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The Parliament of the Commonwealth of Australia

# Detention Centre Contracts

**Review of Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B***

Joint Standing Committee on Migration

November 2005  
Canberra

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## Foreword

The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) has been subject to intense scrutiny this year. There have been various independent reports and internal reviews undertaken into aspects of the Department's immigration detention function. The Committee notes that the Senate Legal and Constitutional References Committee is currently conducting an inquiry into the administration and operation of the *Migration Act 1958*, which includes an examination of the outsourcing of management and service provision at immigration detention centres, and the adequacy of mental health care and other services provided to people in immigration detention. This report is expected to be tabled in December 2005.

The Committee did not wish to duplicate the work of these wider inquiries. However, the tabling of Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B* provided an opportunity for the Committee to undertake a focused examination of certain aspects of DIMIA's detention centre contract management.

The Committee commends the Australian National Audit Office's rigorous and detailed work already undertaken and continuing. The Committee also welcomes the openness with which DIMIA has been willing to engage in discussions.

The Committee is hopeful that action to date and the range of initiatives planned will address many of the problematic aspects of the management of the detention centre contracts, including DIMIA's ability to put in place performance information and monitoring systems to ensure that detainee needs and agency responsibilities are met. The Committee will continue to monitor developments in this area.

Don Randall MP  
Chairman



## Membership of the Committee

Chair Mr Don Randall MP

Deputy Chair Senator Linda Kirk

Members	Senator Andrew Bartlett	Senator Stephen Parry (from 1 July 2005)
	Senator Alan Eggleston	Dr Andrew Southcott MP
	Mr Laurie Ferguson MP	Mr Tony Burke MP (from 6 September to 11 October 2005)
	Ms Julia Irwin MP (from 2 December 2004 to 10 May 2005, and from 11 October 2005)	Mr Roger Price MP (from 10 May to 6 September 2005)
	Mr Michael Keenan MP	Senator Tsebin Tchen (to 30 June 2005)
	Hon Dr Carmen Lawrence MP	

## Committee Secretariat

Secretary	Ms Joanne Towner
Inquiry Secretary	Ms Paola Cerrato-D'Amico (until 9 September 2005)
	Ms Kate Tubridy (from 9 September 2005)
Research Officer	Ms Samantha Mannette
Administrative Officer	Ms Jazmine De Roza



## List of abbreviations

ACM	Australasian Correctional Management
ACS	Australasian Correctional Services
ANAO	Australian National Audit Office
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
DSC	Detention Services Contract
GSL	Global Solutions Limited (Australia) Pty Ltd
IDC	Immigration Detention Centre
IDF	Immigration Detention Facility
IDS	Immigration Detention Standards
IRPC	Immigration Reception and Processing Centre
MOU	Memorandum of Understanding
PIP	Palmer Implementation Plan
PPO	Palmer Programme Office
VFM	Value-for-Money





# List of recommendations

## **Recommendation 1**

The Committee recommends that DIMIA act promptly to develop and implement the changes required to improve the insurance, liability and indemnity regime associated with its detention function.

## **Recommendation 2**

The Committee recommends that the Minister for Immigration and Multicultural and Indigenous Affairs refer the progress report on the Palmer Implementation Plan to the Joint Standing Committee on Migration for examination when released.





## Introduction

### Background

- 1.1 Under the *Migration Act 1958* all non-citizens in Australia who do not hold a valid visa are considered to be unlawful non-citizens and must be detained.<sup>1</sup> The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) is responsible for overseeing the detention of unlawful persons.<sup>2</sup>
- 1.2 The provision of detention services at Australia's Immigration Detention Facilities (IDFs) has been outsourced since November 1997. Australasian Correctional Services (ACS), through its operational arm Australasian Correctional Management (ACM)<sup>3</sup>, provided detention services from November 1997 until February 2004.<sup>4</sup>
- 1.3 The current contract (the Contract) with service provider, Global Solutions Limited (GSL) (formerly Group 4 Flack) was signed on 27 August 2003. The Contract is for a four year period, with an option to extend for a further period of up to three years. The annual cost of the Contract is approximately \$90 million, excluding overheads and administrative costs.<sup>5</sup>

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1 See ss 189(1), 13 and 14 of the *Migration Act 1958*.

2 Source: <http://www.immi.gov.au/facts/82detention.htm> (as at 10 October 2005).

3 ACS / ACM are now known as GEO Australia Pty Ltd.

4 Australian National Audit Office (ANAO), Audit Report No. 54, 2005-2006, *Management of the Detention Centre Contracts – Part A*, p. 47, Figure 2.7.

5 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 11.

- 1.4 GSL is contracted to operate all Australian IDFs, which includes Immigration Detention Centres (IDCs) and Immigration Reception and Processing Centres (IRPCs). A progressive transition began in December 2003 and was completed on 29 February 2004 with the transfer of the final immigration detention centre to GSL control.<sup>6</sup>

## The Audit

- 1.5 The Australian National Audit Office's (ANAO's) audit into DIMIA's management of the detention centre contracts has been conducted in three stages.
- 1.6 The report of the first stage, the first audit report, Audit Report No. 54, 2003-2004, *Management of the Detention Centre Contracts – Part A* was released on 18 June 2004. In Part A, the ANAO assessed 'the effectiveness of DIMIA's management of its detention centre arrangements with ACM to operate Australia's mainland immigration detention centres'.<sup>7</sup> The ANAO acknowledged that the contract had been entered into at a time when the public sector had limited experience with large scale contracting out and managing services delivered by private organisations. However, the ANAO identified a number of concerns with DIMIA's management of the contract and made six recommendations for improvement in the areas of DIMIA's risk management and planning, developing its knowledge base to improve contract management, controls for invoicing procedures, asset management plans and detention infrastructure standards.<sup>8</sup>
- 1.7 The second audit report, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, (Audit Report No. 1 – Part B) released on 7 July 2005, assessed DIMIA's management of detention services through the Contract with GSL, including the transition period and the implementation of lessons learned from the previous contract.<sup>9</sup>
- 1.8 It was initially intended that Audit Report No. 1 – Part B include an examination of the tender process, however the ANAO subsequently

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6 Source: <http://www.gslpl.com.au/gsl/contracts/contracts.asp> (as at 14 October 2005).

7 ANAO, Audit Report No. 54, 2003-2004, *Management of the Detention Centre Contracts – Part A*, p. 12.

8 ANAO, Audit Report No. 54, 2003-2004, *Management of the Detention Centre Contracts – Part A*, pp. 23-24.

9 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 29, paragraph 1.14.

determined that to allow fuller consideration, the audit of the tender process would be undertaken separately. The ANAO expects to release the third audit, Part C, late in 2005.

## Audit Findings

- 1.9 In Audit Report No. 1 – Part B, the ANAO acknowledged that the current Contract with GSL is better structured than previous detention arrangements,<sup>10</sup> and that the sound planning and preparation exhibited in the transition period resulted in a successful transition with minimal disruption to detainees.<sup>11</sup>
- 1.10 However, many of the ANAO’s findings in Audit Report No. 1 – Part B raise serious concerns as to whether the current Contract with GSL, and associated arrangements adequately address best practice for public sector outsourcing and meet the practical operational needs of the detention services delivery function.
- 1.11 The ANAO found that the Contract ‘does not establish clear expectations for the level and quality of services to be delivered; mechanisms to protect the Commonwealth’s interests are not clear; and there is insufficient information about the quality of services being delivered and their costs to allow a value-for-money calculation’.<sup>12</sup>
- 1.12 DIMIA’s ability to monitor the performance of GSL and its subcontractors was compromised, in the ANAO’s view, by the lack of clarity in standards and associated performance measures;<sup>13</sup> the reliance on the reporting of Incidents to determine when standards are not being met;<sup>14</sup> and its limited control over subcontracting arrangements.<sup>15</sup>

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10 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 48, paragraph 3.54.

11 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 14.

12 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 18, paragraph 42.

