WARM

Women and Reform of Migration

Broadway NSW

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600

Dear Sir/Madam

Please find enclosed a submission to the Inquiry into the administration and operation of the Migration Act 1958 compiled by WARM (Women and Reform of Migration).

WARM is a group of community workers and academics working towards migration reform, particularly focusing on women and children in the migration system.

Our submission comprises three parts:

1. RESPONSE AND RECOMMENDATIONS TO THE 1 JULY 2005 AMENDMENTS ON THE DOMESTIC VIOLENCE PROVISIONS
2. RECOMMENDATIONS ON ALTERNATIVES TO MANDATORY DETENTION FOR WOMEN ASYLUM SEEKERS
3. RECOMMENDATIONS ON WOMEN IN IMMIGRATION DETENTION

WARM members are willing to appear before the Senate Inquiry hearings to speak to our submission.

Please don't hesitate to contact me for any further information.

Sincerely

Dr Christina Ho
On behalf of the WARM group

WARM (Women and Reform of Migration) Submission Part 1:

RESPONSE AND RECOMMENDATIONS TO THE 1 JULY 2005 AMENDMENTS ON THE DOMESTIC VIOLENCE PROVISIONS

Prepared by Jane Corpuz-Brock (Immigrant Women's Speakout Association of NSW) and Jennifer Burn (University of Technology, Sydney)

1. 1 July 2005 changes to the domestic violence provisions set out in Division 1.5 of the Migration Regulations 1994.

a) Changes to the regulations

The changes require the Minister for Immigration to assess claims of domestic violence not supported by a court order or finding. If the DIMIA Case Officer exercising the Minister's delegated powers is not satisfied that the alleged victim has suffered domestic violence, then the Minister must seek and accept the opinion of an independent expert (sub-regulation 1B and 1C).

The Minister may gazette such 'independent experts' defined by sub-regulation 1.21 (1) as a person suitably qualified to make independent assessments of non-judicially determined claims of domestic violence and is employed by or contracted to provide services to an organisation gazetted to make such assessments.

Centrelink was gazetted as such an independent expert (notice date 22 June 2005).

Other changes (allowing the use of Police records as evidence; limitations of future sponsorships by alleged perpetrators) are outside the scope of this paper.

b) Context of domestic violence

Domestic violence generally takes place in a context where the perpetrator exercises or tries to exercise power over the victim/s. Physical violence, if it occurs, is one of the means by which the perpetrator seeks to exercise his power (the vast majority of perpetrators are men) over the victim/s. However, there are many other ways that a perpetrator may exercise power in an abusive relationship –

- Threats without actual physical violence;
- Denying the victim any money or income, creating financial dependency and impoverishment of the victim;
- Emotional manipulation and 'violence';
- Cutting the victim off from family, friends, other supports, and/or the wider community;
- Threats or violence against others (e.g. children or other loved ones of the victim)
- Threats to have children taken away from a 'bad mother'
- Use of the dependency of family in the victim's country of origin by, for example, withdrawing the perpetrator's financial support to the victim's aged parents or dependent relatives outside Australia; or making promises to sponsor other family members to Australia dependent on the victim's 'good behaviour' or compliance.

- Shaming the victim in her family or community by false allegations (for example of 'infidelity' or criminal or 'immoral' behaviour)
- Using the power and authority of family, the community, or government authorities to control the victim's actions, choices or options.
- Limiting the victim's access to legal advice to the lawyer or solicitor acting on the perpetrator's behalf in sponsorship or other matters;
- Manipulation of Immigration processes, including threats to withdraw sponsorship, report the victim to DIMIA or the Police and have the victim deported;
- Withholding the initial sponsorship of a spouse or partner dependent on the 'good behaviour' of the victim or compliance to conditions imposed by the perpetrator
- Involving the victim in activities that may breach (or the perpetrator convinces the victim will breach) visa conditions or the law, and threatening to report the victim to DIMIA – an example is working contrary to the provisions of a previous visa before marriage or the grant of a partner or spouse visa.

In the case of a woman migrating to Australia to marry an Australian citizen or permanent resident, they are more vulnerable to such tactics of control because the victim –

- May speak and understand little or no English;
- Is unfamiliar with Australian legal, welfare and immigration processes
- Is cut off from all her previous supports (family friends etc) in her country of origin;
- Has no independent income or resources and is not able to work or find employment in Australia;
- Has responsibility for children, and often very young children;
- Is dependent upon the perpetrator for all the necessities of daily life, social contact and interaction, and the completion of legal and immigration processes and documents;
- Is surrounded by people (family, community etc) who support and are sympathetic to the views and actions of the perpetrator.

In the Immigrant Women's Speakout Association's experience of handling dozens of DVP applications over 8 years, victims of domestic violence –

- Face immense family and community pressure when making claims of domestic violence public;
- Feel shame (often intense shame) and often (irrationally) blame themselves;
- Have no financial, community or social resources to support them when they escape an abusive relationship;
- Often have endured an abusive relationship for months or years, for reasons such as fear of deportation, or out of concern for children;
- Risk 'everything' to escape an abusive relationship,
- After they make their claim of domestic violence find themselves cut off from their family, community, former social supports, income etc;
- Discover after their claim of domestic violence, that the perpetrator lied to them about their legal and immigration situation and rights, and that the perpetrator may well have used this incorrect information as part of the regime of control exercised over the victim;

- Finds it very difficult to speak to anyone about their experience of violence and humiliation, especially in an official or public setting such as a Police station or a Court.

As a service which also conducts early intervention family programs in parts of Western Sydney, and collaborates closely with other women's migrant, and community groups, Immigrant Women's Speakout Association's experience clearly indicates that many women in abusive relationship, and who have a claim under the DV provisions, do not make such a claim for the reasons outlined above.

The very small percentage of eligible visa applicants actually applying under the DV provision represents an under-reporting and under-utilisation of the provisions. This is due to the pressures listed above, the fact that most victims are not aware of their rights under the provision, and the significant difficulty of satisfying the requirements of the provision for a woman in an abusive and dependent relationship as set out above.

Any false claims under the DV provision are outweighed by cases where either –

- The victim stays in and endures an abusive relationship in the hope of a permanent visa or Australian citizenship
- The perpetrator never completed required sponsorship (for example for an on-shore applicant) and therefore the victim cannot access the DV provision.

It is regrettable that it is only when a crisis or traumatic situation has arisen (such as actual physical violence, or a woman has a breakdown of some kind) that third parties (such as Police, doctors or social workers) may intervene and play a support or advocacy role for the victim. A 'sophisticated' perpetrator may avoid such a crisis for extended periods, all the while increasing the dependency of the victim on the perpetrator.

2) Implications of the changes in the context of domestic violence

The changes appear neutral when read in isolation and as mere words on a page.

Read in context, the words are loaded. The provisions make the situation of the victim in an entrenched abusive relationship more difficult, and ensure even fewer women will escape an abusive relationship and access the protections and rights they have under the DV provision and other laws.

In particular, women who are victims of an abusive relationship where the abuse is not physical, or is infrequently physical, will find it even more difficult to support their claims, and will find the process even more onerous and convoluted.

The provisions and the Department's procedures and directions do not set out the obligations and responsibilities of people making adverse inferences against a victim's DV provision application. There is no process whereby a victim may be advised of, and answer such adverse information before referral to an independent expert.

A victim is required to provide statutory declarations to support her claim, and face the legal consequences if her declaration is found to breach the S*tatutory Declarations Act 1959.* People making claims adverse to the victim face no such requirement, and no such consequences.

Baseless rumour and innuendo may found a referral to an independent expert. A scared, isolated and dis-empowered victim will be discouraged in her claim by this 'rejection'. Her morale will be compounded by the convoluted legalese of the official letter which DIMIA uses to pass on decisions such as a referral to Centrelink for independent assessment.

Perpetrators often claim to have greater power to influence authorities and decision-makers, and get the outcomes they desire. The amended provision will play into the perpetrator's hands, seemingly confirming to the victim the claims of the perpetrator of greater power.

The victim's feelings of powerlessness and isolation, and that DIMIA and government authorities will side with the perpetrator will be affirmed.

The more complex and drawn out process to prove claims of domestic violence where there is no court order or finding will discourage even more victims from making just claims under the DV provisions, and other victims to withdraw genuine claims.

Time is often of the essence for victims of domestic violence, especially if they need to access protection and assistance by having permanent residency under the DV provision. They are often penniless or impoverished. They may have dependent children. They have escaped an abusive home environment and have nowhere to stay. Their legal documents, including passport, visa applications and so on may have been confiscated or destroyed by the perpetrator. Legal time limits apply to their eligibility for consideration under the DV provision. The new amendments will extend the time of applications, and will increase the distress and pressure on victims.

The very process of having a DIMIA officer state to such a victim that they 'don't believe them' will support the spiral of fear, self-doubt, isolation and dependency of a victim of domestic violence. Even if they persist with their genuine claim, the victim will be even less able to advocate for herself, and even more prone to seek dependency in an abusive relationship. Even if the victim succeeds, DIMIA processes will encourage, not discourage, future occasions of domestic violence, albeit in a new relationship.

The very selection of Centrelink for the role of 'independent expert' reveals that DIMIA is not aware of or influenced by the reality of the context of domestic violence. Centrelink has not previously revealed any expertise in the area. DIMIA has not shown how Centrelink or its employees have satisfied the requirement in the definition in sub-regulation 1.21(1) that it or they are 'suitably qualified to make independent assessment of non-judicially determined claims of domestic violence'.

Immigrant Women's Speakout Association's experience in the past years is that Centrelink social workers and other staff have consistently refused to take any position that would be construed as supporting the claims of a victim of domestic violence in her application under the DV provision. Centrelink always eschewed the role of independence or expertise – until now.

For most victims, Centrelink is another arm of Government. Victims know from previous dealing that Centrelink has powers to investigate, to make adverse findings and cut off benefits etc, and to initiate processes that lead to prosecutions.

Centrelink will be obliged under other legislation to monitor the victim's compliance with 'mutual obligations' and other requirements attached to Centrelink benefits. Centrelink will be doing this at the same time as assessing the claims of the victim under the domestic violence provision.

In other contexts, "independent" or "expert" witnesses or experts are subject to provisions and codes of conduct which govern things like qualifications, conflict of interest and how their evidence or assessments may be used. See for example Local Courts (Civil Claims) Rules 1988 (NSW) - s23.1D and Schedule 1; Supreme Court Rules (NSW) 1970 – s36.13C and Schedule K; or Workers Compensation Commission Rules 2003 - s67 There is no such provision for the independent expert under the DV provision.

Many victims will have past dealings with Centrelink. In leaving an abusive relationship, it is likely the victim (and her children if any) will be dependent on Centrelink for their current welfare support. The perpetrator may also have prior or current dealings with Centrelink, and may have provided adverse information to Centrelink about the victim as part of the same process of power and control that saw the perpetrator and/or other provide adverse information to DIMIA. The victim may well have to rely on Centrelink in the future.

Even if a real conflict of interest does not exist, and Centrelink and its staff exercise their responsibilities in good faith, victims will have reasonable apprehension of bias on the part of Centrelink in favour of the Government bureaucracy to which Centrelink belongs along with DIMIA.

The victim will believe Centrelink is more likely to support the adverse inferences drawn by DIMIA (and necessarily in many cases, the adverse information of the perpetrator). The victim, and possibly Centrelink will perceive adverse inferences suggested by the very act of DIMIA referring the application to Centrelink.

The victim will have a reasonable apprehension that information or adverse inferences known to Centrelink through dealings with the victim outside Centrelink's role under the Migration Regulations and DV provision may influence a finding on the claims of domestic violence against the victim

Centrelink may not be viewed as 'independent' if there is a real conflict of interest in its role as independent expert. If there is an apprehension of bias on the part of a reasonable person in the position of the victim, then Centrelink will not be able to act as an independent expert. If there are no provisions, guidelines or codes of conduct governing independent experts in exercise of responsibilities under the DV provisions, an apprehension of bias on the part of Centrelink will arise naturally and easily.

