

MEMORANDUM OF UNDERSTANDING RELATING TO CHILDREN IN IMMIGRATION DETENTION IN VICTORIA

BETWEEN

THE STATE OF VICTORIA AS REPRESENTED BY THE DEPARTMENT OF HEALTH & HUMAN SERVICES AND THE COMMONWEALTH OF AUSTRALIA AS REPRESENTED BY THE DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION

BACKGROUND

- A. The Department of Immigration and Border Protection (DIBP) regulates the movement of Non-Citizens into and out of Australia, in accordance with the *Migration Act 1958* (Cth) (the Act). Section 189 of the Act requires that all Unlawful Non-citizens be detained and s 196 of the Act (relevantly) requires that they must remain in Immigration Detention until such time as they are granted a visa or are removed from Australia.
- B. People under Immigration Detention may be accommodated in an Immigration Detention Centre, an Alternative Place of Detention (APOD) (e.g. motels or hospitals) or at a place specified in a Residence Determination.
- C. DIBP has a duty of care for every Child in Immigration Detention.
- D. Pursuant to s 6 of the *Immigration (Guardianship of Children) Act 1946* (Cth) (IGOC Act), the Commonwealth through the Minister is the guardian of every Child in Immigration Detention who comes under the scope of the IGOC Act, to the exclusion of the Child in Immigration Detention's parents and every other guardian until the child:
 - (i) reaches 18 years of age, or
 - (ii) leaves Australia permanently, or
 - (iii) becomes an Australian citizen, or
 - (iv) is exempt from the provisions of the IGOC Act under s 11 of the IGOC Act.
- E. In accordance with its statutory obligation under the *Children, Youth and Families Act 2005* (CYF Act), the Department of Health and Human Services (DHHS) provides protection for children identified as being at risk, including a Child in Immigration Detention in Victoria pursuant to its statutory responsibilities under the CYF Act.
- F. This memorandum of understanding (MOU) sets out the terms and conditions governing the relationship between the Parties for the provision of the protection of children including a Child in Immigration Detention in Victoria.

1. PURPOSE

- (a) DIBP recognises the statutory obligations imposed on DHHS by the CYF Act in relation to children in need of protection in Victoria.
- (b) Recognising this primary responsibility of DHHS and noting the duty of care owed to a Child in Immigration Detention and the importance DIBP gives to the health, safety and welfare of these children, DIBP commits to working with DHHS to facilitate the effective discharge of DHHS's child protection functions under the CYF Act and *Children, Youth and Families Regulations 2007* (Cth) (**CYF Regulations**), consistent with the Act and the Migration Regulations and the IGOC Act and the IGOC Regulations.
- (c) Recognising the Minister for Immigration and Border Protection's responsibilities as legal guardian of certain non-citizen children under the IGOC Act, DHHS commits to working with DIBP to facilitate the effective discharge of these guardianship functions under the IGOC Act.

2. DEFINITIONS

Terms contained in this MOU have the following definitions unless the context otherwise requires:

A child in need of protection has the meaning given to that term by s 162 of CYF Act.

Act means the *Migration Act 1958* (Cth).

Alternative Place of Immigration Detention or **APOD** is a reference to another place of Immigration Detention approved by the Minister in writing under subparagraph (b)(v) in the definition of Immigration Detention in subparagraph 5(1) of the Act.

Child has the meaning given to that term by section 3 of the CYF Act.

Child in Immigration Detention means an unlawful non-citizen child in Immigration Detention, an Alternative Place of Immigration Detention or the subject of a Residence Determination in Victoria who is the subject of a child protection concern in accordance with Attachment A.

Child Protection Statutory Obligations means the exercise of all the Secretary's statutory obligations under the CYF Act further described in Attachment A.

CYF Act means the *Children, Youth and Families Act 2005* (Vic).

Commencement date means the date set out in Item 1 of the Schedule.

