



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.¹ The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) is responsible for overseeing the detention of unlawful persons.²
- 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)³, provided detention services from November 1997 until February 2004.⁴
- 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.⁵

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.⁶

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'.⁷ 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.⁸
- 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.⁹
- 1.8 It was initially intended that Audit Report No. 1 – Part B include an examination of the tender process, however the ANAO subsequently

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,¹⁰ and that the sound planning and preparation exhibited in the transition period resulted in a successful transition with minimal disruption to detainees.¹¹
- 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’.¹²
- 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;¹³ the reliance on the reporting of Incidents to determine when standards are not being met;¹⁴ and its limited control over subcontracting arrangements.¹⁵

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.¹⁶

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.¹⁷
- 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.¹⁸
- 1.17 The scope of the Committee's review of Audit Report No. 1 – Part B appropriately reflects the scope of the audit itself.¹⁹ 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

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 reference²⁰ 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 2001.²¹
- 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.²²
- 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

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)

22 Commonwealth Ombudsman, Media Release, 6 October 2005 (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.²³

- 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.²⁴

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.²⁵
- **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.²⁶
- **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.²⁷

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*

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;²⁸ 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.²⁹
- 1.27 The Committee notes that DIMIA has established the Palmer Programme Office (PPO) to monitor the progress of, and expenditure against, PIP initiatives.³⁰
- 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.

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.

