidence of agitation among the detainees; however the level of agitation seemed to have reduced significantly from the February visit. During the April visit, detainees approached Comcare investigators and openly discussed a number of issues. The

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level of trust built so quickly between detainees and investigators that the detainees offered the investigators cold soft drinks and confectionary from their own personal supplies. In their discussions, the detainees seemed relaxed and praised the cooperative approach of Serco staff.

78. Indications of cultural change were observed in a number of detainees who were seen to be self-regulating their own behaviour and that of others. Initiatives recently rolled out by Serco staff at CI appear to be increasing detainees' morale and reducing conflict. Initiatives affecting this cultural change appear to be:

- Stopping all-day breakfasts, to motivate detainees to be awake when the majority of staff are rostered on
- Restricting access to accommodation areas, to allow detainees to have a 'home' of sorts and a place to take refuge if necessary. This concept has seen detainees for the first time take pride in *their* areas
- Encouraging racial integration through Australian culture lesson as well as mixed-race teams to participate in sporting activities, for example, Aussie Rules teams comprising of different countries.

79. A senior Serco officer explained the new CI approach to detainees as being, "80% of a Serco officer's work is social work, the other 20% is to make sure they don't climb the fence". Evidence of this more humanitarian approach was readily apparent throughout Comcare's recent CI visit.

Villawood

80. Serco staff provided information about the level of serious assaults on staff, witnessing the deaths of detainees and the distress of having to deal with it. Staff also advised of feeling inadequately trained and the lack of instruction and supervision/support during times of critical incidents. Morale among staff at Villawood at this time was acknowledged by staff as being very low.

81. In mid-May 2011 Comcare revisited Villawood and observed significant improvements, particularly in the areas of: culture, safety and morale of both staff and detainees and the staff/detainee ratio.

82. While the Improvement Notice issued at Villawood on 1 April 2011 was never fully complied with, the immediate safety concerns pertaining to the notice had passed. Comcare has since worked with DIAC to ensure it has a better understanding of the substantiating information it needs to demonstrate for complete compliance with any future Improvement Notice. This information was provided to DIAC in writing at their request ([Attachment E](#)).

83. Improvements observed during this investigation, at Villawood in particular, need to be acknowledged. Investigators were pleased to see the significant changes in OHS that had occurred from Comcare's first visit in April, to their second visit in mid-May 2011, for example, necessary training was being provided for key staff and vital security equipment was replaced.

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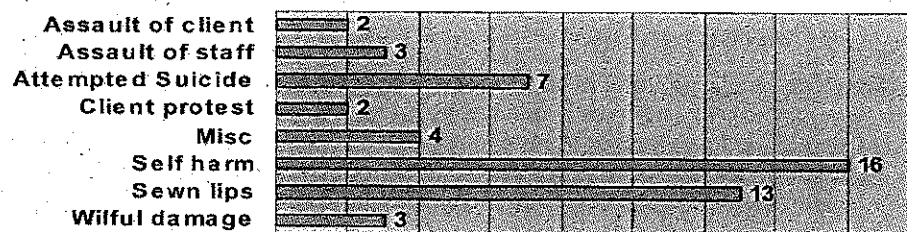
Tension Amongst Detainees

84. A concern raised by detainees at each IDF visited was the lack of understanding and lack of consideration of differences between detainees. Cultural and religious differences were the main issues raised, for example, rooming detainees together with no regard to their religious beliefs or the long history of extreme conflict between their countries.
85. This lack of understanding was said to be a significant cause of tension between detainees and Serco/DIAC staff, which often resulted in disputes. A common situation mentioned was when new arrivals are given a room to themselves (without valid explanation) while those in detention for lengthy periods continue to have to share a room.

Reporting of Notifiable Incidents

86. In 2008, Comcare provided DIAC with a *Process for Incident Notification* (Attachment F) in an attempt to assist with DIAC's reporting requirements. Comcare acknowledges that this schedule caused DIAC some confusion in respect to what is and what is not a notifiable incident. The schedule is now significantly outdated and as such DIAC has been advised in writing that the schedule is no longer recognised by Comcare.
87. The reporting of notifiable accidents and dangerous occurrences by DIAC has significantly increased since the commencement of this investigation. In March 2011, DIAC reported 14 incidents to Comcare for all IDFs – at the time, this was an increase on the eight reported the month before. By June 2011, the number of incidents reported in that month had increased to 50.
88. The following graph depicts the type of incidents reported during June 2011:

Number of National IDF Notified Incidents - June 2011



89. Evidence confirms that DIAC continues to fail to notify Comcare of incidents within the required time frame. DIAC has on a number of occasions advised of their preference to first of all confirm the extent of the incident before notifying Comcare. This decision-making process causes Comcare to often be alerted by the media (rather than DIAC) of DIAC's notifiable incidents. Recent examples include:
- In July 2011, the media reported an alleged incident at the Maribyrnong IDF as: 'an escape, attempted escape and injuries to a detainee'. DIAC later confirmed to Comcare that a detainee had undergone surgery to treat injuries received in an attempted escape. DIAC also acknowledged that the matter should have been notified.

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- In July 2011, the media reported an alleged incident at the Darwin IDF as: *'detainees protesting on detention centre rooftop'*. DIAC confirmed to Comcare that the protest had occurred.

89. At the time of writing this report, Comcare has not received a notification from DIAC for either of the above-mentioned incidents.

Relevant Evidence Collected

90. During the investigation, I collected the following evidence and information which are relevant to and support my findings of fact listed above:

- Personal observations during IDF site visits
- Contemporaneous notes
- Photographs taken during IDF site visits
- Audio recordings of conversations conducted during IDF site visits
- Signed witness statements taken during IDF site visits
- Documents provided by DIAC and Serco
- Notes of Comcare investigators taken during IDF site visits and completed investigator tool kits.

Notices Issued

91. An Improvement Notice was issued to DIAC at the Villawood IDF on 1 April 2011.

s47F

Rhonda Murray

Investigator appointed under section 40 of the *Occupational Health and Safety Act 1991*

21 July 2011

Attachments

- A. List of information sought by Comcare from DIAC at Christmas Island, February 2011
- B. IDF specific Investigator Verification Checklist
- C. Incident Notification Flowchart
- D. Comcare Improvement Notice
- E. Process for Incident Notification
- F. Comcare's ongoing concerns re Improvement Notice