Confidential Information means any information, material, knowledge and data (including Personal Information), whether or not in a material form, which is confidential to a Party or should reasonably be considered confidential and is disclosed, communicated or delivered to a Party, or obtained by the Party, during the course of, as a result of or in connection with this MOU, excluding information or material which the receiving Party can demonstrate:

- (i) is in the public domain otherwise than by disclosure in breach of any obligations of confidence;

- (ii) was lawfully received by the receiving Party from a third party; or
- (iii) was independently developed by the receiving Party.

Delegate is a person who is delegated certain guardianship powers and functions of the Minister for Immigration and Border Protection under s 5 of the IGOC Act.

Detainee means a person:

- (i) taken into Immigration Detention; or
- (ii) kept, or caused to be kept, in Immigration Detention.

Detention Service Provider means the service provider contracted by DIBP to provide and coordinate the day to day operation of MITA and other Immigration Detention services.

Detention Superintendent means the DIBP employee identified in Item 5(a) of the Schedule.

DHHS means the Victorian Department of Health & Human Services or another Department performing the statutory functions under the CYF Act.

DIBP means the Department of Immigration and Border Protection or another Department performing the statutory functions under the Act.

GST means goods and services tax pursuant to the *A New Tax System (Goods and Services) Tax Act 1999* (Cth).

IGOC Act means the *Immigration (Guardianship of Children) Act 1946* (Cth).

IGOC Regulations means the *Immigration (Guardianship of Children) Regulations 2001* (Cth).

IGOC minor is a non-citizen child as provided for by s 4AAA(1) or (4) of the IGOC Act.

Immigration Detention means:

- (i) being in the company of, and restrained by:
 - A. an officer under the Act including an officer of DIBP, a member of the Australian Federal Police, an officer for the purpose of the *Customs Act 1901* or any other person authorised by the Minister; or
 - B. in relation to a particular Detainee - another person directed by the Secretary to DIBP to accompany and detain the person; or
- (ii) being held by, or on behalf of, an officer under the Act:
 - A. in an Immigration Detention Centre; or
 - B. in a prison or remand centre of the Commonwealth, a State or a Territory; or
 - C. in a police station or watch house; or

- D. in relation to a non-citizen who is prevented, under s 249 of the Act, from leaving a vessel – on that vessel; or
- E. in another place approved by the minister in writing; or
- (iii) a person residing at a place specified by the Minister under a Residence Determination within the meaning of s 197AB(1) of the Act.

Immigration Detention Centre means an Immigration Detention Centre established under s 273 of the Act and includes, but is not limited to MITA.

Intellectual Property means trademarks, patents, designs, circuit layouts, copyrights, know-how and all other rights as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation (including all statutory and other proprietary rights in respect of them).

Minister means the Commonwealth Minister for Immigration and Border Protection.

MITA means the Melbourne Immigration Transition Accommodation facility located at Maygar Barracks, 150 Camp Road, Broadmeadows, Victoria 3047.

MOU means this memorandum of understanding, including any attachments, schedules, statements, annexes or other documents expressly incorporated as amended from time to time.

MOU Managers means each Party's representative identified in Item 3 of the Schedule.

Non-IGOC minor is a non-citizen child as provided for by s 4AAA (2) and (3) of the Act and they are not under the Minister's guardianship.

Party or Parties means severally the parties to this MOU and their respective successors.

Personnel mean employees, agents and contractors, including representatives.

Representative means each Party's representative identified in Item 2 of the Schedule.

Residence Determination has the meaning given by s 197AB(1) of the Act which states:

*"If the Minister thinks that it is in the public interest to do so, the Minister may make a determination (a **residence determination**) to the effect that one or more specified persons to whom this Subdivision applies are to reside at a specified place, instead of being detained at a place covered by the definition of 'immigration detention'."*

Secretary to DHHS means the person appointed to, or acting in the position of Secretary to DHHS.

Secretary to DIBP means the person appointed to, or acting in the position of Secretary to DIBP.

Unlawful Non-citizen means an individual in Australia (including its resource and sea installations), who is not an Australian citizen and does not hold a valid visa.