13 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 19, paragraph 43.

14 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 19, paragraph 45.

15 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 14, paragraph 18.

- 1.13 In particular, the ANAO highlighted four key areas for improvement:
- the insurance, liability and indemnity regime in the Contract;
  - the planning, performance information and monitoring arrangements, to provide a basis for systematic and objective monitoring and management of the detention function;
  - the financial reporting of the detention function; and
  - the management of Commonwealth equipment and assets at each detention facility, specifically the development of a comprehensive asset register.
- 1.14 DIMIA agreed with each of the ANAO's four recommendations.<sup>16</sup>

## **The Committee's Review**

- 1.15 On 10 August 2005, the Committee agreed to review Audit Report No. 1 – Part B. A public hearing was held in Canberra on 10 October 2005, with representatives from the ANAO and DIMIA appearing before the Committee.<sup>17</sup>
- 1.16 The Committee took evidence on aspects of the audit's findings and action taken by DIMIA in response to the ANAO's recommendations. Subsequent to the hearing, ANAO and DIMIA also provided answers to questions on notice.<sup>18</sup>
- 1.17 The scope of the Committee's review of Audit Report No. 1 – Part B appropriately reflects the scope of the audit itself.<sup>19</sup> In its review, the Committee has not examined Australia's mandatory detention policy, arrangements for off-shore processing, or the lawful detainment (or otherwise) of individuals.
- 1.18 The Committee does acknowledge that both during the preparation and since the release of Audit Report No. 1 – Part B on 7 July 2005, there have been a number of other significant developments pertinent to DIMIA's management of IDFs. It is therefore necessary, where appropriate, to

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16 See Appendix C: ANAO Recommendations.

17 See Appendix A: List of witnesses.

18 See Appendix B: Submissions.

19 ANAO, Audit Report No. 1, 2005-2006: *Management of the Detention Centre Contracts – Part B*, p. 30.

consider DIMIA's responses to this audit report in the context of those other developments.

## The Palmer and Comrie Reports

- 1.19 Audit Report No. 1 – Part B made specific reference<sup>20</sup> to the independent *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau* (the Palmer Report), publicly released on 14 July 2005. The inquiry was necessitated by the discovery in February 2005 that a permanent resident, Ms Cornelia Rau, had been detained for the previous ten months as a suspected unlawful non-citizen.
- 1.20 The report on the *Inquiry into the Circumstances of the Vivian Alvarez Matter, Report No. 3 of 2005* (the Comrie Report), conducted by the Office of the Commonwealth Ombudsman, was released on 6 October 2005. Ms Vivian Alvarez is an Australian citizen, detained as a suspected unlawful non-citizen and removed from Australia by DIMIA in 2001.<sup>21</sup>
- 1.21 The Palmer Report identified systemic weaknesses in DIMIA and made 49 recommendations for the improvement of DIMIA's culture, processes and operations. Recommendations in the Comrie Report reinforce a number of the Palmer Report recommendations.<sup>22</sup>
- 1.22 A number of findings in the Palmer Report, in particular in relation to detention contract management and the provision of mental health services, directly relate to issues raised by the ANAO in Audit Report No. 1 – Part B. The Palmer Report found that:
- The current detention services contract with GSL is flawed and does not allow for delivery of the immigration detention policy outcomes that are expected by the Government. It is onerous in its application, lacks focus in its performance audit and monitoring arrangements, and transfers the risk to the service provider. Service requirements and quality standards are

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20 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 31. Specific reference was also made to the Federal Court of Australia case *S v Secretary, Department of Immigration and Multicultural and Indigenous Affairs* [2005] FCA 549 (5 May 2005). This judgement highlighted the Commonwealth's duty of care to ensure that detainees receive a certain standard of general health and psychiatric care (paragraph 257) and was critical of the outsourcing arrangements for detention services (paragraph 259).

21 Commonwealth Ombudsman, *Ombudsman releases report of Inquiry into the Circumstances of the Vivian Alvarez Matter*, Media Release, 6 October 2005 ([http://www.comb.gov.au/news\\_current\\_issues/media\\_releases/media\\_release\\_Alvarez\\_061005.pdf](http://www.comb.gov.au/news_current_issues/media_releases/media_release_Alvarez_061005.pdf))

22 Commonwealth Ombudsman, Media Release, 6 October 2005 ([http://www.comb.gov.au/news\\_current\\_issues/media\\_releases/media\\_release\\_Alvarez\\_061005.pdf](http://www.comb.gov.au/news_current_issues/media_releases/media_release_Alvarez_061005.pdf)).

poorly defined, performance measures are largely quantitative and of doubtful value ... the contract leaves the Commonwealth exposed to the risks inherent in the operation of immigration detention facilities.<sup>23</sup>

- The lack of any focused mechanism for external accountability and professional review of standards and arrangements for the delivery of health services is a significant omission.<sup>24</sup>

1.23 The Palmer Report recommendations of particular relevance are:

- **Recommendation 7.5** ... that DIMIA seek from the Australian National Audit Office a detailed briefing on the findings of the ANAO report on the detention services contract with GSL, to obtain the ANAO's guidance on reviewing the Commonwealth's current detention services contract with GSL and identify where and how changes can be made.<sup>25</sup>
- **Recommendation 7.6** ... that the Minister establish a Detention Contract Management Group made up of external experts to provide direction and guidance to DIMIA in relation to management of the detention services contract and report quarterly to the Minister.<sup>26</sup>
- **Recommendation 7.7** ... that, as a priority task, the Detention Contract Management Group review the current contract for detention services and advise DIMIA, in consultation with GSL, in order to identify and agree changes in arrangements ... [including developing] a new regime for performance measures and arrangements for their continued monitoring and management that are meaningful and add value to the delivery of high-quality services and outcomes.<sup>27</sup>

## The Palmer Implementation Plan

1.24 On 6 October 2005, the Minister for Immigration and Multicultural and Indigenous Affairs, Senator the Hon Amanda Vanstone, tabled in the Senate the report from the Secretary of DIMIA on the *Implementation of the*

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23 Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, Report, July 2005, p. 176, section 7.5.1.

24 Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, Report, July 2005, p. xii, paragraph 26.

25 Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, Report, July 2005, p. 180.

26 Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, Report, July 2005, p. 180.

27 Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, Report, July 2005, pp. 181-2.



*Recommendations of the Palmer Report of the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau (the Palmer Implementation Plan).*

- 1.25 The Palmer Implementation Plan (PIP) sets out the action the Government has already taken, and action that is planned, to address the:
- Palmer Report recommendations;
  - Comrie Report recommendations;<sup>28</sup> and
  - need for broader cultural change within DIMIA.
- 1.26 At the Committee's public hearing on 10 October 2005, DIMIA advised that the PIP also includes the Department's proposed action to address the ANAO's recommendations in Audit Report No. 1 – Part B.<sup>29</sup>
- 1.27 The Committee notes that DIMIA has established the Palmer Programme Office (PPO) to monitor the progress of, and expenditure against, PIP initiatives.<sup>30</sup>
- 1.28 Selected relevant findings and recommendations from the Palmer Report and action to be taken under the PIP will be discussed in Chapter 2.

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28 The PIP initiatives are consistent with the Palmer Report recommendations and those contained in the draft Comrie Report provided to DIMIA prior to its finalisation. See DIMIA, *Implementation of the Recommendations of the Palmer Report of the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, September 2005, p. 3.

29 Mr Correll, *Transcript of Evidence*, p. 13.

30 DIMIA, *Implementation of the Recommendations of the Palmer Report of the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, September 2005, p. 10.



