



**Justice and
Equity Centre**

Beyond Imagination: Lived experiences of handcuffing and healthcare failures in Australian immigration detention

July 2026



[I was] handcuffed to come to Australia... Handcuffed from the airport, arrival, ambulance, carried to hospital... The way I was treated was beyond imagination.

– **Hassan**, asylum seeker



About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (**PIAC**), we work with people and communities who are experiencing marginalisation or disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

We actively collaborate and partner in our work and focus on finding practical solutions. We work across five focus areas:

Disability rights: challenging discrimination and making the NDIS fairer to ensure people with disability can participate equally in economic, social, cultural and political life.

Justice for First Nations people: challenging the systems that are causing ongoing harm to First Nations people, including through reforming the child protection system, tackling discriminatory policing and supporting truth-telling.

Homelessness: reducing homelessness and defending the rights of people experiencing homelessness through the Homeless Persons' Legal Service and StreetCare's lived experience advocacy.

Civil rights: defending the rights of people in prisons and detention, including asylum seekers, modernising legal protection against discrimination, raising the age of criminal responsibility to 14, advancing LGBTIQ+ equality and advocating for open and accountable government.

Energy and water justice: working for affordable and sustainable energy and water and promoting a just transition to a zero-carbon energy system.

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1. Introduction

People locked up in immigration detention deserve to be treated humanely and with dignity. But Australia's immigration detention regime is unnecessarily cruel and harmful.

Since 2016, the Justice and Equity Centre has been working with asylum seekers in onshore immigration detention centres to protect their human rights. We oppose prolonged and arbitrary mandatory immigration detention, while also seeking improved treatment of people while they are held in Australia's immigration detention centres.

Through our work, we identified the arbitrary and excessive use of handcuffs in immigration detention centres as a major human rights concern.

We spoke to over 40 people who had been handcuffed in immigration detention. In this report, we share their stories. What we heard reveals the lasting marks left by handcuffing: it 'stays with you the rest of your life'.

People told us about intense humiliation and distress. About anxiety so strong they vomited, struggled to breathe or had panic attacks. For people with a history of torture, these experiences were traumatic, reigniting painful memories. Others told us they were 'scared to go' to hospital for medical treatment because of the threat of handcuffs. Missing out on critical healthcare was a common experience.



Many people told us they were sharing their stories so others would know what they went through. They hope for change, so no one else has to experience this trauma.

These stories demonstrate the need for reform, to protect the human rights of people in immigration detention. We examine how insufficient oversight and regulation from the Australian Government has enabled ongoing misuse and overuse of handcuffing. We also highlight the healthcare inequities experienced by people in detention – both as a result of handcuffing and due to the broader failure of the Australia government to provide adequate healthcare to detainees.

We make three key recommendations for the Australian Government: introduce minimum healthcare standards, establish an oversight body to enforce them and implement stronger regulations to limit the use of force, including handcuffing.

People in immigration detention have often endured significant trauma before being subjected to Australia's immigration detention regime. Australia has a duty of care to people locked up in these facilities. Committing to the humane treatment of people in detention centres should not be controversial. Through improved regulation, transparency and accountability, Australia can ensure adequate standards of safety, humanity and dignity for people in detention.

2. Handcuffing in immigration detention

Conditions in Australian immigration detention are unnecessarily harsh and inhumane.¹ Inappropriate and disproportionate use of force on detainees, including handcuffing, is a long-standing issue,² with concerns raised since at least 2008.³

Widespread and routine handcuffing

Handcuffs are routinely used on detainees while they are transferred between detention centres, or escorted to court or medical appointments. Government policy states the use of force in immigration detention should be a measure of last resort.⁴ It should also be proportionate to the situation and reasonable in the circumstances.⁵

In contrast, people we spoke to who have been held in immigration detention told us ‘the handcuffs, everywhere you go, they put them on you’ and ‘the force they use is out of control’.

Data from the Department of Home Affairs confirms excessive use of force in immigration detention, including use of handcuffs. In the 2023-2024 financial year there were 5,558 use of force incidents documented.⁶ The detention population was 1,000 people or less during that time.⁷ This is consistent with a high number of use of force incidents in earlier years, with 6,582 in FY 2022-23 and 7,017 in FY 2021-22⁸ on slightly larger detention populations.⁹

‘The handcuffs, everywhere you go, they put them on you’ – Kareem



¹ Global Detention Project, *Immigration Detention in Australia: Turning arbitrary detention into a global brand* (Country Report, February 2022) 7; Louise Boon-Kuo, ‘The private harms of detention: why Serco’s violence is not criminalised’ (2023) 36(2) *Current Issues in Criminal Justice* 219.

² Boon-Kuo (n 1) 221.

³ Ibid citing Parliament of Australia, Joint Standing Committee on Migration, *Immigration detention in Australia: A New Beginning, first report of the inquiry into immigration detention in Australia* (Report, December 2008) 66.

⁴ Australian Government, Department of Home Affairs, *Detention Services Manual – Safety and security management – Use of force* (Operation Manual, 2018) 5 <<https://www.homeaffairs.gov.au/foi/files/2025/fa-250600378-document-released.PDF>>; Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *2024-25 Additional Estimates – Home Affairs Portfolio: Question on notice no.96* (February 2025).

⁵ AHRC, *Use of force in immigration detention* [2019] AusHRC 130 [3]-[4] (‘Use of force’); Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *2024-25 Supplementary Estimates – Home Affairs Portfolio: Question on notice no. 375* (November 2024).

⁶ Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *2024-25 Supplementary Estimates – Home Affairs Portfolio: Question on notice no. 370* (November 2024).

⁷ Based on monthly data, an average of 934 people were in immigration detention in the 2023-24 FY. The highest number of people held in immigration detention in this period was 1079 in July 2023 (see Australian Government, Department of Home Affairs, ‘Immigration detention statistics’ (Web Page, 28 January 2026) <<https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/immigration-detention>> (‘Immigration detention statistics’)).

⁸ Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *2023-24 Additional Estimates – Home Affairs Portfolio: Question on notice no. 595* (February 2024) (‘QoN no. 595’).

⁹ Based on monthly data, there was an average of 1475 people in immigration detention in FY 2021-22, and 1196 in FY 2022-2023 (see Department of Home Affairs, *Immigration detention statistics* (n 7)).

Australian Border Force notes '[i]ncidents may involve multiple detainees', meaning a single recorded incident may involve the use of force against more than one person. The true number of uses of force may be underreported.

Figure 1 below confirms handcuffing has become widespread and routine in the practice of immigration detention authorities. It shows a consistently low 'unplanned' use of force trend line compared to the 'planned' use of force trend line which reflects consistently higher usage and follows the population in detention more closely. The vast majority of reported incidents are 'planned' uses of force, meaning they were not in response to an emergency or crisis situation, but were part of the day-to-day operation of the detention system.

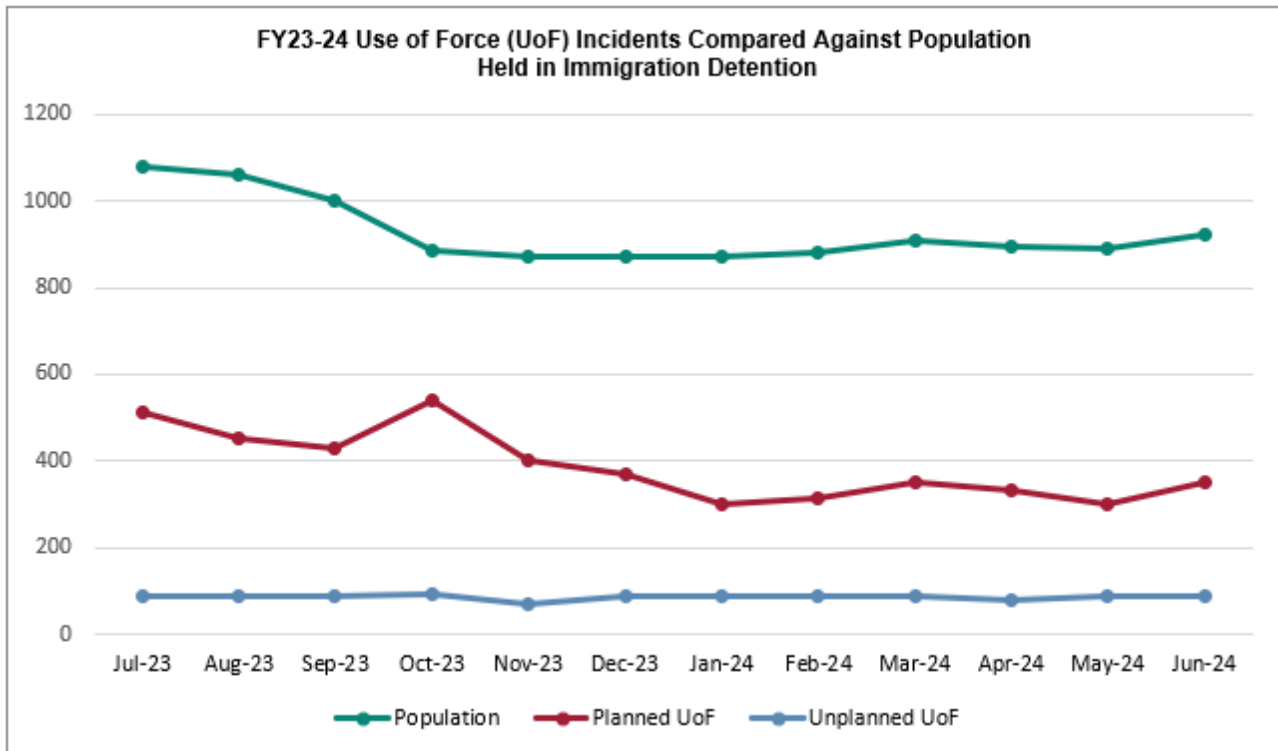


Figure 1: Graph showing use of force incidents to population in immigration detention