3. GENERAL

- (a) In this MOU, the following rules apply except where the context requires otherwise:
- (i) words in the singular include the plural and vice versa;
 - (ii) words importing any gender include each other gender;
 - (iii) a reference to a person includes any other entity recognised by law and vice versa;
 - (iv) where the expression including or includes is used it means “including but not limited to” or “including without limitation”;
 - (v) all references to dollars are to Australian dollars and this MOU uses Australian currency;
 - (vi) a reference to a Party includes its employees, officers, agents, administrators, executors, substitutes, contractors, subcontractors, representatives, permitted assigns and successors;
 - (vii) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (viii) headings and recitals are included for convenience only and do not affect the meaning of the provisions to which they refer;
 - (ix) where a conflict or inconsistency arises between the terms and conditions contained in the clauses of this MOU and any part of the schedule, the terms and conditions of the clauses prevail to the extent of the conflict or inconsistency; and
 - (x) where an expression is defined, another part of speech or grammatical form of the expressions has a corresponding meaning.
- (b) The laws that are applicable in Victoria, Australia, the Act and the IGOC Act govern this MOU and each Party submits to the jurisdiction of the courts of that state and any courts which may hear appeals from those courts where consistent with the relevant Federal laws.
- (c) This MOU constitutes the entire agreement between the Parties in connection with this MOU’s subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.
- (d) This MOU, including the schedule and any attachment to the MOU, may only be varied with the written consent of each Party.
- (e) Any officer of DHHS or DIBP to whom reference is made in this MOU may be substituted by another officer of DHHS or DIBP respectively performing the same or substantially the same functions under the MOU without the need for any formal variation of the MOU.

- (f) No Party may sub-contract, assign or delegate any of its responsibilities under the MOU other than is expressly permitted by the MOU. For the avoidance of doubt this clause does not prevent DHHS from placing a Child in Immigration Detention into the care of a community service provider registered under the CYF Act that DHHS funds, and/or subcontracting any element connected to the Child Protection Statutory Obligations.
- (g) A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.
- (h) A term or part of a term of this MOU that is illegal or unenforceable may be severed from this MOU and the remaining terms or parts of the term of this MOU continue in force.
- (i) This MOU may be executed in counterparts. All executed counterparts constitute one document.

4. COMMENCEMENT

This MOU comes into effect on the date on which the written agreement is last signed by the Party to do so, or at a later date as agreed in writing by the Parties.

5. REVIEW

The Parties will, as required and agreed, but no less than once every thirty-six (36) months:

- (a) review this MOU and consider whether the purpose of this MOU is being achieved; and
- (b) discuss, and use best endeavours to resolve, any issues or concerns of the Parties.

6. REPRESENTATIVE

- (a) Each Party will nominate a Representative to act as the contact point for all communications under this MOU.
- (b) Each Party may replace its Representative by giving written notice to each other Party.

7. PRIVACY AND CONFIDENTIALITY

- (a) Each Party must keep all Confidential Information absolutely confidential and each Party warrants to the other that it will not communicate, publish or release, or permit the communication, publication or release of any confidential information except:
 - (i) as is necessary for the Partner Agencies to perform their obligations under this MOU;
 - (ii) as required by law or by the Parties' reporting obligations; or
 - (iii) as is permitted under this MOU or otherwise agreed in writing by the Parties.
- (b) Notwithstanding any requirements under this MOU, the Parties must comply with the *Privacy Act 1988* (Cth), *Privacy and Data Protection Act 2014* (Vic) and *Health Records Act 2001* (Vic) and their

respective Information Privacy Principles and Health Privacy Principles and any applicable code of practice as well as any other requirements under law, with respect to any conduct by them for the purposes of this MOU.

- (c) A Party may disclose Confidential Information of the other Party to its officers or employees who have a need to know for the purposes of this MOU (and only to the extent that each has a need to know).
- (d) The Parties agree and must ensure that their respective Personnel agree that:
 - (i) they will not improperly access, use, modify, disclose or retain any Personal Information acquired arising out of or during the course of DHHS undertaking its statutory obligations under the CYFA in connection with this MOU; and
 - (ii) all reasonable steps will be taken to ensure that any Personal Information collected, used or held in connection with this MOU is protected against loss, unauthorised access, use, modification or disclosure and misuse.
- (e) Each Party's obligations under this clause will survive termination of this MOU and will continue in relation to Confidential Information until the Confidential Information disclosed to it lawfully becomes part of the public domain.

