Coroners Act 1996
[Section 26(1)]

Western  *Australia*

RECORD OF INVESTIGATION INTO DEATH

Ref: 25/18

I, Sarah Helen Linton, Coroner, having investigated the death of ***Fazel CHEGENI NEJAD*** *with an inquest held at the* ***Perth Coroner's Court, Court 51, CLC Building, 501 Hay Street, Perth*** *from* ***30 July 2018 to 10 August 2018*** *find that the identity of the deceased person was* ***Fazel CHEGENI NEJAD*** *and that death occurred on* ***8 November 2015*** *in* ***jungle adjacent to the North West Point Immigration Detention Centre (Christmas Island)*** *as a result of* ***ligature compression of the neck*** *in the following circumstances:*

Counsel Appearing:

Sgt L Housiaux assisting the Coroner.
Ms C O'Connor SC and Mr S Castan (National Justice Project) appearing on behalf of the family of Mr Chegeni Nejad.
Mr D O'Donovan (AGS) appearing on behalf of the Department of Immigration and Border Protection.
Mr P Urquhart (Corrs Chambers Westgarth) appearing on behalf of Serco Asia Pacific.
Mr S Owen-Conway QC and Mr R Blow (Cove Legal) appearing on behalf of International Health and Medical Services.
Ms L Black (Murray Chambers) appearing on behalf of the Commonwealth Ombudsman's Office.
Mr A Willinge (Clayton Utz) appearing on behalf of Ms Katya Peart.

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SUPPRESSION ORDER IN PLACE

Suppression of the full name of the witness who will be referred to as "Katica" from publication. The suppression will include any evidence likely to lead to the witness' identification.

INTRODUCTION

1. Fazel Chegeni Nejad was born in Iran in 1981. He was single and had no children but he was close to his family. There is evidence before me that Mr Chegeni Nejad was part exposed to many traumatic events in his homeland and he eventually decided to try to make his way to Australia in the hope of a better, more peaceful life. He had never left Iran before commencing his journey to Australia.

2. Mr Chegeni Nejad left Iran by plane in February 2011 and used a false passport to travel via Dubai to Indonesia. He eventually left Indonesia and arrived on a suspected illegal entry vessel at Christmas Island, a territory of Australia, on 23 October 2011. He did not have a valid visa to enter Australia and was detained in immigration detention in Australia as an 'unlawful non-citizen' under the *Migration Act 1958* (Cth).[1]

3. Mr Chegeni Nejad was interviewed in November 2015 and found *prima facie* to engage Australia's protection obligations. While his claim for protection progressed, Mr Chegeni Nejad was predominantly held in closed detention in immigration detention facilities, apart from an 8 month period in community based detention and a short period of time in a WA prison related to a conviction for assault that precipitated his return into closed detention.[2] I am told in total he spent 1477 days in detention of some form prior to his death,[3] which is a very long time to be detained without having committed a crime, especially when there is no definite end date in sight.

4. Mr Chegeni Nejad's last placement was at the North West Point Immigration Detention Centre on Christmas Island (I will refer to it as the Christmas Island immigration detention centre (IDC) for convenience, although noting other detention centres have also previously been in operation on the island).[4] He spent his final 51 days at Christmas Island IDC before his death.[5]

5. During the evening of 6 November 2015 Mr Chegeni Nejad escaped from the Christmas Island IDC by climbing an internal fence to access the roof of a building and then made his way over an external electrified perimeter fence. I am told this is the first time the external fence had been breached by a detainee. The unauthorised exit triggered alarm sensors that sounded in the centre's Control Room but the alarms were not interpreted correctly by the Control Room staff and Mr Chegeni Nejad's escape initially went unnoticed.[6]

6. A head count conducted a few hours later that evening identified that Mr Chegeni Nejad was missing from his allocated compound. As the fence alarms had not been understood by the Control Room staff to indicate a perimeter fence breach, the search for Mr Chegeni Nejad was initially confined within the facility. It was believed Mr Chegeni Nejad might be

[1] T 31; Exhibit 1, Tab 2, p. 2; Exhibit 5, Tab 95.
[2] Exhibit 1, Tab 2, p. 3.
[3] T 31.
[4] Exhibit 1, Tab 2, p. 3; Exhibit 5, Tab 95.
[5] T 31.
[6] Exhibit 1, Tab 2, pp. 8 – 9.

hiding on a roof as he had been known to go onto the roof of other IDCs in the past.[7]

7. After the initial search by Serco staff, who ran the facility on behalf of the Commonwealth, did not locate Mr Chegeni Nejad, the matter was escalated. The Australian Federal Police (AFP) and the Australian Border Force (ABF) were notified and they became involved in the search.

8. Between 9.00 am and 10.00 am the following morning grounds staff observed damage to guttering and fencing. When this was reported, it alerted the authorities to the possibility that Mr Chegeni Nejad had escaped the facility. His escape was confirmed shortly afterwards by a review of the facility's CCTV footage. The footage showed Mr Chegeni Nejad approaching the external perimeter fence at about 9.15 pm the previous evening, around the time the alarm sounded in the Control Room.

9. The Christmas Island IDC is surrounded by thick vegetation that is difficult to penetrate. An immediate search was conducted of the jungle at the location where Mr Chegeni Nejad was seen on footage to have escaped but he was not located. Serious concerns were held for Mr Chegeni Nejad's safety as Christmas Island is a very harsh environment, the weather at the time was very hot, and there was no easily accessible drinking water.

10. Some information was provided to the authorities by other detainees that suggested Mr Chegeni Nejad had a mobile telephone with him and had made his way to a nearby beach. A thorough search of land and sea, including the nearby beach, was conducted throughout the day but no sign of Mr Chegeni Nejad was found. Searchers who walked to the beach described the track as "very hard going" as it was steep and rocky.[8] The search was postponed at 5.00 pm due to poor visibility.

11. When the search resumed at 7.15 am on 8 November 2015 two AFP officers involved in the search returned to the area of jungle around the known point of escape. They discovered the body of Mr Chegeni Nejad almost immediately. His body was found approximately 50 metres from the facility's perimeter fence line in that area. A post mortem examination later determined he died as a result of ligature compression of the neck. One of the officers who found the body had been involved in a search of the same area the previous day and he was certain Mr Chegeni Nejad was not in that same spot the previous day when the search was conducted.

12. Mr Chegeni Nejad's death was a reportable Western Australian death within the meaning of s 3 of the *Coroners Act 1996* (WA). A person held in immigration detention does not come within the definition of a "person held in care," within the meaning of s 3 of the Act, so there was no mandatory requirement to hold an inquest. However, given the circumstances of the death, it was determined that an inquest was desirable pursuant to s 22(2) of the Act. In due course I held an inquest at the Perth Coroner's Court from 30 July 2018 to 10 August 2018.

[7] Exhibit 1, Tab 2, pp. 8 – 9.
[8] Exhibit 2, Tab 9 [5].

SCOPE OF THE INQUEST

13. I am required if possible to find the identity of Mr Chegeni Nejad, how death occurred, the cause of death and the particulars needed to register the death.[9]

14. Under the Act, where the death is of a person held in care, the coroner investigating the death must also comment on the quality of the supervision, treatment and care of that person while in that care. That obligation does not apply in relation to Mr Chegeni Nejad as he does not meet the definition of a person held in care. However, given Mr Chegeni Nejad was involuntarily detained prior to his death by the Commonwealth, and hence akin to a defined person held in care, it is desirable that I make such comments as I am able.

15. I made it clear prior to the commencement of the inquest that I propose to focus my findings upon the specific care, treatment and supervision provided to Mr Chegeni Nejad, particularly in the days prior to his death as they are most relevant to the findings I am required to make. I indicated that I do not intend to consider systemic issues surrounding the detaining of unlawful arrivals to Australia. I consider that issues such as the merits of the mandatory detention of refugees by Australian authorities are outside the scope of the issues that I am empowered to address. They are a matter for government, not for an individual, unelected judicial officer.

16. With that in mind, I held a pre-inquest directions hearing on 2 February 2018, at which time I indicated to the parties that I considered the issues that were relevant to be investigated at the hearing were:

    i. The general health care provided to Mr Chegeni Nejad over the period of time he was a detainee;
    ii. More specifically, the mental health care provided to Mr Chegeni Nejad in the days prior to his death and whether he ought to have been reviewed by a doctor;
    iii. The decision to transfer Mr Chegeni Nejad to Christmas Island IDC prior to his death, given there had been some concerns raised about his mental health; and
    iv. The supervision of Mr Chegeni Nejad, in the sense of how he was able to escape unnoticed.

17. The relevant parties represented at that time were the family of Mr Chegeni Nejad, the Department of Immigration and Border Protection,[10] Serco Australia Pty Ltd and International Health and Medical Services (IHMS). The Department, on behalf of the Commonwealth, has ultimate responsibility for the detention network, the infrastructure of the facilities and the detainees held in it. Serco is, in effect, contracted by the

[9] Section 25(1) *Coroners Act 1996* (WA).
[10] Also understandably often described as the Commonwealth during the inquest, and which I now understand is properly referred to as the Department of Home Affairs.

Commonwealth to provide staff to run the facilities and manage the detainees. IHMS is contracted by the Commonwealth to provide healthcare services within the detention network.

18. At the conclusion of the directions hearing I invited the parties to notify Sergeant Housiaux, who assisted me at the inquest, if they wished to raise other matters. I did not specify a final date by which such matters should be raised, but I did indicate that I wished the matter to be in good order by the first day of the inquest so that we could immediately proceed to call evidence from witnesses.

19. On 2 July 2018, four weeks prior to the inquest, the solicitors representing the family of Mr Chegeni Nejad, the National Justice Project, sent a letter to Sergeant Housiaux requesting some further materials be sought from the Department for possible inclusion in the inquest brief, and discussing some potential additional witnesses. Concerted efforts were made by counsel representing the Department to obtain the requested documents and provide witnesses who could answer some of the issues raised, prior to the inquest commencing.

20. At 11.09 pm on 29 July 2018, eleven hours before the inquest commenced and at a time when most counsel could reasonably have been expected to be asleep, another letter was sent by the National Justice Project requesting some further documents be sought from the Department and providing some additional materials, including a report from a professor that was sought be relied upon. There were 21 documents attached, which in total numbered in the vicinity of 1000 pages. Understandably, none of the other counsel had been able to properly read and digest such a large volume of materials, provided at such a late stage, by the following morning when the inquest commenced. No proper explanation was given for the late provision of the documents.[11]

21. At the commencement of the inquest, counsel representing the Department indicated that he would endeavour to locate some of the requested material. As to the additional material sought to be relied upon by the National Justice Project, in particular the report from the professor and the documents said to be relevant to the preparation of that report, other counsel understandably objected to the reception of the documents into evidence, given the time at which they were delivered, and the unfairness this presented to their clients. It was noted that reception of the documents into evidence would have the propensity to cause significant delay to the inquest as it would take a significant period of time to properly read the materials and take instructions from their clients on the same. It would also likely mean the length of the inquest hearing would increase from the listed two weeks to potentially two months or more.

22. It was also submitted by counsel that it was procedurally unfair to attempt at that late stage to broaden the issues to be canvassed with witnesses at the hearing beyond those identified by me at the directions hearing many

[11] T 16.

months prior, given witnesses had been prepared, and instructions taken, based upon that stated position.

23. It was acknowledged by senior counsel appearing on behalf of the family that it had been anticipated that the reception of the documents into evidence would be objected to on the basis they did not fall within the confines of the issues I had indicated at the directions hearing were to be the focus of the inquest. It was said that it would be submitted that there were reasons, consistent with the systemic issues addressed in the documents that led directly to Mr Chegeni Nejad "taking his life."[12] That proposition itself was based upon an assumption that I would find that Mr Chegeni Nejad did, indeed, intentionally take his life rather than his death occurring by accident, which had been made clear in the opening of the inquest was an alternative open to me to find on the evidence contained in the brief.

24. Ultimately, as no reasonable explanation was given for the lateness of the provision of the information, and given the significant procedural unfairness its admission would present to the other parties, I ruled that the additional information would not form part of the evidence to be heard at the inquest. I did leave it open for counsel to refer to the additional materials, such as they might be considered relevant, in submissions made to me after the evidence was concluded.[13]

25. The core evidence of the inquest came from Detective Leading Senior Constable Adam Broadribb, who is an AFP officer. Detective Broadribb investigated this matter on behalf of the coroner. Detective Broadribb conducted a very thorough investigation and prepared a detailed and comprehensive report outlining the events leading up to Mr Chegeni Nejad's death, which has been of great assistance to me in preparing this finding.[14] The report annexed numerous witness statements and other relevant documents that were obtained by Detective Broadribb from the various parties. Detective Broadribb also gave evidence as the first witness at the inquest, to provide an overview of events.

26. In addition, various additional relevant documents were added, either at the request of the lawyers for the family or at the suggestion of counsel for the other parties, in order to assist me to have a complete picture of Mr Chegeni Nejad's detention history, and more specifically his final days. In total, there were eight volumes that comprised the initial brief of evidence and became exhibits 1 to 8, and a further 9 other exhibits were added during the course of the inquest. The inquest ran for ten days, and I heard from a total of 34 witnesses.

[12] T 16.
[13] T 18.
[14] Exhibit 1, Tab 2.

PROTECTION APPLICATION AND EARLY DETENTION HISTORY

27. Mr Chegeni Nejad was born in Iran, but as he identified his heritage as Faili Kurdish he was classed as 'stateless.'[15] His parents had been expelled from Iraq before he was born and he had never lived outside Iran until he made his way to Australia.[16] A family history provided later in his detention indicated he had lived with his parents and siblings in a village until he was about 13 years of age. He had no formal education but his father had taught him rudimentary skills of reading and writing. He left the village and moved to Tehran because his family could not look after him due to the Iran/Iraq war. In Tehran he obtained work as a street vendor and labourer and spent some time living on the streets. He had a history of drug dependency issues, and had been on methadone, which he said was to 'make bad things go away.' Suggestions were made during the inquest that Mr Chegeni Nejad might have been of low average intelligence, but this was never confirmed by any formal testing.[17]

28. Following his unauthorised arrival in Australia in October 2011 Mr Chegeni Nejad sought protection as a refugee. Mr Chegeni Nejad reported being continually discriminated against and persecuted in Iran due to the fact that he was a stateless Faili Kurd. As part of his claim for protection Mr Chegeni Nejad advised Australian Immigration staff that he had been wrongfully detained in prison and tortured by the authorities in Iran. He also believed he would face persecution, and possibly death, if forced to return to Iran due to the fact that he had claimed asylum in a Western country.[18]

29. On 7 March 2012 Mr Chegeni Nejad was sent a letter by Ms Jennyfer Godfrey, a Protection Obligation Evaluation Officer for the Department. Ms Godfrey indicated that she was satisfied Mr Chegeni Nejad met the relevant definition of a refugee and was a person to whom Australia owed protection obligations. He was advised that the process would commence to consider his eligibility for an Australian visa.[19] Mr Chegeni Nejad was being held at Curtin Immigration Detention Centre (IDC) at the time.

30. On 7 June 2012 Mr Chegeni Nejad made threats to kill himself with a razor blade.[20] This appears to be his first documented incident involving threatened self-harm while in detention.

31. On 22 June 2012 an IHMS Senior Consultant Psychiatrist, Dr Gregory McKeough, reviewed Mr Chegeni Nejad in a clinic at the Curtin IDC as part of a standard health check. Mr Chegeni Nejad spoke to Dr McKeough about witnessing extreme violence as a child during the Iran/Iraq war and being imprisoned and tortured as an adult for 40 days. As part of his asylum application Mr Chegeni Nejad provided great detail of the torture he

[15] Exhibit 5, Tab 95
[16] Exhibit 5, Tab 95.
[17] Exhibit 7, Tab 138, p. 34 of 696.
[18] Exhibit 5, Tab 95.
[19] Exhibit 5, Tab 95.
[20] Exhibit 5, Tab 118; Exhibit 13, Mental Health Referral 7.6. 2012.

experienced. The descriptions are extremely distressing and I can fully understand why he was later reported to be reluctant to continually provide an account of these events to new people he came into contact with as he moved facilities and staff changed positions.[21]

32. When Mr Chegeni Nejad first spoke to Dr McKeough, he denied having suicidal thoughts but spoke of feeling angry about being misled by the people smugglers and guilty that his family had spent a lot of money to get him to Australia. He had spoken to his family the night before and they were anxious about him.[22]

33. Dr McKeough found Mr Chegeni Nejad was a man of limited intellectual capacity who was becoming increasingly distressed as he had now been detained for 18 months and his contemporaries and more recent arrivals were achieving bridging visas and being transferred into the community, but he remained confined. Mr Chegeni Nejad's condition was noted to have deteriorated in the previous 10 days. He was getting little sleep and was agitated and distressed during the daytime. Dr McKeough didn't think any medications were likely to help him.

34. Following this review Dr McKeough advised the Department that Mr Chegeni Nejad had "pretty much exhausted his capacity to cope in the detention environment" and felt he was "likely to experience a continuing deterioration in his mental health if maintained in this very restrictive detention environment."[23] Dr McKeough recommended his case be prioritised on the grounds of his mental health and past trauma and torture experience.[24]

35. Mr Chegeni Nejad was seen by a counsellor on 3 July 2012 and was noted to be overwhelmed and looking for help with self-management of stressors in relation to drug dependence.[25]

36. Mr Chegeni Nejad was moved to Melbourne Immigration Transit Accommodation (MITA) on 12 July 2012.[26]

37. On 16 July 2012 Mr Chegeni Nejad was referred by IHMS staff for an appointment for a septoplasty to repair a fractured and displaced nasal septum that he had sustained when struck with force to the face during an altercation some months before, which I understand was the incident that led to assault charges against him. Mr Chegeni Nejad had been seen by an ENT surgeon in Perth in May and booked for septoplasty, but the appointment had been lost due to his transfer to Melbourne. He had a CT scan on 1 August 2012 and the previous ENT surgeon's findings were confirmed. A referral to a new ENT was recommended on 3 August 2012.[27]

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[21] Protection Obligations Evaluation Outcome dated 7 March 2012.
[22] Exhibit 16, Standard Health Event, Dr McKeough 22.6.2012.
[23] Exhibit 13, Letter from Dr McKeough to DIAC Health Liaison Officer, Curtin Immigration Detention Centre, dated 22 June 2012.
[24] Exhibit 13, Letter from Dr McKeough to DIAC Health Liaison Officer, Curtin Immigration Detention Centre, dated 22 June 2012; Exhibit 16.
[25] Exhibit 13, Counselling note dated 3.7.2012.
[26] Exhibit 1, Tab 2, p. 3.
[27] Exhibit 16.

38. On 4 August 2012, while at MITA, Mr Chegeni Nejad's threats of self-harm escalated to actual self-harm when he banged his head on a wall. His self-harming behaviour escalated even further on 7 August 2012 when he was taken to Northern Hospital after being found with a noose around his neck and the other end on a bush, in an apparent hanging attempt. He was medically cleared and returned to MITA, where he was put on the Psychological Support Programme (PSP) on an ongoing basis. This programme involves different levels of supervision and mental health review, depending upon the level of risk assessed.[28]

39. On 14 August 2012 Mr Chegeni Nejad was reviewed by another psychiatrist, Dr Astha Tomar, following the recent concerns about his head banging and hanging attempt. Mr Chegeni Nejad talked about seeing death twice in his life, once when he was being beaten up naked and the second time the previous week. He expressed some remorse about the previous week's incident but did not want to discuss it in detail. He described experiencing severe anxiety symptoms over the previous few weeks and worried that he might be 'going crazy'. Mr Chegeni Nejad appeared anxious and edgy and dismissive of the review, although there was no obvious aggression or threats. He appeared to understand his anxiety symptoms and his options in terms of medication and psychotherapy, but at the same time was dismissive of them. Dr Tomar considered Mr Chegeni Nejad was continuing to rapidly deteriorate due to his continued stay in a restrictive setting and was exhibiting a worsening state of hopelessness. He was felt to pose an unpredictable risk to himself and others. No new medication was trialled. The main focus was on attempting to engage him in therapy sessions.[29]

40. Mr Chegeni Nejad was seen by Dr Tomar again on 28 August 2012. His main focus at that time was on physical issues, including a possible UTI and diarrhoea. He had started on an antidepressant medication, mirtazapine, to help to manage some of his mental health symptoms. Dr Tomar's impression was of a depressive episode of moderate intensity with anxiety features. His medication dose was increased and some blood tests were initiated.[30]

41. Mr Chegeni Nejad was seen again by Dr Tomar on 11 September 2012 and he seemed to be worse despite the increased medication dose. He also described some possible side-effects including nocturnal enuresis. The mirtazapine medication was stopped and he was started on a different anti-depressant.[31]

42. He was seen the following morning at North Western Mental Health for an urgent assessment due to concern about possible suicide risk. Mr Chegeni Nejad reported he had not slept the previous night and was still experiencing nocturnal enuresis and pain in his left side. Some of his expressed concerns appeared to relate to his pending criminal charges and recent changes to the detention centre population. It was recommended further investigations be undertaken into his enuresis and pain and

[28] Exhibit 5, Tab 118; Exhibit 16.
[29] Exhibit 16.
[30] Exhibit 16.
[31] Exhibit 16.

consideration be given to admitting him to the Melbourne clinic. He had a flexible cystoscopy done at a later stage to explore his urinary issues.[32]

43. On 16 October 2012 Dr Tomar reviewed Mr Chegeni Nejad after changes were made to his medication, and found a marked improvement in his general status and functioning. However, Dr Tomar noted the impression that long term detention was still obviously impacting upon Mr Chegeni Nejad's mental health.[33]

44. On 25 October 2012 a report was provided by Ms Gracie Lopez, a psychologist from Foundation House with a specialty in torture and trauma counselling. Ms Lopez had conducted seven assessment and counselling sessions with Mr Chegeni Nejad in order to provide IHMS and the Department with an opinion on his psychological functioning. Ms Lopez found he was guarded and not forthcoming with information about his life prior to coming to Australia and he mostly focussed on the difficulties associated with his prolonged period of detention. He was said to show "high levels of hopelessness"[34] during his initial assessment. In the early hours of the morning following the first meeting he attempted to end his life by hanging and it was noted that leading up to the first appointment he had been banging his head. It became evident from follow up sessions that Mr Chegeni Nejad found it difficult to understand why he was still being held in detention and he had formed the opinion it was unlikely he would ever leave detention. He also spoke of experiencing hallucinations in which he meditated and connected with God.[35]

45. In Ms Lopez's professional opinion Mr Chegeni Nejad was very unwell psychologically and showed severe symptoms of depression and anxiety meeting the diagnostic criteria for a Major Depressive Episode with possible psychotic features. His medication had improved his agitation but Ms Lopez believed his mental state was likely to deteriorate further if he remained in a detention environment, which he experienced as very punitive. She recommended he be referred to the Minister for residence determination as a priority, in accordance with ministerial guidelines for dealing with detainees who are survivors of torture and trauma.[36]

46. A further review by Dr Tomar conducted on 14 November 2012 suggested that Mr Chegeni Nejad was possibly developing somatic symptoms and ritualistic behaviours as a response to trauma, and Dr Tomar formed the impression ongoing detention was impacting on Mr Chegeni Nejad's physical and mental state.[37]

47. There was a minor disturbance involving Mr Chegeni Nejad on 1 March 2013 and then a more major incident on 28 March 2013 when Mr Chegeni Nejad climbed onto the roof of the Avon Visits Centre. This seems to be the first of many incidents involving Mr Chegeni Nejad climbing onto a roof at a

[32] Exhibit 16.
[33] Exhibit 8, Tab 139, p. 383 of 696.
[34] Exhibit 13, Foundation House Report dated 25.10.2012.
[35] Exhibit 13, Foundation House Report dated 25.10.2012.
[36] Exhibit 13, Foundation House Report, 25.10.2012; *Identification and Support of People in Immigration Detention Who are Survivors of Torture and Trauma; Version 1.0, 3 April 2009, DIAC.*
[37] Exhibit 8, Tab 139, p. 358 of 696.

detention facility. On this occasion Mr Chegeni Nejad fell to the ground approximately 10 metres below, landing on his knees. He sustained bruising and a sore neck. The weight of the evidence suggests it was a deliberate act intending to harm himself, but not necessarily to cause his death. He was hospitalised overnight at the Royal Melbourne Hospital. He was at times uncooperative with spinal management efforts and he kept asking for sleeping tablets. All results of testing was unremarkable and he was cleared by medical staff in the ED from a trauma point of view, but it was felt he would benefit from psychiatric assessment.[38]

48. On 29 March 2013 Mr Chegeni Nejad was reviewed by staff from the Royal Melbourne Hospital psychiatric unit. He was reviewed with the assistance of a Persian interpreter. He made it clear that he did not want to discuss his history of abuse or persecution, stating it was in his files if they needed to know anything. Mr Chegeni Nejad stated he did not know why he had become agitated the previous night and went "crazy" but then related it to thinking of his history of abuse, which had made him upset, as well as sleep deprivation and distress regarding being in the IDC. This prompted him to climb onto the roof and threatened to jump. He said he thought about landing on his head but then jumped and landed on his feet, knowing that this would not kill him. He stated he was "too much of a coward to do it properly."[39] Mr Chegeni Nejad told the clinician his anger and frustration had now abated and he no longer had any suicidal intent or plans and his behaviour overnight and on review supported this position. However, a note was made that he also appeared fearful that psychiatric treatment may hamper his immigration applications. Mr Chegeni Nejad indicated he was happy to be released from hospital. He was discharged into the care of MITA staff.

49. It was submitted on behalf of IHMS that this March 2013 incident occurred when Mr Chegeni Nejad had not been in prolonged detention,[40] but I think that submission ignores the full sum of his history, as well as the fact that even his residence in the community was still a form of detention, albeit of a much less restrictive type. It also occurred within the context of a number of medical health professionals expressing concern about the impact that prolonged detention was having on his mental health.

50. In April 2013 Mr Chegeni Nejad was informed that the Minister for Immigration and Citizenship had decided to exercise his public interest power under the *Migration Act 1958 (Cth)* and make a residence determination to enable Mr Chegeni Nejad to reside in community detention in Victoria. He was released into community detention on 8 April 2013, the same day Mr Chegeni Nejad was reported to have engaged in a peaceful protest on an oval with other detainees.[41]

51. The evidence points to Mr Chegeni Nejad being relatively happy and settled while living in community detention and there is no evidence of any behavioural incidents. However, I do note later, when he returned to

[38] Exhibit 5, Tab 118 and Tab 119; Exhibit 16.
[39] Exhibit 16, NWMH Assessment form, dated 29.3.2013.
[40] Closing Submissions of IHMS dated 11.10.2018.
[41] Exhibit 1, Tab 2, pp. 3, 38; Exhibit 5, Tab 96 and Tab 118.

detention, he mentioned experiencing some visual hallucinations while out in the community. I discuss this in more detail later in this finding.[42]

CONVICTION FOR AOBH AND ITS CONSEQUENCES

52. On 22 December 2011 Mr Chegeni Nejad and four other Iranian detainees were involved in an incident with two male Afghan detainees at the Curtin IDC. Mr Chegeni Nejad later told someone he believed he was in the wrong place at the wrong time. An investigation into the incident was commenced. Mr Chegeni Nejad had remained at Curtin for a period of time after the incident and then he moved to MITA and from there was released into community detention in Victoria, as noted above. He remained living in community detention for 254 days.[43]

53. At some stage Mr Chegeni Nejad was charged with an offence of assault occasioning bodily harm[44] in relation to the incident in December 2011. Mr Chegeni Nejad initially pleaded not guilty to the charge and a trial date was set for 9 September 2013. The trial commenced, but on the second day of the trial Mr Chegeni Nejad and his co-accused changed their pleas to guilty.[45]

54. Mr Chegeni Nejad's sentencing was set for 12 December 2013 and he remained living in community detention until 8 December 2013 when he was moved to Yongah Hill immigration detention centre (IDC) WA. He moved to Hakea Prison the day before his scheduled sentencing date and on 12 December 2013 he appeared before her Honour Magistrate Lane and was sentenced to an immediate term of 6 months' and 1 day imprisonment. Mr Chegeni Nejad spent a further few days in custody at Hakea Prison and then moved back to Yongah Hill IDC.

55. On 18 December 2013 Mr Chegeni Nejad was informed that the Honourable Minister for Immigration and Border Protection had made a decision that the previous residence determination made in March 2013 was no longer in the public interest and his residence determination had been revoked.[46] The Minister had exercised his public interest power under s 197AD of the *Migration Act 1958 (Cth)* to revoke Mr Chegeni Nejad's residence determination. He was required to return to held detention arrangements instead.[47]

56. Mr Chegeni Nejad appealed his sentence (but not his conviction) to the Supreme Court. The appeal was allowed and the original sentence set aside. Mr Chegeni Nejad was re-sentenced on 11 March 2014 to a term of 6 months' and 1 day imprisonment wholly suspended for a period of 9 months.[48]

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[42] Exhibit 17.
[43] Exhibit 1, Tab 2, p. 4.
[44] Section 317 *Criminal Code* (WA).
[45] Exhibit 1, Tab 2, p. 4; *Najad v Bruhn* [2014] WASC 73 [3], Sleight C.
[46] Exhibit 1, Tab 97.
[47] T 75; Exhibit 5, Tab 97.
[48] *Najad v Bruhn.*

57. No new residence determination was made at that stage and he remained in detention at Yongah Hill IDC.[49]

DECEASED'S BEHAVIOUR AFTER RETURNING TO DETENTION

58. It is reported that Mr Chegeni Nejad did not adjust to his return to full detention. He didn't tell his parents as he didn't want to upset them, and thereafter limited his contact with them.[50] Mr Chegeni Nejad's Serco management plan dated 21 January 2014 indicated he was not attending any classes, sports or activities and he was said to exhibit behavioural issues.[51] It was said that he was "overly sensitive"[52] and he was also "extremely aggressive"[53] towards Serco staff, which behaviour included swearing and shouting.[54] This was different to his reported behaviour in the past. A psychological screening test, known as a Kessler test, was conducted on 3 April 2014. It suggested Mr Chegeni Nejad had a mild mental disorder at that time.[55]

59. A decision was made to move Mr Chegeni Nejad from Yongah Hill IDC, and he moved back to MITA on 6 April 2014. Following his arrival there, the evidence suggests Mr Chegeni Nejad's behaviour and attitude improved and he was recorded to be interacting well with staff and detainees and participating in activities.[56] A note made on 10 October 2014 recorded Mr Chegeni Nejad as having told a Serco officer that he "would like to be a good citizen of Australia"[57] and there were general reports he was avoiding confrontation and acting respectfully towards staff and other inmates.[58] He did not appear to require, or desire, regular mental health care during this time.

60. I am informed that the Minister considered intervening on 16 September 2014 to make a residence determination and place Mr Chegeni Nejad back into community detention, but decided ultimately not to intervene at that time. This decision was made in relation to a number of detainees, all with criminal records.[59]

61. Mr Chegeni Nejad seemed to be relatively stable and settled while in Melbourne. However, on 21 November 2014 Mr Chegeni Nejad sustained a large laceration to his wrist from glass. This followed reports that Mr Chegeni Nejad had been the target of abuse and bullying from other detainees.[60]

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[49] Exhibit 1, Tab 2, p. 3.
[50] Exhibit 17.
[51] Exhibit 1, Tab 2, pp. 5 – 6.
[52] T 32.
[53] T 32.
[54] T 32.
[55] Exhibit 7, Tab 138, p. 173 of 696; T 957.
[56] Exhibit 1, Tab 2, pp. 6 – 7.
[57] Exhibit 1, Tab 2, p. 6.
[58] Exhibit 3, Tab 65, GM 14, Revocation Case Review, p. 3.
[59] Exhibit 3, Tab 65, GM11.
[60] Exhibit 5, Tab 118.

62. Mr Chegeni Nejad's Departmental Case Manager expressed concern at this time about Mr Chegeni Nejad's well being and referred him for mental health assessment. Mr Chegeni Nejad reportedly requested he be moved to another IDC as he found parts of MITA too noisy, he felt depressed and wanted a change of environment. No acute risks were identified at the time of the review, but his request to be transferred was acted upon. On 5 December 2014 Mr Chegeni Nejad was transferred from Melbourne to the Brisbane Immigration Transit Accommodation (BITA).[61]

63. Initially Mr Chegeni Nejad appeared to be relatively settled while living at BITA. When observed by medical personnel he generally denied any mental health issues and he was not taking any medication for the same. In a 21 month review on 3 April 2015 it was noted that Mr Chegeni Nejad had been in detention for a prolonged period of time. He was noted to have said that he felt BITA was the 'best yet', as a facility, because it was smaller and people in general were more respectful (perhaps following on from haven't felt bullied at MITA).[62] He was readministered the Kessler test a couple of times and recorded low levels of distress.[63]

64. There was one reported incident where Mr Chegeni Nejad was found with a contraband substance but no major incidents recorded until May 2015.[64] Then, in May 2015, Mr Chegeni Nejad was involved in two incidents that led to him being admitted to the Royal Brisbane and Women's Hospital for psychiatric assessment.[65]

Royal Brisbane & Women's Hospital Assessment

65. Mr Chegeni Nejad attended the Royal Brisbane and Women's Hospital more than once from 28 March 2015 to 3 June 2015 for various health issues.[66] The first presentation in March related to urological issues but the latter ones were for mental health issues.

66. On 24 May 2015 Mr Chegeni Nejad was seen briefly by IHMS psychiatrist Dr Jillian Spencer following an incident where Mr Chegeni Nejad was seen screaming and running around (dancing/skipping) in the sports area and then writhing naked on the ground. He made statements about the devil and said he had an infection in his brain and believed he had contracted AIDS and was going to die.[67] He presented as restless and grinning. He was slightly incoherent and did not appear to be oriented to time and place. His pupils were noted to be pin point. He was cagey when asked about any drug use and was unable to explain his behaviour. He frequently requested water. A plan was made to review him to exclude any medical cause for his behaviour and he was sent to hospital for assessment.[68]

[61] Exhibit 7, Tab 138, pp 134, 166 of 696.
[62] Exhibit 7, Tab 138, p. 115 of 696.
[63] Exhibit 7, Tab 138, p. 115, 122 of 696.
[64] Exhibit 12B, p. 86.
[65] T 34.
[66] Exhibit 5, Tab 119; Exhibit 14.
[67] Exhibit 14, p. 1.
[68] Exhibit 7, Tab 137 and Tab 138, pp. 109 of 696.

67. Dr Spencer only saw Mr Chegeni Nejad briefly at this stage as the ambulance had already been called. He was difficult to interview and was not responding appropriately to her questioning. Although he was able to converse, his answers suggested he was not in touch with reality. The ambulance arrived while Dr Spencer was speaking to Mr Chegeni Nejad, so she handed his care over to the ambulance officers, who took him to hospital.[69]

68. Mr Chegeni Nejad was assessed in the hospital emergency department on 24 May 2015 but not admitted. During his review the history was given of bizarre behaviour and tachycardia (fast heart beat). At the time of review he was behaving appropriately and no abnormal findings were made. His only complaint was of urinary frequency. An ECG was done, which was unremarkable. The diagnosis made was altered mental state (not felt to be attributable to alcohol/drugs although it appears no drug screen was performed at the hospital at that time). He was discharged back to BITA that afternoon with a suggestion of further investigation of his urinary frequency if it was ongoing, such as testing for an STI or diabetic testing.[70] There was no mental health plan.

69. The following day, on 25 May 2015, Mr Chegeni Nejad again exhibited bizarre behaviour that raised serious concerns about his mental health. An ambulance was requested to return him to the Royal Brisbane and Women's Hospital for further medical assessment.[71]

70. On this occasion Mr Chegeni Nejad was admitted as an involuntary psychiatric patient for a 10 day period. A urine test was conducted and no drugs of abuse were detected. On 26 May 2015 he continued to display odd behaviour and described hopelessness given his situation. He was said to be writing death notes, but a psychiatrist believed they were because he thought he was dying, rather than because he wanted to kill himself.[72]

71. By 27 May 2015 his presentation had improved and he denied any mental illness and said he felt much better. He was uncooperative with a nursing assessment the following day. He denied drug use in detention.

72. On 1 June 2015 Mr Chegeni Nejad underwent an EEG test to investigate for any seizure activity. The result of the EEG was normal. He also had a CT head scan that showed no acute intracranial pathology and there was no evidence of an organic cause for the psychosis.[73]

73. On 3 June 2015 Mr Chegeni Nejad was considered well enough to be discharged from hospital. He was reviewed with an interpreter present and was settled and denied any current psychotic symptoms. He was very reassured when he was told he did not have HIV, which apparently had been a concern for him. Mr Chegeni Nejad had provided some insight into what he had experienced at the IDC prior to his hospital admission, describing 'a

[69] T 1111.
[70] Exhibit 11A and 11B.
[71] Exhibit 5, Tab 118.
[72] Exhibit 14.
[73] T 458; Exhibit 14.

negative feeling in his head' with 'pain and visible blood dripping everywhere' and hearing a feeling of being 'touched by angels'. He spoke of hearing voices in his head, but they were kind, and he described the entire experience as a 'holy experience' rather than frightening. He stated he didn't feel this way anymore and the experience was ended. He reported feeling safe at the hospital and at the IDC but was concerned about the stigma of returning to BITA, given the behaviour that had led to his admission. Overall his presentation was felt to be consistent with a brief psychotic episode, with complete remission. Although his presentation had normalised, the cause of his psychosis was not identified. On discharge the treatment team recommended continuing on the anti-psychotic medication risperidone for at least six months.[74]

74. Mr Chegeni Nejad was discharged from hospital on 4 June 2015. He was not returned to BITA given the concerns he had expressed that other detainees might be unfriendly and tease him for his erratic behaviour[75] and a concern about the possible risk he presented to himself and to others.[76] Mr Chegeni Nejad was kept in alternative accommodation in a motel until a new placement could be determined.[77]

75. It appears generally accepted by the parties that his mental health never fully recovered following this Brisbane hospital admission and he continued to suffer a number of acute episodes of apparent psychosis and his general mood remained low.

TRANSFER TO WICKHAM POINT IDC

76. On 5 June 2015 Mr Chegeni Nejad was transferred to Wickham Point immigration detention centre (IDC) in Darwin.[78] While at Wickham Point IDC Mr Chegeni Nejad was involved in three incidents that resulted in his risk rating being increased to 'high risk.' This increase in rating appears to have contributed to his later transfer to the Christmas Island IDC.