Facility	UoF – Unplanned Incidents	UoF – Planned Incidents	Total
Adelaide IDC*	<10	<50	<55
Brisbane IDC	79	1,756	1,835
Melbourne IDC	95	349	444
North West Point IDC	<5	<10	10
Northern APOD**	0	<10	<10
Perth IDC	58	64	122
Villawood IDC	489	1,989	2,478
Yongah Hill IDC	202	408	610
Total	934	4,624	5,558

Table 1: Planned vs unplanned uses of force in the onshore immigration detention network for FY23-24. This data is provided by the Australian Border Force which notes that "[i]ncidents may involve multiple detainees",¹⁰ meaning that a single recorded use of force incident may involve the use of force against more than one person. This has potentially underreported the true number of uses of force.

* IDC – Immigration Detention Centre

** APOD – Alternative Place of Detention

¹⁰ Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, QoN no. 595 (n 8).

Reports on excessive handcuffing

In May 2019, the Australian Human Rights Commission (**AHRC**) published a report about the use of force in immigration detention. The AHRC inspected multiple immigration detention facilities over several years and found that, by 2018, ‘the use of restraints was widespread and routine’ during transfers between centres and when accessing services outside of the detention facility.¹¹

A further report in 2020 found that while there appeared to be an overall reduction in the use of handcuffs, restraints were still used on detainees in ways that were not necessary and proportionate.¹²

As recently as 2024, the AHRC noted the ongoing issue of handcuffing in the Yongah Hill detention facility, recommending that when detainees are accessing external healthcare, handcuffs should be avoided wherever possible.¹³

The Commonwealth Ombudsman published four reports on its monitoring of immigration detention facilities over 2019 to 2021¹⁴ which expressed similar concerns to the AHRC.

The Ombudsman found the use of restraints was routine, in contrast to ‘last resort’ principles.¹⁵ It expressed concern that the use of restraints was being ‘exercised in a manner both inconsistent with the [Department of Home Affairs] own procedures and possibly without legal basis.’¹⁶ In one facility, the Ombudsman observed that restraints appeared to be a ‘default procedural step’.¹⁷

The Ombudsman also noted restraints were often used contrary to medical advice, including where a detainee had a history of torture or trauma, or a mental health condition.¹⁸

¹¹ AHRC, *Use of force* (n 5) [64].

¹² AHRC, *Inspections of Australia’s immigration detention facilities in 2019* (Report, December 2020) 65.

¹³ AHRC, *Yongah Hill Immigration Detention Centre Inspection Report* (Report, April 2024) 41, 45, 67 (‘Yongah Hill’).

¹⁴ Commonwealth Ombudsman, *Immigration Detention Oversight: Review of the Ombudsman’s Activities in Overseeing Immigration Detention: January to June 2019* (Report No 1, February 2020) (‘*Immigration Detention Oversight 2019*’); Commonwealth Ombudsman, *Monitoring Immigration Detention July to December 2019* (Report No 6 2020); Commonwealth Ombudsman, *Monitoring Immigration Detention January to June 2020* (Report No 4, 2021) (‘*MID Jan-Jun 20*’); Commonwealth Ombudsman, *Monitoring Immigration Detention 1 July 2020 to 30 June 2021* (Report No 1, 2022) (‘*MID Jul 20-Jun 21*’).

¹⁵ Commonwealth Ombudsman, *MID Jan-Jun 20* (n 14) [2.24].

¹⁶ Ibid 23 [6.35].

¹⁷ Commonwealth Ombudsman, *MID Jul 20-Jun 21* (n 14) [2.307].

¹⁸ Ibid [2.314-2.315].

Flawed risk assessments

Decision-making processes around handcuffing were also criticised by the Ombudsman. It reported that the Security Risk Assessment Tool (**SRAT**), used as the basis for decisions on handcuffing, tended to include inaccurate information. The Ombudsman further highlighted that the SRAT does not ensure staff can effectively consider the individual circumstances underpinning a person's risk rating,¹⁹ which can lead to unnecessary use of handcuffs.

The JEC worked with a journalist at the Guardian to expose the flaws in the SRAT, leading to the publication of an investigative series in 2024.²⁰



Investigations into the SRAT indicated that it produces very conservative assessments of risk.²¹ And once a detainee receives a high-risk rating, it is rarely lowered.²² The JEC expressed concerns that there was no process for having SRAT decisions reviewed, overturned or reconsidered.²³

The Griffith Criminology Institute was commissioned by the Department of Home Affairs to independently assess the validity of the SRAT.²⁴ It concluded that the 'tool is not borne out of sound scientific research'²⁵ and identified potential errors in how detainee data was recorded.²⁶ Concerns have been raised by academics, detainees and human rights advocates about the Tool's lack of transparency,²⁷ and the resulting lack of accountability for its use.²⁸

¹⁹ Commonwealth Ombudsman, *Immigration Detention Oversight 2019* (n 14) 17.

²⁰ Ariel Bogle, 'Revealed: the secret algorithm that controls the lives of Serco's immigration detainees', *The Guardian* (13 March 2024) ('*Secret Algorithm*'); Ariel Bogle, 'Flawed immigration detention risk assessment tool can't be upgraded as ABF data 'riddled with errors'', *The Guardian* (10 May 2024).

²¹ Bogle, *Secret Algorithm* (n 20); AHRC, *Use of force* (n 5) [555].

²² Bogle, *Secret Algorithm* (n 20).

²³ Ibid.

²⁴ Griffith Criminology Institute, *Final Report: Improving Risk Assessment of Immigration Detainees* (November 2019) <<https://www.homeaffairs.gov.au/foi/files/2020/fa-200200255-document-released.PDF>>.

²⁵ Ibid 117.

²⁶ Daniel Ghezelbash and Niamh Kinchin, *Automated Decision-Making in Australia's Migration System: Risks and Opportunities* (2025) 8 citing Ariel Bogle, 'Flawed immigration detention risk assessment tool can't be upgraded as ABF data 'riddled with errors'', *The Guardian* (10 May 2024).

²⁷ Bogle, *Secret Algorithm* (n 20).

²⁸ Wendy Yang, 'Risky business of using algorithms in immigration detention', *Law Society Journal* (10 April 2024).

The flawed design and operation of risk assessments has been criticised for creating persistent ambiguity around the legal boundaries of the use of force²⁹ – the impacts of which are borne by people in immigration detention.

Human rights concerns

Unnecessary handcuffing breaches the human rights of immigration detainees. People subject to immigration detention are entitled to human rights protected by the International Covenant on Civil and Political Rights (ICCPR), including special protections as persons deprived of their liberty by the State.³⁰ The ICCPR, to which Australia is a party, states:

Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 10(1): All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

In one complaint made to the AHRC, a detainee was forced to wear handcuffs over a significant wrist wound for eight and a half hours while being transferred between facilities. The Commission found this treatment to be contrary to Article 10 of the ICCPR.³¹ The AHRC also repeatedly heard from detainees that handcuffs were left on people while receiving medical treatment or undergoing diagnostic tests.³²

Insufficient oversight and regulation

Insufficient oversight and regulation of immigration detention by the Commonwealth Government have allowed inappropriate handcuffing practices to continue. The operation of immigration detention facilities is outsourced by the Department of Home Affairs to private contractors, who have not been held accountable for harm to detainees.

The contractor from 2009 to 2023, Serco Australia Pty Ltd, was widely criticised for its overuse of force;³³ failure to provide adequate medical care;³⁴ and the flawed risk assessment system used to determine whether to handcuff detainees.³⁵ The AHRC has found Serco officers have used force



²⁹ Boon-Kuo (n 1) 220.