8. ANNOUNCEMENTS AND INQUIRIES

- (a) Neither Party will make any public announcement relating to this MOU or its subject matter or issue any press release in relation to this MOU without the prior written approval of the other Party.
- (b) Both Parties will take all reasonable steps to ensure compliance with this clause by their Personnel.

9. NOTICES

- (a) The Parties agree that any notice to be given in relation to this MOU will be in writing and addressed to the relevant Representatives.
- (b) Notices must be served on the other Party by one or more of the following delivery options: hand delivery; mail; or electronic mail, at the addresses or electronic mail addresses set out in Item 2 of the Schedule.
- (c) Receipt of a notice from a Party will be acknowledged in writing by the other Party within ten (10) days.
- (d) Each Party will promptly notify the other whenever a change relevant to the operation of this MOU occurs, including the details of contact officers, operational officers and persons authorised to resolve disputes.

10. VARIATION

Any proposal to replace or amend the terms or provisions of this MOU will be subject to consultation between the Parties Representatives identified in Item 2 of the Schedule.

11. TERMINATION

- (a) Notwithstanding any other provision of this MOU, any Party may terminate this MOU without cause or penalty at any time by providing the other Party's Representative with three (3) months' prior written notice of its decision to terminate this MOU.
- (b) Where a dispute has arisen in relation to this MOU, and a resolution procedure has commenced, it must be allowed to finish or the relevant time period elapse before a termination notice can be served.

12. CONFLICT RESOLUTION

- (a) If any dispute or issue arises between the Parties in relation to this MOU, the Parties will endeavour in good faith to resolve the issue reasonably, expeditiously and amicably, using the following procedures:
 - (i) the Parties will seek to negotiate a resolution to the dispute at the operational level;
 - (ii) if negotiations at the operational level fail to resolve the dispute, the MOU Managers will seek to negotiate a resolution to the dispute; and
 - (iii) if negotiations between the MOU Managers fail to resolve the dispute the First Assistant Secretary, Children, Community and Settlement Services Division and the DHHS MOU Manager, or persons on their behalf, will seek to negotiate a resolution to the dispute.
- (b) Both Parties will continue to meet their undertakings under this MOU until the dispute is resolved.

13. ROLES AND RESPONSIBILITIES

- (a) DIBP will:
 - (i) direct its Personnel and the Detention Service Provider's Personnel (where applicable) who become aware of a child protection concern in relation to a Child in Immigration Detention, to make a report to DHHS' Child Protection Intake using the contact details set out in Item 4 of the Schedule, as soon as reasonably practicable, after forming a belief on reasonable grounds that a Child in Immigration Detention is in need of protection including, for example, because the child has suffered or is likely to suffer harm as a result of physical injury, sexual abuse, emotional or psychological harm;
 - (ii) if DHHS decides that an investigation is warranted, provide and procure the Detention Service Provider's personnel to provide DHHS with all necessary assistance to facilitate DHHS's investigation into the child protection concern in accordance with DHHS' standard procedures and guidelines;
 - (iii) facilitate and provide safe passage for designated DHHS Personnel and, where deemed necessary by DHHS, representatives from Victoria Police, to enter the Immigration Detention facility where the Child in Immigration Detention is being detained for the purpose of investigating a report that a Child in Immigration Detention may be in need of protection, including, amongst other things, to interview the Child in Immigration Detention, the Child in Immigration Detention's parents (if applicable), the social worker and any other persons

deemed necessary by DHHS to determine the facts of the alleged child protection concern (**Interviews**);