77. On 25 June 2015 the Honourable Minister for Immigration and Border Protection intervened and exercised his powers under the *Migration Act 1958 (Cth)* to permit Mr Chegeni Nejad to make a valid application for a temporary protection visa in Australia, despite his criminal conviction.[79] A submission made to the Minister in support of the decision indicated that he was categorised as low risk and he had been involved in a number of behavioural incidents while in immigration detention, including self-harm and threatened self-harm, *with further deterioration in his mental health predicted if he remained in detention* (emphasis added).[80] Approximately one week later Mr Chegeni Nejad lodged an application for a temporary protection visa

[74] Exhibit 14.
[75] T 1143; Exhibit 14.
[76] Exhibit 14A, p. 61.
[77] Exhibit 11B.
[78] T 34.
[79] Exhibit 5, Tab 98.
[80] Exhibit 5, Tab 98, p. 3 and Tab 118.

through his refugee advocate, which was hoped would lead to his release into community detention again.[81]

78. On 29 June 2015 Mr Chegeni Nejad spoke to a nurse on an out of hours call and described feeling scared and cold and had a feeling he could not move for minutes at a time. It was felt to be a mental health issue and he was told he would be referred to IHMS staff for review.[82]

79. On 2 July 2015 Mr Chegeni Nejad had a mental health review with a psychologist, Jane Fraser, following up on the concerns expressed in his after hours call a few days prior. Mr Chegeni Nejad described himself as restless and fidgety and said he wanted to be like the other detainees who could sit still. He said his restlessness had started after his transfer a few weeks prior and his friends had told him his behaviour was not normal. He denied any personal safety concerns and said he was eating and sleeping reasonably well. He was willing to continue seeing mental health and a GP in relation to his medications. A referral was completed for him to see a psychiatrist.[83]

80. Later that day it was reported that Mr Chegeni Nejad tried to climb the security fence to get back into the medical centre and he was assisted off the fence by Serco officers and taken for assessment to the medical centre. A nurse reviewed him and found no injuries and he was then seen by a GP, Dr Shane Dorney. He was given some diazepam to calm him down and Dr Dorney increased his risperidone dose.[84]

81. The psychologist, Ms Fraser, saw Mr Chegeni Nejad briefly again on 3 July 2015 while he was waiting to see a mental health nurse. He told Ms Fraser that "yesterday was a bad day"[85] and said he had tried to see mental health but was told by Serco staff that he was not allowed to as he did not have an appointment. He explained he had wanted to see someone from mental health as his Departmental case worker had given him a large amount of paperwork to complete, which he didn't understand, so he had become upset and not known what to do. When denied access to a mental health staff member he had tried to climb the fence instead.[86]

82. After speaking to Ms Fraser in the waiting area, Mr Chegeni Nejad was reviewed by Mental Health Nurse Rachael Steel. He declined the use of an interpreter and appeared to Nurse Steel to speak and understand English well. Similar to his discussion with Ms Fraser, Mr Chegeni Nejad said on the previous day he was given a 25 page document by his case worker that he couldn't understand and no one would help him, so he wanted to come back to the medical centre to see if someone would help him there. He did not describe any psychotic symptoms and indicated he had slept well and had no worries.[87] He saw a nurse the next day with complaint of toothache and

[81] Lodged on 1 July 2015 - Exhibit 1, Tab 2, p. 39.
[82] Exhibit 7, Tab 138, p. 92 of 696.
[83] Exhibit 7, Tab 138, p. 91 of 696.
[84] Exhibit 7, Tab 138, p. 88 - 91 of 696.
[85] Exhibit 7, Tab 138, p. 87 of 696.
[86] Exhibit 7, Tab 138, p. 87 of 696.
[87] Exhibit 7, Tab 138, p. 86 of 696.

was given some analgesia, and did the same again on 7 July 2015. A dental review was arranged for 9 July 2015.[88]

83. On 8 July 2015 Mr Chegeni Nejad apparently threatened to escape, although it is not clear whether he did anything in furtherance of this statement.[89]

84. He was seen the following day by a nurse and he said he had told a Serco officer that he sometimes wants to escape but he also said he probably couldn't climb the fence and thought it was a small town and he would not know where to go. The impression formed was that he had experienced an anxiety attack the previous night and a mental health review was requested.[90]

85. Mental Health Nurse Mark Wilson saw Mr Chegeni Nejad later that day to conduct a mental health review. Mr Chegeni Nejad was forthcoming with information and said he had felt like he was going to die the previous night, but could not offer a reason as to why. He reported feeling restless but did not appear restless in the interview. He reported that he was taking his medications and voiced no major concerns. Nurse Wilson felt Mr Chegeni Nejad could benefit from further assessment by a psychiatrist, so he was booked in to see the psychiatrist the next week.[91]

86. On 13 July 2015 Mr Chegeni Nejad was reviewed by IHMS psychiatrist Dr Jillian Spencer by videolink. Dr Spencer had seen Mr Chegeni Nejad briefly in person in May 2015 but had not had an opportunity to conduct a full assessment of him on that occasion. Dr Spencer was not certain why she was requested to do this assessment, which had to be done by videolink/tele-health, as she agreed it was less common where there were local services available. Dr Spencer surmised that the local psychiatrist was perhaps unavailable or it was felt the assessment was particularly urgent and it was preferred not to take him to hospital.[92]

87. Dr Spencer explained that the assessment was done from the BITA to Wickham Point IDC via a video link to create a visual image and audio link through a telephone line. Dr Spencer indicated the use of the phone line helped to ensure clear and direct audio communication. Dr Spencer was alone and Mr Chegeni Nejad was accompanied by a mental health nurse. Dr Spencer did not find a note that she had utilised an interpreter, so she assumed they had conversed in English. Dr Spencer explained it is an easy process to obtain an interpreter, and she was usually guided by the patient as to whether they wished one to be in attendance. Dr Spencer noted that historically Mr Chegeni Nejad was quite suspicious of interpreters and reluctant to reveal information in front of them, so she felt it made sense he preferred to converse in English without the assistance of an interpreter.[93]

[88] Exhibit 7, Tab 138, p. 84 – 85 of 696.
[89] Exhibit 5, Tab 118.
[90] Exhibit 7, Tab 138, p. 83 of 696.
[91] Exhibit 7, Tab 138, p. 82 of 696.
[92] T 1148.
[93] T 1115 – 1116, 1148 - 1149.

88. Dr Spencer, who has worked as a psychiatrist in the IDC environment for a number of years, and who eventually conducted two video conference assessments with Mr Chegeni Nejad, expressed the opinion that it is "quite a good way to assess patients, mainly because you've got the benefit of having a mental health nurse in the room with a patient, so they're able to supplement your clinical information obtained by the video and audio."[94]

89. Dr Spencer explained her usual practice is to have a summary of the client's life and situation at the start of her note and then update with more information about the current situation. In her entry for Mr Chegeni Nejad, his family history, passage to Australia and long history in detention were noted. It was also noted that he had previous episodes of self-harm in detention. He indicated he didn't have any mental health concerns in Iran, and he had no family history of mental illness, but did describe a history of alcohol and illicit drug abuse.[95]

90. At the time of this psychiatric review Mr Chegeni Nejad reported feeling quite normal and denied any low mood. Dr Spencer found no evidence of delusional thought or perceptual disturbances. He showed no mood, anxiety or psychotic symptoms although his previous disturbed behaviour was noted. He described generally eating and sleeping well and having lots of friends in the centre with whom he talked and played games. His main medical complaint was occasional headaches and whistling and pain in his ears.[96]

91. Dr Spencer's evidence was that she was then, and remained later, confused about his diagnosis, as Mr Chegeni Nejad presented well at the time she saw him but he had episodically exhibited odd behaviour that was not easily explained. Dr Spencer noted that the periods of abnormal behaviour were significant, but equally significant were the periods where there were no reports of abnormal behaviour. This pointed away from a developing schizophrenic type illness and made it hard to form a clear diagnostic picture.[97] As there was no clear diagnosis, there was not a clear alternative treatment that Dr Spencer felt might aid him. She was aware he was already on psychiatric medication, and there was nothing clear to indicate it ought to be changed.[98]

92. Dr Spencer and Mr Chegeni Nejad discussed his medication. Mr Chegeni Nejad said he didn't like risperidone as it made him unwell. Dr Spencer indicated it is quite common for patients to dislike risperidone, which can make people feel dull in their thinking and tired physically, as well as other side effects such as muscle rigidity, stiffness, tremor and weight gain.[99]Dr Spencer acknowledged Mr Chegeni Nejad's reluctance to take risperidone but noted that he was still compliant, and in order to try and settle down the brain after a psychotic episode it was standard practice to keep the person on that medication for at least six months. Dr Spencer

[94] T 1180.
[95] T 1117; Exhibit 7, Tab 138, p.81 of 696.
[96] T 1117; Exhibit 7, Tab 138, p.81 of 696.
[97] T 1122 - 1123.
[98] T 1120 - 1121.
[99] T 1117.

therefore continued his risperidone at the same dose and also formulated a plan for an MRI to exclude intracranial pathology such as brain tumour, stroke or inflammation of the blood vessels, given his history of headaches and previous disturbed behaviour and perceptual disturbances.[100] Dr Spencer gave evidence that she felt it was unlikely he had a brain tumour, but felt it was important to do an MRI of the brain to make sure that there was no organic cause that they were missing.[101]

93. Steps were taken to make a booking for the MRI over the following days, which was booked for 27 July 2015 and eventually took place on 30 July 2015 in Darwin. No abnormalities were detected.[102]

94. Mr Chegeni Nejad requested to see mental health again the next day after seeing Dr Spencer as he reported feeling restless and had poor sleep despite feeling tired. He saw Mental Health Nurse Glen Rousch. Mr Chegeni Nejad spoke briefly about his immigration situation, describing the "unfairness" and "injustice" of his situation.[103] He was critical of his review with the psychiatrist, Dr Spencer, the previous day, saying he felt he was "put under a lot of pressure and asked rubbish questions."[104] He believed there was something wrong with him, although he did not know what it was, and believed his medication was not helping although he continued to take it. Nurse Rousch discussed relaxation techniques and sleep hygiene strategies with Mr Chegeni Nejad and he was given a trial of a natural remedy, Valerian, to assist in initiating sleep.[105]

95. The following night, being 14 July 2015, an after-hours health consultation was organised by a Serco officer as Mr Chegeni Nejad complained of generalised body pain. He appeared to be breathing normally and was able to walk. He was given some paracetamol for his pain.[106] It appears Mr Chegeni Nejad then attended the medication round and again reported pain and lay down on the floor and behaved in a histrionic manner. He was given more analgesia and his evening medications and eventually persuaded to return to his room after significant encouragement by Serco staff.[107]

96. On 16 July 2015 Mr Chegeni Nejad was seen again by Nurse Rousch with the assistance of a Kurdish interpreter. Nurse Rousch noted Mr Chegeni Nejad's presentation was odd, with poor eye contact, somewhat slurred speech and he was holding his head in his hands. He exhibited underlying agitation and quickly became restless and irritated when questioned. He talked of pain in his head, but said it was like boiling water around his head rather than a headache. He emphasised that he was unable to sleep and had difficulty eating, describing his mood as 3 to 5 out of 10. He denied any suicidal ideation. Nurse Rousch discussed the case with the GP

[100] T 1118 - 1119; Exhibit 7, Tab 138, p. 81 of 696.
[101] T 1121 – 1122.
[102] T 1119, 1122; Exhibit 7, Tab 138, p. 70 of 696.
[103] Exhibit 7, Tab 138, p. 79 of 696.
[104] Exhibit 7, Tab 138, p. 79 of 696.
[105] Exhibit 7, Tab 138, p. 79 of 696.
[106] Exhibit 7, Tab 138, p. 78 of 696.
[107] Exhibit 7, Tab 138, p. 77 of 696.

on duty and an evening dose of Seroquel (quetiapine) was added to his medication regime to help with his insomnia.[108]

97. Nurse Rousch saw Mr Chegeni Nejad again on 21 July 2015 and noticed he was much more settled. Mr Chegeni Nejad reported the quetiapine had greatly assisted his sleep and he felt much improved during the day. He did, however, report continuing to experience a constant headache and vision problems. He was encouraged to have his eyes checked and it was noted an MRI appointment was pending, which was noted above was eventually undertaken and showed no abnormalities.[109]

98. On 29 July 2015 Mr Chegeni Nejad saw a nurse, two days after having the MRI. He was asking for the results and for a review of his medication as he was struggling to sleep again. The nurse noted he looked tired. A GP referral was done to discuss his MRI results and possible change to his medication, but it is not clear from the IHMS notes whether this occurred. There is a note on 5 August 2015 that a GP had recently reviewed his medications.[110]

99. Mr Chegeni Nejad was seen again by a mental health nurse on 5 August 2015, at which time he reported his medications still weren't helping and he was still experiencing sleep disturbance. It was noted a GP had recently reviewed his medications and he was encouraged to allow the medications to take effect.[111] He returned the following day and saw the same Mental Health Nurse Piri Roberts. Mr Chegeni Nejad reported he was still not sleeping and was not eating or drinking much. He denied any thoughts of self-harm, saying he was too tired to think about it. He also complained of ongoing pain on the left side of his face. His speech appeared slow and slurred at times and his mood was anhedonic (loss of capacity to feel pleasure) with blunted affect. Nurse Roberts liaised with the GP and it was recommended he increase his nightly dose of quetiapine.[112]

100. Mr Chegeni Nejad saw Nurse Wilson, on 7 August 2015, at which time he still complained of generalised head and leg pain and reported feeling restless. He seemed tired but otherwise his mood was good and his insight and judgment seemed fair, with no evidence of psychotic disturbance. His main focus was the pain in his head and legs and he also spoke of poor sleep and a lack of appetite and corresponding weight loss. He denied any thoughts of self-harm but did indicate he was worried about the future. Nurse Wilson spoke to a GP, Dr Waran, and it was felt that his restlessness might be related to the recent increase in risperidone, so his dose was decreased with a plan to review him again after the weekend to see if there was any reduction in his restlessness. He was also given some analgesia.[113]

101. He was seen again by Nurse Roberts on 13 August 2015, at which time he reported the increase in his quetiapine had helped him to sleep but he felt he required a different medication to risperidone to calm him down. It was

[108] Exhibit 7, Tab 138, pp. 73 – 74 of 696.
[109] Exhibit 7, Tab 138, p. 71 of 696.
[110] Exhibit 7, Tab 138, pp. 67 - 68 of 696.
[111] Exhibit 7, Tab 138, p. 67 of 696.
[112] Exhibit 7, Tab 138, p. 65 of 696.
[113] Exhibit 7, Tab 138, p. 65 of 696.

confirmed that he had a GP appointment scheduled for 18 August 2015, where he could discuss his medications, and he was told he could access mental health services in the interim.[114]

102. On 15 August 2015 a significant incident occurred. Mr Chegeni Nejad climbed onto the rooftop of the amenities building in the Surf compound and was seen by Serco staff to be pacing back and forth. While Serco officers tried to negotiate with him and get him to return to the ground he indicated to one of them, who was able to speak his language, that he was having suicidal thoughts, had unsuccessfully been trying to see the mental health team and was unhappy with his medications and wanted them changed. When Mr Chegeni Nejad attempted to climb up to the higher roof level he was restrained initially by the wrist by a Serco officer and eventually fully restrained. He was taken to the mental health facility for assessment but he was reluctant to enter the clinic and did not engage with the mental health nurse, Nurse Rousch, who he had seen in the past. After several minutes Mr Chegeni Nejad walked out of the clinic without saying anything.[115]

103. As Mr Chegeni Nejad was unable to be formally reviewed, he was placed on High KeepSafe and kept under observation. It was also decided by Serco that he would be moved to Sun compound to better manage his behaviour and risk.[116] There was an after hours medical consultation that night as Mr Chegeni Nejad complained of dizziness.[117]

104. The following day Mr Chegeni Nejad was seen by Nurse Rousch again and this time he engaged well with the assistance of an interpreter. He said that he had climbed onto the roof to kill himself in response to an auditory command from a voice he had been hearing for about 7 months. He said the voice also instructs him to take his clothes off and climb over the fence. Mr Chegeni Nejad said he tried to resist the voice by distracting himself and praying but sometimes it became too strong and he could not control it. Importantly, he told Nurse Rousch he didn't want to die. He said he had strong ideation that suicide is a 'sin' so he would never commit suicide.[118]

105. As well as the voices, Mr Chegeni Nejad described other sensory phenomena, such as smelling burning and blood at times, as well as visual hallucinations of shiny circles and a building in the sky. There was a religious element to some of the descriptions of his symptoms. He denied paranoia but then said he believed other people could read his thoughts.[119]

106. Mr Chegeni Nejad described his mood as "exhausted, agitated and anxious"[120] and said nothing made him happy. He said he did not feel safe in detention due to the other detainees. He described feeling hopeless and helpless and spoke of being in detention for four years and how no one could help him, which Nurse Rousch noted as 'detention fatigue' (which I am told is used to describe a depressive syndrome caused by detention, that would

[114] Exhibit 7, Tab 138, p. 64 of 696.
[115] Exhibit 5, Tabs 107 and 109; Exhibit 7, Tab 138, p. 63 of 696.
[116] Exhibit 5, Tab 118; Exhibit 7, Tab 138, p. 63 of 696.
[117] Exhibit 7, Tab 138, p. 62 of 696.
[118] Exhibit 7, Tab 138, p. 60 of 696.
[119] Exhibit 7, Tab 138, p. 60 of 696.
[120] Exhibit 7, Tab 138, p. 60 of 696.

otherwise be classified as either an adjustment disorder or major depressive disorder).[121] It is the same type of description as given by Dr McKeough, when talking about Mr Chegeni Nejad having exhausted his capacity to cope prior to his release into community detention years before.[122]

107. Mr Chegeni Nejad said he believed he would feel better and under less stress if he could be relocated to Melbourne. Mr Chegeni Nejad had been moved from the Surf compound to the Sun compound so that he could be better managed and he reported wanting to stay in the Sun compound but he wanted better freedom of movement and to stop the constant supervision by Serco staff.[123] It was felt that he had a psychotic like illness and a plan was initiated for strict observation and further review the next day. Nurse Rousch also indicated he would request an appointment for Mr Chegeni Nejad to see the next visiting psychiatrist and he required a medication review given the symptoms he was reporting.[124]

108. Mr Chegeni Nejad was seen the following day by Nurse Roberts. He presented as having 'just fallen out of bed.' He was calm but reported he was still hearing voices telling him to hurt himself and jump off the second floor. It was noted he showed obvious deterioration in mood and mental state in relation to ongoing detention. He was commenced on high imminent PSP (constant 'arm's length' supervision), with daily review required, and he was referred to a psychiatrist for review and possible GP review of his medication. It was also recommended that he be reintegrated into the full activities of the Sun compound as at that time he was being kept isolated, which he reported made him more stressed.[125]

109. Mr Chegeni Nejad was also seen the same day by a psychologist, Ms Antoinette Adam. Ms Adam recorded that she saw Mr Chegeni Nejad for a moderate SME review in the Sun compound annexe. She had been unaware he had already been reviewed by someone from the mental health team, and by the time she became aware she decided to conduct her review anyway. Ms Adam noted that she did not utilise an interpreter as she felt Mr Chegeni Nejad spoke English well.

110. Ms Adam noted Mr Chegeni Nejad's appearance was dishevelled and he appeared low in mood but was coherent and cooperative. Mr Chegeni Nejad spoke of his detention history, and in particular his sense of shame at being re-detained. He had told his brother he had been re-detained but was too ashamed to tell his parents as he didn't want to upset them. He also described feeling unmotivated and socially isolated and preferred a low stimulus environment. He said that in the Sun compound he experienced a lot of stress, which had impacted upon his mood, appetite and sleep.[126]

111. Mr Chegeni Nejad described the onset of hearing voices about three months prior, and they told him to climb onto the roof, to kill himself or to break his

[121] Exhibit 1, Tab 13A, p. 2.
[122] Exhibit 1, Tab 12, p. 6.
[123] Exhibit 5, Tab 118; Exhibit 7, Tab 138, p. 60 of 696.
[124] Exhibit 5, Tab 109.
[125] Exhibit 5, Tab 109.
[126] Exhibit 7, Tab 138, p. 57 of 696.

hand or finger. In Ms Adam's opinion his description of hearing voices that told him to harm himself appeared to be more internal voices than delusions or evidence of psychosis. Mr Chegeni Nejad expressed a thought that if he broke his hand or finger then "maybe IHMS will know that I am not well."[127] He said he had no desire to end his life, but said his "mind always thinks these bad things."[128] Mr Chegeni Nejad also talked about the issues he was experiencing in his brain, which Ms Adam queried could be related to anxiety/stress.[129]

112. Ms Adam formed the impression Mr Chegeni Nejad's symptoms were consistent with depression and he had shown a deterioration in his mood since being returned to Wickham Point IDC. She assessed Mr Chegeni Nejad's risk of self-harm as high, but at low risk of harm to others. She considered the fact he was engaging with the mental health team and was compliant with his medications were protective factors. Ms Adam spoke to the mental health team and it was agreed he could be removed from the Sun annexe and be reintegrated into the Sun compound, but he should be placed on high SME due to his high risk of harm. A psychiatric or GP review was also considered warranted.[130]

113. Mr Chegeni Nejad was seen by a GP on 18 August 2015 for a medication review. He reported the quetiapine helped a little but the risperidone had made him feel worse and he had disturbed sleep with frequent nightmares. He said he wanted something to 'calm him'. Mr Chegeni Nejad was counselled against starting any addictive medications, which I assume related to benzodiazepines. Some adjustment was made to his medication doses of risperidone and quetiapine and Mr Chegeni Nejad agreed to trial this regime and have a medication review in a fortnight. He was also seen by a mental health nurse that day. His condition appeared to have improved and he indicated he would like to return to the Surf compound as he was missing his friend. He also had hopes of returning to Melbourne.[131] A further review by the same mental health nurse the next day showed no change in his presentation.[132]

114. On 19 August 2015, while still being held at Wickham Point IDC, Mr Chegeni Nejad was sent a notice that his application for temporary protection had been assessed as a valid application and processing of his application had commenced.[133] However, there was evidence from Departmental staff that they were concerned Mr Chegeni Nejad did not understand how well he was progressing with his immigration pathway due to his mental health issues.[134]

115. Although Mr Chegeni Nejad had mentioned wanting to move back to the Surf compound, on 21 August 2018 he had a review with a mental health nurse and said it made no difference what compound he was in. He also said he

[127] Exhibit 7, Tab 138, p. 57 of 696.
[128] Exhibit 7, Tab 138, p. 57 of 696.
[129] Exhibit 7, Tab 138, p. 57 of 696.
[130] Exhibit 7, Tab 138, pp. 57 - 58 of 696.
[131] Exhibit 5, Tab 109; Exhibit 7, Tab 138, pp. 56 of 696.
[132] Exhibit 5, Tab 109.
[133] Exhibit 5, Tab 99.
[134] Exhibit 2, Tab 54 [12] – [13], [22].

felt safer being in Sun and having an officer with him. He asked about being prescribed an antidepressant as he felt depressed and anxious, and he reported good effect previously from mirtazapine (despite some indication in the medical notes that he experienced some adverse side-effects when on the medication in 2012).[135] The nurse felt he looked depressed. Mr Chegeni Nejad described an underlying sense of fear and said he occasionally became overwhelmed without warning and felt he must run away and find safety, but he couldn't explain why he felt this way. He showed no evidence of delusions or psychosis. The plan was for Mr Chegeni Nejad to continue on high SME and request his GP to commence mirtazapine.[136]

116. The following day Nurse Rousch reviewed Mr Chegeni Nejad again and noted he was still in the Sun compound. Mr Chegeni Nejad requested to be transferred back to Melbourne, stating he had friends there. He also mentioned missing friends in the Surf compound, but was ambivalent about moving back there as he admitted when he was in the Surf compound he would experience bad thoughts, "thoughts to jump,"[137] and he didn't want to get into trouble. He was still requesting antidepressant medication to take in the mornings and to have his evening medications later at night. It was agreed he could attend the later medication round and he was informed they would discuss other medication options the following week. He showed no overt evidence of psychosis and appeared to respond well to supportive counselling. He remained on SME with a plan for further review in a few days' time.[138]

117. Mr Chegeni Nejad was reviewed again on 24 August 2015 and he remained on High PSP. Mr Chegeni Nejad was noted to still be requesting a transfer to Surf compound and a medication review.[139] The next day the same mental health nurse, Nurse Roberts, reviewed him again and noted Mr Chegeni Nejad was asking to return to Surf compound as he felt lonely, and he was requesting Valium to help him relax. He became very demanding at times in the interview. He denied hearing any internal voices and seemed well presented. Nurse Roberts liaised with the GP and Mr Chegeni Nejad's risperidone was changed from an evening to a morning dose. He was reduced to moderate PSP.

118. Nurse Roberts reviewed Mr Chegeni Nejad for the third day in a row on 26 August 2015. He reported feeling "really good" and said he was eating, drinking and sleeping well. He still requested to be transferred back to Surf. He appeared more settled and denied any thoughts of self-harm or internal voices. He was reduced to PSP ongoing.[140]

119. On 27 August 2015 Mr Chegeni Nejad approached Nurse Roberts in the compound and repeated his request to be transferred to Surf compound.

[135] Exhibit 7, Tab 138, p. 383 of 696.
[136] Exhibit 7, Tab 138, p. 52 of 696.
[137] Exhibit 7, Tab 138, p. 51 of 696.
[138] Exhibit 7, Tab 138, p. 51 of 696.
[139] Exhibit 7, Tab 138, p. 50 of 696.
[140] Exhibit 7, Tab 138, p. 48 of 696.

Nurse Roberts asked him to be patient as there was a process to be followed for such a transfer.[141]

120. On 1 September 2015 Mr Chegeni Nejad had a GP medication review. Mr Chegeni Nejad spoke of feeling tired and restless during the day and lacking motivation to socialise and exercise. He said he wanted to be like the other detainees, who are happy and walking around. Mr Chegeni Nejad reported the change in risperidone dose had made no difference. He sleep had improved on the other medications but he wanted something to help him in the day time. The GP noted Mr Chegeni Nejad looked tired and unshaven. The mental health team notes and psychiatrist's notes were reviewed, as well as the recent MRI brain results, which were noted to be normal. It was decided that Mr Chegeni Nejad would cease the risperidone and then commence on SNRI anti depressants. He was keen to start the anti depressants immediately, but it was explained that there were issues of sudden withdrawal and possible drug interactions that needed to be managed by a gradual process. Mr Chegeni Nejad was encouraged to continue to engage with the mental health team and to try to start some regular physical activity.[142]

121. That evening a Serco guard raised a concern that Mr Chegeni Nejad had not taken his evening medication, which he denied.[143]

122. Mr Chegeni Nejad was moved back to the Surf compound around 1 or 2 September 2015. There were no initial incidents of concern.[144]

123. On 2 September 2015 Mr Chegeni Nejad had a brief review with a mental health nurse. He reported feeling much better now he was in Surf compound. His sleep was still broken with nightmares but his main concern was anxiety during the day, although paradoxically he also reported feeling lethargic during the day. He requested medication to assist with this. He denied any thoughts of self-harm and no psychotic features were evident. The plan was to remove him from ongoing SME and to discuss his medications with the GP.[145]

124. Mr Chegeni Nejad had a medication review with a GP on 7 September 2015 and maintained his request to start a new antidepressant. They discussed starting on Efexor and Mr Chegeni Nejad was advised of possible side-effects and advised to report immediately any abnormal effects. A review was scheduled for two weeks' time.[146] In fact, Mr Chegeni Nejad saw the same GP only four days later, on 11 September 2015. It appears the early review was prompted by Mr Chegeni Nejad's concerns that the Efexor was not effective in managing his depression. Dr Mirza noted that they had a long counselling session and Mr Chegeni Nejad was advised to wait 2 to 3 weeks for the Efexor to kick in. He was also encouraged to continue to see the mental health team.[147] Some pathology samples were taken at the end of the review.

[141] Exhibit 7, Tab 138, p. 47 of 696.
[142] Exhibit 7, Tab 138, p. 46 of 696.
[143] Exhibit 7, Tab 138, p. 45 of 696.
[144] Exhibit 5, Tab 107, Incident Detail Report.
[145] Exhibit 7, Tab 138, p. 44 of 696.
[146] Exhibit 7, Tab 138, p. 43 of 696.
[147] Exhibit 7, Tab 138, p. 42 of 696.

125. Mr Chegeni Nejad was not seen again by medical or mental health staff until 15 September 2015.

126. On 15 September 2015 Mr Chegeni Nejad climbed onto the shade cloth cover of a walkway and threatened to kill himself if he was relocated to the Sun compound. It is not clear from the materials why he thought this relocation was likely. A Code Black was initiated. Dr Dorney and the mental health team were called to assist in negotiating with Mr Chegeni Nejad. He was seen to be sitting quietly looking at the staff trying to engage with him but not speaking. He did not appear distressed or to be responding to any kind of psychotic delusion. Mr Chegeni Nejad was eventually convinced to return to the ground and was taken for a mental health assessment.[148]

127. The psychologist, Ms Adam, assessed Mr Chegeni Nejad on the day together with a GP. She noted he was dishevelled in appearance and quite agitated. He did not appear to be responding to perceptual disturbances but his thoughts were quite confused. He appeared to have no recollection of how or why he went onto the roof at that time. He denied any thoughts of harming himself but reported ongoing issues with sleep and complained of pain and a tingling sensation around his head.[149]

128. Serco officers were consulted and they reported concern for Mr Chegeni Nejad's welfare. He had limited social contact in the Surf compound and had been spending most of his time alone. He was not sleeping and remained rather restless. He was placed on high SME and Mr Chegeni Nejad was moved to the Sun compound that afternoon, despite his earlier protest. The GP and Ms Adam agreed he would benefit from a psychiatric review and there was a need to conduct relevant investigations to rule out any organic cause for his symptoms.[150]

129. Mr Chegeni Nejad was reviewed by a GP, Dr Dorney, the following day. His behaviour of the previous day was noted. Mr Chegeni Nejad was said by Dr Dorney to have been extremely agitated and frightened at the time and he later admitted he had "been hearing voices (or having thoughts which told him to kill himself)."[151] He also expressed paranoid thoughts that anyone who spoke to him in the compound was going to kill him and said he was feeling that mental health and the doctors didn't care. At the time of the review Mr Chegeni Nejad had had a good night's sleep after taking 10mg of Valium and said he was much more relaxed. He also said he felt the doctors were keen to help him find an answer. Dr Dorney performed a physical examination, which found nothing of note although he was still awaiting the blood results. His plan was to remove the Efexor as it had possibly caused agitation, and to liaise with the psychiatrist and Ms Adam to explore likely psychosis.[152]

[148] Exhibit 5, Tab 108 and 110; Exhibit 7, Tab 138, p. 40 of 696.
[149] Exhibit 5, Tab 112; Exhibit 7, Tab 138, p. 38 of 696.
[150] Exhibit 5, Tab 108; Exhibit 7, Tab 138, p. 38 of 696.
[151] Exhibit 7, Tab 138, p. 37 of 696.
[152] Exhibit 7, Tab 138, p. 37 of 696.

130. Dr Dorney spoke to a psychiatrist, Dr John Williams, by phone link that same day to seek psychiatric input into Mr Chegeni Nejad's care. Dr Williams was not sure of a diagnosis based on what was described but suggested Mr Chegeni Nejad's behaviour was perhaps an abnormal stress response and it was possible he was developing a psychosis. Dr Williams' suggested plan matched what had already been put in place by Dr Dorney. The plan was to request an EEG and bloods to rule out an organic cause and some medication changes; namely to cease Efexor (venlafaxine) and increase his quetiapine dose and add mirtazapine, a different antidepressant.[153] I note there are submissions that the re-introduction of mirtazapine was inappropriate, given it was felt in the past he experienced negative side-effects, but I also note that Mr Chegeni Nejad had suggested it some months earlier and attested to the fact he felt it had benefitted him. In those circumstances, the reintroduction was appropriate.

131. Ms Adam also reviewed Mr Chegeni Nejad again on 16 September 2015. She noted his long history of self-harming behaviour and impulsive acts while in detention and noted he had no current diagnoses, although he had previously been treated for depression, anxiety and a possible brief episode of psychosis. Mr Chegeni Nejad told Ms Adam he wanted help with his 'nerves' and 'mental condition'. He said he heard voices that caused him to have negative thoughts and tell him to kill himself.[154] He could not be more specific about what the voices said or sounded like. Although Mr Chegeni Nejad described the onset of these voices while in detention, and denied hearing them while released into the community in Melbourne, he did describe an abnormal perceptual experience while living in the community in Melbourne. On that occasion, he said he saw things in front of him that were not there while riding his bike, which caused him to cry afterwards. Mr Chegeni Nejad said his negative thoughts had increased since arriving in Darwin and he was now experiencing them '24/7'.[155]

132. Ms Adam and Mr Chegeni Nejad discussed the previous day's events and Mr Chegeni Nejad told Ms Adam he had gone to the eating area with a friend and the friend had forced him to eat, even though he wasn't hungry. After eating he felt "mental pressure"[156] in his head that felt like fire. He said he had no recollection of what occurred next until he found himself on the roof. He denied any thoughts of suicide at the time and in effect described an 'out of body' experience. He described feeling worried he would act impulsively again and felt he could not control it. He also spoke of ongoing mental pressure from previous hardship and bad memories from events long ago.[157]

133. Ms Adam formed the impression Mr Chegeni Nejad showed symptoms of depression and ongoing difficulties managing stress. It was unclear whether he was psychotic and it was queried whether he had suffered cognitive impairment due to drug abuse. Ms Adam's plan matched Dr Dorney's plan. She recommended he remain on high SME.[158]

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[153] Exhibit 5, Tab 112.
[154] T 59; Exhibit 7, Tab 138, p. 34 of 696.
[155] Exhibit 7, Tab 138, pp. 34 - 35 of 696.
[156] Exhibit 7, Tab 138, pp. 34 – 35 of 696.
[157] Exhibit 7, Tab 138, pp. 34 – 35 of 696.
[158] Exhibit 5, Tab 112.

134. A medical referral was initiated by Dr Dorney for an EEG to be performed to exclude temporal lobe epilepsy as an underlying organic cause for his symptoms. It was noted in the referral form that Mr Chegeni Nejad had already undergone a brain MRI and a clinical neurological examination, both of which were normal.[159] It's not clear if Dr Dorney was aware of the earlier EEG performed at the Royal Brisbane & Women's Hospital, but it seems unlikely. Dr Dorney completed the referral for Mr Chegeni Nejad to have an EEG at the Royal Darwin Hospital as a Priority 1 (to be completed within 30 days).[160] Although the request for an appointment was made on 16 September 2015, the actual appointment date was not set until 2 October 2015 and then communicated to IHMS staff on 5 October 2015.[161] It is relevant to note that Dr Dorney felt it was less likely there was an organic cause for Mr Chegeni Nejad's behaviour, given his long periods of dissociation, but proceeded to request the EEG in any event.[162]

135. Mr Chegeni Nejad was reviewed by Nurse Roberts on 17 September 2015 and he reported feeling better and showed no sign of thought or perceptual disturbance. He was told he would not have any changes to his medications at that time, but they might be reviewed the following week, which he appeared to accept. He denied any thoughts of self-harm and cited his friends as a protective factor.[163]

136. More than one of the Serco officers who were based at Christmas Island IDC at the time of Mr Chegeni Nejad's death had also been working at Wickham Point IDC when Mr Chegeni Nejad was held there. Mr Darryl Robbins was a Detainee Services Officer and a member of the Emergency Response Team. Mr Robbins recalled being involved in removing Mr Chegeni Nejad from the roof of Wickham Point IDC several times. Mr Robbins had also seen Mr Chegeni Nejad run towards the fence on other occasions at Wickham Point IDC and stopped him climbing it. His description of Mr Chegeni Nejad was that some days he was fine and other days he was "not there"[164] and did "wild things."[165] On those days, Mr Robbins made it a point of standing between Mr Chegeni Nejad and the fence as he knew if Mr Chegeni Nejad was able to reach the fence he could easily climb it and go onto the roof.[166]

137. Mr Robbins recalled that Mr Chegeni Nejad was reported by other detainees to say "I don't want to be here. I'm going to kill myself"[167] and then he would try and make it to the roof. Mr Robbins said that he and the other Serco officers were afraid that he might jump from the roof once he was up there so they tried to prevent him reaching the fence whenever possible.[168] Mr Robbins confirmed that he witnessed this behaviour only at Wickham Point IDC and not after Mr Chegeni Nejad moved to Christmas Island IDC,

[159] Exhibit 5, Tabs 110 and 111.
[160] Exhibit 1, Tab 2, p. 45.
[161] T 655.
[162] Exhibit 5, Tab 112; Exhibit 7, Tab 138, p. 37 of 696.
[163] Exhibit 5, Tab 112; Exhibit 7, Tab 138, p. 32 of 696.
[164] T 334.
[165] T 334.
[166] T 342.
[167] T 334.
[168] T 334.

although Mr Robbins was only at Christmas Island IDC from 21 October 2015.[169] Although not a mental health professional, Mr Robbins attributed the behaviour to times when Mr Chegeni Nejad was not taking his medications, so he encouraged Mr Chegeni Nejad to take his medications regularly.[170]

138. Mr Robbins was asked whether he would describe Mr Chegeni Nejad as being 'frail or weak' and he indicated the opposite, describing Mr Chegeni Nejad as "quite fit"[171] and "strong,"[172] at the time he knew him.

TRANSFER TO CHRISTMAS ISLAND IDC

139. Mr Chegeni Nejad was transferred to the Christmas Island IDC on 19 September 2015.[173] There were reportedly concerns due to his escalating behaviour, which was said to go against the ABF's mission to maintain the good order of the Wickham Point IDC.[174] There is a suggestion that Mr Chegeni Nejad may have been involved in a disturbance on or about the date he was transferred, which was investigated by the AFP, but no charges were laid.[175]

140. Mr Chegeni Nejad was transferred to Christmas Island IDC along with a number of other detainees. The fact that a single detainee needed to be moved to Christmas Island IDC for a court appearance had prompted the organising of a charter flight, and the Department used the opportunity to complete a 'bulk transfer'[176] operation focused on moving violent/high risk detainees from Wickham Point IDC to Christmas Island IDC. This was done both to reduce the number of high risk detainees held at Wickham Point IDC and to manage numbers at both facilities.[177] The project was given the name Operation Stabilo.[178]

141. There was some evidence in the brief raising concern about how Mr Chegeni Nejad was selected for this transfer to Christmas Island IDC, and whether the transfer was appropriate and in his best interests, given he was on a positive immigration pathway and had mental health issues. Based on this evidence obtained during the investigation, Detective Broadribb identified in his report that the "transfer occurred despite Mr Chegeni Nejad being assessed as being on a positive pathway and having a valid TPV application"[179] and also despite Mr Chegeni Nejad having scheduled specialist medical appointments that potentially precluded him from being transferred.[180] It was later clarified that there was no specialist appointment in place at the time of transfer, but a neurology referral had been requested.