³⁰ AHRC, *Mr Hanna v Commonwealth of Australia (Department of Home Affairs)* (Report No 187, September 2025) 10 [49].

³¹ AHRC, *Use of force* (n 5) [10].

³² Ibid [175].

³³ Global Detention Project (n 1) 40, Denham Sadler, 'Serco's ugly legacy in Australia's immigration detention system', *The Saturday Paper* (18 January 2025).

³⁴ Global Detention Project (n 1) 40.

³⁵ Commonwealth Ombudsman, *Immigration Detention Oversight 2019* (n 14) 17 [5.37]; Bogle, *Secret Algorithm* (n 20); Ariel Bogle, 'Flawed immigration detention risk assessment tool can't be upgraded as ABF data 'riddled with errors'', *The Guardian* (10 May 2024).

that was not reasonable, necessary or proportionate to the risk the detainee posed to themselves or others.³⁶

Secure Journeys replaced Serco as the operator of Australia's immigration detention system in 2025. But the ongoing absence of legislated protections means detainees are still at risk of abuse and mistreatment, including by being handcuffed.

Holding the government and its contractor to account – handcuffing litigation

In 2020, the Justice and Equity Centre launched a landmark test case in the Australian Federal Court against the Commonwealth and its security contractor, Serco, on behalf of our client, Yasir.

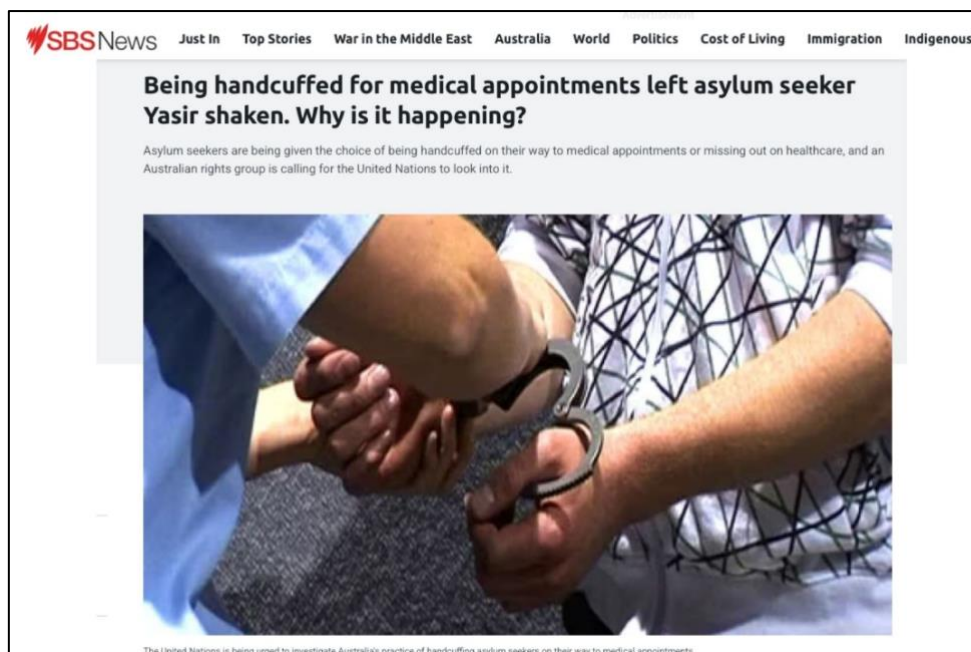
When Yasir was a young child, he and his family were imprisoned in his country of birth where they were tortured and handcuffed by guards. Yasir also witnessed the torture of others. He was later diagnosed with post-traumatic stress disorder.

When he sought asylum in Australia, Yasir was held in immigration detention centres for almost 9 years. Over several years, Yasir was forced to wear handcuffs to access medical treatment, despite the contractor's policy that handcuffs should be used only as a last resort. Because of Yasir's history of trauma, the use or threat of handcuffs triggered severe PTSD responses, including seizures, vomiting and shaking.

He explained:

Since that time, anytime I see a handcuff or someone being handcuffed, I get a flashback, like a movie, I go back to the worst time in my life. I sometimes get shaky and I sometimes get a seizure.

But Serco guards refused to take Yasir to medical appointments unless he agreed to be handcuffed. Yasir had to choose between the trauma of handcuffing or being denied essential medical care. As a result, he missed many medical appointments. His physical and mental health both suffered.



³⁶ AHRC, *Use of force* (n 5) [10].

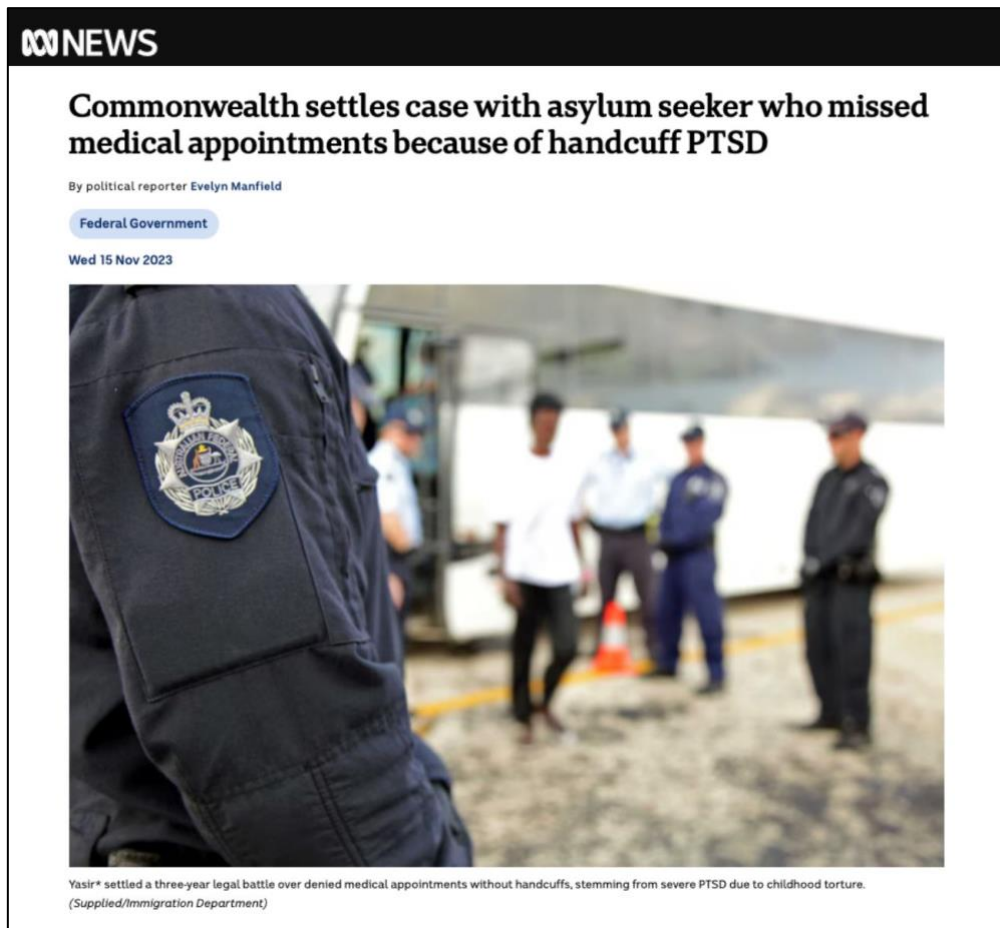
Yasir said:

When I missed medical appointments, I felt very worried because doctors had been telling me that my medical problems are serious, like my heart and lung problems. When I missed appointments, I felt that maybe I am sick and no one can help me. This was very hard for me, not knowing. It caused me a lot of distress.

We alleged the actions of immigration detention staff unreasonably denied our client access to essential medical care while in detention and was a form of discrimination under the *Disability Discrimination Act 1992* (Cth).

We also claimed that forcing our client to wear handcuffs to attend medical appointments was unlawful as there was no power under law allowing authorities to pre-emptively use restraints on people in immigration detention in those circumstances.

After we filed the case, detention authorities stopped handcuffing Yasir. He was able to attend essential medical appointments he had previously been denied.



In 2023, the case settled on confidential terms that Yasir was pleased with – feeling there was some accountability for the treatment he endured.

I feel happy and sad now. Sad about the bad things that happened to me and how that made my health worse and still impacts my life but happy because I can tell my story and let people know about the bad things the Commonwealth and Serco do to people like me. I am really happy because I didn't have a voice and when [the JEC] help me, people could hear my voice. I am happy with how things finished.

3. The experience of being handcuffed

In this section, we share the experiences of people who have been handcuffed in immigration detention. Names marked with an asterisk have been changed to protect the person's anonymity.