- (iv) ensure that DHHS Personnel are able conduct Interviews without the presence of personnel from DIBP, its service providers including but not limited to the Detention Service Provider's personnel;
- (v) provide, or procure access to all relevant information pertaining to the child protection concern, the Child in Immigration Detention and their family's situation to DHHS to enable it to assess whether the Child in Immigration Detention is in need of protection and what actions, if any, are required to ensure that the Child in Immigration Detention's best interests are paramount;
- (vi) use best endeavours to provide DHHS with an appropriate counselling room separate to and different from those used by DIBP, DIBP's service providers or the Australian Federal Police for interviews at an Immigration Detention Centre for the purposes of determining whether a Child in Immigration Detention is at significant risk of harm and in need of protection;
- (vii) provide DHHS with a point of contact who is available twenty-four (24) hours a day, seven (7) days per week to support any emergency contact required to be made with a child in immigration detention by DHHS;
- (viii) ensure that the Delegate for an IGOC minor is available to liaise with DHHS;
- (ix) employ a suitably qualified and experienced social worker or allied professional to be based in Victoria, for the duration of this MOU (**Social Worker**), who, along with the Detention Superintendent, will be the primary contact for DHHS Personnel in relation to child protection concerns raised in relation to a Child in Immigration Detention ;
- (x) carefully consider all recommendations provided by DHHS to ensure that best interests of the child are protected and ensure that the discretionary powers under the Act are implemented so as to ensure consistency with decisions of the Secretary to DHHS within the timeframes specified in Annexure B;
- (xi) consistent with the Act and the IGOC Act, work with DHHS to ensure that a Child in Immigration Detention resides in circumstances where the child is not in need of protection;
- (xii) immediately notify DHHS if DIBP becomes aware of any change to the Residence Determination or detention status of a Child in Immigration Detention who is the subject of a child protection concern, or the Child in Immigration Detention's family; and
- (xiii) upon completion of an investigation and assessment by DHHS and where DHHS determines, in its absolute discretion, that a Child in Immigration Detention is at a significant risk of harm and is in need of protection, DIBP will ensure that any necessary exercise of power by an officer of DIBP in relation to a Child in Immigration Detention is performed in a manner that is consistent with a decision of the Secretary to DHHS pursuant to DHHS's statutory obligations under the CYF Act and that to the extent necessary is not inconsistent with the Act, IGOC Act and IGOC Regulations.

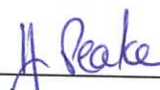
(b) DHHS will:

- (i) notify the Detention Superintendent, as soon as reasonably practicable of all reports received in relation to Children in Immigration Detention or IGOC minors;

- (ii) notify Victoria Police of any reports concerning physical or sexual abuse of Children in Immigration Detention in accordance with the 'Protecting Children Protocol' between DHHS and Victoria Police dated 1 June 2012;
- (iii) upon receiving a report that a Child in Immigration Detention may be in need of protection or that there is a significant concern for the wellbeing of a Child in Immigration Detention, DHHS will:
 - A. as soon as reasonably practicable, contact DIBP's Representative identified in Item 2 of the Schedule;
 - B. undertake an initial assessment of the report; and
 - C. if deemed necessary, conduct an investigation of the report in a way that will be in the best interests of the Child in Immigration Detention;
- (iv) in accordance with its statutory obligations under the CYF Act deal with a Child in Immigration Detention that DHHS reasonably suspects is in need of protection in the same way as a child living in the community;
- (v) provide the Detention Superintendent with regular updates regarding the status of DHHS's investigation;
- (vi) advise DIBP if upon the completion of an investigation DHHS determines that a Child in Immigration Detention is not at a significant risk of harm and therefore is not in need of protection;
- (vii) advise DIBP if upon completion of an investigation DHHS has determined that a Child in Immigration Detention is at a significant risk of harm and in need of protection including from a person with whom the child resides and work with DIBP to identify options to remove this risk including, for example, relocating the person posing the risk or relocating the Child in Immigration Detention;
- (viii) following an investigation of a report about a Child in Immigration Detention in accordance with clause 13(b)(iii), if DHHS determines, in its absolute discretion that a Child in Immigration Detention is at significant risk of harm and in need of protection, work with DIBP to agree a course of action to discharge DHHS's obligations under the CYF Act that is consistent with the Act and the IGOC Act and IGOC Regulations including, but not limited to, issuing a protection application by notice under section 243 of the CYF Act or by taking the Child in Immigration Detention into emergency care pursuant to section 241(1)(a) of the CYF Act; and
- (ix) provide DIBP with reasonable access to a Child in Immigration Detention to ensure the continued resolution of their immigration status.

