

Administration of detention centres

Provision of detention services

- 3.1 The Federal authorities responsible for the administration and management of detention centres in Australia are DIMA and the Australian Fisheries Management Authority (AFMA).

Immigration detention centres

- 3.2 Until 1997, immigration detention services at the centres were provided by Australian Protective Services Pty Ltd (APS). Following a tender evaluation process in 1997, Australasian Correctional Services Pty Ltd (ACS), a specialist company in the provision of custodial services, was selected as the service provider at immigration detention facilities. DIMA subsequently signed an agreement with ACS on 27 February 1998.
- 3.3 While ACS is contracted to deliver the full range of services required at the immigration detention centres, actual service delivery has been sub-contracted to Australasian Correctional Management Pty Ltd (ACM), the operational arm of ACS.¹
- 3.4 DIMA officers remain on location at all detention centres, monitoring service provision and performance on a daily basis and attending to immigration case management. All decisions on detainees' immigration status continue to be made by DIMA.

¹ But see paragraph 3.24.

Willie Creek Holding Centre, Broome

- 3.5 AFMA is a Commonwealth statutory body, established in 1992 under the *Fisheries Administration Act 1991*, which manages Commonwealth fisheries under the *Fisheries Management Act 1991*.
- 3.6 AFMA delegates many of the administrative responsibilities for the fishing vessels to officers of the WA and NT fisheries departments. Fishing boats intercepted fishing illegally in the Australian Fishing Zone (AFZ) by a Navy or Australian Customs Service vessel are detained by the relevant State/Territory Fisheries authorities while an investigation is conducted into the alleged offence. In the absence of detention powers in fisheries legislation, the fishers are detained using immigration powers.
- 3.7 The *Border Protection Legislation Amendment Bill 1999*, proposes specific powers of detention under fisheries legislation, but limited to seven days. Subsequent detention would remain under the immigration powers. AFMA has entered into contracts with private companies to provide the day to day caretaking services for illegal fishers and their boats at Willie Creek and Darwin.

DIMA's contractual arrangements with ACS

- 3.8 The detention agreement comprises three separate contracts with ACS:
- a General Agreement which provides the background for the relationship with the contractor;
 - an Occupation Licence Agreement which provides the contractor with the authority to use immigration detention facilities; and
 - the Detention Services Contract which sets out the detail of the services to be delivered. This contract has a number of schedules, including the Immigration Detention Standards (IDS) and performance measures.²
- 3.9 Under the detention services contract, the service provider's responsibilities include security at all DIMA detention facilities, provision of accommodation, maintenance, catering, health care and medical/dental treatment, educational and recreational activities, welfare and counselling, and most transport services for detainees.
- 3.10 Under the agreement, DIMA retains ultimate responsibility for the Government's duty of care obligation to detainees. However, the service

2 DIMA, **Detention Agreements between the Commonwealth of Australia and Australasian Correctional Services Pty Ltd**, 27 February 1998. The IDS are at Appendix H.

provider also has a 'duty of care'. The contract also provides DIMA with a range of powers should the service provider default, or in times of emergency. These include complete access to the detention centres and the service provider's records, power of attorney, and the ability to contract other service providers.³

- 3.11 The contract with ACM has recently been extended for 12 months, to allow time to assess ACM's performance and decide whether to extend the contract. Mr Andrew Metcalfe, Deputy Secretary of DIMA, made the following comments on the issue of contract renewal.⁴

Essentially, the department has a contract in place with ACM, called the general agreement, which has a life of 10 years. Although that sounds like a long period, the actual performance of the contract comes under a services contract which is the three-year contract we have been talking about. That ran from February 1998 until about now and has been extended to allow us to go through this particular process. It is open to the Commonwealth to extend the contract for a further period, but ... there are a number of issues that we are obliged to take into account in deciding whether or not we would extend the contract. The threshold issue is: do we believe that we are getting value for money? Are we able to satisfy ourselves in relation to that? ... Depending upon the outcome of that, we also have to look at issues such as whether we believe that they are performing all requirements of the contract to a satisfactory standard and whether they represent best practice in the industry. The value for money consideration is occurring at the moment.⁵

- 3.12 The contract also sets out a reporting and contract management procedure. Performance monitoring has been built into the detention contract to ensure compliance with the IDS. The contract includes incentives and sanctions to ensure high quality service which links payment to performance standards.
- 3.13 Through a process of quarterly formal evaluations, the contractor is assessed, for example, on what incidents occurred and how they were managed. Points either positive or negative, are assigned. At the end of this process, net negative points would result in a financial penalty, while net positive points would result in a bonus payment.⁶

3 'Duty of care' is not defined in the IDS.

4 Senate Legal and Constitutional Legislation Committee, Additional Estimates, 20 February, 2001, pp. 136-137.

5 *ibid.*

6 *op cit*, p. 126.