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[169] T 333 – 334.
[170] T 342.
[171] T 340.
[172] T 348.
[173] Exhibit 1, Tab 2, p. 7.
[174] T 34; Exhibit 1, Tab 2, p. 7.
[175] Exhibit 5, Tab 118.
[176] T 688; Exhibit 4, Tab 80.1, RG2, p. 5.
[177] T 711 - 712; Exhibit 3, Tab 62, Attachment MS1; Exhibit 4, Tab 80.2.
[178] T 678.
[179] Exhibit 1, Tab 2, p. 40.
[180] Exhibit 1, Tab 2, pp. 40, 44

142. Further, an issue was raised about communication between stakeholders in the process of organising the transfer. On 1 July 2015 the Department of Immigration and Border Protection and the Australian Customs and Border Protection Service were integrated to form the Australian Border Force. It was suggested in evidence before me that, post integration, the transfer process for detainees between facilities changed and was a less collaborative process for security reasons. It was suggested this made the decision-making process less clear.[181]

143. It was acknowledged by the Commonwealth that there was a change after the ABF and Department were integrated to a more 'operational command' type of approach to the transfer of detainees and it was acknowledged that "the transfer process involved a greater focus on operational security and secrecy"[182] from that time. However, it was emphasised that the actual decision-making process did not change, including the way stakeholders could provide feedback.[183]

144. The decision to transfer Mr Chegeni Nejad, and the way the transfer process was managed, was the subject of further detailed evidence during the course of the inquest to explore these expressed concerns.

145. It was explained through statements and oral evidence that the transfer process is about ensuring that the various IDCs are operating in the optimal way and to ensure the safety of the individuals in each centre, which includes the detainees, staff and service providers. Total numbers of detainees at each centre was also relevant, to prevent overcrowding and to reflect cost factors related to contractual arrangements for running the centres.[184] The overall process involved ensuring that the numbers of detainees in any given facility were appropriate, taking into account the risk profile of those detainees and ensuring detainees' suitability at each centre, particularly from a safety viewpoint.[185]

146. At the time it appears the way placements were selected was primarily done on a risk-based approach. The Serco Security Risk Assessment Tool (SRAT) was used to give a security risk rating to a detainee for that purpose. At around the time of this transfer, the Department had also started to use a new tool in conjunction with the SRAT. It was known as the National Detention Placement Assessment Tool (DPAT), and it was applied as part of a principles-based approach and was designed to consider a broader range of factors relevant to a detainee to allow an assessment to be made about the best placement for an individual. The aim of using the two tools was to balance community safety, the cost and the needs and circumstances of the individual detainee, but with community safety given the highest priority.[186] Mr Chegeni Nejad's DPAT was not done until after he was transferred, so it did not play a role in the decision to transfer him.[187]

[181] T 55; Exhibit 1, Tab 2, p. 43.
[182] Exhibit 4, Tab 80.2 [49].
[183] Exhibit 4, Tab 80.2 [50].
[184] T 678 – 680; Exhibit 4, Tab 80.2.
[185] Exhibit 4, Tab 80.2 [11].
[186] T 691 – 692; Exhibit 4, Tab 80.2 [17] – [18].
[187] T 690.

147. DPAT tool has been implemented since Mr Chegeni Nejad's death. I receive some limited evidence as to how it works and I am satisfied it is a better tool than the previous SRAT. The Department submits it is an appropriate tool, provided it is used consistently,[188] and I agree with that submission.

148. Inspector Mike Stevens was the Inspector Operational Planning and intelligence at Wickham Point IDC at the time. Mr Stevens regularly had responsibility for transferring detainees out of Wickham Point IDC to other parts of the detainee network, so he had some experience in this kind of operation.[189] Mr Stevens explained that after receiving instructions from Canberra to commence the planning operations, with a criteria of who would be transferred, he would start compiling an operation order and establish a transfer committee to facilitate the process. The committee comprised various stakeholders and Mr Stevens would chair it. The stakeholders would each be given a list to go away and research the individual detainees and then advise if there were issues with transfers of the particular people named.[190]

149. Serco would identify any security issues relating to individuals proposed for transfer. IHMS staff would undertake a medical review of the identified detainees and advise of any medical reasons why they considered a transfer should not proceed or any medical needs to be managed during it. The Department's case managers would consider whether a proposed transfer would adversely affect the resolution of the detainee's immigration status.[191]

150. Mt Stevens indicated there was "a lot of negotiation and traffic between the different stakeholders from the initial meeting up until the final meeting."[192] The final meeting would usually take place the afternoon before the transfer and they would come together and look at each separate detainee and give each stakeholder an opportunity to recommend that someone should be taken off the list.[193] The final decision as to removal of people from the list would then be made by senior management, usually the Wickham Point IDC Superintendent Julie Furby in conjunction with the Superintendent for Detention and Removals Planning Section, Sally Pfeiffer, who was based in the National Office in Canberra.[194]

151. After the final meeting, the list was generally settled.[195] Nevertheless, it was said that there was always an opportunity to adjust the list right up until the charter plane uplifted if new information came to hand, either by a directive from Canberra Head Office or if there was a medical event. Doctors were present at the airport to ensure that detainees could be properly assessed in those circumstances.[196]

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[188] Submissions in Reply by the Commonwealth, filed 8 October 2018, [141].
[189] T 659.
[190] T 659 – 660.
[191] Exhibit 4, Tab 80.2 [39] – [41].
[192] T 660.
[193] T 660 – 661.
[194] T 664.
[195] T 661.
[196] T 661, 680 - 681.

152. For the Christmas Island transfer that included Mr Chegeni Nejad, the focus of the operation (once the charter flight was identified as necessary) was identifying suitable high risk detainees as there was a high level of detainees with an SRA rating of 'high' at Wickham Point IDC, which as a facility was only designated a rating of 'low and medium' and had only a limited number of beds designated for the level of high or above. There was also a cost benefit to be gained from a transfer of approximately 20 detainees from Wickham Point IDC to Christmas Island IDC, as it would result in the facility having a lower capacity rate applied.[197]

153. The transfer operation effectively commenced on Friday 11 September 2015 when ABF Supervisor Operational Planning and Intelligence, Nathan Grant, was tasked by Superintendent Furby to urgently request Serco Intelligence compile a list of current detainees at Wickham Point IDC with a high risk rating for 'violent/aggressive behaviour' and also those with a high risk rating for self-harm. Mr Grant received a list from Serco that day identifying 29 detainees in total who fell into one or both of those categories, with Mr Chegeni Nejad being one of them.[198]

154. On 14 September 2015 an internal email that included Superintendent Furby and Mr Grant indicated that the transfer would focus on the high risk aggressive and violent detainees and not the identified self-harm detainees.[199]

155. On 15 September 2015, Mr Stevens was tasked with the operational planning of the proposed transfer of detainees from Wickham Point IDC to Christmas Island IDC. Mr Stevens was aware that it had been "stipulated that detainees with either medical issues, mental health issues that could not be adequately dealt with on Christmas Island or other issues such as court, imminent visa release or other immigration status issues would not be considered for transfer."[200]

156. After the initial list was compiled on the original directions, the criteria that self-harmers should be excluded was removed, and the criteria was expanded to allow people with a history of self-harm to be included on the list.[201] Mr Chegeni Nejad had an overall high risk rating at the time of the commencement of this operation based upon his SRAT, with a high rating recorded for aggression and violence but low rating for escape and self-harm.[202] He therefore was seen to meet the criteria for the transfer and was included on the list.

157. A stakeholder meeting was held on 15 September 2015. The Department points to the fact that the there is no evidence that anyone raised any objection to Mr Chegeni Nejad being transferred on medical grounds or case management grounds at this meeting.

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[197] Exhibit 4, Tab 80.2 [57].
[198] Exhibit 1, Tab 2 p. 43; Exhibit 3, Tab 63; Exhibit 4, Tab 80.2 [60].
[199] Exhibit 1, Tab 2, p. 44.
[200] Exhibit 3, Tab 62 [6].
[201] T 662 – 663.
[202] T 666; Exhibit 3, Tab 62, MS2.

158. Around that same time Mr Chegeni Nejad's risk was upgraded by IHMS staff and he was placed on a high imminent PSP that meant it was believed by health staff that he was very likely to harm himself. This was due to his erratic behaviour, as described above.

159. Given Mr Chegeni Nejad had been placed on high imminent PSP on 15 September 2015, Mr Stevens queried with Superintendent Furby by email whether Mr Chegeni Nejad's upgraded risk status would preclude him from transfer. Superintendent Furby responded that it did not necessarily preclude Mr Chegeni Nejad. She indicated that Mr Chegeni Nejad was to be left on the list with a note to the effect that he was on a high imminent PSP and the National Office and Detention Health would then decide whether he was to go.[203]

160. Mr Chegeni Nejad was given medical clearance for travel on 15 September 2015,[204] which was noted in the medical spreadsheet on 18 September 2015. His neurology referral was noted and his mental health issues were noted, including his "frequent self harm attempts"[205] and the recent roof climbing incidents. Mr Stevens said that the factors that were generally taken into account included detainee welfare as a paramount consideration, as well as the safety of the staff and the public during the course of the operation.[206]

161. On 16 September 2015 Serco staff completed a 'Detention Service Provider Aviation Security Risk' assessment that concluded that Mr Chegeni Nejad was at low risk of self harm and high risk overall. He was also noted to be likely to attempt self-harm in an attempt to disrupt the transfer.[207] I note Mr Chegeni Nejad's recent incidents where he had gained access to roof tops were described in the report as occurring "in order to verbalise his frustrations with his immigration pathway,"[208] rather than attributed to any mental health issues. However, the list compiled for the transfer did acknowledge he "may be suffering mental issues."[209]

162. Mrs Katherine (Katya) Peart was working in a limited capacity in the role of Director of Case Management for the Department at Wickham Point IDC in August and September 2015, having started a return to work program following an injury.[210] In the lead up to Mr Chegeni Nejad's transfer to Christmas Island IDC Mrs Peart had noticed there were a lot of closed door meetings taking place with ABF staff. Mrs Peart was aware that a transfer was planned but did not know of the details.[211] Mrs Peart asked an ABF member what was going on and she was told they could not divulge that kind of information.[212]

[203] T 667 - 668; Exhibit 1, Tab 2, p. 44; Exhibit 3, Tab 63, Attachment MS4.
[204] Exhibit 4, Tab 80.2, SP-5.
[205] Exhibit 3, Tab 62, MS6.
[206] T 665.
[207] Exhibit 1, Tab 2, p. 44; Exhibit 3, Tab 63.
[208] Exhibit 3, Tab 63, Attachment NG2.
[209] Exhibit 3, Tab 62, Attachment MS7.
[210] Exhibit 3, Tab 59.
[211] T 584.
[212] Exhibit 3, Tab 59 [16].

163. Mrs Peart recalled that she first saw the proposed detainee transfer list on 15 September 2015 when she was sent it by email to be actioned. There were approximately 57 names on the original list and Mrs Peart thought at the time that there were a large number of names on the list, so it would require extensive research to ensure that the individuals named were suitable for transfer.[213]

164. Those involved in the researching of the suitability of the names on the list included the Department's Detention Status Resolution Officers, IHMS staff and Serco staff (particularly security staff). They were required to interrogate various databases to consult the relevant information on each individual.[214]

165. Mrs Peart recognised Mr Chegeni Nejad's name on the list as she remembered reading situation reports relating to his recently climbing the Wickham Point IDC roof. Mrs Peart understood that Mr Chegeni Nejad was on a positive pathway and had a temporary protection visa application ongoing, and that he also suffered mental health issues and was receiving ongoing assistance from IHMS mental health services. Based on that information, Mrs Peart said that at the time she was very surprised to see Mr Chegeni Nejad's name on the proposed transfer list.[215] Mrs Peart explained that the reason for her surprise was that it would be logistically more difficult to move Mr Chegeni Nejad out into the community from Christmas Island IDC and, in her view, it made more practical sense to keep him at Wickham Point IDC.[216]

166. Mrs Peart indicated in her statement that she also was aware that usually detainees with significant medical or mental health issues would not be transferred from Wickham Point IDC to Christmas Island IDC or other IDCs. Mrs Peart understood that some of the Department's Detention Status Resolution Officers had voiced their concerns to the ABF staff concerning Mr Chegeni Nejad being on the transfer list due to his positive pathway and ongoing mental health issues, prior to his transfer, although she did not know the details of the concerns raised at that time, or how they were raised.[217]

167. Mrs Peart said she was also concerned that Mr Chegeni Nejad's mental health issues might make him unsuitable for transfer, but her primary concern was the fact that he was on a positive pathway.[218] Mrs Peart's evidence was that she felt Mr Chegeni Nejad should be removed from the list due to his positive pathway, and she raised her concerns with Superintendent Furby in person around 15 or 16 September 2015. As they worked in the same area, a face to face discussion was easy to arrange.[219] Mrs Peart accepted that there were other pathways to raise her concerns, either by email or on the transfer list in the relevant section marked for 'other considerations,' but she did not use them.[220]

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[213] Exhibit 3, Tab 59.
[214] T 599.
[215] Exhibit 3, Tab 59 [23].
[216] T 580.
[217] T 592; Exhibit 3, Tab 59 [24].
[218] T 600.
[219] T 586, 590.
[220] T 615 - 616.

168. Ms Michelle Cohen was the acting Team Leader for Mr Chegeni Nejad's case manager at Wickham Point IDC, Ms Saraswathi (Sara) Alexander. Ms Cohen had been more heavily involved in Mr Chegeni Nejad's case in the weeks prior to his transfer as Ms Alexander was on leave. Ms Cohen gave evidence that, like Mrs Peart, she did not record any written concerns about Mr Chegeni Nejad being transferred, but did have some concerns that she raised verbally in an informal way.[221]

169. On Saturday, 19 September 2015 the ABF established the Emergency Control Centre (ECC) for the proposed transfer to occur that day. Generally speaking, a person of Mrs Peart's level would represent the Department to ensure that, from the status resolution point of view, all processes were followed and to raise concerns if it was felt a detainee should be withdrawn from the transfer. On this day, a less senior staff member, Erin McGregor, was requested to attend on behalf of the Department. Mrs Peart expressed concern that she was not advised of this, and that Ms McGregor was not senior enough to perform this role. Mrs Peart felt it was another example of the lack of communication between the ABF and Department staff.[222] A similar issue arose that Mrs Peart's Regional Director, Louise Smith, was also not informed of the transfer by either the ABF or her own Departmental staff.[223]

170. Mrs Peart gave evidence that after hearing of Mr Chegeni Nejad's death she was very sad and another staff member, his former case manager Ms Alexander, was particularly upset. Ms Alexander had been on leave the week the transfer occurred.[224] Ms Alexander had been his case manager from 9 June 2015 to September 2015 and had four meetings with him in that time. Her impression was that he may have had some mental health issues and she was aware that he was on a positive immigration pathway, so she had felt he should have remained at Wickham Point IDC as he had built relationships with IHMS staff and his applications for a TPV and community detention were progressing.[225]

171. Ms Alexander clarified in her evidence at the inquest that her main concern was about the lack of continuity and consistency for Mr Chegeni Nejad in the people managing his care, such as IHMS staff and his Departmental case manager, as well as the other detainees he could socialise with, and the like.[226]

172. Mrs Peart said in her statement she felt "that it was such a waste and that we had failed him,"[227] referring to the system as a whole rather than any particular person or Department.[228] Mrs Peart felt, at the time of making her statement, that the ABF had ignored relevant information about

[221] T 642/
[222] T 594; Exhibit 3, Tab 59 [27].
[223] T 594 – 595; Exhibit 3, Tab 59 [28].
[224] T 607.
[225] T 898 – 900; Exhibit 2, Tab 53.
[226] T 901, 917.
[227] Exhibit 3, Tab 59 [31].
[228] T 581.

Mr Chegeni Nejad in deciding to transfer him to Christmas Island IDC.[229] However, by the time of the inquest Mrs Peart had reflected on the words used in her statements and described them as "emotive language"[230] related to how she felt at the time.

173. Mrs Peart was questioned at the inquest about other opportunities she had to raise concerns about Mr Chegeni Nejad being on the list of detainees to be transferred. She generally accepted that she had opportunities but, other than some verbal conversation about it, she did not take the matter further. When information was compiled by the Department after the transfer took place, no red flags were put next to Mr Chegeni Nejad's name, and Mrs Peart did not take any action to try to have him returned from Christmas Island IDC.

174. After the transfer occurred, Ms Cohen stated various senior case managers expressed their surprise that Mr Chegeni Nejad had been moved, mentioning that it was "crazy and very expensive" to transfer him and others to Christmas Island IDC, only to bring them back to Darwin in the future due to medical, health and immigration issues.[231] Again, the primary concern appeared to be the practicalities of moving him back if required.

175. On 23 September 2015 Ms Cohen was involved in a process of completing a spreadsheet regarding the transfers to Christmas Island IDC that had occurred a few days before and recording why they disagreed with certain detainees being transferred. Ms Cohen entered information for Ms Alexander's clients as she was still on leave. Ms Cohen included in her statement that on the spreadsheet under Mr Chegeni Nejad's name it was noted "that he was on a positive pathway and he was vulnerable due to his mental health."[232] In her evidence, Ms Cohen accepted this information was not recorded on the spreadsheet, but said that the information was provided verbally to Mrs Peart.[233]

176. In an email sent by Ms Cohen on 12 November 2015 to Ms Alexander and Ms Alana Cole-Munro, Ms Cohen mentions that Mr Chegeni Nejad was on a positive pathway and this "was voiced to ABF on several occasions."[234] Ms Cohen emphasised in her evidence that the main concern she tried to convey, based upon the information provided by Ms Alexander, was that from an immigration point of view he was on a positive pathway, with a referral for him to get community detention placement, and she was unsure if that could be carried out if he was at Christmas Island IDC. She was also concerned, in terms of his mental health, that he showed limited understanding of his positive pathway.[235] Ms Cohen's concerns appear to reflect the concerns raised by Mrs Peart.[236]

[229] T 602 – 603.
[230] T 595.
[231] Exhibit 3, Tab 59 [23], [29].
[232] Exhibit 2, Tab 54 [20].
[233] T 644.
[234] T 645; Exhibit 2, Tab 54, attachment.
[235] T 646.
[236] T 646 - 647.

177. The Department accepts it is possible there may have been some informal querying of whether Mr Chegeni Nejad should be transferred on medical grounds or case management grounds, but points to the lack of any formal documentation of these objections, as compared to the decision-making around other proposed transferees, at least one of whom was removed from the transfer list based on medical advice received from IHMS.[237] It is submitted that there was many opportunities given to the Department's case managers to formally record their concerns, but these opportunities were not taken up.

178. The Department accepted that based on the new DPAT tool of analysis, he would not have been identified as satisfying the criteria for transfer to Christmas Island IDC, but this was not fully implemented at the time.[238] The Department also accepted that, even based on the criteria and using the tools available at the time, it was possible Mr Chegeni Nejad would not have been transferred if his case manager, Ms Alexander, had not been on leave and unable to advocate on his behalf.[239]

179. However, the Department submits that given Mr Chegeni Nejad's demonstrated propensity to climb onto structures and threaten self-harm, "the more restrictive environment on Christmas Island had significant advantages in terms of close supervision"[240] and that there were no medical disadvantages to him.

CARE AND SUPERVISION AT CHRISTMAS ISLAND IDC

180. Upon arrival at Christmas Island IDC Mr Chegeni Nejad was first detained in 'White 2 Compound' for assessment and then moved into 'Green 1 Compound.' He initially shared a room in the green compound with another detainee but after two weeks the other detainee moved into another room and Mr Chegeni Nejad then had the room to himself.[241]

181. Mr Chegeni Nejad saw Mental Health Nurse Colin Li on 19 September 2015 shortly after his arrival. Nurse Li was aware Mr Chegeni Nejad was on a medium SME that required him to be physically checked every 30 minutes. Nurse Li described Mr Chegeni Nejad as pleasant and compliant. He did appear overwhelmed and unhappy about his recent transfer.[242] Nurse Li recalled Mr Chegeni Nejad thought his transfer was "a bit unjust"[243] but did not appear specifically discontented about being at Christmas Island itself.[244] Mr Chegeni Nejad said he felt "safe,"[245] although he also said he has urges to harm himself sometimes when he got scared or had a headache.[246]

[237] Submissions by the Commonwealth, dated 5 October 2018, [44].
[238] Submissions in Reply by the Commonwealth, filed 8 October 2018, [57].
[239] Submissions in Reply by the Commonwealth, filed 8 October 2018, [57(a)].
[240] Submissions by the Commonwealth, dated 5 October 2018, [48].
[241] Exhibit 1, Tab 2, p. 8.
[242] Exhibit 2, Tab 45 [6]; Exhibit 7, Tab 138, p. 30 of 696.
[243] T 1009.
[244] T 1010.
[245] Exhibit 7, Tab 138, p. 30 of 696.
[246] Exhibit 7, Tab 138, p. 30 of 696.

182. In relation to his physical appearance, Nurse Li thought Mr Chegeni Nejad looked skinny and not overly fit and healthy looking, akin to the appearance of a drug user.[247] He did not see any significant change in this physical appearance over the period of 10 weeks that he engaged with Mr Chegeni Nejad before his escape.[248]

183. Based on Mr Chegeni Nejad's SME history and his recent transfer, Nurse Li recommended that he remain on moderate SME overnight, which could be reconsidered the following day if there were no incidents overnight.[249]

184. The following day Nurse Li saw Mr Chegeni Nejad again to complete his Transfer Health Assessment. Mr Chegeni Nejad appeared calm and cooperative He expressed no specific concerns or worries about being moved to Christmas Island IDC. He denied any current thoughts of self-harm. He said he only wanted to hurt himself when he was scared. When asked to clarify, he stated "when I see Satan,"[250] but said he had not seen Satan since arriving at Christmas Island IDC and was able to guarantee his safety. Mr Chegeni Nejad was mainly pre-occupied with his medications, claiming that it was his medications that were making him anxious and unwell. However, he was agreeable to remaining on the medications until he was reviewed by a psychiatrist.[251]

185. Based on this assessment Nurse Li reduced Mr Chegeni Nejad's SME to checks every 8 hours and scheduled a telehealth psychiatric review for medication review.[252] Other physical health issues were also dealt with, such as immunisations.

186. On 22 September 2015 Mr Chegeni Nejad participated in another tele-health conference with IHMS psychiatrist Dr Spencer. Nurse Li also sat in on the conference. Dr Spencer recalled having reviewed Mr Chegeni Nejad in July so she was aware of his history, but it is not clear whether Dr Spencer had an opportunity to update herself on all the events that had occurred between her review in July and this next review. Dr Spencer believed she would have focussed on Mr Chegeni Nejad's health notes from the week or two prior to her review. Dr Spencer was aware that Mr Chegeni Nejad had been moved to Christmas Island IDC and the results of his earlier MRI and she refreshed her memory about his past history so that she didn't have to get him to repeat his story.[253]

187. Dr Spencer said it is her practice to ask people about their immigration matters because it often can be informative as to their mental state. Mr Chegeni Nejad told Dr Spencer that "he wasn't affected negatively by the move to Christmas Island IDC and that he had pleasant memories of Christmas Island IDC from the first time that he had been in detention there because he felt that he was quite active and fit back then."[254] He said he had

[247] Exhibit 2, Tab 45 [6].
[248] Exhibit 2, Tab 45 [6].
[249] Exhibit 7, Tab 138, p. 30 of 696.
[250] Exhibit 7, Tab 138, p.28 of 696.
[251] Exhibit 7, Tab 138, p.28 of 696.
[252] Exhibit 2, Tab 45 [7]; Exhibit 7, Tab 138, p.29 of 696.
[253] T 1124 – 1125.
[254] T 1125.

been recognised as a refugee and didn't know the reason why he was still in detention. He also said he wasn't thinking a lot about his immigration situation, which Dr Spencer said was often the case with people who had been in prolonged detention, so she was not surprised to hear this.[255]

188. Mr Chegeni Nejad told Dr Spencer he was not depressed. He acknowledged that he sometimes had "bad thoughts in his mind"[256] and thoughts of hurting himself, which Dr Spencer understood to be "bad thoughts of suicide,"[257] but he didn't have any particular plan or method.[258]

189. He also spoke about a worsening pain in his head, which moved around. He said he was fatigued and always wanted to lie down and was worrying about his health quite a bit. He repeated his dislike of risperidone. Mr Chegeni Nejad said the tablets made him feel stressed and he thought some of his physical health symptoms were due to the tablets and it was making him worried that he might have brain cancer. Dr Spencer's impression was that he was a man who didn't particularly like taking medication. Dr Spencer explained in her evidence that it is reasonably common for people who are anxious and don't like being on medication to be quite sensitive to any effect of the medication on their body and hypervigilant to any body sensations. This can create an "anxiety loop."[259]

190. Mr Chegeni Nejad said he was often only sleeping five hours a night, but even when he had a good night's sleep the pain in his head was not improved. Dr Spencer explained that it is quite common for people who are feeling unhappy to suffer headaches and in her opinion he was probably scanning his body looking for any sign that the medication was damaging him, and he also had an underlying persistent worry of catastrophic health events such as brain tumours and HIV. She believed he probably did have a headache, which was magnified by these psychological mechanisms. She also agreed that his dental pain could have contributed to his headache.[260]

191. In trying to assess his risk to himself, Dr Spencer spoke to him about his 'bad thoughts' and Mr Chegeni Nejad said he felt they were satanic. She tried to establish whether it was a delusion about Satan or more of a religious belief he was describing. She felt from questioning him that it was more likely to be related to a Christian belief rather than a psychotic phenomena. Mr Chegeni Nejad said he had been spending half an hour to two hours a day in religious activities, which showed a level of religious preoccupation, but his description was of feeling supported by prayer and his faith rather than any sense of description of religious delusions, which Dr Spencer found reassuring. He did describe experiencing some unusual visual hallucinations when he was in Brisbane and that resulted in his hospital admission, and he said a similar thing had happened to him in Melbourne. Dr Spencer noted that such delusions can be drug induced, rather than indicative of schizophrenia, although he denied illicit drug use. Dr Spencer said she did

[255] T 1126.
[256] T 1126 – 1127.
[257] T 1150.
[258] T 1128 – 1129.
[259] T 1127.
[260] T 1128.

not find these symptoms particularly helpful in clarifying his diagnosis and continued to try to understand what had happened previously in Brisbane by questioning him further.[261]

192. To explore a possible mood disorder, Dr Spencer asked if he was more likely to experience the symptoms when he was in a low mood or good mood and he said they were more likely to occur when he was in a low mood. He said he did not recall having an elevated mood for a long time, although his hospital notes suggested his mood was elevated when he was hospitalised in Brisbane. Dr Spencer also asked him about his sleeping patterns, as this can also be affected by mood disorder, and Mr Chegeni Nejad spoke of impaired sleep and feeling tired and not energised.[262] Mr Chegeni Nejad denied any history of mental illness in his family, which is relevant as mood disorders run quite strongly in families.[263]

193. Upon further discussion of his medications, Mr Chegeni Nejad indicated he was happy with his medication as it helped him sleep at night, but did not want to take it during the day. Dr Spencer felt this made sense, given he wanted to improve his fitness. He asked for methadone, which he had taken previously, but she explained she was not permitted to prescribe that medication to him.[264]

194. Dr Spencer suggested that Mr Chegeni Nejad's symptoms might be related to a low IQ, although she wasn't entirely sure what about him had caused her to make that comment at the time (I note Dr McKeough also made a similar comment). Dr Spencer said it was more common for people with less education to come up with unusual ideas about what is driving their sense of distress. She noted his anxiety and somatic symptoms (where emotional distress is expressed through physical complaints) and also that he tended to "act out," which she explained meant that he was someone who couldn't express strong feelings verbally and so was more likely to engage in expressive behaviour. At the conclusion of her review Dr Spencer still felt herself in a "diagnostic dilemma."[265]

195. Dr Spencer decided to increase Mr Chegeni Nejad's nightly antidepressant medication, mirtazapine, from 15 mg to 30 mg, and to maintain his dose of quetiapine but cease the morning dose to help him feel more energy and motivation during the day. Dr Spencer hoped this would lead him to engage more in activities in the centre.[266] He had already come off risperidone at this stage, which had not been under Dr Spencer's direction, but Dr Spencer indicated she was not concerned about the change as quetiapine is also an antipsychotic medication and can work on elevated mood, so she felt it was likely to assist him in a similar way to risperidone if there was a psychotic component to his mental health issues. However, Dr Spencer indicated that she had the feeling at that stage that his symptoms were more driven by anxiety in any event.[267]

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[261] T 1129 – 1131.
[262] T 1132 – 1133.
[263] T 1133.
[264] T 1133.
[265] T 1134.
[266] T 59, 1134.
[267] T 1135.

196. Dr Spencer agreed that she did give consideration as to whether Mr Chegeni Nejad's prolonged detention was a reason for his behaviour and she did, in that regard, explore with him how he was coping in detention and with his transfer to Christmas Island IDC. As noted above, Mr Chegeni Nejad did not provide Dr Spencer with a lot of information that would suggest he was distressed by the transfer to Christmas Island IDC and in terms of the impact of his prolonged detention, Mr Chegeni Nejad did not refer to this as a factor in his behaviour or symptoms.[268] Dr Spencer did clarify that it was not her role to comment on whether he should be kept in detention, and she was not asked about his suitability to be kept on Christmas Island, nor did she consider it her role to determine where people in detention were housed.[269] Nevertheless, Dr Spencer considered the mental health team at Christmas Island IDC to be very good, despite the lack of a permanent psychiatrist, and she was aware that Christmas Island IDC was a very large facility with lots more space and activities than some IDCs, so there was nothing about the environment that she considered made it inappropriate for him to be held there.[270]

197. Dr Spencer did not think she was aware that an EEG had been performed on Mr Chegeni Nejad in Brisbane, but she indicated that she did not consider this was an investigation worth pursuing at this stage as EEG's rarely show any abnormality unless it catches someone having an active seizure event and she did not think his symptoms were particularly classic for frontal lobe epilepsy.[271] If she had wished to pursue this, she would have followed the pathway of referring Mr Chegeni Nejad to a neurologist as a starting point, but she did not think this was an urgent action at that time although epilepsy was still part of the differential diagnosis at this stage.[272]

198. Overall, Dr Spencer concluded that Mr Chegeni Nejad was reporting more symptoms than during her previous review but described his symptoms as "low grade symptoms"[273] that she believed could be safely watched over time and, if they escalated with episodic difficulties, they could be managed.[274] Dr Spencer did not form the impression Mr Chegeni Nejad was someone "who was particularly deteriorating in their mental state."[275]

199. Dr Spencer explained at the inquest that if she had felt Mr Chegeni Nejad's symptoms were sufficiently severe as to require hospitalisation she could have referred him to a local public hospital's Emergency Department with a letter of referral indicating why the patient required hospitalisation. Dr Spencer did not have admitting rights, so she would have to go through the usual process to find a patient a public hospital bed, even though they came from the IDC. Although this course was open to her, Dr Spencer did not feel that was required on this particular day based on the risk versus benefit of sending him to hospital. Dr Spencer explained that adult mental

[268] T 1139 – 1141.
[269] T 1162 - 1163.
[270] T 1163 – 1164.
[271] T 1135 – 1136.
[272] T 1136.
[273] T 1136.
[274] T 1136.
[275] T 1150.

health wards can be very challenging environments for people, which can weigh against a hospital admission.[276]

200. Dr Spencer was also aware that she could have placed Mr Chegeni Nejad on closer observation through SME but, once again making a risk versus benefit decision, she was concerned that being under constant supervision might make him feel worse given its restrictive and invasive nature. It was said that constant supervision would be required to keep someone safe, and in the case of Mr Chegeni Nejad, Dr Spencer did not feel the risk he presented to himself warranted such action.[277]

201. Dr Spencer also did not make a recommendation that Mr Chegeni Nejad be reviewed by another psychiatrist in any set period of time. Her evidence was that she understood there were regular visiting psychiatrists, and otherwise she trusted the mental health team to arrange a psychiatric review if they felt it was required.[278]

202. It was put to Dr Spencer that at the time she saw Mr Chegeni Nejad he had a cluster of symptoms that indicated he had a severe psychiatric illness, but she maintained her position that he had a pattern of symptoms that did not clearly fall into a particular illness category, which meant he remained a diagnostic dilemma. It was also put to Dr Spencer that she should have recommended a follow-up assessment by a psychiatrist as part of his ongoing mental health plan. Dr Spencer agreed that if the patient had been in the community, it may have been appropriate, but given he was a person in detention receiving ongoing management by the mental health team, it was not required as he would have been booked in to see a psychiatrist if the mental health team considered it clinically appropriate.[279]

203. It was also suggested to Dr Spencer that a hospital would have been the more appropriate environment for Mr Chegeni Nejad than an IDC and might have assisted in diagnosing his condition. However, Dr Spencer maintained that taking him away from his familiar environment, into a challenging environment such as an acute mental health ward, could have been detrimental. She also emphasised that his earlier hospital admission in Brisbane had not assisted in diagnosing his mental health condition, so it was not clear that a further hospital admission would assist in that regard.[280] Dr Spencer explained that it is a very high threshold to decide that a person needs hospital admission, as the demand on mental health resources can lead to a long wait for a hospital bed, so there needs to be a clear plan for what hospitalisation might achieve, which was not clear in his case.[281] Dr Spencer's opinion was that the symptoms he described, although unusual and worrying, were not necessarily going to respond to clear mental health treatment, and she believed they might well pass with support and time and some medication to assist him to feel calmer, which he was receiving.[282]

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[276] T 1137 – 1139, 1155.
[277] T 1141 – 1142, 1157.
[278] T 1166.
[279] T 1168 – 1169.
[280] T 1170 - 1171.
[281] T 1173 – 1174.
[282] T 1169.

204. The general impression I have gained from Dr Spencer's notes and evidence, including her suggestion that he might improve with support and some medication to calm him, is that she felt Mr Chegeni Nejad had severe anxiety, which was manifesting in physical symptoms. As to why he was anxious, she did not appear to form a conclusion, although she did attempt to explore his prolonged detention as a possible cause, but he didn't give her much information to support that conclusion or to refute it.

205. On 24 September 2015 Mr Chegeni Nejad saw a nurse with a complaint of dental pain. There was no evidence of swelling or inflammation and only minor decay observed but he requested stronger pain relief. The GP prescribed some medication and a dental assessment request was completed.[283] He also complained of dental pain on 27 September 2015 and was given paracetamol on that day,[284] and again at his request on 29 September 2015.[285]

206. A report showing the chronology of his health care from 28 September 2015 indicates that Mr Chegeni Nejad's mental state had not improved following his transfer to Christmas Island IDC. However, a report by a Clinical Reporting Nurse from IHMS to the Commonwealth Ombudsman on 28 September 2015 indicated there was "no clinical evidence to suggest that Mr Nejad's health is likely to be adversely affected by his current placement."[286] It was asserted that his mental health was being appropriately investigated and managed by the medical and mental health team.[287]

207. On 29 September 2015 Mr Chegeni Nejad attended a mental health review with Nurse Li. These reviews were required to be conducted at specified periods, and Nurse Li described this particular review as the 48 month assessment. Nurse Li had available to him notes from the discussion with Dr Williams and from Dr Spencer's psychiatric review.

208. Mr Chegeni Nejad raised a number of complaints during the review. He said he was "tired and exhausted and had pain all over his body."[288] He reported he had experienced this for the past three months and said he didn't know what the triggers or causes of his pain were. He indicated he had sought help at Wickham Point IDC but it had not been assisted by the medications or any other help provided, although he acknowledged that the quetiapine helped him sleep.[289]

209. Nurse Li described his presentation as "flat and depressed."[290] The notes indicate that Mr Chegeni Nejad said he was experiencing fleeting thoughts of self-harm but denied wanting to act on them. Nurse Li recorded Mr Chegeni Nejad as saying "I am not crazy, I don't want to hurt or kill

[283] Exhibit 7, Tab 138, p. 24 of 696.
[284] Exhibit 7, Tab 138, p. 23 of 696.
[285] Exhibit 7, Tab 138, p. 19 of 696.
[286] Exhibit 5, Tab 119.
[287] Exhibit 5, Tab 119.
[288] Exhibit 2, Tab 45 [9].
[289] Exhibit 7, Tab 138, p. 20 of 696.
[290] Exhibit 2, Tab 45 [9].

myself."[291] He reported feeling anxious and believed he had brain cancer due to a whistling noise he heard in his right ear at night and frequent headaches. Nurse Li suggested to Mr Chegeni Nejad that his symptoms were possibly signs of depression and anxiety or stress due to detention. Mr Chegeni Nejad rejected this suggestion and said "detention is not doing this to me. I am not worried about visa or being in detention, I am worried about myself,"[292] although he later said that his transfer to Christmas Island IDC had made him worse.

210. Nurse Li asked Mr Chegeni Nejad what help he wanted, and he replied that he wanted to be accommodated in the support compound and have an officer with him, apparently so people could see he was getting worse.[293]

211. At the conclusion of his notes, Nurse Li indicated that in his opinion Mr Chegeni Nejad's presentation and interaction with him were consistent with Dr Spencer's impression of a man with low IQ, anxiety and associated somatic symptoms.[294] Nurse Li determined Mr Chegeni Nejad should remain on a supportive management plan so that he would receive ongoing support. He also formed a plan to discuss with the GP increasing his quetiapine dose and he was booked for a GP review to discuss this, and to explore his physical health concerns.[295] Nurse Li also made a referral for Torture and Trauma counselling.[296] There is evidence that suggests an appointment for this Torture and Trauma counselling was later made but Mr Chegeni Nejad declined to attend.[297]

212. At the PSP meeting that morning IHMS staff had advised that Mr Chegeni Nejad had shown no significant change in his presentation. He was requesting to be alone and continued to have fleeting thoughts of self-harm, which he said he did not want to act on, and he was agreeable to his treatment plan.[298]

213. Also on 29 September 2015 Mr Chegeni Nejad was sent a letter advising him that in addition to a temporary protection visa, he was now also eligible to apply for a safe haven enterprise visa.[299] This visa required the detainee to live and work in a regional area, so it was said to be a less popular option with many detainees, who preferred to live in a metropolitan area.[300] There was some evidence in the inquest to suggest that, rather than seeing this as good news, the information may have confused Mr Chegeni Nejad about his prospects of receiving a temporary protection visa and led him to the false belief that his prospects of release into the community had diminished.

