



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Reference: Administration and operation of the Migration Act 1958

TUESDAY, 8 NOVEMBER 2005

CANBERRA

BY AUTHORITY OF THE SENATE

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to:
<http://parlinfoweb.aph.gov.au>

SENATE
LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Tuesday, 8 November 2005

Members: Senator Crossin (*Chair*), Senator Fierravanti-Wells (*Deputy Chair*), Senators Bartlett, Joyce, Kirk and Ludwig

Participating members: Senators Abetz, Barnett, Mark Bishop, Brandis, Bob Brown, George Campbell, Carr, Chapman, Colbeck, Conroy, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Fielding, Heffernan, Humphries, Lightfoot, Lundy, Mason, McGauran, Milne, Murray, Nettle, Payne, Parry, Robert Ray, Sherry, Siewert, Stephens, Stott Despoja, Trood and Watson

Senators in attendance: Senators Crossin, Fierravanti-Wells, Joyce, Ludwig, Kirk and Nettle

Terms of reference for the inquiry:

To inquire into and report on:

- the administration and operation of the Migration Act 1958, its regulations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs and the Department of Immigration and Multicultural and Indigenous Affairs, with particular reference to the processing and assessment of visa applications, migration detention and the deportation of people from Australia;
- the activities and involvement of the Department of Foreign Affairs and Trade and any other government agencies in processes surrounding the deportation of people from Australia;
- the adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention;
- the outsourcing of management and service provision at immigration detention centres; and
- any related matters.

WITNESSES

COMRIE, Mr Murray Neil, Consultant, Commonwealth Ombudsman 29

McCarthy, Mr Mike, Commercial Director, GSL (Australia) Pty Ltd..... 2

McMILLAN, Professor John Denison, Commonwealth Ombudsman 29

OLSZAK, Mr Peter, Managing Director, GSL (Australia) Pty Ltd 2

**WILLIAMS, Mr Jim, Assistant Secretary, Detention Contract and Services Branch, Department
of Immigration and Multicultural and Indigenous Affairs 2**

Committee met at 7.37 pm

CHAIR (Senator Crossin)—I declare open this meeting of the Senate Legal and Constitutional References Committee for its inquiry into the administration and operation of the Migration Act 1958. This is the seventh hearing of the committee for this inquiry. The inquiry was referred to the committee by the Senate on 21 June 2005 and is being conducted in accordance with the terms of reference determined by the Senate.

The committee has received over 200 submissions for this inquiry. The terms of reference are on our web site and are available in the *Hansard*. Witnesses are reminded of the notes they have received relating to parliamentary privilege and the protection of official witnesses, and we have further copies of those if they are needed. Witnesses are also reminded that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate.

The committee prefers all evidence to be given in public but, under the Senate's resolutions, witnesses have the right to be heard in private session, if they so choose. If witnesses intend to do that they will need to seek agreement from the committee for that to happen.

[7.38 pm]

McCarthy, Mr Mike, Commercial Director, GSL (Australia) Pty Ltd

OLSZAK, Mr Peter, Managing Director, GSL (Australia) Pty Ltd

**WILLIAMS, Mr Jim, Assistant Secretary, Detention Contract and Services Branch,
Department of Immigration and Multicultural and Indigenous Affairs**

CHAIR—Welcome. I understand there has not been a submission lodged by GSL. I thank you for accepting our invitation to appear before the committee and assist us in our inquiry. Before we go to questions, I invite you to make a short opening statement.

Mr Olszak—Thank you. It is nearly two years since GSL assumed responsibility for the management of the first detention centre in what was a staged transition. We have a duty of care to people entrusted in our care and we also have an obligation to comply with numerous detention standards that underpin a contract which Mick Palmer was critical of in his report into the Cornelia Rau detention.

DIMIA is reviewing the contract, and GSL welcomes that review and will participate fully in the process. When the contract was written, boat people and asylum seekers were very much in mind. Many of them were long-term detainees. Today, these people make up only a small percentage of the detainee population. Fewer than 20 so-called boat people still remain in detention. Most detainees are what we now call compliance cases who often remain in detention for only a few weeks—some for only a few days. Nearly 30 per cent of all detainees at midnight on Sunday comprised 208 illegal Indonesian fishermen being held at Baxter. They have no desire to stay in Australia and they present no significant management problems. The detention environment and dynamics are therefore quite different from those that existed when we took over the contract.

The provision of mental health services, particularly at Baxter, which houses long-term detainees, is an issue which has most occupied our minds. To address the issues associated with long-term detention in regard to mental health, two important initiatives have been introduced that will improve the mental health and general wellbeing of detainees at Baxter and, beyond Baxter, at other centres. Known as the Enhanced Integrated Mental Health Service and the Environmental Change Program, they will provide quality of life for all detainees and give them considerably more autonomy within their facility.

We continually strive to meet our contractual requirements, and part of this process is a regular review of our operational procedures. Important examples of this are new operational procedures for the management support units at Baxter and Villawood and for Red One compound at Baxter, both of which provide additional safeguards for detainees. In other initiatives, our catering partners continually try to meet the challenges of catering at Baxter for sometimes up to 40 different nationalities in the one facility, each with its own food preference, and with limited appropriate infrastructure. Food takes on an importance that is quite disproportionate to its nutritional and dietary value.

We no longer have any children in detention, but until they were released we achieved virtually 100 per cent attendance at outside schools. Many children in long-term detention had received only minimal schooling or no education at all before they came to Australia. Very few spoke English, and learning English was the cornerstone of their education. Our teaching staff worked closely with local schools. Children who elected, for whatever reason, not to go to school outside the facility were educated within the facility. Children were encouraged to take part in sport and other recreational activities and they went on a number of excursions, just like any other children.

With respect to our staff, when we select staff we look for interpersonal skills, life skills, compassion and empathy, as well as cultural diversity and gender balance. Every new member of the detention staff receives a six-week training course targeted at administrative detention. Our training emphasises the problems faced by detainees, especially long-term detainees, and reinforces our overriding obligation to safeguard their human rights. The overwhelming majority of our staff take their responsibilities very seriously and enjoy a good relationship with detainees. In his report into the Cornelia Rau matter, Mick Palmer wrote that GSL had continued to progressively implement improvements to the detention environment, and the inquiry found many instances of good people trying to do a difficult job well.

This is a complex and sensitive contract in which parliament and the community rightly show great interest. We are working in a difficult environment, but I believe that by any balanced measure GSL has performed to, and in some cases exceeded, its tendered offerings in seeking to meet the needs of detainees and DIMIA.

Senator LUDWIG—I was trying to get an understanding of your corporate structure, both in Australia and in your overseas connections. Do you want to outline that briefly for the committee?

Mr Olszak—Our head office is in the UK and it performs similar roles to what we perform in Australia, very much focused on PFI programs, custodial services. In the UK we operate a number of detention centres and a number of prisons but we also operate, in the PFI mode, schools, hospitals and the like. With regard to the Australian operation, our head office is based in Melbourne and we operate in most states in Australia. We have contracts with state governments and of course the federal government with our DIMIA contract for detention services.

Senator LUDWIG—Is the DIMIA contract with Global Solutions Limited?

Mr Olszak—The company is called GSL Australia. There was a name change.

Senator LUDWIG—And it is proprietary limited.

Mr Olszak—Yes.

Senator LUDWIG—That is a wholly owned subsidiary of the English—

Mr Olszak—GSL, yes.

Senator LUDWIG—How does the UK express that?

Mr Olszak—Limited.

Senator LUDWIG—Is the contract with DIMIA only one contract or are there multiple contracts or parts of contracts?

Mr Olszak—It is a single contract with many parts to it. There is obviously the management of a number of detention centres, but there are also additional tasks—for example, the management of the illegal fishers that we are dealing with at the moment.

Senator LUDWIG—Is there a head contract with separate contracts or separate variations to the contract to deal with those issues?

Mr Olszak—It is basically broken up into what we would call in scope services, which are contracted services; and out of scope services, which are, by definition, conducted on a fee for service basis, because you cannot define all the service offerings.

Senator LUDWIG—Are the in scope services in one document, effectively?

Mr Olszak—Effectively, yes.

Senator LUDWIG—When did that commence?

Mr Olszak—We signed the contract, from memory, in August 2003.

Senator LUDWIG—That is to run for—

Mr Olszak—Four years, with an option of three.

Senator LUDWIG—If you want to end the contract, on what basis could you end it? Can you end it after the four-year period?

Mr Olszak—My recollection is that DIMIA had the option to take up the contract and we need to fulfil that obligation. That is my understanding.

Senator LUDWIG—What is the total cost of that contract?

Mr Olszak—The total cost would vary. It is approximately \$70 million per annum.

Senator LUDWIG—Is there a rate or an outcome depending on the number of detainees or the number of centres?

Mr Olszak—Yes. The centres have an ultimate capacity, and we operate within a particular band within that total capacity. For example, there would be a rate of fixed and variable costs for if we had one detainee to 25 per cent of capacity, then 26 to 50 per cent of capacity and so on. There are different bands.

Senator LUDWIG—Are there different bands for different IDCs?

Mr Olszak—No, they are all in the same four bands.

Senator LUDWIG—There is Maribyrnong, Perth, Port Hedland, Christmas Island, Baxter and Villawood. Are there any others? The out of scope services are in the Northern Territory.

Mr Olszak—They are what we call escorts, predominantly. You will be aware that Port Hedland has what we call a care and maintenance basis. It is the same with Christmas Island.

Senator LUDWIG—They do not fall into the one to 25 per cent band. Do they receive a different rate?

Mr Olszak—Yes. As I said, Port Hedland is virtually on a care and maintenance basis.

Senator LUDWIG—Are the out of scope services in a separate contract or are they part of the head contract?

Mr Olszak—They are part of the head contract, and there is a schedule attached.

Mr McCarthy—There is a clause which deals with cost plus—it is a cost plus a margin.

Senator LUDWIG—How many out of scope contracts are there?

Mr Olszak—It is incorporated in the head contract.

Senator LUDWIG—How do you refer to them—as separate or discrete services?

Mr Olszak—Yes. They are separately invoiced.

Senator LUDWIG—How many are there?

Mr McCarthy—That would vary from day to day. Some of them can be lengthy—provision of services into Queensland at the moment, for example. Others can be a single day or a few hours of work. There is not a definite number. They vary.

Senator LUDWIG—That is remunerated on a cost plus basis.

Mr Olszak—Yes. But the hourly rates are determined in the contract.

Senator LUDWIG—And that is fixed at the start of the contract with variation over time.

Mr Olszak—Yes.

Senator LUDWIG—How is the variation built in?

Mr McCarthy—Escalation and indexation.

Mr Olszak—CPI and wage cost adjustments.

Senator LUDWIG—How is it linked to the wage cost adjustment?

Mr McCarthy—It is not—only through CPI.

Senator LUDWIG—So it is a CPI adjustment.

Mr McCarthy—Yes, that is all.

Senator LUDWIG—How does the drop in numbers affect the four-year contract when the option comes up? We have been experiencing a drop in numbers in the detention centres. How does that affect the contract and then the renegotiation of that contract?

Mr Olszak—If we operated, say, at the 50 to 75 per cent band and there was a reduction, we would go down to the next band or possibly the lowest band. If there were no detainees in our care then we would have to discuss that with DIMIA.

Senator LUDWIG—Is there a clause that deals with that?

Mr McCarthy—DIMIA can shut down and open facilities depending on what they determine their needs to be.

Senator LUDWIG—In the last 12 months, have there been breaches of the contract by GSL?

Mr Olszak—Yes. We have been sanctioned for not performing to the particular standards.

Senator LUDWIG—How many times?