EXECUTION PAGE

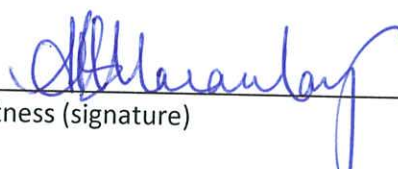
SIGNED by KYM PEAKE, SECRETARY to the)
DEPARTMENT OF HEALTH & HUMAN SERVICES for)
and on behalf of the STATE OF VICTORIA (ABN 74 410)
330 756), in the presence of:)
)
)
)
)
)



Signature

16/2/2017

Date



Witness (signature)

AMY BARRY-MACAULAY

Witness Name (print)

SIGNED for and on behalf of DEPARTMENT OF
IMMIGRATION AND BORDER PROTECTION for and on
behalf of the COMMONWEALTH OF AUSTRALIA by
CHERYL-ANNE MOY, FIRST ASSISTANT SECRETARY,
CHILDREN, COMMUNITY AND SETTLEMENT
SERVICES, DEPARTMENT OF IMMIGRATION AND
BORDER PROTECTION, in the presence of:



Signature of authorised representative

CHERYL-ANNE MOY, FAS CCSSA

Name and Position of authorised representative



Witness (signature)

HELEN PENNY

Witness Name (print)

9 January 2017

Date

SCHEDULE

ITEM 1 TERM

Commencement date: On the date that the last Party executes this MOU.

ITEM 2 REPRESENTATIVES

DHHS

Name of representative: Kym Peake

Position: Secretary to the Department of Health and Human Services

Telephone: 03 9096 8584

Email: kym.peake@dhhs.vic.gov.au

DIBP

Name of representative: Cheryl-Anne Moy

Position: First Assistant Secretary, Children, Community and Settlement Services Division.

Telephone: 02 6275 6677

Email: cheryl-anne.moy@border.gov.au

ITEM 3 MOU MANAGERS

DHHS

Name of representative: Beth Allen

Position: Assistant Director, Child Protection, Statutory and Forensic Services, Department of Health and Human Services

Telephone: 09 9096 6189

Email: beth.allen@dhhs.vic.gov.au

DIBP

Name of representative: David Norris

Position: Assistant Secretary, Child Wellbeing Branch

Email: child.protection@border.gov.au

Telephone: (02) 6275 5996

ITEM 4 DHHS CHILD PROTECTION INTAKE CONTACT DETAILS

Child Protection Intake

Business Hours 8:30am – 5:30pm Monday to Friday

During business hours, ring the number covering the local government area (LGA) where the child lives.

North Division – 1300 664 977

North Division has one child protection intake located at DHHS Preston covering the following LGAs: Banyule, Buloke, Darebin, Campaspe, Central Goldfield, Gannawarra, Greater Bendigo, Hume, Loddon, Macedon Ranges, Mildura, Moreland, Mount Alexander, Nillumbik, Swan Hill, Whittlesea, Yarra.

South Division – 1300 655 795

South Division has one child protection intake located at DHHS Dandenong, and covers the following LGAs: Bass Coast, Baw Baw, Bayside, Cardinia, Casey, East Gippsland, Frankston, Glen Eira, Greater Dandenong, Kingston, Latrobe, Mornington Peninsula, Port Phillip, South Gippsland, Stonnington, Wellington.

East Division – 1300 360 391

East Division has one child protection intake located at DHHS Box Hill covering the following LGAs: Alpine, Benalla, Boroondara, Greater Shepparton, Indigo, Knox, Manningham, Mansfield, Maroondah, Mitchell, Moira, Monash, Murrindindi, Strathbogie, Towong, Wangaratta, Whitehorse, Wodonga, Yarra Ranges.