214. On 30 September 2015 Mr Chegeni Nejad had a GP review in relation to his dental issues. He described toothache and pain when eating and at night.

[291] Exhibit 7, Tab 138, p. 20 of 696.
[292] Exhibit 7, Tab 138, p. 20 of 696.
[293] Exhibit 7, Tab 138, p. 20 of 696.
[294] Exhibit 7, Tab 138, p. 20 of 696.
[295] Exhibit 5, Tab 13.
[296] Exhibit 2, Tab 45.
[297] Exhibit 15, Tab 7.
[298] T 530; Exhibit 2, Tab 52, Summary of Timeline & Action annexure.
[299] Exhibit 5, Tab 103.
[300] T 518.

Some decay was noted and he was given a prescription for Panadol Osteo and placed on the dental list.[301]

215. On 1 October 2015 Mr Chegeni Nejad was formally allocated a new case manager by the Department. It was explained that the case manager's role is to manage barriers to immigration pathways, so that the detainee spends the least possible time in detention.[302] The new case manager was already aware of his migration status, as well as his mental health status as it had been discussed regularly at the PSP meetings. Mr Chegeni Nejad's new case manager understood the particular area of concern was thoughts of self-harm, which were being assessed by IHMS staff.[303] His case manager also understood that Mr Chegeni Nejad had been invited to apply for a temporary protection visa and was being considered for community detention, so he was on a positive immigration pathway still.[304]

216. A progress note made for Mr Chegeni Nejad's Individual Management Plan that day noted that he was engaging well and appeared calm and in good spirits. He indicated he was happy to be out of White 1 as he could engage in activities, which he was keen to start. He said he had no issues or concerns at that time.[305]

217. On 2 October 2015 Mr Chegeni Nejad's new case manager had her first meeting with him, which was conducted with the assistance of a Farsi interpreter. She found him easy to deal with in the sense that he was cooperative and engaged willingly, but noted he presented with a "flat affect"[306] and appeared distressed about his mental health. She identified in her first meeting that he had no social support and did not appear to socialise within the IDC. However, he told her that he liked the Christmas Island IDC better than Wickham Point IDC because he "had quite happy memories"[307] there.[308]

218. His lack of social support appeared to relate to both Christmas Island IDC and elsewhere. Mr Chegeni Nejad told his case manager he had two cousins in Melbourne but did not report a significant relationship with them and it was unclear if they were even direct relations as the term 'cousin' was known to sometimes be used fairly freely. He mentioned up to 20 Iranian friends at Christmas Island IDC but when asked further details about them he couldn't name a single friend. His closest supports appeared to be friends from the boat that he arrived on, many of whom now lived in Sydney or Melbourne. He was known to have an advocate, Mr Geoff McKeich, but he did not want to engage with him. The case manager wasn't sure, but thought it was possible Mr Chegeni Nejad simply didn't have the mental energy to engage in visa/legal discussions with Mr McKeich.[309]

[301] Exhibit 7, Tab 138, p. 17of 696.
[302] T 511.
[303] Exhibit 2, Tab 52 [8].
[304] T 514; Exhibit 2, Tab 52 [9].
[305] Exhibit 15, Tab 4.
[306] Exhibit 2, Tab 52 [11].
[307] Exhibit 2, Tab 52 [13].
[308] T 524.
[309] T 551 – 552; Exhibit 2, Tab 52, Summary of Timeline & Action annexure.

219. During the meeting Mr Chegeni Nejad's case manager attempted to explain about his temporary protection visa application but towards the conclusion of the meeting "he became very distressed, putting his head in his hands, clutching his head and face and rocking in his chair. He way saying he felt enormous pressure and confused."[310] Interestingly, Mr Chegeni Nejad was also reported to have said, "My problem is not with detention. It is my brain. I am tired and thirsty."[311] His case manager immediately referred him to IHMS and a Serco escort took him for a mental health assessment. The case manager understood he would be raised onto PSP as well and she was later advised he was placed onto high imminent SME as a result.[312]

220. The case manager spoke to the interpreter after the interview to try and glean a better understanding of the conversation, and the interpreter told her that Mr Chegeni Nejad was exceptionally difficult to interpret because it was so disjointed. Mr Chegeni Nejad never used the words 'self-harm' directly, but the interpreter's impression was that everything Mr Chegeni Nejad was saying pointed towards wanting a Serco officer with him so he did not self-harm, which was similar to the case manager's impression.[313]

221. Mr Chegeni Nejad was seen at the medical clinic that day by Nurse Li following concerns being raised by Mr Chegeni Nejad's case manager. Mr Chegeni Nejad said he felt unsafe and also said "I am scared to kill myself."[314] Nurse Li was unable to ascertain if he had any plans or specific suicidal intent, despite questioning him. Mr Chegeni Nejad was asked what he wanted and he stated he wanted an officer to be with him to support him and to protect him from himself.[315] A plan was initiated for Mr Chegeni Nejad to be accommodated in a secure safe environment with close supervision by Serco staff, as requested, by increasing his SME to ongoing/high imminent. He was also placed on the appointment list to be reviewed by the visiting psychiatrist, although it does not seem this eventuated prior to his death.[316]

222. During that day's PSP meeting it was noted that Mr Chegeni Nejad had apparently expressed a desire to be moved back into the White 1 compound, which was a more secure and monitored compound than the Green compound where he had been moved, or alternatively to a support area. His case manager explained that he had said he wanted to be in White 1, even though it was more secure and had more Serco monitoring, as he felt he benefitted from that environment. His case manager recalled he said that he liked Serco officers and wanted a higher level of support around him.[317] However, it was felt by Serco staff that there was more access to welfare in the more open compounds, which would be better for him.[318]

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[310] Exhibit 2, Tab 52 [13].
[311] Exhibit 2, Tab 52 [13].
[312] T 515, 522.
[313] T 547; Exhibit 2, Tab 52, Summary of Timeline & Action annexure.
[314] Exhibit 7, Tab 138, p. 15 of 696.
[315] Exhibit 2, Tab 45 [10]; Exhibit 7, Tab 138, p. 15 of 696.
[316] Exhibit 2, Tab 45; Exhibit 5, Tabs 110 and 113.
[317] T 560.
[318] T 542 – 543; Exhibit 2, Tab 52, Summary of Timeline & Action annexure.

223. On 3 October 2015 Nurse Li had a follow up review appointment with Mr Chegeni Nejad, given the previous day's episode. Mr Chegeni Nejad presented as more settled and less anxious than the previous day and he denied any thoughts of self-harm or suicidal ideation. Mr Chegeni Nejad reported he had received negative news the day before from his case manager. He said she told him "bad, bad things"[319] that reportedly made him feel "hopeless"[320] in terms of when he might receive a visa (although I note this was not the message his case manager had intended to convey). He said he had been hopeful of getting a visa that week or the next week but the information his case manager provided indicated he could be waiting a long, long time. Nevertheless, Mr Chegeni Nejad said he was now feeling more normal and requested that the officer no longer follow him around. He said he was able to guarantee his own safety, so he didn't require such close supervision. He reported no visual disturbances but he did say he continued to hear a whistling noise in his right ear at night, which was suggested could be tinnitus. As a result of this discussion and assessment, Nurse Li assessed Mr Chegeni Nejad as having experienced a situational crisis, which appeared to have resolved. He downgraded Mr Chegeni Nejad's SME back to ongoing.[321]

224. Mr Chegeni Nejad's case manager was surprised to later hear that he had felt hopeless after their meeting as she did not consider the information she provided to him was negative news, and she could not recall anything from the meeting which might be construed as bad. However, she did acknowledge that she usually advised detainees the visa process is a very lengthy process and he "displayed considerable confusion about his immigration pathway,"[322] so he may not have fully understood that he was not on a negative pathway.

225. He expressed a desire to focus on his health rather than worrying about his visa. Mr Chegeni Nejad was assessed as having undergone a situational crisis related to the visa information but his feelings expressed the day before about feeling unsafe appeared to have resolved.[323] It was recommended that supervision continue but the level of supervision was downgraded to 'ongoing based on assessment.'[324]

226. Mr Chegeni Nejad was reviewed again by a registered nurse, Margaret Martin, on 6 October 2015 and his mood appeared stable.[325] His improvement was noted at a PSP meeting that day and his supportive management plan was ceased.[326] Mr Chegeni Nejad was apparently scheduled to attend Torture and Trauma counselling on the island the following day with an external provider and a psychiatrist by videolink later in the week, although it seems he may have declined to attend the counselling.[327]

[319] Exhibit 7, Tab 138, p. 13 of 696.
[320] Exhibit 7, Tab 138, p. 13 of 696.
[321] Exhibit 2, Tab 45; Exhibit 7, Tab 138, p. 12 of 696.
[322] Exhibit 2, Tab 52 [20].
[323] Exhibit 5, Tab 8, Annexure B.
[324] Exhibit 5, Tab 8, Annexure B and Tabs 110 and 113.
[325] Exhibit 5, Tab 113.
[326] T 930 - 931; Exhibit 2, Tab 47 [13].
[327] T 931 – 932; Exhibit 2, Tab 47 [13].

227. Mr Chegeni Nejad was allegedly involved in an incident where he damaged a microwave, toaster and television on this date but no charges appear to have proceeded.[328]

228. After the PSP meeting on 6 October 2015 Mental Health Nurse Darren Sanger, who had attended the earlier meeting, saw Mr Chegeni Nejad for a scheduled mental health appointment, which is a standard assessment that was done periodically for all detainees. During this appointment Nurse Sanger conducted a mental health assessment of Mr Chegeni Nejad and provided him with a Kessler questionnaire, written in Farsi, to complete. Mr Chegeni Nejad had requested an interpreter, despite appearing to have a good command of English. Nurse Sanger found Mr Chegeni Nejad to be polite and cooperative during the process and did not appear to require an interpreter, although one was provided.[329]

229. The result of the Kessler questionnaire was a score of 24 out of 50, which indicates a mild level of distress. Nurse Sanger indicated this was an extremely common result for people in detention, who often exhibit a level of distress.[330] Nurse Sanger's impression was that Mr Chegeni Nejad seemed to be of good health and generally happy during the appointment, although his interaction with Mr Chegeni Nejad was minimal as he had seen Nurse Martin earlier that day.[331] Unlike some other descriptions by detainees of Mr Chegeni Nejad's appearance, Nurse Sanger described him as appearing to be of "wiry, athletic build"[332] and did not think he appeared frail, although he did appear lethargic.[333] Mr Chegeni Nejad's main concern in the review was to have his symptoms of headaches and body numbness resolved and he wanted to see a psychiatrist in preference to a GP for those issues. He spoke of having a dry mouth and coughing up white stuff that he referred to as "milk from my brain" and he felt it was the cause of his headache. Nurse Sanger suggested to him it might simply be the product of coughing but he preferred his explanation. Based on his assessment, Nurse Sanger recommended that the SME be ceased and Mr Chegeni Nejad be booked to see a psychiatrist for follow up on 9 October 2015.[334]

230. A note had been made by Nurse Martin that Mr Chegeni Nejad was due to attend Torture & Trauma counselling the following day.[335] Again, it seems this did not occur. There is a note made on 2 November 2015 that Mr Chegeni Nejad told a Serco officer that he did not attend a Torture and Trauma appointment approximately one week prior, as he did not want to attend the appointment.[336]

231. Following up on Mr Chegeni Nejad's referral for an EEG to rule out epilepsy, an initial appointment had been sourced for Mr Chegeni Nejad to attend in

[328] Exhibit 5, Tab 118.
[329] T 974; Exhibit 7, Tab 138, p. 10 of 696.
[330] T 932, 958, 974; Exhibit 2, Tab 47 [20] – [23].
[331] T 933; Exhibit 2, Tab 47 [25]; Exhibit 7, Tab 138, p. 8 of 696.
[332] T 974.
[333] T 977.
[334] Exhibit 7, Tab 138, p. 11 of 696.
[335] Exhibit 7, Tab 138, p. 9 of 696.
[336] Exhibit 15, Tab 7.

Darwin on 15 October 2015.[337] However, the ABF apparently advised IHMS that Mr Chegeni Nejad could not be accommodated in Darwin due to security issues so the appointment was postponed until 18 November 2015 and scheduled to occur in Western Australia instead.[338] The investigation was therefore not carried out prior to his death, but as noted above he had a similar investigation in Brisbane some months earlier that had been normal.

232. Mr Chegeni Nejad had his second meeting with his new case manager on 9 October 2015, which was much sooner than would ordinarily occur. At that time Mr Chegeni Nejad still presented with a very flat affect and his conversation was very disjointed. He spoke extensively about his headaches during the interview and his case manager referred him to the PSP for a second time.[339]

233. In her note made on 9 October 2015 the case manager raised the fact she had seen Mr Chegeni Nejad that day and he still presented with "a very flat affect and defeated by everything"[340] and frequently said he couldn't think or make decisions as his head hurt from headaches and his pain was very severe. The case manager had asked if Mr Chegeni Nejad could be added to the PSP Client of Concern inclusion to find out from IHMS if they could provide any information about his claimed headaches and if IHMS had any recommendations as to how to possibly support him around this issue, whether or not there was a medical indication for his headaches.[341]

234. Mr Robbins, who had known Mr Chegeni Nejad at Wickham Point IDC and been involved in incidents when Mr Chegeni Nejad climbed the roof, had arrived at Christmas Island IDC a couple of weeks before he went missing. Mr Robbins recalled seeing Mr Chegeni Nejad on one occasion approximately one week prior to his death. He saw him while walking across the compound and went over to him. Mr Robbins said he greeted Mr Chegeni Nejad but Mr Chegeni Nejad did not speak to him in return and simply turned and walked away. Mr Robbins did not think Mr Chegeni Nejad's reaction suggested he was unwell, as he was walking with two other people and was talking and laughing with them. Instead, Mr Robbins assumed that Mr Chegeni Nejad was upset with him because he believed Mr Robbins may have had something to do with his transfer. Mr Robbins did not pursue him and accepted Mr Chegeni Nejad did not want to talk to him, for whatever reason.[342]

235. Mr Robbins did not have any other contact with Mr Chegeni Nejad before he escaped.[343] Mr Robbins was a section leader of the Emergency Response Team (ERT) at Christmas Island IDC and he believed if Mr Chegeni Nejad had made any earlier attempts to climb fences it is likely he would have been transferred to the compounds that Mr Robbins managed with the ERT,

[337] Exhibit 5, Tab 113.
[338] Exhibit 5, Tab 113.
[339] Exhibit 2, Tab 52 [14].
[340] Exhibit 2, Tab 52, Summary of Timeline & Action annexure.
[341] Exhibit 2, Tab 52, Summary of Timeline & Action annexure.
[342] T 350.
[343] T 349.

which were more secure. However, Mr Robbins heard and saw nothing more about Mr Chegeni Nejad until his escape.[344]

236. On 26 October 2015 Mr Chegeni Nejad met with his case manager for the third and final time. His presentation had improved and he did not appear as distraught or emotional as he had at the previous two meetings. He told his case manager he was not seeing IHMS because "they do not help me,"[345] and he did not want to talk further about it. His case manager gave evidence that this was a fairly common comment from detainees, and usually indicated that a detainee didn't get what they wanted, so it was not something that she took as an indicator of the quality of treatment provided by IHMS staff.[346]

237. In her own experience, Mr Chegeni Nejad's case manager had always found the IHMS mental health team to be very professional and well qualified. She described them personally as "very committed staff members" and in particular the Director of IHMS, who used to attend the daily PSP meetings regularly, as having "an extraordinarily good knowledge of detainees." Therefore, from her personal experience, she had never had "any reason to question the quality of their mental health assistance."[347] Her opinion was of some significance, given the case manager's own personal background in psychology, even though she did not perform a psychologist's role at that time.

238. This last meeting with his case manager was primarily about the Minister for Immigration inviting Mr Chegeni Nejad to apply for a Safe Haven Enterprise visa. As he already had an application before the Department for a temporary protection visa, Mr Chegeni Nejad indicated he did not wish to pursue an alternative visa application.[348]

239. Mr Chegeni Nejad's case manager understood that Mr Chegeni Nejad was scheduled for a medical transfer back to Wickham Point IDC on 29 October 2015 to attend a medical appointment, but the flight was re-routed so it did not occur. The case manager was unsure as to whether Mr Chegeni Nejad was aware of the planned transfer.[349] It was suggested that the date was erroneous, and the transfer was actually scheduled for 15 October 2015 for an EEG, which as noted above had been cancelled for security reasons. Mr Chegeni Nejad's case manager was unable to be certain if this was the case or not.[350]

240. In Mr Chegeni Nejad's case review, his case manager stated that it was unclear if a community detention placement would be beneficial to Mr Chegeni Nejad's mental health, as she was concerned that he might not be able to receive the high level of support he required in community detention. She felt he would be more likely to receive a high level of support in an IDC, as there is 24/7 support available. Her evidence was that she

[344] T 349 – 350.
[345] Exhibit 2, Tab 52 [15].
[346] T 522, 536
[347] T 564 – 565.
[348] Exhibit 2, Tab 52 [15].
[349] Exhibit 2, Tab 52.
[350] T 536 – 537.

nevertheless did not disagree with a community detention placement, but simply raised her concerns as to whether it was the most appropriate option.[351] At this stage, the case manager was aware that the community detention team had identified a property and referred the matter to the service provider who managed the property and the service provider were assessing the suitability of Mr Chegeni Nejad for placement at the property. This involved taking into account the possible housemates, the level of support and social interaction available at that property.[352] It was the case, therefore, that Mr Chegeni Nejad's placement in community detention was being "actively pursued" by the Department.[353]

MR CHEGENI NEJAD'S REFUGEE ADVOCATE

241. Mr Geoffrey McKeich, Mr Chegeni Nejad's refugee advocate at the time of his death, gave evidence at the inquest about his understanding of Mr Chegeni Nejad's immigration pathway. Mr McKeich had spent his working life in the corporate world and on retirement he became involved with refugee advocacy through his church. He volunteers his time to help refugees navigate the immigration process by assisting them with understanding and preparing documentation so that they can tell their story, which is an admirable endeavour to undertake in his retirement years. Mr McKeich had already assisted a number of other refugees before he began to advocate for Mr Chegeni Nejad, including two refugees who resided with Mr McKeich after their release from detention. One of those had befriended Mr Chegeni Nejad when they were in detention together in Brisbane and asked Mr McKeich to advocate on his friend's behalf, as Mr Chegeni Nejad was "really distraught" as he had been in detention for hundreds and hundreds of days.[354] Mr McKeich read Mr Chegeni Nejad's paperwork and felt it was "totally unjust that he was being held in detention" and because he hates injustice he agreed to become involved in assisting Mr Chegeni Nejad. This occurred in the year prior to Mr Chegeni Nejad's death.[355]

242. Mr McKeich did not meet Mr Chegeni Nejad in person, but spoke to him over the telephone with the assistance of Mr Chegeni Nejad's friend as an interpreter or sent the friend to speak to Mr Chegeni Nejad and convey information between them. He also obtained information about Mr Chegeni Nejad from other sources, such as the Department's full case file and the materials relating to his criminal conviction.[356]

243. Mr McKeich told the investigators that he believed the Department was aware of Mr Chegeni Nejad's troubled mental state, due to the trauma he experienced in Iran, from the time he arrived in Australia in 2011, but felt that his needs were largely ignored by the Department, although not by the

[351] T 523, 544, 554 - 556; Exhibit 2, Tab 52 [22].
[352] T 561 – 562.
[353] T 562.
[354] Exhibit 3, Tab 65, p. 4.
[355] T 841; Exhibit 3, Tab 65.
[356] T 852.

individual staff involved in his case.[357] Mr McKeich stated that there was a large amount of documentation of the deterioration in Mr Chegeni Nejad's mental health from the time he was returned to a detention facility following his criminal conviction, and it was recognised that he would benefit from being released into community detention, but this did not occur.[358] Mr McKeich felt that Serco staff, IHMS staff and the Department's case managers tried to help facilitated Mr Chegeni Nejad's release but they were ultimately unsuccessful. Mr McKeich attributed this to "blockages"[359] in the system and felt Mr Chegeni Nejad got "lost in the system" as it wasn't equipped to process him.[360] As a result, he spent a very long time in detention, without a definite release date.[361]

244. Mr McKeich acknowledged that, immediately prior to his death there had been some movement in Mr Chegeni Nejad's case and his temporary protection visa was progressing through the system, but felt that by that time Mr Chegeni Nejad had become demoralised and exhausted by the immigration process.[362] Mr McKeich also understood that some people within the IDC had told him that his application for a temporary protection visa had stopped, which was incorrect. Although Mr McKeich tried to convey the falsity of this information through Mr Chegeni Nejad's case manager, but he was unsure whether Mr Chegeni Nejad understood and noted that he died soon after.[363] Mr McKeich understood from past experience that sometimes being told of different options, in the way Mr Chegeni Nejad was told of the Safe Haven Enterprise Visa, can cause confusion and a belief that something has gone wrong with the visa process. Given the evidence of the Departmental staff that Mr Chegeni Nejad was reacting badly, despite his pathway being positive, Mr McKeich speculated that Mr Chegeni Nejad may also have misunderstood the offering of a SHEV in addition to his temporary protection visa as a negative indication.[364]

245. Mr McKeich indicated that since the time of Mr Chegeni Nejad's death there have been some improvements to the system, via legislative changes, that have reduced delays, but for unusual cases like Mr Chegeni Nejad's, the blockages in the system remain. Mr McKeich described this case as going off the rails due to his failing of the character test, and "once it's off the rails, it just doesn't get back on."[365] Mr McKeich agreed that the problem for Mr Chegeni Nejad was his assault conviction, which led the Minister to form the view that he shouldn't be out in the community, but still felt that more could have been done to review the situation after the successful appeal against sentence, given his belief the circumstances of the offence were minor.[366] Mr McKeich was unaware that steps were being taken prior to Mr Chegeni Nejad's death to try to release him again into community detention. He was reassured by that information.[367]

[357] Exhibit 3, Tab 65, pp. 5 - 6.
[358] T 842; Exhibit 3, Tab 65, p. 9.
[359] T 843.
[360] T 844.
[361] T 844.
[362] T 847 – 848.
[363][363] T 848.
[364] T 849.
[365] T 850.
[366] T 860 - 861.
[367] T 859.

LAST DAYS AT CHRISTMAS ISLAND IDC

246. On 4 November 2015 Mr Chegeni Nejad was reviewed by a registered nurse, Nichola Taylor, after he reportedly collapsed in the Green compound and a Code Blue was called. The entry in the progress note indicates when the nurse attended he was seated against a post in the communal area and complained of head pain. He reportedly said to the nurse words to the effect that his head was burning and he believed semen was coming out of his mouth, nose and penis.[368] He also told the nurse he ached all over and had "felt like this for months."[369] On examination his vital signs and ECG were normal.

247. Mr Chegeni Nejad was reviewed by a medical practitioner, Dr Quynh Nguyen. Dr Nguyen was performing locum work at Christmas Island IDC for IHMS through a locum agency.[370] It was the second, and last, time Dr Nguyen worked at an IDC, having previously worked for a month at Christmas Island IDC in June/July that year. She had returned for a further two month period commencing on 17 October 2015.[371]

248. Dr Nguyen noted Mr Chegeni Nejad had reportedly been complaining of left sided chest pain and a headache. He said to the doctor, "The brain is coming out from my nose; semen coming out from my nose too"[372] but he had no nasal discharge.[373] Dr Nguyen described Mr Chegeni Nejad as flat in affect.[374] He spoke in a "monotonous soft voice"[375] and did not appear agitated or distressed. Dr Nguyen's main priority was to determine whether he had an acute medical problem that needed urgent treatment as she was seeing him after hours. In particular, given his complaint of chest pain, she needed to rule out a heart problem that might require urgent medical attention. If it appeared he had a more chronic problem, then he could be dealt with at another time. After reviewing him, Dr Nguyen did not think Mr Chegeni Nejad appeared acutely unwell and his cardiovascular examination was consistent with a healthy person with normal vital signs.[376]

249. Dr Nguyen had reviewed Mr Chegeni Nejad's medical history and understood he had been seen by the psychiatric team in the past.[377] She thought Mr Chegeni Nejad's comments regarding his brain were possibly indicative of a delusional disorder and she felt his main problem was most likely psychiatric.[378] She recommended a mental health review and Nurse Sanger was requested by Dr Nguyen to complete the review. Dr Nguyen told Nurse Sanger that Mr Chegeni Nejad had been brought to the medical centre

[368] Exhibit 5, Tab 114.
[369] Exhibit 5, Tab 114.
[370] T 1025 – 1026, 1031.
[371] T 1031.
[372] Exhibit 5, Tab 115.
[373] T 1028.
[374] T 1028.
[375] T 1028.
[376] T 1032, 1045 - 1046.
[377] T 1033 - 1034.
[378] T 1028 – 1029.

"complaining of chest pain and head pain and was expressing bizarre phenomena in the sense of sight, taste and smell."[379] Whilst Dr Nguyen felt Mr Chegeni Nejad might be depressed, she stressed that, in comparison to other patients she had seen at the IDC, he did not appear severely or acutely depressed, but rather exhibited symptoms of chronic depression.[380]

250. Nurse Sanger conducted a mental health consultation with Mr Chegeni Nejad in the clinic that afternoon. As noted above, he had conducted a mental health assessment with Mr Chegeni Nejad approximately a month earlier, so he had met Mr Chegeni Nejad before. On this occasion Mr Chegeni Nejad initially appeared willing to engage and he maintained eye contact. His speech was quiet, but clear and understandable, and his thought processes appeared sequential and logical.[381] However, some of the thoughts he expressed were unusual and he appeared depressed.[382]

251. Mr Chegeni Nejad did not describe any auditory/command hallucinations but did describe having delusions that semen dripped from his nose and he could taste semen, as well as stating a heavy oil-like substance seeps from his hands. He also spoke of a belief that he had brain cancer and he appeared fixed in his belief that his sensory experiences were due to an undiagnosed brain tumour.[383] After talking to Nurse Sanger for some time, Mr Chegeni Nejad then expressed the view that Nurse Sanger could not help him any further as he was "just a nurse,"[384] and could not prescribe anything for him, so he asked for a GP review.[385]

252. Nurse Sanger believed Mr Chegeni Nejad was likely suffering from an increased perceptual disturbance, due to increased stress or depression. In addition, given some of the symptoms Mr Chegeni Nejad had described such as a headache and chest pain, and the fact he appeared clammy with sweaty hands, Nurse Sanger also wondered whether there was also a physical source for some of Mr Chegeni Nejad's complaints, such as a sinus infection or sore throat and nasal drip, that he wasn't able to articulate.[386] However, the focus in the end appeared to be on his mental health status as Nurse Sanger thought Mr Chegeni Nejad was probably describing somatic delusions; mental disturbances that he was experiencing as physical symptoms.[387]

253. Nurse Sanger discussed the case with Dr Nguyen after conducting his review. Nurse Sanger recommended that Mr Chegeni Nejad's antidepressant, mirtazapine, dose be increased but instead Dr Nguyen increased his antipsychotic, quetiapine. She increased the nightly dose and added a morning dose. Nurse Sanger agreed this may have been because of a belief

[379] Exhibit 2, Tab 47 [30].
[380] T 028 – 1030
[381] Exhibit 2, Tab 47.
[382] T 935; Exhibit 2, Tab 47 [35].
[383] Exhibit 2, Tab 47; Exhibit 5, Tabs 113, 115 and 116.
[384] T 934; Exhibit 2, Tab 47 [33].
[385] T 938 - 940.
[386] T 934.
[387] T 977 – 978.

by Dr Nguyen that Mr Chegeni Nejad's symptoms were consistent with a psychotic episode.[388] Dr Nguyen clarified in her evidence that this was, indeed, the reason why she chose to increase the quetiapine instead, as her concern was for Mr Chegeni Nejad's delusional or psychotic type symptoms. However, she also maintained that it was at the recommendation of Nurse Sanger, and she did not recall any discussion about mirtazapine.[389] I don't consider this difference between their evidence to be of any great significance in the sense of it being a contributor to Mr Chegeni Nejad's death, so I don't propose to take the matter any further.

254. I note briefly at this stage that Dr Nguyen expressed the view that it would be better if the on-site doctors played a greater role in the mental health care of the detainees. In this case, it is clear that Nurse Sanger reviewed Mr Chegeni Nejad at Dr Nguyen's request, and he then consulted back with her and discussed an appropriate plan. Whilst there may have been a communication issue about the medication, there is nothing to suggest that Dr Nguyen was not able to express her opinion and play an active role in the decision-making in relation to Mr Chegeni Nejad's care, at least at that time. Further, Dr Spencer's evidence was that the mental health nurses had greater expertise in mental health, so they were usually the more reliable source for psychiatrists (as is common in most public hospitals in Western Australia), but that the psychiatrists were always happy to receive contact from a doctor or GP and they could also communicate through the medical notes.[390] Therefore, I do not consider the evidence before me raises any concern about the role played by the doctors and GP's, at least as it arises in the case of Mr Chegeni Nejad's medical care.

255. It was planned that Mr Chegeni Nejad would be reviewed at the end of the week to assess the efficacy of the change in medication, but this did not eventuate as he escaped.[391] Based on his lethargic presentation at the time of his presentation, Nurse Sanger was surprised to hear that Mr Chegeni Nejad escaped a few days later by climbing a fence, mainly given his lethargy.[392]

256. Dr Nguyen gave evidence at the inquest that, having heard about his death and seen the photo, she reflected back to her examination of Mr Chegeni Nejad and thought that perhaps she had missed something significant physically. At the inquest, Dr Nguyen suggested, having thought about it, the changes in his physical appearance between a photo she saw and the person she assessed may have been related to his chronic mental health problem.[393] Dr Nguyen confirmed that at the time she reviewed Mr Chegeni Nejad, she had no concern that he might hurt himself or others based on his presentation.[394]

257. It was raised at the inquest that Mr Chegeni Nejad may have spoken to a member of the Australian Red Cross in the days before his death, as they

[388] T 936 - 937.
[389] T 1041 - 1042.
[390] T 1166.
[391] T 935 - 936; Exhibit 5, Tabs 113, 115 and 116.
[392] T 980.
[393] T 1050 - 1051.
[394] Exhibit 2, Tab 46.

were at the centre speaking to detainees during a regular monitoring visit to the IDC.[395] Enquiries were made with that organisation after the inquest by a coronial investigator. Information was provided by email that a member of the visit team had attempted to meet with Mr Chegeni Nejad on 4 November 2015 at the suggestion of another detainee who had said words to the effect of, "You have to see Fazel, he is not good." The Red Cross officer later saw Mr Chegeni Nejad, whom she had met on previous visits. She smiled and gestured to him to invite a conversation, but Mr Chegeni Nejad smiled and shook his head, declining the opportunity to speak with the Red Cross member.[396]

258. On 5 November 2015 Mr Chegeni Nejad attended a dentist appointment and had his cavities repaired without incident.[397]

259. On 6 November 2015 Mr Chegeni Nejad had a consultation with Primary Health Nurse Cassandra Stroop after a compound officer advised that Mr Chegeni Nejad was again complaining of chest pain. Mr Chegeni Nejad was walked to the medical centre by Serco staff and Nurse Stroop examined him there.

260. Nurse Stroop had met Mr Chegeni Nejad before and was aware he had a history of mental health issues. Nurse Stroop was also aware that Mr Chegeni Nejad had complained of chest pain two days earlier but at that time his symptoms had been attributed to anxiety.[398] When Mr Chegeni Nejad saw Nurse Stroop he reported he had experienced chest pain and rapid heartbeat in the morning, but said he didn't currently have chest pain. He complained instead of a headache, so Nurse Stroop gave him some analgesia to help it. He said he thought he had brain cancer and also stated that the "fighting cells in his body felt like they were leaking out of his body"[399] and he "felt liquid running down his brain into his body like yoghurt."[400] Nurse Stroop had asked the interpreter to repeat these comments to make sure she had heard it correctly, as it sounded odd to her and she knew English was not his first language, so she felt he might not understand the meaning of certain words and was perhaps having difficulty describing his symptoms.[401]

261. Mr Chegeni Nejad appeared otherwise well and alert and his observations were normal. Nurse Stroop performed an ECG, which looked normal. She took the ECG to Dr Nguyen to check (although I note Dr Nguyen did not recall doing this).[402] Nurse Stroop recalled that Dr Nguyen indicated that she was not concerned about Mr Chegeni Nejad from a cardiac perspective.[403] Complaints of chest pain can be a symptom of a stress response,[404] and in

[395] T 490.
[396] Email to Sgt Langton, Coronial Investigation Squad, from Mr Tom Neilson, Red Cross Australia, dated 7 August 2018.
[397] Exhibit 5, Tab 113.
[398] T 1058.
[399] Exhibit 5, Tab 117.
[400] Exhibit 5, Tab 117.
[401] T 1059 - 1060.
[402] T 1042.
[403] T 1060.
[404] T 1003.

this case it was felt appropriate for Mr Chegeni Nejad to speak to a mental health nurse given his symptoms and his bizarre statements.

262. Nurse Stroop asked Nurse Li to speak to Mr Chegeni Nejad. Nurse Li had not seen Mr Chegeni Nejad since 3 October 2015, but Mr Chegeni Nejad said he remembered him. Nurse Li recalled that Mr Chegeni Nejad greeted him nicely but then when he began to question him, Mr Chegeni Nejad shut down and did not want to engage.[405] Nurse Li asked Mr Chegeni Nejad about some of the comments he had made to Nurse Stroop and Mr Chegeni Nejad appeared to become frustrated in response but was not overly agitated.[406] He said, "All you do is ask questions, you don't actually help."[407] Nurse Li told him that he needed to ask questions and have Mr Chegeni Nejad answer them in order to help him. Nurse Li said that Mr Chegeni Nejad still did not want to talk to him.[408] Nurse Li indicated to Mr Chegeni Nejad that he would see him at their next appointment, to which Mr Chegeni Nejad replied, "Yep, sure" and shook his hand.[409]

263. The progress note made by Nurse Li after this discussion indicated Mr Chegeni Nejad appeared pleasant and appropriate on engagement and Nurse Li could not elicit any bizarre or inappropriate comments from Mr Chegeni Nejad. It appeared that all he wanted was analgesia for his headache and no acute concerns were detected. Mental health follow up was scheduled for another week.[410] Nurse Li did not consider it necessary to put Mr Chegeni Nejad on PSP at that time.[411]

264. Nurse Stroop had advised Mr Chegeni Nejad he could get further analgesia at the evening medication round if required. She saw him for the medication review round that night and asked him how he was feeling. He told her he was feeling fine and no longer had his headache. He received his mirtazapine and quetiapine and then waved and said goodbye, which was normal behaviour for him.[412] She described him as appearing the "same as he did any other day"[413] on that evening.

265. Mr Chegeni Nejad escaped custody that same night, once again climbing fences and onto the roof. Nurse Stroop said she was very surprised to later hear of his escape, given her interaction with him that day.[414]

Information from other detainees

266. A number of Mr Chegeni Nejad's fellow detainees provided statements as part of the coronial investigation, and some were also available to provide oral evidence at the inquest. Their evidence helped me to gain a better

[405] T 1007.
[406] T 1007.
[407] Exhibit 2, Tab 45 [12].
[408] T 1005.
[409] T 1007; Exhibit 2, Tab 45 [12]; Exhibit 7, Tab 138, p. 1 of 696.
[410] Exhibit 5, Tabs 113 and 117.
[411] T 1008.
[412] T 1064 - 1065; Exhibit 2, Tab 44; Exhibit 5, Tab 117; Exhibit 7, Tab 138, p. 2 of 696.
[413] T 1072.s
[414] Exhibit 2, Tab 44.

understanding of how Mr Chegeni Nejad presented in his time at Wickham Point IDC and at Christmas Island IDC, prior to his escape.

267. Mr Jalil Ghadere, a detainee who knew Mr Chegeni Nejad in his childhood, as they grew up in the same small community in west Iran, had been in Wickham Point IDC with Mr Chegeni Nejad before his transfer to Christmas Island IDC. Mr Chegeni Nejad had told Mr Ghadere about his time living in the community in Melbourne, when he described himself as the happiest he had been since arriving in Australia. Mr Ghadere thought Mr Chegeni Nejad appeared quiet and not mentally well at Wickham Point IDC. Mr Chegeni Nejad described hearing voices in his head, so Mr Ghadere would spend time with him talking, listening to music and watching television to try to take his mind away from the voices and in an attempt to make Mr Chegeni Nejad happy.

268. Mr Ghadere was aware that Mr Chegeni Nejad was involved in climbing incidents at Wickham Point IDC, and he thought these were "a cry for help"[415] as Mr Chegeni Nejad had mental health issues. When Mr Ghadere asked Mr Chegeni Nejad why he did it, he said the voices in his head were telling him to do it.[416] Mr Ghadere had said in his statement that Mr Chegeni Nejad did not speak of suicide,[417] but in his oral evidence he recalled that Mr Chegeni Nejad said the voices in his head were telling him to kill himself[418] and that Mr Chegeni Nejad spoke of thoughts of "suicide racing in his mind."[419]

269. Mr Chegeni Nejad also expressed worry about the future and what would become of him. Based upon how he presented, Mr Ghadere felt Mr Chegeni Nejad had "severe depression"[420] while he was in Wickham Point IDC as he was very quiet, was isolating himself and wasn't eating.[421] Mr Ghadere said he spoke to IHMS staff and told them he did not think Mr Chegeni Nejad was doing well and asked them to help him.[422] Mr Ghadere said he was aware that Mr Chegeni Nejad was prescribed medication and he thought Mr Chegeni Nejad appeared a lot better after he took his medication.[423] Mr Ghadere did not speak to Mr Chegeni Nejad again after he was moved to Christmas Island IDC.