Mr Olszak—A number of times.

Senator LUDWIG—Which instances are they?

Mr Olszak—I guess the most notable is the Mildura escort.

Senator LUDWIG—Have there been others?

Mr Olszak—Yes, there have been.

Mr Williams—It is assessed on a quarterly basis. The incidents and activities are assessed each quarter and anything that, in our view, has led to a breach of one of the Immigration Detention Standards, which are a schedule to the contract, may lead to a sanction. I am not a lawyer; I do not know whether they are technically regarded as a contractual breach.

Senator LUDWIG—I am happy to refer to them as a sanction.

Mr Williams—Yes. A contractual breach has other implications. The quarterly report is done and that accumulates incidents and occurrences that we feel concern efficiency and standards in terms of the IDS—that is, the Immigration Detention Standards.

Senator LUDWIG—Have you provided those quarterly reports to the committee?

Mr Williams—No, we have not. They are not usually publicly available documents.

Senator LUDWIG—Are they available?

Mr Williams—I would have to take that on notice.

CHAIR—Can I just clarify something there. Mr Olszak, you report on a quarterly basis to DIMIA. DIMIA looks through your quarterly report and, if they believe there has been an incident or a breach of the contract, they then ask further questions or investigate that item further? You do not automatically report to DIMIA when there has been a breach—is that correct?

Mr Olszak—There is a pretty involved reporting structure around the reporting of incidents. Different incidents have a reporting time frame. For major incidents it is within the hour. For minor incidents it can be within an extended period of time. That is the first thing. On a day-to-day basis, we report through to DIMIA any particular incidents that may or may not reflect any possible failure by GSL. If there is a whole raft of incidents we are duty bound to report those. With regard to the quarterly reports, by going through our reports and the DIMIA centre managers reports, DIMIA will then determine if there are to be any sanctions applied.

Mr Williams—Is that clear enough? Basically—

CHAIR—Yes. I just wanted to clarify what Senator Ludwig's question was.

Senator LUDWIG—So how much has been involved in sanctions in the last four quarterly reports? Is there a monetary value attached?

Mr Williams—There is usually a monetary value attached. It is deducted from the percentage of the payments which are at risk. As I understand it, payments consist of a large portion which is fixed and a percentage which is regarded as at risk. For each invoice and payment we keep back the at-risk portion. We apply any sanctions at the end of the quarter to the money kept back and we pay the balance across.

Senator LUDWIG—How much has it been for the last four quarters for sanctions?

Mr Williams—I would have to take that on notice. I do not have the information with me.

Senator LUDWIG—Why don't you have that information here?

Mr Williams—It is not something we normally make public.

Senator LUDWIG—But we have the facility to go in camera, and you know that.

Mr Williams—Yes. I am able to take that on notice.

Senator LUDWIG—In terms of the renegotiation of the contract, are you currently talking to DIMIA about that?

Mr Olszak—At this particular time, no.

Senator LUDWIG—Why do you say ‘at this particular time’? Is there a better time to talk to them?

Mr Olszak—I said, ‘At this particular time, no,’ because DIMIA has engaged an officer to do a review of the contract—a gentleman by the name of Mick Roach.

Mr Williams—That is one of the outcomes of the Palmer inquiry. The review is currently being kicked off. It is still in early stages but it is something we will no doubt need to talk to GSL about in due course.

Mr McCarthy—In terms of the normal operation of a contract, the four years and the extension, there is not a renegotiation. It is simply a decision that DIMIA makes at the end of or close to—

Senator LUDWIG—It is whether they take up the option.

Mr McCarthy—That is right.

Senator LUDWIG—No. This was an unrelated question.

Mr McCarthy—Sorry.

Senator LUDWIG—Who is Mr Roach?

Mr Williams—I understand he is a former head of the Defence Materiel Organisation and has been deputy secretary in agencies like Customs and other Commonwealth government agencies.

Senator LUDWIG—Is there a contract that DIMIA have let with Mr Roach?

Mr Williams—I believe so. He is employed as a consultant. We will probably be able to provide a CV and some details to the committee.

Senator LUDWIG—Could you provide the CV, the terms of reference, the cost of the consultancy in total, whether there are any specific requirements in terms of performance, the time of the contract and whether there are any terms of renegotiation of the contract?

Mr Williams—For Mr Roach?

Senator LUDWIG—Yes. Have you spoken separately to GSL about the access that Mr Roach will be able to have and the information that GSL will be able to provide to him in order for him to do his work?

Mr Williams—We are about to write to GSL formally about it. I understand that tomorrow there is a formal briefing with GSL about the project and other projects that arise out of the Palmer inquiry. The material held by GSL on our behalf remains Commonwealth property, so it is our expectation that most of the material in their position, which relates to the contract and its operations, would be available to Mr Roach.

Senator LUDWIG—But you do not know at this point whether GSL will provide open access to Mr Roach.

Mr Williams—We have not asked them formally. We expect that they would do so.

Senator LUDWIG—Is this news to you, Mr Olszak?

Mr Olszak—No.

Senator LUDWIG—They have not written to you yet, though.

Mr Olszak—We have been verbally informed that Mr Roach is undertaking this review. We are meeting with Mr Roach tomorrow and things will progress from there, I guess.

Senator LUDWIG—What was the other project you mentioned?

Mr Williams—There are lots of other projects arising out of the Palmer report. There is something like 60-odd projects that are tagged in response to the Palmer report.

Senator LUDWIG—I meant more specifically with GSL. I can ask about those later.

Mr Williams—I think I was referring to the range of Palmer related inquiries. There is work to do, for example, on the health strategy, which will have contractual implications as well as infrastructure implications at our centres. There is work on—I am just trying to remember the other detention matter.

Senator LUDWIG—I am happy for you to take that notice to provide an overview of those relevant to GSL and then, if there is a spreadsheet or summary document of the current projects that you intend to let, how you are going to let them, whether they are going to be tendered or not for tender. I take it that Mr Roach's was not a tendered contract.

Mr Williams—I do not believe so.

Senator LUDWIG—Then you might explain how Mr Roach was selected, the same as for any of those other contracts.

Senator NETTLE—You talked a little bit before about the health responsibilities in your contract. One of the things we have discussed before in this committee is the part of your

contract that relates to needing to set up a health panel, an advisory panel, for Baxter. Is there any update on how that is going?

Mr Olszak—I think events have overtaken the setting up of the panel. We went through an expression of interest stage some time last year, I believe. It was felt by both parties—DIMIA and GSL—that the applicants for that committee were not suitable. As I say, things have moved on since then. A detention mental health task force has been established coming out of, I understand, Palmer. That is a discrete department of DIMIA advised by Professor Harvey Whiteford. They are certainly working through the health issues. That is not to say that the health advisory panel will not be set up. It is just taking another twist and turn, I guess.

Senator NETTLE—So is it a requirement of the contract that you set up the health panel?

Mr Olszak—My understanding is that it was not an initial requirement of the contract but we did say that we would look at setting up the health advisory panel. I may be wrong here but I do not think it was a specific requirement. It was to be negotiated after the contract.

Mr McCarthy—It was a question of whether that was the right model forward. DIMIA was reluctant to go on that model, for whatever reason. That is why it changed direction. Actually, I think it was a requirement, but it was a requirement which DIMIA did not require us to proceed with. We took it to the point where DIMIA needed to work with us in choosing who ought to be on it. But then, as Peter said, other events took over and it was felt that a better model might be more appropriate. That is what is emerging now.

Senator NETTLE—You asked for expressions of interests and you got people in. That was when it was stopped—is that right?

Mr McCarthy—It was done in consultation with DIMIA. That was always the intent. GSL would not simply decide who was going to be on it. It was always in cooperation and consultation with DIMIA. It got to the point where there was, I suppose, some thought of whether that was going to be the best or there was some uncertainty about whether that was going to provide the advice that was needed to shape health services. That was probably also in an environment where the need for health or the perception of what the needs were for health were changing as well. The detainee population was changing. So there was a period of time there when there was some uncertainty about what direction that would take. We are coming out of that uncertainty now with the group that Peter has referred to—the task force.

CHAIR—We have to attend a division.

Proceedings suspended from 8.09 pm to 8.19 pm

Mr Williams—The responses were not considered to be of a suitable depth, so it was decided that we needed to readvertise. All of these new issues have since arisen, and that is where we find ourselves. But I think it is our intention to readvertise. We have started dialogue with the various medical bodies ahead of readvertising so that we can hopefully get a better response next time.

Senator NETTLE—So it was quality of applicants, not number of applicants; was that the issue?

Mr Williams—Quality and depth of the field that ended up responding. Some medical bodies did not want to respond or get involved. We really need to have those bodies involved, so we felt we needed to try to broaden the response.

Senator NETTLE—I go to another issue about detainees who are assisting in the detention centres. Do you define what they do as work?

Mr Olszak—We define it as a meaningful activity which is purely voluntary. No-one is forced to undertake any role; it is purely voluntary. Its genesis is in trying to keep people busy, to keep them occupied.

Senator NETTLE—They get awarded merit points for the activities that they are involved in?

Mr Olszak—Yes.

Senator NETTLE—Is it those merit points that they then use to purchase items at the cafeteria—phone cards or drinks?

Mr Olszak—Phone cards, lollies, tobacco, personal items et cetera.

Senator NETTLE—If that is what you use to purchase things, whether you term it money or not, it seems to perform that function within the detention centre. Is that a correct assessment of how the merit points system operates?

Senator LUDWIG—A merit point has how much value?

Mr Olszak—Nominally a dollar.

Senator LUDWIG—What rate do you then assess an activity at? Is it a matter of 10 merit points an hour? Is there an activity that attracts a particular number of points?

Mr Olszak—I believe it varies from site to site, but it is nominally a dollar an hour.

Senator LUDWIG—If someone participates in an activity, they receive a merit point per hour?

Mr Olszak—Yes.

Senator NETTLE—Do the detainees get a weekly statement of all the merit points that they have earned for that week?

Mr Olszak—I am not across the detail but I would be very sure that that would be the case, yes.

Senator NETTLE—I understand your comment in describing what the detainees do as activities. The committee visited Villawood detention centre, and we were provided with two documents which I would describe as pay slips—I do not know how you would describe them—which outlined the amount of hours that had been worked and the amount to be paid. We were given two separate documents. I have copies here; they were tabled when we visited the centre. One of them has the title ‘Detainee Working List’. It describes the type of work, the total hours worked and the amount to be paid by facilities. The other document has ‘Facilities Stage 2’ written in the upper right-hand corner. It is no longer called ‘work’ on the second document; it is called an ‘activity’. It refers to type of activity, total hours of activity, detainee activities. It strikes me that we have two pay slips here, one which is about work and one which is about activities. Can you describe why there is this change in terminology between the two documents.

Mr Olszak—I cannot. I have not seen the documents before. As I say, my understanding is that the activities are voluntary and the philosophy behind it is to keep detainees active. How that works through to these particular sheets here, I do not know. I would have to take that on notice.

Senator NETTLE—I would appreciate it if you could take that on notice.

Mr Olszak—Yes.

Senator NETTLE—I have some other questions in this area. With respect to the detainees who are doing this work—I would describe it as work, but however you choose to describe it—are they supervised by GSL or by DIMIA?

Mr Olszak—I doubt very much if they would be supervised by DIMIA. They would certainly be supervised by GSL or perhaps one of its partners.

Senator NETTLE—Do you mean a subcontractor who is providing—

Mr Olszak—Yes—for example, in the kitchen.