If a Centrelink social worker does not believe that a woman is a victim of domestic violence then it unclear whether the decision will be reviewable by the Migration Review Tribunal in its entirety.

3) Recommendation to address the above concerns –

1. Sub-regulation 1B be amended to require the Minister to
    a. accept the alleged victim has suffered domestic violence and consider the application on that basis; or
    b. if not satisfied the alleged victim has suffered domestic violence grant a visa independent from the sponsor/spouse whilst the independent expert determines whether or not the alleged victim has suffered domestic violence, after which the Minister determines the application on the basis of the independent expert's determination.
2. Exercise of powers under sub-regulation 1B should be timely –
    a. Less than 48 hours for the Minister from receipt of a complete application, if practicable;
    b. Less than 5 days for the independent expert from the date of the DIMIA referral to the expert, if practicable.
3. Adverse claims or statements about an alleged victim or her application under the DV provisions be in the form in a statutory declaration or the Minister may not refer an application to an independent expert;
4. Suitably qualified experts and non-government organisations should be statutorily appointed and contracted (with adequate funding) to act as independent experts;
5. Centrelink and its staff should not act as an independent expert
6. Publicly available regulations and a code of conduct must govern any independent expert under the DV provisions;
7. If Decisions of Centrelink social workers that are adverse to a woman must be completely reviewable by the Migration Review Tribunal.

4) Other DVP-related issues

a) The provisions still do not address the situation where a perpetrator uses his/her knowledge of Australian law and immigration processes to control and manipulate a victim in an abusive relationship (see case studies # and # below).

Case Study: V. arrived in 1998 aged 17 with her father, a widower, who applied for a protection visa, including V and her brothers in the application. The application is rejected, but whilst V's father takes his claims to the RRT and Federal court, V. meets and marries an Australian citizen on shore. V's father and brothers strongly reject the new husband and V, and she is alienated from her family and her community. The husband promises to take care of her spouse visa application. In fact he doesn't, but maintains the claim that he has and is her sponsor. V now works contrary to the provisions of her bridging visa.

V's father is invited to Europe by a senior family member, and withdraws his application and his Federal Court action when he is granted protection there. Now out of contact with her family V is not aware that she has become an unlawful non-citizen.

Meanwhile, V's husband's begins abusing her emotionally and physically. He uses the threat of ending the (fictional) sponsorship of his wife and reporting her to DIMIA for deportation to dissuade her from reporting domestic violence or acting contrary to his "orders" and direction. She is poor in English, and does not really understand legal and immigration processes. This situation persists for a number of years until V leaves in desperation. Only then does she discover she is an unlawful non-citizen. Although her marriage is valid and registered, she has no current substantive visa, time limits for other applications have expired, and she has no claim under the DV provision.

b) The role of commercial and for profit migration agents in accessing DVP: the Immigrant Women's Speakout Association has dealt with cases where a substantial number of for profit migration agents have sent clients (all are women) to counsellors. These migration agents instructed their clients to ask the counsellors to complete DIMIA Form 1040. All clients alleged that these migration agents asked for an initial fee of $1,000 and additional $1,000 if their application has been approved.

Recommendation:

DIMIA must amend the regulations so that commercial and for profit Migration Agents must not charge fees from those accessing DVP and it is best to refer the clients to DV Specialist Non-Government organisations.

WARM (Women and Reform of Migration) Submission Part 2:

RECOMMENDATIONS ON ALTERNATIVES TO MANDATORY DETENTION FOR WOMEN ASYLUM SEEKERS

Prepared by Heather Goodall (University of Technology, Sydney)

1. The campaigns against the incarceration of children and women in mandatory and non-reviewable immigration detention, during the indefinite period in which their claims for refugee status are assessed, have been successful in that on July 30 all remaining women and children were released into various forms of 'community' accommodation.

2. This has been a change of policy forced by pressure from backbenchers within the Liberal party who were themselves pressured by unrelenting public campaigns by refugee spokespeople and advocacy groups over some years now. It has been justified in public by arguing that (a) these are low-security-risk detainees and (b) the deterrence effect of mandatory detention has been effective in stemming the 'flood' of illegal entry by boat on the northern shores of the continent, therefore it is possible to relax and release a small proportion of those in detention. This actually justifies the punitive nature of the policy of detention and asserts its efficacy, thereby ensuring it can be tightened and reimposed whenever the government argues it is again 'needed'. It is therefore important to stress that the 'deterrent' effect of Australian mandatory detention is far from proven, and in fact is of little significance in the overall changes to refugee flow in the last three years. Instead, as a recent UN report has indicated [Amnesty *Bulletin*, 11:April 2004]:

> '… for the third year in a row, there has been a sharp decline globally in the number of asylum seekers arriving in industrialised countries. The report states that changes within the countries of origin of refugees (most notably Afghanistan and Iraq) are behind the fall in numbers. A spokeswoman for the UNHCR in Australia, Ariane Rummery, said while border control policies might play a role, "it is also striking that the drop in numbers is across the board and not just in the handful of countries that have brought in restrictive policies" '.

3. While release from detention has altered the conditions facing those women and children released to some extent, they are still significantly affected by the fact that male relatives, husbands, brothers and fathers, remain in the same mandatory, non-reviewable and indefinite detention while claims are assessed. The arguments against the inappropriate use of mandatory, non-renewable detention therefore are of continuing relevance and force. Pressure on the government to end this form of management of asylum seekers should continue unabated. To this must be added the continuing concerns about achieving family unity for children, which are only partially addressed if mothers or female relations are released with children. The aim of family unity remains unfulfilled if fathers and husbands are still separated from children and partners in the unacceptable conditions of detention camps.

4. Furthermore, the fundamental issues of the anti-detention campaigns still largely remain as serious questions for the conditions faced by those women and children who have been released into 'community' accommodation while awaiting status determination. Many of these conditions still hold even if that determination results in their status as refugees being recognized and confirmed.

5. Therefore, this submission will review the central concerns raised by the campaigns against detention, which the alternatives they proposed sought to address, and then ask which of these concerns remain current in the new situation, and what the specific implications are for women.

6. The major reports and documents on detention and its alternatives which have been reviewed here were by:

The Human Rights and Equal Opportunity Commission [HREOC, 1998]: 'Those who've come across the sea', Broad review of asylum policy, highlights vulnerability of women in detention camps as well as children.

The Refugee Council of Australia [RCOA] [see current website]: proposes three levels of management – closed detention, open detention and community release.

The NGO Justice for Refugees [JAS 2001] with a revised version published in association with VicHealth and other NGOs called 'A Better Way' [2002]: as for RCOA but with intensive individual case management for each asylum seeker.

Amnesty 2003 submission to HREOC inquiry into children in immigration detention and current 'Fact Sheet' on Asylum seekers: argues for all of above and for fully variable approach to management of asylum seekers' conditions.

ChilOut 2003 submission to HREOC inquiry into children in immigration detention focusing on experiences of and minimum requirements for children in detention.

HREOC inquiry report 2005 in *A Last Resort?*.

Human Rights Watch [HRW] report [2002] on Australian Asylum Policy: 'By Invitation Only': a broad approach to the overall conditions faced by asylum seekers, going beyond detention to interrogate visas.

7. Most of these reports focused on conditions IN detention and developed alternatives for the processes of reception and management which would direct some or all asylum seekers to non-detention conditions. Their authorities are the series of internationally accepted UNHCR and UN conventions and guidelines which have set out the rights of and appropriate conditions for asylum seekers. They draw heavily, as does particularly the ChilOut submission, on the recorded experiences of detainees in the camps. However few if any of these reports actually detailed what **non-detention conditions** would be like for asylum seekers.

These reports are still very useful: the ChilOut submission, for example, has a series of recommendations [based on the UN Convention on the Rights of the Child] which set out what minimum conditions should be guaranteed for children IN detention. Such recommendations identify points of extreme vulnerability and need on the part of detainees, and particularly of children and women. It is important to recognize that attaining such minimum conditions is just as essential a goal in NON-detention circumstances and as such the recommendations of submissions like ChilOut should be utilised as a valuable yardstick. The HREOC report [2005] takes up this approach and summarises such key principles in assessing the conditions of children who are asylum seekers by drawing on the *Convention on the Rights of the Child*. These are essential yardsticks for non-detention conditions: The HREOC [2005] key principles are that:

- children can only be detained as a measure of **last resort** and for the **shortest appropriate period of time**
- the **best interests** of the child must be a primary consideration in all actions concerning children
- **unaccompanied children must receive special assistance** so that they are in a position to enjoy the same rights as all other children
- children have the right to **family unity**
- children must be treated with **humanity and respect** for their inherent dignity
- children enjoy - to the maximum extent possible - the right to **development and recovery from past torture and trauma**
- asylum-seeking children must receive appropriate assistance to enjoy their rights - including the **right to be protected under the *Convention relating to the Status of Refugees***.

The Amnesty submission [2003] and its current Fact Sheet on Asylum Seekers [see website] indicate valuable comparable examples in Europe of non-detention means of managing asylum seekers and of their references, the European Council on Refugees and Exiles, has reported in 1997 on a wide range of detailed alternatives to detention all employed at that time in Europe. [Most employed on variations of the bail or self-surety release which is widely used globally in criminal and juvenile justice systems]. Further inquiry [ie quick web media search] into the conditions since 1997 indicate a tightening in some European countries, for example in Denmark, leading to local redirection of refugees to Sweden and Denmark. None of these countries have, however, instituted mandatory detention.

Each of the above reports [other than the HRW report] offers a variable and graduated model of alternatives to mandatory, non-reviewable and indefinite detention which assumes government will seek to retain some form of the system. However the circumstances in which asylum seekers faced least restriction, the 'community release' outlined in the RCOA document, and endorsed by the others, has no details attached as to what it might actually look like and feel like.

The HRW report 'By Invitation Only' is particularly important as it takes a wider view of the conditions of asylum seekers awaiting determination of their applications for recognition as refugees. It links conditions within and outside detention and it points out that the use of Temporary Protection Visas for those whose applications have been GRANTED, ie for those who have already been accepted as UN Convention Refugees, has a severe impact on those people themselves and on their families, both inside and outside Australia. This report offers an important way to link the previous arguments against detention with a wider assessment of the new changed circumstances in which asylum seekers AND refugees are being held IN the community, ie NOT in detention, but nevertheless in a state of severely impaired legal, economic and civil circumstances. In such circumstances women are particularly vulnerable to political, economic and sexual exploitation.

8. Fundamental issues of concern in reports arguing AGAINST DETENTION:
detainees were stripped of legal rights and protections

a) no access to legal review or protection ie no protections of citizen's rights under national law; and no protection of internationally recognized human rights [despite nation state being signatory, etc…]

b) no limit to time to be taken to assess application for refugee status or residency

conditions of detention

c) limited communication because of detention conditions

d) no guarantee of personal safety or privacy in detention conditions: vulnerability of women and children in gender imbalanced populations

e) no guarantee of education or essential developmental rights for children in detention conditions

f) no guarantee of cultural and religious support

management of detention

g) abuse by guards a constant danger

h) failure to ensure professional access for medical etc assessment

i) privatization of detention centre management removes actions of staff even further from scrutiny and accountability.

9. The key elements for alternative reception and treatment in most proposals, ie HREOC 1998, JAS 2002-3 and HREOC 2005 are:

a) Strictly limited time in detention to allow for health and security checks [max of 30 days extensible twice to max of 90 days]

b) Inclusion into process of judicial and civil review of (a) reason for detention (b) reason for extension of detention (c) suitability for release into community and conditions of such a 'bridging' or 'temporary' visa

c) No detention of children except as a last resort, and all children are entitled to family and community support. In compliance with the UN Convention on the Rights of the Child, decisions always to be taken in the best interests of the child.

d) Importance of individual management. This feature is particularly stressed in JAS 2002-3 whose proposal argues that this is essential to allow full and accurate case evaluation and to ensure effective ongoing support in the difficult post detention period and in that of adjusting to the results of the determination of status.

10. Examples of alternatives to detention which allow degrees of supervision and monitoring while of applications for refugee status are being investigated and determinations made have already been trialled in several circumstances in Australia and are used in other countries, namely Sweden [in the example most approvingly quoted] but also in UK and other places where pressures are being increased to 'follow the Australian lead'.