270. Mr Harbinder Singh arrived on Christmas Island IDC from another detention facility on 24 September 2015. Mr Singh had lived in Australia with his family for many years before being taken into detention on character grounds after serving a prison sentence. Mr Singh's first recollection of Mr Chegeni Nejad was that he was very quiet and he "spoke about being in detention for a long time and how it was making him feel sick and depressed."[424] Mr Singh observed Mr Chegeni Nejad would often hold his

[415] Exhibit 2, Tab 36 [13] – [15].
[416] Exhibit 2, Tab 36 [13].
[417] T 887.
[418] T 882, 890, 894.
[419] T 887.
[420] T 886.
[421] T 886, 889.
[422] T 884.
[423] Exhibit 2, Tab 36 [17].
[424] Exhibit 2, Tab 29 [7].

head and would describe pain in his head that moved around. He also described having to urinate frequently. Mr Chegeni Nejad appeared to Mr Singh to be very thin and not fit or strong or healthy. He was also said to have a limited appetite, although I note he had dental issues that may have explained his eating very little.[425]

271. Mr Singh's evidence was that he realised Mr Chegeni Nejad was not doing very well in detention, so he made an effort to try to speak to him on a daily basis to help lift his spirits.[426] Mr Singh encouraged Mr Chegeni Nejad to exercise but replied "he could not walk because his head was hurting and he felt that his brain was going to come out into his mouth."[427] Mr Singh was aware Mr Chegeni Nejad was taking an anti-psychotic medication, Seroquel. From his own observations he concluded that Mr Chegeni Nejad was missing his family and was depressed. Mr Singh suggested to Mr Chegeni Nejad that he try the antidepressant medication Deptran that Mr Singh was prescribed.[428] The significance of Deptran arises later in the evidence, as Mr Chegeni Nejad was found in possession of a Deptran tablet when his body was discovered and the same medication was present in his system upon his death.

272. Deptran is a tricyclic antidepressant and one of the earliest antidepressants developed. It is rarely introduced to patients today, but is still prescribed for older patients who have been taking it for many years or where newer antidepressant medications have not been effective.[429] Mr Singh was the only patient prescribed Deptran at the IDC, but he denied providing Mr Chegeni Nejad with the medication.[430] He did, however, admit that he sometimes didn't take his tablets at the medical centre and instead took them back to his room and kept them loose on a shelf. Mr Singh suggested that Mr Chegeni Nejad may have taken a tablet from his room without him noticing.[431]

273. Mr Singh's description of being allowed to take medicine back to his room, rather than take it at the medical centre or receiving it in a blister pack, is inconsistent with some of the other evidence of how such medicine was provided in the IDCs.[432] However, I don't propose to take that any further in this case as it is less important how Mr Chegeni Nejad got hold of the Deptran than the effect it might have had on him if he took it. I will return to this later in the finding. I also note evidence was given at the inquest that after Mr Chegeni Nejad's death it was found that there was a lot of medication out in the compound, and practices were changed to limit this occurring.[433]

274. Mr Singh stated that Mr Chegeni Nejad never spoke about escaping from the centre or suicide, but he did talk about feeling that he might go to sleep and

[425] Exhibit 2, Tab 29.
[426] T 736.
[427] Exhibit 2, Tab 29 [9].
[428] T 735.
[429] T 959, 978.
[430] T 730.
[431] T 730; Exhibit 2, Tab 29 [12] – [13].
[432] T 1063.
[433] T 1069.

not wake up. Mr Singh suggested he should see a doctor but Mr Chegeni Nejad said he had seen the doctors many times but they did not help him.[434] He saw Mr Chegeni Nejad the night he escaped after attending the medical centre. Mr Singh asked Mr Chegeni Nejad how he was feeling and Mr Chegeni Nejad said, "Okay."[435] That was the last time he saw him.

275. Another detainee, Mr Wissan Jadiri,[436] also gave evidence at the inquest. Mr Jadiri met Mr Chegeni Nejad in 2014 at the Yongah Hill IDC, having previously known Mr Chegeni Nejad's parents in Iran. Mr Jadiri said they became close friends and would play board games together. They did not discuss Mr Chegeni Nejad's history but he did know Mr Chegeni Nejad was hoping to start a new life in Australia.[437] Mr Jadiri described Mr Chegeni Nejad as quiet, polite and respectful but noted he spent a lot of time on his own. Mr Jadiri believed Mr Chegeni Nejad was not psychologically well as he "appeared sad and spoke and behaved in a childlike manner and needed to be looked after."[438] He also often expressed paranoid thoughts but never spoke of self-harm or escape plans. Mr Jadiri was aware Mr Chegeni Nejad took medication and he usually appeared a little better after taking his medication. Mr Jadiri described Mr Chegeni Nejad as very skinny back in 2014 and he never saw him exercise.[439]

276. Mr Jadiri met up again with Mr Chegeni Nejad on Christmas Island at the start of October 2015. It was over a year since he had seen him last, and Mr Jadiri thought Mr Chegeni Nejad's condition "had deteriorated since I last saw him."[440] Similarly to Northam, Mr Chegeni Nejad kept to himself, although he did mix with some other Iranians and a Kurdish man named Farzad Karimi. Mr Jadiri and Mr Chegeni Nejad would go for walks together. Mr Jadiri recalled Mr Chegeni Nejad constantly complained of severe headaches and would hold his head in his hands.[441] Mr Chegeni Nejad also said he heard something in his head, either a voice or a noise.[442] He would usually improve for a few hours after taking his medication in the evening, but then his symptoms would return.[443] During their conversations Mr Chegeni Nejad did not speak of hurting himself or wanting to take his life or of escape. However, Mr Jadiri was concerned for Mr Chegeni Nejad's health as he looked worse every day. Mr Jadiri understood that Mr Chegeni Nejad saw the staff at the medical centre daily about his headaches but believed "they would not help him."[444]

277. Farzad Karimi, who was mentioned by Mr Jadiri, also gave evidence at the inquest. Mr Karimi was a difficult witness as he was clearly distressed about his own circumstances in detention and the immigration process generally. He expressed concern for his safety giving evidence although I was not able

[434] T 730 - 731; Exhibit 2, Tab 29 [14].
[435] T 732; Exhibit 2, Tab 29 [15].
[436] Also referred to as Mr Jadari in some documents.
[437] T 779; Exhibit 2, Tab 31.
[438] Exhibit 2, Tab 31 [13].
[439] Exhibit 2, Tab 31.
[440] Exhibit 2, Tab 31 [26].
[441] T 781.
[442] T 784 – 785.
[443] Exhibit 2, Tab 31.
[444] Exhibit 2, Tab 31 [51].

to discern the basis of his concern. Mr Karimi was generally non-responsive to questioning. However he did give some evidence about his recollection of Mr Chegeni Nejad. He expanded upon his statement to say that he recalled Mr Chegeni Nejad was "really sick,"[445] had problems with his teeth that made it hard for him to eat, appeared depressed, was becoming progressively weaker and complained often of a headache.[446] He remembered Mr Chegeni Nejad as a shy person, but Mr Karimi tried to talk to him as he knew his language and wanted to help him. He said he also tried to speak to Serco and IHMS staff about Mr Chegeni Nejad, particularly after Mr Chegeni Nejad collapsed in a compound, but felt that his concerns about Mr Chegeni Nejad were not taken seriously. He recalled that after his collapse Mr Chegeni Nejad was simply given some Panadol and water and nothing more.[447]

278. Mr Karimi was asked about his conversations with Mr Chegeni Nejad and he recalled that Mr Chegeni Nejad would say that he was sick and had stayed long enough in detention. He didn't know what was going to happen to him and did not want to be staying in detention on Christmas Island.[448] Mr Karimi said in his statement that he had interpreted Mr Chegeni Nejad's comments and behaviour as indicating that he "had been in detention for so long that he was becoming tired and depressed."[449] Mr Chegeni Nejad never spoke to Mr Karimi about hurting himself or trying to escape. Indeed, like Mr Jadiri, Mr Karimi was very surprised that Mr Chegeni Nejad did successfully escape, due to his perceived weakness.[450]

279. Mr Mehdi Yazdani provided a statement and also gave oral evidence at the inquest about witnessing Mr Chegeni Nejad's escape. He had only arrived in the green compound on the afternoon of the day Mr Chegeni Nejad escaped, and met Mr Chegeni Nejad for this first time that afternoon. He noticed Mr Chegeni Nejad was skinny but did not speak to him or notice anything more about him until he witnessed his escape that night.[451] Mr Farajpoor, who also witnessed the escape, gave similar evidence.

THE ESCAPE

280. On Friday 6 November 2015 there were 200 detainees recorded as being held at the Christmas Island IDC. The facility is located approximately 17 kilometres from the settlement area of Christmas Island and is surrounded by dense forest/jungle, so the only way to get to the settlement is effectively by travel along the road. There is no way to make your way off the island other than by boat or plane and the nearest land masses are hundreds of kilometres away.[452] The terrain on the island is inhospitable and dangerous and the waters are subject to dangerous currents.[453] Staff at

[445] T 798.
[446] T 798, 809 – 810; Exhibit 2, Tab 27 [12].
[447] T 798 – 799, 801, 813 – 814.
[448] T 816.
[449] Exhibit 2, Tab 27 [8].
[450] Exhibit 2, Tab 27 [12].
[451] Exhibit 2, Tab 28.
[452] T 67; Exhibit 5, Tab 8, p. 1.
[453] T 67.

the centre are instructed in their induction not to enter the jungle on their own and to stay on designated walking paths for their own safety.[454]

281. Mr Chegeni Nejad was present in Green 1 compound for the dinner welfare count. At around 7.45 pm on Friday, 6 November 2016, Mr Chegeni Nejad was observed on CCTV being signed out of the Green 1 compound by Serco officer Nicholas Guevarra. At that time, many detainees were allowed out at night into the area known as the 'Green Heart' to socialise and attend the medical facility if required.[455] Mr Chegeni Nejad walked to the medical facility and waited for his nightly medications to be administered. At that time he was prescribed quetiapine, mirtazapine nightly and indomethacin as necessary.[456]

282. Mr Karimi saw Mr Chegeni Nejad on the night he escaped near the medical centre, where Mr Chegeni Nejad was waiting in line. He greeted Mr Chegeni Nejad but they did not have a conversation. Mr Karimi noticed Mr Chegeni Nejad was wearing his sneakers, but did not think much of it at the time. When he left, Mr Chegeni Nejad was squatting against a wall in the line to attend the medical centre.[457]

283. Mr Chegeni Nejad left the medical facility at 8.02 pm and then walked with a group of unidentified male detainees towards the Green Heart area.

284. Mr Jadiri's evidence was that he spoke to Mr Chegeni Nejad around this time, as he left the medical centre. Mr Jadiri called him over and he noticed Mr Chegeni Nejad looked unusual. He was shaking and shivering and appeared to be cold, so Mr Jadiri offered him a jumper. Mr Chegeni Nejad wore the jumper for about 20 minutes and kept rocking forward and holding his head, saying it hurt. Mr Jadiri noticed Mr Chegeni Nejad was wearing shoes, which was unusual for him. He asked him why he was wearing shoes but Mr Chegeni Nejad did not reply. After finishing a cigarette, Mr Chegeni Nejad returned Mr Jadiri's jumper and then said he would be back in 15 minutes and walked away. Mr Jadiri did not see him again. Mr Jadiri was very surprised to hear of Mr Chegeni Nejad's escape as he didn't expect him to do it, and also didn't think he would have been able to climb the fence in his condition.[458]

285. Mr Chegeni Nejad was seen in the Green Heart area just before 9.00 pm having a drink from a water fountain before returning walking towards the tennis courts. That is the last CCTV footage of Mr Chegeni Nejad prior to his escape.[459]

286. It is known that Mr Chegeni Nejad then walked towards the Canteen/Education building. Two detainees, Murteza Farajpoor and Mehdi Yazdani, were sitting down against the tennis court fence in the Green Heart. Mr Farajpoor drew Mr Yazdani's attention to Mr Chegeni Nejad climbing a

[454] T 141.
[455] Exhibit 2, Tab 19.
[456] Exhibit 5, Tab 8, p. 2.
[457] Exhibit 2, Tab 27 [13].
[458] Exhibit 2, Tab 31.
[459] T 830; Exhibit 1, Tab 2, p. 8.

fence on the side of the canteen building at around 9.15 pm.[460] He was said to be climbing quickly, and after he gained the roof he was seen running for about 10 to 15 metres before disappearing from view.[461] Mr Farajpoor had seen Mr Chegeni Nejad earlier at the medical centre, and thought he looked tired and sick at that time, but he saw Mr Chegeni Nejad jumping and running as he made his escape.[462]

287. It is relevant that Mr Chegeni Nejad chose the only spot on the fence that was unprotected by 'anti-climb' barrels.[463] This shows some level of reasoning by Mr Chegeni Nejad by choosing the least protected spot to start his escape bid.

288. After he ran across the roof, Mr Chegeni Nejad held onto the roof guttering to enable him to drop to the ground inside the sterile area within Zone 13 of the Christmas Island IDC. The weight of Mr Chegeni Nejad hanging from the guttering caused the guttering to be pulled away from the roof line, leaving it hanging towards the ground.[464] The guttering also had sharp edges, which it is suspected caused cuts to Mr Chegeni Nejad's fingers.[465]

289. Mr Farajpoor and Mr Yazdani had been joined by Mr Karimi, who had left them for a short time to go to the toilet. They told Mr Karimi that they had seen Mr Chegeni Nejad escaping by going over the canteen fence. They heard a bang, which they thought was the sound of Mr Chegeni Nejad falling although it may have been the guttering tearing. They approached the fence line and called out to Mr Chegeni Nejad, asking him to come back, but he did not respond and they heard no further noise. They considered telling Serco staff but were scared and thought that perhaps he might voluntarily return, so they agreed to say nothing although they were concerned for his safety.[466] Interestingly, although some of the detainees gave evidence he was weak, Mr Yazdani recalled the detainees discussed at the time that Mr Chegeni Nejad "was strong"[467] and had "wisdom and understanding"[468] and it was felt that "maybe he had a plan as he had done this previously in other detention centres."[469] This was despite the fact there was general evidence that detainees understood there was nowhere to go outside the facility.[470]

290. There are a number of physical and electronic security systems in layered defence at the Christmas Island IDC. They are designed to deter and detect any attempt to escape from the facility.[471] However, as with most technology, it is only as good as the person operating it.

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[460] Exhibit 1, Tab 2, p. 29.
[461] Exhibit 2, Tab 28.
[462] Exhibit 2, Tab 26 [11].
[463] T 54; Exhibit 3, Tab 26 [11].
[464] Exhibit 1, Tab 2, pp. 8 – 9; Exhibit 2, Tab 28.
[465] T 35.
[466] Exhibit 1, Tab 2, pp. 29 – 30; Exhibit 2, Tab 27 and Tab 28.
[467] T 822; Exhibit 2, Tab 28 [13].
[468] T 822.
[469] Exhibit 2, Tab 28 [13].
[470] T 746; Exhibit 2, Tab 36 [12].
[471] Exhibit 1, Tab 2, p. 34.

291. There were microwave sensors located within the sterile zone, which were activated as Mr Chegeni Nejad ran through the area. A still from CCTV footage shows him in the area with material held in his hands (probably from two bedsheets)[472] as he approached the external perimeter fence.

Figure 15: CCTV still of deceased running towards external perimeter fence carrying sheeting in his hands.

292. Mr Chegeni Nejad then climbed a 1.2 metre wire mesh link fence before scaling the energised 4.7 metre external electrical perimeter fence. Some CCTV footage suggests he wrapped his hands in the sheets to insulate himself from the electricity and stop himself from getting an electric shock, which shows some level of planning and understanding of how the fence operated. Once he was outside the perimeter fence of the facility the evidence suggests Mr Chegeni Nejad entered the jungle in a north easterly direction by heading down a small path that ran close to where he came out.[473]

293. Mr Chegeni Nejad activated alarm sensors on the perimeter fence when he climbed it. Alarms sounded within the facility's Control Room as a result.[474] Two Serco officers, James Noonan and Reynaldo Caramancion, were on duty in the Control Room that evening and heard the alarm sound.

294. The primary functions of the Control Room operators are to monitor and respond to alarms, open doors, observing and moving CCTV cameras as required and recording incidents in the occurrence logs.[475] An experienced Control Room operator later told investigators that in his experience it would

[472] T 39.
[473] Exhibit 1, Tab 2, p. 9.
[474] Exhibit 1, Tab 2, pp. 8 - 9.
[475] Exhibit 1, Tab 2, p. 22.

take an average person a good six months of constant work in Control Room operations to be able to competently operate the systems.[476] Another experienced officer gave evidence that it would require at least two weeks' full time on the job training to become even a semi-competent Control Room operator.[477] It is not disputed that both men in the Control Room on the relevant night were inexperienced in Control Room operations and were not able to follow the Control Room procedures competently, at least in relation to the alarm response.

295. Mr Caramancion had not received any formal training in Control Room operations. He gave evidence that he had done a few shifts in the Control Room at a different IDC in the past and he had expressed an interest in being trained in the Control Room Operations at the Christmas Island IDC, which had led to him doing some shifts in the days before this incident.[478] The extent of his 'on the job' training was, therefore, limited and Mr Caramancion's evidence was that he was feeling "nervous and very cautious"[479] due to the many noises, panels, alarms and screens in the Control Room. He admitted in his statement that he "really didn't know what to do in the Control Room"[480] at that time.

296. Mr Noonan had completed two previous partial shifts on 4 and 5 November 2015 and had about 2 hours' experience in the Control Room at a different facility.[481] Like Mr Caramancion, Mr Noonan had not received any formal training.[482] Mr Noonan agreed that he had a basic understanding of the systems but no more than that.[483]

297. The Facility Operations Manager on duty, DSO Kylie Rach, was aware of their inexperience but said she "had to make do with the staff available."[484] The usual protocol was for at least one experienced Control Room operator to be on duty, but it was submitted there were insufficient operators available for that shift. The only officer with relevant Control Room experience working that night shift was Wylie Reweti, who was a Detainee Service Manager and was working on the night overseeing the Blue and White compounds. He stated that he had suggested to Ms Rach that he could also work in the Control Room given the inexperience of the other officers. However, he was informed by Ms Rach that he was required elsewhere as they needed his experience in the role as a DSM, which was a more important role.[485]

298. A more experienced Control Room officer, Mr Gregory Bell, saw that Mr Noonan was rostered in the Control Room that evening when Mr Noonan arrived for his shift. Mr Bell was aware that Mr Noonan was inexperienced and said that he "couldn't believe that he was in the Control Room by

[476] Exhibit 2, Tab 4 [4].
[477] Exhibit 2, Tab 5 [13].
[478] T 233.
[479] T 222; Exhibit 2, Tab 3 [12].
[480] Exhibit 2, Tab 3 [12].
[481] T 358.
[482] Exhibit 1, Tab 2, p. 25.
[483] T 360.
[484] Exhibit 1, Tab 2, p. 26; Exhibit 2, Tab 14 [15].
[485] T 187; Exhibit 1, Tab 2, p. 27; Exhibit 2, Tab 15.

himself based on his level of inexperience."[486] Mr Bell said in his statement he asked if Mr Noonan needed any help but Mr Noonan replied that he was trained and could work things out. Mr Bell said he ran through a few simple things and Mr Noonan seemed confident in his abilities and declined Mr Bell's offer to stay on for a bit longer, so Mr Bell left at 6.16 pm.[487] Mr Noonan denied he that he said he was trained and did not think Mr Bell would have offered to stay on after his shift although he accepted Mr Bell did offer to show him a few things.[488]

299. Mr Reweti was said by some witnesses to be the Control Room operators' direct line supervisor that night, although Mr Reweti disputed this and said their roles came under the responsibility of Ms Rach as the Facility Operations Manager.[489] Mr Caramancion agreed with Mr Reweti that Ms Rach was the person he reported to on the night.[490] However, the evidence is clear that Mr Reweti took an active role in providing direction to the Control Room operators on the night.

300. Mr Caramancion and Mr Noonan started their 12 hour shift in the Control Room at 6.00 pm on Friday, 6 November 2015, although Mr Caramancion was initially based in the reception area, which is beneath the Control Room, and Mr Noonan was in the Control Room on his own.[491] At about 6.30 pm that evening there was an incident where a Code Black was called in one of the compounds. Mr Noonan's evidence was that he was struggling to perform the required duties for a Code Black on his own, which involved moving the cameras onto the location of the incident, opening the required doors and taking information for the log book. Mr Caramancion joined Mr Noonan in the Control Room to help him manage the incident. One of tasks was to repeat the code and relay information over the radio but Mr Noonan recalled he wasn't fast enough and Mr Reweti came on the radio and relayed the information from another location.[492]

301. Mr Reweti said he used his handheld radio and repeated the code then attended the Control Room and spoke to the two Control Room operators about their failure to respond to the Code Black over the radio. He said he gave them a basic rundown of their responsibilities with regard to repeating the code on the radio and also a basic rundown of some of the other procedures in the Control Room, such as pointing cameras in the right direction during an incident and acknowledging some of the alarms and how to reset them. Mr Noonan recalled Mr Reweti told them not to worry as he was leaving.[493]

302. Mr Caramancion joined Mr Noonan in the Control Room permanently at about 7.00 pm.[494] Mr Noonan recalled that the two of them struggled to keep up with the required procedures and duties within the Control Room.

[486] Exhibit 2, Tab 4 [7].
[487] Exhibit 2, Tab 4.
[488] T 390, 396.
[489] T 146, 192, 366; Exhibit 2, Tab 15 [11].
[490] T 222.
[491] Exhibit 2, Tab 3.
[492] T 364; Exhibit 2, Tab 1.
[493] T 217 – 218, 367; Exhibit 2, Tab 1 [27].
[494] Exhibit 2, Tab 13.

Mr Noonan said he didn't feel confident and didn't understand what all the equipment was for. He said in his statement he believed he was not experienced enough to be left unsupervised at this time and he believed it was obvious to his line managers that he was inexperienced and struggling to perform at an appropriate level.[495]

303. At 9.11 pm Mr Noonan left the Control Room for a break. A few minutes later, at 9.15 pm, a series of loud alarm tones sounded, which evidence later confirmed was the fence alarm.[496] It was said that the fence alarm had a quite separate and unique sound to the other alarms, but it was not recognised by Mr Caramancion nor Mr Noonan.[497]

304. Internal CCTV footage of the Control Room reveals Mr Caramancion did not appear to react or respond to the alarm, other than looking at the monitor screens. Mr Caramancion's evidence was that the alarm sounded different to the other alarms he had heard, but he did not know what it signified. He said he looked at the monitor screens to see if he could see something unusual and waited for Mr Noonan to return.[498] The alarm continued to repeat itself at intervals of a few seconds until 9.18 pm. Having listened to the alarm sounding on the CCTV footage, I would describe the alarm as very loud and ominous sounding. Nevertheless, no action was taken by Mr Caramancion until Mr Noonan re-entered the Control Room at 9.21 pm.

305. An experienced Control Room operator later watched the CCTV footage and indicated that the alarm sounding was unmistakeably the external fence perimeter alarm. He believed that would have been obvious to a trained operator and attributed Mr Caramancion's lack of reaction to his known inexperience.[499]

306. Mr Noonan's evidence was that he was walking back up the stairs to the Control Room after his break when he heard the alarm. He ran back inside the Control Room to see what was going on. He asked Mr Caramancion what had happened but Mr Caramancion didn't know. Mr Noonan looked around the Control Room to see if he could identify what may have caused the alarm but nothing stood out. He then saw an orange fault on a box on the wall, which he had previously been told had something to do with the fire alarms. He pressed a button on the panel a number of times relating to the fire alarm control but the alarm continued to sound.[500]

307. Both Mr Noonan and Mr Caramancion were aware that the alarm was continuing to sound but they were unable to identify the source of the alarm and they did not appreciate that it related to the perimeter fence being breached.[501] Evidence was given that a lot of false alarms occurred at the perimeter fence due to wind, crabs, rubbish blowing around and other such interference, so it was not unusual for the alarm to sound. Nevertheless, the activation required proper investigation and there were protocols to follow in

[495] T 365, 369 - 370; Exhibit 2, Tab 1.
[496] T 246.
[497] T 246.
[498] Exhibit 2, Tab 3.
[499] Exhibit 2, Tab 4.
[500] T 226; Exhibit 1, Tab 2, pp. 23 - 24.
[501] Exhibit 1, Tab 2, p. 24.

that regard, which involve getting the cameras to check the area and sending a vehicle out to the location so staff could physically check the area.[502]

308. At 9.23 pm Mr Noonan unsuccessfully attempted to speak with the person he considered to be his supervisor, Mr Reweti, by telephone. He then attempted to contact Mr Reweti by handheld radio. He spoke to Ms Rach, who indicated Mr Reweti was on the telephone. Mr Noonan did not mention the alarm to Ms Rach but he noted in his evidence that it was still sounding in the background, so one would expect she would have heard it.[503] Ms Rach told him to wait and Mr Reweti would contact him shortly. Mr Noonan eventually spoke to Mr Reweti at 9.47 pm on the telephone.[504]

309. Mr Reweti recalled that he spoke to Mr Noonan, who said that there had been a problem with an alarm and he had fixed the problem, which he took to mean that Mr Noonan had reset the alarm system.[505] He said Mr Noonan did not elaborate any further and Mr Reweti did not ask him any questions despite the fact that Mr Reweti acknowledged that he was aware at the time that the two Control Room operators were both inexperienced in Control Room operations. Mr Reweti's explanation for his lack of concern was that at that time they often had various alarms going off in the Control Room, which I assume is a reference to the regular false alarms.[506] Mr Reweti indicated that he would have recognised the fence alarm if he had heard it, but he did not hear the alarm sounding over the telephone and he did not ask Mr Noonan to describe it.[507]

310. Mr Noonan's evidence was that he told Mr Reweti that an alarm was going off, they didn't know what it related to, and he asked what they should do. Mr Noonan did not think Mr Reweti asked him to describe the alarm, but he assumed he could hear it as it was sounding the background. Mr Noonan recalled that Mr Reweti told him he should acknowledge the alarm and reset, as he had been shown before. He said he definitely did not tell Mr Reweti he had already reset the alarm as he didn't know what the alarm was, so he would not reset it without asking for instructions.[508]

311. As noted before, there is CCTV footage from inside the Control Room that shows the events in the Control Room. Mr Noonan is heard while on the telephone to actually make a noise attempting to replicate the sound of the alarm.[509] After hanging up the telephone Mr Noonan is heard on the CCTV footage to say to Mr Caramancion "*… he said it's something to do with the fence in zone da da da, but anyway, he said reset them and it should stop it.*"[510] Mr Reweti gave evidence he did not recall that conversation, but accepted it was possible this conversation took place, and the footage objectively showed at last Mr Noonan's side of that conversation.[511]

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[502] T 140 – 141, 186, 195, 215.
[503] T 372.
[504] T 372; Exhibit 1, Tab 2, p. 24.
[505] Exhibit 2, Tab 15 [56].
[506] T 186.
[507] T 193, 218.
[508] T 373 - 374; Exhibit 2, Tab 1.
[509] T 386; Exhibit 2, Tab 1, pg. 6.
[510] T 195; Exhibit 1, Tab 2, p. 24.
[511] T 195,

312. After speaking to Mr Reweti, the footage shows Mr Noonan then reset the alarm and once the alarm was reset the audible alarm stopped sounding and the two Control Room operators continued with their normal duties. Most of this involved opening doors to facilitate movement through the facility.[512]

313. The men in the Control Room did not make an entry in any written log of what occurred, although both Mr Noonan and Mr Caramancion said they were aware there was a procedure to record significant things in a log and there was evidence given by other witnesses that staff in the Control Room were expected to keep a log of incidents of note.[513] Mr Noonan's explanation was that he didn't think writing in the occurrence log was a priority in his mind at the time, when so much was going on.[514] Mr Caramancion didn't give a reason for not doing so, but it appeared from the evidence that he was following Mr Noonan's lead on the night, as Mr Noonan exhibited a greater level of confidence and competence than Mr Caramancion, despite both have similar levels of experience.

314. At about 10.25 pm Mr Reweti went to the Control Room to review CCTV footage of an unrelated incident. Mr Noonan and Mr Caramancion were both in the Control Room at the time. None of them raised the earlier incident with the alarm.[515] Mr Reweti did recall thinking in his head at the time about how inexperienced the two Control Room operators were as he would have expected an experienced Control Room operator to have had the cameras scanning, or on, the alleged incident location he was investigating, before he arrived.[516] Mr Reweti left the Control Room after being unable to locate any relevant footage, and shortly afterwards he was advised there was a problem with the headcount.[517]

THE SEARCH

315. The evening head count was conducted across all compound areas of the facility at about 11.00 pm. At this time Mr Guevarra, who had earlier signed Mr Chegeni Nejad out to the medical facility, conducted a headcount of Green 1 Compound. He observed Mr Chegeni Nejad was not in his room, which he thought was unusual as in his experience Mr Chegeni Nejad was always in his room at that time of night. Mr Guevarra described Mr Chegeni Nejad as a very quiet person who generally kept to himself and spent much of his time alone in his single room watching television, although he did speak to some of his fellow Kurdish and Iranian detainees.[518] Mr Guevarra had thought that Mr Chegeni Nejad "looked as though he was stressed and that being in detention was effecting [sic] him and that he was not coping with being in detention."[519] Mr Guevarra indicated that he had been trained to look for indicators such as a detainee

[512] T 230.
[513] T 51, 189, 231, 233.
[514] T 374.
[515] T 188.
[516] Exhibit 2, Tab 15 [23].
[517] Exhibit 2, Tab 15.
[518] T 269.
[519] Exhibit 2, Tab 19 [35].

suddenly becoming reclusive or having a lack of appetite when monitoring the well-being of detainees, and it was primarily Mr Chegeni Nejad's lack of engagement with other detainees and activities that caused him to conclude he was not coping.[520] Mr Guevarra was advised by Mr Chegeni Nejad that he was on medication and was engaging with the mental health team, so he did not require referral.[521]

316. Mr Guevarra finished the headcount and found he was one detainee short. On checking the register on the Green 1 exit door he noted that Mr Chegeni Nejad had not been signed back in since he was signed out at 7.45 pm.[522] Mr Guevarra informed the night shift DSO Rach of the irregular headcount and that he suspected the missing person was Mr Chegeni Nejad.[523] He was directed to conduct a face to photo check of each detainee and an emergency headcount was ordered across the facility. This was completed by around 11.30 pm and Mr Guevarra confirmed that Mr Chegeni Nejad was still missing.[524]

317. At about this time Mr Reweti asked Mr Caramancion to conduct a patrol. He left the Control Room and then drove with another officer in a vehicle out to the main road and then came back and did an external perimeter fence check. They drove around the external perimeter of the facility, stopping at various points to get out of the car and check the fence lines by torchlight. They were specifically looking for the missing detainee and found nothing of interest at that stage.[525]

318. At around 11.34 pm Ms Rach, and the other Detainee Services Manager went to Green 1 Compound with members of the Emergency Response Team (ERT), who conducted a thorough physical inspection of the compound to make sure Mr Chegeni Nejad was not hiding somewhere in the compound. Mr Chegeni Nejad's room was checked again and noted to have minimal personal possessions apart from a few packets of cigarettes. His room was locked as they exited.[526]

319. Attempts were also made to track Mr Chegeni Nejad on CCTV footage earlier in the night. Mr Reweti went to the Control Room to do this at about midnight, and this was the first time the two officers in the Control Room became aware that a detainee was missing. On reviewing the footage a person believed to be Mr Chegeni Nejad was seen near the medical area appearing calm and taking his medication but his movements after he left the medical area were difficult to track and no footage of him escaping was found at that time. Mr Reweti said he was concentrating on the roof areas as he was not aware of the fence alarm.[527] It is also appears the person they were viewing was not Mr Chegeni Nejad, as the person was wearing thongs on his fee and Mr Chegeni Nejad is later seen on footage wearing shoes as he

[520] T 272, 303 - 304.
[521] T 274 – 275, 320; Exhibit 2, Tab 19.
[522] Exhibit 1, Tab 2, p. 9; Exhibit 2, Tab 19.
[523] T 266.
[524] Exhibit 1, Tab 2, pp. 9 - 10.
[525] T 228 – 229, 240 - 241.
[526] Exhibit 2, Tab 19.
[527] T 193, 212; Exhibit 2, Tab 15.

escapes, and the detainees who saw him prior to his escape noticed he was wearing shoes when at the medical centre.

320. By 2.45 am it was confirmed that Mr Chegeni Nejad was missing. The AFP and ABF were both notified.[528]

321. At about this time Mr Robbins, who had previously known Mr Chegeni Nejad at Wickham Point IDC, became aware of the identity of the missing detainee. Mr Robbins spoke to Ms Rach and told her about Mr Chegeni Nejad's known propensity to climb onto the roof.[529] Mr Chegeni Nejad's history suggested he might be at risk of harming himself, but was not thought to be an escape risk. There was speculation that he might be on the roof of the medical centre, as that is where he was last seen and some of the detainees reported seeing him climb up to the roof.[530] The building was not well lit, so staff were put in place to surround the building and torches were used to try to search the roof.[531]

322. At about 4.30 am the Senior Security and Risk Manager, Adrian Bain, went to the Control Room to try to identify any alarms that may have been activated. Mr Noonan and Mr Caramancion were in the Control Room when he arrived. Mr Bain's evidence was that he knew Mr Caramancion was inexperienced in the Control Room procedures but he believed Mr Noonan had a few months experience and was quite proficient in using the systems in the Control Room. He projected confidence and Mr Bain formed the impression that Mr Noonan was "more than capable to do the job up there,"[532] although later evidence indicates that confidence was misplaced. After hearing both men give evidence, I can see why Mr Noonan would give that impression, as he appeared to me to be a very confident person who was doing his best to try do the job in a difficult situation, whereas Mr Caramancion was a lot less sure of himself.

323. Mr Bain said he asked both men whether there had been any alarms or suspicious activity throughout the night. He recalled that Mr Caramancion provided no information and Mr Noonan "stated vaguely that he heard something but [was] not aware what it was."[533] He understood from Mr Noonan that he wasn't in the Control Room when the alarm sounded. Mr Bain checked the log and found no alarms had been logged and he did not have the capability to check the computer system to confirm no alarms had activated, so he did not take it further.[534]

324. Mr Bain went to the Command Suite, which is separate to the Control Room and has its own monitors to show the security camera footage. He began looking at the cameras that had visibility of the roof structures around the centre to see if he could spot the missing detainee.[535]

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[528] Exhibit 1, Tab 2, p. 10.
[529] T 334; Exhibit 2, Tab 7.
[530] T 444.
[531] Exhibit 2, Tab 21.
[532] T 425.
[533] Exhibit 2, Tab 21 [12].
[534] T 424.
[535] T 424.

325. The Centre Manager, Ms Denise Alexander, had been notified of the problem with the headcount earlier in the morning by her Deputy, Mr Bain, and she drove in to the centre at about 6.15 am as the repeated incorrect headcounts had escalated the matter to classify it as an 'incident'.[536] A further face to photo check of all detainees was completed at 7.10 am, with the same result.

326. At this stage, given the failure of anyone to identify the breach of the perimeter, the search was still confined to the interior of the compound.[537] A cherry picker was brought in to use to search the inside roof cavities and rooftops.[538]

327. Mr Noonan gave evidence that he did not raise with anyone the earlier alarm as he knew that Mr Reweti was aware of it and he had also been led to believe escape over the fence could not occur due to the electrical voltage.[539] It was also relevant that, until that date, there had not been a prior escape from the centre, and most people generally believed it was impossible to get over the fences. Therefore, it did not seem to be within anyone's contemplation that Mr Chegeni Nejad had left the centre.[540] Nevertheless, if an experienced operator had heard the fence alarm sounding earlier in the night, that may have altered the position and broadened the search.

328. The Centre Manager, Ms Alexander, activated the ECC at 7.13 am. The members of the ECC included the centre's senior management team, and members of the ABF and AFP.[541] They convened in an area referred to in evidence as the command suite.

329. At about 8.00 am on the morning of 7 November 2015 the AFP Community Policing Team implemented their Immediate Action Plan relating to the escape of a detainee from the facility, even though at this stage it was still not known whether he had left the premises. As part of the plan three police vehicles began to patrol the roads and track in the vicinity of the Christmas Island IDC and a fourth vehicle patrolled the roads around the airport and township.[542]

330. At 9.00 am Neil Caporn, the head groundsman at the facility, observed that the guttering on the Education/Recreation building had been damaged. He was apparently not aware at that stage that there was a missing detainee so he did not immediately raise it with his supervisor but he did speak to some colleagues about it to ask them if they knew about the damage, which they did not.[543]

331. At 9.05 am it was reported that all the checks of the internal buildings and roof spaces had been completed with no sign of Mr Chegeni Nejad. Nothing in the sterile area had been searched at this time.[544]

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[536] T 99.
[537] T 100.
[538] Exhibit 2, Tab 21 [17].
[539] T 376.
[540] T 100, 378.
[541] T 100.
[542] Exhibit 1, Tab 2, p. 10.
[543] Exhibit 2, Tab 24.
[544] T 100.

332. At 9.22 am Mr Caporn spoke to his supervisor, Acting Assets Manager Aaron Relf, and informed him of the damaged guttering.[545] Mr Relf went to the Education/Recreation building with Detective Broadribb and Special Constable Adams of the Christmas Island Police. They then reported the information to Sergeant David Horscroft. At about 10.00 am further investigation identified that the top strands of wire of the external perimeter electric fence near the Education Building were damaged. An examination of the fence line located black plastic insulator clips on the ground both inside and outside the fence line. These clips were suspected of having broken away from the fence when force was applied by someone climbing on the strands of wire.[546]

333. It was at this time that Sergeant Horscroft reached the conclusion that Mr Chegeni Nejad was no longer contained within Christmas Island IDC and had escaped from the facility.[547] He immediately informed Ms Alexander, who directed an investigation into whether any alarm had been triggered or if the perimeter fence had a fault, and whether the fence was still 'live'.[548]

334. ABF management reviewed the Control Room CCTV footage. The footage revealed that at about 9.15 pm the previous evening Mr Chegeni Nejad was filmed running across the sterile area in Zone 13 and approaching the external perimeter fence.[549] A review of the master control computer system also confirmed that there were three distinct points where three fence alarms were activated in sequence.[550] This was the first time the searchers became aware that the fence alarm had activated. Mr Caramancion, Mr Noonan and Mr Reweti had not informed anyone that an alarm had sounded the previous night as they had not made the connection between the alarm and the missing detainee.