Senator NETTLE—Can I ask you to take that on notice and let us know whether in fact you are responsible for supervising or if it is one of your subcontractors? I do not know how the system works. If you are able to do that it would be appreciated. Is there anything in your contract which stipulates the number of staff that you need to ensure that you are providing a particular service? I will explain why I am asking the question. Obviously, there are a number of detainees. I do not know how many. Perhaps you can take on notice how many detainees are providing this assistance or work. What are your obligations—I do not know if they are contractual or not—to ensure that, for example, there are enough staff working in the kitchen?

At Villawood, for example, where we went to visit, you might have two paid workers in the kitchen for a lunchtime and you may have 17 detainees there. On the face of it, that looks as though the detainees are doing work that it strikes me is an obligation of GSL to do. Can you tell me if there is anything in your contract that requires a minimum number of paid employees that you need to have? Can you tell me anything about your responsibilities for supervising people? I do not know whether you have sharp knives in the kitchen, for example. What safety equipment do you have for your supervision? I do not know if you are able to answer those questions today.

Mr Olszak—I can give you an example that I am aware of which involves the kitchen. If detainees are working in the kitchen, they would be trained in proper hygiene techniques et cetera.

Senator NETTLE—Would you run that training?

Mr Olszak—I do not know. It may be GSL but I would be more inclined to say that it was our catering partner.

Mr Williams—I can perhaps help here. For our contracts we do monitoring and compliance work. We do some monitoring of this. Firstly, the contract is an outputs based contract. Broadly speaking, there are no stipulations about the number of staff that GSL have to have for any particular service. They are simply held to a standard. So the service has to meet a certain standard. That is what the Immigration Detention Standards in the contract intend to produce. That is how we judge it. We are not so concerned about how many staff are applied to a particular service; we just want to know that the service is being delivered. Broadly speaking, that is the way the contract is structured.

Senator LUDWIG—What is to prevent the substitution of that cheap labour at \$1 an hour for GSL employees who would otherwise fulfil the contract to the standard? From your perspective, what is to prevent GSL from utilising one to three on activity? What is to stop GSL using or abusing that system, from your perspective? Is there a maximum number of work activities they can do per hour?

Mr Williams—No.

Senator LUDWIG—So they could do 80 in a week?

Mr Williams—No. It is a balance. The original fundamental aim of the merit point system is to have a program for people to do something useful and meaningful.

Senator LUDWIG—I understand what it is, but that is not what I asked.

Mr Williams—I know that. I guess I am trying to provide some context.

Senator LUDWIG—I would just like the answer.

Mr Williams—We would look at an activity in, say, a kitchen and we would look at whether the food quality was sufficient. In a case like Baxter, I think there is quite a high number of detainees doing merit point work in the kitchen—probably far more than are actually required to produce the food for the centre. Because it is a program, it is approached in that way. So, to us, it depends on whether the food quality is adequate and meets the standards.

Senator LUDWIG—That is not the question I asked.

Mr Williams—How do we make sure they are not abusing—

Senator LUDWIG—Do you understand the question?

Mr Williams—I understand the question.

Senator LUDWIG—Then why don't you try to answer that question?

Mr Williams—Okay. I guess we cover it through our contract compliance. Another of the detention standards is, for example, that detainee dignity has to be maintained. We would regard over-reliance on detainee work possibly as a breach of that detention standard. So we would probably try to manage it through the detention standards that we have.

Senator LUDWIG—Do you know what are the maximum hours a detainee might work or perform an activity?

Mr Williams—We could find that out if we needed to know.

Senator LUDWIG—Do you monitor it?

Mr Williams—I do not recall having seen it monitored recently but there is no reason that we could not. I can take that on notice and find out if we have done monitoring in that area.

Senator LUDWIG—It goes to the nub of the question: how do you ensure that there is not substitution going on for work that otherwise should be performed by GSL which is then being done by a \$1-an-hour activity detainee? How do you ensure that? How do you monitor to ensure that it is not abused—that is, that they do not then utilise the system in excess of an ordinary 38- or 40-hour week, or whatever the case may be?

Mr Williams—Our primary means of doing it would be to use contractual provisions—they are the obvious provisions to use—and to monitor it. We have access to the records. The records are Commonwealth property. We would go and seek the records and make an assessment.

Senator LUDWIG—But have you done that?

Mr Williams—I do not know. I would have to take that on notice.

Senator NETTLE—We would certainly appreciate your finding out whether or not you have done that. Maybe GSL knows if there have been any sanctions applied in relation to the dignity clause, which is the one you suggest.

Mr Williams—That is one clause that springs to mind. There may be other clauses that are relevant to this.

CHAIR—Mr Olszak, the parent company is GSL Ltd—is that correct?

Mr Olszak—That is correct.

CHAIR—The contract is not with GSL Ltd—is that correct?

Mr Olszak—No, it is with GSL (Australia).

CHAIR—What other subsidiaries does the parent company have?

Mr Olszak—I would have to take that on notice.

CHAIR—Is there a contract with DIMIA or with any of the other subsidiaries?

Mr Olszak—No, the contract is with GSL (Australia).

CHAIR—So what subsidiaries does GSL (Australia) have?

Mr Olszak—GSL Custodial Services Pty Ltd and Medical Transport Services Pty Ltd. I think that is it.

CHAIR—That is two. So it has two subsidiaries?

Mr Olszak—Yes.

CHAIR—So the contract with DIMIA is with GSL (Australia). Are there other contracts between DIMIA and Custodial Services, and DIMIA and Medical Transport Services?

Mr Olszak—No.

CHAIR—It is all just with GSL (Australia), and that was for \$70 million in the last year—is that correct?

Mr Olszak—The order of magnitude is \$70 million per annum.

CHAIR—So what were your operating costs for the last year?

Mr McCarthy—Out of the \$70 million total, it would be approximately \$66 million or thereabouts.

CHAIR—When were your last audited reports finalised?

Mr McCarthy—Last December.

CHAIR—Last December?

Mr McCarthy—Yes—\$70 million is our expected value of the contract for this year.

CHAIR—What was it last year?

Mr McCarthy—Offhand I cannot tell you but we could find out for you.

CHAIR—Are you able to provide us with last year's audited statements?

Mr Olszak—We have a responsibility to DIMIA to provide them, so that is not an issue.

CHAIR—Are health services provided within GSL operated detention centres paid on a fixed basis or on a per service basis?

Mr Olszak—I was going to say both.

CHAIR—Can you explain the difference between both?

Mr McCarthy—They have a similar model to GSL in terms of the overall contract. They are paid on a fixed and variable basis with different bands, depending on the population. But, on top of that, there are what we call third party services—that could be dentists, hospital stays or anything like that. They are paid separately for that.

CHAIR—Do you contract the health service to provide the service?

Mr McCarthy—Yes, we do.

CHAIR—Who is that?

Mr McCarthy—IHMS.

CHAIR—Is that for all detention centres?

Mr McCarthy—Yes.

CHAIR—That is not a separate contract with DIMIA? That is a contract through you?

Mr Olszak—It is a contract through us.

CHAIR—It is part of the \$70 million—is that correct?

Mr Olszak—Yes. It is our responsibility to provide that service.

CHAIR—Under the contract, who covers the cost of hospital or psychiatric treatment for detainees?

Mr McCarthy—In terms of hospitals, for the first 24 hours, we do. Beyond that it is DIMIA. In terms of psychiatric care, we do.

CHAIR—Is that all psychiatric care?

Mr McCarthy—Yes, except if it is something exceptional. With DIMIA's agreement they may be prepared to pay for something exceptional or if there is a particular—

CHAIR—But you are currently paying for all psychiatric care?

Mr McCarthy—Yes.

CHAIR—What was the total cost of that last year?

Mr McCarthy—Offhand I do not know.

CHAIR—Can you take that on notice for us?

Mr McCarthy—Yes.

CHAIR—Who decides what is an exceptional circumstance?

Mr McCarthy—At the end of the day it is DIMIA. We put to them what we think is something exceptional and they will decide whether they are going to insist that we pay for it or whether they see it as being something that is really beyond what the intent of the contract was. Then they would be prepared to pay. But I am not aware—although it might have happened—at the moment that that has happened in terms of psychiatric services. But the capacity is there for it to happen.

CHAIR—Has the contract to operate the detention centres hampered the bedding-down of new facilities such as those at Baxter?

Mr Williams—GSL took over Baxter as a running concern. I do not think we have opened any new centres in the time that GSL has had the contract.

CHAIR—Mr Palmer, on page 61 of his report, says:

It is the view of the Inquiry that an unduly rigid, contract-driven approach has placed impediments in the way of achieving many of the required outcomes.

This is in terms of the operation of the detention centres. Do you agree or not agree with Mr Palmer in that instance?

Mr Olszak—He also recommended a review of the contract. There are, in our view, possibly too many immigration detention standards. They would possibly detract. There are some things you measure just because you can. There are some things you should measure and you cannot. I think that is what he is referring to.

CHAIR—Are you seeking more flexibility in determining how you manage and operate in the centres in the future, do you believe?

Mr Olszak—If we feel that we have an issue that affects the management of the centre and there is an improvement that can be made, we will put that to DIMIA.

CHAIR—Have you put any such requests to DIMIA?

Mr Olszak—Yes. The enhanced mental health plan was devised essentially by GSL. We put that to DIMIA. We are looking at an environmental plan for Baxter which lifts the amenity of the facility. We are looking at different modes of accommodation. That is with DIMIA at this particular time.

CHAIR—So you would agree with Mr Palmer’s finding, perhaps, that the contract is unduly rigid in some instances?

Mr Olszak—In some instances. This contract was devised probably four years ago. It is probably the most dynamic environment that I have been operating in. Yes, things change and we need to sometimes move with those changes and reflect those changes back to the customer and then work with the customer to introduce them if the customer feels that that is appropriate.

CHAIR—I asked in estimates last week about one of your GSL people attending a woman giving birth who had a caesarean section. I understand one of your GSL staff was present at the caesarean section. Can you explain to me how the decision came about to have your staff member inside the operating theatre rather than waiting outside the door, given that it is a theatre, it is an enclosed environment, you cannot open the windows and the only way out would be the door? Why was a decision made to be there while the operation was performed?

Mr Olszak—My understanding is that the husband was in attendance as well and—

CHAIR—I understand that. My question goes to—

Mr Olszak—he was deemed a flight risk.

Senator NETTLE—By you?

Mr Olszak—There was a risk assessment.

CHAIR—By you or by DIMIA?

Senator NETTLE—By GSL?

Mr Olszak—I am not too sure how that works in detail. Sometimes it is us; sometimes it is DIMIA; and sometimes it is probably both, but maybe you can—

CHAIR—Can you take it on notice and find out who made the assessment in this instance?

Mr Olszak—I can, yes.

CHAIR—I understand that, and that is the answer we were given last week at estimates. My question to you is about your procedures or protocol when it comes to the health care of detainees: given it is an operating theatre, given it is a sealed and enclosed environment—that is, you cannot open the window and jump out of it—why was the decision made to place your guard inside the theatre rather than directly outside the door?

Mr Olszak—My understanding is there were some other doors in the operating room that would have facilitated a possible escape.

CHAIR—Why was the decision not made to put more staff outside those doors and to afford that couple some privacy?

Mr Olszak—I do not know all the details. I would have to take that on notice.

Senator NETTLE—Were you sanctioned at all in relation to your conduct during that incident?

Mr Olszak—Not to my knowledge.

CHAIR—In maintaining your contract, I suppose your concern is to ensure that there is an orderly migration program and to assist DIMIA. In undertaking your contract, is your primary concern with maintaining an orderly migration program; is it for the welfare of detainees; or is the bottom line maximising profits within your company?

Mr Olszak—We certainly have to make a profit. I do not think there is anything peculiar about that. What we like to do is obviously grow the business and grow the opportunities. The way we feel we can grow the business and increase our opportunities is to provide a level of service where people recognise that we are doing a good job and doing a good job of looking after the people in our care.