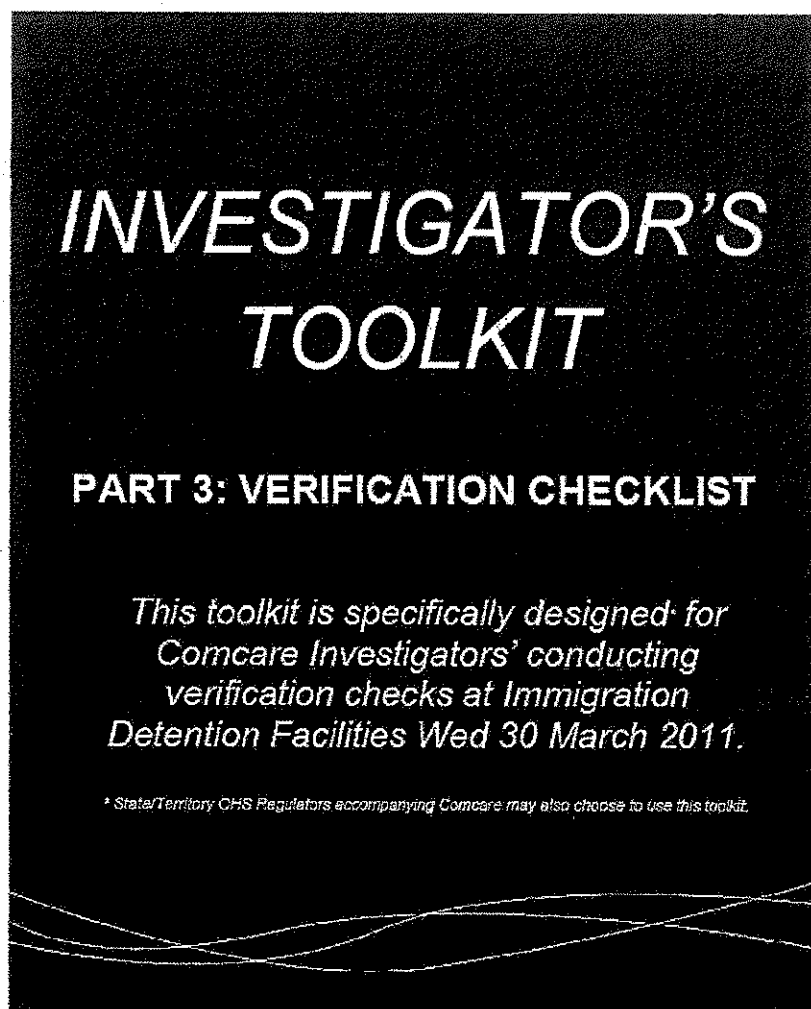
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List of information sought by Comcare from DIAC at Christmas Island, February 2011

Information Sought	
Information is sought for Christmas Island from 1 January to 31 December 2010	
1. Copies of all health and safety incident reports from the Immigration Detention Centre (IDC)	
2. Copies of all security incident reports from the IDC	
3. Copies of all records of injuries requiring first aid and/or emergency treatment for IDC detainees	
4. Copies of all records of injuries requiring first aid and/or emergency treatment for staff	
5. Copy of all OHS Committee meeting minutes	
6. Record of training of managers in hazard inspections	
7. Record of hazard inspections conducted	
8. Record of HSR training	
9. Record of emergency evacuation drills conducted	
10. Record of all incident notifications Serco to DIAC	
11. Record of all incident notifications DIAC to Comcare	
12. Record of OHS Induction for employees and contracted staff	
13. Policy/guideline to manage the language and/or cultural barriers	

ATTACHMENT B

IDF specific Investigator Toolkit Part 3



PUTTING YOU *FIRST*

Further pages of this attachment can be accessed by double-clicking the above image on the original electronic (NON-PDF) version or contacting the author

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Australian Government

Comcare

Occupational Health and Safety Act 1991 (Cth)

Occupational Health and Safety (Safety Standards) Regulations 1994

VERIFICATION CHECKLIST

COMCARE INVESTIGATOR'S DETAILS

Investigator 1: _____

Investigator 2: _____

Date Conducted: _____ Time: _____ am/pm

DIAC MANAGER'S DETAILS

Name: _____

Email: _____

Site: _____

Address: _____

Telephone Number: _____

DIAC HEALTH & SAFETY REPRESENTATIVE'S DETAILS:

Name: _____

Email: _____

Telephone Number: _____

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Scope and Purpose

The purpose of this checklist is to assess compliance of DIAC Immigration Detention Facilities (IDFs) with the Occupational Health and Safety Act 1991 (the Act) and the Occupational Health and Safety (Safety Standards) Regulations 1994.

The checklist provides a systematic process for verifying the organisational structures, policies, procedures and practices, and their implementation in IDFs to determine whether these effectively support the health and safety of employees, contractors and third parties in matters over which DIAC has responsibility under their duty of care in accordance with the legislation.

Verification Processes

Verification processes should be aimed at assessing the implementation of activities and related results at the site level and to determine whether these conform to planned arrangements, are implemented effectively and are suitable to achieve the organisation's policy and objectives in compliance with the legislation.

Verification processes should therefore include an examination of relevant documentation, for example:

- site OHS policies and procedures
- records i.e. employee induction and training records
- incident reporting procedures
- hazard inspections schedules and reports
- equipment maintenance and inspections schedules and records
- health and safety committee meeting minutes, and
- other documents and records related to the compliance assessment.

Assessors should where possible, also conduct interviews with randomly selected employees and third parties available on the day, e.g. site managers, supervisors, contractor staff¹, frontline employees, i.e. case workers, health and safety representatives, and detainees. Interviews should be brief and aimed at verification of knowledge and understanding of employees, and the effective implementation of policies and procedures at the site level.

The names of persons who provide information in this assessment should be recorded on page 3 of this checklist. It is then sufficient to use initials when recording information against individual criteria in the checklist.

The following sections (highlighted in grey) should only be completed if time permits:

- Section 13 (hazardous Substances)
- Section 14 (Asbestos) and
- Section 15 (Electrical Hazards).

¹ Serco is contracted by DIAC to deliver the day to day operational services in the majority of IDFs. Serco also contracts staff to deliver services such as security of the perimeter of IDFs (undertaken by MSS security guards), cleaning and maintenance, which in most IDFs is delivered by Resolve Cleaning and Maintenance Services and health and medical services, which is delivered by International Health and Medical Services (IHMS).

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Persons Interviewed:

Name	Position	Role e.g. HSR

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The assessment requires answers only to the criteria in the workbook. Where assessors detect possible OHS risks outside of this checklist, they should consult with their Assistant Directors regarding the commencement of a reactive investigation.

1. OHS Induction and Training			
1.1 Is OHS induction provided to all new employees? (Act 16 (2)) <ul style="list-style-type: none"> ▪ OHS induction program ▪ OHS induction records ▪ Employees when asked confirm that they received OHS induction on commencement of employment 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Evidence: _____ _____ _____			
1.2 Is the OHS induction adequate? (Act 16 (2) (e)) <ul style="list-style-type: none"> ▪ OHS induction program covers relevant OHS issues and hazards, e.g. OHS representation, and relevant workplace hazards ▪ Employees when asked are able to identify OHS issues or information they received in the induction 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Evidence: _____ _____ _____			
1.3 Are training needs identified? (Act 16 (2) (e)) <ul style="list-style-type: none"> ▪ For example, supervisors meet at least yearly with employees and HSRs to identify suitable training ▪ Use of hazard/incident notifications ▪ Training needs analysis 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Evidence: _____ _____ _____			
1.4 Are records of all induction and training maintained in the Division/Office? (OHS Code of Practice 1.54)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Evidence: _____ _____ _____			
1.5 Is training provided when plant, equipment, substance or workplace process changes? (Act 16 (2), SS Regs. 1.05 (4))	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Evidence: _____ _____ _____			