335. At the same time (around 10.00 am) AFP officers Kelemedi Nabukete and Peter Gardiner were informed that there was a possible breach in the fence line. They observed the fence from the outer perimeter and could see clips on the ground and that the strands of the fence were bent. Senior Constables Nabukete and Gardiner then followed a track into the jungle directly adjacent to the identified point of escape and conducted an initial search of the area. They walked approximately 60 to 80 metres until the track disappeared into the jungle and there was no further path to follow. No items of interest were identified and there were no signs of obvious disturbance such as broken branches, footprints or skid marks.[551] This was the same area where Mr Chegeni Nejad was eventually located the following day but Senior Constable Nabukete was "absolutely confident"[552] that Mr Chegeni Nejad was not in that spot at this time.[553]

[545] Exhibit 2, Tab 24 [18].
[546] Exhibit 1, Tab 2, p. 11.
[547] Exhibit 1, Tab 2, p. 11.
[548] T 101 – 102.
[549] Exhibit 1, Tab 2, p. 11; Exhibit 2, Tab 20 [24].
[550] T 102.
[551] T 149 – 150.
[552] T 150.
[553] Exhibit 1, Tab 2, p. 11.

336. At a similar time to these events, but just before it was established that Mr Chegeni Nejad had escaped, Serco staff received some information from Ms Sally Reeves, a member of the Office of the Commonwealth Ombudsman. Ms Reeves is the Director of Immigration Detention Review Inspections. In her role Mr Reeves undertakes preventative inspections of all IDC's and offshore facilities "in order to ensure that the centres are operating in an effective and efficient manner, and administrative and operational processes and procedures are being undertaken appropriately, fairly, and in a reasonable manner."[554] Ms Reeves was part of a team conducting such an inspection at Christmas Island IDC at the relevant time.[555]

COMMONWEALTH OMBUDSMAN'S OFFICE

337. On Saturday, 7 November 2015, three members of the Office of the Commonwealth Ombudsman (OCO) visited the Christmas Island IDC as part of a routine unannounced inspection that had begun on Wednesday 4 November 2015. The inspection was conducted under s 5(b) of the *Ombudsman Act 1976* (Cth). The primary purpose of the inspection was to inspect the conditions of detention at the IDC and to provide an opportunity for detainees to approach Ombudsman staff to raise any complaints regarding the facilities or their treatment.[556]

338. The three Ombudsman officers in the inspection team were Ms Reeves, Doris Gibb and Katrina Neuss. Ms Reeves was the Team Leader of the group. All three officers provided witness statement to the Coroner outlining their actions at the Christmas Island IDC on the relevant day, but only Ms Reeves, the most senior officer, was called to give oral evidence at the inquest.

339. The three Ombudsman officers arrived at the centre on the Saturday morning at about 8.45 am. At this time Mr Chegeni Nejad had already escaped from the IDC but the search was still limited to within the centre. The group were advised by Mr Bain, who was leaving the centre at the time, that an ECC had been established, but he was in a hurry and did not stop to say why. Ms Reeves understood that the establishment of an ECC signalled a major incident had occurred, so instead of going out into the compound they went to the Serco ECC room to find out more about what was occurring, as it had the potential to impact on their ability to do their work in the compounds.[557]

340. When they reached the ECC room Ms Reeves noted that it was one of the more unique ECC's she had seen established. Ms Reeves had previous experience at ECC rooms at other immigrations centres and her general observations of this ECC led her to believe that there were people missing that she would ordinarily expect to see there and it was not clear to her who was exercising command and control, in the sense of whether it was Serco or the ABF.[558] Ms Reeves was informed that a detainee was unaccounted for

[554] T 468.
[555] T 467.
[556] Outline of Submissions on behalf of the Office of the Commonwealth Ombudsman filed 4 October 2018.
[557] T 477.
[558][558] T 481.

but it was strongly felt he had not left the centre and was possibly on a roof.[559] She did not make any comment on how the ECC was running as it was not her role.

341. Ms Reeves' team was permitted to go about their usual business, so the members of her team commenced discussions with detainees in the various compounds. While one of the group, Ms Neuss, was in the Green Compound, she was approached by a detainee later identified as George Bukvic. Mr Bukvic informed Ms Neuss that he had heard that the missing detainee had telephoned and spoken to another detainee and said that he was "sitting on a beach having a good time" or words to that effect.[560]

342. Ms Neuss passed on the information she had received from Mr Bukvic to Ms Reeves. Ms Reeves considered the information to be plausible, so at 9.50 am Ms Reeves relayed the information to the Centre Manager, Ms Alexander and others in the EEC. In effect, Ms Reeves advised that she had received information that approximately one hour prior a detainee had received a phone call from Mr Chegeni Nejad and he had stated that he was on a beach.[561] Ms Reeves and Ms Neuss emphasised that they did not know how accurate the information was, but felt it was relevant for the EEC to know.[562]

343. This was around the same time that it had become apparent that the fence alarms had gone off, so the possibility that Mr Chegeni Nejad had left the centre was realistic and the information required a response.[563]

344. West White Beach was identified as the only beach in the area with mobile phone reception. The beach is approximately 1.5 km north east of the Christmas Island IDC. It was described by Detective Broadribb as accessible from the IDC by a very rough track with small cliffs that require rope traverses to get up and down them and through thick jungle, which made it very unlikely that Mr Chegeni Nejad had made his way there, particularly at night.[564] Nevertheless, the track opposite his escape point faced towards West White Beach, so based on the information given to the Commonwealth Ombudsman staff, three searchers walked into the West White Beach area and searched the foreshore and adjoining jungle. No sign of Mr Chegeni Nejad was found on the beach or surrounding area.[565]

345. Ms Alexander, also directed some other staff to search other beaches across the island, in case Mr Chegeni Nejad had followed the road into town and made his way to another beach, but no sign of him was found.[566]

346. Ms Rees was asked to identify the particular detainee who had provided the information. Her colleague inadvertently said his first name before Ms Reeves stopped her. In terms of providing the detainee's full name, in the

[559] T 483 - 484.
[560] Exhibit 1, Tab 2, p. 14.
[561] T 486; Exhibit 1, Tab 2, p. 11, 14.
[562] T 486 – 487.
[563] T 102.
[564] T 41.
[565] T 151; Exhibit 1, Tab 2, p. 11.
[566] Exhibit 2, Tab 20 [22] – [23], [26].

first instance Ms Reeves declined, consistent with the OCO's statutory obligation of confidentiality to detainees pursuant to s 35 of the *Ombudsman Act 1976 (Cth).* As Ms Reeves explained it in court, the Ombudsman's staff consider the information they receive to be "confidential in the true sense of the word,"[567] and the assurance that informants will not be identified is a key part of the Ombudsman's interactions with detainees, so to disclose the identity of the person would have been a significant breach of that confidentiality. This led to some disagreement between the OCO officers and the investigating authorities at the time, as it was felt by members of the ECC that the OCO officers were obstructing the investigation. Indeed, Sergeant Horscroft at one stage threatened to arrest Ms Reeves if she did not provide the full name, although this did not eventuate.[568]

347. Ms Reeves gave evidence that the Ombudsman staff felt a responsibility to provide information that might assist in locating Mr Chegeni Nejad, as they were concerned about his safety. Ms Reeves understood that the island was at the end of a dry period and the weather was very hot and there was little surface water around. They were concerned he would be hot, sunburnt and very dehydrated after being out in that environment for at least 12 hours. They approached Mr Bukvic and asked him if he was prepared to speak to ECC members, which he declined. They also asked him if he could try to contact Mr Chegeni Nejad himself to check on his welfare, but he also declined to do this and expressed concern that he was going to get in trouble.

348. Eventually, after several hours had elapsed,[569] in an endeavour to balance the need to try and locate Mr Chegeni Nejad with the obligations of confidentiality, Ms Reeves agreed to provide the authorities with a list of ten detainees, one of whom was the person who had provided the information. The list included Mr Bukvic, who was that person. Ms Reeves' intention in doing so was to allow the authorities to continue their investigation and hopefully elicit any further relevant information from Mr Bukvic, without undermining the confidence of detainees in the confidentiality of their discussions with OCO staff. Ms Reeves explained that the Ombudsman has the ability to disclose information if he considers it to be in the public interest to disclose that information, which is how the compromise was able to be reached, as well as how Ms Reeves was able to give evidence at the inquest.[570]

349. Ms Reeves and her colleagues left the facility at about 4.00 pm after another heated exchange with members of the ECC and did not return to the centre due to the unrest that followed the discovery of Mr Chegeni Nejad's body on the Sunday morning.[571]

350. Mr Bukvic was later interviewed by police and he stated that he first became aware that Mr Chegeni Nejad had escaped the facility at around 10.00 pm to 10.30 pm the previous night. Mr Bukvic stated that another detainee he

[567] T 473.
[568] T 487 - 488.
[569] T 45.
[570] T 497.
[571] T 489 – 492.

identified as 'Farzon' (believed to be Farzad Karimi) told him that he had received a phone call from Mr Chegeni Nejad and Mr Chegeni Nejad was heading towards the beach. Mr Karimi was spoken to by police but he denied receiving a call from Mr Chegeni Nejad.[572]

351. No mobile phone was found with Mr Chegeni Nejad's body when it was discovered, and he was not recorded as having had one in his possession, although he had been seen with mobile phones while in detention in the past. It was indicated in evidence that it was not unusual for detainees to have contraband mobile telephones.[573] The accuracy of the information about Mr Chegeni Nejad making a phone call after his escape therefore remains uncertain.

352. It was submitted that, viewed in hindsight, it is difficult to see how the provision of Mr Bukvic's name at an earlier time would have made any difference to the events. I accept that proposition, noting that Detective Broadribb agreed that in the end the information provided by Mr Bukvic and Mr Karimi didn't take the investigation much further.[574] In my view, Ms Reeves and her colleagues acted professionally and reasonably, with due concern for the safety of Mr Chegeni Nejad.

Initiation of search and other actions

353. At approximately 11.00 am, after Ms Alexander formed the opinion that Mr Chegeni Nejad was not inside the centre and had escaped, she handed control of the search to Sgt Horscroft and the AFP.[575]

354. Senior Constable Nabukete, who had prior experience in search and rescue, was contacted and asked to activate the search and rescue, which was activated at 10.45 am.[576] A land and search was organised utilising members of the AFP, ABF and Serco. Members of the local SES and other community members were not included at this stage, as the search was limited to personnel who had "use of force qualifications,"[577] for the safety of all involved, given the missing person was a detainee who had escaped a secure facility. After the planning had been commenced and appropriate resources coordinated, the search commenced fully at 2.00 pm.[578]

355. Information was obtained from IHMS and Serco to create a profile of Mr Chegeni Nejad, which suggested that he was likely to stay around the confines of the IDC while trying to evade detection by hiding. Accordingly, attention was focussed on the area around the IDC.[579]

356. Between 4.00 pm and 5.00 pm two teams again searched and cleared the immediate jungle area opposite the point of escape without locating Mr Chegeni Nejad. It was completed by two teams, in case Mr Chegeni Nejad

[572] Exhibit 1, Tab 2, p. 15.
[573] T 497; Exhibit 5, Tab 118.
[574] T 46.
[575] Exhibit 2, Tab 20 [25].
[576] T 152 - 153.
[577] T 152.
[578] T 153; Exhibit 5, Tab 8, p. 4.
[579] T 154 – 155.

evaded the first team but then came out into the open to be spotted by the second team. It was known, however, that Mr Chegeni Nejad could easily conceal himself from searchers simply by hiding in a rock or crevice.[580] The search was suspended at 6.00 pm due to low light visibility and the dangers of searching the thick jungle and rocky terrain and sea in darkness.[581] There was a briefing at the end of the day, which included planning for the commencement of the search the following day.

357. At around 3.00 pm that afternoon authorisation was given by the Serco National Office for the immediate suspension of the three Serco members who were working in, or supervising, the Control Room at the time of the escape, namely Mr Noonan, Mr Caramancion and Mr Reweti. Their suspension notices were delivered to them by Mr Bain about an hour later.[582] Interestingly, Mr Caramancion and Mr Reweti were later reinstated following an internal investigation, although issued with first and final letters on their personal files, whereas Mr Noonan's employment contract was terminated.[583] I understand from the evidence the difference was that Mr Noonan had already received a letter from Serco on an unrelated matter, which had ramifications when he received a second letter in relation to this matter.[584] This makes more sense of the decision, as I would have thought Mr Noonan was the least culpable person out of the three in relation to this incident.

DISCOVERY OF MR CHEGENI NEJAD'S BODY

358. The land and sea search resumed the following morning, being Sunday 8 November 2015. At 7.15 am a briefing was delivered and team tasks were issued. The search then continued.[585]

359. Immediately upon recommencement the area opposite the point where Mr Chegeni Nejad scaled the fence was searched again, which was the fourth time that area was combed over the two day period.

360. Mr Lewis Taikato was employed at the IDC as a Facilities Operation Manager but had been on extended leave. He returned to Christmas Island on 7 November 2015 and returned to work at 6.00 am on Sunday, 8 November 2015. After a brief handover he spoke to the search coordinators and advised them that he had received training as a tracker when he was a member of the New Zealand army. He was tasked to try to identify Mr Chegeni Nejad's entry point into the jungle, the direction he was travelling and anything else he could discern about Mr Chegeni Nejad's whereabouts and welfare.[586]

361. Mr Taikato headed towards the area believed to be the entry point and asked for the search team in the area to be pulled out so they would not

[580] T 155.
[581] Exhibit 5, Tab 8, p. 7.
[582] T 103.
[583] T 108; Exhibit 2, Tab 20 [37].
[584] T 401 – 402.
[585] Exhibit 1, Tab 2, p. 12.
[586] T 169 – 170; Exhibit 2, Tab 12.

contaminate the area any further. As they reached the suspected entry point they heard search members calling out that they had found Mr Chegeni Nejad. Mr Chegeni Nejad's body had been found by Mr Robbins and Mr Lee shortly after they resumed searching the area at about 8.00 am.

362. Mr Taikato immediately entered the jungle up the track to where Mr Chegeni Nejad's body lay on the ground. He asked the other men if they had checked his body for vital signs and they said that he was motionless.[587]

363. Mr Chegeni Nejad was located in the jungle area lying face down on his stomach on the rocky ground. It was described as "a very jagged limestone rocky outcrop" and the area was littered with jagged rocks and small to medium sized shrubs and trees.[588] It appeared Mr Chegeni Nejad's head had struck a rock as he fell forward as there was a rock still embedded in his forehead, which had broken the skin.[589] Mr Chegeni Nejad's face was turned to the left and there was blood pooled on the rocks and ground below his head. His body lay parallel to the direction of the IDC.[590]

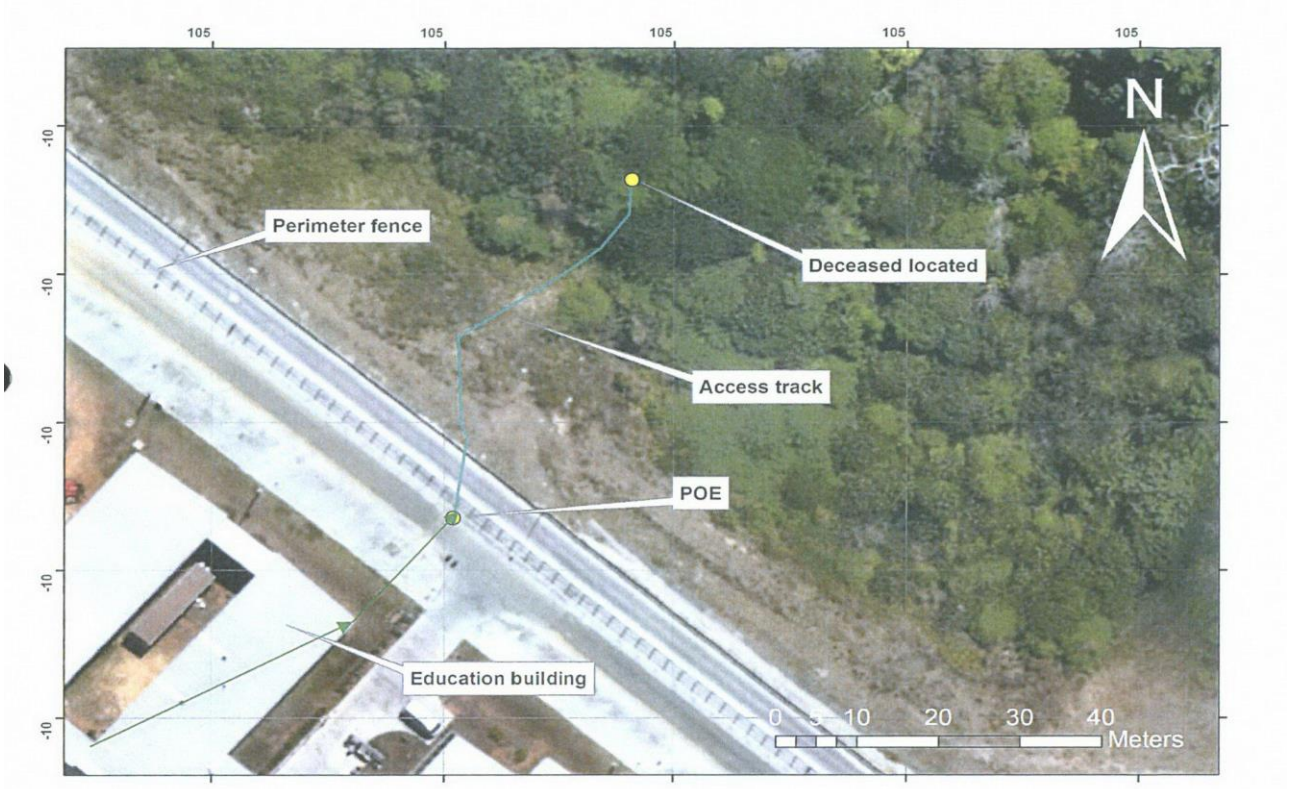

Figure 2: Map of NWPIDC indicating route from point of escape to location of the deceased.

364. Mr Chegeni Nejad was wearing a maroon t-shirt, blue shorts and shoes that were consistent with the clothes he was seen wearing on the CCTV footage.[591] He also had a dark blue piece of bedding sheet tightly knotted around his neck with the knot at the rear of the neck. Tied to the blue cloth was a patterned grey piece of cloth.[592] This has been described as a ligature

[587] Exhibit 2, Tab 12.
[588] T 70.
[589] T 50.
[590] T 345.
[591] T 47.
[592] T 89; Exhibit 1, Tab 2, pp. 16 – 19

by many during the inquest, but I note that Mr Taikato described it as "something like a sweat rag wrapped around his neck."[593]

365. Mr Taikato was asked about this description and he explained that it is an item he has seen before in the military, and was generally a piece of garment that is then used to wipe the sweat out of the eyes caused by the humidity on Christmas Island.[594]

366. When Mr Chegeni Nejad was rolled over his right hand was observed to be clenched tightly around the piece of grey cloth. His left hand was also clenched and gripped dry leaves and soil.[595] Based upon what he saw, Mr Taikato did not believe Mr Chegeni Nejad had put his hands out to break his fall.[596]

367. As noted previously, no mobile telephone was found with Mr Chegeni Nejad's body.[597]

368. There was no sign of disturbance around the body, with no additional footprints identified or disruption of the natural environment suggestive of another person being present.[598]

369. At the time Mr Robbins and Mr Lee came across Mr Chegeni Nejad's body there were a number of robber crabs (large crabs that are native to Christmas Island) on and around the body. There were so many that Mr Robbins recalled he initially saw only a mound of crabs before getting closer and seeing Mr Chegeni Nejad's shoes and part of his head.[599] These crabs are known to eat carrion opportunistically as part of their diet and they had to be removed from Mr Chegeni Nejad's body as there was apparent post mortem predation.[600] Mr Robbins recalled Mr Chegeni Nejad's body was stiff and he was clearly deceased.[601]

370. All tree branches in the immediate area were checked for solid hanging points, given the possibility Mr Chegeni Nejad had been hanging before falling to the ground, but none were located. There was no sign of blue or grey cloth attached to a branch and there were no signs of secondary transfer from bark or plant matter to those materials, which would be expected if they had been used to support Mr Chegeni Nejad's weight over a branch.[602]

371. Detective Broadribb also indicated that there were no trees that were felt to have been substantial enough to bear Mr Chegeni Nejad's weight.[603] His evidence was that most of the tree branches in the area were very brittle

[593] Exhibit 2, Tab 12 [16].
[594] T 173 – 174.
[595] T 70; Exhibit 1, Tab 2, p. 20.
[596] T 172.
[597] Exhibit 1, Tab 2, p. 16.
[598] T 47, 50.
[599] T 337.
[600] Exhibit 1, Tab 2, p. 21; Exhibit 5, Tab 120.
[601] T 337.
[602] T 47 – 48; Exhibit 1, Tab 2, p. 21.
[603] T 48.

and of a small diameter that "wouldn't have supported any weight whatsoever."[604]

372. Mr Robbins, who found Mr Chegeni Nejad's body, was asked his first impression of how he appeared to have come to rest there. Mr Robbins' evidence was that initially it appeared that Mr Chegeni Nejad had tried to come over the mound and had slipped and fallen and knocked himself out falling face first onto a lava rock. However, he then observed that next to Mr Chegeni Nejad's head was a tree branch with a diameter of about 60 mm and there were also two small trees approximately one metre away from Mr Chegeni Nejad's head. Mr Robbins wondered if Mr Chegeni Nejad had attempted to hang himself or had grabbed at the branch and fallen over. He was unsure as to which was the case, although he was aware Mr Chegeni Nejad had spoken in the past of wanting to kill himself, which made him feel it was a possibility.[605] Mr Robbins was asked whether he thought the branch he had seen could have supported Mr Chegeni Nejad's body, and by his answer he indicated that he felt perhaps Mr Chegeni Nejad had tried to hang himself from the branch, but clearly it had broken and fallen to the ground.[606]

373. Senior Constable Nabukete attended the area where Mr Chegeni Nejad was found afterwards and was very confident that Mr Chegeni Nejad's body had not been in that same position when he searched the area the previous morning.[607] Another Serco officer, James Woodruff, who had been in the search teams that searched the same area on the Saturday agreed that Mr Chegeni Nejad was not in that same location on the Saturday, or the searchers would have found him.[608] Similarly, Mr Robbins, who had searched the area earlier with Mr Woodruff and was one of the officers who found Mr Chegeni Nejad's body, was 100% sure that they had covered the area where Mr Chegeni Nejad was found and no one was there on the previous day.[609]

374. Senior Constable Nabukete asked Mr Taikato to attempt to trace Mr Chegeni Nejad's steps backwards, in order to establish the direction he had come from before he came to rest in that location.[610] Mr Taikato returned to the scene with some other Serco officers to assist him. Mr Taikato began looking for footprints to help him find the path Mr Chegeni Nejad took. Mr Taikato found the last footprint was as Mr Chegeni Nejad climbed a small rocky outcrop where he came to rest. It was apparent to Mr Taikato that Mr Chegeni Nejad struggled to get up the rocky outcrop as it was a sliding footprint, rather than a clear footprint.[611] This indicated to Mr Taikato that Mr Chegeni Nejad slipped as he climbed but he also believed he had steadied himself as he got to the top.[612]

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[604] T 49.
[605] T 338; Exhibit 2, Tab 7 [16].
[606] T 345.
[607] T 156 - 157.
[608] T 329.
[609] T 336, 345 - 346; Exhibit 2, Tab 7.
[610] Exhibit 2, Tab 12.
[611] T 171 – 172.
[612] T 179 – 180.

375. Mr Taikato then backtracked from Mr Chegeni Nejad's last footprints and did a 10 metre cast either side, looking for the route of least resistance behind them. Mr Taikato walked the path backwards and found broken twigs and upturned fresh leaves that caused him to strongly suspect that Mr Chegeni Nejad had come from the direction of the east, headed in a westerly direction back towards the IDC before he died.[613] He believed Mr Chegeni Nejad was probably pushed further out into the jungle by the sound of the searchers as he wished to avoid being detected, and was making his way back in after the searchers had left the area.[614]

376. Mr Taikato noted that the tracks he examined prior to Mr Chegeni Nejad reaching the rocky outcrop showed that the pacing of his footsteps was less than 40 cm apart, which is significantly less than normal pacing between footprints of about 75 cm long. The pacing of Mr Chegeni Nejad's footsteps suggested to Mr Taikato that Mr Chegeni Nejad was tired/lethargic and possibly not confident as to where he was going.[615] The evidence of broken branches at Mr Chegeni Nejad's chest height also indicated to him that Mr Chegeni Nejad was "very, very tired" as he walked towards the rocky outcrop, as the fact that the branches were broken rather than pushed aside indicated that he was trying to grab at them to stay upright.[616] Mr Taikato believed from the signs he saw that Mr Chegeni Nejad was "struggling to keep on his feet."[617] Based on his training, and his knowledge of the area, Mr Taikato inferred that Mr Chegeni Nejad would have been quite dehydrated and suffering the effects of the humidity.[618] This is also consistent with the evidence of some of the searchers, who spoke of the search being "hard and arduous"[619] and the weather as hot and very humid with minimal cloud cover.[620]

377. Mr Taikato did not think Mr Chegeni Nejad was likely to have been walking during the night-time as the route that he had taken was the route of least resistance, which suggested he could see ahead.[621] Mr Taikato theorised Mr Chegeni Nejad made his way there either just before last light on the Saturday or first thing in the morning as the sun came up again on the Sunday.[622]

378. While Mr Taikato was still examining the scene a massive downpour of rain occurred. Mr Taikato then ceased his examination of the scene as the rain would have disrupted any other evidence or signs.[623]

CAUSE OF DEATH

[613] Exhibit 2, Tab 12.
[614] T 181.
[615] T 178.
[616] T 179.
[617] T 173.
[618] T 173.
[619] Exhibit 2, Tab 9 [8].
[620] Exhibit 2, Tab 7.
[621] T 178 - 179.
[622] T 181.
[623] T 172; Exhibit 2, Tab 12.

379. An initial external examination of Mr Chegeni Nejad's body was undertaken by an AFP crime scene investigator at Christmas Island Hospital on 12 November 2015 before his body was sent to Perth for a full post mortem examination at the State Mortuary. No evidence was found during the initial examination to suggest the involvement of another person in the death of Mr Chegeni Nejad, which was consistent with the evidence at the scene.[624]

380. Detective Broadribb was asked about the estimated time of death based upon visible signs, and he commented that in his experience with other deaths on the island, in a very short period of time the bodies had become completely flyblown, whereas Mr Chegeni Nejad's had no flies or maggot infestation whatsoever. This suggests that death had not occurred too long before, although there was also a small amount of damage from crabs that suggested death had not occurred immediately before his body was found.[625]

381. On 17 November 2015 the Chief Forensic Pathologist, Dr C T Cooke, made a full post mortem examination on the body of Mr Chegeni Nejad in the presence of two AFP officers and an independent forensic pathologist, Professor S Cordner, who attended at the request of the family.[626]

382. The examination revealed post mortem changes, including some apparent post mortem predation to the body surface, which was consistent with witness accounts of crabs being found near Mr Chegeni Nejad's body. The skin also showed changes consistent with sun exposure.[627]

383. There was no apparent natural disease identified. Although there were some scattered injuries to the skin and bruises, these were considered to be consistent with "collapse-type" injuries and possibly some type of blunt impact to the head, but there were no further evident internal injuries.[628]

384. External examination of the neck found a faint marking consistent with the knotted scarves said to have been found wrapped around Mr Chegeni Nejad's neck and several small haemorrhages were found internally around the muscles of the neck as well as petechiae (blood spots) to the inner lining of the larynx and also the right eye.[629]

385. At the conclusion of the initial examination Dr Cooke initiated a series of further investigations to assist him in determining a cause of death. Microscopic examination of major body tissues, toxicology analysis and neuropathology examination of the brain were all undertaken but did not identify a cause of death.[630]

386. Dr Cooke indicated that many of the other injuries found on the surface of the body could be explained by movement in a difficult environment before death, collapse and/or post mortem predation. However, there were cuts to the palmar surfaces of four fingers of each hand that were not easily

[624] Exhibit 5, Tab 83.
[625] T 91.
[626] Exhibit 1, Tab 5.
[627] Exhibit 1, Tab 5.
[628] Exhibit 1, Tab 5.
[629] Exhibit 1, Tab 5.
[630] Exhibit 1, Tab 5.

explained by these three mechanisms. Police officers had suggested the possibility that the top of the mesh boundary fence or edge of the roof guttering at the Christmas Island IDC may have caused these cuts but Dr Cooke was not certain these surfaces were sharp enough to be a valid explanation.[631] Nevertheless, there was no evidence to suggest the involvement of another person in causing these injuries.

387. Neuropathology examination was conducted by a Neuropathologist, Dr Fabian. Dr Fabian's examination detected no abnormalities in the brain and no features of recent traumatic brain injury, so the wound to Mr Chegeni Nejad's head was only superficial and did not result in a brain injury.[632]

388. Toxicology analysis detected a therapeutic level of mirtazapine and quetiapine, Mr Chegeni Nejad's prescribed medications. A further prescription medication, doxepin, was also detected, which was not prescribed to Mr Chegeni Nejad. Doxepin is the active ingredient in Deptran, the tablet found in Mr Chegeni Nejad's pocket after his death. No alcohol or illicit drugs were detected.[633]

389. At the conclusion of all investigations Dr Cooke offered the opinion that, based on the apparent circumstances of the death, together with the post mortem findings, it appears that Mr Chegeni Nejad died from ligature compression of the neck. The presence of faint marking to the skin of the neck (consistent with a broad and soft ligature), petechiae in the larynx and right eye and some bruising inside the neck are all supportive of this conclusion although they might also be associated with post mortem change in a person who remains face down after death.[634]

390. I accept and adopt the conclusion of Dr Cooke as to the cause of death. I also find that the evidence supports the conclusion Mr Chegeni Nejad died on the morning he was found by the searchers, namely on Sunday 8 November 2015.

MANNER OF DEATH

391. The mechanism of death was ligature compression of the neck. More often than not in coronial investigations, that cause of death is associated with deliberate hanging. However, this case is unusual as Mr Chegeni Nejad was not found hanging and there was little evidence found to support a conclusion that he had been hanging or suspended from any object at any stage.

392. Based upon the known circumstances in which Mr Chegeni Nejad's body was found, together with the opinion as to the cause of death, the investigating police officers came up with two possible theories as to how Mr Chegeni Nejad died. Both of them related to Mr Chegeni Nejad tightening

[631] Exhibit 1, Tab 5.
[632] Exhibit 1, Tab 6.
[633] Exhibit 1, Tab 7.
[634] Exhibit 1, Tab 5.

the cloth around his neck by the force of his own body weight. In one scenario this was deliberate and in the other it was unintended.[635]

393. The first possibility was a theory described as 'inverse strangulation'. This involved the knot or sheet being pulled tight around Mr Chegeni Nejad's neck and then the remaining fabric pulled down and placed under the knee. This would maintain a tight compression of fabric around the neck that could be described as a ligature. Mr Chegeni Nejad's head was then wrenched backwards suddenly and the ligature constricted further, compressing the neck and resulting in loss of consciousness. Mr Chegeni Nejad had then fallen forward while unconscious, striking his head as he fell. If events occurred in this way, it was felt by the investigating police that it would have been a deliberate act by Mr Chegeni Nejad, done with an intention to take his life.

394. The alternative theory was not entirely dissimilar, but lacked any intention on the part of Mr Chegeni Nejad. This involved Mr Chegeni Nejad stumbling in the darkness with the long length of tied fabric in front of him. He has then trodden on the fabric, again with the result that it is pulled tight against his neck, causing ligature compression leading to unconsciousness. Mr Chegeni Nejad then fell forward while unconscious, striking his head as he fell and his death occurring before he regained consciousness.

395. The second theory raises the question why Mr Chegeni Nejad would tie material around his neck, if not to form a ligature in order to take his life? Detective Broadribb explained that it was believed Mr Chegeni Nejad could have done so in order to keep the insects away from his neck, which apparently is not uncommon in the tropics.[636] I note Mr Taikato's evidence, outlined above, that in his experience it is also very commonly done in order to be used to wipe sweat away from the face, and that is how it appeared to him when he saw Mr Chegeni Nejad's body.[637]

396. The two options leave open the manner of death being by way of suicide or accident. This was made very clear throughout the inquest, when questions were put based on the assumption that the death occurred by suicide. The manner of death is a key component of the findings that I am required, if possible, to make under the Act.

397. Nevertheless, in submissions filed on behalf of the family by solicitors who represented the family during the inquest,[638] it was put in the section headed Background (rather than in the section headed Findings that the Family Seek) that "the Deceased died by suicide."[639] It is surprising and concerning that this statement would be included as in effect, a known fact, rather than put as a submission. A submission is then made that I should find the deceased died at his own hand, coupled with a suggestion that it matters not whether I rule the actual act of death suicidal or accidental as "it is clear that the intent of the Deceased when he left the centre was to harm

[635] T 71.
[636] T 49.
[637] T 173 – 174; Exhibit 2, Tab 12 [16].
[638] Although not apparently signed by counsel.
[639] Submission of the Family, undated [9].

himself."[640] Again, I indicated during the inquest that it was not clear on the evidence whether his intention in escaping was to harm himself once outside or not, and there was evidence to support other conclusions.

398. I now make it very clear, once again, that both alternatives of suicide and accidental death are open on the evidence before me and it is a matter to which I have given considerable attention in attempting to make a finding in that regard. It is also open to me on the evidence to find Mr Chegeni Nejad intended to escape for a reason other than to take his life.

399. Based on the evidence found in his investigation, Detective Broadribb did not feel he was in a position to express an opinion as to which theory was more likely to be correct.[641] It was put to Detective Broadribb that the fact Mr Chegeni Nejad's right hand was clenched around the cloth was more consistent with the theory of deliberate inverse strangulation, but Detective Broadribb's evidence was that Mr Chegeni Nejad could also have grabbed the cloth if he had accidentally trodden on it and then tried to grasp it as he fell forward. I also note the evidence was that Mr Chegeni Nejad's left hand was also found clenched around dirt and leaves, which further suggests that the clenching of his right hand on the cloth is less significant than it might first appear.[642] Detective Broadribb continued to maintain that on the evidence he obtained, it "left both options open."[643]

400. Detective Broadribb was also asked whether he could draw any conclusion as to which scenario was more likely, based upon the knowledge that there was effectively no escape from the island, even after leaving the IDC. Quite properly, Detective Broadribb declined to speculate.[644]

401. I, on the other hand, can take into account the fact that Mr Chegeni Nejad had nowhere to run to once he escaped, in reaching a conclusion as to the manner of death. I do not, however, find that this information takes the matter much further. While escaping the IDC makes little sense when the inhospitable environment and lack of ways to leave the island are considered, the alternative proposition put that he escaped because he was determined to kill himself and wanted to find somewhere quiet to do so[645] also makes little sense.

402. As a coroner, I am regularly required to conduct inquests into deaths in custody, and I am well aware that it is relatively easy for a person in custody to find a quiet place in which to successfully take their life by hanging if they are determined to do so. The process is relatively simple, can utilise many different mundane things as a hanging point, and is usually quick. Forensic pathologists regularly give evidence in this court that a person can become unconscious within as little as thirty seconds of a ligature applying sufficient pressure to the neck to block the blood flow, and following that, they can sustain irretrievable brain injury within minutes. The only exception is when

[640] Submission of the Family, undated [29].
[641] T 49 70.
[642] Exhibit 1, Tab 2, p. 20.
[643] T 71.
[644] T 91
[645] T 91.

a person is in closely monitored crisis care, as the close supervision limits the opportunity. The family submitted that it was known that Serco officers carry Hoffman knives designed to cut a ligature, but the same can be said for prison officers, and yet sadly many cases of successful hangings in prison come before me every year.

403. I turn then to other evidence that might assist me in determining which is the more compelling of the two possibilities, which includes reasoning as to what may have been his thoughts prior to climbing the fence.

404. It was raised that Mr Chegeni Nejad did not take his personal property with him, although his personal property was described as "very, very minimal."[646] He did, however, have with him his ID card and a cigarette lighter and a single Deptran tablet. The Deptran tablet is significant as it was not prescribed to Mr Chegeni Nejad and there was evidence that it might have had a negative effect on his mental state if he had taken Deptran (generic name doxepin) in combination with his prescribed medications. It was suggested the Deptran could have put him at risk of developing serotonin (or serotonergic) syndrome, particularly in conjunction with the antidepressant mirtazapine he was taking, which might have contributed to making Mr Chegeni Nejad agitated and confused.[647] Dr Spencer explained that Deptran would not be prescribed together with a more modern antidepressant such as mirtazapine for that reason, as the consequences can be severe. In addition to agitation and confusion, there are also physical signs of this syndrome, such as diarrhoea, dilated pupils, high fever, muscle jerks and changes in blood pressure in addition to the confusion and agitation.[648] I was also advised that doxepin (Deptran) taken in combination with mirtazapine can cause headaches and nausea.[649] Dr Spencer indicated that the description of Mr Chegeni Nejad shivering on the night that he escaped could be consistent with a symptom of serotonin syndrome.[650]

405. Dr Spencer's evidence was that the effect of doxepin (Deptran), in terms of developing serotonin syndrome, can come on quite quickly after taking the medication and can last over several days. It can lead to an elevated confusional state such that "people can demonstrate quite poor judgment."[651] Dr Spencer believed it would take more than one tablet to have such a severe effect. I note the toxicology analysis undertaken following Mr Chegeni Nejad's death found an unspecified quantity of doxepin in Mr Chegeni Nejad's blood, suggesting he had access to other Deptran tablets prior to his death, in addition to the tablet found on his person.[652]

406. However, working against Mr Chegeni Nejad acting in a confused way due to serotonin syndrome, was the place where Mr Chegeni Nejad made his escape, as the education building, was a logical place to make an escape attempt at that time of night as it was only staffed during the day, and the

[646] T 94.
[647] T 959 – 957, 1176 - 1177.
[648] T 961 1177.
[649] T 1225.
[650] T 81, 1178.
[651] T 1179.
[652] T 978, 1179.

fact he selected the spot where there were no anti-climb barrels.[653] Another factor suggesting some pre-planning or forethought was that Mr Jadiri and Mr Karimi both noticed Mr Chegeni Nejad was wearing shoes, which they said was very unusual for him, as he usually only wore thongs. His wearing his shoes on this night could suggest that he had formulated a plan to escape earlier, as does his carrying the fabric, which he used to insulate himself from the electric fence well before it formed a ligature around his neck.[654]

407. Two other psychiatrists gave evidence at the inquest about the possibility of serotonin syndrome playing a role in the escape, and they both felt it was unlikely. I discuss more about the background and roles of these psychiatrists later in this finding.