CHAIR—What was your profit last financial year?

Mr Olszak—I am guessing between \$4 million and \$5 million in a total revenue of \$120 million or \$130 million.

CHAIR—What is your anticipated profit this year?

Mr Olszak—About \$6 million.

Senator FIERRAVANTI-WELLS—There are a couple of areas I want to ask some questions on. You purchased another company. Was there another company running the detention centres previously? Was it GMS or something like that?

Mr Olszak—It was ACM.

Senator FIERRAVANTI-WELLS—When did you purchase from ACM?

Mr Olszak—I have to try and get the chronology right. It was a purchase done out of the UK. It was a company called Wackenhut, which was the parent company of ACM. Group 4 Falck—which was the name of our company at the time—purchased Wackenhut and all its subsidiaries.

Senator FIERRAVANTI-WELLS—Including all its contractual obligations?

Mr Olszak—Some Chinese walls were put around the custodial services in both the UK and Australia. It is so long ago that I cannot recall the detail, but I can say that ACM, in Australia, and GSL were very strong competitors at the time and they remain competitors now.

Senator FIERRAVANTI-WELLS—Mr Williams, for how long, before GSL, did ACM run detention centres?

Mr Williams—ACM delivered detention services from, I think, 1997 through to the beginning of 2004, when GSL took over the first centre.

Senator FIERRAVANTI-WELLS—Has the model of contract for detention services changed considerably in recent years or has that model been in existence for, say, five or 10 years?

Mr Williams—Both contracts that we have run were, as I understand it, outputs based. They looked at the services that should be delivered, not the inputs to those services. In that sense, they were similar. But, based on the experience with the earlier contracts, the contract GSL was eventually awarded was significantly expanded. There was greater emphasis on the immigration detention standards and one of the decisions taken was that there should be more performance measures. That has made it a more complex contract.

Senator FIERRAVANTI-WELLS—Am I correct in making the general comment that the sort of contract that is now in place has far greater standards in place than the detention service contract of an organisation that provided detention services in, say, in 1990, 1992 or 1993?

Mr Williams—It has certainly developed significantly. The emphasis on standards has increased significantly.

Senator FIERRAVANTI-WELLS—Would you say that the ambit of the services that are delivered now is greater than, say, 15 years ago? I am trying to look at the bigger picture over the last 15 years or so.

Mr Williams—We can really only go back to 1997. Prior to that, detention services were run by a government agency, the Australian Protective Service. It was before my time but, as I understand it, there was not a contractual relationship with them.

Senator FIERRAVANTI-WELLS—For how long before that had the Australian Protective Service been running detention services?

Mr Williams—It was for quite some time. It was for at least 10 years, if not back to the beginning of the eighties.

Senator FIERRAVANTI-WELLS—So, effectively since detention service commenced under a previous government, they had been run by the Australian Protective Service?

Mr Williams—I think in the very olden days they were probably run by the Commonwealth police.

Senator FIERRAVANTI-WELLS—I just wanted to get some sort of historical perspective.

Mr Williams—In terms of the ambit of the services, they have changed very significantly. Mr Olszak mentioned in his opening statement that the services that we were contracting for at the time this contract was put together are now quite different. At that time we had a very large number of boat arrivals. We had far greater numbers in detention and we had different pressures.

The change we have seen is that the new contract was intended to place much more emphasis on the standard of service that was delivered. That is what we sought to achieve.

Senator FIERRAVANTI-WELLS—I would appreciate it if you could give a global description of the sorts of services that these contracts contained going back, if it is at all possible. I appreciate that we are going back some time. This is just to give us an idea of the historical context of these detention service contracts as they have evolved from the start of the period of detention to now.

Mr Williams—We did not have contractual arrangements with previous providers to 1997.

Senator FIERRAVANTI-WELLS—I appreciate that, but it was nevertheless a Commonwealth-governed entity, so perhaps there may be some records.

Mr Williams—Would you like me to take that on notice?

Senator FIERRAVANTI-WELLS—Yes, thank you. Mr Olszak, do you just run detention services or does GSL run activities other than providing services to the Commonwealth?

Mr Olszak—We run a number of other services to state governments. For example, in Victoria we run Port Phillip Prison.

Senator FIERRAVANTI-WELLS—It is fair to say that you have a wide portfolio, so your figures for whatever outgoings you have and profit you may make is right across the spectrum for GSL Australia?

Mr Olszak—That is correct.

Senator FIERRAVANTI-WELLS—So it is unfair to draw the inference that whatever profit you made has been perhaps solely from detention services, if I could put it like that?

Mr Olszak—Yes, that is correct.

CHAIR—Can I clarify that. When you said to me before that you anticipated that your profit would be about \$6 million this year, that is not from the \$70 million contract with DIMIA?

Mr Olszak—No.

CHAIR—Can I ask that question again. What was your operating profit last year under the DIMIA contract then?

Mr Olszak—It was about \$2.3 million. I would have to take it on notice, but it is in that order of magnitude.

CHAIR—So what do you anticipate your operating profit under the DIMIA contract to be this year?

Mr McCarthy—It is around \$3½ million to \$4 million or in that range.

CHAIR—So, if your overall profit is \$6 million, you are getting \$2 million profit from other contracts that you have in other industries?

Mr McCarthy—Yes.

Senator FIERRAVANTI-WELLS—Just on the activities that we were talking about, are they a requirement? I did not have the opportunity to go to Villawood. Are those activities voluntary based?

Mr Olszak—They are voluntary. No-one is forced to work.

Senator FIERRAVANTI-WELLS—So if, for example, somebody wants to do a lot of work in the detention centre and they ask you if they can do it, it is entirely up to them?

Mr Olszak—Essentially, yes. I do not know whether there is a limit or a maximum.

Senator FIERRAVANTI-WELLS—When you provide that information about the activities, I would appreciate it if you could include voluntary activity. Presumably we have information about different detainees and their requests et cetera. Perhaps you could specify how many of those hours are voluntary and at the request of the particular detainee to undertake.

Mr Williams—All of those hours would be voluntary. We would like to see, as the program administrator, reasonable limits on the amount of time any individual spends on those activities.

Senator FIERRAVANTI-WELLS—I appreciate that. I wanted to ask if you could—and perhaps you might like to take this on notice—give us an outline of the mental health assessments that happen at the detention centres. Is that information that you can provide to us?

Mr Olszak—It is quite detailed—

Senator FIERRAVANTI-WELLS—It is quite detailed.

Mr Olszak—given the time, but we can certainly give you our model.

Senator FIERRAVANTI-WELLS—If you can provide me with some information about the mental health screening, assessment and procedures that are involved at Baxter and the other detention facilities, and the sorts of changes that may have been implemented as well as any consultation or liaison arrangements that have been made with DIMIA in terms of strategic planning. I would also like some information on the timing for this, given the environmental change that is now happening, and the reasons why that has perhaps taken a little bit longer than was anticipated.

CHAIR—Mr Olszak, you will get a copy of the *Hansard*, so all that flow-on from that question will be in there. I see you busy, trying to write it all down in shorthand, but you will actually get the *Hansard* that will cover that question that you have taken on notice.

Mr Olszak—Thank you.

CHAIR—Senator Joyce?

Senator JOYCE—Thank you, Chair. To the best of your knowledge, the people in your camps, your detention centres, arrived illegally in Australia—that would be correct, wouldn't it?

CHAIR—They are not actually GSL's detention centres.

Senator JOYCE—The people that you deal with would have arrived illegally? Would that be correct?

Mr Williams—These days, most of them have not arrived illegally; they entered legally but have overstayed visas or had visas cancelled.

Senator JOYCE—Right. But they are illegal?

Mr Williams—Yes, that is right.

Senator JOYCE—They have the option to go back overseas, don't they?

Mr Williams—Each person can make their own choice, yes.

Senator JOYCE—If they wished to go, they could. But they choose to stay, basically, don't they? So they are only in detention because they choose to be there; they have the option to head back overseas.

Mr Williams—Yes, some can leave; some are pursuing litigation.

Senator JOYCE—Fine. So they are there of their own volition. Is there any corporal punishment? You don't deal out any corporal punishment in your camps—in your detention centres, do you?

Mr Williams—No.

Senator JOYCE—No capital punishment—you haven't killed anyone yet, have you?

Mr Olszak—No.

Mr Williams—No.

Senator JOYCE—Right. So it must be hard at times to maintain discipline amongst a whole heap of people who do not want to go but are illegal? It must be hard to maintain discipline.

Mr Olszak—It is probably one of the most difficult parts of the job.

Senator JOYCE—So you would be using whatever methods you can that do not involve corporal punishment or capital punishment to do that, including encouragements such as \$1 an hour for merit points?

Mr Olszak—I think it is a little more along the lines of our officers having a positive relationship—

Senator JOYCE—It builds up a sense of trust—

Mr Olszak—Yes.

Senator JOYCE—and it builds up a working relationship. Do you plan for a work force employed out of this \$1 an hour?

Mr Olszak—No.

Senator JOYCE—In your budgets, do you plan for a whole range of people, a bevy of people, to be out there washing socks—

Mr Olszak—No. Could I also say—

Senator JOYCE—and doing dishes?

Mr Olszak—Could I also say that this was a system in place—

Senator JOYCE—It has been around for a while.

Mr Olszak—prior to us taking over the contract.

Senator JOYCE—And they are happy to do the work?

Mr Olszak—We would have serious issues if we tried to remove it.

Senator JOYCE—They are happy to do the work, basically. And what do you provide them with in these camps, where they choose to be? Do you provide them with meals a day, dental health, psychiatric help—is that all part of the deal?

Mr Olszak—Yes, we have a duty of care that encompasses all those things that you have mentioned.

Senator JOYCE—To the best of your knowledge—

CHAIR—Senator Joyce.

Senator JOYCE—in the countries where they come from—

CHAIR—Sorry, Senator Joyce—

Senator JOYCE—do they have those facilities available?

CHAIR—Senator Joyce, you did not come with us to Villawood, did you?

Senator JOYCE—Beg your pardon?

CHAIR—You were not with this committee when we got a tour of Villawood, did you?

Senator JOYCE—I know Villawood.

CHAIR—But you did not come with this committee when we went to Villawood, did you?

Senator JOYCE—Why? Why is that relevant?

CHAIR—I am just, for the purposes of—

Senator JOYCE—Why is that relevant?

CHAIR—For the purposes of GSL, I think they—

Senator JOYCE—If you are asking me the question, Madam Chair—

CHAIR—should know—

Senator JOYCE—have I been to Villawood, the answer is yes. Have I been to Villawood with you? The answer is no.

CHAIR—The question was whether you had been with this committee.

Senator JOYCE—No.

CHAIR—The answer is no. Thank you.

Senator JOYCE—Let's just put it on the record: I have been to Villawood, but I have not been with you.

CHAIR—No, with this committee, the question was.

Senator JOYCE—Anyway, what are the key performance indicators for a detention centre; what do you think they are?

Mr Olszak—We have over 200 detention standards under the contract. In terms of KPIs that we say are important, it is obviously the overall duty of care to the people that we have to look after.

Senator JOYCE—The duty of care, that would be a fair thing. Have you had any deaths in your detention centre—unnatural deaths?

Mr Olszak—No.

Senator JOYCE—Any suicides?

Mr Olszak—Not successful.

Senator JOYCE—No suicides.

CHAIR—Not successful.

Senator NETTLE—Not successful.

Senator JOYCE—Any escapes?

Mr Olszak—Yes.

Senator JOYCE—How many of those?

Mr Olszak—Not from the detention centre itself.