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2. Psychosocial Hazards			
<p>2.1 Are there policies, procedures and systems for the prevention and management of psychosocial hazards? (Act 16 (1), (2), (5))</p> <ul style="list-style-type: none"> ▪ <i>There are policies and procedures in place for the prevention and management of occupational psychosocial hazards, e.g. violence, bullying, work related stress, and fatigue</i> ▪ <i>Managers and employees are trained in strategies to prevent and manage occupational violence (e.g. client-initiated aggression), workplace bullying, work related stress, and fatigue</i> ▪ <i>Employees when asked are able to identify strategies for prevention and management of client-initiated aggression, workplace bullying, work related stress and fatigue</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>2.2 Are effective communication/alarm systems in place? (Act 16 (1), (2), (2A), (3))</p> <ul style="list-style-type: none"> ▪ <i>There is timely and effective security back-up and response, e.g. response times</i> ▪ <i>Employees are trained in the relevant procedures and use of equipment e.g. duress alarms, communication systems and equipment</i> ▪ <i>Employees are able to identify emergency response contact numbers</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>2.3 Are systems in place for critical incident management, including workplace structures, and identified employee roles and responsibilities? (Act 16 (1), 92, 92A), (3))</p> <ul style="list-style-type: none"> ▪ <i>Managers and employees when asked are able to identify emergency response procedures for different emergency codes², including roles and responsibilities</i> ▪ <i>Employees receive induction and training in critical incident management and response</i> ▪ <i>Employees have access to critical incident de-briefing and counselling</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>2.4 Is there is a system and procedures for critical incident investigation and review? (Act 16 (1), (2), (5))</p> <ul style="list-style-type: none"> ▪ <i>Critical incident investigation reports</i> ▪ <i>Identified recommendations and follow up actions are implemented in a timely manner</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			

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3. Third Parties Health, Safety and Welfare (Detainees)			
<p>3.1 Are there clearly defined policies, procedures and protocols in place for the prevention of detainees' self harm, attempted suicide and suicide? (Act (17), DIAC Policies and Procedures)</p> <ul style="list-style-type: none"> ▪ Copies of relevant policies and procedures are available in the workplace ▪ Policies and procedures include systems for the proactive identification of risks of self harm and suicide, and relevant risk controls 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>3.2 Are managers and employees who provide case management support and care of detainees (eg case managers and workers) skilled and competent to undertake their roles and responsibilities? (Act 17, DIAC policies and procedures (as referenced))</p> <ul style="list-style-type: none"> ▪ Managers and employees have required skills and qualifications ▪ Managers and employees are trained in the relevant procedures and protocols ▪ Managers and employees when asked are able to identify and explain the relevant policies and protocols 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>3.3 Is there a sufficient number of appropriately qualified interpreters and translators in the relevant languages engaged to provide required translating and interpreting services in the IDC? (Act 17, DIAC policies and procedures (as referenced))</p> <ul style="list-style-type: none"> ▪ There is a sufficient number of appropriately qualified and skilled to perform their role and responsibilities ▪ There are minimal or no delays in services when required for detainees' requiring medical treatment, interviews, or other requirements ▪ Incidents, complaints from staff or detainees/detainee representatives 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			

² Codes (compliant with AS 3745-2002 [Emergency Control for Organisation & Procedures for Buildings, Structures and Workplaces]) used at IDFs are: **Red** (Fire/Smoke), **Purple** (Bomb Threat), **Blue** (Medical Emergency), **Black** (Officer needs assistance), **Yellow** (Internal Emergency), **Brown** (External Emergency), **Orange** (Evacuation) **White** (Staff search immediate area), **Grey** (Major disturbance) and **Green** (Escape or Security breach).

DIAC established a number of programs in April 2009, e.g.: Psychological Support Program (PSP) for the Prevention of Self-Harm in Immigration Detention; DIAC Identification and Support of People in Immigration Detention Who are Survivors of Torture and Trauma; and DIAC Mental Health Screening for people in immigration detention.

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3. Third Parties Health, Safety and Welfare (Detainees) continued...			
<p>3.4 Are there sufficient mental health resources to support the effective delivery of mental health services to detainees? (Act (17))</p> <ul style="list-style-type: none"> ▪ <i>There is a sufficient number of mental health practitioners to support the delivery of mental health services to detainees</i> ▪ <i>There are sufficient facilities (for example there is an adequate number of mental health rooms in the medical/health centre)</i> ▪ <i>Incidents, complaints from staff or detainees/detainee representatives</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>3.5 Are there specific protocols and facilities for the care and psychological support for children and minors in custody (Act 17), DIAC policies and procedures (as referenced))?</p> <ul style="list-style-type: none"> ▪ <i>There are specific protocols, programs and facilities in place for the care and psychological support of children and minors in custody</i> ▪ <i>Managers and employees are able to identify relevant policies, protocols and strategies for the care of children and minors</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>3.6 Are strategies implemented to ensure as much as is reasonably practicable a safe physical environment for prevention of self-harm and suicide of detainees? (Act 17)</p> <ul style="list-style-type: none"> ▪ <i>For example, removal of sharp objects, glass, or objects which can be used as potential weapons, hanging points in bathrooms or bedrooms;</i> ▪ <i>Risk controls are in place for falls prevention (for example to prevent falls from rooves and windows),</i> ▪ <i>There are adequate seclusion facilities</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>3.7 Are employees who provide case management support to detainees skilled and competent to perform their role? (Act 17)</p> <ul style="list-style-type: none"> ▪ <i>Employees are trained in relevant mental health protocols, e.g. the use of restraint, use of reasonable force, seclusion, privacy and dignity, and other relevant principles and practices</i> ▪ <i>Employees have access to professional de-briefing</i> ▪ <i>Employees are trained in prevention and management of client-initiated aggression</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			

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3. Third Parties Health, Safety and Welfare (Detainees) continued...			
<p>3.8 Are facilities and services provided to a reasonably practicable standard for the general health and welfare of detainees? (Act 17, DIAC policies and procedures as referenced)</p> <ul style="list-style-type: none"> ▪ <i>For example, there is adequate, appropriate accommodation for detainees, including families, children and unaccompanied minors</i> ▪ <i>Detainees have access to recreational programs and activities, e.g. sporting facilities and activities, English language classes, library and computer facilities, schooling for children and minors</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>3.9 Is there provision for sufficient trained staff to a reasonably practicable standard to cover increased demand, staff absenteeism and back fill for staff on leave? (Act 16 (2), 17)</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>3.10 Is there a policy and procedures in place for the expeditious processing of detainees' applications for asylum? (Act 17)</p> <ul style="list-style-type: none"> ▪ <i>Detainees' applications for asylum are processed as expeditiously as possible, e.g. strategies are in place to minimise unnecessary delays to a reasonably practicable level</i> ▪ <i>Strategies are in place to manage detainees' expectations, for example refusal of application</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			

4. Contractor Management			
<p>4.1 Is there is a policy and procedures for managing contractor compliance with OHS responsibilities? (16 (4), Serco Contract³)</p> <ul style="list-style-type: none"> ▪ <i>Policy and procedures are in place for management and supervision of contractor OHS in the workplace</i> ▪ <i>Managers are aware of policy and procedures and are able to identify how contractor OHS is managed</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			

