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## CHAPTER 2 - DETENTION IN AUSTRALIA

### The Detention Function

2.1 Australia has the right to determine which non-citizens are permitted to enter Australia, the conditions under which they may remain, and the conditions under which they may be deported or removed. The *Migration Act 1958* provides the legislative authority controlling the access of non-citizens to Australia.

2.2 The Act provides that a non-citizen must have a valid visa before entering Australia. Conversely, the Act provides that a non-citizen without a visa, a non-citizen who obtained the visa fraudulently or a non-citizen who holds an invalid visa, is unlawfully in Australia. The Act requires authorised border control officers to detain all non-citizens unlawfully in Australia and to maintain that detention until authorised by the Act to release the non-citizen. The Act also provides for the establishment and operation of immigration detention centres for the purpose of detaining non-citizens.<sup>1</sup>

2.3 Immigration detention is an administrative sanction, that is, the deprivation of personal liberty other than as a result of a conviction for an offence. The Australian Government and ACM, as service provider, have a duty-of-care to detainees and all actions relating to the detention and care of detainees must be consistent with the relevant Commonwealth and State laws and, if asylum is sought, with the relevant international conventions covering refugees.

2.4 The detention required by the *Migration Act 1958* is delivered in purpose-specific detention centres that are low to medium security establishments. If individual circumstances warrant, detention can be provided in prisons or, for short periods pending transfer, police cells or remand centres.

### Immigration detention centres

2.5 DIMA currently operates immigration detention centres (IDCs) in Sydney (Villawood), Melbourne (Maribyrnong), and adjacent to the airport in Perth. IDCs are used to accommodate non-citizens who seek to enter Australia, through air or sea ports without appropriate documentation, or who are found to be in Australia unlawfully (working illegally or having overstayed their visas).

2.6 DIMA also operates a reception and processing centre (IRPC) at Port Hedland, WA. The Port Hedland facility is used to accommodate unauthorised boat arrivals, the so-called “boat people,” that arrive in northern Australia. During 1995, DIMA also leased accommodation at the Curtin Air Base near Derby WA when the Port Hedland facility was full. Temporary accommodation is occasionally required at

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1 A more detailed analysis of the concepts governing immigration detention is contained in the Committee's recent report, *Deportation of Non-Citizen Criminals*, June 1998 and its earlier report, *Asylum, Border Control and Detention*, February 1994.

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point of landing of boats, in the past on Christmas and Thursday Islands, and in Darwin. IDCs also accommodate some unauthorised boat arrivals.

### Numbers of detainees

2.7 Detainees come from a wide variety of social and cultural backgrounds and few have English as their first language. The composition of nationalities in detention at any time can also fluctuate significantly. Length of time in detention has varied significantly, from days to years.

2.8 The Committee sought to provide some measure of these variations by recording detainee numbers at two different times. DIMA supplied the detainee figures at the time of the tender process and the Committee collected the detainee numbers during its inspections.

2.9 As at 24 March 97, there were 472 people in immigration detention in Australia. As at 17 June 1998, there were 394 people in detention:

<b>Detention Location</b>	<b>Unauthorised arrivals</b>	<b>Overstayers</b>	<b>Boat</b>	<b>Stowaway</b>	<b>Total</b>
<b>17 June 1998</b>					
<b>Villawood</b>	179	64	1		244
<b>Maribyrnong</b>	45	23			68
<b>Perth</b>	24	4		2	30
<b>Port Hedland</b>	21		27		48
<b>Other</b>	3			1	4
<b>TOTAL</b>	272	91	28	3	394

2.10 Since 1993, DIMA reports the number of people requiring detention per annum has fluctuated between 1410 and 2900 persons, with a range of 340 to 1025 persons in detention at any one time. The average number of non-citizens detained on any one day in the period 1996 to 1997 was 495 and 400 respectively. In that same period, the number of detainee days per annum has ranged between 229,570 and 215,654.