In Australia examples described in the JAS report: *A Better Way* [2001-2002]

- Lowest security = community accommodation
- Medium security = Hostel accommodation : used for Kosovar refugees on temporary protection visas in 1999. Despite the high publicity over a few who were reluctant to leave to return to Kosovo, there were actually very few who absconded or refused to leave.
- Detention = current Baxter, Villawood, Curtin, etc…

2004 developments, prior to the most recent [July 2005] release of all women and children, had been the releases of some detainees into 'community housing at Woomera after the closure of the detention centre there and the transfer of most of the inmates to Baxter. While this 'community housing' at Woomera was an improvement over full detention within the camps, it was still a tightly monitored and restricted situation and are a far cry from the community accommodation in the sense that was described even as recently as 2001/JAS.

11. Even with the release of women and children asylum seekers, many of the fundamental concerns on which all previous campaigns against detention have been based still hold:

(a) there is a lack of legal protections which are available to 'released' women and children while their applications are being processed

(b) there is a lack of any review and accountability in DIMIA: the new conditions place even more discretion in the hands of the Federal Minister for Immigration and DIMIA.

(c) there is a lack of any time limit in processing of claims, so uncertainty and vulnerability continues

(d) there is a lack of a guarantee of physical safety and sexual protection in community housing settings

(e) there is a lack of any individualized case management to ensure effective support while adjusting to the temporary 'community' living arrangements, while awaiting determination and in aftermath.

To these continuing concerns must be added further concerns about poverty, economic vulnerability and education arising from the extreme restrictions placed on such released women by the nature of the visas under which they are released.

12. This highlights the relevance of the VISA conditions on which these women and children are released. The extreme restrictions of visas available BEFORE applications for refugee status and permanent residency are finalized, have severe and material impacts on the lives

of women and the children and relatives for whom they are caring. There are particular concerns for women, especially those with dependents, if they are in community accommodation but have too few resources or too little support. These include:

- need for guaranteed physical and sexual safety of themselves and their children
- need for social supports and networks into ethnic and wider communities
- need for child care, particularly if they have to or are able to work to support the children. They also need and are entitled to childcare as an occasional personal respite from the stress of childcare in anxious circumstances
- the need for income supports and access to non-exploited employment
- the need for protection from sexual exploitation in the process of seeking secure income to support themselves and their dependents
- the need for education for their children and for themselves, including the urgent need for language learning assistance in order to facilitate their children's education as well as their own.
- continuation of extreme insecurity concerning their future: directly relating to visa arrangements for themselves, for their children [as those born in Australia have no automatic right to Australian citizenship, unlike for example the situation in the United States] and for their partners.

As the HRW report *By Invitation Only* has pointed out, Australia is alone in imposing an even more reprehensible form of the Temporary Protection Visas onto people whose status as refugees under international conventions to which Australia is a signatory has been confirmed. This must be condemned. It means that people to whom Australia is obligated to offer permanent residency, with all its rights and civil, economic and legal protections, are instead being offered nothing but further insecurity and restrictions on civil, industrial and legal conditions and rights. This contravenes Australia's international legal obligations and all of its international and national moral obligations. It also gravely weakens the position of women and children in this position, making them more vulnerable to exploitation, including sexual exploitation, than if they had a secure form of residency status.

Furthermore, this has grave implications not only for women and children in Australia, but for the families of male refuges granted asylum in Australia but unable to reunite their families because the TPVs under which they remain do not allow family reunion. The consequence is that women and children and other family members are vulnerable to people smugglers and others who offer them dangerous and exploitative ways to enter Australia without visas.

13. The end of the detention of women and children asylum seekers in Australia has not removed the grave concerns about their vulnerability to the punitive and unique impacts of the Australian laws against asylum seekers. In fact it has highlighted the common concerns about the particular vulnerabilities faced by women on insecure, short term visas which place them at economic, industrial and sexual/physical risk without offering them any adequate form of legal protection.

14. **Recommendations** in this area should include:

a) demanding a set of guarantees for non-detention conditions for women asylum seekers which ensure physical and sexual safety, adequate economic support, adequate social resources to ensure effective support for dependents and access to maximum legal protection of their human rights.

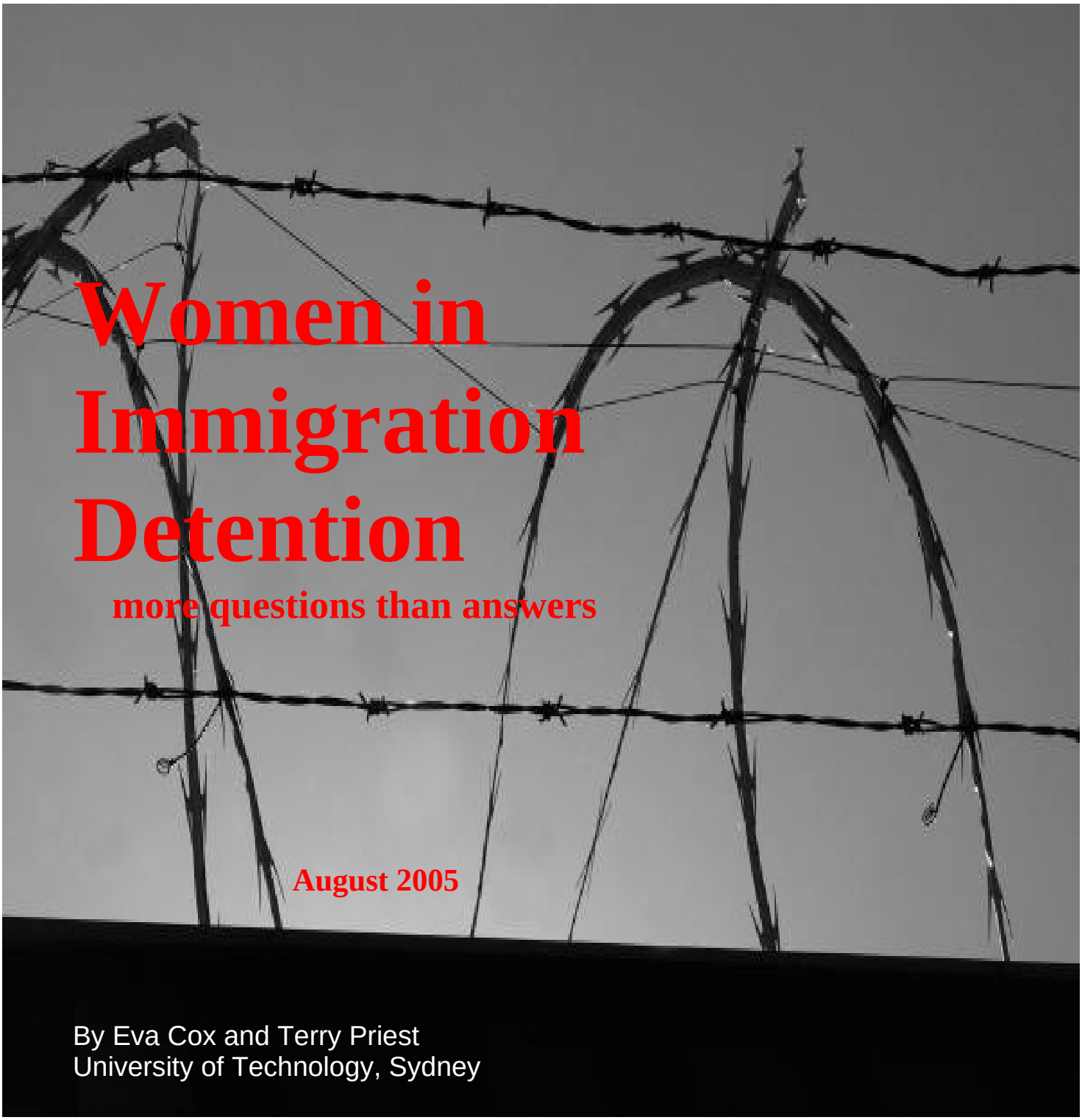
b) liberalization of TPVs and Bridging Visas for those awaiting determination of status applications to allow adequate economic and educational conditions and legal protections.

c) abolition of TPVs for those granted refugee status and implementation of full permanent residency status, including family reunion, in fulfillment of Australia's obligations under national and international law.

WARM (Women and Reform of Migration) Submission Part 3:

RECOMMENDATIONS ON WOMEN IN IMMIGRATION DETENTION

This part of the WARM submission comprises a recent study conducted by Eva Cox and Terry Priest (University of Technology, Sydney, and Women's Electoral Lobby)



Women in Immigration Detention

more questions than answers

August 2005

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Funded by The Pamela Denoon Trust
for the Women's Electoral Lobby, Australia

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This paper, researched by Terry Priest, was partially funded by a donation from the Pamela Denoon Trust. The Trust was established with a bequest from Pamela in 1988. Pamela as a feminist activist has been sorely missed since she passed away, but this paper remembers her contribution. She was active in the Women's Electoral Lobby, a national feminist advocacy group, so it is appropriate that they sponsor this paper.

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Abbreviations and acronyms

ANAO	Australian National Audit Office
DIMIA	Department of Immigration and Indigenous Affairs
GSL	Global Solutions Limited
HREOC	Human Rights and Equal Opportunities Commission
IDAG	Immigration Detention Advisory Group
IDFs	Immigration Detention Facilities
IDS	Immigration Detention Standards
IHMS	International Medical Health Services
IRPC	Immigration Reception and Processing Centres
MSI	Migration Series Instruction
PAM	Procedure Advice Manual
PSS	Professional Support Services
UNHCR	United Nations High Commissioner for Refugees
WEL	Women's Electoral Lobby
WHO	World Health Organisation

Conclusions and recommendations

The following paper details some of the ways in which Immigration Detention Facilities (IDFs) are administered and how the system can cover up abuses of the basic rights and needs of detainees. Any closed system can be mismanaged, even where there is good will and no wrong intentions. This is particularly likely where the population mix are particularly vulnerable, where the leadership offers problematic political messages, where the operations are subject to conflicting views and where there are ineffective external and independent forms of official and unofficial scrutiny. There is ample material that supports the dysfunction of the immigration detention system, much of which emerged before recent official reports highlighting that the system is out of order, and is in fact seriously damaging to many detainees.

Women are a minority in IDFs, making them vulnerable to failures in recognising their needs. Apart from the well publicised case of Cornelia Rau, it is likely those who have been 'legitimately' detained share the same problems, as there is no evidence that standards and scrutiny are specifically set up in ways to effectively minimise the possibility of abuse and exploitation.

The following recommendations for change have largely been developed on the basis of the material collected by the Government's own internal critics. The condemnation of the Department of Immigration and Indigenous Affairs (DIMIA) regime by the Australian National Audit Office (ANAO), Federal Court judgements and the Palmer Report, are powerful indicators of the flaws in the system.[1] These all record some of the problems that suggest it is reasonable to treat all detainees as being at risk of both the malfunctioning culture of service delivery and systems failures in reporting and monitoring. These official sources have been validated by and validate the material that we have collected from many workers and advocates, which make surprisingly similar points.

Many questions arose while conducting our research and we can now see why there are relatively few satisfactory answers to our question, does being a woman put those tangling with DIMIA at extra risk? The two women currently in public view were noticed because they were mistreated despite being Australian residents/citizens but not because internal systems revealed their problems. They were identified and located because of noises made by other detainees and their advocates in Cornelia Rau's case, and the media in Vivian Alvarez Solon's. This suggests that much more can be hidden if there is not further external scrutiny, as the current inquiries and actions have only taken place because of the effect of external revelations of flawed actions. There are aspects of these cases that raise general questions about the treatment of women by DIMIA that need more information and debate on the possible additional risks for women in these facilities.