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4. Contractor Management <i>continued</i> ...			
<p>4.2 Are contract employees inducted to OHS hazards, policies and procedures in the workplace, and do they receive relevant safety information, instruction and training? (Act 16 (4), 16 (2) (e)), for example:</p> <ul style="list-style-type: none"> ▪ <i>There is a system for OHS induction of contract employees</i> ▪ <i>Induction is conducted in relevant languages</i> ▪ <i>OHS communications are tailored to specific language needs and abilities, e.g. safety instructions, signage</i> ▪ <i>Records of OHS induction of contractor employees are available</i> ▪ <i>Contractor employees when asked can identify OHS policies and procedures relevant to their work</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			

5. Incident Reporting			
Reporting of Incidents, Accidents and Hazards			
<p>5.1 Is there is a system to ensure that all incidents, accidents and hazards are notified as soon as practicable? (Act 68)</p> <ul style="list-style-type: none"> ▪ <i>Incident reporting policy and procedure</i> ▪ <i>Includes procedure for notification to Comcare</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>5.2 Are procedures in place to ensure that employees report all incidents, accidents and hazards on appropriate forms? (Act 68)</p> <ul style="list-style-type: none"> ▪ <i>Incident reports</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>5.3 Are copies of incident, accident and hazard records are kept at the Division Office?</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			

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6. General OH&S			
<p>6.1 Do all employees have access to a copy of the health and safety policies and procedures? (Act 16 (2), (3))</p> <ul style="list-style-type: none"> ▪ <i>Employees are able to readily access health and safety policies and procedures e.g. on the intranet</i> ▪ <i>Employees when asked, are able to identify where they can access the policies and procedures</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>6.2. Is health and safety promoted in co-operation with employees? (Act 16 (2) (d) (ii))</p> <ul style="list-style-type: none"> ▪ <i>Employees are consulted in the development of health and safety policies and procedures, for example, via the health and safety committee</i> ▪ <i>Copies of health and safety publications such as OHS newsletters, national OHS alerts, are displayed on staff noticeboard or available on the intranet</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>6.3 Is health and safety information communicated in languages other than English? (Act 16(2) (e))</p> <ul style="list-style-type: none"> ▪ <i>There is a policy for communication of health and safety information in languages other than English</i> ▪ <i>Site manager can direct investigators to records of communications or information in relevant languages</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			

7. OHS Consultative Procedures			
<p>7.1 Are designated work groups established? (Act 24 (1), (2), (3), (7), 24B)</p> <ul style="list-style-type: none"> ▪ <i>Composition of designated work groups</i> ▪ <i>Employees are consulted in relation to the establishment or variation of designated work groups</i> ▪ <i>An up to date written list of all designated work groups is available to employees</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			

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7. OHS Consultative Procedures <i>continued</i> ...			
7.2. Is there a current written list of elected health and safety representatives? (Act 25B) <ul style="list-style-type: none"> ▪ <i>Written list is available to employees (for example, list of HSRs is displayed on notice board in the workplace)</i> ▪ <i>Can employees when asked name their HSR?</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Evidence: _____ _____ _____			
7.3 Is there a properly constituted health and safety Committee that meets regularly? (Act 34 (1), (2) & (3), (4), DIAC HSMAs) <ul style="list-style-type: none"> ▪ <i>Employee representation is not less than employer representation</i> ▪ <i>OHS Committee meets at least every three months</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Evidence: _____ _____ _____			
7.4 Is there capability for detainees to raise health and safety issues? (Best practice) <ul style="list-style-type: none"> • <i>There is an agreed process, developed in consultation with detainees, for detainees to raise health and safety issues</i> • <i>Detainees are able to nominate and brief their representatives about issues which concern them</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Evidence: _____ _____ _____			
7.5 Do employees have access to OHS Committee meeting minutes? (Act 16 (3)) <ul style="list-style-type: none"> ▪ <i>Minutes available to employees, e.g. minutes on workplace notice board/intranet</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Evidence: _____ _____ _____			

8. Facilities and Training for HSRs			
8.1 Have HSRs undergone training to effectively perform their role? (Act 27 (1), (2)) <ul style="list-style-type: none"> ▪ <i>OHS course is accredited by the Commission</i> ▪ <i>HSRs are permitted time off work to attend training without loss of remuneration or other entitlements</i> ▪ <i>All HSRs have received accredited training, e.g. records of HSR training</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Evidence: _____ _____ _____			

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9. Access and Egress at the Workplace			
<p>9.1 Has the employer provided and maintained access to and egress from the workplace that is safe and without risks to health? (State building regulations, Act 2 (b), (ii), AS3745-2002, SS Regs. 1.05).</p> <ul style="list-style-type: none"> ▪ <i>There is a policy and procedure for safe access to and from the workplace</i> ▪ <i>There is provision in the policy and procedures, for security of premises e.g. internal buildings, security of perimeter, external buildings, car parks and surrounds, signage</i> ▪ <i>Hazards and risks, e.g. slips and trips, are proactively identified and controlled</i> ▪ <i>Management receive regular reports from workplace inspections which assess movement to and from the workplace</i> ▪ <i>Security incidents are reported and investigated, e.g. security incident & investigation reports and records</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>9.2 Are emergency systems regularly checked and maintained? (state building and fire legislation, Act 16 (2), workplace emergency policy and procedures manual)</p> <ul style="list-style-type: none"> ▪ <i>Inspection and maintenance schedules and records</i> ▪ <i>Evacuation exercises are held regularly</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>9.3 Is there a policy, procedures and systems in place for emergency response in relation to all relevant emergency codes? (State building and fire legislation, Act 16 (2) (a) (i), AS 3745-2002)</p> <ul style="list-style-type: none"> ▪ <i>Systems and procedures are in place for emergency response in relation to all relevant emergencies in IDFCs, e.g. Emergency Policy and Procedures Manual</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>9.4 Are managers and employees trained in emergency response for all relevant emergency codes, consistent with their roles and responsibilities? (Act 16 (2) (a) (i), (b) (i) & (ii), State building and fire legislation, AS3745-2002)</p> <ul style="list-style-type: none"> ▪ <i>Workplace Emergency Policy and Procedures Manual</i> ▪ <i>Training records</i> ▪ <i>Employees when asked can identify required emergency response for relevant codes, consistent with their role and responsibilities</i> ▪ <i>Training is up to date and includes regular, refresher training</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			

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9. Access and Egress at the Workplace continued ...			
<p>9.5 Are emergency evacuation and site plans displayed in the workplace? (State building regulations, Act 16 (2) (b) (ii), AS3745-2002, State building and fire legislation)</p> <ul style="list-style-type: none"> ▪ <i>Workplace emergency policy and procedures manual</i> ▪ <i>Evacuation and site plans displayed in workplace</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>9.6 Are maintenance and inspections regularly carried out on fire fighting equipment? (State building and fire legislation, Act 16 (2) (b) (ii), AS 3745-2002, State building and fire legislation, workplace emergency policy and procedures manual)</p> <ul style="list-style-type: none"> ▪ <i>Maintenance and inspection schedules and records</i> ▪ <i>Tag out procedure is in place for faulty equipment and maintenance/repair service orders promptly actioned, e.g. service repair orders and records</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			