Senator JOYCE—None from the detention centre.

Mr Olszak—To the best of my knowledge, not from the detention centres but—

Senator JOYCE—So we have got no deaths, no suicides and no escapes from the detention centre. I just want to get that on the record.

CHAIR—It is nine o'clock, Senator Joyce. We have had these witnesses for an hour and a half. They were scheduled—

Senator JOYCE—Are you worried about any other questions I might ask?

CHAIR—No. They were scheduled for—

Senator JOYCE—If you have you got a concern about other questions we might ask, that is fine.

CHAIR—Senator Joyce, order! I am chairing this committee. You arrived 45 minutes late—

Senator JOYCE—Because I was doing my parliamentary duty, where you should have been, during the quorum and the start of parliament.

CHAIR—We have had these witnesses for an hour and a half. I am actually in government so I do not need to form a quorum. When you are here long enough, you will understand the processes.

Senator JOYCE—No, you are in opposition; I am in government.

CHAIR—If you have any other questions you will need to put them on notice. Mr Olszak, Mr McCarthy and Mr Williams—

Senator JOYCE—I can understand if you have concerns about any other questions I would ask. We will not ask them.

CHAIR—thank you for your appearing here this evening.

Senator JOYCE—I was going to ask about the man who escaped from the—

CHAIR—Senator Joyce, order! Mr McCarthy and Mr Olszak, Senator Joyce, I am sure, will put other questions on notice. I certainly have questions to put on notice. Thank you very much for your appearance here this evening.

Senator Joyce interjecting—

CHAIR—Senator Joyce! It might pay you to read the standing orders before you come to the next committee meeting. Gentlemen, thank you very much for your appearance here this evening.

Senator JOYCE—When we do the guillotine they get really upset.

Senator NETTLE—I just wanted to ask, Mr Williams, there was an indication before in relation to the GSL guard in the operating theatre. You did not believe there had been a breach.

Senator JOYCE—That is not another question, is it, Chair?

CHAIR—It is a clarification, Senator Joyce. I am going to warn you in a moment, thank you very much.

Senator NETTLE—An answer was given.

CHAIR—This is a clarification; it is not a further question. I am chairing this committee meeting. A clarification is being sought.

Senator NETTLE—I thought it was fair, given the answer that was given—that is, Mr Olszak did not think that a sanction had been applied—that I just give Mr Williams the opportunity to correct the record if there was any more information.

Mr Williams—I do not recall. I do not know when the incident occurred. Was it recent? It may not have been something that we have assessed yet.

Senator NETTLE—I am just looking at it now. It was certainly reported on 10 October this year but I cannot find a date.

Mr Williams—No, it would not have been assessed.

Senator NETTLE—You know when it was? It was May 2004.

Mr Williams—Right. I would have to take that on notice but my broad understanding of the incident is that we would not have been concerned with the way it was managed.

Senator NETTLE—Okay.

CHAIR—Thank you, gentlemen.

[9.04 pm]

COMRIE, Mr Murray Neil, Consultant, Commonwealth Ombudsman

McMILLAN, Professor John Denison, Commonwealth Ombudsman

CHAIR—Welcome. You have lodged a submission with the committee, which we have numbered 196. Do you wish to make any amendments or alterations?

Prof. McMillan—No, I do not.

CHAIR—I invite you to make a short opening statement, and then we will go to questions.

Prof. McMillan—I will not make an opening statement. This is, as you may recall, the second occasion on which I have appeared before the committee and my understanding is that the committee wished to meet with Mr Comrie. So it is probably best that I simply leave it to the committee to ask the questions they wish to ask.

CHAIR—Mr Comrie, do you want to say anything to begin with?

Mr Comrie—No, thank you.

CHAIR—In paragraph 7.2.3, on page 164 of his report, Mr Palmer said:

The speed of change in the immigration detention environment during 2000-01 required that policy, procedures and enabling structures be developed in tandem and on the run.

Instead of reviewing these policies and procedures in the following years, Mr Palmer found that there was:

... considerable evidence of deafness to the concerns voiced repeatedly by a wide range of stakeholders, a firmly held belief in the correctness and appropriateness of the processes and procedures that exist, and a culture that ignores criticism and is unduly defensive, process motivated and unwilling to question itself. Energies seemed to be channelled more into justifying and protecting the status quo.

From your work, do you think that is a fair assessment by Mr Palmer?

Mr Comrie—Yes, it is.

CHAIR—Vivian Solon was removed in 2001 and the ‘children overboard’ scandal, in which we know that the Prime Minister and the ministers were involved on a daily basis, occurred in 2001, so 2000-01 was quite a damning year for the department. Did you discover that?

Mr Comrie—I do not know that I am in a position to draw a nexus between those two incidents. I concede that both incidents occurred in that year, but I am unable to draw any connection between them.

CHAIR—Vivian Solon was removed in 2001. Did you go back to 2001 in your inquiry and have a look at the culture in the department during that year?

Mr Comrie—I did, and I made some observations about that in my report.

CHAIR—Did you also have a look at interactions with the ministry in relation to DIMIA at that time?

Mr Comrie—That was not part of my terms of reference and I did not do that.

CHAIR—The terms of reference for your investigation included the Commonwealth and state agencies. Is that correct?

Mr Comrie—They were essentially the same terms of reference as for the Rau inquiry, but they were expanded to accommodate the Alvarez situation.

CHAIR—So that included the Commonwealth and state agencies, but not the minister's office. Is that correct?

Mr Comrie—Correct.

CHAIR—So, considering the actions, the involvement and the authority of the decisions made within the minister's office, if the same level of decision and interaction had been made by a section of the department, would you have interviewed the staff involved?

Mr Comrie—Do you mean in the minister's office?

CHAIR—No. The minister's office has a high level of involvement, a high level of authority and a high level of activity in relation to DIMIA. In a section of the department, if there were such a high level of activity as that, would you, and did you, interview the officers concerned?

Mr Comrie—It would depend on whether or not it was relevant to the terms of reference.

CHAIR—If it were relevant to the terms of reference then you would interview them?

Mr Comrie—Yes.

CHAIR—Why was the minister's office then off limits to the investigation?

Mr Comrie—They were not off limits; they were not part of the terms of reference. I had no cause to go down that path to complete the task that I was required to undertake.

CHAIR—Why do you say that?

Mr Comrie—The terms of reference really required me to examine the role of the department and, as you have indicated, state agencies and other agencies. At no stage was the minister's office mentioned. Indeed, following on from the Palmer report, my activities were confined to looking at the immediate activities associated with the removal of Vivian Alvarez.

Senator LUDWIG—Dr Nation is in the minister's office, isn't he?

Mr Comrie—Yes, I believe so.

Senator LUDWIG—That is who Mr Young made contact with. In fact, Mr Young was never in contact with the department. The only contact the department had with Mr Young was through Dr Nation.

Mr Comrie—My understanding is that the contact initiated by Mr Young was directed to an email address which was—

Senator LUDWIG—The minister's.

Mr Comrie—It was addressed as the minister's office but in fact managed by the ministerial and communications unit in the department. My understanding of any contact between Dr Nation and Mr Young is that it was initiated by Dr Nation after being advised of the matters in Mr Young's email.

Senator LUDWIG—Yes, but Dr Nation is in the ministers office.

Mr Comrie—Yes.

Senator LUDWIG—So did you talk to Dr Nation about what information he exchanged with Mr Young?

Mr Comrie—No, I did not. I was concerned about the chronology of events in that I was aware that the email sent by Mr Young was sent on 4 April. There did not appear to be any action taken on that matter until the 21st. There was no explanation and, on a first reading of the email, it would appear that that would have gone to the minister's office. So I made inquiries about that matter and established that, indeed, the email went to the department's ministerial and communications unit and remained there until 20 April when it was brought to the attention of the executive at DIMIA. I understand that the minister's office was communicated with the next day.

Senator LUDWIG—Yes. That is the curious part. Why didn't you then talk to Dr Nation about what his involvement was as effectively the go-between between Mr Young and DIMIA? As I understand it, DIMIA never had any contact with Mr Young. Indeed I do not know whether they still have. From that date onwards, if you recall, Dr Nation and Mr Killesteyn from the department—he was then in one of the senior roles—indicated at estimates, from recollection, and I am happy to be corrected by DIMIA later, that Dr Nation had indicated to Ed Killesteyn that Mr Young would like the matters kept confidential, or at least not made public, and that, therefore, that would continue on during the investigation for some time. So, in other words, the task force was formed and they were searching for Ms Solon during a period when the best way

to find someone, in my view, was to make it reasonably public, to put their photo about and indicate that they were not available in Australia or wherever they might be. But, in this instance, the advice the department had received indirectly from Dr Nation was that it was Mr Young's request that it be kept confidential. I am curious why you did not have a look at the issue of whether or not that was the appropriate way the department should handle the contact with Mr Young.

Mr Comrie—The first thing I need to say is that I was not aware that there had been any undertaking of confidentiality given, if indeed there was. I contacted Mr Young on 4 May, some two days after I started on the inquiry. He made no point to me other than he was very concerned about matters of privacy. He had very good reasons for that, which are related to his son. Apart from that, he had no issue about confidentiality. My impression is that the words 'confidentiality' and 'privacy' have been interchanged and somewhat misunderstood. At no stage did anyone say to me, 'You have to deal with this confidentially.' I was not given any advice or any instructions in that regard. Indeed, as I said, within two days of starting the inquiry I made a telephone call to Mr Young and took the matter from there.

Senator LUDWIG—I am not suggesting that you did not act with probity. The question really is why you did not talk to Dr Nation to establish what conversation transpired between Mr Young and Dr Nation and then what conversation transpired between Dr Nation and the department. There is an obvious case where privacy and confidentiality might have been confused, because there is effectively not a direct link between Mr Young and the department. There are obviously cases where things may have been misheard, mis-said or misunderstood.

Mr Comrie—To put it bluntly, I saw no reason to. The terms of reference did not require me to speak to the minister's office. There was nothing that I gained by way of evidence that indicated that there had been any action taken that caused me concern. I did inquire into the delay in dealing with Mr Young's email. I was satisfied, after making those inquiries, that the delay had been in the ministerial and communication office. As I said, I had been given no advice or instruction to deal with the matter confidentially and I saw no reason to pursue that matter with the minister's office.

Senator LUDWIG—So you saw no reason why you would ask Mr Killesteyn why he did not contact Mr Young directly.

Mr Comrie—As I recollect, there had been some discussion between the minister's office and Mr Young advising Mr Young that the matter was going to be investigated. I was tasked with that job on 2 May and within two days, as I said, I spoke to him. I am not quite sure whether anyone from the department spoke to Mr Young. In any event, if they did, it would not be of concern to me.

Senator LUDWIG—So you would not look at how the department would deal with these issues in terms of liaising with the person concerned or dealing with, more broadly, the procedures that the department would be involved with in dealing with instances of this type where someone has been removed or where there has been unlawful detention.

Mr Comrie—Essentially my inquiry was about the reason Vivian Alvarez was removed from Australia. The events immediately leading up to her first contact with DIMIA were of interest,

and I summarised those in my report, as I summarised the events after her removal. I have not inquired into events before and after because, again, the terms of reference were really confined to the actions that led to her removal.

CHAIR—Was it that you felt restricted in going to the minister's office or did you feel you were not required to go to the minister's office?

Mr Comrie—I at no time felt restricted. Had I felt there was a need to do so, I would have done so.

CHAIR—The second dot point of the terms of reference actually says to:

- examine and make findings on the circumstances, actions and procedures which resulted in her remaining unidentified during the period in question

Yet in your time line you seem to stop at contact with the minister's office on 4 April 2001. As we mentioned last week in estimates, there was a considerable period of time before Dr Nation rang Mr Young. It could have been within your terms of reference to inquire into that time delay, couldn't it?

