CHAPTER 4 - AFMA CARETAKER FACILITIES - DARWIN & BROOME

Background

4.1 The Australian Fisheries Management Authority (AFMA) is a Commonwealth statutory body that was established in 1992 under the *Fisheries Administration Act 1991* and manages Commonwealth fisheries under the *Fisheries Management Act 1991*. A Board of Directors is appointed to direct the operations of the Authority. The Minister for Resources and Energy oversights AFMA's activities.

AFMA manages detainee facilities in Darwin and Broome for Indonesian nationals and their vessels caught fishing within Australian territorial waters. A brief was provided by AFMA to the Committee on this matter in response to questions raised on separate visits conducted by the Committee Chair, Mrs Chris Gallus MP, and the Deputy Chair, Senator McKiernan, to Willie Creek, near Broome, in May and June 1998.

Location

Darwin

4.2 AFMA maintains caretaker arrangements at Darwin, pending the hearing of matters in court, or the repatriation of persons not being prosecuted. Apprehended fishermen are kept on their boats in Darwin Harbour, moored in the quarantine area. The detainees are provided with fresh food and water daily, and other services as required. There is a large tender launch oversighting boats under care.

Broome

4.3 AFMA also provides a caretaker facility at Willie Creek, around 32 kilometres north of Broome by road.

Administration

4.4 There are three levels of administration concerned with the caretaking facilities.

1 AFMA is the *principal* agency responsible for arrangements.

2 The Department of Primary Industries and Fisheries in the Northern Territory, and the Fisheries Department of Western Australia, at the workface perform a role as AFMA's "Coordinating Agent", oversighting the daily activities of the caretaker and carrying out AFMA's instructions as required. The Northern Territory and Western Australian Fisheries carry out this function under a reimbursable funding arrangement with AFMA.

3 The "Caretakers" are contractors to AFMA who carry out a full range of functions set out in the caretaking contract.

4 The Department of Immigration and Multicultural Affairs has the responsibility for the repatriation of the detainees and the cost of the repatriation is a cost to the DIMA budget. This is an expense for which there is no line item in the DIMA budget and which can be a considerable and unpredictable amount in any one year. In 1997-98 repatriation of illegal fishermen cost DIMA $275,000.

4.5 The Committee notes the Ombudsman's comment that these arrangements have created 'a long and uncertain chain of command from DIMA to AFMA to the State and Territory offices to the caretakers'[1] The Ombudsman concluded that the legislative and administrative arrangements dealing with detainee fishermen need to be clarified, and that DIMA should take a more active role in fulfilling its statutory responsibilities while the current arrangements remain in place.[2]

Current Facilities

Darwin

4.6 The caretaker provides basic services to illegal fishermen on board their boats in Darwin Harbour including food, water and medical attention as required. As there are no land based facilities at Darwin, toilets are not provided. Currently, detainees use the traditional ablution facilities which exist on their boats, and release waste into the sea. The Committee notes that the Ombudsman's report listed poor sanitation, as well as overcrowding among the concerns expressed about the conditions provided in Darwin.[3] The Committee was concerned about the environmental and health ramifications of these arrangements, and believes that hygienic sanitation services should be provided as a matter of priority. The Ombudsman reported a divergence of views about the appropriateness of detaining the fishermen on their boats rather than in a land based facility.[4] This is said to be the preferences of the fishermen and the arrangement has been favorably commented upon by Indonesian authorities.[5]

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1 *Administrative Arrangements for Indonesian Fishermen Detained in Australian Waters*; Report under Section 35A of the Ombudsman Act 1976; July 1998, Paragraph 5.5 - Detention Arrangements.

2 *Administrative Arrangements for Indonesian Fishermen Detained in Australian Waters*; Report under Section 35A of the Ombudsman Act 1976; July 1998, Summary and Conclusions, paragraphs 1 and 6.

3 *Administrative Arrangements for Indonesian Fishermen Detained in Australian Waters*; Report under Section 35A of the Ombudsman Act 1976; July 1998, Paragraph 5.5 - Detention Arrangements.