10. Welfare of Employees			
<p>10.1 Are suitable amenities provided for all employees? (Act 16 (2) (a) (ii))</p> <ul style="list-style-type: none"> ▪ <i>For example, dining facilities, toilets</i> ▪ <i>Where applicable, suitable accommodation is provided for employees</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>10.2 Have first aid requirements been assessed and are relevant requirements in place? (Act 16 (2), (5) (c)), for example</p> <ul style="list-style-type: none"> ▪ <i>Appropriate signage</i> ▪ <i>Trained First Aid Officer(s)</i> ▪ <i>Relevant first aid kits available</i> ▪ <i>Records kept</i> ▪ <i>Emergency telephone numbers displayed</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			

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10. Welfare of Employees <i>continued</i> ..			
<p>10.3 Are there supports in place for employees' psychological health and well being? (Act 16(2)(a)(ii))</p> <ul style="list-style-type: none"> ▪ <i>Employees have access to counseling, e.g. an Employee Assistance Program (EAP) is in place and is provided in a systematic way</i> ▪ <i>There are programs in place to support employee psychological health and wellbeing, e.g. employee resilience training</i> ▪ <i>Employees when asked can identify where to access relevant information, e.g. EAP contact details</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			

11. Employee Responsibilities			
<p>11.1 Do all employees work in a safe manner and according to instructions?(Act 16(2)(e) and Act (21))</p> <ul style="list-style-type: none"> ▪ <i>Copies of safe working instructions are available to employees</i> ▪ <i>Employees are trained in safe working instructions and their competency is assessed</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>11.2. Are safety instructions provided in relevant languages? (Act 16(2)(e))</p> <ul style="list-style-type: none"> ▪ <i>Copies of safe working instructions are available to employees in relevant languages</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>11.3 do employees report hazards as soon as they are detected? (Act 21; SS Regs 4.30 (concerning plant))</p> <ul style="list-style-type: none"> ▪ <i>Sample of hazard reports</i> ▪ <i>Employees when asked can identify procedure for reporting hazards</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			

AUDIT-IN-CONFIDENCE

11. Employee Responsibilities <i>continued</i> ..			
<p>11.4 Do workplace hazard inspections occur regularly? (Act 16(2)(a)(i), SS Regs 1.05)</p> <ul style="list-style-type: none"> ▪ <i>Hazard inspection schedule</i> ▪ <i>Do hazard inspection checklists include all work areas and relevant hazards</i> ▪ <i>Sample of hazard inspection reports</i> ▪ <i>Hazard reports are actioned in a timely manner and feedback provided to employees</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>11.5 Are managers and supervisors competent to conduct workplace hazard inspections? (Act 16 (2), DIAC HSMAs)</p> <ul style="list-style-type: none"> ▪ <i>Managers and supervisors have relevant qualifications and skills to conduct workplace hazard inspections</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			

12. Organisation of the Work			
<p>12.1 Are workloads and work practices regularly reviewed to ensure that safe work practices are being maintained? (SS Regs 1.05, Code of Practice 1.12). For example,</p> <ul style="list-style-type: none"> ▪ <i>A policy and procedures are in place including safe rostering, work intensity and pressure, and regular review of workloads in consultation with employees</i> ▪ <i>Employees have input into safety related decision making processes</i> ▪ <i>Procedure is in place for hazard identification and assessment of risks relating to safe work loads and practices</i> ▪ <i>Incident reports, complaints</i> ▪ <i>Stress claims/incident data</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			
<p>12.2 Are employees fully trained in all skills required to do their work? (Act 16 (2) (e))</p> <ul style="list-style-type: none"> ▪ <i>Skills and qualifications required to perform each role are identified in recruitment and selection processes</i> ▪ <i>Employees are trained in the safe work practices required to do their work</i> 	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<p>Evidence: _____</p> <p>_____</p>			

AUDIT-IN-CONFIDENCE

13. Hazardous Substances <i>(greyed out sections should only be completed if time permits)</i>			
13.1 Is there is a system that enables the identification of hazardous substances entering the workplace? (SS Regs. 6.12)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Evidence: _____ _____			
13.2 Are MSDSs obtained for all hazardous substances and are these readily available to employees? (SS Regs. 6.12)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Evidence: _____ _____			
13.3 Have risk assessments been completed? (SS Regs. 6.7)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Evidence: _____ _____			
13.4 Is there a register of hazardous substances maintained in each area at the workplace?(SS Regs. 6.14)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Evidence: _____ _____			

14. Asbestos <i>(greyed out sections should only be completed if time permits)</i>			
14.1 Is there a policy and procedures for the identification of hazards, assessment and control of risks of exposure to asbestos? (SS Regs. Part 6 Division 3)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Evidence: _____ _____			
14.2 Are audits conducted to identify location, type and condition of asbestos in the workplace? (SS Regs. Part 6 Division 3)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Evidence: _____ _____			

AUDIT-IN-CONFIDENCE

15. Electrical Hazards <i>(greyed out sections should only be completed if time permits)</i>			
15.1 Is there a program for the regular inspection, testing and tagging of electrical equipment? (Act 16 (2) (a) (i), SS Reg. 10.06)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<ul style="list-style-type: none"> ▪ Inspection and maintenance records ▪ Faulty equipment tag out policy and procedure 			
Evidence: _____ _____ _____			
15.2 Are electrical fittings and leads in good condition and kept in such a way as to eliminate or minimize potential damage? (Act 16 (2) (a) (i), SS Reg. 10.06)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<ul style="list-style-type: none"> ▪ Inspect sample of electrical equipment in the workplace 			
Evidence: _____ _____ _____			
15.3 Are RCD's used, maintained and tested as required? (Act 16 (2) (a) (i) and SS Regs. 10.04 and 10.06)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Evidence: _____ _____ _____			

16. Incident/Accident Investigation			
16.1 HSRs & Supervisors are actively involved in investigating incidents/accidents/hazards?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<ul style="list-style-type: none"> ▪ Sample of incident investigation reports 			
Evidence: _____ _____ _____			
16.2 Are workgroup OHS Committees are involved in investigations?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Evidence: _____ _____ _____			
16.3 Are causes of injuries and incidents identified?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<ul style="list-style-type: none"> ▪ There is a policy and procedure for periodic review and analysis of data including incidents, accidents and hazard reports 			
Evidence: _____ _____ _____			

AUDIT-IN-CONFIDENCE

16. Incident/Accident Investigation			
16.4 Is adequate corrective action is taken in all cases?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Evidence: _____ _____			

If additional space is required to record information, Investigators should use their notebooks and reference the relevant sections of the checklist.