## Key Issues identified by the ANAO

- 2.1 At the Committee's hearing on 10 October 2005, the ANAO identified a number of significant weaknesses in the Contract and DIMIA's management of the provision of detention services.<sup>1</sup> Certain key issues will be discussed in this Chapter.
- 2.2 The Committee considers the PIP a necessary initiative by DIMIA to address many of these weaknesses. In particular, the Committee notes the engagement of a consultant for three months, Mr Mick Roche, 'to review the compliance and detention functions within the Department and ... to look specifically at the detention services contract and review the shape of the contract'.<sup>2</sup> At the hearing, DIMIA advised that Mr Roche will be contributing and working with the Department to implement proposals progressively during the three-month review period on matters such as health arrangements and detention services strategies. DIMIA also expects that Mr Roche will provide a more formal report on his review of the Contract at the end of the review period.<sup>3</sup>
- 2.3 In response to Recommendation 7.6<sup>4</sup> of the Palmer Report, DIMIA has committed to establishing, by the end of 2005, a Detention Contract Management Group of external experts to provide direction and guidance to DIMIA and the Minister on the management of the detention services contract.<sup>5</sup> Recommendation 7.7<sup>6</sup> originally envisioned the group of

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1 Mr Meert, *Transcript of Evidence*, pp. 2-3.

2 Mr Correll, *Transcript of Evidence*, p. 14.

3 Mr Correll, *Transcript of Evidence*, p. 15.

4 Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, Report, July 2005, p. 180.

5 DIMIA, *Implementation of the Recommendations of the Palmer Report of the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, September 2005, p. 12, Attachment A.

external experts undertaking a review of the Contract and detention arrangements. However, at the hearing, DIMIA advised that it considers the establishment of this group to be the next step in the review process. The Department advised that any changes made to the Contract and detention arrangements as a result of the review may impact on the areas of expertise required. The Department expects that Mr Roche may provide advice on the composition of the group of external experts.<sup>7</sup>

## **DIMIA working with the ANAO**

- 2.4 The Committee is pleased to note that DIMIA has acted on the Palmer Report Recommendation 7.5<sup>8</sup> that DIMIA work with the ANAO to review the current detention arrangements.
- 2.5 The ANAO advised the Committee that, in response to a request from DIMIA, a number of discussions have been held to discuss the ANAO audits of the management of the detention centre contracts, including but not limited to Audit Report No. 1 – Part B.<sup>9</sup>
- 2.6 An agreement has been reached that the ANAO will play a role in the review being undertaken by Mr Roche. It is planned that the ANAO will meet with Mr Roche and relevant DIMIA officers to discuss its audit findings, including its preliminary findings on the tender process audit.<sup>10</sup>

## **Committee Comment**

- 2.7 The Committee supports the ongoing consultation between DIMIA and the ANAO. In particular, the Committee is pleased to note that the ANAO considers DIMIA to be ‘more receptive to [their] assistance’.<sup>11</sup> The Committee is hopeful that consultation with the ANAO, which focuses on addressing the issues identified in Audit Report No. 1 – Part B, will ensure

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6 Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, Report, July 2005, pp. 181-2.

7 Mr Correll, *Transcript of Evidence*, p. 20.

8 Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, Report, July 2005, p. 180.

9 ANAO, *Submission No. 1*, p. 1.

10 ANAO, *Submission No. 1*, p. 1; Mr Correll, *Transcript of Evidence*, p. 13; DIMIA, *Submission No. 2*, p. 1.

11 Mr Meert, *Transcript of Evidence*, p. 5.

that DIMIA is fully aware of the issues of concern and the options and approaches available to address the problems in the current arrangements.

## Transition

- 2.8 An objective of the second audit was to examine DIMIA's management of the transition to the new service provider GSL. The ANAO found that a successful transition was achieved without incident and with minimal disruption to detainees. However, this transition was achieved at the considerable cost of \$6 million.<sup>12</sup>
- 2.9 An Operational Transition of Detention Centres (OTDC) report was produced by DIMIA outlining the transition procedures and circumstances arising at each detention centre during transition. The ANAO was confident that this report would provide a sound basis for future transitional undertakings.<sup>13</sup> However, the Committee notes that the costs associated with the transition were not examined as part of the OTDC Report.<sup>14</sup>

## Committee Comment

- 2.10 While the Committee commends DIMIA for the overall success of the transition to GSL, it believes that it is important for the costs associated with the transition to be examined to ensure it represents a sound investment in the transition process.

## Ongoing Transition Issues

- 2.11 In Audit Report No. 1 – Part B, the ANAO identified areas in which arrangements were not finalised before the Contract was signed and transition occurred, including agreements with State agencies and the list of Commonwealth assets.

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12 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 36, paragraph 2.28.

13 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 36, paragraph 2.27.

14 DIMIA, *Submission No. 2*, p. 5.

## Commonwealth Assets

- 2.12 Discrepancies surrounding the ownership of certain assets<sup>15</sup> at IDFs were of considerable concern to the ANAO in Audit Report No. 1 – Part B. The ANAO found that when the Contract was signed with GSL and the transition undertaken, DIMIA had not clarified the ownership of certain assets.<sup>16</sup> These assets included such items as beds, mattresses, kitchenware, loose furniture, whitegoods and various electrical items, with an estimated value of \$150,000.<sup>17</sup>
- 2.13 The ANAO's Recommendation No. 4 of Audit Report No. 1 – Part B was that, as a matter of priority, DIMIA develop a 'comprehensive asset register for all Commonwealth Equipment at each of the detention facilities'.<sup>18</sup> DIMIA agreed with this recommendation and advised in its response to the report that progress was already underway.<sup>19</sup>
- 2.14 DIMIA has acknowledged that GSL were forced to purchase assets from the former service provider that the Department had committed to provide. At the Committee's hearing, DIMIA confirmed that stocktakes of all detention centres had been completed and the next step was to arrange the purchase of these assets from GSL. Once completed, these assets would be added to the list developed from the stocktakes and DIMIA would have a comprehensive list of Commonwealth assets at all IDFs.<sup>20</sup>

## Committee Comment

- 2.15 It is troubling that it has taken two years for DIMIA to resolve the ownership of these assets. The Committee is of the view that an issue so fundamental to the provision of detention services and Commonwealth interests should have been addressed and resolved sooner. The Committee is hopeful that once the comprehensive Commonwealth asset register is in place, this will not be an issue of concern in future detention services arrangements.

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15 Clause 4.7.1 of the Detention Services Contract provides for Commonwealth Equipment listed in Schedule 6 to be licensed to GSL for the term of the Contract. However, certain equipment that was listed in Schedule 6 was also offered for sale as the property of ACM, and subsequently purchased by GSL.

16 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 101, paragraph 6.42.

17 DIMIA, *Submission No. 2*, p. 7.

18 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 23.

19 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 102, paragraphs 6.48-9.

20 Mr Doherty, *Transcript of Evidence*, p. 23.

## State Agreements

- 2.16 IDFs are located throughout Australia and as a result are subject to both Commonwealth and state specific legislation dealing with health, education, police services, child protection, youth and community affairs, and occupational health and safety. DIMIA is responsible for working in consultation with state agencies, organisations and stakeholders to develop Memoranda of Understanding (MOUs) to provide IDFs and relevant agencies with guidelines to ensure that the provision of detention services in that State adheres to the relevant legislation.<sup>21</sup>
- 2.17 The Committee notes with concern the ANAO's finding that although 'detention services have been delivered under outsourced arrangements for the past seven years, DIMIA is yet to finalise more than half of the relevant agreements with State agencies'.<sup>22</sup> In particular, the ANAO expressed concern about the extent to which GSL could rely on agreements between DIMIA and other jurisdictions, when arrangements in many of those states had not progressed to a formalised MOU.<sup>23</sup>
- 2.18 At the hearing, the ANAO acknowledged that seeking to finalise MOUs before entering into the Contract with GSL would not have been a realistic option.<sup>24</sup> In evidence to the Committee, the ANAO commented that any decision to delay would have to have been a conscious decision by DIMIA based on a good management rationale and risk assessment.<sup>25</sup>
- 2.19 DIMIA has advised the Committee that at 'the time of transition the Department considered that, given the significant complexity of the project, the costs and risks associated with delaying the transition process outweighed the benefits to be derived from such a delay'.<sup>26</sup>
- 2.20 The Committee is pleased to note DIMIA's response that:
- The Department agrees that it would be beneficial to finalise the abovementioned arrangements before signing a contract with a new services provider.<sup>27</sup>

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21 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 46, paragraph 3.42.