Handcuffing is harmful and demeaning

Handcuffing has significant physical and mental health impacts on detainees.

Many people in detention have a history of torture and abuse, and being forced to wear handcuffs re-traumatises them. People describe a sense of humiliation and degradation when they are forced to wear handcuffs to attend appointments outside of detention centres – feeling members of the public will assume they are a criminal.

Imran* is an asylum seeker who suffers from post-traumatic stress disorder, depression and physical health issues. He has been handcuffed at least 13 times while in immigration detention. 12 instances happened during an emergency escort to the hospital, when Imran was in severe pain and seeking urgent care.

Serco staff chose to handcuff Imran despite the advice of his medical team, who warned handcuffs would exacerbate Imran's physical and mental health conditions and strongly recommended against handcuffing. When we spoke to Imran, he reported:

I am actually waiting to go to the hospital now... The doctor said I have to go in ambulance today. But even in the ambulance they handcuff me.

Imran described the harm caused by the use of these restraints:

People in [the] community will see me with handcuffs – they show the community that I am a criminal, that I am the worst of the worst.

I have no bad record in immigration detention. No violence in detention. Why should I be handcuffed?

I know Article 10 of the Human Rights – it is humiliation of my freedom.

Imran is missing out on critical healthcare as he is not taken to medical appointments if he refuses to wear handcuffs:

I can't sleep at the moment and haven't seen the GP... I denied handcuffs before. I keep denying appointments I need.

Hassan spent seven years in immigration detention in Nauru. In 2020, he was flown to Australia for critical medical treatment for cardiac failure.

Hassan recounts:

[I was] handcuffed to come to Australia... Handcuffed from the airport, arrival, ambulance, carried to hospital.

I am someone with [a history of] cardiac failure [and] stroke and I wonder why an individual like me should be handcuffed and what threat I pose.

He believes the continuous stress of being handcuffed was 'the root cause for [his] second heart failure'. Hassan explains the distress caused to him:

The way I was treated was beyond imagination.

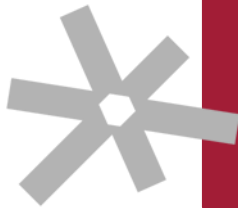


Hassan (image supplied)

Cyrus* was held in immigration detention for over five years. Medical advice recommended against the use of restraints due to Cyrus' history of torture and trauma. Despite this, Cyrus was continuously handcuffed, including immediately after surgery for kidney stones.

He describes being handcuffed while recovering from surgery as 'humiliating and excessive':

When I was coming out of the operation room, they said they have to handcuff me to the bed. I said 'why'? They said 'because you are in detention'. But I was coming out of the operation, have to go toilet ... Serco said 'I have to handcuff you to the bed to your hand'.



The doctor looked at me badly as if I was a criminal. I tried to explain, I am a detainee, I didn't do anything.

When Cyrus asked why he was handcuffed, he was told by Serco 'these are the rules'.



Cyrus (image supplied)

Now, years later after he was released from immigration detention, Cyrus sees people in handcuffs in public and he thinks back to when that happened to him:

Everything comes back to my mind. I remember when other people looked at me badly as well.

Defying medical advice

Immigration detention authorities must consider the advice of the detention healthcare provider in determining whether to handcuff someone.³⁷ The healthcare provider can make recommendations that a person should not be restrained due to pre-existing or current physical injuries or health conditions, including mental health conditions.³⁸

The Australian Human Rights Commission has recommended restraints should not be used on a detainee if the healthcare provider advises against use.³⁹

However, for many detainees, this medical advice has seemingly been ignored. Of the 21 people whose medical records we examined, over half had been handcuffed at least once against medical advice while the medical advice relating to a further 7 people was either withheld or redacted.

Damir* was a young child when he and his family fled their country of origin due to war. After living in a refugee camp for a number of years, Damir and his family were finally able to resettle in Australia.

Damir was taken into immigration detention in 2018 after having lived in Melbourne for most of his life. During his time in detention, he did not understand why he had to be handcuffed, particularly to attend medical appointments. Damir has a history of torture, and the use of handcuffs is re-traumatising for him:

Yes, the problem with the handcuffs is I get panic attacks and I struggle to breathe.

I have videos which someone else took of them putting me in a belt – there were 10 of them – they were ripping my hands and kneeling on my shoulders because I didn't want the handcuffs. I couldn't breathe... I was yelling "I can't breathe, I can't breathe."

It was just the handcuffs and I was panicking – I was having flashbacks from my past.

Medical advice was provided to Serco on multiple occasions that handcuffs should not be used on Damir, but this advice was ignored:

International Health and Medical Services said that I should not be handcuffed because of my past trauma but Serco refused.

The head Manager said you can go to your lawyer, the Ombudsman, International Health and Medical Services and whoever but you can stop it because it won't change. Everyone goes in handcuffs so you can stop trying to change it.



³⁷ Australian Government, Department of Home Affairs, *Detention Services Manual – Safety and security management – Use of force* (Policy document, 10 October 2018) [4.1.1.].

³⁸ Ibid [4.4.1-4.4.5].

³⁹ AHRC, *Use of force* (n 5) 179.

In one incident, Damir was handcuffed during a flight to transfer him between detention facilities. He explains:

I didn't want to go because of the handcuffs... They tied my hands and legs up and connected with each other and carried me to the plane.

There was a couple of times on the plane where I refused to come out of the toilet because of panic attacks – I asked the nurse to take off the handcuffs and she told me to just take deep breaths. They had to drag me out of the toilets.

Damir's hands were badly bruised from this incident and he could not lift his arms up for a month.

As a result of his experiences, Damir has recurring nightmares, including being dragged onto a plane. He later spoke to his psychiatrist about this traumatic experience and his intense fear of being handcuffed again. Given the seeming inevitability of being handcuffed on future flights, the psychiatrist suggested the only solution to manage his distress would be a prescription sedative.

When Damir had to take his next escort flight between detention centres, he was given six diazepam pills – one when he left the first detention centre, one before boarding the plane, two during the flight, one when he landed and one in the escort vehicle to the destination detention centre.

The prospect of flying and being handcuffed still causes Damir significant anxiety. He observes:



We are treated worse than animals.

I think the whole goal is to break you and break down your mental health.



Nauroze (image supplied via X)

Nauroze arrived in Australia on a Student visa in 2007 and later spent four years in immigration detention.

According to Serco records, he was handcuffed over 40 times while in detention, despite being consistently assessed to be at a 'low' risk of escape. Documents from IHMS, the healthcare provider at the time, show that fourteen of these handcuffing incidents were against medical advice. Nauroze told us the number of times he was handcuffed over his four years in detention was in the hundreds.

Nauroze recalls being escorted in handcuffs even when he was injured, in the ambulance and in the hospital.

On a plane escort between detention centres, which lasted over four hours, Nauroze was placed in a crouch position with his hands handcuffed behind him for the duration of the flight. This caused abdominal discomfort and pain for months after the incident.

Nauroze explains the physical impact of being handcuffed:

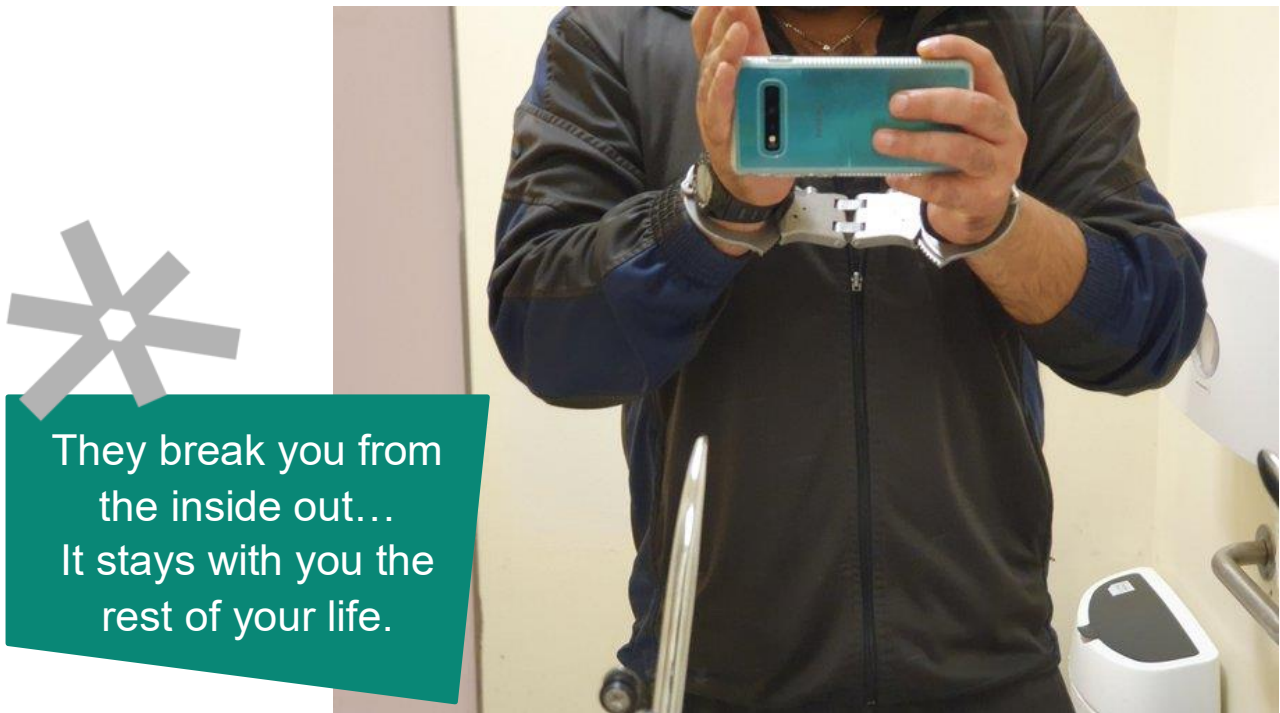
I still have nerve damage because of the handcuffs...It is permanent now. The pain specialist in Sydney said they blocked the nerve. I started to realise the damage afterwards.