- 3.14 Commenting on this system, in his **Report of an Own Motion Investigation into the Department of Immigration and Multicultural Affairs' Immigration Detention Centres**, the Commonwealth Ombudsman noted that

It is possible that the contractual terms that impose penalties on ACM if their performance results in escapes and other incidents could produce an incentive to ACM staff that would lead to under reporting. In my view, it is important that in negotiating any renewal or new contract that any incentives to under reporting be removed. I will be considering this issue in my own motion investigation into incident reports.⁷

- 3.15 The Ombudsman also suggested that there was a need:

to have a clear framework for DIMA to produce some public reporting arrangement of its own to indicate where performance targets were not being met.⁸

Immigration Detention Standards

- 3.16 The principles and minimum standards of immigration detention are set out in a document titled Immigration Detention Standards (IDS), drawn up in 1997 by DIMA in consultation with the Commonwealth Ombudsman. These standards are also included in the contractual arrangements and are used to measure ACM's performance.
- 3.17 ACM is obliged to meet the minimum standards outlined in the IDS. These standards set out the service provider's responsibility to meet the individual care needs of detainees in a culturally appropriate way, while providing safe and secure detention. They cover such issues as the personal dignity of detainees, social interaction, religious and recreational facilities, safety, detainee management, etc. The IDS also address issues such as the personal attributes and competence requirements to be met by the contractor's staff.
- 3.18 While the standards were made an integral part of the contract with ACM, DIMA stated that the contract 'is not prescriptive' about these standards because 'it is more about quality' of delivery.
- 3.19 **The Committee is of the view that, at the time of its visits, not all of these standards were being met.** DIMA suggested that there were

7 Commonwealth Ombudsman, **Report of an Own Motion Investigation into the Department of Immigration and Multicultural Affairs' Detention Centres**, 2 March 2001, p. 25.

8 *ibid.*

practical reasons for this. In response to the sudden and large increase in unauthorised arrivals, provision was made at very short notice. Its initial emphasis was on providing lodgings within a secure facility. DIMA has assured the Committee that the emphasis is currently on improving these facilities to meet the IDS.

3.20 The Flood Report found that:

While overall the Standards provide a sound and responsible basis for detainee care, further attention needs to be paid to some areas, for example, education provision and the issue of detainee privacy. To this end, I recommend that DIMA review the Immigration Detention Standards in advance of the renegotiation of the service provider contracts.⁹

3.21 DIMA has supported this recommendation to undertake a review of the Standards, with legal advice, before renegotiating any contract with ACM or another potential provider.

3.22 HREOC has prepared an alternative set of detention guidelines. Its version seeks to improve the IDS by comprehensively translating all relevant international law and international minimum standards of detention for Australian conditions. HREOC intends that its Guidelines will facilitate further dialogue and cooperation between the Commission, DIMA, ACM and relevant non-government agencies to the development of acceptable minimum standards for immigration detention in Australia.¹⁰

Australasian Correctional Management Pty Ltd

3.23 Seventeen companies were invited to put in a proposal for the provision of immigration detention services. Five proposals were lodged and Australasian Correctional Services Pty Ltd (ACS) was awarded the contract. ACS is owned by Wackenhut Corrections Corporation, a subsidiary of Wackenhut Corporation, an American company, and Theiss Constructions, an Australian company.¹¹

3.24 The actual delivery of this contract has been sub-contracted by the parent company ACS to Australasian Correctional Management Pty Ltd (ACM). ACM also runs four prisons in Australia: Arthur Gorrie Remand Centre in

9 Phillip Flood AO, **Report of Inquiry into Immigration Detention Procedures**, February 2001, p. 27.

10 The IDS will be further considered in Chapter 6.

11 Senate Legal and Constitutional Affairs Committee, *Additional Estimates*, 20 February 2001, p. 134.

Brisbane, Junee Correctional Centre in NSW, Fulham Prison in Melbourne and the Melbourne Custody Centre.¹²

Cost of Detention

- 3.25 DIMA advised that the overall direct cost of detention of asylum seekers in Australia for the 1999/2000 Financial Year was \$A96,650,701, with an average cost per detainee per day of about \$A104. These figures include payments made under the contract for managing the centres, as well as Departmental expenses such as those for employees, travel, motor vehicles, telephones, costs for interpreting services, depreciation and other administrative costs. They do not include capital costs, nor the cost of detainees held in State/Territory jails.¹³
- 3.26 There have been several incidents at detention centres in the current financial year that have caused additional costs. For example, the riots and resulting fire at Woomera in August 2000 caused a total of over \$A1m in damages. After insurance claims have been settled, the net cost of the damage to the Australian taxpayer is expected to be about \$A0.5m.¹⁴

12 DIMA, Media Release DPS 4/97. On 25 May 2001, it was reported that the contract with ACM would be put out to further public tender, so 'that the offer represented best value for money'. See DIMA Media Release DP S16/2001 of 25 May 2001, and AAP Report No 1908.

13 Question on Notice (44), Additional Estimates, Senate Legal and Constitutional Affairs Committee, 20 February 2001. See paragraph 4.4 for further information.

14 Question on Notice (52), Additional Estimates, Senate Legal and Constitutional Affairs Committee, 20 February 2001.