We need to ensure that the women, not covered in these public revelations of DIMIA errors, are not subjected to extra risks in facilities that have recently been seriously criticised for bad management practices. Women face similar issues to the men, but women may face others, such as assumptions about gender appropriate behaviours, prejudices, specific needs relating to contraception, reproduction, mothering, healthcare and possible harassment and

[1] Quotes and references from the *Palmer report* have been used throughout this document. A full copy of this report can be found at www.minister.immi.gov.au/media_releases/media05/palmer-report.pdf
Quotes and references from the *ANAO report Part B* have been used throughout this document. A full copy of this report can be found at www.anao.gov.au

violence.[2] There were relatively few women in immigration detention in mid July, (106 with 45 children and 575 men) and those with children were released on special visas or placed in residential determination arrangements within the community at the end of July. Under the new arrangements, families will live in the community at a specified address, with reporting conditions while remaining available to the Department. We do assume however that there will still be a number of women detained and that new ones will join them[3]. Therefore, we need to ensure that those women in detention are not subject to additional risk through the extreme gender imbalance that this will create.

This paper should be used to put some serious questions on the public agenda about the care of women in IDFs, and the particular risks they face. While we hope women will no longer be held in immigration detention at all, we recognise that this is likely. So we would prefer IDFs that can meet the particular needs of women that are open about how these needs are met, and are subject to formal, independent processes of scrutiny. The Women's Electoral Lobby (WEL) hopes this paper is the starting point for debate about the need for a more open, honest, accountable and transparent system.

Recommendations for change

The Palmer and ANAO reports contain many useful and detailed recommendations that would improve the operation of IDFs. In particular the ANAO criticisms of the contract processes with the service provider, Global Solutions Limited, Australia (GSL), reinforced in the Palmer report, could be used to improve the formal processes of administration and internal information flows and we welcome the proposals for healthcare providers offered by Palmer as a part solution to some of the problems.

What neither report deals with specifically is the problems that emerge from the limitations of external scrutiny and the limited capacity of any external groups to compel DIMIA to improve or change their processes. For example, the Human Rights and Equal Opportunity Commission (HREOC), the ANAO, and the Commonwealth Ombudsman have no power to compel, only to report, and it is then up to DIMIA or the Government to act. Even the new provisions only involve reporting to backbenchers, but again without power to make changes without Ministerial or Departmental concurrence. The above reports are also relatively silent on the necessary public scrutiny required to ensure that even their recommendations are acted upon. Sadly, many recommendations they make are not new and there are other reports dating back to the nineties that have been ignored.[4]

We propose that a two part strategy should be implemented as a matter of urgency. The first part is to set up forms of external and independent scrutiny with power to intervene to ensure that the general standards of care are appropriate and the particular needs of women are both recognised and met; the second is to add some specific women centred Immigration Detention Standards (IDS) and review the inadequate measures and monitoring of these.

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[2] These figures have been in a state of flux since it was announced that women and children were to be released from all IDFs by 29 July. Figures used in this paper are as at 13 July and updated weekly at www.immi.gov.au/detention/facilities.htm

[3] Ours calls to DIMIA at the beginning of August could not confirm how many women were still detained.

[4] For example – the recommendations made in HREOC's, (1998) *Those Who've Come Across the Seas: Detention of Unauthorised Arrivals*, have not been picked up ie that 'detention is especially undesirable for vulnerable people such as single women, children, unaccompanied minors, and those with special medical or psychological needs (r.3.3).

The recommendations we make will benefit all IDF detaineesthrough greater effective accountability. Our first recommendation is for an external authority that can expeditiously deal with DIMIA problems, where necessary, to protect basic human rights.

1. That the Commonwealth authorise the Federal Magistracy to be the complaints solving and placement authorising group where disputes occur or people's status is not able to be resolved. One in three magistrates on call must be female and detainees should have the right to ask to see them. They would be authorised to:
    a. Review placements of any unidentified people in IDFs within 48 hours.
    b. Decide whether any detainee should be put in an isolation centre, closed behaviour management area or other form of restraint, where this is for more than three hours at one time and within any seven days.
    c. Review the people who are put into the above isolation facilities on a 48 hour basis to decide whether they should stay there.
    d. Review all deportation orders where there are any questions about identity, citizenship, identity papers and/or residency status before these are undertaken.
    e. Be able to order release of any detainee where they are deemed to be not a risk to the public and are being negatively affected by detention.
    f. Investigate any complaints of harassment or other forms of gender based assault that is not pursued by police to see if a protection order or some other action would be appropriate.
2. The Government should implement a scheme with official visitors, independent of DIMIA or other government bodies, who have weekly open sessions in facilities and a defined process of public reporting to Parliament on a monthly basis where problems are raised but are not resolved satisfactorily. These could report to the Georgiou group initially. At least one third of these visitors must be female and detainees should have the right to see them.
3. An urgent review by the ANAO of the appropriateness of contracting out the management of IDFs to private sector organisations and their capacity to further contract services, to examine whether such extended and complex lines of accountability can deliver quality services.

The Immigration Detention Standards should be expanded to cover the following:

4. Clear guidelines on privacy and access to female guards and other female workers in the facilities at all times.
5. Clothing needs and particular modesty requirements as part of routine provisions; on offer and not requiring special consideration.
6. Direct access and referral to specialist and general medical practitioners and other paraprofessionals
7. Facilities that allow mothers the privacy and the capacity to fulfil family needs like preparing food and providing care, if that is their wish.

8. The development of procedures and protocols, in consultation with experts, so that women have access to the following:
    a. Gynaecological services and options for fertility control that meet individual needs and where required are culturally acceptable.
    b. Antenatal care including options on birthing and privacy
    c. Postnatal care and support that does not assume that mothers possess some natural care abilities but assesses what support may be needed.
    d. Parenting support and care services that recognise the child's and mothers needs.
9. Termination of pregnancy available, if requested, and with full access to counselling to ensure informed choice.
10. Training for both staff and detainees covering domestic violence, sexual harassment and assault and also addressing gender and cultural issues.
11. Clear and understood procedures for making a complaint with timely and appropriate follow up and support.
12. Access to appropriately trained interpreters and translators on request, in particular for healthcare and legal advice. Family members should not be used in this capacity.

Introduction

The original intention of this paper was to focus on the needs of women asylum seekers who had arrived by boat and were being held in IDFs in Australia. Over the time we have been working on the paper fewer of these women have arrived by these means and most of those in detention have been released, albeit often only on Temporary Protection Visas. During this time, there has been an increasing awareness that there are other groups of women, often with children, who are being held in detention because of visa problems, including visa over stayers, so we expanded our research to examine the situations that all women face in immigration detention facilities.

On 17 June 2005 the Prime Minister made a statement that the Government:

> has decided on a number of changes to both the law and the handling of matters relating to people in immigration detention.[5]

The changes, passed on 24 June, do not fundamentally change the framework of immigration detention and under the new system our concern is that women will still be detained, though hopefully not long term. As we finalise this paper, there is a move by the Government to move all families with children into the community, post haste. While this is obviously an improvement, it is being done as a response to the above announced changes that do not alter the system, as these moves are made at the Minister's discretion. We assume the issues raised in this paper remain relevant as there will still be women in IDFs, now and in the future.

Research on women in institutions and correctional services has often raised issues of the need for protection of inmates against those with power and authority, particularly when inmates are from minority groups. Women in immigration detention, like those in prison, are vulnerable because they live in custodial settings divorced from the general population and need safeguards to ensure that they are not mishandled or abused. We know that women are likely to have different experiences from men when they are detained. These may be due to gendered assumptions about appropriate behaviour and/or tensions relating to expectations about social roles such as being a wife or mother within different cultural and religious frameworks. Women also have specific physical and psychological needs that need to be recognised, including menstruation, gynaecological issues, fertility control, pregnancy and childbirth.

It is because of evidence of institutional discrimination against women in the broader society that much work has been done over the past three decades on adapting or changing the way these are run to accommodate diverse female needs. These range from health and education services in workplaces and correctional services. While there is still much to be done in many of these areas, most government funded or government contracted services in Australia have introduced the necessary mechanisms to examine whether structures and operations treat women fairly or involve systemic injustices.

One of the major mechanisms in the general population for ensuring that practices are fair and equitable is the existence of independent monitoring processes and complaints procedures. Forms of administrative processes, codes and laws have been created to ensure not only that good policies are developed but that they are actually implemented and regularly reviewed with the desired outcome for women being that they are free from discrimination on the grounds of sex, have their rights protected and have avenues of

[5] www.immi.gov.au/legislation/amendments/index.htm

recourse if they fear that these are being breached. It appears that these mechanisms do not operate effectively in IDFs.

Immigration detention facilities while they continue to operate, should not be excluded from these requirements because of their closed nature. The Government claims that in relation to detainees, it is not its intention to punish people or treat them badly. The IDS stipulate that:

> detainees are not subjected to discrimination on any ground, including race, colour, gender, sexual preference, language, religion, political or other opinion, national or social origin, property, birth or other status, or disability.[6]

It is therefore reasonable that requirements for managing IDFs would have adequate, built in mechanisms for monitoring and review, as well as managing complaints, to ensure the Government's claims are met for those in their care. Given the particular dangers of closed institutions and the vulnerability of some of the detainees, such as unaccompanied women and children, there could be a reasonable expectation that more than the usual levels of monitoring, scrutiny and review would be in place. We would expect standards and monitoring to ensure that women's needs are met without fear of harassment or judgement.

This has not been the case. A series of reports, including ANAO part B and the Palmer report have been highly critical of both the operations of the IDFs and the contracts that are expected to determine standards. In their report the ANAO states:

> In its assessment of the Contract the ANAO was, therefore, looking for service standards that articulated the expected level and quality of service to be delivered by GSL. The ANAO found that DIMIA's Immigration Detention Standards generally did not meet these criteria. Among other things, clear and consistent definitions are not provided for health standards. DIMIA highlights the challenges it has set itself in evaluating GSL's performance, 'given the volume of standards to be met'. The number and type of performance information is properly a matter for departmental judgement. However, when specified, performance information should be measurable and be designed to assist the department to manage the Contract, including monitoring GSL's performance.[7]

With the Palmer report claiming that:

> There are serious problems with the handling of immigration detention cases. They stem from deep seated cultural and attitudinal problems within DIMIA and a failure of executive leadership in the immigration compliance and review areas.[8]

These are just two examples of the types of criticisms that are raised and confirm our concerns that there is not appropriate standards and monitoring for all inmates, let alone those specific to women.

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[6] A full list of the Immigration Detention Standards can be found at www.immi.gov.au/detention/standards_index.htm

[7] www.anao.gov.au

[8] www.minister.immi.gov.au/media_releases/media05/palmer-report.pdf

The Palmer report does contain some indicators of potential gender issues as do the ANAO report, Federal Court judgements and media reports. There has however been no specific analysis of the material available from a gendered perspective, leaving assumptions about the ways women are expected to act which impact on their treatment by DIMIA and IDF staff.

In the case of Vivian Alvarez Solon, the Palmer report states that there was an assumption by at least one worker that she was a trafficked sex worker and this could have affected her deportation before her identity was verified. This assumption carried both ethnic and gender stereotyping and may have led to her claims to citizenship being disbelieved. In the case of Cornelia Rau, there is the question of her reported 'abusive, uncooperative, prone to unprovoked violence and disruptive' behaviours that led to assumptions of behaviour disorder. Had she manifested behaviour more stereotypical of feminine distress, rather than aggressively defending herself, would she have been more easily and properly diagnosed?

The only specific gendered issues raised in Palmer were about Cornelia Rau's complaints, later not signed, of sexual assault and being observed naked in the Red One section by male guards. Palmer expresses some concern at both these incidents and recommends mandatory reporting of allegations to police and a gender mix in staff. What Cornelia Rau's experiences in these areas sets up, is what do other inmates, who may not have access to such external scrutiny, put up with? Do they have access to female guards in relevant situations? We know they don't sometimes. Can we assume they use the complaints mechanisms in closed institutions where they will continue to have close contact with the guard or other inmate about whom they have complained? The relative dearth of such complaints emerging to HREOC or police, suggests that expected results of high stress environs of such facilities are probably being systematically under reported. The complexity of process and time taken to resolve many complaints also make these systems inappropriate to solve current problems.