408. One of the psychiatrists, Dr Pascu, accepted that serotonin syndrome was an "academic possibility"[655] in this case, and that some of his symptoms could be said to fit this picture, but having seen quite a number of patients who have developed this syndrome and were physically very sick, she did not think his behaviour in being able to climb buildings and a fence was consistent with this being the case.[656] In Dr Pascu's opinion it was "very, very unlikely"[657] that Mr Chegeni Nejad had developed this syndrome as he would have had a very different clinical presentation and a very noticeable level of confusion.[658] The level of planning involved in the escape effort was also inconsistent with Mr Chegeni Nejad being very confused.[659]

409. The other psychiatrist, Dr Young, agreed with Dr Pascu and Dr Spencer that some of Mr Chegeni Nejad's symptoms seen on the evening he escaped, such as a confused state and shivering, could be attributed to this combination of medications.[660] However, Dr Young also pointed to the past history of adverse episodes in different places and at different times, which would not support this theory as it was not a sudden emergence of symptoms. Dr Young therefore felt it was unlikely that serotonin syndrome was the cause of all of his disturbed behaviour prior to his death.[661] Dr Young also pointed to the evidence of Mr Chegeni Nejad's quite organised behaviour in making his escape to point against him being in a fully delirious state at that time, which I have detailed above.[662]

410. Dr Pascu did indicate that the degree of planning was not inconsistent with Mr Chegeni Nejad being psychotic, however, as people can still execute a degree of planning under the influence of a psychotic delusion. The evidence of Nurse Stroop, that he appeared his usual self, made that less likely but not impossible.[663]

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[653] T 142.
[654] Exhibit 2, Tab 27 [9], [13] and Tab 31.
[655] T 1330.
[656] T 1363.
[657] T 1331.
[658] T 1362 - 1364.
[659] T 1367.
[660] T 1226.
[661] T 1276.
[662] T 1278.
[663] T 1367.

411. Another possibility was that Mr Chegeni Nejad escaped, simply because he was feeling desperate and wanted to be free. In August 2018 Mr Chegeni Nejad had told a nurse he sometimes experienced an underlying sense of fear and said he occasionally became overwhelmed without warning and felt he must run away and find safety, but he couldn't explain why he felt this way.[664] He had also mentioned thoughts of escape in Darwin, but acknowledged he wouldn't have known where to go. Even though escaping the IDC might seem irrational, he could have felt compelled to try, even knowing it would be difficult or even impossible to go anywhere.[665]

412. Another factor to consider, in determining whether Mr Chegeni Nejad intended to commit suicide, is that there is no evidence to suggest Mr Chegeni Nejad took any immediate steps to take his life after escaping from the facility. It is unclear where he went immediately afterwards, or how far he travelled, but I have found on the evidence that he was not in the place where his body was eventually found when the external search first commenced and that he died in that location on the morning he was found, more than 24 hours after his escape. It is open on the evidence to find that he was, in fact, returning to the relative safety of the centre after realising that his attempt to escape was futile, and slipped and died accidentally making his return. Alternatively, he may have been overcome with hopelessness, after realising his escape was futile, and decided to kill himself in that location. There was also evidence that dehydration can have a major effect on a person's cognitive state, leading them to hallucinate or fall into a stupor, which may have affected his behaviour and reasoning at the end.[666] There is insufficient evidence for me to decide what is the most probable cause of the event.

413. There is no firm evidentiary basis for me to find that Mr Chegeni Nejad was intending to harm himself when he fled the IDC. It is possible, but other possibilities are also open, namely that he had formulated an ill-judged plan to escape and find a way off the island (or at least to the settlement) or that he was acting under the influence of a psychotic delusion or was confused due to serotonin syndrome (although I find this less likely).

414. Similarly, there is no firm evidentiary basis for me to find that Mr Chegeni Nejad deliberately did an act to take his life when his neck was compressed with a ligature. It is a possibility, but there is evidence to suggest other possibilities are equally open.

415. Despite close and careful consideration of the evidence before me, and the submissions made on behalf of the various parties in regard to how I might use the available evidence to reach a finding, I am unable to find to the requisite standard how Mr Chegeni Nejad's death occurred.

416. Accordingly, I make an open finding as to the manner of death.

[664] Exhibit 7, Tab 138, p. 52 of 696.
[665] Exhibit 7, Tab 138, p. 83 of 696.
[666] T 1366.

417. Contrary to the submissions of the family, I consider there is a relevant distinction to be made, in terms of the comments I make, flowing from a finding of suicide as compared to accident.

QUALITY OF SUPERVISION, TREATMENT AND CARE

418. As noted at the start of this finding, while I am not required under the Act to comment on the quality of the supervision, treatment and care of Mr Chegeni Nejad, I intend to make such comments as I am able to in that regard, focussing in particular on the last days of his life.

419. Whether or not he died as a result of suicide or accident, the circumstances that led Mr Chegeni Nejad to choose to take the dramatic step to escape the Christmas Island IDC are relevant as it is clear from the evidence that his reasoning in doing so was not the decision-making of a well individual, making a reasoned and rational choice. There is documented evidence about his mental health issues and related unpredictable behaviour in the years he was in detention. Therefore, how his mental health issues were treated and managed is relevant.

420. Further, his death (at least in the manner it occurred) was preventable if he had remained inside the IDC, so the fact he was able to escape the IDC is a relevant issue for me to make comment upon.

421. I attempted to identify for counsel at the end of the inquest the particular areas that I felt were of interest, focussing upon the circumstances that allowed Mr Chegeni Nejad to escape undetected, his mental health care and the circumstances surrounding his transfer to Christmas Island IDC. I have set out these issues, and others that perhaps flow from the submissions filed by the parties, in the way that appears to best fit the above categories.

422. I make no comment on the government's immigration detention policies in doing so. However, it is my role to comment on the care and supervision provided on behalf of the government when a decision is made by that government to detain an individual and remove their freedom and their ability to seek their own health care.

Supervision

Security Fencing and Infrastructure

423. The Commonwealth is responsible for the IDC structures, including its security systems. It is the responsibility of Serco to manage the facility within the structure provided by the Commonwealth.[667] I understand from the evidence that it was generally understood that the external electric fence was not able to be scaled without serious injury to the individual attempting it. Mr Bain, the Senior Security and Risk Manager, agreed that the general belief at the IDC was that it was nigh on impossible to climb the electric

[667] T 143.

fence and there was little reason for anyone to do so given the inhospitable environment of the island, which would give the detainees "no real appetite to go anywhere."[668]

424. However, Mr Bain also gave evidence that from his experience, any security system can be defeated if the person has the drive and motivation. In the case of Mr Chegeni Nejad, he proved to be the exception to the rule. He used simple tools and a strong will to defeat the system. Although he would have received an electrical charge from the fence even with the use of material as a buffer, he clearly had the motivation to continue to climb up the fence and make his escape. He appears to have been able to make his way into the jungle without significant impediment from the shock he received.[669]

425. After Mr Chegeni Nejad's successful escape, the perimeter fencing and security measures related to it were reviewed. In addition, there was a serious riot at the Christmas Island IDC in the days following Mr Chegeni Nejad's death, which also generated a number of internal reviews that prompted works to increase security at the facility.[670]

426. Detective Broadribb summarised some of the changes to security at the Christmas Island IDC following these events. The changes were significant. There were changes were made to the perimeter fence, with a secondary internal perimeter fence installed, as well as upgraded security on the external perimeter fence with the installation of razor wire.[671]

427. At the time of the inquest, changes had also been made to movement of detainees around the centre, which had restricted their movement and freedom, to ensure they were monitored more closely. This appeared to be more in response to the riot that followed Mr Chegeni Nejad's death.[672] The new procedure limited the opening of compounds to only one at a time, thereby limiting the number of detainees moving about during the day time. In the evening, after 6.00 pm, detainees were not released from the compound unless escorted by a DSO. Such measures would obviously reduce the opportunity for a similar escape, particularly one going unnoticed.[673]

428. In submissions filed on behalf of Serco, it was submitted that the modifications demonstrate that the prospect of a detainee escaping in a similar manner to Mr Chegeni Nejad has been considerably reduced (although also noting that the responsibility for the installation of the perimeter fencing rests with the Commonwealth and not Serco).[674]

429. It was not disputed that these changes to infrastructure and detainee management made it much more difficult for a detainee to execute a similar escape, and I accept that is the case.[675]

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[668] T 431.
[669] T 431, 450.
[670] T 63. 143.
[671] T 109.
[672] T 109, 111.
[673] Exhibit 2, Tab 20 [42].
[674] Submissions filed on behalf of Serco Australia Pty Ltd, dated and filed 11 October 2018, [24] – [25].
[675] T 63.

430. It is relevant to note that the Christmas Island detention centre was closed by the current government in October 2018, although it remained in a state of operational readiness so that it could be reopened. I am aware from media reports that a reopening of the centre began in mid to late February 2019, as a response to some legislative changes to off-shore refugee detention. I am unaware whether the centre will operate in the same way, but have proceeded with this finding on the assumption that it will.

431. I am satisfied from the information provided that the changes have largely removed any likelihood that a detainee could escape in a similar manner to Mr Chegeni Nejad, although once again, there is always the possibility a very determined person will find a way.

Control Room Training/Staffing

432. Detective Broadribb reviews of the Control Room policy and procedures highlighted a number of deficiencies that limited the ability of Serco/ABF to detect and respond to Mr Chegeni Nejad's escape.[676] Detective Broadribb described the experience of the two men who were working in the Control Room that night as "next to none,"[677] which meant that when the alarms went off both Mr Caramancion and Mr Noonan had "no idea whatsoever"[678] what the alarms meant. This is patently apparent from the CCTV footage and the conduct of the officers afterwards. Although the three men involved, Mr Noonan, Mr Caramancion and Mr Reweti, were disciplined over the matter, it must be said that there was an overriding failure in the system that allowed this to occur, and it must come down to the decision to have untrained staff in charge of the Control Room without proper supervision.

433. As of 6 November 2015 the only formally trained Control Room operator at Christmas Island IDC was Detainee Services Officer[679] Tze Wei Peh. He had received some training in the form of basic familiarisation training with an earlier service provider and in 2012 he also received some Control Room training by STS, the new security systems service provider.[680] Mr Peh told Detective Broadribb that he had never provided any formal training to other Control Room staff but had provided 'on the job' training on an ad hoc basis during normal shifts to other control operators.[681] The Centre Manager, Ms Alexander, confirmed that the training of Control Room operators was generally conducted 'on-the-job' at the time.[682]

434. In Mr Peh's experience, it would take approximately two weeks of full time on the job training in the Control Room to become a semi-competent Control Room operator, with a very basic understanding of the systems, and even then he would not think a person with this level of training should be left in the Control Room by themselves without a more experienced operator's

[676] Exhibit 1, Tab 2, p. 24.
[677] T 51.
[678] T 51.
[679] There is evidence that at the time the title was Client Services Officer, which later changed to Detainee Services Officer. I have used Detainee Services Officer as that the term most witnesses used during the inquest.
[680] T 243.
[681] T 243 – 244; Exhibit 2, Tab 5.
[682] T 103.

assistance.[683] Another Control Room operator, Detainee Services Officer Bell, stated that in his experience it would take an average person a good six months of constant work in Control Room operations to be able to competently operate the systems.[684]

435. As noted earlier in this finding, the evidence at the inquest was that Mr Caramancion and Mr Noonan had received no formal training, and minimal 'on-the-job' training before the night of Mr Chegeni Nejad's escape, and yet they were rostered to work together in the Control Room that night. This was despite other more qualified staff, such as Mr Reweti, being available.

436. Mr Peh expressed the opinion that an experienced operator should have been brought in on overtime to fill in the skills gap rather than leaving two inexperienced operators in the Control Room that night, although Mr Peh acknowledged there was a shortage of control operators at the time.[685] Mr Peh felt it was unfair to Mr Noonan and Mr Caramancion to have placed them in the situation they faced on that evening.[686]

437. Similarly, other experienced Control Room operators, such as Gregory Bell and Sean Too, mentioned being "shocked"[687] and surprised that Mr Noonan was asked to perform shifts or partial shifts in the Control Room, knowing his lack of training, and Mr Caramancion's experience was considered to be even less than Mr Noonan's.[688] Mr Noonan's evidence was that he was happy to learn,[689] when rostered with another experienced operator, and had agreed to go back into the Control Room on 6 November 2015 as he thought he would again be placed with another more experienced officer. However, he was instead put there with Mr Caramancion. Mr Noonan said he found the experience of running the Control Room with another inexperienced officer a lot more difficult, and "a rather unpleasant night overall."[690]

438. I agree with the opinion of Mr Peh that it was unreasonable to expect Mr Noonan and Mr Caramancion to operate the Control Room on their own that evening, given the level of responsibility it involved and their known inexperience.

439. Ms Alexander, who accepted that she had overall oversight of staff and their training at the centre and that the Control Room was a key part of the operation of the centre, was unable to say why this was permitted, as she maintained she was not involved in rostering.[691] Ms Alexander did say her understanding was that Mr Reweti was a trained master controller and he was there to support the staff in the Control Room on the night.[692] Still, it

[683] Exhibit 2, Tab 5 [12].
[684] Exhibit 1, Tab 2, p. 25.
[685] T 249.
[686] T 248.
[687] Exhibit 2, Tab 6 [11] and
[688] Exhibit 2, Tab 4.
[689] T 394.
[690] T 388.
[691] T 104.
[692] T 143.

appears the choice was made to put the inexperienced men in the Control Room due to a lack of more appropriate staffing options.

440. Ms Alexander was asked about staffing issues at the time and she gave evidence that they did not have the ability to have a casual pool of staff on Christmas Island, so the only capability they had to bring in additional staff was to offer existing staff overtime in addition to their rostered hours, which they utilised when necessary.[693] This put a strain on the ability to provide trained operators. In submissions filed on behalf of Serco, a more fulsome explanation was provided as to the fact that the bulk of trained operators had attended a training course that day, so they could not perform the night shift, and others were on leave. Nevertheless, more should have been done to ensure that someone with proper knowledge of the procedures in the Control Room was in charge.

441. Ms Alexander indicated that her expectation was that if an alarm sounded in the Control Room, she would expect the staff in the Control Room to respond to the alarm to see if the camera covers the area where the alarm has triggered, check to see whether they can ascertain if it was a false alarm or not, and then report to their supervisor. They are also required to enter the event in a logbook.[694] Ms Alexander also indicated she would expect the supervisor to attend the Control Room and check the information, then send staff to the relevant area where the alarm was activated to check the area.[695] Apart from the logbooks, which Ms Alexander said she had not checked, Ms Alexander accepted that the relevant staff had not performed in accordance with her expectations in relation to the alarm sounding in the Control Room that night.[696]

442. It was indicated in evidence that if it was realised that the fence alarm was activated, it would be called in as a Code Green, being an attempted escape.[697] A Control Room operator would be expected to travel to the location of the breach in a vehicle and the 12 member emergency response team would then be guided by the Control Room operator to the location where the breach was believed to have occurred.[698]

443. There was some discussion in the inquest as to whether there were any written guidelines or procedures available in the Control Room to assist the operators. Mr Reweti and Mr Bain gave evidence that there were operation guidelines in the Control Room at the time,[699] but Mr Noonan gave evidence that he had looked for any manuals or guidelines on previous shifts and found none.[700] It seems that if they did exist, they were not drawn to the attention of Mr Caramancion or Mr Noonan in any meaningful way, so they were of little use in any event.

[693] T 143.
[694] T 105, 140.
[695] T 106.
[696] T 106.
[697] T 248.
[698] T 447.
[699] T 184, 450.
[700] T 391.

444. At the time of preparing his report Detective Broadribb was informed that the Control Room procedures had changed so that all Control Room operators had proper training and competency assessment and were required to have a minimum of three months' experience before being rostered to work unsupervised in a control room.[701]

445. Ms Alexander gave evidence that after this incident, and following the ensuing riot being quelled, a review was completed and an expression of interest was sent out for officers who wanted to be placed in Master Control. Introductory training was then provided by the IT service provider, with additional enhancements to the training including advice on how to respond if different events occurred while in the Control Room.[702] All new Control Room operators are also designated a mentor while a trainee, who can provide them with training and advice.[703]

446. Mr Peh agreed that there had been improvements provided in the training for Control Room operators to allow them to build up their experience in the Control Room, which were an improvement on the previous system and, at the time of the inquest, he believed it was working well.[704]

447. Mr Guevarra had not worked in the Control Room at the time of Mr Chegeni Nejad's death, but he nominated himself to be trained in the role when expressions of interest were sought in the period after. He was, therefore, in a good position to describe the training system that was implemented. Mr Guevarra indicated that he received a half day of technical training from the service provider and then training from Serco in relation to the relevant procedures via 'on the job' training with an experienced operator. The procedural training is estimated generally to take four to six months and at the end the trainee is assessed by the security risk manager and has to pass a competency test to be deemed competent to be put on a list as a trained Control Room operator. Once deemed competent, that officer is then able to perform the supervisor role, which Mr Guevarra has now successfully achieved.[705] Mr Guevarra advised that another change implemented is to ensure that there are always two officers in the Control Room at all times, other than when one officer is on a very brief toilet break.[706]

448. Bolstering this information of new procedures provided by the witnesses, information was provided in final submissions filed on behalf of Serco as to the significant steps taken by Serco regarding the operation of the Control Room and the training of officers assigned to the Control Room. It was indicated that the changes were "designed to ensure that the allocation of two inexperienced and inadequately trained officers to the Control Room in the one shift did not eventuate"[707] again. The changes described were put in place prior to the closure of Christmas Island IDC. In brief, the changes involved suitable applicants, who self-nominated and were then interviewed

[701] T 63.
[702] T 107.
[703] T 109.
[704] T 249 – 250.
[705] T 315 – 316.
[706] T 316 – 317.
[707] Submissions filed on behalf of Serco Australia Pty Ltd, dated and filed 11 October 2018, [26].

and selected, undergoing training in Control Room operations and procedures from the technology services provider. Following this formal training, the trainees had to complete a minimum three month probationary period during which they could only be assigned to the Control Room with a permanent Control Room operator. At the end of the three month probation period they could undertake competency assessment. If assessed as competent, the trainee than could be assigned as a permanent Control Room operator.[708] I assume this procedure for training Control Room operators will be reinstated as part of the reopening of the centre.

449. In addition, an easy to use work instruction booklet has been prepared to provide Control Room operators with step by step written instructions for how their duties are to be carried out during their shift, including during an incident.[709] I have been provided with a copy of this booklet and note the procedures to be followed in the event of an escape, including when the alarm sounds indicating an escape, are set out in detail. I assume that the initial training provides some examples of how the alarm sounds, so that operators are familiar with it.

450. I am satisfied from the information put before me that the failings that led to the Control Room being staffed by insufficiently trained Serco staff members will not be repeated. The new training protocol covers the correct procedure to follow when the perimeter alarm sounds, so I am satisfied there is unlikely to be a similar failure to identify an escape, as occurred on the night of Mr Chegeni Nejad's escape.

The Search

451. Although not strictly part of Mr Chegeni Nejad's supervision, it follows on from the escape that there was a search by the authorities to try to locate Mr Chegeni Nejad and return him to custody.

452. Ms Alexander attributed Mr Chegeni Nejad's successful escape to a breakdown in the Control Room Operations. Ms Alexander agreed that if the Control Room staff had recognised that the alarm signalled an escape at an earlier stage, there could have been an opportunity to capture Mr Chegeni Nejad, although she did note that they would not have left the carpark area as it would not have been safe to send staff into the jungle to search for him at that stage of night. They could, however, have shone torches and called out to Mr Chegeni Nejad, to try to encourage him to return voluntarily.[710] Nevertheless, as has been noted earlier, if he did not wish to be found, he could have concealed himself very easily without having to move far into the jungle.[711]

453. Detective Broadribb was asked what the AFP could have done if Mr Chegeni Nejad's escape had been detected at the time he climbed the fence late in the evening on 6 November 2015. Detective Broadribb confirmed that a similar action plan would have been invoked as was

[708] Submissions filed on behalf of Serco Australia Pty Ltd, dated and filed 11.10.2018, [27].
[709] Submissions filed on behalf of Serco Australia Pty Ltd, dated and filed 11.10.2018, [28].
[710] T 108 – 109, 141.
[711] T 141.

commenced in the morning, but it would have been confined to vehicles patrolling the roads and inspection of open areas around the facility. There would not have been any foot searches of the jungle at that stage as it would have been deemed unsafe to do so in the dark.[712]

454. Both Detective Broadribb and Ms Alexander agreed that, in those circumstances, it would have been very easy for Mr Chegeni Nejad to conceal himself and hide from any approaching vehicle or people in the carpark.[713]

455. Ms Alexander gave evidence that she had been involved in the search for a missing staff member on a previous occasion and, despite an extensive search coordinated by the AFP, even including the use of cadaver dogs, they were unable to locate the missing person or their remains.[714] I myself have been involved in a number of coronial matters where people have gone missing on Christmas Island, without any apparent intention to conceal themselves, and yet their bodies have never been discovered, so I accept the proposition that Mr Chegeni Nejad could potentially have remained undiscovered indefinitely if he desired.[715]

456. Ms Reeves from the Commonwealth Ombudsman's Office had raised some concern during her oral evidence about the way the EEC performed during this incident. Ms Reeves advised that after the events the Commonwealth Ombudsman's Office made some suggestions in regards to future management of the ECC, which she was pleased to say had been seen to be taken up by the various parties.[716] With that in mind, I do not propose to make comment on the way the ECC was run during the search for Mr Chegeni Nejad.

457. I am satisfied that, once Mr Chegeni Nejad escaped the facility, it would have been almost impossible to find him unless he wished to be found. Therefore, I make no criticism of the way the search was conducted and I do not consider the delay in commencing the search altered the outcome.

Treatment

458. The mental health care provided to Mr Chegeni Nejad over the long period that he was held in detention was a major focus in the questioning of witnesses during the course of the inquest, as well as extensive submissions filed on behalf of some of the parties.

459. I have set out in great detail in my finding the history of Mr Chegeni Nejad's medical treatment while in detention. I am satisfied, based upon all the evidence that is before me, that Mr Chegeni Nejad came into detention as a vulnerable person given his history of torture and trauma in Iran, as well as prior drug abuse and limited education, which meant he would be predisposed to be less able to cope and have low resilience when detained in Australia. This is nothing new to the authorities, as the policy that was put

[712] T 69.
[713] T 69, 141.
[714] T 141.
[715] T 143.
[716] T 492, 496.

before me about how to deal with detainees with a history of torture and trauma demonstrates.

460. Mr Chegeni Nejad's medical history and documented behaviour reveals that, consistent with what could be anticipated from his known history, he struggled to cope in detention. As his detention period became prolonged, his mental health deteriorated. It was not a consistent and steady deterioration. He had good times and bad times, depending on where he was held, what medication he was on and other factors that can't be pinpointed with any accuracy. Nevertheless, the evidence before me shows that Mr Chegeni Nejad became progressively unwell, so that in the final six months or so of his life, he was never really described as well again.

461. As to what precisely was wrong with Mr Chegeni Nejad, there was some debate and uncertainty in the evidence. As noted at the start of this finding, I do not propose to make any comment on the government policies in relation to the detention of unlawful maritime arrivals or other asylum seekers. However, the evidence does raise the question whether his mental health issues were primarily caused or contributed to by his prolonged detention, which is a proper question for me to consider as part of this inquest.

462. Dr Peter Young is a Consultant Psychiatrist who is currently the Acting Clinical Director of the South East Sydney Local Health District and also engages in private psychiatric consulting. From 2011 to 2014 Dr Young was the Director of Mental Health Services for IHMS, which covers much of the period when Mr Chegeni Nejad was held in immigration detention, although not the year of his death. Dr Young resigned from his position in 2014 after reaching the conclusion that he could not continue to work in a system that, in his view, "was causing harm to people."[717] Dr Young had felt particular frustration with the offshore IDCs and had felt that the Department was unwilling to acknowledge or to deal with issues that he saw arising in those centres.

463. Dr Young has been quoted in the media as describing the detention environment as "inherently toxic"[718] as it has "characteristics which over time reliably cause harm to people's mental health."[719] I asked Dr Young whether it would be fair to say he had a fundamental objection to prolonged immigration detention. Dr Young in effect agreed, but clarified that he took that position because from a medical point of view, there is "a lot of evidence to establish that prolonged detention and the way that we do it for people in immigration detention in Australia causes them harm to their mental health."[720] Dr Young emphasised that his own experience in the immigration detention system, and data he was involved in collecting and reporting during that time, supported that position.[721] Dr Young stated that it is a universally accepted phenomenon amongst the medical field that long

[717] T 1215.
[718] https://www.theguardian.com/world/2014/aug/05/-sp-australias-detention-regime-sets-out-to-make-asylum-seekers-suffer-says-chief-immigration-psychiatrist, p. 1.
[719] https://www.theguardian.com/world/2014/aug/05/-sp-australias-detention-regime-sets-out-to-make-asylum-seekers-suffer-says-chief-immigration-psychiatrist, p. 1.
[720] T 1215.
[721] T 1215.

detention causes harm to mental health.[722] This seems to be an understandable phenomenon, even to a layperson.

464. Dr Young also clarified in his evidence that he didn't have a particular problem with IHMS as an organisation, but rather felt that the circumstances under which IHMS was engaged with the Department to provide the medical health services "created insurmountable problems to be able to do that in an effective way."[723]

465. Dr Young had limited opportunity to review the evidence and prepare his report for the court, as he was only instructed by the solicitors for the family at a late stage in the period prior to the inquest commencing. This put him at some disadvantage in the way he prepared the report and was able to refer back to material when giving his evidence. His report was also prepared in a format responding to some loaded questions provided by his instructors that put Dr Young at a disadvantage in that he appeared in his written report less objective than I found he was in person, when given a fair opportunity to express his professional opinion.

466. Accepting Dr Young came to provide his opinion with a preformed view in relation to the effects of immigration detention based on his experiences in that environment, and that he came to write his report in less than ideal circumstances, he nevertheless expressed opinions largely in agreeance with the court appointed expert, Dr Victoria Pascu.

467. Dr Pascu is a Consultant Forensic Psychiatrist with extensive experience within the Western Australian mental health system, including within prisons. She has not practised in the detention environment, but did give evidence she had provided treatment to detainees who came into the WA public health system. Dr Pascu was asked by the court to prepare a psychiatric opinion in relation to the mental health care provided to Mr Chegeni Nejad prior to his death. Dr Pascu is currently the Director of Clinical Services for North Metro Mental Health Public Health Ambulatory Care and was formerly the Head of Clinical Services at Graylands Hospital, but she provided this report in her private capacity as a forensic psychiatrist.[724] I will refer to both Dr Young and Dr Pascu's opinions, and how they concur and differ with each other, and also how they relate to Dr Spencer's evidence, noting Dr Spencer was the only psychiatrist who gave evidence who actually examined and treated Mr Chegeni Nejad.

468. Based upon his review of the available materials, Dr Young agreed with Dr Spencer that it was not possible to be absolutely certain about a definitive diagnosis for Mr Chegeni Nejad.[725] Therefore, he listed a range of conditions that could potentially form part of the differential diagnosis, emphasising the ones which he considered were more likely. Dr Young explained that the fact that Mr Chegeni Nejad came from a non-Western cultural background is also relevant as the diagnostic manual for psychiatric illnesses is American and is less relevant when applied to other cultures and people from non-English

[722] T 1216.
[723] T 1216.
[724] T 66; Exhibit 1, Tab 16.
[725] T 1219; Exhibit 1, Tab 13A, p. 1.

speaking countries.[726] Dr Young accepted the proposition that people from some cultures, particularly such as a Kurdish man from Iran, may have difficulty understanding or describing symptoms of a mental illness, which can manifest in a person such as Mr Chegeni Nejad describing these symptoms in a physical form.[727]

469. Dr Pascu also considered Mr Chegeni Nejad's tendency to somatise his symptoms by connecting his emotions with physical symptoms, was likely associated with his cultural background, as culturally it might be considered inappropriate, and seen as weakness, to talk about how he was feeling. She explained he might also struggle to describe his psychological issues in a different language, when that is not commonly discussed in his primary language.[728]

470. Dr Pascu spoke of cultural awareness training as important for all psychiatrists in Australia, but particularly those working in custodial environments.[729] Dr Young accepted the suggestion that this might indicate that psychiatrists working in the IDC environment might benefit from cultural awareness training.[730] In Dr Young's experience, because the psychiatrists were contractors rather than employees, this would not necessarily be easily done, but he did emphasise that IHMS tried to recruit psychiatrists who had different life experiences and came from other cultural backgrounds and/or could speak other languages.[731]

471. Dr Young went on to explain that the other difficulty with making a diagnosis for a person such as Mr Chegeni Nejad, is that there is little research done on populations in detention in Australia. Although he said it is clear from research that detention harms people's mental health, the more specific effects of this type of stress over time are not known.[732]

472. I asked Dr Young whether a person coming into the Australian immigration detention system who has already experienced torture and trauma would have, or would be likely to already have, mental health issues. Dr Young felt that was not necessarily the case, although it would certainly indicate an "increased degree of vulnerability."[733]

473. Dr Pascu expressed a similar opinion, stating that it is "well known that people with a history of exposure to traumatic events in their early lives ….together with any biological predisposition to mental health issues complicated by difficult environmental circumstances, will be more at risk of developing vulnerable personality styles and personality disorders."[734]

474. Dr Young said in his report that he felt the "difficulty in forming a diagnosis for Mr Chegeni Nejad most likely reflected an evolving clinical picture over

[726] T 1220.
[727] T 1220.
[728] T 1347 – 1348; Exhibit 1, Tab 12 [65] – [66].
[729] T 1369 – 1370.
[730] T 1221.
[731] T 1221.
[732] T 1221.
[733] T 1221.
[734] Exhibit 1, Tab 12 [63].

time."[735] Dr Young explained further in his oral evidence that in his experience, over time people in detention would often start off quite well in their initial health screen, even where they have been subject to torture and trauma in the past. They would then "become subjectively more distressed, more unhappy, more depressed"[736] over time and would develop an adjustment disorder, that could then progress to major clinical depression.[737]

475. Dr Young agreed that even at the end, there was no clear diagnosis for Mr Chegeni Nejad prior to his death, and there was more "a changing list of differential diagnosis."[738] Dr Young accepted his list was not intended to be an exhaustive list, but more a list of the diagnoses that were most likely.[739]

476. Dr Young spoke of Mr Chegeni Nejad's diagnosis of brief psychotic disorder at Brisbane Hospital and noted that it suggested it was not organic or drug-induced caused, nor originating from one of the well-recognised type of disorders such as schizophrenia, schizoaffective disorder or bipolar disorder. He expressed the opinion it fit the clinical picture of somebody who has vulnerabilities and who has experienced prolonged exposure to a stressful environment.[740]

477. Dr Young expressed the opinion in his written report that Mr Chegeni Nejad may have obtained improved diagnostic certainty from admission at an inpatient mental health facility. At the time of writing his report, Dr Young was not aware of Mr Chegeni Nejad's recent hospital admission in Brisbane. Haven't had an opportunity to review the information surrounding his hospital admission, Dr Young commented that the really interesting thing was that once in the setting of the hospital Mr Chegeni Nejad's symptoms improved very substantially, and the disorder then re-emerged once he was put back in the detention environment. Dr Young's opinion is that this information supports the conclusion Mr Chegeni Nejad's psychotic disorder was as a result of the stressors of his environment.[741]

478. Dr Pascu appeared to take a similar view, suggesting that Mr Chegeni Nejad's clinical picture was more consistent with psychosis associated with psychological issues rather than a major psychiatric illness such as schizophrenia or bipolar illness.[742] Dr Pascu considered, from reading the medical notes, that Mr Chegeni Nejad's documented behavioural disturbances were generally seen by his treating practitioners as "not in keeping with an underlying functional mental illness but more in context of significant inability to cope with the distress of his circumstances and future."[743]

479. From the information available Dr Pascu considered that Mr Chegeni Nejad's

[735] T 1222; Exhibit 1, Tab 13A, p. 2.
[736] T 1222.
[737] T 1222.
[738] T 1223.
[739] T 1223.
[740] T 12224.
[741] T 1226 – 1227.
[742] T 1341.
[743] Exhibit 1, Tab 12, pp. 6 – 7.

> "fluctuating and changing mental state was consistent with what [she] would expect in a patient with a vulnerable, emotionally unstable personality who had to deal with long-standing stress and uncertainty in the context of lengthy legal processes….in a custodial environment where he was moved constantly for security reasons without significant consideration for his physical and psychological needs."[744]

Dr Pascu said she found it unsurprising that Mr Chegeni Nejad's mental state and behaviour gradually deteriorated over time, "given the limited support and lack of continuity of care"[745] that he received, with no clear timeframe for his future.

480. Dr Pascu emphasised that Mr Chegeni Nejad had a lot of pre-existing vulnerabilities due to trauma he experienced before his arrival in Australia, which contributed to him having an emotionally unstable personality disorder that made it difficult for him to regulate his emotions and react strongly to external events.[746] In her opinion the evidence of Mr Chegeni Nejad experiencing brief psychotic episodes fits with this background and could have been prompted by factors such as sleep deprivation and/or significant emotional trauma rather than a major mental illness such as schizophrenia or bipolar affective disorder.[747] Dr Pascu also considered that the IHMS staff appropriately considered an organic aetiology for his symptoms and investigations were organised where required, which largely ruled out an organic cause.

481. Ultimately, Dr Pascu expressed the opinion that Mr Chegeni Nejad suffered from "acute stress reaction, adjustment disorder on the background of an emotionally unstable (borderline) personality disorder, which predisposed him to recurrent depressive episodes associated with anxiety, somatisation symptoms and recurrent deliberate self harm behaviours in context of real or perceived stressors."[748]

482. Dr Spencer's evidence was not entirely dissimilar from these opinions, although she maintained more decisively that there was no clear emerging diagnosis and that her questioning of Mr Chegeni Nejad about his prolonged detention and placement at Christmas Island IDC did not elicit answers that confirmed this was a major factor for his distress.

483. Dr Spencer was asked her opinion on Dr Young's comment that Mr Chegeni Nejad's symptoms and behaviours were induced by the effects of prolonged immigration detention. Dr Spencer responded that it was a simplistic statement that did not consider all of the "various lifelong influences"[749] that would have contributed to Mr Chegeni Nejad's mental state. Dr Spencer suggested that some of his symptoms of distress and behavioural disturbance occurred before detention, given his history in Iran,

[744] T 1323; Exhibit 1, Tab 12 [61].
[745] Exhibit 1, Tab 12 [62].
[746] T 1324.
[747] T 1324.
[748] Exhibit 1, Tab 12 [70].
[749] T 1181

and she also noted that he had described some psychotic-like symptoms while living in the community in Melbourne, so he was still symptomatic when not in restrictive detention.[750]

484. However, when I asked Dr Young whether the information that he had reported some unusual symptoms even while in community detention undermined prolonged detention as the cause of his illness, Dr Young disagreed with this proposition, as he noted that community detention is still another type of detention, albeit less restrictive than facility based detention. Therefore, he suggested Mr Chegeni Nejad would still have been under considerable stress.[751] I accept that may be an explanation, as well as understanding that Mr Chegeni Nejad had a vulnerability to mental health issues anyway, and would have been dealing with a different form of stress living in a new community and culture.

485. Dr Spencer also drew attention to some comments in Mr Chegeni Nejad's medical notes where he talked about adopting some relatively extreme behaviours for religious reasons and at the suggestion of other detainees, which supported the view that there are other "subtle and not so subtle things that influence someone's mental health and mental state."[752]

486. Dr Spencer also noted that Dr Young did not appear to have considered anxiety disorders or personality disorders or organic disorders or drug-induced disorders as driving his symptoms. She mentioned possibilities such as post-traumatic stress disorder, adjustment disorder, hypochondria, epilepsy and drug use as all other reasonable possibilities open on his history and presentation and that should have formed part of a differential diagnosis list.[753] Dr Spencer emphasised that, from her involvement in Mr Chegeni Nejad's medical care and knowing any additional information she had received since his death, there remained real diagnostic uncertainty regarding his mental health diagnosis given the very high level of complexity in his symptoms, which to point solely to detention as the cause was overly simplistic and not borne out by the clinical record.[754]

487. Dr Spencer did not support a position that Mr Chegeni Nejad was malingering in the sense of trying to gain anything from reporting his symptoms, but she did point to some noted drug-seeking behaviour and suggested he may have been seeking connection or support as well, although it was unclear what his main driver was.[755]

488. Dr Spencer agreed with Dr Pascu's comments that Mr Chegeni Nejad's symptoms may have been dissociative, as part of an emotionally unstable personality disorder.[756]

489. Dr Spencer believed that Mr Chegeni Nejad's "preoccupation with an illness conviction," such as having a brain tumour our HIV, was part of an anxiety

[750] T 1181 – 1182.
[751] T 1227.
[752] T 1190.
[753] T 1183.
[754] T 1183 - 1184.
[755] T 1184 – 1185.
[756] T 1182.

disorder, rather than a psychotic disorder, and in support of her belief she noted that his health improved at the Royal Brisbane and Women's Hospital when he was told that his HIV test was negative. Dr Spencer emphasised that if such beliefs had been part of a delusion, that information was unlikely to have had any impact on his thinking. He also had a long standing preoccupation with physical health complaints.[757]

490. Going back to the effects of detention, there were many occasions when Mr Chegeni Nejad gave detention, and his increasing certainty that he would not be released on a visa, as the reason for his deteriorating behaviour, both to health staff, his case manager and other detainees. It is not contradicted that he had been released into community detention following the recommendation of a psychiatrist who believed prolonged detention was likely to cause a continuing deterioration in his mental health as he had "pretty much exhausted his capacity to cope in the detention environment,"[758] also noting his past trauma and torture experience.[759]

491. Further, Mr Chegeni Nejad did not initially cope well when returned to detention after his conviction. He showed some improvement when he moved to MITA and BITA, before deteriorating again in dramatic fashion while still in Brisbane. By the time he was at Christmas Island IDC, he was clearly finding his immigration pathway confusing and overwhelming when dealing with his new case manager at Christmas Island IDC. Although he had an experienced refugee advocate willing to help him, in the form of Mr McKeich, his case manager believed he no longer had the mental energy to engage with him.[760]

492. Dr Young suggested that the information showed Mr Chegeni Nejad's health was deteriorating as his response to detention and should have prompted a greater response by IHMS staff to inform the Department that his disorder was as a result of his environment and his mental health was being adversely affected by detention and to encourage them to expedite him on his immigration pathway.[761] Dr Young accepted that the Department was not always receptive to such advice, and "it was always a difficult conversation to have."[762] Dr Young also accepted that the positive pathway that Mr Chegeni Nejad was on shortly prior to his death was what he would envisage. However, he suggested the process should have been expedited earlier.[763]

493. Dr Young did not have any particular criticism of the medication regime implemented for Mr Chegeni Nejad, but commented that if the cause of his disorder was not schizophrenia or one of the other well recognised conditions, then you would not really expect his disorder to respond well to

[757] T 1182 - 1183.
[758] Exhibit 13, Letter from Dr McKeough to DIAC Health Liaison Officer, Curtin Immigration Detention Centre, dated 22 June 2012.
[759] Exhibit 13, Letter from Dr McKeough to DIAC Health Liaison Officer, Curtin Immigration Detention Centre, dated 22 June 2012; Exhibit 16.
[760] T 551 – 552; Exhibit 2, Tab 52, Summary of Timeline & Action annexure.
[761] T 1228.
[762] T 1228 – 1229.
[763] T 1229.

that type of treatment.[764] This is consistent with Dr McKeough's approach, before Mr Chegeni Nejad was released into community detention, and also consistent with Mr Chegeni Nejad's frequently expressed belief at the end that his medications were not generally effective in resolving his symptoms.