AUDIT-IN-CONFIDENCE

IDC Site Visit

Record of Documents Viewed

Time: _____ Date: _____

Location: _____

NAME	TITLE/POSITION	EMPLOYER

DOCUMENT			
TITLE			
REFERENCE		VERSION	
AUTHOR		DATE	
OTHER			

DOCUMENT			
TITLE			
REFERENCE		VERSION	
AUTHOR		DATE	
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INVESTIGATION-IN-CONFIDENCE

ATTACHMENT C

Villawood Improvement Notice



Australian Government
Comcare

Form 5

Improvement notice
*Occupational Health and Safety
(Safety Arrangements) Regulations 1991*
(paragraph 34 (d))

No. **EVE0020547301**

To: The Secretary, Department of Immigration and Citizenship ('DIAC') (the 'responsible person')
At: Tracey Bell, OHS Manager, DIAC

I, Rhonda Murray, an investigator appointed under section 40 of the *Occupational Health and Safety Act 1991* ('the Act'), am satisfied that the person named above as the responsible person is breaching or has breached and is likely to breach s 16(1) of the Act and regulations 1.05 and 1.08 of the *Occupational Health and Safety (Safety Standards) Regulations 1994* (the 'SS Regulations') at:

Villawood Immigration Detention Facility, 15 Birmingham Avenue, Villawood NSW 2163

The reasons for my opinion are:

On 26 March 2011, Comcare commenced an investigation into DIAC's management of the health and safety of detainees at the Immigration Detention Facilities ('IDFs') and the potential impact of these arrangements on the health and safety of DIAC employees and contractors. As a part of this investigation, Comcare investigators Paul Stevens, John MacNamara and I conducted a site inspection ('the inspection') of the Villawood IDF on 1 April 2011 where we:

1. physically inspected the IDF;
2. took photographs inside and outside the IDF premises and the facility generally;
3. conducted discussions and interviews with DIAC staff including the Director of the Villawood IDF;
4. conducted discussions and interviews with Serco contractors performing work at the Villawood IDF; and
5. conducted discussions and interviews with current detainees at the Villawood IDF.

During the course of the inspection, we were advised that a group of 10 detainees from the Christmas Island IDF ('the Christmas Island detainees') are to be relocated to the Villawood IDF on Monday 4 April 2011. We were advised and are aware that these detainees had previously been involved in violent behaviour at the Christmas IDF.

Having conducted an investigation into the incident, including lengthy discussions with the Director of the Villawood Detention Centre, Serco contractors and detainees and for the following reasons, I have formed the opinion that DIAC has not taken all reasonably practicable steps to identify hazards and assess risks to health and safety associated with the relocation of the Christmas Island detainees and consequently to eliminate or minimise those risks:

- A lower level of security arrangements exists at the Villawood IDF than that in place at the Christmas Island IDF including in relation to detainee recreation areas and the existence of broken and missing video cameras;
- There are likely to be significant risks to health and safety associated with the relocation of the Christmas Island detainees to the Villawood IDF;
- During the inspection, the Villawood IDF Director and others were unable to provide evidence to satisfy me that hazards had been properly identified and risks assessed associated with relocation of the Christmas Island detainees to the Villawood IDF;
- During the inspection, the Villawood IDF Director and others were unable to provide evidence to satisfy me that appropriate control measures had been put in place to control the risks associated with the relocation of the Christmas Island IDF detainees to the Villawood IDF;
- During the inspection, the Villawood IDF Director and others were unable to provide evidence to demonstrate that DIAC employees and Serco contractors at the Villawood IDF had been provided with information, instruction and training regarding the risks associated with the relocation and arrival of the Christmas Island detainees at the Villawood IDF.

(see additional notes over)

Copy 1 Responsible person
Copy 2 Comcare
Copy 3 Investigator

Further pages of this attachment can be accessed by double-clicking the above image on the original electronic (NON-PDF) version or contacting the author

INVESTIGATION-IN-CONFIDENCE

I am therefore of the opinion that hazard identification, risk assessment and risk control have not been undertaken and implemented by DIAC at the Villawood IDF in relation to the relocation of the Christmas Island detainees to the Villawood IDF.

You are required to take action by 10 am on Monday 4 April 2011 to prevent any further breach or likely breach of the provisions identified above.

The following action must be taken by the responsible person within the period specified above:

1. Undertake hazard identification and risk assessment of the hazards and risks associated with the relocation and arrival of the Christmas Island detainees at the Villawood IDF in accordance with regulation 1.05 of the SS Regulations and s 16(1) of the Act;
2. Take all reasonably practicable steps to implement risk control measures to eliminate or minimise the risks assessed, in accordance with regulation 1.06 and s 16(1) of the Act;
3. Take all reasonably practicable steps, in accordance with ss 16(1) and 16(2)(e) of the Act, to provide to the DIAC employees and contractors performing work at the Villawood IDF, the information, instruction and training necessary to enable them to perform their work in a manner that is safe and without risk to their health, in relation to the risk and risk control measures associated with the arrival of the Christmas Island detainees at the Villawood IDF; and
4. Provide to Comcare, documentary evidence of the action taken to address points 1 to 3 above.

Signed: _____
(Investigator)
Rhonda Murray

S47F

Dated: 01 / 04 / 11

Return this portion of the notice (when the required improvement has been completed) to:
Comcare Level 6, 535 Bourke Street, Melbourne, Vic 3000
Improvement Notice No. 4883IN01 has been complied with.

Agency: _____

Name: _____

Address: _____

Position: _____

Signature: _____

Telephone: _____

Date: / /

Copy 1 Responsible person
Copy 2 Comcare
Copy 3 Investigator

NOTES

Note 1 Under subsection 47 (6) of the Act, the responsible person to whom this notice was issued must ensure that, to the extent that this notice relates to any matter over which the person has control, this notice is complied with. The maximum civil penalty for non-compliance with this requirement by a non-Commonwealth licensee employer, a Government business enterprise, an employee of a non-Commonwealth licensee employer or an employee of a Government business enterprise is \$1,110 for every day of the breach (see Part 1 of Schedule 2 to the Act). The maximum criminal penalty for non-compliance with this requirement by a non-Commonwealth licensee employer, a Government business enterprise, an employee of a non-Commonwealth licensee employer or an employee of a Government business enterprise is \$99,000 (see Part 2 of Schedule 2 to the Act).

Note 2 Under subsection 47 (8) of the Act, if this notice was issued to an employer, the employer must:

- (a) give a copy of this notice to each health and safety representative for a designated workgroup of employees performing work that is affected by this notice; and
- (b) display a copy of this notice in a prominent place at or near each workplace at which that work is being performed.

Note 3 Under subsection 48 (1) of the Act, any of the following persons may, in writing, ask the Australian Industrial Relations Commission to review the investigator's decision, under section 47 of the Act, to issue this notice:

- an employer affected by the investigator's decision;
- the person to whom this notice was issued;
- the health and safety representative or an employee representative in relation to a designated work group when requested by an employee affected by the decision;
- if there is no designated work group — an employee representative when requested by an employee affected by the decision;
- the owner of any plant, substance or thing to which the investigator's decision relates.

Note 4 Under subsection 48 (4) of the Act, where the decision appealed against is a decision of an investigator, under section 47 of the Act, to issue this notice, the operation of the decision is suspended pending determination of the appeal, except to the extent that the reviewing authority makes an order to the contrary.

Note 5 Under section 50 of the Act, this notice must not be tampered with or removed before the notice has ceased to have effect. The maximum criminal penalty for breach of this section by a non-Commonwealth licensee employer, a Government business enterprise, an employee of a non-Commonwealth licensee employer, an employee of a Government business enterprise, an employee of a Commonwealth authority or an employee of a Commonwealth entity is \$3,300 or imprisonment for 6 months, or both.