Mr Comrie—I did not interpret it that way, and that is why I did not go down that path.

CHAIR—You see, it was revealed to us in an estimates hearing last week that, in fact, the department's reason for that time delay is the way emails are handled in the minister's office and the severe congestion that is experienced. If you look at those answers given during estimates, they suggest that you could well have added to the report another chapter, about the way emails are classified and processed as they come into the minister's office.

Mr Comrie—With respect, there are many things that could be written about and you could take an awfully long time doing it. I was concerned to report on the matters directly referred to in the terms of reference and to address those as quickly as I could without compromising the integrity of the investigation. I believe I achieved that, and I do not believe that the report or the coverage of the circumstances as I have outlined them in any way suffered as a result of not following the line of inquiry that you are suggesting.

CHAIR—As thorough as it could have been, your report is extremely damning of the department and of the government's management of the portfolio. You did not formally interview the minister or his staff, or even the previous minister, Mr Ruddock, or his staff. Do you feel that a full judicial inquiry may have had more extensive powers to investigate and cross-examine witnesses than the government provided to your investigation?

Mr Comrie—To a certain extent I think that is hypothetical. I have no idea what terms of reference would be given to a full judicial inquiry.

CHAIR—Do you believe that a judicial inquiry is perhaps needed, given that during estimates last week we uncovered that some problems still existed with the way this was treated once it got to the minister's email system?

Mr Comrie—I do not believe a judicial inquiry would reveal any more facts than we have revealed.

CHAIR—Chapter 3.3 of your report is headed ‘Systemic problems’. Page 31 states:

It is difficult to form any conclusion other than that the culture of DIMIA was so motivated by imperatives associated with the removal of unlawful non-citizens that officers failed to take into account the basic human rights obligations that characterise a democratic society.

They are pretty damning words. Based on this finding, did you conclude that the unreasonable treatment of detainees must have gone beyond Cornelia Rau or Vivian Alvarez or, in fact, the 220 cases you are now looking at? Or do you feel it is confined to that number?

Mr Comrie—My conclusions were drawn from my involvement in both the Rau matter and the Alvarez matter. Certainly, I formed the view, on the basis of a substantial number of witnesses that we interviewed, that there was a cultural issue in the organisation. We are currently examining the other cases that you referred to, and it may well be that those issues emerge again, but it is still too early to comment on that.

CHAIR—As an aside, do any of the 220 cases you are now looking at involve Australian citizens?

Mr Comrie—I believe there are a number of citizens in that group, yes.

CHAIR—Do you know how many?

Mr Comrie—No, I do not.

CHAIR—Can you take that on notice for us?

Mr Comrie—I do not think I am going to be able to answer that question for you. The situation is that 220 persons—or cases, if you like—have been referred to us for investigation. At this point, a substantial number of the cases involving those persons have not been fully documented and provided to us. We have very brief summaries indicating what potential issues might emerge from the cases. It is something that DIMIA may be able to answer, but from the perspective of the Ombudsman’s office it is far too early to answer that question.

Prof. McMillan—To add to that, as I indicated last time, it is my intention to make sure that, subject to any privacy issues, the reports on all those cases are published. So, in time, the details should be publicly available.

CHAIR—Mr Comrie, you are experienced as the Victorian police commissioner. Can someone be in charge of an organisation experiencing and fostering such systemic problems as you have outlined—and you summarise them on page 31 of your report—and remain completely unaware that they exist?

Mr Comrie—It is difficult to understand how one could be in that position. I would have to say that, in any large organisation, there are a multitude of things occurring at any given time,

but it would be difficult to understand how issues such as those raised in the Palmer report and my report could go unnoticed for an extended period of time.

CHAIR—Would you say then that someone who may head such an organisation is usually part of the problem—that is, the senior people in that organisation would be part of the problem?

Mr Comrie—At the end of the day, the person in charge of any organisation is ultimately responsible for what happens in the organisation. Whether they contribute to the problem or whether they are unaware of it is another matter, but they certainly have to be held responsible and accountable for it.

CHAIR—Do you have any idea why none of your interviews or questioning were made public?

Mr Comrie—Yes, I do. It was because I was asked to undertake a private inquiry, and I also understand the requirements of the Ombudsman's office. To be frank, I think that is a desirable course of action in a situation like this and one which allows one to fully investigate matters without a blow by blow description with various media interpretations being applied to things happening at any given time. Sadly, as I have reported in my report, there was at least one instance where the media wrongly nominated a person as a villain who in fact was a bit of a hero. That is the risk that is run when, as I said, blow by blow descriptions are covered every day in an inquiry.

CHAIR—In your experience as a former commissioner of police, if there were more than 220 ongoing inquiries into the validity of the arrest or the treatment of individuals by the police service, for example, would you support a judicial inquiry?

Mr Comrie—I have to say that I am not a fan of judicial inquiries. Perhaps the answer might lie in that response.

CHAIR—I notice that, Mr Comrie. In fact, I understand that, when you were employed by the Victorian government, you conceded that the approach to corruption was partly aimed at heading off calls for a royal commission into the force back in the corruption incident in 2000. Do you believe that you were appointed because you had a previous record of not being a fan of judicial inquiries?

Mr Comrie—I would not have any idea, but I suspect not.

CHAIR—As some might suspect otherwise, perhaps.

Mr Comrie—I cannot judge what other people think.

CHAIR—Why are you not a fan of judicial inquiries?

Mr Comrie—In my experience, they often take a very long time, they cost an awful lot of money and, often, they do not actually achieve the outcome that is desired. There is a fairly good example of that in recent times in Queensland where a lot of money was spent on a judicial inquiry that fell over after a period of time.

CHAIR—Finally, I want to clarify something we have been following in this inquiry. We certainly raised it last week at estimates. In your report, you note with regard to the record of interview with Vivian Alvarez in July 2001 that she was unable to sign. You mentioned that on page 15.

Mr Comrie—Yes.

CHAIR—Did you ever investigate whether DIMIA had a specific policy for the use of ‘unable to sign’ as opposed to ‘refused to sign’? Did immigration officers make a clear differentiation between the two to you at any time during your investigation?

Mr Comrie—I pursued that matter along the lines that I was aware that Ms Alvarez was incapacitated, and there was medical evidence to that effect. The comment ‘unable to sign’ was consistent with the medical evidence that I had seen and I did not pursue the matter any further than that.

CHAIR—So you might have seen instances of ‘refuse to sign’, as opposed to ‘unable to sign’?

Mr Comrie—No. What I am saying is that in Ms Alvarez’s case the documents said ‘unable to sign’. The medical evidence that I had seen about her condition after discharge from the hospital in Lismore was consistent with that observation. Therefore, I saw no need to pursue that any further.

Senator FIERRAVANTI-WELLS—Mr Comrie, I noticed your interpretation of the terms of reference. As I read them, they are very specific. You were really asked to focus, if I may say so, on one particular case, or a very limited number of aspects of DIMIA’s operation. Is that right?

Mr Comrie—Essentially I was asked to look at the circumstances leading up to the removal, and the management of the removal, of Ms Alvarez.

Senator FIERRAVANTI-WELLS—That is right. We have heard evidence in this inquiry that DIMIA make four million decisions per annum. I do not know if you have become aware of that at any stage in your inquiries or if you are aware of that figure.

Mr Comrie—No, I was not, but I would not be surprised. It is a very large organisation that has an enormous workload, so that figure would not surprise me.

Senator FIERRAVANTI-WELLS—It has an enormous workload and it makes a variety of decisions. In the context of four million decisions, all you were really doing was focusing on decisions relating to one case only.

Mr Comrie—In the Alvarez matter, correct. But, as I said before, I had been involved in the Rau case, so I came to the Alvarez case with that background.

Senator FIERRAVANTI-WELLS—I appreciate that, but you were, irrespective, limited to a very small portion of the four million decisions that DIMIA looks at over a year.

Mr Comrie—Correct.

Senator FIERRAVANTI-WELLS—I guess the point I am making is that some of your comments, when you look at them, and your assertions about practices within the department are made in the context of a very minutia compared to the four million decisions that DIMIA makes.

Mr Comrie—Certainly, if you want to put it up against the sheer numbers, that is correct. But the magnitude of the decisions that I am referring to was the significant point.

Senator FIERRAVANTI-WELLS—I appreciate that, but you are talking about two cases and two decisions in four million. That is the point I am really making. It still gets back down to a series of decisions. There might be a series of decisions along the way, but they still pertain simply to two cases in four million decisions that the department makes and all the procedures associated with that.

Mr Comrie—I agree with your raw numbers, but there were many decisions made at different levels of the organisation by many different people concerning the Vivian Alvarez matter, and that is what I am commenting on.

Senator FIERRAVANTI-WELLS—But the point I am making, Mr Comrie, is that those decisions pertain to a very limited series. You had a very small snapshot, and on the basis of a small snapshot you made a series of assertions about these particular cases. That is all I am asking you to say or comment on.

Mr Comrie—I am sorry—I cannot say that.

Senator FIERRAVANTI-WELLS—No, I am just asking you to—

CHAIR—You are putting words in his mouth, are you not?

Senator FIERRAVANTI-WELLS—No, I am just asking: do you agree? You simply investigated two cases in potentially millions of cases in the department. That is the point I am making.

Mr Comrie—The very simple answer to your question is: yes, I investigated two cases. But, as you will see at the back of the Vivian Alvarez report, there were 117 witnesses interviewed and similar numbers in the Cornelia Rau case. So it was not just a quick snapshot of what was happening at any given time. They were thorough, detailed investigations of a whole lot of circumstances leading to decisions in the organisation. Many policies and other requirements were examined by the inquiry, and I am quite comfortable with the conclusions that I have arrived at. I might add that the recommendations and findings in the report have been accepted by the department.

Senator FIERRAVANTI-WELLS—I appreciate that; I am not saying that they have not been. But the point I am making is that, as we have heard evidence on in this inquiry, we are talking about a department that makes four million decisions per annum. So, in the bigger picture of what we are talking about, this is a very small aspect.

Mr Comrie—I think I have conceded that.

Senator FIERRAVANTI-WELLS—Also, at page 31, you talk about failing to take into account basic human rights. I think in another part of the report you also make the point about the strictness of the legal interpretation about removal. In the context of that, would you agree that the department has legislative parameters that are clearly defined by the Migration Act and a lot of the decision-making that does occur is as a consequence of the strictness of those legislative parameters?

Mr Comrie—There is no doubt that the interpretations of sections 189 and 198 of the Migration Act have been a significant factor in some of the issues that have emerged.

Senator FIERRAVANTI-WELLS—There were also some comments made about email traffic. One can appreciate that, with four million decisions being made in the department, there is therefore probably a lot of email traffic.

Mr Comrie—I would be extremely surprised if there was not.

Senator FIERRAVANTI-WELLS—I appreciate Senator Ludwig's comments about your investigation but I think that, in the end, in the context of that, you are quite comfortable with the actions that were taken in relation to the email that Senator Ludwig was talking about from the minister's office.

Mr Comrie—I was and I remain concerned that it took 16 days for the matter to be acted upon. However, I saw nothing to indicate that that was anything less than a managerial issue which obviously needs to be addressed.

Senator FIERRAVANTI-WELLS—I take the opportunity to ask Professor McMillan a couple of questions, if I may. Professor McMillan, there were some press comments after you appeared here on the last occasion that were perhaps an interpretation of your comments, particularly in relation to whether, in the cases that are now under your purview, detention was unlawful for any period of time. Would you like to make some comments about some of the interpretation being attributed to your evidence?