4 *Administrative Arrangements for Indonesian Fishermen Detained in Australian Waters*; Report under Section 35A of the Ombudsman Act 1976; July 1998, Paragraph 4.1 - Complaint from the Islamic Society of the Northern Territory - Investigation.

5 *Administrative Arrangements for Indonesian Fishermen Detained in Australian Waters*; Report under Section 35A of the Ombudsman Act 1976; July 1998, Overview - Purpose.

4.7 The Committee agrees with the Ombudsman's view that it would be highly desirable that a land based facility be established in Darwin as soon as is practicable.[6]

4.8 Preliminary work has been conducted to identify appropriate sites at which to locate a land-based facility adjacent to Darwin Harbour. However, suitable sites appear to be tied up due to planned commercial developments or native title land claims.

4.9 AFMA will be progressing this matter, if appropriate, once it has been decided which agency, either AFMA or the Department of Immigration and Ethnic Affairs, has responsibility for this activity and necessary funding is made available. The Ombudsman noted that both DIMA and AFMA had reported that they did not have the capacity within their existing budgets to provide funding to upgrade facilities at Darwin or Broome.[7]

Broome

4.10 Through the Caretaker contract arrangements, AFMA provides basic accommodation, cooking and sanitation facilities at Willie Creek. As a result of their visits to Willie Creek, it is the view of the Chair and the Deputy Chair of the Committee that these facilities would require some upgrading. By comparison with the facilities at the other IDCs, they thought the facilities at Willie Creek were inadequate. They observed two incomplete structures for which there did not appear to be any clear plans for completion. There was also a large and potentially dangerous unsecured excavation. The Committee notes that the Human Rights and Equal Opportunity Commission visited the Willie Creek detention centre as part of its inquiry into detention of unauthorised arrivals. The report of this inquiry - *Those who've come across the sea*, does not comment on the standard of facilities provided at Willie Creek.

4.11 In terms of upgrading the facilities, AFMA requires government finance up-front, or approval to enter into a longer term contract with provision to amortise capital improvements over, say, five years.

The need for upgrading facilities

4.12 The Committee notes the Ombudsman's finding that the existing facilities in Darwin and Broome are not satisfactory for ongoing detention of fishermen, and that improvements at both locations are urgently needed to provide appropriate and

6 *Administrative Arrangements for Indonesian Fishermen Detained in Australian Waters*; Report under Section 35A of the Ombudsman Act 1976; July 1998, paragraph 5.8 - Conditions of Detention.

7 *Administrative Arrangements for Indonesian Fishermen Detained in Australian Waters*; Report under Section 35A of the Ombudsman Act 1976; July 1998, Overview - Purpose.

reasonable facilities.[8] The Committee hopes that the funding issues will be resolved as quickly as possible to enable these urgent upgrades to go ahead

Insurance

4.13 Existing contracts require the two caretakers at Willie Creek and Darwin to carry basic public liability insurance to the amount of $10 million, plus workers compensation insurance. The Caretaker must also take out additional insurances to cover events such as loss or damage to vessels and catch, or injury to persons under care at the facility.

Statistics

4.14 There is a table at the end of this Chapter with statistics covering numbers of boats, crew, prosecutions, bonds, imprisoned, dismissed, total person days in detention, average days in detention and costs.

Security

4.15 Security at both facilities is managed by the Caretaker.

Darwin

4.16 In Darwin, the Caretaker service maintains a 24 hour watch over the fishermen's boats to ensure that those persons under care remain on their boats in the holding area, and to ensure that any interaction with outsiders is strictly controlled.

Broome

4.17 In Broome, the philosophy is to provide an environment that is non-threatening and which meets the Indonesian fishermen's basic needs, without any need for them to roam further afield. The facility provides a low-level of security. The detainees are free to visit the Caretaker at any time regarding problems or concerns.

Escort Duties

4.18 The Caretaker carries out escort duties under the direction and supervision of the Coordinating Agent.

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8 *Administrative Arrangements for Indonesian Fishermen Detained in Australian Waters*; Report under Section 35A of the Ombudsman Act 1976; July 1998, Summary and Conclusions, paragraph 12.

Medical Screening

4.19 Preliminary questioning of arrivals about medical concerns is carried out by officials to identify critical or chronic conditions, and ongoing observation of persons is conducted whilst under AFMA's care. When evidence of more specific conditions arises a more detailed screening is carried out at medical facilities in Darwin or Broome.