494. Dr Pascu agreed with Dr Young's comment that focussing on medication is not the solution for a person such as Mr Chegeni Nejad, who was exhibiting psychological distress, as it really medicalises what is a psycho-social problem and masks what is really an inability to cope with stress. However, Dr Pascu acknowledged that it is difficult to encourage a person to take control of their life when they are in a detention environment or any other institutional environment, and medication is often used in that environment as a tool, given the limits of the other available options.[765]

495. I am satisfied that when the evidence is considered as a whole, it supports the conclusions of Dr Young and Dr Pascu that Mr Chegeni Nejad's mental health issues demonstrated in detention were primarily due to an inability to cope in detention in the face of an uncertain future, accepting that he was already vulnerable due to his background history. It has been said that uncertainty does the most damage, as it leads to feelings of hopelessness, and I believe that this was the case for Mr Chegeni Nejad. His situation was compounded by the fact that he struggled to understand the complex immigration process, so that even when things were progressing well, he found that difficult to comprehend and often mistook positive information as a negative sign that he would never be granted the opportunity to live freely in Australia.

496. Dr Young expressed the view that Mr Chegeni Nejad's death was "quite clearly preventable"[766] and he clarified in his oral evidence that he based this opinion on the assumption that I would find that Mr Chegeni Nejad committed suicide, but he also felt his deteriorating mental health was relevant to his escape in any event.[767] In his report Dr Young emphasised the effects of Mr Chegeni Nejad's prolonged detention in this regard, suggesting that if his processing had been expedited, "then the deterioration in his mental health and subsequent death could have been avoided."[768] Dr Young clarified that he was not focussing upon the last few days prior to Mr Chegeni Nejad's death in this respect, but rather the overall effect of his prolonged detention.[769]

497. This is a fairly simplistic view, when considering whether a death is preventable. It is also something that is beyond the power of the IHMS staff. I am informed that as part of the contractual arrangements between the Commonwealth and IHMS, it is expressly provided that IHMS does not have authority or control over where any particular detainee is located.[770] However, it is accepted that IHMS staff can make recommendations concerning the detainee's location from a medical perspective, and have their

[764] T 1225.
[765] T 1326 - 1328.
[766] Exhibit 1, Tab 13A, p. 3.
[767] T 1233.
[768] Exhibit 1, Tab 13A, pp. 3 - 4.
[769] T 1234.
[770] Dr Mark Parrish statement Exhibit 9 [38].

opinion considered by the Department, although Dr Young and Dr Spencer both gave evidence this was not encouraged.[771] In my view, the mental health team as a whole were doing their best to manage Mr Chegeni Nejad's symptoms, acknowledging they could do little about the primary cause of his illness. The Department was working to organise his re-release into the community, but sadly it did not come in time for Mr Chegeni Nejad.

498. As to whether Mr Chegeni Nejad should have been recommended for a further hospital inpatient admission in October/November 2015, Dr Young's evidence was that it would have been useful if there was any remaining uncertainty about his diagnosis, as it would have been definitive in showing that it was the detention environment causing his symptoms.[772] Dr Young also suggested that in the days prior to his death, when Mr Chegeni Nejad was describing some bizarre psychotic-type symptoms, an admission may have assisted in resolving the situation, as it had when he was admitted to Brisbane Hospital.[773]

499. Dr Spencer disagreed with Dr Young's conclusion that Mr Chegeni Nejad could have obtained more diagnostic certainty from an admission to an inpatient mental health facility. Dr Spencer emphasised that Mr Chegeni Nejad had demonstrated a range of odd symptoms that were episodic and not falling within a clear diagnosis. Further, she noted a hospital is its own unique and artificial environment that can cause symptoms to emerge, or reduce symptoms, depending on the situation. Also, he had already received psychiatric input from an extended hospital admission in Brisbane, which had noted a brief psychotic episode without being able to identify a clear cause. Therefore, in Dr Spencer's opinion re-admission to hospital would not necessarily have resulted in a different outcome.[774]

500. Dr Pascu was asked whether she considered Mr Chegeni Nejad would have benefited from another hospital admission after his hospital admission in Brisbane. She agreed that in an ideal world it would have been beneficial as he would have had a temporary change of environment. Dr Pascu also agreed that acute containment in a hospital might have helped at least in providing some stability of staff. Also, a round the clock supervision and observation might have helped in clarifying diagnostic issues and managing acute suicidal risk. However, Dr Pascu also noted that it is unrealistic to hold people who are suicidal in hospital indefinitely, so Dr Pascu noted that it would not have been likely to be a long admission.[775] Dr Pascu therefore acknowledged that an admission may not have prevented Mr Chegeni Nejad's death.[776]

501. In my view, the evidence suggests an inpatient hospital admission might have helped improve Mr Chegeni Nejad's mental health, by giving him a respite from detention, but that is not a usual reason for a psychiatric

[771] Closing Submissions of IHMS, dated 11.10.2018, [4.5].
[772] T 1227.
[773] T 1309.
[774] T 1193 - 1194.
[775] T 1329.
[776] Exhibit 1, Tab 12 [77] – [78].

hospital admission. Further, given the known pressure for psychiatric in-patient beds in the WA public health system, and given the lack of any clear evidence he was floridly psychotic at the time, there is a real chance he would not have got a bed at the time. When he was obviously psychotic, or demonstrating genuine acts of self-harm, he was sent to hospital in the past, so I am confident if his symptoms had escalated, similar action would have been taken again. However, the evidence of all the experts was that there was nothing in the last couple of days that would have raised red flags.

502. Dr Young acknowledged that it is notoriously difficult to predict risk of self-harm or suicide, but emphasised that if someone is in a vulnerable state for a prolonged period of time, they are more likely to have episodes where they are at higher risk to themselves, and are more likely to be successful if those acts are repeated.[777] Dr Young accepted that Mr Chegeni Nejad's risk to himself fluctuated, like it does for most people, and made it hard to predict that on the days prior to his death he was more likely to act in the unusual way he did. Dr Young indicated the simplest way to manage his risk would have been to put him under an increased level of observation under the PSP system, which would have reduced his opportunity to do what he did. However, Dr Young accepted that there was nothing particular in Mr Chegeni Nejad's behaviour when he was seen by Nurse Li that would have made it obvious that his risk to himself had increased and he required increased observation.[778] Nevertheless, Dr Young expressed the opinion the evidence showed Mr Chegeni Nejad's mental health was on an "overall deteriorating course."[779]

503. Dr Pascu agreed that, based upon the known evidence, there were no obvious red flags in Mr Chegeni Nejad's behaviour in the last couple of days before he escaped that would have prompted him to be put on closer observations.[780] Dr Pascu also noted that people's risk of suicide changes frequently so standard risk assessments aren't very reliable to use as a guide to a person's risk of harm, and whether or not they say they are suicidal does not mean a lot from a psychiatric point of view about their risk.[781] Dr Pascu agreed with the proposition that Mr Chegeni Nejad's mental health issues and associated risk of self-harm were chronic and fluctuating in degree, and his risk to himself was not necessarily any greater while he was at Christmas Island IDC than before, such as when he was in Brisbane and had a psychotic episode.[782] However, she did say in her report that in her opinion his chronic risk of harm to himself appeared to have escalated over time, at least from when he first went into detention.[783]

504. This appears to me to be the overall theme, namely that Mr Chegeni Nejad was a vulnerable man whose mental health was adversely affected by being held in detention, and the longer he remained in detention without any clear date of release, the more deeply affected he would become. It was very

[777] T 1233 – 1234.
[778] T 1235.
[779] T 1239.
[780] T 1353 – 1356.
[781] T 1324 - 1325.
[782] T 1350.
[783] Exhibit 1, Tab 12 [68].

difficult for the IHMS staff to treat him in those circumstances, when they had no control over the major cause of his mental distress.

505. I accept that on the key dates of 4 November 2015 and 6 November 2015, when it was clear that Mr Chegeni Nejad needed medical assessment, he was seen quickly by IHMS staff and appropriately reviewed from a physical and mental health perspective. The expert psychiatric evidence before me was in agreement that there were no red flags or indicators that Mr Chegeni Nejad required urgent psychiatric assessment on those dates or suggested he was at acute risk of self harm.[784]

506. In summary, I accept that Mr Chegeni Nejad's mental health was adversely affected by his prolonged detention, and that was the primary cause of his mental health issues. In the early days, when this became apparent, psychiatric advice was acted upon by the Department and Mr Chegeni Nejad was released into community detention. Unfortunately, due to his actions in an incident in a detention centre preceding his release, Mr Chegeni Nejad was convicted of assault, which prompted his return to closed detention. In time, his re-release was raised with the Minister, and ultimately, when it again became clear that he was experiencing a high level of distress, steps were taken again to re-release him into community detention. Sadly, Mr Chegeni Nejad did not appear to understand how well this was progressing, and instead he appears to have taken a negative view of his prospects of release into the community, which I believe prompted his further mental decline and escape.

507. I consider Mr Chegeni Nejad's mental health treatment by IHMS staff was attentive and generally of the same standard as would be provided in the community. The only difference was the constant movement of Mr Chegeni Nejad, which meant he had little continuity of care, and the absence of any regular in-person psychiatric review when he was at Christmas Island. This leads to the next issue, considered below.

Transfer to Christmas Island IDC

508. In addition to the effect of long-term detention on Mr Chegeni Nejad's mental health, there was also evidence about the adverse effect of his regular movement between detention facilities, particularly the last transfer to Christmas Island IDC. This transfer was suggested to have detrimentally affected his mental health, so it could be said to be causally connected to his death.

509. As noted above, Mr Chegeni Nejad was described as being on a positive pathway, and active steps were being taken to try to facilitate his release into the community, either by way of community detention or on a temporary protection visa, for several months prior to his death.

510. In the meantime, Mr Chegeni Nejad was moved between a number of detention facilities. All of the doctors considered the mental health staff in the different centres tried to provide the care required, but Dr Pascu

[784] T 1353, 1356, 1359.

expressed the opinion his constant movement compromised their ability to do so. Dr Pascu's opinion, in particular, was that Mr Chegeni Nejad did not receive appropriate medical care while in detention, primarily because of this lack of continuity of care due to this movement between IDCs.

511. Dr Pascu expressed the opinion in her report that, given his complex emotional problems, Mr Chegeni Nejad would have benefited from more stability in his care. While Dr Pascu acknowledged the mental health staff individually provided a high level of care, she felt that his continuity of care was sacrificed by being moved from one detention centre to another. Dr Pascu acknowledged that the reasons for his movement were myriad, including at his request, but that irrespective of the reasons, it led to a lack of continuity that detrimentally affected his mental health care.[785] Dr Pascu was challenged on a comment she made that his movement was often for security reasons and security related policies, and she clarified that what she really meant was that the clinical aspect of Mr Chegeni Nejad's care may not always have been at the forefront of management's mind when deciding on his transfer.[786] I accept that this is a fair comment, particularly on the last occasion, where the evidence showed Mr Chegeni Nejad was moved to Christmas Island IDC for security reasons rather than for reasons related to Mr Chegeni Nejad's clinical needs.

512. I found it interesting that it was put to Dr Pascu that Mr Chegeni Nejad was never really well again after his psychotic episode, with which proposition she agreed, yet he was transferred to Wickham Point IDC and then to Christmas Island IDC with no apparent regard given to his mental health care, in particular the continuity of that care.[787] It seems from the evidence his mental health issues made him more difficult to manage, and the emphasis then moved to the security risk this presented, rather than a focus on treating the mental health issues that were causing this difficult behaviour. It was suggested that there was a health aspect to the moves, as greater security improved his safety by better containment, but I am not particularly attracted to that proposition.

513. Some questioning by counsel was directed to establishing that the transfer did not cause the deterioration in his mental health, as it was already deteriorating before he was moved to Wickham Point IDC. However, as Dr Pascu emphasised, on the whole he was still generally presenting as better where he was in an environment where he had more supports, and he coped less well where he had less supports.[788] Constant movement destabilised his support network.

514. Dr Pascu commented that there does not appear to be a focus in detention centres on continuity of care and providing a supportive and stable environment to help those not coping and those suffering from mental illnesses.[789] Dr Pascu recommended that consideration should be given to trying to provide a similar level of clinical care to people held in detention as

[785] T 1333 - 1334; Exhibit 1, Tab 12 [73].
[786] T 1337; Exhibit 1, Tab 12 [51].
[787] T 1343.
[788] T 1343 – 1345.
[789] Exhibit 1, Tab 12 [86].

is provided to members of the community, or at least prisoners in custodial environments. Dr Pascu suggested this should include timely access to hospitals, if required, and appropriate clinical handovers to ensure continuity of care. Dr Pascu commented that the clinicians appear to be trying to provide best clinical care, "but it appears that the underlying schism between custodial versus clinical paradigm" makes that difficult.[790]

515. Dr Young also emphasised the detrimental effect of Mr Chegeni Nejad's transfer between facilities in terms of the lack of continuity of care.[791] Dr Young emphasised that there is a level of trust built up between a patient and their mental health team, which new practitioners simply having access to the medical notes does not replace.[792] Dr Young believed moving between facilities disrupted Mr Chegeni Nejad's social relationships and therapeutic relationships with his treatment providers.[793]

516. As to the final placement at Christmas Island IDC, Dr Young did not dispute Dr Spencer's opinion that the mental health team at Christmas Island IDC at the relevant time was well-trained, competent, and experienced. Dr Young agreed that the mental nurses who work for IHMS are generally very good at providing mental health care, and are at least as good as most you would meet in the general community. He accepted they were able to provide appropriate care to Mr Chegeni Nejad on a day to day basis. However, Dr Young expressed concern about the lack of face to face contact with psychiatrists. Although Dr Young accepted that a video link psychiatric assessment is a reasonable compromise when a person is based in a remote area, he felt that it was not as good a substitute for face to face contact for a person such as Mr Chegeni Nejad who had additional communication barriers as he did not speak English as a first language and came from a different cultural background.[794] The advantage of being in a metropolitan based facility would be that this sort of compromise would not be required.

517. Dr Young also suggested that the purpose of seeing a psychiatrist with more frequency would have been to adjust other aspects of Mr Chegeni Nejad's treatment plan, which only a psychiatrist can do, such as changing his medication or directing other types of interventions, such as advocating for more expedient dealing with his immigration case.[795] Dr Young did not suggest that a psychiatrist might have seen signs that Mr Chegeni Nejad's risk to himself was escalating in the day or two prior to his escape, but rather that it was his ongoing care that would have been affected.[796]

518. Dr Pascu also suggested that face-to-face assessments by a psychiatric are much better in a complex situation where environmental issues are present, such as in a detention centre where there isn't a lot of trust between the patient and practitioner. Dr Pascu noted in a face to face assessment the psychiatrist is looking at not only what the person is saying, but how they

[790] Exhibit 1, tab 12 [87a].
[791] T 1231.
[792] T 1231 – 1232.
[793] Exhibit 1, Tab 13A, P. 3.
[794] T 1232 – 1233, 1299.
[795] T 1318.
[796] T 1319 – 1320.

say it, and it is hard to get a similarly full picture on a video link.[797] Dr Spencer gave evidence that the videolink and telephone link worked quite well, as an alternative to face-to-face assessment, but I did not understand her evidence to be that she felt it was the preferred option.

519. In Dr Young's experience, according to the model generally used, detainees who were vulnerable and who had other health conditions were generally kept in facilities that were more metropolitan and less restrictive than a place such as Christmas Island.[798]

520. Dr Spencer disagreed with what was said to be Dr Young's reference to the mental health services on Christmas Island as "scant," but I note this was not his term, but a phrase put to him in a question in his instructions. Dr Spencer's evidence was that she had visited the island herself on a number of trips in 2014 and early 2015 and described the mental health team based there as a "very dedicated and experienced bunch of people" who had a deep understanding of their clients in conjunction with the visiting psychiatrists and utilising videolink assessments. Dr Spencer therefore believed that it provided "quite a good level of mental health service"[799] and stated that in the community the ability to access mental health services is much less than that. She considered the level of psychiatric cover as sufficient and she did not believe greater access to a psychiatrist would have necessarily changed the outcome in this case.[800]

521. Dr Spencer also did not agree with Dr Young's description of the Christmas Island IDC as 'one of the most restrictive detention environments' as she described it as a very big centre designed for a very large number of people and providing more facilities and greater freedom of movement, and access to exercise and ovals, than some other centres, at least at the time Mr Chegeni Nejad was held there.[801]

522. The evidence was that Mr Chegeni Nejad did not express a particular concern about being at Christmas Island IDC, at least at first, but was more concerned with the fact of another transfer. The restrictive environment of Christmas Island detention centre, if it is the case that it is so, also did not appear to distress him as he often appeared to seek out closer supervision. However, I accept that the transfer to a different facility, once again, was overwhelming for Mr Chegeni Nejad, and I also note he was asking by the end to be sent back to Melbourne, where he had appeared to be well and relatively happy before he had issues with other detainees.

523. Having considered all of the evidence before me, I accept that Mr Chegeni Nejad would have benefited from greater stability in his medical care, and also from face to face psychiatric assessment, given his complex psychiatric needs, which had become apparent following his deterioration in Brisbane. This makes his transfer from Wickham Point IDC to an offshore facility, a place that did not have access to in-person psychiatric review on a

[797] T 1332.
[798] T 1230.
[799] T 1197.
[800] T 1198.
[801] T 1197.

regular basis, a less than ideal situation. In my view, a greater emphasis should have been placed on his medical needs and less on the security issues that Mr Chegeni Nejad's behaviour was raising. That leads into a discussion about the process for approving the transfer, particularly to Christmas Island.

524. To gain a better understanding of the transfer process from the perspective of the Department and Serco, I received evidence from some of those involved.

525. Ms Furby, who was the Superintendent overseeing the transfer process from Canberra, and with the primary decision-making power at that time,[802] was asked to comment on whether, in hindsight, she thought certain factors should have resulted in Mr Chegeni Nejad not being transferred to Christmas Island IDC prior to his death:

    i. Mental health concerns and PSP rating of high/imminent – Ms Furby's evidence was that other detainees at Christmas Island IDC had a history of mental health issues and were managed at times via high/imminent PSP, so Mr Chegeni Nejad's mental illness did not necessarily preclude him from transfer to, or placement, at Christmas Island IDC, as there was facility and capacity to manage people who were on high PSP at Christmas Island IDC. It was, however a relevant factor to be considered;

    ii. The likelihood of specialist appointments at a later time – Ms Furby's evidence was that if an appointment had been imminent, it might have delayed transfer, but if the appointment was scheduled for a date several months in the future (or in this case not yet scheduled), the transfer may still have proceeded and Mr Chegeni Nejad then returned closer to the scheduled date to attend the appointment; and

    iii. Positive immigration pathway – Ms Furby confirmed that an indicatively positive pathway would not necessarily have prevented transfer unless the grant of a visa was imminent, which it could not be said was the case here.[803]

526. None of these questions and answers really address the concern raised about a disruption of continuity of care.

527. As noted previously in this finding, Ms Pfeiffer, who was the Superintendent for Detention and Removals Planning Section at the time of Mr Chegeni Nejad's transfer, gave evidence that the Department sought to balance three factors in transfers, being the safety of the community, the cost and the needs and circumstances of the individual detainee. Ms Pfeiffer indicated that the needs of detainee were considered as part of the Department's duty of care to all detainees, and suggested that in making placement decisions, "medical needs were prioritised, and family and community links were considered carefully."[804]

[802] T 681.
[803] T 704; Exhibit 4, Tab 80.2.
[804] Exhibit 4, Tab 80.2; T 711.

528. There is nothing to suggest that Mr Chegeni Nejad's medical needs were prioritised in the decision to move him, nor his family and community links taken under consideration. The main emphasis appears to have been on cost (both in terms of making the most of a private charter flight and total numbers in facilities) and security issues, in the sense that Mr Chegeni Nejad's behaviour was creating management issues. The Commonwealth submissions appeared to accept the position that the last transfer to Christmas Island IDC was largely for security reasons.[805]

529. I have outlined earlier in the finding the evidence where various people within the Department have said they raised concerns about Mr Chegeni Nejad's suitability for transfer given his mental health issues and positive immigration pathway. It is sufficient here to point to the exchange between Mr Stevens and Ms Furby, where it was said that it would be noted that he was on high PSP as a relevant factor to be considered, and Ms Pfeiffer acknowledged was a relevant factor,[806] and yet this factor appears to have played little or no part in the decision –making.

530. IHMS submitted that information was put before the Department of Mr Chegeni Nejad's mental health issues, including his 10 day hospital admission, psychiatric review in July 2015, frequent self-harm attempts and recent incident of climbing onto the roof in the context of mental health issues.[807] They did not suggest that he was not fit to travel, as there was no indication he was not, nor that he couldn't receive appropriate mental health treatment at Christmas Island IDC, which again I understand was largely correct (accepting psychiatric review was possible by videolink, although not ideal). IHMS did not provide input as to what impact a transfer, in and of itself, might have on Mr Chegeni Nejad's mental state, but I get the impression that is not the kind of information the Department was seeking from IHMS as part of their contractual obligations.

531. In my view, given Mr Chegeni Nejad's behaviour had been identified by IHMS staff generally as behaviour related to mental health issues (as opposed to any physical cause), it was incumbent on the Department to consider how a transfer conducted without warning might impact upon his mental health, rather than putting the emphasis on the security risk his behaviour represented.

532. I accept the family's submission that a greater priority should have been given to social and therapeutic relationships and continuity of care when considering where Mr Chegeni Nejad was placed. Whilst I accept that there are various priorities that need to be balanced when considering where to place a detainee, and some of that comes down to numbers for financial reasons, the choice of which detainee is to be moved is at the discretion of the Department. The evidence before me indicates that, rather than Mr Chegeni Nejad's behaviour at Brisbane and Darwin being a red flag that his mental health was deteriorating and this needed to be a major factor in deciding upon his placement, his behaviour was seen simply as creating a

[805] Submissions in Reply by the Commonwealth, filed 8 October 2018, [65].
[806] T 704.
[807] Closing Submissions of IHMS, dated 11.10.2018, [4.9] – [4.`0]

security issue that could be expediently dealt with by moving him to Christmas Island IDC. The impact upon his mental health does not appear to have been a factor given any real consideration, despite his long and troubled mental health history. In my view, it should have been one of the major considerations taken into account. To say that he could still receive an adequate level of mental health care at Christmas Island IDC, fails to acknowledge the impact upon his mental health of a sudden move, without warning, to a new facility, where there was no easy access to either an IHMS psychiatrist or a hospital with psychiatric expertise.

Other Comments

533. Communication between IHMS staff, Departmental staff and Serco was raised in submissions by the family. Although there was a limit to what could be disclosed of Mr Chegeni Nejad's medical information to non IHMS staff, in my opinion there seemed to be a relatively good understanding by Serco staff who dealt with Mr Chegeni Nejad, and Mr Chegeni Nejad's Departmental case managers, that Mr Chegeni Nejad was suffering from mental health issues and might be at risk of harming himself. When he behaved in a concerning manner, Serco staff and his case managers took steps to have him medically assessed.

534. There is evidence that Mr Chegeni Nejad was suspicious of some of the IHMS staff, as he was concerned they would pass on information to the Department that might affect his immigration pathway. To encourage them to breach his confidentiality and do so, would certainly not have enhanced the therapeutic relationship. However, there was evidence relevant information was passed on at the PSP meetings when his risk was escalated, and in my view this was appropriate and sufficient to deal with the need to communicate relevant information about his mental health status to the other stakeholders. Mr Chegeni Nejad's last case manager gave evidence she was well aware of his mental health status, as it was discussed every day at the PSP meetings, and she acted appropriately to get him urgent mental health assessment when she became concerned when interacting with him.[808] She also advocated for his release into community detention, even though she was concerned that he might actually receive a higher level of mental health care in closed detention, as she felt it could have a beneficial effect.

535. All of this evidence supports the conclusion the various stakeholders communicated effectively.

536. My impression from hearing the evidence of the individual witnesses who were Departmental Case Managers or IHMS health professionals was that each person was acting from a position of wanting to help and provide good care and support for Mr Chegeni Nejad. However, they must work within the system and individually they had little control over where he was housed or how quickly his immigration status was resolved. I felt that they each did their best to advocate for Mr Chegeni Nejad but his mental health issues were unlikely to resolve entirely until he was released back into the

[808] T 514 - 516.

community. This was progressing, but as I noted previously, sadly had not eventuated by the time he died.

RECOMMENDATIONS

537. The submissions filed on behalf of the Office of the Commonwealth Ombudsman suggest I should recommend that the role, function and statutory basis of the OCO in relation to IDCs should be included as part of the training for all officers and for police who have an involvement with IDCs. It's not entirely clear to me whether or not this is currently done for Serco officers. If it is not, I agree that it should be included as part of the standard induction training for Serco officers proposing to work in IDCs. As for the Australian Federal Police, they were not represented at the inquest and so I do not consider it appropriate to take the matter further in relation to them. However, I have no doubt that members of the AFP will be aware of the contents of this finding, and if it is felt that there is any lack of understanding of the role, function and statutory basis of the OCO demonstrated from the factual evidence in this case, I'm confident it will be addressed appropriately. I therefore do not make a formal recommendation in that regard.

538. In submissions put before me, many recommendations were suggested by the family. I have considered them all, but note that a large number did not arise directly from the evidence before me. Accordingly, I address in this finding only those that I consider arise from the evidence at the inquest and are likely to lead to the prevention of similar deaths.

539. I accept the submission made on behalf of the family that the evidence before me establishes that Mr Chegeni Nejad came into detention with pre-existing vulnerabilities, which were exacerbated by his lengthy detention, resulting in a deterioration in his mental health over time. His deterioration is well documented in the almost 700 pages of IHMS medical notes pertaining to Mr Chegeni Nejad, as well as other medical notes from his in-patient admissions. It is also consistent with evidence from the expert psychiatrists, Dr Young and Dr Pascu, that this is an accepted phenomenon for people held indefinitely in prolonged detention. Even to a lay person, it makes sense that being held in detention without knowing when or if you will be released is going to have a negative effect on the minds of all but the most robust optimists.

540. The family has quoted in their submissions the findings of the then NSW State Coroner, Magistrate Jerram in three inquests into suicides at Villawood Detention Centre in 2010. I respectfully adopt Magistrate Jerram's comments, as follows:

> *When government chooses to maintain a detention system, it carries a heavy responsibility. Similarly, a company which contracts to shoulder a*

large part of that responsibility is under a major obligation to fulfil its contract, both to government and to those in its care.[809].

541. It was also said in the same decision, that

> *It is surely stating the obvious to observe that persons detained in Immigration Detention Centres must, by the nature of their various situations, be at much greater risk of suicide than the general community. Loss of families, freedom, status, work and length of time must all play their part. The corollary of that is that those responsible for detainees owe a greater than normal duty of care to those persons regarding their health and well being.*[810]

542. In the three deaths investigated by Magistrate Jerram, as in this one, a lack of continuity in Departmental case managers and clinical care by health professionals was highlighted. I note that a recommendation was made that the Department and IHMS give consideration to changing the clinical governance structure at Villawood in relation to the provision of mental health services so that they would be overseen by a consultant psychiatrist.[811]

543. The evidence before me indicates that, although Mr Chegeni Nejad received attentive health care from all of the health professionals who attended to him at the many different IDCs in which he was placed, there was limited access to a psychiatrist in each place, and in particular, limited access to psychiatrists for face-to-face assessments at some of them, and particularly Christmas Island.

544. A recommendation was suggested that there be on site psychiatrists at all detention centres.[812] Given the scope of this inquest, I have limited my attention to whether there should be psychiatrists available on-site at Christmas Island detention centre on a regular basis. The Commonwealth submitted that there was nothing in the evidence to indicate that access to an on-site psychiatrist would have made any significant difference to the care Mr Chegeni Nejad receive.[813] I disagree, as there was evidence from both Dr Young and Dr Pascu, and even Dr Spencer to an extent, that a videolink psychiatric review was not the preferred method of interview for a person in Mr Chegeni Nejad's situation, namely speaking English as a second language and from a different cultural background. It was accepted that it was the most practical method, given the remoteness of Christmas Island, but certainly not the preferred method if a face-to-face interview was possible.

545. The IHMS submissions acknowledged the evidence was that, where possible and practical, a face to face psychiatric assessment was preferable over one conducted by video conference. It was, however, submitted that the standard of healthcare delivery required of IHMS is only to deliver health services

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[809] *Findings in the Inquests into the deaths of J. Raulini, A. Al-Akabi and D. Saunders at Villawood Detention Centre, NSW in 2010*, 19 December 2011, p.12 (State Coroner, Magistrate Jerram)
[810] Ibid, p. 10.
[811] Ibid, p. 17.
[812] Submissions of the Family, undated, undated [61].
[813] Submissions in Reply by the Commonwealth, filed 8 October 2018, [105].

commensurate with what would be provided to patients located in remote areas of mainland Australia.[814] That might be true for patients generally, but I don't think the equivalent can be said of people with mental health issues in prisons, which is the more apt comparator. Although psychiatrists are not available daily, my understanding is that in most major WA prisons, psychiatrists attend or face to face interviews regularly, and in most cases the same psychiatrist attending a few days every week. There was evidence before me that mental health disorders are experienced a higher level in detention than in the general community, which I accept.

RECOMMENDATION 1

I recommend that the Department/Commonwealth should work together with IHMS to make it a contractual requirement for IHMS to ensure that a psychiatrist is available to provide in-person psychiatric assessments at Christmas Island for detainees at least on a fortnightly basis, acknowledging the practicalities of limited flight services to the island.

546. Training of staff in the Control Room was squarely raised by the evidence before me, and it was submitted by the family,[815] and supported by the Commonwealth, that staff dealing with camera and alarm systems at IDCs should be appropriately trained.[816] I accept those submissions, but also note my comments above that I accept the evidence provided by Serco that the training is now of an appropriate standard.

547. Some information was put before me by the family in submissions that a health advisory group, known as the Immigration Health Advisory Group (IHAG), that previously provided specialised expert medical advice to the Department, was disbanded in late 2013 and has not been replaced with any other form of *independent* advisory medical panel. Significant concern was raised about this decision by the Australian Medical Association at the time it occurred. The government's reported response at the time was that the proper care and treatment of people within the detention environment was of the utmost importance to the Government, but in effect that it could properly be dealt with and oversight provided internally.

548. No other evidence about this was led at the inquest, so it would be unfair to the parties to pursue it. However, I note it as a matter of interest, so that if another death arises in similar circumstances, it is apparent to other coronial investigators from this matter that there is a possible avenue to explore in terms of more open and transparent review of mental health care within detention centres, that perhaps is not currently being made available.

[814] Closing Submissions of IHMS, dated 11.10.2018, [1.3b].
[815] Submissions of the family, undated, undated [83].
[816] Submissions in Reply by the Commonwealth, filed 8 October 2018, [145].

It would certainly have assisted me to have an independent body of medical experts, with experience in the operation of detention centres, to have provided me with a review of the medical care and any suggestions for improvement. Whilst the Department and IHMS were cooperative in providing all documentation, and making witnesses available, it was still a difficult task to go through all of the materials, even with the expert assistance of Dr Pascu, Dr Young and Dr Spencer.

549. There was a submission from the family that there were egregious failings in the professional conduct of Dr Spencer. I do not find the evidence supports such a conclusion and I note such a proposition was never directly put to Dr Spencer in evidence to give her a fair opportunity to address such a serious allegation. The expert psychiatric evidence from Dr Pascu and Dr Young certainly did not suggest that Dr Spencer had been derelict in her duty and both psychiatrists generally agreed with Dr Spencer's conclusion that Mr Chegeni Nejad's diagnosis was uncertain. There was a suggestion that a further in-patient hospital admission may have assisted in this regard, but it was also noted that the 10 day admission a few months earlier had not assisted in determining a reason for Mr Chegeni Nejad's brief psychosis. I reject the submissions made on behalf of the family in relation to Dr Spencer.

550. One matter not necessarily at the forefront of questioning, but that appeared to me through consideration of the materials, was that Mr Chegeni Nejad made quite a number of requests to see a doctor or nurse and I note that there was usually a delay of several days between the request and the appointment. The Detainee Medical Request Forms showed that sometimes there was a day or two lag between Serco receiving the request and forwarding it to IHMS, but then there was usually another couple of days or more for the appointment. As an example, a request was received on 22 July 2015, which contained a complaint of a constant headache and accompanying vision problems, with a request for a review ASAP, but the appointment time was set for 28 July 2015.[817] I cannot imagine it would take six days in the general community to obtain a GP appointment for a similar complaint, and it is a long time for a person to be expected to wait for help when experiencing such symptoms. Another example is Mr Chegeni Nejad's last request made to see a GP and Mental Health on 26 September 2015 and he was not scheduled for an appointment until 1 October 2015.[818]

551. Mr Chegeni Nejad's behaviour in climbing the fence to get into the medical centre when refused because he did not have an appointment, is an example of his frustration with the system.

552. The obvious explanation for the delays is a lack of available staff, given the reported high level of health mental health issues of those in detention. This is supported by the evidence of one of the experienced mental health nurses who gave evidence, Nurse Li. Based on his experience at Christmas Island IDC, Nurse Li recommended that consideration be given to reviewing the

[817] Exhibit 10C, p. 3c.
[818] Exhibit 10C, p. 2a

mental health staffing profile on the island with a view to increasing the number of mental health clinicians.[819] Nurse Li also noted that best practice suggests it should be clinicians doing the observations when a person is considered at risk, and felt if that could be operationalised in a detention environment, it would be beneficial.[820]

553. I accept this is a valid suggestion, which aligns with the other evidence before me. As to the observations being performed by a clinician, that is more similar to some of the Crisis Care Unit models used in Western Australian prisons. There was some evidence about the observations being done by Serco staff during the inquest, but on the whole the evidence in that regard was limited. However, I can see the obvious benefit in such a unit being available, particularly in a place such as Christmas Island, where there is no easy access to a hospital in-patient facility. Nevertheless, given the evidence did not canvas this in detail, and given Mr Chegeni Nejad was not under observation at the time he escaped, I do not take this issue further.

RECOMMENDATION 2

I recommend that the Department/Commonwealth should work together with IHMS to make it a contractual requirement with IHMS that there be an increase in the number of mental health clinicians at Christmas Island than was the case at the time of Mr Chegeni Nejad's death, so that there is a reduced delay between requests for medical attention and appointments. Clinical governance of the provision of mental health services by the mental health team should also be supervised by a psychiatrist.

CONCLUSION

554. The issues surrounding the mandatory detention of those seeking asylum in Australia are complex, and not ones I have attempted to explore and resolve in this inquest. My focus has been upon the individual experience of Mr Chegeni Nejad within the detention system, once he arrived without a visa at Christmas Island.

[819] T 1006.
[820] T 1006, 1008.

555. The evidence before me shows that Mr Chegeni Nejad spent a long time in the immigration detention system, and over time, his prolonged detention led to a deterioration in his mental health. This was in the context of Mr Chegeni Nejad being a person vulnerable to mental health issues, given his background and the terrible things he had experienced in the past, which I understand is not uncommon for people who seek refuge in our country.

556. Efforts were made to release him into the community, to diminish his distress, and this had the desired effect. Unfortunately, due to an incident at a detention centre prior to his release, where Mr Chegeni Nejad assaulted another detainee, he received a criminal conviction that triggered a return to detention. Over time, as he remained in detention with no definite end in sight, Mr Chegeni Nejad's mental health deteriorated again. People within the system saw his distress, and took steps individually to facilitate his release, but he struggled to understand the complexities of the system and began to act out in a manner that led him to be transferred to increasingly secure facilities.

557. When Mr Chegeni Nejad was moved finally back to Christmas Island IDC, a full circle from where he started several years before, it must have looked to him like things were never going to improve, even though steps were being actively taken to release him into community detention. For reasons I can't fully explain, he made a decision to escape the Christmas Island IDC, and he successfully put his plan into action on 6 November 2015.

558. As most people knew, there was nowhere for him to go once he was outside. Despite a concentrated search, Mr Chegeni Nejad remained hidden from view until his body was found, not far from where he had escaped, on 8 November 2015. I have been unable to determine whether he died as a result of an accident or by his own hand. Either way, it is clear he died in a distressed state, physically debilitated from the extreme conditions on the island.

559. I extend my condolences to Mr Chegeni Nejad's family, who have not been able to see their son and relative for many years, since he fled Iran looking for a better life. It must have been very hard to know that he had travelled so far, and gone through so much, but never gained the life in Australia he had sought. The complexities of the Australian immigration detention system, and the inquest system, are no doubt difficult to comprehend. I hope that my finding to some degree sets out the history in a way that explains a little further his story.

560. Tragically, Mr Chegeni Nejad's story ends with his death in a hostile environment, far from home. Some of the issues that led to his escape have been resolved, and others are far more complex and beyond the scope of this inquest. The few recommendations I have made I hope will go some way to ensuring that, while people like Mr Chegeni Nejad are held in detention in Christmas Island IDC, they are given the best mental health care that can be provided, which is a responsibility that is owed to people who have had their freedom denied to them. This is particularly so, when it is known that detention is often the source of their declining mental health.

S H Linton
Coroner
02 May 2019