A neurologist report corroborated Nauroze's experience:

From the history I can conclude that Mr Anees' symptoms are suggestive of ulnar nerve neuritis which could be due to the recurrent compression of the wrist joints from the handcuffs. He does have positive tinell sign for median nerve suggestive of carpal tunnel syndrome ... I agree that continuous handcuffing will worsen his ulnar neuritis plus the carpal tunnel syndrome.

Nauroze has since been released from immigration detention but suffers long-term impacts from his experience of being handcuffed:

I can't even sleep properly now...I also have nightmares – I am screaming and punching in my sleep – I have PTSD very bad.



They break you from
the inside out...
It stays with you the
rest of your life.

As recounted by Nauroze: 'While getting assessed at the hospital @AusBorderForce has ordered @SercoGroup to keep me hand cuffed at all times, even while using the wash room, & Serco Guard keeping the door open' (image supplied via X)

Afshar* sought asylum in Australia and was subsequently held in offshore immigration detention for over five years, separated from his wife and newborn baby.

Afshar has depression and post-traumatic stress disorder, as well as physical health issues. During his five years in detention, he was transferred to an onshore facility for eight months to receive medical treatment.

Afshar was handcuffed at least 40 times when he received medical treatment outside of the detention centre, though this number is likely to be much higher as records of earlier uses of force are limited. At least 28 instances were against medical advice.

Afshar recounts:

every time they took me to a specialist in relation to my level of mental distress, they handcuffed me. Every time I went to the hospital, it was the same thing.

There is considerable evidence demonstrating the harm this caused Afshar:

My psychologist said I am not allowed to be handcuffed due to my trauma background – I had 35 tablets a day then – painkillers and for panic attacks and anxiety.

I requested the documents from the psychologist who wrote a letter with a request saying don't handcuff. STARTTS⁴⁰ saw how much I was shaking and how I was in bed for days and days.

Two lovely counsellors there know about this and helped me...They have all the reports regarding handcuffs. It says how much medically and physically it affected me. It was humiliating.

In the medical risk assessments conducted by Afshar's medical team, IHMS advised:

the Detainee is a known survivor of torture and/or trauma and the use of force and restraints may exacerbate trauma symptoms. It is strongly recommended that it NOT be employed.



In a separate occasion following an abdominal surgery, IHMS also advised for Afshar that 'a physical condition does exist and the use of force and restraints may exacerbate physical injuries.'

This detrimental impact on Afshar's physical and mental health conditions was clear even to the immigration detention security officers who carried out the handcuffing:

Even the Serco officers are really upset to take me with the handcuffs, but whenever they call immigration, [they say] you have to apply handcuffs if you want to take him out, no matter what.

I went to see my back specialist, because I had back pain. At the hospital I was nearly to faint because of the panic I had. So that officer got really upset and he even wrote a complaint to Serco, to his manager and to the ABF – "why do you have to handcuff him, he's completely sick, as you see we are taking him to the specialist to the hospital."

⁴⁰ STARTTS is the Service for the Treatment and Rehabilitation of Torture and Trauma Survivors, a not-for-profit organisation which provides healthcare to people in immigration detention in New South Wales, including psychological assessments and counselling support. More information about STARTTS is available at: <https://startts.org.au/>.

A barrier to healthcare

People in immigration detention who have a history of trauma from handcuffing are placed in an impossible position, where they must choose between the harm of re-traumatisation and losing their access to healthcare.

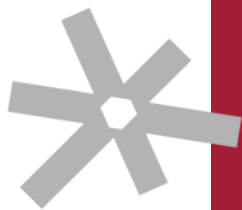
To avoid the harm handcuffing causes them, some people refuse to attend medical appointments. Losing access to healthcare results in deteriorating mental and physical health for detainees. It exacerbates existing healthcare inequities, with detainees already experiencing poor mental and physical health⁴¹ due to generally inadequate access to healthcare within immigration detention and the harmful conditions of detention itself.⁴²

The AHRC has highlighted concerns about the harm that can result from people missing medical appointments. In reviewing a complaint from a detainee, Mr DB, about the requirement to wear handcuffs to attend medical appointment, the Commission commented:

I am particularly concerned that there do not appear to be any documents that consider whether the requirement that Mr DB be restrained was appropriate given the medical risks that he faced if he was not provided the treatment that was recommended by his doctors...it appears that there was an attempt to shift the responsibility for any risks onto Mr DB by encouraging him to sign a 'Refusal of Treatment' form in circumstances where he was not refusing treatment, he was refusing to be handcuffed.⁴³

The Commission found that the requirement for Mr DB to wear handcuffs to medical appointments was not reasonable in the circumstances or proportionate to relevant risk.⁴⁴ They determined that this was contrary to article 10 of the ICCPR, amounting to a failure to treat a person with humanity and with respect for their inherent dignity.⁴⁵

Yet, acceding to being handcuffed to receive care comes with its own harms – and can lead to a person requiring an even greater level of medical care. As recognised by the AHRC:



...the use of restraints on detainees may risk exacerbating some medical conditions (particularly mental health issues) and is particularly problematic with respect to individuals who have previously been victims of torture and trauma.⁴⁶

⁴¹ AHRC, *Inspecting immigration detention* (n 14) 39.

⁴² AHRC, *Yongah Hill* (n 13) 44; AHRC, *Inspection of Maribyrnong Immigration Detention Centre: Report* (March 2017) 22.

⁴³ AHRC, *Use of force* (n 5) 65 [219].

⁴⁴ Ibid [218].

⁴⁵ Ibid.

⁴⁶ AHRC, *Yongah Hill* (n 13) 41.

Yasir* was held in immigration detention centres for nearly 9 years after arriving in Australia to seek asylum. His legal battle is discussed above. When Yasir was a small child, he and his family were imprisoned in his country of birth where they were tortured and handcuffed by guards. He also witnessed the torture of others.

Since that time, anytime I see a handcuff or someone being handcuffed, I get a flashback, like a movie, I go back to the worst time in my life. I sometimes get shaky and I sometimes get a seizure.

Although Yasir was diagnosed with severe post-traumatic stress disorder while in detention, Serco guards regularly refused to allow him to attend offsite medical appointments without handcuffs.

I missed many medical appointments because they said they wouldn't take me unless I am handcuffed. But when they used them on me, I would have seizures, fall over and hit my head and feel bad for weeks. My body would shake, sometimes I would vomit and I would feel terrible. Even talking about or thinking about handcuffs makes me feel awful.

Also, if other people see me in handcuffs, they give me bad looks and I hate it. It makes me think they feel like I am dangerous. I feel embarrassed and like I am not being treated like I am a human when they hold my arms and walk through the hospital.

I missed appointments to see the dentist for my bad teeth, appointments for X-rays or ECG because of my chest pains, to get scans for my lungs and appointments for my heart.



Milad* was diagnosed with post-traumatic stress disorder and had surgery for physical health issues.

He was handcuffed over 45 times; at least 19 against medical advice. It was recommended he not be handcuffed as he is a 'known survivor of torture and/or trauma and the use of force and restraints may exacerbate trauma symptoms.'

Milad explained his distress at being handcuffed:

Every time I am handcuffed, my anxiety hits the roof. I end up in hospital. I was in my room and wanted to sleep and not wake up again. At hospital, they couldn't help me because of handcuffs and I was not comfortable. After one or two hours, the nurse could not do it. Then Serco took off handcuffs and within minutes I calmed down.

You feel disgusted in yourself. You look at those faces – everyone can see you in different ways...I wouldn't want anyone to go through it.