22 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 49, paragraph 3.55.

23 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 47, paragraph 3.43.

24 Mr Watson, *Transcript of Evidence*, p. 11.

25 Mr Meert, *Transcript of Evidence*, p. 11.

26 DIMIA, *Submission No. 2*, p. 6.

27 DIMIA, *Submission No. 2*, p. 6.

- 2.21 The Committee notes that no specific completion dates have been set for finalising MOUs. DIMIA has advised that:
- an MOU with the South Australian Police was signed on 22 September 2005;
  - as at 18 October 2005 seven MOUs were being actively progressed; and
  - MOU requirements are being reviewed in light of recent policy changes, such as the requirement that women and children be detained as a last resort.<sup>28</sup>

### Committee Comment

- 2.22 The Committee acknowledges that not all arrangements are straightforward and able to be easily finalised. However, the Committee is hopeful that DIMIA, having experienced some of the difficulties associated with incomplete arrangements and recognising the benefits of finalising such arrangements, will address these issues before entering into another contract.

### Insurance, Liability and Indemnity Regime

- 2.23 A number of the ANAO's findings in Audit Report No. 1 – Part B were critical of the insurance, liability and indemnity arrangements between the Commonwealth and GSL.<sup>29</sup> In particular, the ANAO identified three significant shortcomings.<sup>30</sup>
- 2.24 Firstly, the ANAO found that definitions of what constituted an incident (Incident) differed throughout the Contract, creating uncertainties with regard to assessing responsibility under the insurance, liability and indemnity arrangements.<sup>31</sup>
- 2.25 Secondly, the Contract does not identify a mechanism to determine the amount for which GSL is liable in respect of damages incurred. An independent advisor is appointed by DIMIA to assess liability for

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28 DIMIA, *Submission No. 2*, p. 6.

29 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 31, paragraph 1.23.

30 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 15, paragraph 21.

31 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 54, paragraphs 4.13-5.



damages to IDF equipment resulting from an Incident, however, there is no mechanism in the Contract that establishes this assessment as binding upon GSL or DIMIA.<sup>32</sup>

2.26 Thirdly, the Commonwealth's interests are not adequately protected under the current insurance arrangements. The ANAO believes that the Contract lacks a prescriptive insurance regime which would let 'both the Commonwealth and the Services Provider know, at the outset, the insurance obligations of the Services Provider'.<sup>33</sup>

2.27 It is worth noting that since 2000, claims of approximately \$16.9 million have been paid out or settled by the Commonwealth following disturbances that resulted in damage to the detention centres.<sup>34</sup> The ANAO concluded that:

...the terms of the liability, indemnity and insurance regime in the Contract are unclear to the point that it is not possible for the Commonwealth to know with any certainty what insurances are effected, what risks are covered, and to what extent the insurance cover that has been obtained is limited or qualified.<sup>35</sup>

2.28 The ANAO's Recommendation No. 1 was for DIMIA to review the insurance, liability and indemnity regime in the Contract. This would allow DIMIA, informed by a clear allocation of risks, to develop clearer mechanisms to apportion the cost of repairs to detention facilities and Commonwealth equipment following an Incident, and to determine GSL and Commonwealth indemnities and liabilities under the Contract for insurance purposes.<sup>36</sup>

2.29 DIMIA agreed to this recommendation. However, the Department opted to defer further consideration of the regime until the release of the tender process audit report (Part C) which will examine DIMIA's process of risk identification in more detail.<sup>37</sup>

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32 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 15, paragraph 22.

33 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 64, paragraph 4.49.

34 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 15, paragraph 20.

35 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 19, paragraph 46.

36 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 23.

37 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 67, paragraph 4.63.

- 2.30 The ANAO's view is that any findings relating to the tender process are not a prerequisite for examining this issue and in fact 'given the level of risk to the Commonwealth created by the current regime, DIMIA should act promptly to develop a more suitable insurance, liability and indemnity regime to better protect the Commonwealth's interests'.<sup>38</sup>
- 2.31 At the Committee's hearing, DIMIA confirmed that no action had yet been taken to follow up the recommendation or to clarify the definition of an Incident. However, DIMIA indicated that this issue would be considered as part of the review of the current detention services contract being undertaken by Mr Roche.<sup>39</sup>

## Committee Comment

- 2.32 The Committee believes that DIMIA should take action to minimise risks to the Commonwealth in relation to its detention function. The Committee encourages DIMIA to ensure that the consideration of the insurance, liability and indemnity regime, occurring as part of Mr Roche's review of the contract, addresses the issues identified by the ANAO.

### Recommendation 1

- 2.33 The Committee recommends that DIMIA act promptly to develop and implement the changes required to improve the insurance, liability and indemnity regime associated with its detention function.**

## Merit Points Scheme

- 2.34 The ANAO expressed concern over aspects of the Merit Points Scheme which allows detainees to undertake 'meaningful activities' in return for points that can be used to purchase small items. The *Migration Act 1958* prohibits detainees from working and the ANAO is of the view that in 'its current form, the scheme represents a risk to the Commonwealth as the

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38 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 67, paragraph 4.65.

39 Mr Correll, *Transcript of Evidence*, p. 16.

distinction between “meaningful activity” and “paid employment” is not made clear’.<sup>40</sup>

2.35 The operation of this scheme also varies between IDFs. The ANAO suggested the development of provisions in the Contract that articulate DIMIA’s intended approach and take into account the relevant legislation.<sup>41</sup>

2.36 In its response to a question taken on notice, DIMIA advised the Committee that:

The Department is preparing to commence a policy review of the meaningful activities and merit points scheme. The ANAO’s comments ... will be examined in this context.<sup>42</sup>

## Committee Comment

2.37 The Committee is pleased that DIMIA will be taking action to specifically address the issues identified by the ANAO as problematic in this scheme. The Committee is hopeful that DIMIA will be able to reach a solution which will ensure this scheme is conducted in accordance with the relevant legislation, as well as meeting the practical needs of detainees.

## Performance Information and Contract Monitoring

2.38 The ANAO considers that:

The foundation for agency accountability and transparency in Commonwealth Government agencies is performance information, with measures and targets presented initially in the Portfolio Budget Statements (PBS) and results provided in an Annual Report ... [and where] services have been outsourced, performance information should be set out in contracts with providers and also be linked through business plans to the outputs and outcomes specified in the PBS.<sup>43</sup>

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40 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 41, paragraph 3.16.

41 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 41, paragraph 3.17.

42 DIMIA, *Submission No. 2*, p. 5.

43 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 68, paragraph 5.1-2.

- 2.39 In DIMIA's Portfolio Budget Statements, the contribution that detention makes towards the Department's outcome is stated as 'providing lawful, appropriate, humane and efficient detention of unlawful citizens'.<sup>44</sup> In terms of DIMIA monitoring, assessing and reporting on its own performance in relation to the detention function, the ANAO found:
- 'the quality measures listed in DIMIA's PBS ... are activities rather than indicators against which performance can be assessed';<sup>45</sup>
  - DIMIA 'did not define, nor measure lawful, appropriate, humane or efficient detention';<sup>46</sup>
  - 'no evidence that DIMIA's internal reporting arrangements monitored the extent to which expenditure under output 1.3.5 was contributing to the on-going achievement of VFM [value-for-money], while assisting in the achievement of the overall outcome';<sup>47</sup> and
  - the use of terms such as 'marked reduction' in the Department's Annual Report is 'not a clear measure of performance'.<sup>48</sup>
- 2.40 As part of its response to Recommendation No. 2<sup>49</sup> of Audit Report No. 1 – Part B, DIMIA stated that the implementation of the 2005-2006 Governance Framework would 'address several of the ANAO's concerns relating to divisional planning and performance information identified through this report'.<sup>50</sup>
- 2.41 DIMIA's governance framework provides an 'overarching structure' for planning and risk management processes in relation to its detention function.<sup>51</sup> The review of the detention function's governance framework revealed a number of areas for improvement within the existing framework. The Department advised the Committee that:

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44 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 16, paragraph 31.