Note 6 This Improvement Notice is being issued in accordance with section 47 of the Act on the grounds that a person is failing to comply with a provision of the Act or regulations, or has failed to comply with a provision of the Act or regulations, and is likely to do so again.

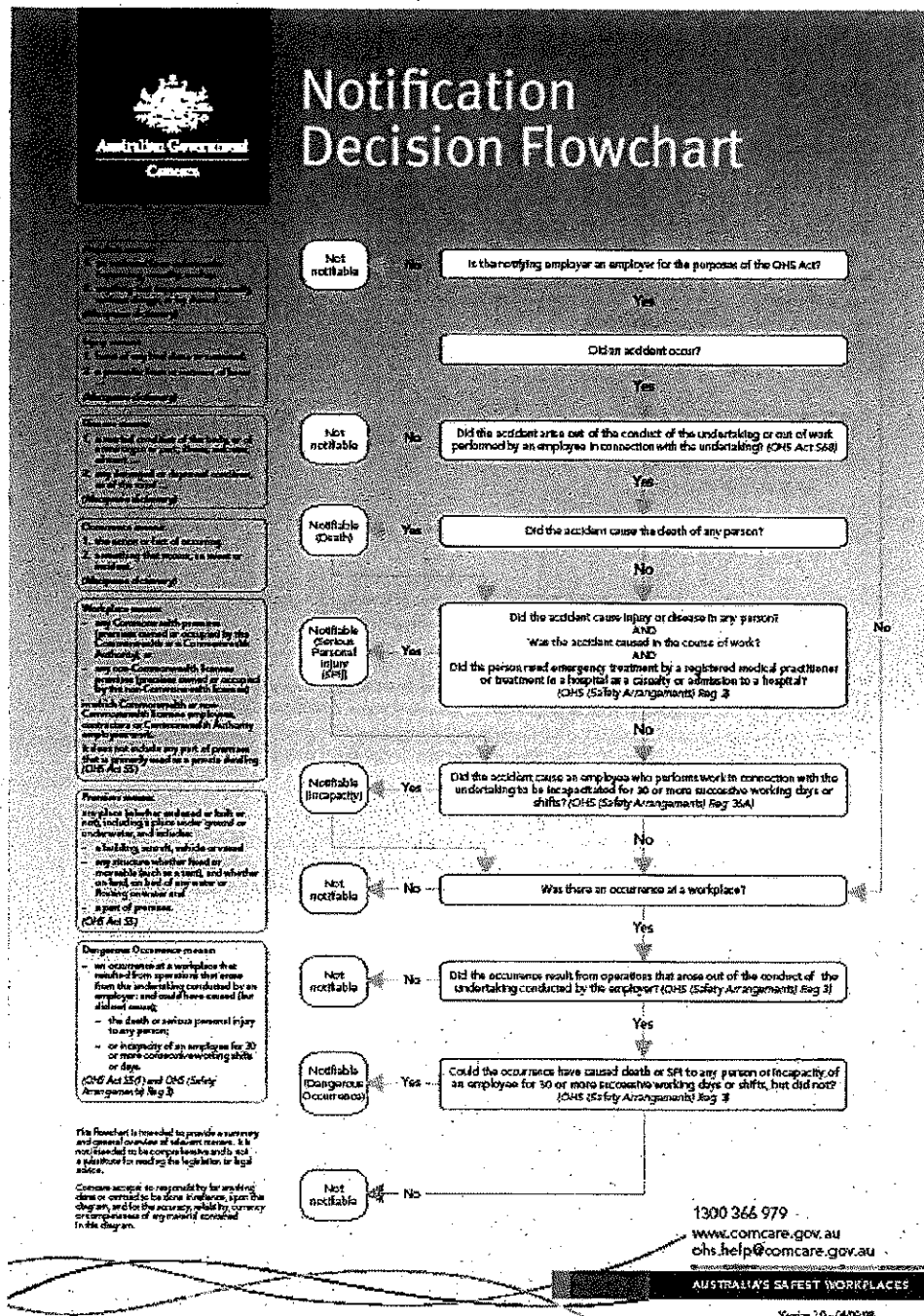
X _____

This notice was delivered to: _____
(Name)

in the office/position of: _____
(Office/Position)

at: _____ am/pm on: _____ / _____ / _____

The Notification Decision Flowchart



INVESTIGATION-IN-CONFIDENCE

ATTACHMENT E

Comcare's ongoing concerns re Improvement Notice



PUTTING YOU FIRST

31 May 2011

Jackie Wilson
Deputy Secretary
Department of Immigration and Citizenship
PO Box 25
Belconnen ACT 2616

By email: jackie.wilson@immi.gov.au

Copies: craig.farrell@immi.gov.au
Tracey.Bell@immi.gov.au

Dear Jackie

Comcare Improvement Notice EVE0020547301: Department of Immigration and Citizenship
(DIAC), Villawood Immigration Detention Facility

I am writing in response to a request on 24 May 2011 from Tracey Bell that DIAC be provided with Comcare's written views on DIAC's response to Comcare improvement notice EVE0020547301 ('the improvement notice'), dated 1 April 2011. DIAC provided written responses to the improvement notice to Comcare on 4 April 2011 and 10 May 2011 (the latter resulting from a letter from Comcare (dated 4 April 2011) requesting further and more detailed information).

I note that the immediate safety issues regarding the proposed relocation of the 10 detainees from Christmas Island to Villawood Immigration Detention Facility (IDF) which the improvement notice sought to address at the time of its issue, have now passed. As you know (and as the improvement notice makes clear), these issues related predominantly to:

- the comparatively lower level of security arrangements at the Villawood IDF;
- the clear risks to health and safety associated with the relocation of high risk detainees to the Villawood IDF;
- staffing levels at the Villawood IDF; and
- the adequacy of DIAC's hazard identification, risk assessment and risk control arrangements regarding the proposed relocation.

GPO BOX 9905
CANBERRA ACT 2601
P 1300 369 878
COMCARE.GOV.AU

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We are aware that the relocation took place as planned on 5 April 2011. Accordingly, and in view of DIAC's cooperation and responses to the required actions set out in the improvement notice, the utility of any further action by Comcare in relation to the improvement notice, is limited.

Nevertheless, I note by way of feedback, Comcare's ongoing concerns regarding DIAC's ability to provide substantiating information sufficient to demonstrate complete compliance with the improvement notice. Specifically, I note that:

1. DIAC did not provide sufficient details of the basis on which the decision was made to relocate all 10 detainees to Villawood IDF (as opposed to elsewhere) in a manner which comprehensively identified the hazards, risks and appropriate control measures;
2. The harm minimisation strategies in relation to threats and acts of self harm, abusive and aggressive behaviour etcetera to be implemented by Serco staff at Villawood (including the behavioural management plans) did not differ from DIAC's standard approach to behaviour management nor appear to contemplate the increased risk associated with individuals identified as very high security risk;
3. there was limited, if any, material provided to demonstrate or substantiate the claim that Serco and/or DIAC Villawood staff had been provided with the briefings in the Operational Order prepared prior and in relation to the arrival of the 10 detainees. The existence of a blank attendance register is insufficient in this regard;
4. the repair of critical security and surveillance equipment such as video cameras had not been achieved by the date specified for compliance with the improvement notice; and
5. Comcare was not made aware by DIAC of the detainee who was sent to Marybymong IDF or the rationale for relocating this particular individual to this facility.