Again, Cornelia Rau's difficulties in accessing appropriate medical care are now well documented and show the real flaws in the system. While the IDS are explicit that women's needs for health care and cultural diversity are to be appropriately met, there are gaps in the standards specifying these. We have heard stories about forced birth processes and lack of choices, poor access to medical practitioners and being accompanied at all times by 'guards' when attending these. There are also questions about women's ability to access contraception, adequate pre and postnatal care, terminations if required and a range of other aspects of specifically female medical needs that are not addressed in the IDS.[9]

There have also recently been other cases reported in the media including Virginia Leong and her daughter Naomi from Villawood Detention Facility, and a report of a woman being sexually assaulted by other inmates, that have brought the treatment of women in detention to the public's attention.[10] These cases raise questions about the very foundations of the detention system, including how individuals in detention are identified, particularly when they may be vulnerable due to mental illness, trauma or language difficulties.

[9] A table of Immigration Detention Standards relating specifically to women can be found at Appendix A

[10] http://smh.com.au/articles/2005/07/18/1121538922275.html This article is based on a leaked interim report which has just been completed on an incident that allegedly occurred a couple of years ago. The process is not yet complete as comments from DIMIA and GSL are being sought. This illustrates both the complexity and slowness of this particular procedure.

There is considerable research into women and health care problems in the community which can be assumed to be more problematic in closed institutions. While specifying standards in some of these areas would improve the present system, this is not enough to ensure compliance. The ANAO report is particularly scathing about the contract and the performance indicators that DIMIA requires from GSL who run the facilities for them. Global Solutions further contracts out some services, including healthcare, to other providers, thus stretching the lines of accountability further. Global Solutions is expected to report its own breaches that incur the fines they have to pay. The ANAO and other critics have pointed out the basic absurdity of this process!

There are therefore strong signs that more effective monitoring be carried out by DIMIA and more importantly, that there be external reviews on an ongoing basis. Another point to seriously consider is whether contracting out such services to private providers can ever ensure enough accountability. Direct government provision is open to more effective scrutiny as there is no commercial-in-confidence constraint on access to material.

Part one: Understanding the framework

Who is responsible for managing Australia's IDF and delivering services, and what is in place to monitor and protect the care, safety and wellbeing of those detained?

In the context of immigration detention, the *Migration Act 1958* (Cth) (the Migration Act) delineates the framework for Australia's immigration detention policy, the Department of Immigration and Multicultural and Indigenous Affairs (the Department or DIMIA) is responsible for executing that policy, and the Federal Courts and other external bodies are responsible for review. However, the Migration Act must operate in concert with
State legislation regarding child welfare, amongst other legislation, and the Department should therefore cooperate with State child welfare bodies, education authorities and other State agencies[11].

On 27 August 2003, GSL signed a contract (parts of which are Commercial in Confidence) with DIMIA on behalf of the Commonwealth Government, to operate all Australian IDFs and Immigration Reception and Processing Centres (IRPC).[12] The contract is initially for four years, with an option of a further three years. As part of their contract, GSL are unable to talk publicly about their policies and procedures though their website includes information stating:

> mandatory detention is not imprisonment. The critical difference is the absence of punishment. Detainees are part of an administrative process to determine their status: there is no question of punishment. Inside the perimeter of the centres, detainees enjoy relative freedom and the presence of families and single persons of both sexes makes the centres very different from prison.
>
> It is a sensitive and complex contract, and GSL must comply at all times with the Immigration Detention Standards in performing its obligations. The company is ***rigorously monitored***. Extensive training prior to starting their employment and then throughout their careers ensures that management and staff fully understand their responsibilities under the contract and the unique nature of administrative detention.[13] (Our italics and bold)

GSL has the capacity to subcontract key services, creating a range of levels of accountability, that could only enhance the possibility of breaches without proper processes of monitoring being in place. The current subcontractors to assist in the provision of healthcare services are International Medical Health Services (IHMS) providing general medical services, and Professional Support Services (PSS) providing psychological care services. It was recently cited in the Federal Court Case *S v Secretary, Department of Immigration & Multicultural & Indigenous Affairs [2005] FCA 549*, dealing

[11] This is the section of DIMIA's website that deals with matters of immigration detention www.immi.gov.au/refugee
[12] A copy of the contract can be found at www.immi.gov.au/detention/group4/index.htm
[13] Global Solutions Limited, Australia, website www.gslpl.com.au/gsl/contracts/contracts.asp

with an incident at Baxter IDF, that the subcontractors at this site also subcontract services, and evidence was given to support the notion that no formal auditing process of any of the subcontractors had taken place till January 2005, and that this audit did not include all services. If GSL has its own monitoring system for subcontractors, our inquiries found that these are not publicly available. The case hinted that this scrutiny may take the form of monthly subcontractor meetings.[14]

The Immigration Detention Standards and their implementation

Part of the framework and the basis of the contract with the service provider are the IDS, listing 148 standards and 243 measures, covering things such as duty of care, care needs, education, religion, security and order and complaints mechanisms[15]. The DIMIA website states that the IDS were developed by DIMIA in consultation with the Commonwealth Ombudsman's Office and HREOC. In the *Report on Visits to Immigration Detention Facilities by the Human Rights Commissioner 2001,* the Commissioner accepts that the standards are consistent with those international obligations which Australia has accepted, however:

> remains concerned that they fall short of minimum human rights areas in some areas, including compliance measures.[16]

The IDS do not 'prescribe' what a facility must do to meet them, though form the underlying principles and relate to the quality of care and quality of life that should be expected by detainees. These standards have often been accused of being unclear and ambiguous. The recent audit by the ANAO concluded that the IDS did not articulate the expected level and quality of service to be delivered by GSL and among other things, clear and consistent definitions are not provided for health standards.[17]

Along with the IDS, the only published accessible rules and procedures for delivering detention services are the Procedure Advice Manuals (PAMS) and Migration Series Instructions (MSIs)[18]. These however, were difficult to locate, with only samples being provided on DIMIA's website. These serve as a guide for departmental officers and specifically address the administration of migration law. The key points noted in the reader's guide are:

- It is primarily a companion to the *Migration Regulations 1994*
- Its main purpose is to annotate migration legislation providing both policy and procedural instruction relevant to the legislation
- It is written to be read with the legislation
- Although the term 'guidelines' is generally used to describe the content of PAM3, documents, PAM3 documents are DIMIA policy/procedural documents, with status as official departmental instructions within DIMIA's centralised policy instructions system.

In 2003-04 the ANAO undertook Part A of a performance audit on the management of detention centre contracts. Part B to this report has just been released and examines 'DIMIA's management of the contractual arrangements for the delivery of detention services and related performance measures' (the audit did not separately examine the outcomes of the detention program, nor the inherent quality of the services provided).[19]

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[14] Federal Court Case 549 – www.austlii.edu.au/cases/cth/federal_ct/2005/549.html.
[15] www.immi.gov.au/detention/standards_index.htm
[16] Page 6 – www.humanrights.gov.au/human_rights/idc/index.html
[17] www.anao.gov.au
[18] Commenced in September 1994 and deal with matters relating to migration series legislation that cannot be put straight into PAM. Both PAMs and MSIs can be found in full on some library databases including www.lexisnexis.com
[19] www.anao.gov.au

The ANAO report is highly critical of these standards as already covered in the introduction to this report. The quotes below are other examples of their views and the intractability of DIMIA to suggestions for changes:

> The ANAO examined a selection of the standards/measures and identified a number of limitations that would affect their usefulness in assessing contractor performance. Similar issues were identified in ANAO Report No.54, 2003–04 (Report No.54) and have previously been raised in a Management Initiated Review undertaken by the department's internal auditors in March 1999.
>
> In its examination of the IDS and performance measures contained in the Contract with the previous detention services provider, the ANAO stated that 'the IDS used ambiguous language … [and] many of the performance measures did not specify a target that needed to be achieved or articulate the method of assessment.' The report also stated that the IDS described an activity and therefore, 'it is not possible for DIMIA to measure [the detention services provider's] progress against a pre-determined standard.[20]

Monitoring the standards

When standards are legislated or contractual, there is usually regular review of these to ensure compliance. Rather than DIMIA actively enforcing a standards system, the monitoring of GSL's compliance with its contractual obligations and standards is carried out by both GSL staff onsite, and DIMIA staff on and off site. The IDS include standards on monitoring and reporting (9.1) that in summary state that the service provider monitors on a continuous basis against the IDS, and that all breaches and incidents are reported to DIMIA. The IDS set out what are classified as minor, major and critical incidents. If breaches occur and are identified, DIMIA will issue the provider with a notice of sanctions.[21] The incident reports supplied by the provider to DIMIA are confidential and the form and frequency of monitoring by DIMIA could not be sourced and there are no published accounts on what is assessed or found. The performance measures included in the IDS are general in nature and again, based on information provided by the service provider.

The ANAO report is critical of the above processes. The section, *Contract Monitoring* states:

> DIMIA has adopted an exceptions-based approach to assessing the performance of GSL, whereby the focus of monitoring arrangements is the reporting of Incidents. The department assumes that detention services are being delivered satisfactorily at each immigration detention centre unless the reporting of an Incident (or repeated Incidents) highlights a problem.
>
> While assessment by exception enables DIMIA to identify extremely poor quality service delivery, there are two weaknesses with this approach. First, at a number of points in the monitoring and reporting process, DIMIA officials exercise considerable discretion as to what is reported. Secondly, the lack of clarity in the

[20] www.anao.gov.au

[21] To date, these are reported to add up to more than half a million dollars.

> performance standards and measures in the Contract itself means that it is not possible for DIMIA's staff to assess the ongoing performance of the Services Provider objectively, based on the performance reporting.[22]

This is followed further on by:

> DIMIA advised that it is not possible to define these requirements in simplified ways, and that it was a misconception that services, standards and reporting can be simply and inflexibly stated. The ANAO considers that, although sometimes difficult, it is important to clearly define service requirements and standards to ensure there is a common understanding of the services required. The number of standards and performance measures included in the Contract is properly a matter for departmental judgement but, when specified, they should be able to be reliably measured.

The overall picture of accountability is dismal and raises major questions on whether the system can be effectively changed to at least do what it claims to do. While the ANAO has not listed every standard and measure from the Contract or commented on each of them, the comments made apply to the majority of the performance information listed in Schedule 3. Overall, the issues are that:

- there is a large number of standards and related measures—this makes it difficult to manage and interpret the information in a systematic and cost effective way;
- terms such as 'timely', 'appropriate', relevant, 'adequate' and 'as soon as possible' are used in the standards and/or measures and are not defined to allow their assessment;
- the standards contain conditions and provisos that would make it difficult to prove, that the standard should have been met in a particular instance and would therefore negatively impact on application of sanctions;
- many standards could only be assessed by experts rather than by general administrators; and
- evidence to substantiate whether standards had been met or not would be difficult to collect and/or prove.[23]

Similarly in recommendation 7.7, the Palmer report states that the contract be reviewed and specifically:

> develop, in consultation with GSL a new regime of performance measures and arrangements for their continued monitoring that are meaningful and add value to the delivery of high quality services and outcomes.[24]

External scrutiny and complaints

One attribute of most Australian Government organisations, is the requirement that they face scrutiny by Parliament and other external organisations in administrative law and human rights compliance. While the standards suggest that DIMIA facilities are to comply

[23] Some ANAO comments on specific standards can be found at Appendix B
[24] www.minister.immi.gov.au/media_releases/media05/palmer-report.pdf

with national and international requirements, there are considerable difficulties in activating such scrutiny. The external bodies that detention services are subject to scrutiny from to ensure that detainees are treated 'humanely, decently and fairly', are listed as HREOC, the Commonwealth Ombudsman, the United Nations High Commissioner for Refugees (UNHCR) and the Immigration Detention Advisory Group (IDAG).[25] Although these bodies have the capacity to review and report, their primary function is to receive and act on complaints. None have the power to compel the government to act on their recommendations and all are government bodies. Under the circumstances, it is most significant that some of these bodies have been highly publicly critical of IDFs and interesting to note that DIMIA and the Government have not been keen to take up the issues and change the processes with any alacrity.