When Milad refused to be handcuffed, he missed out on important medical appointments:

They drive me for X-ray. They put me in the truck, and we start driving. I ask officer where you taking me and they said 'this place'. I looked at the handcuffs and said 'no, that can't

happen'. I said to driver to go away. I was bad. Bad. Everything was going through my head.

I said that I was not going and 'take me back'. They said 'no'. I said 'I will put my head through the window now'. That was what was going through my head. They made a phone call. They had to go back straight away.

On another occasion:

I was assaulted, I had cuts on my face. Ambulance and International Health and Medical Services said we need to send [him] to hospital to get some tests done. Handcuffs. I said 'no way'. With my depression and anxiety, most likely I would end up hurting myself. Shaking up thinking about it. Won't say a word about it.

I was put in a bad situation – a really bad situation. So I refused because of the handcuffs.

Flawed risk rating system

The decision to use handcuffs on people held in immigration detention is based on risk assessments conducted by detention services contractors. While overseeing Australian immigration detention centres, notorious multinational detention provider Serco implemented a risk rating system known as the 'Security Risk Assessment Tool'. The 'S-RAT' used an undisclosed algorithm to calculate risk scores based on certain inputs from a detainee's background, detention records and 'intelligence reports' to determine whether someone was a low, medium, high or extreme risk in relation to types of behaviour including escape, violence or self-harm.

Investigations have revealed systemic flaws in this risk rating system, which often relies on incorrect or incomplete data or fails to appropriately consider individual circumstances.⁴⁷

Detainees are not informed of their risk rating⁴⁸ and report to us that handcuffing decisions are arbitrary and inconsistent – varying in similar situations with no clear rationale. The AHRC has also highlighted the inconsistency of handcuffing practices.⁴⁹

Along with the actual harm caused by handcuffing, this ambiguity puts detainees in a constant state of anxiety over the prospect of being handcuffed: particularly those with a history of torture.

The lack of fair, consistent decision-making about use of handcuffs is also experienced as an injustice. As one person in immigration detention said:⁵⁰

they never tell me why I need to be handcuffed.

One of our clients also expressed:

I ask why [I'm being] handcuffed and they say because I am an unlawful citizen.

⁴⁷ Commonwealth Ombudsman, *Immigration Detention Oversight 2019* (n 14) 17.

⁴⁸ Ghezlbash and Kinchin (n 24) 8.

⁴⁹ AHRC, *Yongah Hill* (n 13) 41 citing AHRC, *The Use of Hotels as Alternative Places of Detention* (Report, June 2025) 34-35 ('Hotels as APODs'); AHRC, *Inspecting immigration detention* (n 14) 64.

⁵⁰ Christopher Knaus, 'Australia's use of handcuffs on asylum seekers inhuman and unlawful, lawyers say', *The Guardian* (24 November 2020).

There are no avenues available for detainees to review or challenge their assigned risk rating⁵¹ – exacerbating the lack of natural justice and risk of inaccuracies in these processes.

Marwan* has a history of torture and trauma after witnessing death and violence in his country of origin. He sought asylum in Australia and has been held in immigration detention for over two years.

Marwan, like many others in detention, was given a Serco risk rating of 'High' and classified as a 'High-Risk Escort'. However his Serco Security Risk Assessments described his 'Risk for Escape' as 'Low'. In documents prepared by Serco which review Marwan's activities and behaviour,⁵² Marwan is consistently described as friendly, polite, respectful and 'project[ing] [a] positive vibe in the compound'.⁵³ After more than 500 days in detention without an incident, Marwan's risk rating did not change and he has been handcuffed every time he has been escorted outside of the detention centre:

Every time they would take me out for medical things, it would be in handcuffs. So for doctors' appointments, X-Rays, some MRIs, I had to have [handcuffing] done.

A lot of the places I need to go to, they're quite a far way, over an hour, or one and a half hours...And it's just really difficult and uncomfortable, sitting there in the back of a van, trying to eat lunch with handcuffs on you.

Marwan says he felt the use of handcuffs was excessive and unnecessary, making him feel as if he were a criminal:

You've got about three or four Serco guards, holding your arms. So the handcuffs – it's totally unnecessary. They shouldn't be putting handcuffs on anyone, especially us detainees. We're not under the care of the Department of Justice – we're here being detained. We're not here for any criminal offence...

...when we're going to the doctors, or for medical appointments or whatever – people look at us, they stare at us like we're these dangerous people... It doesn't make you feel good at all, when all the people just stare at you.

Tafadzwa* arrived in Australia on a student visa and was transferred to immigration detention following traffic offences. He has no criminal or violent history and was described by Serco as polite, respectful, pleasant and well-liked.

Nevertheless, Tafadzwa was categorised by Serco as a 'High-Risk Transfer'. As a result, he was handcuffed every time he left the detention centre:

[They handcuff] every time we'd go outside. Medical appointments, and also I was getting counselling – each time they took me I was handcuffed. Also, any court dates – I went to court for AAT and was handcuffed all throughout that. It was any time you left the centre...

I had to get some scans done, for health stuff, and they put you in handcuffs and then you have to wait in reception, and you're handcuffed and everyone just stares at you – it's humiliating – they do it to humiliate you...some of the stares you get – when you're sitting in reception or whatever, they look at you like you're nothing, or like you're some creature

⁵¹ Ghezelbash and Kinchin (n 24) 8.

⁵² Serco, *Immigration Detention Centre: Individual Management Plan Policy and Procedures* (Policy Document, 4 February 2011) 4.

⁵³ Serco, *Individual Management Plan Review for Muhammad* (20 November 2022).

they don't want to see. And you're already under so much pressure, I mean we're not well in here. And it just makes you feel worse.

In Serco's Security Risk Assessments, no aggression, self-harm or behavioural indicators were noted that could explain his High-Risk rating.

Tafadzwa says there is no warning before being handcuffed:

No, not until maybe one minute before you were getting in the truck. Then they'd just say "okay, we've got to put handcuffs on you now" and 'cuff you.

I asked why we were getting handcuffed. And they said they look at our security readings. And I told them that I have nothing on my record – I'm clean. And they just said, "We can't comment on individual matters". But they just beat around the bush – they had no answer to give.

Tafadzwa has never received an explanation.

Kareem* has been in immigration detention for over four years and has been handcuffed many times.

The handcuffs, everywhere you go, they put them on you. Not just that – they can see that the 'cuffs are literally about to rip your skin off. They are so tight.

On one occasion Kareem spent nine hours handcuffed in a van while transported from Sydney to Melbourne. On another, he was forced to wear handcuffs after being discharged from hospital with 42 stitches in his abdomen, while in a wheelchair.

Kareem says being handcuffed makes him feel humiliated and seen as a criminal:

It is affecting my mental health – every time they use handcuffs...two officers are holding your arms. It is humiliating - [I] don't wish that feeling on my enemy. It is an ugly feeling.

He has since declined medical treatment to avoid being handcuffed. The use of handcuffs is part of what Kareem views as the 'broken' system of immigration detention where he is 'tortured mentally and emotionally.'



Kareem (image supplied)

They are trying to take you in handcuffs when you are in pain. It is a perfect example of why detention is a punishment...What is my crime? Why [are they] using handcuffs?

The handcuffing of detainees, I believe itself, should be against the law...the only reason [you're in a detention centre] is you don't have a visa to be part of the community.

I don't understand how the ABF and the federal government cannot be held accountable for these things.

4. Healthcare failures

The stories of lived experience shared above highlight that handcuffing is a barrier to medical treatment for people in immigration detention. This is part of a broader failure of the Australian Government to ensure that detainees can access appropriate healthcare.

Inadequate healthcare in immigration detention – *In Poor Health*

In 2018, we highlighted the Commonwealth Government's failure to provide detainees with access to medical care in our report *In Poor Health*.



We documented the significant body of cases establishing that Australia owes a duty of care to people in detention – a duty it has repeatedly failed to fulfil. Despite this duty, the legislative framework does not contain an explicit obligation to provide reasonable medical care.

Our clients' experiences highlighted the impact of inadequate healthcare, including lifelong physical and mental health impacts from their time in immigration detention. The report also gave an overview of the multiple reports and inquiries which have spotlighted the inequity of healthcare access for detainees.

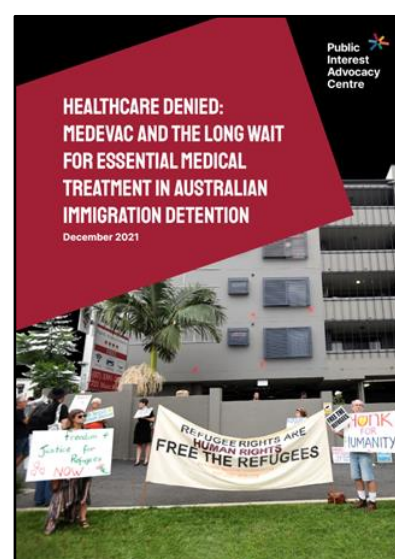
In Poor Health made the case for reform with several recommendations for change. This included recommendations to create stronger legislative standards for healthcare, deliver training on these improved standards, and establish oversight mechanisms comprised of medical professionals.