Prof. McMillan—The cases of 220 people that we are currently examining are cases referred by the department. In each case, the person was in detention for a period of time and the person was an Australian citizen, a permanent resident or a person holding a visa that entitled them to be in Australia lawfully. The question for us is whether any or all of that period of detention was unlawful, either at the outset or at some stage during the detention. That is the bland and accurate description of the scope of this inquiry. Some of the media reporting has reported that faithfully and has, in particular, noted that at this stage it is premature to speculate as to whether any or all of the period of detention was unlawful. I suppose some of the media reporting has emphasised only some of the facts—for example, that a person who is an Australian citizen has been held in detention. The report is not necessarily inaccurate, but it is possible that, because of the mention of only some of the aspects of the inquiry, people have drawn a different lesson from it. I have certainly heard adjectives used that say it is shocking that there should be a need for an inquiry of that kind. I think it is perhaps premature to draw that inference.

Senator FIERRAVANTI-WELLS—I understand you wrote to the minister in relation to some of your concerns. Would you like to elaborate on that?

Prof. McMillan—I wrote to the minister in respect of the reporting of my appearance before another committee—this was the Senate Select Committee on Mental Health. I was asked on a couple of occasions questions concerning my observations about whether those in detention had suffered mental illness as a consequence of their detention. I made a careful response and, in particular, I noted that mental health concerns—I did not use the phrase mental health illness; I used the phrase mental health concerns and also mental distress—were a feature in some of the cases that we had been examining, and there were some reports that wrongly construed that; reports with a heading, for example, of ‘Detainees going mad’ or the ‘Commonwealth Ombudsman said that all of those he has looked at in detention are suffering from mental illness.’

I decided at the time, of my own initiative, to write to the minister and the head of the agency saying, ‘I’m simply conveying to you that if you’ve read an account of my evidence in the media only, it’s not necessarily correct.’ I did that purely because the office is developing a new and enhanced function with the title of Immigration Ombudsman and I was concerned that as that function develops it does not get off on the wrong foot. The minister then, without any discussion with me, chose to refer to my letter in an appearance before the estimates committee, I think it was.

Senator LUDWIG—Is that correspondence available to the committee?

Prof. McMillan—I am happy to provide the letter. I will forward it tomorrow.

Senator LUDWIG—And the minister’s response?

Prof. McMillan—The minister has not responded to me in writing.

Senator LUDWIG—And the letter that you referred to which the minister wrote, the last piece of correspondence—I might have missed that.

Prof. McMillan—There was only one letter. Of my own initiative, I simply wrote a letter in similar terms to the minister and to the secretary. The minister then referred to that in an estimates committee. I will happily provide that letter to the committee.

Senator LUDWIG—Thank you.

Senator NETTLE—I wanted to start with Mr Comrie. Again, I want to look at page 31 of your report where you talk about those issues of culture. I want to draw particular attention to the second last paragraph where you say:

... the culture of DIMIA was so motivated by imperatives associated with the removal of unlawful non-citizens ...

In your interviews with DIMIA staff, did you get a sense of where you thought those imperatives were coming from?

Mr Comrie—They were explained as being obligations to meet certain key performance indicators and they felt that they were under obligations to meet those KPIs. They also felt an obligation to do certain things under the act, sections 189 and 198, which the officers explained to us really took away their discretion. They explained at times they felt that if they did anything outside of those requirements that they were likely to be criticised.

Senator NETTLE—Is that what you refer to—I think it is on the next page—when you say:

... staff told the Inquiry that in some situations they deliberately left their actions unrecorded.

I do not know if that relates to what you just said.

Mr Comrie—Yes. It is a similar causal factor, I believe.

Senator NETTLE—You go on to talk about any repercussions that they thought they might experience. Did they outline what they thought those repercussions might be, in your conversations with them?

Mr Comrie—I think criticism would have been the sum of it. They were concerned that, if they failed to meet the KPIs and the interpretation of the act as they understood it, they would be criticised.

Senator NETTLE—Are there specific key performance indicators that they pointed out to you?

Mr Comrie—They went into issues such as the length of time that people are held in detention. I express somewhere else in the report that they felt that the shortest time that they kept someone in detention was a positive indicator to them and to the department, so that, clearly, they felt some pressure to deal with these cases as expeditiously as possible.

Senator NETTLE—You mentioned previously sections 189 and 198 of the Migration Act. Is it your view that those sections need reform in order to address the concerns that the staff raised with you?

Mr Comrie—I think the sections may be fine as long as the interpretation of those sections, or an understanding of the obligations under those sections, is better explained to the officers. I spent some time in the report discussing that issue. One of the key issues that arose during the Rau matter and the Alvarez matter was this whole issue of reasonable suspicion. I think it is fair to say—and I believe this is a consequence of inadequate training, which I have highlighted in my report—that many of the officers did not really have a good understanding of the interpretation of that legislation or indeed court precedents in relation to those matters.

Senator NETTLE—Also on that same page, page 31, you say:

For some DIMIA officers, removing suspected unlawful non-citizens had become a dehumanised, mechanical process.

I wondered why you chose to use the word ‘dehumanised’.

Mr Comrie—I believe that the process had become so process driven—a bad expression—that other things where one might expect people to stop for a while, reflect and perhaps think about what other options are available really were not taken. So, once they actually got into the process of detaining someone, the next step seemed to flow automatically rather than an opportunity to consider other options that might have been available.

Senator NETTLE—Did any of the DIMIA staff use that word to you in describing their processes, or was that your sense of things?

Mr Comrie—No. That is my expression, but it is an expression that I chose to use after discussions with several staff who expressed concerns to me about the process and the way that they were required to operate it.

Senator NETTLE—Do you have a view on what the main factor is that is leading to that dehumanisation?

Mr Comrie—I think it is a convergence of a number of factors. One, as I said, is that I think there is a misunderstanding of some of the requirements of the act. I think the fact that there was a long period where compliance officers were not trained is certainly a contributing factor. And they were also running into difficulties with the support mechanisms that they were required to use to make informed decisions, and I have spent quite some time talking about databases and so on in the report. So I think all of those things converged to make them feel like they were working under pressure.

Senator NETTLE—When you say there was quite a long period when compliance officers were not trained, do you mean ‘at all’ or do you mean in the areas that they needed to be trained in?

Mr Comrie—Quite a number of the officers we interviewed expressed concern that they had not really been trained well for their job. They did not understand how to use the systems that were available to them. I believe I reported that there was about an eight-year period when there was no formal training for compliance officers.

Senator NETTLE—You talked about the reasonable suspicion requirement. I am not sure to whom I should address the question, but I wonder if you have any view about whether or not that has been a factor in the other 220 cases that you are looking at.

Mr Comrie—John is a professor of law. He might have more informed view than I do on that.

Prof. McMillan—The suitability of the legislative framework for the decisions that are being made is an issue that we will look at closely. I think there is an issue as to whether section 189 is appropriately framed, for the reason that section 189 says that if an officer has a reasonable suspicion that a person is an unlawful non-citizen the person must be detained. As I have said, both in my annual report and in other evidence, I am concerned about the imposition of statutory duties without any discretionary exceptions in relation to powers of that significance and coercive force. The effect of such a power is that if a person who is a citizen is reasonably suspected, for whatever reason, of being an unlawful non-citizen then the person must be taken into detention. I say no more than that I think there is an issue that needs to be addressed, and we

will reflect on that as we go through the 220 cases. I think I could say at this stage it will be an issue that we will squarely address at some stage of that inquiry.

Senator NETTLE—Last week in the Senate estimates process we were provided with a list of the nationalities of the 220 cases that you are looking at. When I look down the list of countries they are from all around the globe, but there is also, in between Turkey and Vietnam, the category ‘unknown’. That struck me because it is not a country I know of. I wonder if you have any more information. Clearly it is somebody who has been in detention for over two years. Maybe you are not in a position—

Prof. McMillan—No, I have no further information on that.

Senator NETTLE—Okay. When I think of the Rau and the Alvarez cases, both of those inquiries took place at a time when a reasonable amount of information relating to those two individuals was in the public realm. This was partly because the inquiry started after the information was already in the public realm. Do you have a view about information in the public realm relating to those cases impacting on your capacity to continue with those investigations?

Mr Comrie—Perhaps I can answer that. Certainly there was only a short period of time—in both cases, I think—before there was public knowledge. I have commented at the end of my report that I think at times the media coverage actually assisted us. There were important witnesses identified. But it also had a detrimental impact in at least one instance. I think there is no issue about that public knowledge as long as the reporting is responsible and accurate and, sadly, in both cases there was a lot of reporting that was neither accurate nor responsible.

Senator NETTLE—But it is not, in your view, implicit that any public knowledge would be a problem, with the caveat that you put in place—which is so long as it is accurately reported?

Mr Comrie—On the contrary, I think there can be a considerable advantage. But I add that caveat about the requirement for accurate and responsible reporting, which is sadly not always the case.

Senator NETTLE—We all appreciate accurate reporting when it occurs. Thank you.

Prof. McMillan—I will just add a short comment to that. Now that those 220 or so cases are being investigated under the Ombudsman Act, it provides a statutory framework in which it says that the investigation must be conducted in private and there is presumptively a secrecy obligation. The Ombudsman has a discretion to release matters in the public interest. We have tried to manage that, for example, by having regular bulletins on our web site that detail the progress of the investigations, and in some instances that has led to people contacting us in relation to those inquiries. We will manage that process as best we can.

Senator JOYCE—There has been a lot reported on the cases of Vivian Solon and Cornelia Rau. You would have to say they are high-profile cases and well noted.

Mr Comrie—I am sorry, Senator?

Senator JOYCE—They stand out—Vivian Solon and Cornelia Rau. Both cases are well known. They are held up as icons of problems that we possibly have. Would that be a fair statement of the perception out there?

Mr Comrie—Yes.

Senator JOYCE—Two cases—and we have said this a number of times—out of 20 million people is a one in 10 million chance of being illegally deported as an Australian citizen. Do you know what your chances are of being struck by lightning in this country?

Mr Comrie—I would have no idea.

Senator JOYCE—I will tell you. It is more than one in 10 million. It is a very slim chance. We have got two standout cases and the chances of it happening are extremely rare. Just out of your knowledge of the Cornelia Rau case—and I can see you have got the book there on your table—when she was first held, do you know where she said she was from?

Mr Comrie—She said she was from Germany.

Senator JOYCE—What type of accent did she have?

Mr Comrie—A German accent.

Senator JOYCE—And what language did she speak?

Mr Comrie—She spoke English with an accent and she also spoke German.

Senator JOYCE—So someone presented and they said they were from Germany and had a German accent. Where was she born?

Mr Comrie—In Germany, I understand.

Senator JOYCE—So it would be a fair assumption that someone in the first instance would possibly think she was from Germany.

Mr Comrie—That was certainly the assumption that some people did draw, yes.

Senator JOYCE—So if someone comes up to you and says, ‘I’m from Germany. I’m here illegally,’ has a German accent and was born in Germany, it would be a fair assumption to think that they were possibly from Germany and illegal.

Mr Comrie—Certainly that would be a situation that you would take into account but you would also have to weigh up a number of other factors before you formed a view, I believe.

Senator JOYCE—Did Cornelia Rau suffer any impediments or inflictions in her life?

Mr Comrie—She certainly had a long history of mental illness.

Senator JOYCE—Would that be apparent the first time you met her?

Mr Comrie—It is hard to say. Some witnesses said that they thought she was strange. Others thought she was okay. So it would seem that she presented differently on different occasions.

Senator JOYCE—But unless you had a fair knowledge of what a German person was like on an everyday occurrence, it would stand to reason that you would not really be able to discern whether this was an impediment or not.