West Division – rural and regional only – 1800 075 599

West Division (rural and regional) has one child protection intake located at DHHS Geelong covering the following LGAs:

Ararat, Ballarat, Colac-Otway, Corangamite, Glenelg, Golden Plains, Greater Geelong, Hepburn, Hindmarsh, Horsham, Moorabool, Moyne, Northern Grampians, Pyrenees, Queenscliffe, Southern Grampians, Surf Coast, Warrnambool West Wimmera, Yarriambiack.

West Division – metro area – 1800 664 977

West Division (metro) reports are managed by North Division Intake located at DHHS Preston for the following LGAs:

Brimbank, Hobsons Bay, Maribyrnong, Melbourne, Melton, Moonee Valley, Wyndham.

After hours Child Protection Emergency Services Statewide – 13 12 78

24 hours a day, 7 days a week

State-wide after hours emergency service that receives new reports, as well as concerns for existing child protection clients who are considered to be at immediate risk and require urgent after hours service.

ITEM 5 DIBP OPERATIONS CONTACT

- (a) Detention Superintendent, Victoria:
Telephone: (03) 9244 8873
Mobile: 0437 256 150
- (b) Detention Operations: (03) 9280 6168
Mailbox: mita.inbox@border.gov.au
- (c) Security Liaison Officer Victoria: (03) 9280 6172
E-mail: mita.security.liaison@border.gov.au

Alternative operations contact

- (d) Director, Child Welfare Support Section
Mailbox: child.protection@border.gov.au

ATTACHMENT A

CHILD PROTECTION PROCESS

The main principle underpinning child protection and the Department of Health & Human Services (DHHS) responsibilities pursuant to the *Children, Youth and Families Act 2005* (VIC) is that the best interests of the child must always be the paramount consideration. In determining whether any decision or action is in the best interests of the child, the need to protect the child from harm, to protect the child's rights, and to promote the child's development must always be considered.

Current assessment

Analysis and assessment, along with case planning, is a core process for all child protection concerns. This is the process through which a determination is made that a particular Child in Immigration Detention, once reported to DHHS, is 'in need of protection', or other intervention to ensure their wellbeing.

DHHS uses a professional judgement model, the Best Interests Case Practice Model, which involves the gathering of information, analysis and planning, action and review.

Consideration is given to the vulnerability of the Child in Immigration Detention, the likelihood of future harm if nothing changes and what is needed to ensure their the safety, healthy development and wellbeing. Assessment of cumulative harm is critical to the overall analysis, risk assessment and planning.

Stages

There are a number of stages of child protection involvement that require different courses of action. These stages are described as follows:

Intake

The function of DHHS child protection intake is to receive reports concerning children at risk of harm, and to determine what action is required to be taken using the Best Interests Assessment and Case Practice Framework and case planning process.

DHHS child protection intake will receive reports related to a child protection concern or a significant concern for the wellbeing of a Child in Immigration Detention.

When a report is received, DHHS will make an initial assessment including a detailed examination of the information and an appraisal of the potential consequences of intervention and non-intervention. Primary responsibility is to assess the risks to the Child in Immigration Detention and the level of urgency.

Investigation and assessment

The decision as to whether an investigation (direct visit) is required is dependent on a risk assessment—that is, does a Child in Immigration Detention's prescribed circumstances mean that they are in need of protection, and that the reported concerns cannot be adequately determined or addressed without DHHS involvement.

The purpose of a direct visit is to assess the Child in Immigration Detention's safety, ascertain the validity of the allegations, assess the Child in Immigration Detention's needs and make a decision as to the appropriate course of action to promote the child's safety and wellbeing.

At the completion of the investigation, DHHS in consultation with the DIBP Representative will make a determination as to what action, if any, is required in order to ensure the Child in Immigration Detention is safe from risk.

Substantiation

Within 28 days of receipt of the report DHHS must determine a case to be either:

- substantiated, or
- not substantiated.

A substantiation determination must be based on the evidence gathered during the investigation. The report is to be substantiated if DHHS is satisfied, based on the evidence, that any of the grounds for a child being in need of protection exist. This includes concerns not included in the report.