Human Rights and Equal Opportunities Commission

When dealing with complaints the HREOC Complaints Line confirmed that detainees use the same process as other complainants. If the complaint is not amenable to conciliation or if no agreement is met, then pursuant to the *Human Rights and Equal Opportunities Act 1986* the Commission can provide a report to the Minister. From 1996-2005, 10 reports of this kind have been received dealing with a range of issues such as:

- Practices inconsistent with or contrary to human rights in an immigration detention facility
- Visa issues
- Transfer from immigration detention to State prisons
- Adequacy of medical treatment
- Separation into management blocks.[26]

If these complaints cannot be successfully conciliated, the Commission may report on them to the Attorney General who tables each report in Parliament.

The Human Rights unit of the Commission has published two significant reports on immigration detention from October 2002 till May 2004.[27] They have also been a major critic of the IDFs as breaching the rights of children in detention. Yet until the latest efforts of some backbenchers, no formal action was taken on these complaints. While many asylum seekers families were released, other children were held because of parental visa breaches.

In a media release post the release of the Palmer report, Dr Sev Ozdowski, the Human Rights Commissioner, welcomed the findings and recommendations of the Palmer Inquiry and stated amongst other comments that:

> The report of Human Rights Commission's Inquiry into Children in Immigration Detention, 'A last resort?' was tabled in Federal Parliament in May 2004. It highlighted mental health issues as the most serious breach of Australia's international obligations under the Convention on the Rights of the Child. It found that children in detention for long periods are at high risk of serious mental illness. In particular, the Inquiry found that the Immigration Department's failure to implement the repeated recommendations to release children suffering from mental illness amounts to cruel and inhumane treatment under article 37(a) of the Convention on the Rights of the Child.

[25] www.immi.gov.au/detention/scrutiny.htm
[26] www.humanrights.gov.au/human_rights/index.html
[27] See Human Rights Commission at Appendix D

The ANAO report on the same theme concludes with the following:

> However, notwithstanding the changing of the guard at DIMIA, HREOC still believes that Recommendation 4 of 'A last resort?' namely that Parliament should codify in legislation the minimum standards that should apply to immigration detention standards with respect to children, should be widened to cover all immigration detainees and should incorporate every aspect of departmental interaction with its clients. "This could also include a review of the perceived shortcomings of the contract between DIMIA and the detention centres' service provider.[28]

These comments indicate what little power or influence such bodies have to enforce change on government policy. Government Ministers and their departments often choose to ignore such criticisms and have done so in the present case.

Commonwealth Ombudsman

Detainees have the right to comment or make a complaint about any matter relating to the conditions of detention directly with the Ombudsman. The role of the Commonwealth Ombudsman is to assess, make preliminary inquiries, decisions and recommendations on complaints from detainees that fall into their jurisdiction. Occasionally they will take a proactive rather than a reactive approach if systemic issues are evident. Although only having recommendatory powers, the Commonwealth Ombudsman has a great deal of influence. In 2002-03 a review was conducted by the Commonwealth Ombudsman into the standards and complaints systems that identified a range of concerns about how IDFs were being managed and how their performance was being monitored by DIMIA. A report was planned but due to a change in the detention service provider and the closure of some IDFs, the information was put to other uses, namely a consultation with DIMIA regarding contractual conditions with the new provider, and information to the ANAO for its audit of detention centres conducted during 2003-04. Information in the Commonwealth Ombudsman's Annual Report 2003-04 stated that Ombudsman staff 'visited detention facilities regularly throughout the year.' There are no figures available as to the regularity of these visits.

In the period the most common complaints (95 from between January and June 2004) were related to access to medical and dental care; lost or stolen property and assault by detention centre staff and other detainees. The report states that complaints often relate to day-to-day experiences and are difficult to resolve 'given the limitations of the detention environment.' The report concludes that the number of complaints regarding assault were of continuing concern, especially the:

- confusion over where allegations of assault should be reported, and
- delays in reporting allegations to police.

It was recommended to DIMIA by the Ombudsman that posters summarising the complaint management process should be distributed and displayed and information cards outlining the steps to take in case of assault should be provided to all detainees by 2004-05[29]. A conversation we had with the office stated that they were still working with DIMIA on this recommendation, though when visiting centres they did check that there was appropriate material visibly displayed. Again there is evidence that the Office has had some influence on DIMIA but not that its recommendations are expeditiously implemented.

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[28]

[29] This information was extracted from the Ombudsman's Annual Report 2003-04. See Appendix D

United Nations High Commissioner for Refugees

The UNHHCR was established on 14 December 1950 by the United Nations General Assembly. The agency is mandated to lead and coordinate international action to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and wellbeing of refugees. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or to resettle in a third country.[30]

This group has visited Woomera at least once and sets some standards which can be read in various ways. The Government claims it does conform but others dispute this claim. Like all United Nations bodies, it has no power to demand compliance.

The Immigration Detention Advisory Group

Although listed as part of the external scrutiny of IDFs, the Immigration Detention Advisory Group (IDAG) was formed in February 2001 to provide advice to the Minister and DIMIA on the adequacy of services, accommodation and facilities at IDFs, and as its title infers, its function is purely advisory. Membership is comprised of a number of individuals with interest or expertise in immigration matters and members have the right to visit facilities at any time without prior warning and are free to talk to staff, detainees and representative committees.[31] Since its creation this body has issued no public reports of any kind. It is difficult to find out what they have discovered, what recommendations have been made, or whether or not they have been implemented.

While the members are obviously well intentioned and have some expertise, they have no resources to implement formal inquiries. Most have other workplace responsibilities, so do this part time and the reporting processes are informal and internal and cannot be seen as part of serious official monitoring processes, rather as problem solvers for individual problem solving. They have no official power and are dependent on the Minister and the implied power of that connection for any implementation of requirements.

Internal complaints procedures

There also needs to be a serious review of how the complaints processes operate in practice. The IDS state that detainees must be informed of their rights and be able to comment on or complain about any matter without hindrance or fear of reprisal. The IDS claim that complaints can be made to the service provider about any aspects of the conditions of detention, and where necessary to HREOC and the Commonwealth Ombudsman. In the case of criminal matters, they state that detainees can go to the police and to relevant state agencies in cases such as child abuse. The very limited numbers of complaints that can be identified as having been made compared to the numbers of detainees and some of the questions raised once they have been released, suggest that the system is not working.

Most government bodies register the number of complaints and their progress and outcomes, but such data is not readily available in the case of detention facilities. As there are financial penalties for breaches, it could be expected that staff would not be encouraged to report complaints and make them official. Facilities claim information on how to make complaints is available but whether it is displayed prominently and forwarded to the appropriate agency in a timely manner is not clear. There is no transparency on behalf of DIMIA in terms of reporting the numbers of complaints, the kinds of complaints made and the ways in which complaints are handled.

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[30] www.unhcr.org.au/basicfacts.shtml

[31] Current members and more information at www.immi.gov.au/detention/idag/

The IDS state that detainee committees must be formed in each facility, comprising detainees, management, and community members, so that complaints can be aired. These committees have not been mentioned elsewhere and no resources for these have been included in any public reporting, so presumably these do not exist or have little effect on the functioning of facilities.

Part two: life for women in immigration detention

The Department of Immigration and Indigenous Affairs website states that the Government is committed to meeting the special needs of women and children in immigration detention. While there is limited hard evidence to support the systemic ill-treatment of women, the IDS and associated guidelines of DIMIA are relatively quiet when it comes to addressing their needs.[32] The website also suggests that women and children should be detained only as a last resort, a point reiterated by the Australian Government in its recent policy revision in relation to detention, and used by the HREOC in the title of their report into their inquiry of children in immigration detention in 2004. Until July 2005 the number of women detained confirmed that this principle was not put into practice. As at 13 July 2005 there were a total of 106 women and 45 children being held in IDFs across Australia:

- Villawood IDC (65 women and 22 children)
- Maribyrnong IDC (15 women and 1 child)
- Baxter IDF (14 women and 3 children)
- Port Augusta RHP (9 women and 16 children)
- Christmas Island IRPC (3 women and 3 children).
- Perth IDC (0). [33]

These women formed a small percentage of Australia's total population of detainees (726). Approximately 75% of detainees arrived in Australia with a visa and have been detained as the result of compliance action by DIMIA. The majority of these detainees are not seeking asylum.

Our brief was to look at operations from a feminist perspective and our research has asked people connected with detainees to identify possible and actual problems, and for us to find whether there is any evidence to suggest that these are being considered or acted on. We relied on making inquiries to public offices, sourcing available written reports and media material to achieve this.[34]

Our questioning has been confirmed by the Government's own reports and their actions in recently removing most women with children from facilities, however, without changing policy. The material that follows applies to those women still in detention facilities and any future detainees while current policies remain in force.

Addressing female detainees needs

There are several reasons why it is important to understand how the needs of female detainees may differ from those of male detainees. First, there is the fact that there are relatively few women in detention and so they may be overlooked. There are the obvious physical aspects of health, personal care and reproductive functions. There are issues of personal space, privacy, safety, and freedom from fear and harassment. There are also particular issues about the care of infants and children, and differences in social, religious and cultural needs to consider. As we have no access to incidents reports or even basic data on how many babies are born and how, we have had to rely on conversations with those

[32] See appendix A for standards relating specifically to women
[33] updated weekly at www.immi.gov.au/detention/facilities.htm
[34] Our resources did not include the possibility of extensive, formal or in depth quantitative or qualitative survey work.

who have had direct or indirect experience in these areas. However, there have been some media and submission accounts that have helped frame our questions.

While defined health and personal care standards are common to most institutions that are funded by the Australian Government to care for individuals, you could safely say that they are not being effectively implemented in detentions facilities. The contractual obligations with GSL, specifically state that the:

> respect for and dignity of immigration detainees is to be observed and maintained in culturally, linguistically, gender and age appropriate ways.[35]

There is no way of us measuring the statement above, though anecdotal evidence and reports from the media and other groups suggests some of the needs of women detainees have been neglected by the provider and DIMIA. It has become apparent through our research and articulated through workers that many detainees' personal care needs are only met through regular visits and support from outside.

Privacy

The IDS 1.4.2 (Privacy) states that each detainee should be able to undertake personal activities such as bathing, toileting and dressing in private. How can we be assured that the basic principle of privacy is met? As we have no way of knowing how many breaches of privacy occur (incident reports are the Australian Government's confidential information) we are left to rely on media reports. ABC online reported on 4 June 2005 that the Immigration Minister admitted that due to operational requirements and staffing rosters, that the supervision of female detainees by female officers could not always be guaranteed. This was raised as an issue due to an allegation earlier in the year of women being seen in the shower and toilet of the Management Support Unit of Baxter IDF by male officers.[36] This same issue was also raised in the case of Cornelia Rau.

Standard 7.1.1 is there to ensure that the number and mix of the staff in a detention facility are appropriate to the delivery of services in an administrative detention environment and take into account the number and profile of the detainee population.[37]

The operation of this standard was criticised in the Palmer report in one particular facility citing that:

> The arrangements governing surveillance of female detainees in Red Compound and the Management Unit at Baxter are unacceptable. Contract requirements should insist that in all but emergency or extraordinary circumstances, surveillance of female detainees should be done by female officers. ANAO points out the standard just says where practicable which is not good enough.[38]

[35] A copy of the contract can be found at www.immi.gov.au/detention/group4/index.htm
[36] ABC online – www.abc.net.au/news/newsitem/200506/s1384487.htm
[37] www.immmi.gov.au/detention/standards_index.htm
[38] www.minister.immi.gov.au/media_releases/media05/palmer-report.pdf

Harassment, violence and sexual abuse

There are many tensions that can arise in a custodial environment such as a detention facility. There are single women and men, families and people from a diverse range of cultural and religious backgrounds, all locked up behind the same walls with little to occupy their time except anxiety about the future. Anecdotal and some reported evidence suggests that harassment and violence are commonplace in IDFs and it was stated to us that domestic violence is often a 'consequence' of the detention environment. It was alleged in a submission to the Palmer Inquiry from the Rau family that Cornelia Rau may have been abused during her 10 months in detention.[39] While this was not followed up by Rau, it was also not reported to the police, which Palmer found unacceptable, as it suggested that this type of complaint was not taken seriously.