45 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 69, paragraph 5.7.

46 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 17, paragraph 31.

47 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 17, paragraph 32.

48 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 71, paragraph 5.11.

49 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 23.

50 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, pp. 118-9, paragraph 26.

51 DIMIA, *Submission No. 2*, p. 2.

The development of a new governance framework will incorporate the outcomes of the review, ANAO recommendations, additional advice from internal and external stakeholders, and a departmental review of business planning (in light of the recent organisational restructure) to ensure consolidated improvements in business planning processes within the detention function.<sup>52</sup>

- 2.42 In particular, the Committee is pleased to note DIMIA's advice, that as part of the broader review of the components of the governance framework:

Performance measures for the detention function are being reviewed in the context of the recent organisational restructure, the review of the DSC, and the ongoing review of business requirements in light of the Government's response to the Palmer inquiry.

The outcome of this review is intended to give the Secretary, the Minister and the Australian community greater assurance that the department is planning its work robustly and can account for its performance effectively.<sup>53</sup>

## Contract Performance Information

- 2.43 A recurrent criticism throughout Audit Report No. 1 – Part B is that the standards and performance measures for monitoring GSL's performance lack clarity and consistency.<sup>54</sup> The ANAO considers it 'important to clearly define service requirements and standards to ensure there is a common understanding of the services required'.<sup>55</sup>

- 2.44 The ANAO concluded:

Lack of clarity in the performance standards and measures in the Contract means it is difficult for DIMIA to systematically monitor and assess the Services Provider's performance.<sup>56</sup>

- 2.45 In response to ANAO's criticisms, DIMIA stated:

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52 DIMIA, *Submission No. 2*, p. 2.

53 DIMIA, *Submission No. 2*, p. 2.

54 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 16, paragraph 29 and p. 108, Appendix 2.

55 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 81, paragraph 5.46.

56 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 81, paragraph 5.46.

For the most part, the issues highlighted by the ANAO with the standards and measures (which flow through to monitoring and reporting) are not deficiencies but in DIMIA's view are reflections of the inherent complexity and variability of the services required.<sup>57</sup>

- 2.46 DIMIA maintained that 'it is not possible to define these requirements in simplified ways, and that it was a misconception that services, standards and reporting can be simply and inflexibly stated'<sup>58</sup>, and that 'flexibility in the terminology of the IDS provides discretion to the Department to consider service delivery within the necessary context'.<sup>59</sup> The ANAO indicated in evidence to the Committee that it is not satisfied with DIMIA's response.<sup>60</sup>
- 2.47 At the Committee's hearing, DIMIA conceded that 'a clear description of definitions and very clear key performance indicators' were needed,<sup>61</sup> and informed the Committee that as part of its review of the detention services contract, the ANAO's comments on this issue would be considered. While DIMIA did express doubt that precise quantitative measures were feasible, it noted that other ranges of standards may be possible.<sup>62</sup>
- 2.48 The Committee notes that at the hearing the ANAO acknowledged that there is no simple approach, but emphasised the need for a workable monitoring regime.<sup>63</sup> The ANAO has also suggested that 'performance information should be based on a mix of indicators to provide a balanced view of the detention services, and not focus on only a narrow aspect of performance'.<sup>64</sup>

## Committee Comment

- 2.49 While the Committee acknowledges that developing detailed performance information is not an easy task, the problem that DIMIA faces, in developing such measures for the delivery of services in a complex

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57 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 116, paragraph 12.

58 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 19, paragraph 44.

59 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, pp. 115-6, paragraph 5.43.

60 Mr Meert, *Transcript of Evidence*, p. 4.

61 Mr Correll, *Transcript of Evidence*, p. 18.

62 Mr Correll, *Transcript of Evidence*, p. 16.

63 Mr Meert, *Transcript of Evidence*, p. 4.

64 ANAO, *Submission No. 1*, p. 3.

environment, is not unique. The Committee notes that performance indicators and quality assurance frameworks have been developed in other areas of comparable government activity, such as prisons, aged care facilities and hospitals. There are models available for DIMIA to learn from and build upon.<sup>65</sup>

- 2.50 The Committee is hopeful that when DIMIA considers the issue in the course of the review being undertaken by Mr Roche and other PIP initiatives, the Department will explore and build upon the range of suggestions made by the ANAO for improving the clarity and consistency of standards and performance measures.

## Contract Performance Monitoring

- 2.51 The arrangements for monitoring and reporting on GSL's delivery of detention services focus on the reporting of Incidents, to highlight instances of the IDS not being met; in other words, an exceptions-based approach to reporting.<sup>66</sup>
- 2.52 At the hearing, the ANAO observed that while an exceptions-based approach may be a relatively cheaper option, there are repercussions in selecting this approach to monitor the performance of GSL and its subcontractors.<sup>67</sup> The ANAO identified two main weaknesses to the exceptions-based approach.<sup>68</sup>
- 2.53 Firstly, the ANAO found that DIMIA officials, at a number of points in the reporting and monitoring process, exercise considerable discretion over the Incidents that are reported.<sup>69</sup> A consequence of this discretion is that both negative and positive performance outcomes could be overlooked.<sup>70</sup>
- 2.54 Secondly, the 'lack of clarity in performance measures and standards means that it is not possible for DIMIA's staff to assess the ongoing

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65 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 81, paragraph 5.45; Mr Meert, *Transcript of Evidence*, p. 4; Mr Watson, *Transcript of Evidence*, p. 6.

66 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 83, paragraph 5.55; p. 86, Figure 5.6.

67 Mr Meert, *Transcript of Evidence*, p.10.

68 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 16, paragraph 29.

69 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 86, paragraphs 5.70-1.

70 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 86, paragraph 5.71.

- performance of the Services Provider objectively, based on the performance reporting'.<sup>71</sup>
- 2.55 When a report of an Incident is substantiated as a breach of an IDS, clause 18.1.23 of the Contract provides for sanctions (negative points) that can be offset by rewards (positive points) on what is effectively GSL's performance scorecard. Schedule 3 of the Contract lists the performance points per occurrence against the measure.<sup>72</sup>
- 2.56 The ANAO made the troubling observation that the maximum 'penalty points generally apply to failure to report an Incident, rather than outright failure in critical services such as food and health'.<sup>73</sup> The ANAO found that a single breach of food or health IDS could incur up to minus 10 points in contrast to a failure to report a breach could attract up to minus 25 points.<sup>74</sup> This raises serious questions regarding DIMIA's priorities and the implied direction to GSL and its subcontractors.<sup>75</sup>
- 2.57 The Palmer Report found that exceptions-based reporting 'provides no information to management until the system has failed'.<sup>76</sup> The ANAO and Mr Palmer share the view that DIMIA's approach lacks quality assurance.<sup>77</sup> The ANAO notes that other comparable jurisdictions, such as prisons, have focused on quality assurance rather than exceptions-based reporting.<sup>78</sup>
- 2.58 The Committee recognises that it is DIMIA's responsibility to judge whether an exceptions-based approach meets their monitoring needs in the complex environment of detention services delivery. However, the Committee notes the ANAO's view that 'there are standards and measures ... that you can set to give you a more proactive response to

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71 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 16, paragraph 29.

72 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 87, paragraph 5.74.

73 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 76, paragraph 5.38.

74 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 84, paragraph 5.62.

75 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 84, paragraph 5.64.

76 Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, Report, July 2005, p. 68.

77 Mr Watson, *Transcript of Evidence*, p. 6; Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, Report, July 2005, p. 165.