In considering the substantiation decision, there are four basic outcomes:

1. No significant concern

This outcome is applicable to a case that is not substantiated and where it is assessed that:

- the Child in Immigration Detention has not **experienced significant harm**
- the Child in Immigration Detention is **not in need of protection**.

2. Significant concern for wellbeing

This outcome is also applicable to a case that is not substantiated, but where it is assessed that:

- the Child in Immigration Detention is **not in need of protection**.
- there are **significant concerns for the wellbeing of the Child in Immigration Detention**.

This type of outcome would result in DHHS recommending that the Child in Immigration Detention be closely monitored and if possible, removed from where they are currently being detained in order to ensure their safety and wellbeing.

3. No further risk of significant harm

This outcome is applicable to a substantiated case where it is assessed that:

- harm has been experienced by the Child in Immigration Detention; and
- the Child in Immigration Detention now has sufficient protection.

4. Significant risk of harm – child in need of protection

This outcome is also applicable to a substantiated case, but where it is assessed that:

- **harm has been experienced** by the Child in Immigration Detention;
- there is an **unacceptable risk of harm**, and the Child in Immigration Detention **does not have sufficient protection**; or

- no actual harm has occurred but there is an **unacceptable likelihood of harm and the Child in Immigration Detention does not have sufficient protection.**

This type of outcome may result in DHHS recommending that the Child in Immigration Detention be removed from the place listed in their Residence Determination pursuant to the Secretary's statutory obligations under the CYF Act.

Following a substantiation decision being made, DHHS will report its findings and recommendation to DIBP for its consideration and implementation.

Court Order

If, following an investigation, it is assessed that there is an unacceptable level of risk to a Child in Immigration Detention DHHS may issue a protection application in order to ensure the child's safety.

In the event that the Child in Immigration Detention continues to be at 'significant risk of harm' following the provision of necessary services, DHHS may seek a protection order through the Children's Court.

ATTACHMENT B

TIMING REQUIREMENTS

DIBP and DHHS commit to exercising their respective roles and responsibilities, as outlined in clause 13 of the MOU, within the timeframes outlined below.

DIBP will:

Action	Timing
Make a report to DHHS' child protection intake after forming a belief, on reasonable grounds, that a Child in Immigration Detention is in need of protection.	As soon as reasonably practicable
Upon request, facilitate DHHS' entry to the Immigration Detention Centre or APOD	Within 24 hours
Upon request, facilitate an interview between DHHS Personnel with the Child in Immigration Detention, the child's parents and other persons deemed necessary by DHHS	Within 24 hours
Provide all relevant information pertaining to the child protection concerns to enable DHHS to determine if the Child in Immigration Detention is in need of protection	Within 48 hours
Notify DHHS upon becoming aware of any change to the Residence Determination or detention status of a Child in Immigration Detention or the child's family	Immediately
Seek agreement from the Minister for Immigration and Border Protection to change a Child in Immigration Detention's Residence Determination where necessary to prevent any inconsistencies with recommendations made by DHHS in accordance with its obligations under the CYFA	Within 24 hours

DHHS will:

Action	Timing
Notify the Detention Superintendent of all reports received in relation to Children in Immigration Detention Centres	Within 24 hours
Notify the Detention Superintendent of the closure of a report where it has been determined a Child in an Immigration Detention Centre is not at a significant risk of harm and an investigation is not required	Within 3 days of receiving a report
Notify the Detention Superintendent of a decision to conduct an investigation to determine if a Child in Immigration Detention is in need of protection	Within 24 hours of the decision being made
Notify the Detention Superintendent where access to an Immigration Detention Centre is required	Within 24 hours of the decision being made
Notify the Detention Superintendent of the closure of an investigation, where it has been determined a Child in immigration Detention is not at a significant risk of harm and no further action will be taken	Within 48 hours
Upon determining that a Child in Immigration Detention is at a significant risk of harm and in need of protection, advise the Detention Superintendent of the recommended course of action	Within 24 hours
Keep the Detention Superintendent reasonably informed of actions taken in regards to a Child in Immigration Detention over the course of an investigation, protective intervention or protection order	As reasonably determined