The Medevac scheme – *Healthcare Denied*

In 2021, we released *HealthCare Denied: Medevac and the long wait for essential medical treatment in Australian immigration detention*. This report identified inadequate healthcare for people subject to the Medevac scheme.

Under this scheme, detainees were transferred to Australia from offshore detention centres in Nauru and Papua New Guinea, for medical treatment not available to detainees locally.

The Medevac scheme was intended to streamline the transfer process and confer decision-making on specialist medical practitioners, rather than relying on the discretion of



Department of Home Affairs officials.⁵⁴ It required two independent doctors to determine that temporary transfer was necessary, with the Minister then deciding within 72 hours whether to approve the transfer.

Refusals were only permitted where the Minister reasonably believed the transfer was not necessary or would threaten Australia's security. If refused, a clinical assessment would be conducted by the Independent Health Advice Panel (IHAP) who could overturn the decision of the Minister. Uniquely, this decision-making panel was entirely comprised of health professionals, with a pre-requisite of membership being expertise in the medical profession, including in the areas of mental health and paediatric health. The Medevac scheme placed health professionals at the centre of decision making about the health needs of people in immigration detention.

The scheme operated for eight months in 2019, with approximately 192 refugees and asylum seekers transferred to Australia. Each person in the Medevac cohort was detained in onshore immigration detention upon arrival, even though many who had been living in the community offshore were recognised as refugees.

Despite the scheme's intentions, a concerning number of people in the Medevac cohort experienced serious problems accessing healthcare once they arrived in Australia. Many in the cohort waited months or years for the treatment for which they were transferred to Australia. These delays exacerbated existing medical conditions for detainees, which were already deteriorating due to their long-term confinement.

People in this cohort were also held in 'Alternative Places of Detention' or 'APODs': facilities like hotels which were unsuitable for prolonged detention. We highlighted this issue in the Medevac report, in our 2022 submission to the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment⁵⁵ and in public comments⁵⁶ following an AHRC inquiry into APODs⁵⁷. While finding that detention in APODs was legal, the Federal Court expressed concern at:⁵⁸

...the lack of thought, indeed lack of care and humanity, in detaining a person with serious psychiatric and psychological problems in the Hotels for 14-months, primarily in a hotel room with a window that would only open 10cm, and for most of the time without access to an outdoor area to breathe fresh air or feel the sun on his face...as a matter of ordinary human decency the applicant should not have been detained for such a period in those conditions.

The experience of the Medevac cohort underscored the Commonwealth's broad failure to provide basic medical care for people in immigration detention.

⁵⁴ While it existed, powers and functions under the Medevac scheme were set out in sections 199A to 199E of the *Migration Act 1958* (Cth).

⁵⁵ Public Interest Advocacy Centre, *Submission to the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (August 2022) 7 <<https://jec.org.au/wp-content/uploads/jec-publications/14028/PIAC-UN-SPT-submission-August-2022.pdf>>.

⁵⁶ Justice and Equity Centre, *AHRC highlights serious health concerns for people in hotel detention* (Web page, 12 July 2023) <<https://jec.org.au/focus-areas/civil-rights/policing-and-detention/ahrc-highlights-serious-health-concerns-for-people-in-hotel-detention/>>.

⁵⁷ AHRC, *Hotels as APODs* (n 47).

⁵⁸ *Azimitabar v Commonwealth of Australia* [2023] FCA 760 [5].

Our report made ten recommendations for reform, starting with the immediate transfer of remaining members of the Medevac cohort out of closed places of detention into the community. Following this report, nearly all remaining members were released.

Access to treatment for hepatitis C

Through our work with people in immigration detention, we became aware that people living with hepatitis C were being denied curative, antiviral therapy. This was despite such treatment being readily available to people living with hepatitis C in the community.

If left untreated, hepatitis C can cause liver disease and liver cancer. This was another Commonwealth failure to provide adequate healthcare to people in immigration detention, with significant consequences.

In 2018, we filed Federal Court proceedings on behalf of a detainee with hepatitis C who was being denied treatment. The Commonwealth subsequently agreed to provide our client with treatment. We also made complaints to the Commonwealth Ombudsman on behalf of five more people in immigration detention who were being denied treatment.

In March 2019, as a result of our legal action and joint advocacy with the Commonwealth Ombudsman, the Commonwealth agreed to provide all immigration detainees living with hepatitis C with medication.

Despite this, barriers to antiviral treatment for people in immigration detention remained. We filed further proceedings in the Federal Court on behalf of a client who had been refused care despite numerous requests for treatment. While our client was given access to this treatment a month after we commenced court action, a lack of transparency means it is unclear whether the policy has been fully implemented to allow access for all.

5. The need for reform

Australia purports to have respect for human rights, including the humane treatment of people held in detention. But the experience of the people we have spoken to shows this is not the case.

Human rights obligations

By failing to protect human rights in immigration detention, Australia is not upholding its obligations under international law.

Arbitrary or unnecessary use of handcuffs has been found to breach Article 10 of the ICCPR – the obligation to treat people with humanity and respect for their inherent dignity.⁵⁹ Where handcuffing constitutes excessive use of force, it may also breach article 7 of the ICCPR and article 2(1) and 16(1) of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment.⁶⁰ Under this Convention, Australia is required not to subject anyone to cruel, inhuman or degrading treatment or punishment, and to take effect measures to prevent those acts from occurring.⁶¹ The UN Committee Against Torture has called for prompt investigation of all allegations of excessive force.⁶²

The failure to provide health services to people in detention may also breach Australia's human rights obligations. The right to health is protected by international human rights treaties.⁶³ Detainees are entitled to medical treatment which is culturally appropriate and to a standard commensurate to that provided in the general community.⁶⁴

A lack of access to healthcare is also long-recognised as a ground that may give rise to 'torture, and other cruel, inhuman and degrading treatment'.⁶⁵ The poor conditions in onshore immigration detention centres have been highlighted by the UN Committee Against Torture, which recommended guaranteed access to adequate mental and physical health services.⁶⁶

⁵⁹ AHRC, *Use of force* (n 5) [378]; 107 [421]; 113 [448]; 119 [476]; 122 [506].

⁶⁰ AHRC, *Inspecting immigration detention* (n 14) 157.

⁶¹ Ibid 156 citing *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 7; *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) art 2(1); art 16(1).

⁶² United Nations Committee Against Torture, *Concluding observations of the sixth periodic report of Australia*, CAT/C/AUS/CO/6 (5 December 2022) 8.

⁶³ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12 ('ICESCR'); *Convention on the Elimination of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 12 ('CEDAW'); *Convention on the Rights of Persons with Disabilities*, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) art 25 ('CRPD').

⁶⁴ ICESCR (n 61) art 12; *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, GA Res 43/173, UN GAOR, 43rd sess, 76th plen mtg, UN Doc A/RES/43/173 (9 December 1988) principle 24.

⁶⁵ Human Rights Committee, *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, 44th sess, UN Doc HRI/GEN/1/Rev.1 (27 May 2008); Manfred Nowak, 'What Practices Constitute Torture?' (2006) 28 *Human Rights Quarterly* 821; Manfred Nowak and Elizabeth McArthur, *The United Nations Convention Against Torture: A Commentary* (Oxford University Press, 2008) 553 cited in Public Interest Advocacy Centre, *In Poor Health: Healthcare in Australian immigration detention* (Report, June 2018).

⁶⁶ United Nations Committee Against Torture (n 62).

For decades, the Australian Government has taken an ‘out of sight, out of mind’ approach to the treatment of people held in immigration detention. Greater regulation, oversight and accountability will improve the lives of people condemned to long periods of detention under Australia’s cruel and harmful immigration detention regime.

Unclear legal authority to handcuff

The legal authority for the use of restraints on detainees held in immigration detention is unclear.