Mr Comrie—Certainly in the initial stage I suspect that she would be taken on her word.

Senator JOYCE—I would do that. Everybody trusts everybody in the first instance. Were there any impediments with Vivian Solon? Was she suffering any impediments, or any medical or physical conditions?

Mr Comrie—She also had a history of mental illness, yes.

Senator JOYCE—So that would make any possible investigation at least difficult.

Mr Comrie—Yes, it is certainly a complicating factor.

Senator JOYCE—Do you think there was any malice aforethought or discernible malice in any of the investigations into either Cornelia Rau or Vivian Solon?

Mr Comrie—Do you mean in the original detention?

Senator JOYCE—Did people have an intention to be nasty?

Mr Comrie—No, I do not believe that that is the case at all.

Senator JOYCE—So basically, on the best information presented to them, they made the fairest decision they possibly could.

Mr Comrie—No, I cannot agree with that as an observation. As immigration officers who have some quite strong legislation and a power to detain that is not even available to police officers, they also have a responsibility, I would argue, to make sure that the decision they are taking is a proper one. In both cases we have argued that that was not the case.

Senator JOYCE—In the four million applications they get, they have got it proven wrong twice. So one in every two million they have botched. Even in those cases there were other major factors involved in the decision, such as the person claiming to come and actually coming from another country, and being without full knowledge of the case. Just going back to the terms of reference, there are possibly thousands of terms of reference you could have been given, but you had particular terms of reference. That is the usual case for an investigation, isn't it?

Mr Comrie—Yes.

Senator JOYCE—Do you have any latitude to go outside your terms of reference, to just make up your mind and wander off on—?

Mr Comrie—Not without going back to the government and asking for extended terms of reference, no.

Senator JOYCE—So basically you are given terms of reference and you follow them.

Mr Comrie—Yes.

Senator JOYCE—Did you think when you first saw the terms of reference that they were peculiar, unusual, extremely limiting? Were there any factors that you thought were beyond the pale?

Mr Comrie—No.

Senator JOYCE—So for you to start devising possible terms of reference would be an unlimited factor—it could go on forever. There are so many potential terms of reference that you could possibly take up. You could see a thread of something and think, ‘I might follow this or I might follow that.’ It would be never-ending; you could go on forever.

Mr Comrie—That is correct, yes.

Senator JOYCE—When you were dealing with the minister did you feel restricted? Did you think she had an adversarial nature, or she was not going to see you or she would not deal with you? How was your relationship with the minister’s office and the minister herself?

Mr Comrie—I had very brief contact, but the contact as far as I was concerned was positive and very supportive of the job that we were asked to do. I was certainly left with no misunderstanding about what was required of me.

Senator JOYCE—So you would say that, all in all, it was as engaging as you would expect from a federal minister?

Mr Comrie—Yes.

Senator JOYCE—You said that there were other issues that you could have discerned or picked up, but of course that is always the case. You are not given a sense of omnipotence. You have to deal with the assets you have and the terms of reference you have, and that is how you basically guide your decisions, isn’t it?

Mr Comrie—Correct.

Senator JOYCE—I notice that you had a previous involvement in the police force—is that correct?

Mr Comrie—Yes.

Senator JOYCE—Would you say that the way we run our detention centres and such would be fair, poor, average or good? How would you discern them? In comparison, benchmarked to others—everybody can be better—in your knowledge throughout Australia or possibly throughout the world, how would you discern their operation?

Mr Comrie—I do not believe I am qualified to answer that question. In the Rau matter I had very little to do with that particular aspect of the inquiry. The detention of Vivian Alvarez was actually in a motel. I do not think I could give you an informed opinion.

Senator JOYCE—Would you call the detention of Vivian Alvarez in a motel unduly restrictive or unnecessarily cruel?

Mr Comrie—I have actually commented adversely on it in my report on the basis that it went for too long. She was kept in a single motel room for a week. She did not have access to a range of facilities that one would have if they were admitted to a detention centre. It is the case, I understand, to detain people there for up to 48 hours prior to placing them on an aircraft for removal or deportation. But a week in a single motel room was too long, I believe.

Senator JOYCE—Did Vivian Alvarez make any attempts to communicate with other possible relatives in Australia that should have been contacted to clarify her position?

Mr Comrie—No.

Senator JOYCE—Did Cornelia Rau make any attempts to identify other possible relatives in Australia who could be contacted to clarify her position?

Mr Comrie—No.

Senator JOYCE—They both had them, though, didn't they?

Mr Comrie—Yes.

Senator JOYCE—You talked about sections 189 and 198. You said they were significant factors. I would say they would be crucial factors, wouldn't they, because they actually pertain to the legislative matter that you have to deal with?

Mr Comrie—'Crucial' is not a word that I would argue against. It is the basis on which they make their decisions about detention.

Senator JOYCE—There are another 220 persons that are now under investigation or being sought after or inquired into. How many of them are Australian residents? How many of them have visas? What is the break-up of them?

Mr Comrie—Again, it is a bit too early to be able to provide you with that detail. We have been given a summary list by DIMIA, telling us the name of the person, the case number, and essentially a two- or three-line summary of what the case is about. In some of the cases we have got a one-page summary. So at this stage we still do not have a lot of information on which we would need to make a comment like that.

Senator JOYCE—But you say that there has been a further investigation. There has been nothing impinging on or restricting that process, has there? Do you see it as basically an open and fair process to try and get to the bottom of any possible problem?

Mr Comrie—There is absolutely no question about that, and the cooperation that we are getting from DIMIA is not an issue—it is first class. The issue is the accessibility of some records that go back quite a number of years, some of which have been archived in various locations around Australia. Some of the cases require extensive dumping of data that goes back many years and was recorded in many different systems. It is quite a complicated process.

Senator JOYCE—So you would say that basically it would be a sign of an open and accountable government, trying to get to the bottom of an issue? Would that be a correct statement?

Mr Comrie—As far as I am concerned, DIMIA has done everything possible to assist us with our inquiry.

Senator JOYCE—And, ultimately, the Ombudsman is the final arbiter in this. It is going through the Ombudsman's department—is that correct?

Mr Comrie—The office of the Commonwealth Ombudsman is conducting the investigations, yes.

Senator JOYCE—And there will be a public disclosure of the outcome at the end?

Prof. McMillan—Yes. It is my intention, subject to any privacy concerns, to make as much of the report public as I can.

Senator JOYCE—So, once more, the Australian people will know full well the outcome of this further investigation?

Prof. McMillan—That is correct.

Senator JOYCE—You said that in these issues there are a lot of process driven outcomes. Could it be a fair comment, though, on someone who has to deal with the immigration issue that, no matter what your depth of humanity, at the end of the day you have to do a job and you have to see it through to the end? Would that be a fair comment of anybody working in, say, a police environment, or an ambulance environment, or an immigration environment—that ultimately you are process driven and you have to come to an outcome?

Mr Comrie—Yes, but I would add that, usually, there are options to consider and, in any professional environment, I believe that someone should consider all options before they make a decision.

Senator JOYCE—Do you feel that in your previous job, as a policeman, you would potentially have been overwhelmed by your own personal commitment to an issue if you left yourself open on every possible issue that you would have come across—every car crash, every

tragedy, everything that you would have come across? If you had become fully personally engaged with every issue, might it have been slightly overwhelming for you?

Mr Comrie—I think that is part of the professional training and the way one conducts oneself in that environment. It is a matter of making informed judgments about which way you should go. Discretion is perhaps the greatest component of any policing environment. There are many young people who could be arrested for poor behaviour who are given a talking-to and sent home.

Senator JOYCE—Believe you me, I see a lot of them at St George. Thank you very much for that, and I really appreciate your attention and your coming here tonight.

CHAIR—Mr Comrie, I would like to ask you a few questions to follow up. Is it adequate or sufficient that, if you presented as a person with a German accent and you could in fact speak German, a DIMIA official would assume that you were German?

Mr Comrie—No, I do not believe so. There are Australian citizens who speak other languages.

CHAIR—So it would not have been adequate for DIMIA—particularly a DIMIA case officer—to assume this person was German?

Mr Comrie—The point that I was trying to make to Senator Joyce was that it might be a fact to take into account, but there are other things that you would need to take into account as well.

CHAIR—Particularly if you are a DIMIA case officer?

Mr Comrie—Especially if you are DIMIA case officer.

CHAIR—How many times did you have contact with Minister Vanstone in the course of your inquiry?

Mr Comrie—I think it was twice at the outset and once when I presented the report.

CHAIR—What was the nature of the contact at the start of the inquiry?

Mr Comrie—It was basically to make sure that I understood the terms of reference. The senator stressed to me that she expected me to do the best job I could and that, if I had any problems doing the job, I was to let her know, which I did not do because I did not strike any problems. I think it was basically an introductory statement saying, ‘Here are the terms of reference; this is what I expect of you.’

CHAIR—Did you have any contact with the minister’s staff during the progress of your inquiry?

Mr Comrie—I did speak to Dr Nation on two or three occasions because we needed to get the agreement of some of the state jurisdictions to get access to some of their agencies. That required the minister to write to premiers to get that cooperation, and that occurred.

CHAIR—That was the only nature of your contact?

Mr Comrie—Yes, it was.

Senator JOYCE—Vivian Alvarez and Cornelia Rau are both back in Australia right now, aren't they?

Mr Comrie—To my knowledge, Cornelia Rau never left Australia after her initial arrival many years ago. Sorry, that is wrong. She did take some overseas trips, but she was in Australia and, as I understand it, remained in Australia from the time of her dealings with DIMIA. Vivian Alvarez, as I understand it, is still in the Philippines. I have heard nothing to the contrary.

Senator JOYCE—Perhaps she does not want to come home.

Mr Comrie—I have not been part of those discussions.

CHAIR—I think we need to correct the record there. There is documented evidence of ongoing problems about her coming home, rather than her not wanting to come home. Mr Comrie and Professor McMillan, I thank you both for appearing before the committee this evening.

Senator NETTLE—I just wanted to ask about a document that you mentioned, Mr Comrie. It is a list of the 220 people who have been referred and a two- to three-line descriptor. I wanted to ask you whether it was possible for you to table that document, obviously with any privacy concerns that need to be dealt with removed.

Mr Comrie—I would have some concerns in that these are cases in such an early stage of inquiry that the information cannot, I believe, be said to be reliable. I would have concerns about putting forward a document that may be interpreted as being some sort of authoritative document. It is not, in my view, an authoritative document. Already, some of our preliminary inquiries indicate that some of the information does not necessarily sit with the sorts of summaries that are on the report. I think this has been prepared in a fairly hurried way so that the office could get on with the investigation. We do not regard it as a reliable document, and the numbers in the different categories keep changing on a daily basis. So I would have concerns about that.

Senator NETTLE—So have DIMIA changed the information in that document?

Mr Comrie—No, we change it as we gain further information. This is not intended as a criticism of DIMIA. You would understand that with 220 persons—and, as I said before, there are files spread right across Australia—they have done the best they can to let us know what they think the circumstances are, but at this stage we are a long way from being able to say that that data is accurate.

Senator NETTLE—I accept what Professor McMillan said before: it is a difficult job you have to manage public interest and the inquiries that you are doing.

Prof. McMillan—The senator may be aware that, in answer to questions that we took on notice last time, a couple of lists were provided. One was a breakdown of the 200 or more cases into eight groups. Another was a list of the period of detention, and an explanation about the reliability or otherwise of that data that was given in the response. That is now available.

Senator NETTLE—Yes, we also got a list of their nationalities from DIMIA.

CHAIR—Mr Comrie and Professor McMillan, thank you very much for appearing before the committee.

Committee adjourned at 10.16 pm