78 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 81, paragraph 5.45.



your service delivery so that you do not respond to an event but rather can manage events'.<sup>79</sup>

## The Monitoring Plan

2.59 As part of its response to Recommendation No. 2<sup>80</sup>, DIMIA stated that in January 2005, the Department implemented a 'comprehensive contract monitoring regime' to proactively monitor the delivery of service at detention facilities in a systematic and objective way. DIMIA advised the Committee that the focus of their monitoring arrangements was to 'sustain a systematic approach to assessing performance'.<sup>81</sup> The Department stated:

The 2005 Monitoring Plan provides for a proactive and systematic approach to monitoring, drawing upon a range of monitoring tools including National Office monitoring reports, performance reports from DIMIA immigration detention facility staff, expert panel reviews and GSL self reporting.<sup>82</sup>

2.60 As the 2005 Monitoring Plan was implemented in January 2005, the ANAO was not able to assess the effectiveness of this new monitoring regime in Audit Report No. 1 – Part B.<sup>83</sup>

2.61 DIMIA has advised the Committee that informal reviews of the Monitoring Plan have occurred since its implementation. The Department found that:

Overall findings from the [internal] audits have been largely positive. The checklists completed by both DIMIA staff from National Office and at the IDFs have highlighted areas where GSL's actual service delivery has in some way varied from agreed standards as set out in the contract and approved Operational Procedures. Checklists now provide for DIMIA staff to advise GSL of their findings and GSL comment on these findings.

While work will continue on refining the framework, the Department considers that the Monitoring Plan is already proving

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79 Mr Meert, *Transcript of Evidence*, p. 4.

80 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 23.

81 DIMIA, *Submission No. 2*, p. 7.

82 DIMIA, *Submission No. 2*, p. 7.

83 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 90, paragraph 5.89.

effective in bringing greater consistency to the monitoring of service delivery across all centres.<sup>84</sup>

## Committee Comment

- 2.62 The Committee shares the ANAO's view that the nature and complexity of the detention services environment warrants a more proactive approach to performance monitoring, to ensure that detainees' needs are met and that there is some degree of quality assurance in the delivery of detention services. The Committee is hopeful that the host of reforms outlined in the PIP will facilitate a more proactive management and monitoring role by DIMIA.
- 2.63 The Committee notes that a formal review of the 2005 Monitoring Plan has commenced.<sup>85</sup> The Committee will request a briefing from DIMIA on the outcomes of this review and, in particular, to hear about specific examples of DIMIA's 'proactive and systematic' approach to performance monitoring.

## Duty of Care

- 2.64 The Contract (clause 4.1.2 of Schedule 2) 'imposes particular responsibilities on the Commonwealth [exercised through DIMIA] with regard to duty of care for each and every person in immigration detention, and beyond the individual, to ensuring the safety and welfare of all detainees in a detention facility...While not absolving itself of these responsibilities, the Department, in turn, exercises its duty of care commitments through the engagement of a competent Service Provider'.<sup>86</sup>
- 2.65 The ANAO found that the Contract lacked a clear delineation of actual responsibilities and accountabilities when it came to determining and meeting detainees' day-to-day needs. The ANAO expressed concern that this lack of guidance could lead to misunderstandings of what was expected and, as a consequence, the needs of detainees and duty of care obligations not being met.<sup>87</sup>

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84 DIMIA, *Submission No. 2*, p. 3.

85 DIMIA, *Submission No. 2*, p. 3.

86 Source: [http://www.immi.gov.au/detention/group4/002\\_schedule\\_2.pdf](http://www.immi.gov.au/detention/group4/002_schedule_2.pdf) (as at 12 September 2005).

87 ANAO, *Audit Report No. 1, 2005-2006, Management of the Detention Centre Contracts – Part B*, p. 43, paragraphs 3.24-5.

- 2.66 The ANAO found that DIMIA and GSL use separate determinations of detainees' day-to-day needs.<sup>88</sup> The 2005 Monitoring Plan includes 25 audit checklists that are provided for use by DIMIA officers when examining a range of matters, such as detainee welfare, education, food, emergencies and assaults, food, health care, meaningful activities, searches and transport. However, DIMIA advised that while GSL staff are familiar with the content and format of these checklists from discussions with DIMIA officers, they are not formally provided with copies of these checklists.<sup>89</sup>
- 2.67 The ANAO's concerns have been supported by the finding in the Palmer Report that the case of Cornelia Rau revealed 'a manifest failure of DIMIA's duty of care'<sup>90</sup> and the judgement in the case of *S v Secretary, Department of Immigration and Multicultural and Indigenous Affairs* [2005] FCA 549 (5 May 2005). At paragraph 257 of the judgment, Finn J stated:
- It was the Commonwealth's duty to ensure that reasonable care was taken of S and M who, by reason of their detention, could not care for themselves. That duty required the Commonwealth to ensure that a level of medical care was made available to them which was reasonably designed to meet their health care needs including psychiatric care. They did not have to settle for a lesser standard of mental health care because they were in immigration detention.<sup>91</sup>
- 2.68 In its response to questions on notice, DIMIA stressed that this case was a confirmation of the position held by the Department for a number of years, that 'the Commonwealth retains the ultimate duty of care for all immigration detainees.'<sup>92</sup> DIMIA also acknowledged that its duty of care 'does not end with selecting a competent service provider.'<sup>93</sup>
- 2.69 The Committee notes that both DIMIA and GSL have agreed that 'there is scope for a more integrated approach to both GSL and DIMIA audits' and relevant discussions are underway.<sup>94</sup> DIMIA advised:

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88 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 43, paragraphs 3.25.

89 DIMIA, *Submission No. 2*, p. 8.

90 Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, Report, July 2005, p. 28, section 3.1.2. See also p. 45, recommendation 3.2 and p. 145, recommendation 6.9.

91 Source: [http://www.austlii.edu.au/au/cases/cth/federal\\_ct/2005/549.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2005/549.html) (as at 9 September 2005).

92 DIMIA, *Submission No. 2*, p. 4.

93 DIMIA, *Submission No. 2*, p. 5.

94 DIMIA, *Submission No. 2*, p. 8.

The day-to-day needs of detainees in immigration detention facilities, and the services required to meet these day-to-day needs, will be reviewed in the context of Mr Roche's review of the DSC.<sup>95</sup>

## Subcontracting Arrangements

- 2.70 Intimately linked to DIMIA meeting its duty of care obligations is ensuring that the Department has adequate control over the delivery of services by subcontractors. In Audit Report No. 1 – Part B, the ANAO found that 'the Contract does not clearly specify mechanisms for the ongoing monitoring of subcontractor arrangements'.<sup>96</sup>
- 2.71 The ANAO noted that there was considerable scope for DIMIA to improve the management of risks associated with the contractual arrangements with subcontractors.<sup>97</sup> Food, maintenance, health and psychological services at IDFs are delivered through subcontractors.<sup>98</sup> The ANAO considers food, health and psychological services to be central to detainee welfare.<sup>99</sup>
- 2.72 DIMIA advised the ANAO that it 'does not have a direct contractual relationship with any subcontractor employed by GSL'.<sup>100</sup> The Contract does not provide for DIMIA to review the terms and conditions of any subcontract. In 2004, DIMIA had to seek GSL's agreement to engage the Australian Government Solicitor (AGS) to review the subcontracts. The AGS found that the rights and obligations in the subcontracts differed substantially in a number of areas and in the case of psychological services, IDS and performance measures were not applied.<sup>101</sup> The ANAO viewed this with concern since 'the extent to which DIMIA retains control of resources can be a determinant of overall service quality'.<sup>102</sup>

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95 DIMIA, *Submission No. 2*, p. 9.

96 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 49, paragraph 3.54.

97 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 46, paragraph 3.41.

98 Source: <http://www.gslpl.com.au/gsl/contracts/contracts.asp> (as at 14 October 2005).

99 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 46, paragraph 3.41.

100 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 44, paragraph 3.29.