The power to use handcuffs or other restraints on people is not explicitly given to detention authorities by the *Migration Act 1958* (Cth), *Migration Regulations 1994* (Cth) or any other legislation. This is in contrast with corrections and youth justice legislation in a number of states and territories, which regulate the use of handcuffs on those who are otherwise lawfully detained.⁶⁷

The *Migration Act* authorises such force as is ‘reasonably necessary’ to take a person into immigration detention or keep, or cause a person to be kept, in immigration detention.⁶⁸ Handcuffing has been said to be justified to prevent a person from escaping or endangering the safety or property of persons.⁶⁹

It is questionable that the ‘pre-emptive’ routine handcuffing that is taking place in Australian immigration detention centres can be justified on these grounds. The Federal Court has expressed concern about such a general approach:

In the absence of some reason for concern as to safety or a concern as to the necessity to handcuff a person in order to ensure his detention, the Minister should give reconsideration to any policy directive that handcuffing should be undertaken in all cases. In some circumstances, handcuffing may be necessary or appropriate; in other circumstances, especially in those where the person being detained offers no resistance and manifests compliance, handcuffing may be seen as unnecessary. The definition of the term “detain” in s 5 [of the *Migration Act 1958* (Cth)], it may be noted, refers to “taking such action and using such force as are reasonably necessary...” What “force” and what steps such as handcuffing may be “reasonably necessary” obviously invites a factual inquiry dependent upon the circumstances of any individual case. But a universal policy of handcuffing an unlawful non-citizen may well be open to serious question.⁷⁰

⁶⁷ See eg, *Corrections Management Act 2007* (ACT) ss 137-142; *Prisons Act 1981* (WA) s 42; *Young Offenders Act 1994* (WA) s 11D, *Children (Detention Centres) Act 1987* (NSW), s 22(2). It is to be noted that the Commonwealth would not need to amend legislation in order to more closely control the circumstances in which handcuffs could be used. Under s 273 of the *Migration Act*, the Minister can make regulations in relation to the operation of detention centres (s 273(2)), including with respect to the powers of persons performing functions in connection with the supervision of detainees (s 273(3)(b)). This is likely to extend to making regulations limiting the power to use handcuffs.

⁶⁸ *Migration Act 1958* (Cth), s 5 definition of *detain*.

⁶⁹ *Kumar v Minister for Immigration, Local Government & Ethnic Affairs* (1991) 100 ALR 439 at 442.

⁷⁰ *MZZHL v Commonwealth of Australia* [2021] FCA 600 at [122] per Flick J.

In the absence of a specific and immediate risk, it is doubtful the use of handcuffs could be justified as 'reasonably necessary' for the routine and pre-planned transfer or escort of a detainee offsite from a detention centre. But this is how handcuffs are being used in the great majority of cases within the immigration detention system.

Whether the use of force is permitted under the Commonwealth's general power to establish and maintain detention centres⁷¹ is also open to doubt.



Stock image

Lack of adequate regulation and oversight

We consider many pre-planned uses of restraints could be found to be unlawful.

The Commonwealth Government has a duty of care to prevent any reasonably foreseeable harm to immigration detainees.⁷² This duty means the Government is responsible for providing a range of services to them, including healthcare.

The Commonwealth Ombudsman says the Government's duty of care is 'a high one', as immigration detainees are particularly vulnerable and the Department has significant control over them.⁷³ This creates a positive duty on the Department to take action to prevent harm – it is insufficient for the Department to merely avoid acting in ways that cause harm to detainees.⁷⁴ As stated by the Commonwealth Ombudsman:

The department must also ensure that each individual detainee has access to the care that they need. It has to ensure that its contractors monitor each individual detainee's health, and provide the health services that they need in a timely way. Again, the Commonwealth cannot simply rely on assurances from its contractors that this is happening. It has to make its own active, independent assessment.⁷⁵

⁷¹ *Migration Act 1958* (Cth) s 273.

⁷² The Department has both a common law duty of care (see e.g. *Behrooz v Secretary, Department of Immigration & Multicultural & Indigenous Affairs* [2004] HCA 36) and statutory duties of care under the *Work Health and Safety Act 2011* s 19(2). These duties are recognised in the Department's contracts with Serco and IHMS, which require Serco and IHMS to perform that duty on their behalf (see Commonwealth and Immigration Ombudsman, *Suicide and Self-Harm in the Immigration Detention Network* (Report No 2, May 2013) 27-28 ('*Suicide and Self-Harm in IDN*').

⁷³ Commonwealth and Immigration Ombudsman, *Suicide and Self-Harm in IDN* (n 72) [4.4-4.5].

⁷⁴ *Ibid* [4.6].

⁷⁵ *Ibid* [4.15].

However, legislation regulating the immigration detention system does not provide any minimum standards for the provision of healthcare for detainees in immigration detention. A series of cases have established that the Commonwealth has historically failed to fulfil its duty of care by failing to provide medical care for detainees.⁷⁶

As described by the AHRC as early as 2004:

... the development of standards and systems for immigration detention has been left to the internal systems of the Department. In practice, this has taken place through commercial agreements with detention services providers, ad hoc arrangements with State authorities and Departmental guidelines. As detainees are not parties to such agreements, they have no enforceable rights to be treated in accordance with the standards and have no direct remedy for a failure to meet those contractual standards.⁷⁷

This description remains apt.⁷⁸

The lack of legislation regulating the conditions of immigration detention has been criticised by the Federal Court of Australia and labelled a 'legislative vacuum'.⁷⁹ People in immigration detention do not have a right written into legislation to reasonable care and medical treatment. In contrast, each of Victoria,⁸⁰ the ACT⁸¹ and the NT⁸² regulate in legislation the healthcare that people in correctional custody are entitled to.

⁷⁶ See, eg, *Mastipour v Secretary, Department of Immigration and Multicultural and Indigenous Affairs* (2004) 259 FCR 576 ('*Mastipour*'); *S v Secretary, Department of Immigration and Multicultural and Indigenous Affairs* (2005) 143 FCR 217; *SBEG v Commonwealth* (2012) 208 FCR 235; *MZYR v Secretary Department of Immigration and Citizenship* (2012) 292 ALR 659; *AS v Minister for Immigration and Border Protection* [2014] VSC 593.

⁷⁷ HREOC, *A last resort? National Inquiry into Children in Immigration Detention* (Report, April 2004) 878 cited in Boon-Kuo (n 1) 229.

⁷⁸ Boon-Kuo (n 1) 230.

⁷⁹ *Mastipour* (n 75) [2], [8].

⁸⁰ *Corrections Act 1986* (Vic), s 47(1)(f)-(h).

⁸¹ *Correction Management Act 2007* (ACT), s 53.

⁸² *Correctional Services Act 2014* (NT), s 82.

6. Recommendations for reform

People in immigration detention have a right to be treated humanely and with dignity.⁸³ Our recommendations for reform have been developed in consultation with detainees, legal organisations, medical professionals and academics. Their implementation would better protect the basic rights of people in immigration detention in Australia.

Recommendation 1: Minimum healthcare standard

The Australian Government should create a Minimum Healthcare Standard to guarantee a legislated, baseline standard of healthcare for people in immigration detention, equivalent to the standard of healthcare available in the community.

This Minimum Health Standard should:

1. Provide for culturally appropriate and trauma informed healthcare;
2. Specifically address disability, mental health and oral health needs, recognising the particular issues facing people in immigration detention;
3. Include a guarantee of general conditions in detention that support health and wellbeing;
4. Provide for a right to avoid, as far as practicable, exposure to risks of infection; and
5. Provide for a right to timely access to medical records.

Recommendation 2: An effective oversight body

The Australian Government should establish an oversight body to monitor the implementation of the Minimum Health Standard and ensure it delivers improved health outcomes for people in immigration detention.

This oversight body should be legislated and have the following characteristics, powers and functions:

1. Be comprised of members of the medical profession with multi-disciplinary expertise.
2. Publish its findings and recommendations.
3. Have a mandate which includes agreed timelines for government to publicly respond to recommendations arising from the body's findings.
4. Receive referrals of individual complaints regarding the Minimum Health Standard from the Commonwealth Ombudsman.
5. Conduct announced and unannounced visits to onshore immigration detention centres to report on conditions with respect to compliance with the Minimum Health Standard.

⁸³ ICESCR (n 61); CEDAW (n 61); CRPD (n 61).

6. Make recommendations to the Minister as appropriate regarding:
- practice and policy in immigration detention with respect to the Minimum Health Standard.
 - medical care required to be provided to certain people in held and community detention.
 - the duration, location and conditions of a particular person's detention, where the body has determined that the current duration, location or conditions of a person's detention is resulting in adverse outcomes.

Recommendation 3: Restrictions on the use of force

The Australian Government should amend the *Migration Act 1958* (Cth) to require that the use of force, including restraints, only occurs as a last resort in certain limited circumstances.

Specifically, the amendments should provide that the use of restraints:

1. Is only ever a measure of last resort, which requires that all available alternatives to using force should be exhausted before there is a resort to force;
2. Involves no more force than is reasonably necessary in the circumstances;
3. Is used only for the shortest amount of time necessary;
4. Is not excessive;
5. Is never used as a form of punishment or in a way that amounts to cruel, inhuman or degrading treatment; and
6. Is never used contrary to medical advice, except where required to prevent an imminent threat of serious harm to another person.