Accordingly, Comcare is continuing to investigate and review these issues in the context of its ongoing investigation into DIAC's health and safety arrangements at its IDFs nationally. I note that Comcare may take further action where it identifies such health, safety and compliance issues under the *Occupational Health and Safety Act 1991*.

I would be happy to discuss further if necessary.

Yours sincerely

s47F

Rhonda Murray

Director Regional Service Vic/Tas

Investigator appointed under s 40(2) *Occupational Health and Safety Act 1991*

INVESTIGATION-IN-CONFIDENCE

ATTACHMENT F

Process for Incident Notification

Critical Incidents			
A critical incident is an incident or event which critically affects the good order and security of the facility or where there is serious injury or a threat to life. These must be reported orally immediately (no later than 1 hour after the incident) and a written report within 4 hours to Detention Operations and National Office OHS Coordinator. Including but not limited to:		Reportable to Comcare?	Comcare comments
Assault – occasioning grievous bodily harm	Detainee on detainee	Yes	
	Detainee on staff	Yes	
	Staff on detainee	Yes	
	Other (eg. Visitor)	Yes	
Assault – sexual assault	Detainee on detainee	Yes	
	Detainee on Staff	Yes	
Biological/chemical threat		Not unless threat is actually carried out with a hazardous biological or chemical substance	
Bomb threat		As above	
Complaints	Any known complaint about critical incident	No	
Damage to facility: serious, including fire		Yes	
Death	Detainee	Yes – within 2 hours to Comcare	
	Staff	As above	
	Other (eg. Visitor)	As above	
Accident	To detainee – serious	Yes	
	To staff – serious	Yes	
Demonstration	Outside facility	No	We assume peaceful
Disturbance	Riot/hostage situation	Yes	
Escape	Successful (includes mass escapes)	No – unless SPI or could cause SPI/psychological injury	Difficult to assess risk as we do not know DIAC responds.
Force Majeure	Actual	As above	
Industrial action	Withdrawal of labour	No	
Public Health risk	Serious (includes epidemics)	No – unless it arose through DIAC's conduct	
Self Harm	Actual	Yes	
Use of Observation Room/mgmt support Unit – over 7 days		No	
Visits	High profile visitor refused access	No	
Voluntary Starvation	By a minor	No – unless SPI or could cause SPI/psychological injury	

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Prohibited article	Prohibited substance, suspected	No	
	Weapons /means of escape	No – unless SPI or could cause SPI/psychological injury	Could be a dangerous occurrence
Removal	Aborted	No	
Self harm	Attempted	No - SPI or could cause SPI/psychological injury	
Strip search		No	
Substance use/abuse		No	
Systems failure		Could it cause SPI? If so, yes.	
Unlawful detention		No	
Use of force	by detainee	No - unless SPI or could cause SPI/psychological injury	
	by staff	No - unless SPI or could cause SPI/psychological injury	
Use of observation room, management support unit	Medical Over 24 hours	No	
	Non-medical – over 3 days	No	
Voluntary starvation	Over 24 hours	No - unless SPI or could cause SPI/psychological injury	

Major Incidents			
<p>A Major incident is an incident or event which seriously affects the good order, safety and security of the facility, the welfare of detainees or which threatens the success of escorts/transfer/removal activities. <i>These should be reported as soon as possible orally (no later than 2 hours after the incident) and a written report within 6 hours or before the end of the shift to Detention Operations and National Office OHS Coordinator.</i> Major incidents include but are not limited to:</p>		Reportable to Comcare?	Comcare comments
Assault – allegation / suspicion	Detainee on detainee	No	
	Detainee on staff	No	
	Staff on detainee	No	
	other [eg. visitor]	No	
Assault – occasioning actual bodily harm	Detainee on detainee	Yes	
	Detainee on staff	Yes	
	Staff on detainee	Yes	
	other [eg. visitor]	Yes	
Complaints - any known complaints about Major incidents		No	This is vague and potentially broad – what is meant by major incidents?
Contamination of facility		No – unless SPI or could cause SPI/psychological injury	What sort of contamination? Could this be a dangerous occurrence?
Demonstration	Inside Facility	As above	
Disturbance	Major	Yes	
Emergency medical Attention	Off site	Yes	
	On site	Yes	
Escape (includes mass breakouts)	Attempted	No – unless SPI or could cause SPI/psychological injury	
Food poisoning		No – unless DIAC provided meals	Yes – either a dangerous occurrence or potentially an SPI even where contractor supplies food because it is part of DIAC's undertaking and responsibility for managing safety of good
Force majeure	an expected force majeure	No – unless SPI or could cause SPI/psychological injury	
Media	Approaches by media to staff /detainees	No	
	Presence at facility	No	
	Incident likely to attract media attention	No	

Minor Incidents			
<p>A Minor incident is an incident or event which affects, but to a lesser degree than a major incident, the good order, safety and security of the facility, the welfare of detainees or which threatens the success of escorts/transfer/removal activities. <i>A written report should be provided within 24 hours to Detention Operations and National Office OHS Coordinator.</i> Minor incidents include, but are not limited to:</p>		Reportable to Comcare?	Comcare comments
Abusive /aggressive behaviour	by detainee	No	Assuming there is no injury or risk of injury. If so, could be a dangerous occurrence
	by staff	No	Assuming there is no injury or risk of injury. If so, could be a dangerous occurrence
Accident	to detainee, minor	No – unless SPI or could cause SPI/psychological injury	Could be a dangerous occurrence
	to staff, minor	As above	Could be a dangerous occurrence
Assault – not occasioning bodily harm	Detainee on detainee	As above	Could be a dangerous occurrence
	Detainee on staff	As above	Could be a dangerous occurrence
	staff on detainee	As above	Could be a dangerous occurrence
	other [eg. Visitor]	As above	Could be a dangerous occurrence
Birth of a child		No	
Complaints	Any know complaint about Minor incidents	No	
Damage to facility	Less serious	Not generally	
Disturbance	Minor	No	
Industrial action	Minor	No	
Notification by State/Territory authorities [eg. welfare, police]		No	Not sure what this is referring too.
Notification to State/ Territory authorities		No	Not sure what this is referring

[eg. welfare, police]			too.
Prohibited article	other - brought in by visitor	No – unless SPI or could cause SPI/psychological injury	
	other - found	As above	
	other - brought in by staff	As above	
Public health risk	Public health risk	Not unless it arose through DIAC's conduct	Also includes public health risk generated by DIAC's contractors
Property	Missing	No	
	Theft	No	
Self harm	Threatened	No	
Theft (of non-detainee property) (eg Commonwealth, GSL, visitor or contractor property)		No	
Transfer of detainee	to alternate place of detention [excluding hospital]	No	
Use of instruments of restraint		No – unless SPI or could cause SPI/psychological injury	
Visits	Other visitor refused access	No	
Voluntary starvation	under 24 hours	No	
	end of	No – unless SPI or could cause SPI/psychological injury	