101 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 45, paragraphs 3.36-7.

102 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 46, paragraph 3.39.

- 2.73 The ANAO stress that DIMIA is ultimately responsible for service delivery, and 'if a subcontractor does something untoward, the department is still accountable'.<sup>103</sup>
- 2.74 The ANAO noted that DIMIA informally considered food and health services to be areas of risk.<sup>104</sup> While ANAO did not examine every food and health standard, it found that generally these standards and associated measures lack clarity; contain provisos that make it difficult to prove whether the standard is met; in some cases would require expert assessment; or the evidence required to substantiate cases of standards not being met would be difficult to collect.<sup>105</sup>

### Food Services

- 2.75 The ANAO found that the provision of food services at the Baxter IDF is an area in which DIMIA and GSL have experienced difficulty exercising control over the subcontractor. The quality, quantity and appropriateness of food served at Baxter had been the subject of complaints since the commencement of the Contract.<sup>106</sup>
- 2.76 The Palmer Report examined the issue of food at Baxter and found that 'generally the concern was not about the food's quality or adequacy; rather, it was that for many detainees the food is boring ... [and incidents]... such as storing food in their rooms against the rules were simply ways of expressing individuality'.<sup>107</sup>
- 2.77 On 12 September 2005, the Minister for Immigration and Multicultural and Indigenous Affairs released the Baxter Catering and Nutrition Report and announced that the Department had been instructed to 'work with Global Solutions Limited (GSL) to ... provide greater menu choice, some self catering ... and increased opportunities for detainees to have a say on food'. The Minister also indicated that DIMIA would consider whether

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103 Mr Meert, *Transcript of Evidence*, p. 4.

104 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 76, paragraph 5.37.

105 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, pp. 78-9, paragraph 5.39; pp. 108-12, Appendix 2.

106 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 46, paragraph 3.40.

107 Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, Report, July 2005, p. 75, section 4.4.3. See also recommendations 4.3, 4.4 and 4.6.

amendments were needed to the descriptions and standards of food services in the Contract.<sup>108</sup>

- 2.78 At the hearing, DIMIA advised the Committee of a number of measures being put in place to improve the delivery of food services at Baxter, and indicated that any consideration and alteration of food standards would be subject to the longer term review of the Contract.<sup>109</sup>

### Mental Health Services

- 2.79 At the hearing, the ANAO stated that DIMIA had taken a 'purely financial view' of the provision of psychological services.<sup>110</sup> The cost of the subcontract was under \$3 million, and so DIMIA was not required to undertake certain financial and probity checks.<sup>111</sup> The ANAO indicated that it would have been desirable for DIMIA to more closely examine the arrangements for the provision of psychological services to detainees.<sup>112</sup>
- 2.80 The Palmer Report found that the detainee population 'requires a much higher level of mental health care than that required by the Australian community as a whole'<sup>113</sup> and that in the case of Cornelia Rau, the mental health care delivered was inadequate.<sup>114</sup>
- 2.81 In paragraph 257 of the judgment on *S v Secretary, Department of Immigration and Multicultural and Indigenous Affairs* [2005] FCA 549 (5 May 2005), Finn J stated:

The Commonwealth entered into a complex outsourcing arrangement for the provision of mental health services which left it to contractors and subcontractors to determine the level of services to be supplied ... The Commonwealth now foreshadows more by way of auditing and monitoring. Nonetheless, it is difficult to avoid the conclusion that the Commonwealth's own

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108 Minister for Immigration and Multicultural and Indigenous Affairs, *Baxter Food Report Released*, VPS 111/2005, 12 September 2005, [http://www.minister.immi.gov.au/media\\_releases/media05/v05111.htm](http://www.minister.immi.gov.au/media_releases/media05/v05111.htm).

109 Mrs O'Connell and Mr Doherty, *Transcript of Evidence*, p. 22.

110 Mr Lack, *Transcript of Evidence*, p. 5.

111 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, pp. 44-5, paragraph 3.33.

112 Mr Lack, *Transcript of Evidence*, p. 5.

113 Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, Report, July 2005, p. 149, section 6.6.5.

114 Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, Report, July 2005, p. 70, section 4.3.1.

- arrangement for outsourcing health care services itself requires review. Its aptness is open to real question.<sup>115</sup>
- 2.82 The ANAO recognises that DIMIA's outcomes focus is a good approach in the setting of health standards, however considers that the Department failed to balance this with workable performance measures.<sup>116</sup>
- 2.83 The PIP includes the establishment of a Detention Services Taskforce to develop a long term detention health services delivery strategy.<sup>117</sup> This strategy aims to enhance the mental health and well-being of IDF detainees through an 'improved physical and social environment for immigration detainees [and] improved organizational and increased professional inputs into monitoring and assessment of detainees'.<sup>118</sup>
- 2.84 At the hearing, DIMIA advised that they 'have put in place some improved health standards within the Baxter immigration detention centre which do have some more specific measures around them, such as the time in which a detainee will be seen and assessed by a health nurse and a psychiatric nurse after entering into a detention services facility'.<sup>119</sup> These measures put in place at Baxter will be trialled, refined and then replicated in other IDFs.<sup>120</sup>
- 2.85 With an aim towards improving communication and developing a closer working relationship with GSL and its subcontractors, DIMIA has created two subcommittees (health and infrastructure) to bring together core people from DIMIA, GSL and the relevant subcontractors on a monthly basis to discuss issues, find solutions, and progress activities.<sup>121</sup> The Committee notes that the Health Services Delivery Group, made up of senior representatives from DIMIA, GSL Health Management, and IHMS and PSS (GSL's subcontractors) is developing 'health service performance measures for immigration detention facilities that will provide a comparable level of monitoring to those that are applied in the mainstream health sector'.<sup>122</sup>

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115 Source: [http://www.austlii.edu.au/au/cases/cth/federal\\_ct/2005/549.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2005/549.html) (as at 9 September 2005).

116 Mr Lack, *Transcript of Evidence*, p. 7.

117 DIMIA, *Implementation of the Recommendations of the Palmer Report of the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, September 2005, p. 7.

118 DIMIA, *Submission No. 2, Attachment C*, p. 1.

119 Mrs O'Connell, *Transcript of Evidence*, p. 17. See also DIMIA, *Submission No. 2*, p. 10.

120 Mrs O'Connell, *Transcript of Evidence*, p. 21.

121 Mr Doherty, *Transcript of Evidence*, p. 24.

122 DIMIA, *Submission No. 2*, p. 5.

- 2.86 DIMIA maintains that subcontracting can work effectively if properly managed.<sup>123</sup> DIMIA has acknowledged that 'it maintains an obligation to monitor the performance of GSL and its subcontractors and to actively ensure that necessary services are provided to agreed standards'.<sup>124</sup>
- 2.87 The Committee is pleased to note DIMIA's advice at the hearing, that issues related to the use of subcontractors would be closely examined as part of the contract review being undertaken by Mr Roche.<sup>125</sup>

### Committee Comment

- 2.88 The Committee acknowledges that the action already taken and the action planned in relation to improving food and mental health services at IDFs go some way towards addressing ANAO's concerns over DIMIA meeting its duty of care obligations.
- 2.89 The Committee is satisfied that DIMIA is aware that action needs to be taken to address the ANAO's concerns regarding the subcontracting arrangements at IDFs. The Committee is hopeful that the findings of the contract review by Mr Roche will enable DIMIA to take a more proactive role in managing its relationship with GSL and its subcontractors to ensure that the services provided are meeting detainees' needs.

### Value-for-Money

- 2.90 The Department's decision in 2001 to re-tender the detention services contract was influenced by the difficulties it experienced in determining whether the then service provider, ACM, was providing the best value-for-money service.<sup>126</sup> Similar concerns persist under the current Contract with GSL. In Audit Report No. 1 – Part B, the ANAO found that there is 'insufficient information about the quality of services being delivered and their costs to allow a value-for-money calculation'.<sup>127</sup>
- 2.91 It was projected that for the year ending 30 June 2005, contract administration costs would exceed \$30 million, in addition to the \$90

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123 Mr Correll, *Transcript of Evidence*, p. 18.