4.20 AFMA incurs considerable expenditure addressing medical conditions of Indonesian fishermen. Whilst all genuine complaints are treated without distinction to cause or period, they are for administrative purposes documented as either existing before the persons came into AFMA's care, or "care related" arising whilst in AFMA's care. Pre-existing conditions may include tuberculosis, chronic dental cases or thiamine deficiency, for example.

4.21 The Government of Indonesia was served with a third person note several years ago requesting the reimbursement to Australia of around $40,000 to cover two years expenditure on "pre-existing" conditions. A response was never received and costs have grown since then as the number of apprehensions and length of stay in detention has increased.

Legal Process

4.22 Matters are brought before the courts as quickly as possible. However, when there are pleas of "not guilty", there have been significant delays in the judicial process. Once matters have been resolved, the Department of Immigration and Multicultural Affairs repatriates detainees as quickly as possible, usually within a week. If convicted for a first offence, detainees are put on a bond and then removed by DIMA. However, prison sentences are sometimes handed down for repeat offenders. There is a record of one fisherman having reentered eight times.

4.23 Legal representation of the illegal fisherman was previously conducted by Legal Aid of Western Australia. Currently there is no legal aid available but *pro bono* assistance is available. However, some cases, in which guilty pleas have been entered, proceed to court without legal counsel.

Access/Inspections

4.24 Access to illegal fishermen is arranged by appointment, to fit in with daily activities, availability of escort officers, and the need to observe any specific health or quarantine issues. AFMA has agreed to facilitate visits by members of Islamic Societies for cultural/religious purposes.

4.25 Facilities in Darwin and Broome were recently inspected by Mr Ron McLeod, the Commonwealth Ombudsman, who, whilst noting that the facilities were basic, commented to AFMA that they were culturally appropriate but that some additional work would be necessary to cater for occupants who may stay for longer periods.

4.26 The facilities have also been visited regularly by other persons, including the Indonesian consuls from Darwin and Perth, who have found the standards acceptable. Other visitors to one or other of the facilities, include Sir Ronald Wilson, the then President of the Human Rights and Equal Opportunity Commission, Mr John Williams, WA State Director of DIMA, and Mr Graham Campbell MP, Member for Kalgoorlie, and Senator David Brownhill, then Parliamentary Secretary for Primary Industry and Energy, in addition to Mrs Chris Gallus MP and Senator McKiernan.

Interpreters

4.27 AFMA's coordinating agents employ the services of accredited interpreters for various activities related to Indonesian caretaking, interviews, court hearings and so on. In addition, Fisheries Officers and caretaking staff have varying levels of Indonesian language skills. AFMA supports on-going education of its officers and contractors to improve language skills.

STATISTICS RELATING TO AFMA CARETAKER FACILITIES

Darwin

Year	Boats	Crew	Prosecuted	Bonded	Imprisoned	Dismissed	Total person days in detention	Average person days in detention	Estimated average cost per day - People + boats[2]
1996	64	486[3]	99	88	10	1	12,057	24.8	$39.17
1997	98[4]	805[5]	175	164	8	3	21,396	27.11	$27.89

1 Not all members of all crews which arrive a prosecuted. Those who are prosecuted are either bonded or imprisoned.

2 Includes care of people, boats and subsequent boat destruction at end of appeal period. Persons reside on boats in Darwin.

3 Includes 42 persons from 1995

4 Includes 2 boats subsequently released

5 Includes 16 persons from two boats subsequently released, and 93 persons of Thai or Korean nationality.

Broome - Indonesians

Year	Boats	Crew	Prosecuted [1]	Bonded	Imprisoned	Dismissed	Total person days in detention	Average person days in detention	Est ave cost per day - People only	Boats only Total cost per boat[1]
1996	35	284	83	61	22	0	5,773	20.33	$34.92	$3,840
1997	33	208	120	102	18	7	5,372	25.83[2,3]	$55.55[4]	$6,029

1 Not all members of all crews which arrive a prosecuted. Those who are prosecuted are either bonded or imprisoned.