We know very little about cases of harassment or abuse against women in IDFs. Though we do know that there is generally no use of the Sex Discrimination Act by women in immigration detention; that very few, if any complaints of this nature are made to HREOC; and that the Commonwealth Ombudsman has continuing concern for the number of complaints re assault generally. So in the absence of any detailed information it is realistic to ask the questions:

- In the case of possible issues of harassment, discrimination and sexual abuse, how are female detainees informed of the laws governing sexual assault and their rights?
- What strategies are in place to protect women from sexual assault?
- If an incident occurs, how is it dealt with? (The IDS classify a sexual assault as a 'critical incident' which means that it is required to be reported orally immediately, no later than 1 hour after the incident, and a written report provided to the DIMIA within four hours). What is the performance measure on this?
- Are complaints/reports of sexual harassment and sexual assault common? Although there are avenues available for a complaint to be made directly to external authorities, this does not seem to be occurring, and
- What sort of post-incident treatment is provided for those who have been harassed or abused?

Personal hygiene and fertility control

Standard 2.2 (Care needs) could be assumed to cover the provision of items such as tampons and menstrual pads, but there is no direct mention of these and there are many stories that suggest that these are not easily obtained and that in many cases female detainees are placed in the situation of having to request such items from male officers, causing great embarrassment and suggesting this is not properly accepted as important to the privacy and dignity of women detained.

A search on DIMIA's website found evidence that each IDF is required to ensure that female detainees are provided with sanitary products in the most discreet manner possible. This information may still be pertinent, although it dates back to the contractual obligations that the Government had with the previous service provider, Australasian Correctional Management. The information on the site states that each facility has their own arrangements according to layout, composition of staff and detainee population.[40] Questions needing answers are:

[39] www.abc.net.au/lateline/content/2005/s1380529.htm
[40] www.dimia.gov.au/detention/sanitary.htm

- How/when are the female population made aware of the arrangements for receipt of such products?
- What happens if there is no female officer on staff?
- What happens if a larger quantity than what is specified is required?

Some obvious solutions could be that these products be freely available, 24 hours a day from either a female officer or female nurse on duty. Or alternately, these products could be stored in a communal cupboard in the compound, making requests unnecessary and therefore protecting the privacy of the detainee.

A similar search on 'contraception' brought no results. Anecdotal evidence suggests that condoms are available in some facilities. Many women in detention are unable to use standard forms of contraception for cultural or religious reasons, but clearly contraception should be available to those who can or may choose to avoid pregnancy and practice safe sex while they are incarcerated. Assuming that contraceptive advice is sought, do female detainees have the right to discuss their options with female medical staff and at what price is contraception available?

Pre and postnatal care

Since the release of women with children from IDFs at the end of July, it is hard to know what the future holds for women coming into the system. We hope that they will not have to continue to experience their pregnancies and births while detained but in the absence of any clear policies we cannot assume that this will not be occurring.

Women who are detained should be able to experience births according to established standards for good practice. The National Inquiry into Children in Immigration Detention by HREOC in April 2004 received evidence that communication difficulties in pre and postnatal care, including lack of access to an interpreter, were problematic in one case raised where a woman was unclear about why she had had to undergo a caesarean. She alleged that she was not full term and not in labour; that she had no regular access to an interpreter and only phone access upon medical request; and was supervised 24 hours a day by IDF staff during her 20 day stay. The Minister at the time did not refute the claims and DIMIA's response was that:

> the responsibility for communication and interpreting on medical treatment while in hospital lies with the State Authority[41].

If the responsibility does lie with the state authority (which we have been unable to confirm), is there a Memoranda of Understanding or any other agreement between DIMIA and relevant State and Territory Agencies to cover such incidents and ensure that the fundamental standards of duty of care are not breached?

The standard covering pre and postnatal care states detainees should have access to pre and postnatal care, and that births should take place in a hospital outside the detention facility[42]. There is no further detail concerning choice of birth support, choices about birth process, scheduled pre and postnatal visits or regular screening. Our conversations have suggested that when women go into labour they are accompanied to the hospital by a guard/s who

[41] Page 502 www.hreoc.gov.au/human_rights/children_detention_report/index.html
[42] See appendix A for immigration detention standards relating specifically to women

stays on the hospital premises (often outside the door) till the women is ready to be taken back to detention. In most cases, husbands are not allowed to accompany wives (although there do appear to be concessions made for particular cases such as the recent birth of a boy in Perth whose parents were both transferred from Christmas Island), and that pre and postnatal care services are not easily or readily obtained once back at the facility. What raises concern about these practices is that they could easily place a woman and/or her newborn at risk, by what appears to be policy determined by logistics, security and cost, rather than the pre and postnatal care needs and/or preferences of the women concerned.

Most of our questions about pre and postnatal care remain unanswered as there is not much information on the public record. Conversations with midwives have given us some basic understanding that standard procedure on the 'outside', sees women start undertaking regular visits to a hospital monthly from16-28 weeks, then fortnightly till 36 weeks and then weekly till the birth. The questions we pose in the absence of any detailed reports or data are:

- What is the frequency of visits by specialist nurses or midwives to detention facilities?
- Is a woman allowed to attend prenatal visits at the hospital that she will eventually give birth?
- What is the schedule of visits provided for women in detention?
- In cases where pregnancy and birth are not straightforward, are women provided with specialist obstetric services?
- Can women choose alternative models such as birth centres?
- Does access to services as stated in the standards include birth classes?
- Are translators provided for pre and postnatal visits and during childbirth?
- Are detainees given the correct information for informed consent to medical procedures?

Care of infants

Some children have been born and until recently, continued to live their early lives in IDFs. And while the framework that allows the mandatory detention of children is still in place, we need to continue to raise questions about what access women have to items needed for the care of their infants and children and how easily they are obtained.

Standard 2.2.2.3 (Food and beverages) allows for the provision of 'milk' to all infants and children at all times, but fails to mention other provisions such as formula, dummies, bottles and nappies.[43] The standards do not deal with questions of care and bonding and maternal capacities to choose how one mothers.

Pursuant to standard 2.1.2 (Detainee property) certain personal items cannot be retained by detainees. Mentioned in the standard are money, valuables, documents, and particular items of clothing and other personal effects. A comprehensive list could not be obtained though discussions revealed that cameras were included on this list. Does this mean that if a baby is born in detention that parents are unable to take photos? Is the only photo a mother has of her child the passport size photo taken at the child's birth for identity purposes?

There are many stories about the problems women faced trying to establish good relationships with their new infants. The stresses of the detention environment combined with lack of access to support, information, provisions and services has resulted in some

[43] See Appendix A for immigration detention standards relating specifically to women

women suffering undue pressure in attempting to establish good relationships with their babies.

Child development and maternal wellbeing

On 12 May this year, HREOC issued a media release stating that:

> our immigration detention system is creating tragic and unnecessary costs both to individual detainees and the Australian community at large.[44]

HREOC's National Inquiry into Children in Detention, which reported numerous and repeated breaches of the human rights of children in IDFs, was tabled in Parliament over 12 months ago, with the major findings and recommendations being rejected by the Government and referred to as 'backward looking'.

Since then, there have been constant media cases of the wrongful treatment of women and their children in facilities across Australia. The recent case of Virginia and Naomi Leong has demonstrated what some of the effects of long term detention have on both mother and child. The *Sydney Morning Herald* reported on 24 May 2005 that numerous psychiatric reports over three years had shown that Virginia had been suffering from severe depression and that her three year old daughter Naomi, who was born in detention, had been banging her head against the wall, was uncommunicative with other children and had become mute, listless and unresponsive.

The IDS clearly state that the special care needs of detainees with psychiatric or psychological issues should be identified, assessed and responded to. GSL are required to provide evidence on a monthly basis of any detainee who may be at risk. If these reports were provided to DIMIA in the case of Virginia and Naomi, why did it take so long for them to be let free?

Again, the lack of transparency in the management of IDFs means that we are left with more questions than answers. Since the release of women with children last week, the question we are now left with in terms of child development and maternal wellbeing is, how are 'split' families going to cope and what support will they be offered for dealing with being separated.[45]

[44] Enough is enough – time to review immigration detention
www.hreoc.gov.au/media_release/2005/17_05.html

[45] Split families refer to those where children may be out of detention but the parent is not. An example is a mother in Villawood IDF, with three dependent teenage children on Bridging Visas Es living in the community with their aunt.

Conclusions

Democracy depends on the free flow of information and the vigilance of both the population and our elected representatives to ensure that government services conform to both legal requirements and decency. If this does not occur governments lose trust and legitimacy. There has been considerable disquiet expressed by a wide range of people from across the political and public spectrum about the Government's management of IDFs.

One attribute of most Australian Government agencies is the requirement that they face scrutiny by other organisations in administrative law and compliance. While the standards suggest that DIMIA facilities are to comply with national and international human rights requirements, there are considerable difficulties in ensuring this happens and in activating effective scrutiny.

Some important ways of determining if standards are being met in detention facilities is the existence of and easy access to adequate complaints mechanisms, impartial and external monitoring and independent reporting of conditions and services. Here, there appears to be a major chasm between what exists on paper and what actually happens. The notion of detainees being able to complain without fear of reprisal is meaningless if measures to protect their interests are lacking. This is especially so where people come from a range of religious, cultural and linguistic backgrounds, and where gender issues may also intervene. There are no official visitors to detention facilities (unlike the case with prisons). There are no formal detainee advocates in detention facilities (unlike the case of patient advocates in hospitals). The media have had serious difficulties in accessing detention facilities, detainees and the people who work there.

The recommendations in this submission would improve our capacity as citizens and voters, as well as officials, to ensure that what is supposed to be done, is done, and that facilities comply with basic human rights and decency. No democracy can claim legitimacy if it fails to remedy its own system that creates injustices.

Appendix A – Table of Immigration Detention Standards relating to women

There are ten parts to the Immigration Detention Standards covering for example, education, communication and visits, security and order, and staff. A full list can be found at www.immi.gov.au/detention/standards_index.htm. We have chosen to list the ones that either specifically relate to women or may affect them differently. There are many obvious gaps.

1.4.1 Dignity	
1.4.1.2	Detainees are not subjected to discrimination on any ground, including race, colour, gender, sexual preference, language, religion, political or other opinion, national or social origin, property, birth or other status, or disability.
1.4.2 Privacy – personal and information privacy	
1.4.2.1	Each detainee is afforded as much personal privacy as is reasonably practicable; in particular, each detainee can undertake personal activities, such as bathing, toileting and dressing in private

2.1.4 Allocation of accommodation, including in separation detention	
2.1.4.2	To the extent practicable and subject to the good order and security of the detention facility and the safety of all those within it, detainees have access to accommodation which recognizes the special needs of particular groups, including but not limited to families, unaccompanied minors/women/men and persons who are ill and/or have a disability.

2.2.1.3 Individual health	
2.2.1.3.3	Detainees have the opportunity to be examined by a medical officer of the same gender, if they so wish and as far as practicable.

2.2.1.4 Hygiene – personal	
2.2.1.4.2	Detainees have access to information, services and safe secure facilities appropriate to their age, gender, family circumstances, linguistic/cultural background and physical/mental disability to enable them to maintain their personal hygiene.

2.2.1.5 Hygiene – clothing, footwear and bedding	
2.2.1.5.4	Detainees: • have access to information, services, equipment and facilities appropriate to their age, gender, family circumstances, linguistic/cultural background to enable them to keep their personal clothing and linen clean and fit for use

2.2.2 Food and beverages	
2.2.2.3	The special food requirements of infants are met and milk is available for detainee infants and children at all times.