124 DIMIA, *Submission No. 2*, p. 5.

125 Mr Correll, *Transcript of Evidence*, p. 18.

126 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 28, paragraph 1.5.

127 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, pp. 18-9, paragraph 42.



million annual cost for detention services.<sup>128</sup> The ANAO observed that DIMIA was unable to reconcile the slight decline in detainee days with the substantial increase in contract administration costs during the same period.<sup>129</sup>

- 2.92 DIMIA advised the Committee that it pursued a value-for-money outcome in 2002 when evaluating tenders for the current contract and ‘continues to pursue a value for money balance in the detention environment’. The Department acknowledged that recent ‘amendments to the detention environment, for example the removal of razor wire, have resulted in increased costs to the Commonwealth. However ... considers that such expenditure has also produced a better quality of services and environment within immigration detention facilities’.<sup>130</sup>
- 2.93 DIMIA agreed with the ANAO’s Recommendation No. 3<sup>131</sup>, to review the financial and non-financial performance information for the detention centre function. The Committee notes that this review ‘is intended to assess how the department can best measure performance within the detention function, in both qualitative and quantitative measures [and that the]... ANAO’s comments ... will be considered in this review process’.<sup>132</sup>

## Committee Comment

- 2.94 The Committee shares the ANAO’s concern that DIMIA could not demonstrate whether or not the increased investments in contract administration are producing greater levels of operating efficiency.<sup>133</sup>
- 2.95 The Government has committed over \$230 million over the course of five years towards the PIP.<sup>134</sup> The Committee notes that the PPO will be monitoring all expenditure against PIP projects.<sup>135</sup> The Committee believes it is important to ensure that adequate financial reporting and

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128 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 21, paragraph 54.

129 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 17, paragraph 34.

130 DIMIA, *Submission No. 2*, p. 4.

131 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 23.

132 DIMIA, *Submission No. 2*, p. 3.

133 ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 17, paragraph 34.

134 DIMIA, *Implementation of the Recommendations of the Palmer Report of the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, September 2005, p. 10.

135 DIMIA, *Implementation of the Recommendations of the Palmer Report of the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, September 2005, p. 10.

measures are in place to allow DIMIA to effectively assess the contribution that this considerable investment makes to the delivery of quality detention services.

## Concluding Comments

- 2.96 The Committee recognises that DIMIA acknowledges the need to addresses a range of issues in the management of the detention services contract. The Committee does not underestimate the significant task that the Department is facing in reviewing and improving the operation of its detention function.
- 2.97 The Committee notes that a consultant has been engaged to review the functions and operations of detention and compliance activities and the detention services contract, and that this review will consider many of the issues raised by the ANAO in Audit Report No. 1 – Part B. However, the Committee is concerned that the three-month period allocated for the review may be too short a time for the significant task that Mr Roche is undertaking. The Committee does note DIMIA’s advice that provision can be made to continue to liaise with Mr Roche depending on the issues that arise from the review.<sup>136</sup>
- 2.98 The Committee acknowledges the ANAO’s optimism that DIMIA’s willingness to work with the ANAO,<sup>137</sup> the improvements already made to health and food services at Baxter, the development of the PIP and the \$230 million committed to its implementation, will result in the issues identified by the ANAO being addressed. The Committee looks forward to the progress report on the PIP expected in September 2006 and which is expected to be tabled in Parliament on its release.<sup>138</sup>
- 2.99 The Committee is pleased that DIMIA recognises that ‘there is room for improvement in the management of a function as complex as the immigration detention environment’<sup>139</sup> and that the Department is undertaking a number of initiatives, including departmental restructure and the PIP, that will address the issues identified by the ANAO in Audit Report No. 1 – Part B. The Committee is hopeful that these initiatives will

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136 Mr Correll, *Transcript of Evidence*, p. 14.

137 Mr Meert, *Transcript of Evidence*, p. 9.

138 DIMIA, *Implementation of the Recommendations of the Palmer Report of the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, September 2005, p. 3.

139 Mr Correll, *Transcript of Evidence*, p. 13.

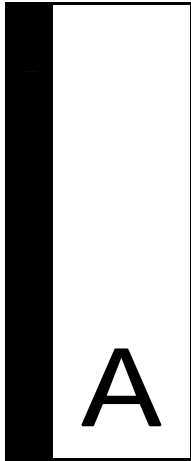
result in more proactive management of the detention centre contracts by the Department. The Committee considers effective management of the detention centre contracts crucial to ensuring that detention services meet the needs of detainees and are provided in an efficient and cost-effective manner. The Committee will continue to monitor DIMIA's performance in this area.

## **Recommendation 2**

- 2.100 **The Committee recommends that the Minister for Immigration and Multicultural and Indigenous Affairs refer the progress report on the Palmer Implementation Plan to the Joint Standing Committee on Migration for examination when released.**

Don Randall MP  
Chairman





## Appendix A: List of witnesses

### **Public Hearing – 10 October 2005, Canberra**

#### **Australian National Audit Office**

##### **Performance Audit Services Group**

Mr John Meert, Group Executive Director

Mr Steven Lack, Executive Director

Mr Greg Watson, Senior Director

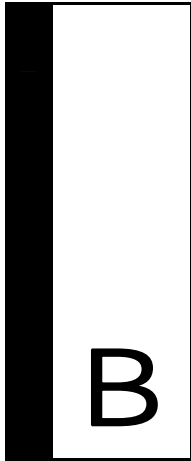
Ms Rebecca Collareda, Acting Director

#### **Department of Immigration and Multicultural and Indigenous Affairs**

Mr Bob Correll, Deputy Secretary, DIMIA

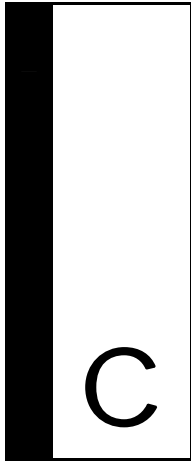
Mrs Lyn O'Connell, First Assistant Secretary, Detention Services Division

Mr David Doherty, Assistant Secretary, Detention Infrastructure Management Branch, Detention Services Division



## Appendix B: Submissions

<b>No.</b>	<b>Organisation</b>
1	Australian National Audit Office
2	Department of Immigration and Multicultural and Indigenous Affairs
2a	Department of Immigration and Multicultural and Indigenous Affairs - CONFIDENTIAL SUPPLEMENTARY



## Appendix C: ANAO Recommendations

**Recommendation  
No. 1  
Para 4.62**

The ANAO recommends that DIMIA review the insurance, liability and indemnity regime in the Contract and, informed by a clear allocation of risks, develop clearer mechanisms for determining:

- the amount of costs for repair or rectification of damage to Detention Facilities and Commonwealth Equipment following an Incident; and
- the Services Provider's and Commonwealth indemnities and liabilities under the Contract for the purposes of insurance.

*DIMIA Response: Agree.*

**Recommendation  
No. 2  
Para 5.87**

The ANAO recommends that DIMIA review and revise its planning, performance information and monitoring arrangements so they provide the basis for managing and monitoring the performance of its detention function in a systematic and objective way.

*DIMIA Response: Agree.*

**Recommendation No. 3**  
**Para 6.23** The ANAO recommends that DIMIA comprehensively review the ongoing financial reporting of the detention function and include:

- consideration of the ongoing financial commitment as well as a cost-benefit analysis of the total costs of administration; and
- provision of explicit links between financial and non-financial performance information.

*DIMIA Response:* Agree.

**Recommendation No. 4**  
**Para 6.47** The ANAO recommends, as a matter of priority, that DIMIA develop a comprehensive asset register for all Commonwealth Equipment at each of the detention facilities.

*DIMIA Response:* Agree.

*Source* ANAO, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B*, p. 23.