2.2.3 Special care needs, including detainees with special illnesses and conditions	
2.2.3.1.1	The special care needs of detainees are identified, assessed and responded to. Detainees with special needs may include but are not limited to the following: • elderly detainees, whether accompanied or unaccompanied • minors, in particular unaccompanied minors • expectant mothers • women, whether accompanied or unaccompanied • detainees with serious health problems • detainees in need of psychiatric or psychological treatment • detainees at risk of self-harm • long-term detainees • victims of torture or trauma • detainees wit ha physical/mental disability

2.2.3.2 Minors – including babies, infants and unaccompanied minors	
2.2.3.2.2	While parents remain responsible for the health and welfare of their children, they are assisted, where necessary, to care for their children, including but not limited to" a. the provision of training in parenting and life skills b. the development and implementation of an individual care plan for their children
2.2.3.2.3	Suitable care arrangements are made for children when parent(s) are absent from the detention facility, including but not limited to the absence of an expectant mother while she is giving birth.

2.2.3.3 Ante-natal, obstetric and post-natal services and facilities	
2.2.3.3.1	Expectant mothers have access to necessary ante-natal, obstetric and post-natal services in a timely manner and by persons qualified to provide such services.
2.2.3.3.2	Facilities, equipment and professional support are available to enable a detainee parent to care for a nursing infant.
2.2.3.3.3	Arrangements are made, whenever practicable, for children to be born in a hospital outside the detention facility. In the event the child is born in a detention facility, this fact is not recorded on the child's birth certificate.

6.8 Assaults	
6.8.1	Detainees and staff are informed of the law pertaining to assault, including sexual assault, the consequences of infringing the law, and avenues for reporting allegations of assault.

Appendix B – ANAO comment on the Immigration Detention Standards

The following examples are drawn from the ANAO report and **list** the criticisms of the language and format of the standards. The full report can be found at www.anao.gov.au

DIMIA	ANAO
Quality Formal arrangements in place with relevant State authorities for education, police, corrections, child welfare and health issues.	Formal arrangements may not have any impact on service quality unless they are exercised and tested, or in some other way can be shown to be operating. The ANAO notes that negotiations with many State authorities have been ongoing since 2001 but remain unfinalised.
Manage the delivery of detention services in accordance with Immigration Detention Standards and other contractual requirements, with any breaches addressed.	Managing detention services is discussed in detail later in this chapter (see paragraph 5.53). Based on the findings of this audit, the ANAO considers that it would only be possible to report against this 'indicator' in a very general and subjective manner because of the number and nature of standards, measures and other contractual requirements.
All unaccompanied minors and women and children assessed against relevant instructions for alternative detention arrangements. All cases for people in detention reviewed regularly to ensure progress of relevant processes.	The use of terms such as 'relevant' and 'regularly' means it would be difficult to assess whether services had been delivered to the required quality.

Source: DIMIA PBS 2004–05 p.106

Figure 5.3
Extract of DIMIA standards and measures for food

Standard 2.2.2.1	Measure(s)	ANAO Comment
Taking account of cultural requirements and the institutional setting, detainees are provided with a choice of food that is nutritional, adequate for health and well being; dietary specific where required, for example, for religious or medical reasons; stored, prepared, transported according to relevant laws, regulations and standards; and in sufficient quantities.	1) No substantiated instance of a detainee not having access to food of this kind; or any food handling hygiene, safety, equipment storage, preparation and transporting practices contrary to relevant laws, regulations and standards. (2) The department is provided with evidence that menus are developed and regularly reviewed in consultation with dieticians and nutritionists, and with input from the detainees; and strategies are in place and implemented which recognise and cater for such aspects of the detention environment as the peculiarities of the institutional setting, arrival of detainees outside established meal times, religious festivals and between meal snacks.	The standard is very broad and includes conditions. This means it would be difficult to judge whether it had been met. Reference to a nationally accredited standard, would clearly specify an expected minimum standard for service delivery and would allow for measurement of performance. Any assessment of whether the standard had been breached would need to be undertaken by an expert, because, for example, a general administrator would not be qualified to judge whether all the conditions had been met. The measures do not clarify what is expected of the Services Provider.

Source: ANAO from the GSL Contract

Figure 5.4
DIMIA standards and measures for individual health

Standard 2.2.1.3.1	**Measure**	**ANAO Comment**
The individual health care needs of detainees are recognised and managed effectively, appropriately and in a timely manner The individual health care needs of detainees are recognised and managed effectively, appropriately and in a timely manner.	No substantiated instance of the individual health needs of a detainee not being recognised and effectively managed.	A number of terms in this standard have not been defined–'effectively', 'appropriately' and 'timely'. This would make it difficult to assess whether performance had met the standard. The measure does not provide clarification.
Standard 2.2.1.3.2	**Measure**	**ANAO Comment**
A detainee can expect to be consulted and informed about his/her medical condition and treatment, including transfer for medical reasons, in a language or in terms that he/she understands; and that the communication of such information and advice will be consistent with the requirements to maintain accuracy and his/her privacy.	No substantiated instance of a detainee not being appropriately consulted and informed.	The standard contains unclear terminology. This standard would be difficult to assess because it would rely on an absence of complaints. Lack of complaints does not mean the standard has been met.
Standard 2.2.1.3.3	**Measure**	**ANAO Comment**
Detainees have the opportunity to be examined by a medical officer of the same gender, if they so wish and as far as practical.	No substantiated instance of a detainee not having such an opportunity, as appropriate and where practicable.	Because access to a same gender practitioner is contingent on it being practical, it would not be clear whether this standard had been met or not.

Figure 5.5
DIMIA's Contract Performance Information

DIMIA's Standard and Measure for individual health services	ANAO Comment
Immigration Detention Standard (IDS) The individual health care needs of detainees are recognised and managed effectively, appropriately and in a timely manner.	Such a standard should relate to pre-defined levels of excellence, including minimum requirements. GSL's progress in the provision of health services could only be measured against this standard if the terms 'appropriately' and 'timely' were defined.
Performance Measure No substantiated instance of the individual health needs of a detainee not being recognised and effectively managed.	This 'measure' relies on DIMIA officials being able to recognise a breach of the undefined health standard. Ideally, it would measure changes in the timeliness, cost and/or quality of the actual health service being delivered by GSL.
Monitoring DIMIA monitors the performance of GSL in providing health services by using information provided by GSL on Incidents and independent and expert opinion commissioned by DIMIA regarding the causes and/or consequences of health Incidents.	DIMIA has adopted an exceptions-based approach to assessing the performance of GSL. DIMIA assumes that its health 'outcome standard' is being delivered satisfactorily at each IDC unless the reporting of a health Incident (or repeated Incidents) highlights a problem
Method of Assessment An Incident is a defined term for the purposes of the DIMIA/GSL Contract; it is defined to be a 'Minor, Major or Critical Incident'. Information on incidents is assessed by DIMIA for instances of breaches of the health standard. This information also forms the basis for any sanctions against GSL. However, as summarised in DIMIA's response to this audit 'In assessing the Services Provider's compliance with the relevant performance measures, flexibility in the terminology of the IDS provides discretion to the Department to consider service delivery within the necessary context'.	As indicated above, this method relies on DIMIA officials being able to recognise when GSL is providing inappropriate and untimely health services. The definition of an Incident is also unclear. For example, clause 16.1.5 of Schedule 2 describes 'medical emergency' as a Major Incident while Attachment A to Schedule 3 indicates that 'serious illness or injury' is a Critical Incident. This means that at a number of points in the monitoring and assessment process, DIMIA officials exercise considerable discretion as to what is reported. Reports are necessarily subjective and could lead to difficulties in pursuing sanctions and interpreting liability, indemnity and insurance requirements.

Source: ANAO analysis

Appendix C – Other issues that affect women in the migration area that may result in their detention or deportation

This paper has focused on the ways that women are treated in IDFS but has not dealt with why many of them are detained. While many share their reasons for being in Australia with men, others are affected by aspects of law and procedures that fail to recognise some situations that may affect them differently. These include the conditions for spouse visas, the ways that sex workers (including presumably trafficked women) are treated, having an Australian Citizen child while being a non-citizen, the lack of humanitarian visas to deal with non refugee reasons for needing protection and problems with the definitions of refugee under the *United Nations Refugee Convention 1951*(the Convention).[46]

The spouse visa system includes a new regulation by the Australian Government that makes it harder for women whose relationship breaks down because of domestic violence to prove their case for residency which may place them at additional risk. The question of trafficked women has received some media publicity but the regime in place is geared to prosecuting traffickers, not addressing the needs of the women that may have been exploited. As such, it reinforces stereotypes of Asian women in the sex industry as being trafficked or illegal, and gives rise to assumptions such as the one detailed in the Palmer report on Vivian Alvarez Solon. While there may be diverse views on the legitimacy of sex work amongst women's groups, the issues of workplace exploitation need to be dealt with as such, without moralising overtones that stereotype the women involved.

There are questions about the Convention, and its deficits in dealing with women. The majority of the world's refugees are women but until recently gender-related persecution claims were largely unsuccessful as the category of sex/gender is not included as grounds of persecution. Since then guidelines have been developed by UNHCR for processing gender-related persecution claims, but women asylum seekers still struggle for recognition of their refugee status.

The number of women who seek asylum in Australia due to gender-based persecution is small. Approximately 27 per cent of the applications for protection visas in Australia are made by women asylum seekers. Australia has a Women at Risk Program but the 'women seeking asylum must apply off shore' and be 'in danger of victimisation, harassment or serious abuse because of her sex.' There needs to be a major review of DIMIA Gender Guidelines for both on and off shore applicants supported by a legislative direction to decision-makers to recognise gender based persecution claims that fall within the Convention. These issues all need to be addressed and DIMIA should be more aware of the needs of women more generally in policy and practices.

[46] Article 1A(2) states the grounds for being a refugee as 'a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion' which do not include sex or gender issues as grounds.

Appendix D – Bibliography of selected references

Auditor General, *Audit Report No. 54 2003-2004*
Management of Detention Centres Contracts – Part A
www.anao.gov.au

Auditor General, *Audit Report No. 1 2005-2006*
Management of the Detention Centres Contracts – Part B
www.anao.gov.au

Bartolomei, Linda and Pittaway, Eileen (September 2002) *Refugee Women (in Searching For Solutions – A Project of the centre for Refugee Research, University of NSW, Australia. Refugee Law and Policy Implementation and Evaluation. Background Papers for the Annual Meeting of the Executive Committee of the United Nations High Commissioner for Refugees)*

Cauchi, Stephanie, Ierodiaconou, Mary-Jane and Perry, Angela (co-authors in coalition with Feminist Lawyers and Women Rights Action Network Australia) (November 2003) *The Invisible Women – A Report on Gender-Based Persecution Claims by Women Asylum Seekers in Australia*

Commonwealth Ombudsman *Commonwealth Ombudsman Annual Report 2003-04*
www.ombudsman.gov.au/publications_information/Annual_Reports/ar2003-04/

Department of Immigration and Multicultural and Indigenous Affairs
www.immi.gov.au/refugee

Human Rights Commissioner (2001) *A report on Visits to Immigration Detention Facilities by the Human Rights Commissioner*
www.humanrights.gov.au/human_rights/idc/index.html

Human Rights and Equal Opportunity Commission (April 2004) *A last resort? National Inquiry into Children in Immigration Detention*
www.hreoc.gov.au/human_rights/children_detention_report/index.html

Human Rights and Equal Opportunity Commission (1998*) Those Who've Come Across the Seas: Detention of Unauthorised Arrivals*

Keneally. Tom and Rosie Scott (eds) (2004) *Another Country – writers in detention* Sydney PEN and Halstead Press

Neumann, Klaus (2004) *Refuge Australia – Australia's Humanitarian Record* University of New South Wales Press, Limited

The Australian Law Reform Commission *Violence and women's refugee status*
www.austlii.edu.au/au/other/alrc/publications/reports/69/vol11/ALRC69Ch11.html

World Health Organisation *(*2001) *Advancing Safe Motherhood through Human Rights*
www.who.int/reproductive-health/

Additional websites used

Amnesty International
www.amnestyusa.org/women/asylum

ChilOut (Children out of Detention) are a group of parents and citizens opposed to the mandatory detention of children and their parents. They coordinate a Villawood visitors program and assist detainee families around Australia.
www.chilout.org

www.chilout.org.index_home.html

Global Solutions Limited, Australia
www.gslpl.com.au/gsl/contracts/contracts.asp