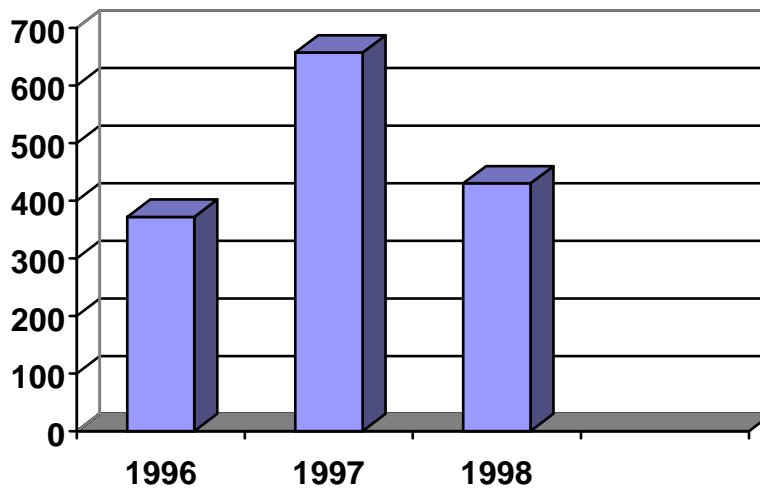
### Number of detainees

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### 1993/4 - June 1998

Year	Number of detainees as at 30 June
1998	372
1997	657
1996	430
Number of persons admitted	
1994/5	1 633
1993/4	2 789

### Number of detainees at June 30 1996 - 1998



### Nationality of detainees

2.11 The volatility of world events, changing theatres of war and, possibly, changing perceptions of Australia as a desirable destination has seen the mix of nationalities held in detention change considerably over time.

2.12 In 1996, non-citizens from the People's Republic of China accounted for 55% of detainees and Sino-Vietnamese over 10% of detainees. By June 1998 in Villawood, citizens of Sri Lanka, Somalia, Kuwait, Indonesia and Iran outnumbered the Chinese and Vietnamese nationals.

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## Length of detention

2.13 The marked variation in the duration of immigration detention makes 'average' figures somewhat misleading. For many non-citizens who overstayed their visa, the experience of detention lasts for a few days. For some non-citizens seeking refugee status, detention can last for several months while they await the decision by DIMA and the Refugee Review Tribunal (RRT). For those individuals who exercise their right to appeal rejection of a refugee application through the full gamut of Tribunal and Court appeals, in some cases detention has extended for some years.

2.14 While it is true to say most detainees can avoid lengthy periods of detention by agreeing to removal, detention can be prolonged while travel documentation is sought from their country of nationality (which in some countries can be a time-consuming process).

2.15 DIMA supplied figures about the period of detention for non-citizens released during the year 1997/98:

Time Detained	<14 days	>14 days but <1 mth	>1 mth but <2 mths	>2 mths but <3 mths	> 3 mths but <6 mths	> 6 mths but <1 year	> 1 year but < 2 years	>2 years but < 3 years	>3 years
Percentage of detainess	24.5%	14.9%	10.0%	17.2%	13.4%	7.6%	4.8%	3.5%	3.9%

In a snapshot, a quarter of detainees are released in less 2 weeks, half are released in less than 2 months and over three-quarters are released within 6 months.

## Outsourcing of the Service

2.16 The Australian Protective Service (APS) was contracted under tied provision arrangements to provide the guarding service at all three detention centres and at Port Hedland. The APS provided escort services where a detainee was required to travel outside of a centre. At DIMA's request, the APS also provided or coordinated a range of other services including catering, health, welfare and educational services and building maintenance.

2.17 In the 1996/97 Budget, the Government announced that guarding services be put to competitive tender. It subsequently decided to put the full detention function to tender.

2.18 In September 1997, DIMA announced that ACS was the successful tenderer. ACM commenced operations in November 1997 under a letter of understanding with DIMA and a contract was signed on 27 February 1998.

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## Activities within the Contract

2.19 Under the contract, ACM provides the following services:

- a. *The transfer and escort of detainees within Australia and on occasion to overseas locations.* For example, this function includes movement from point of arrival in Australian territory to a detention facility, between detention facilities, and subsequently from a detention facility to the detainee's country of origin. These movements can involve large numbers of detainees with escorts on charter flights or may be single person movements on commercial transport services. All movements of detainees must satisfy relevant provisions laid down by Australian and international air transport regulations.
- b. *The provision of facilities for detention of unlawful non-citizens in Australia.* This function involves the management of Commonwealth owned facilities; and possibly the financing, construction and management of new facilities.
- c. *The provision of detention services* includes functions such as guarding, interpreting and translation, catering, cleaning, maintenance, education, clothing, welfare and health services. The services encompass all that is required to provide care and security for detainees from commencing immigration detention to completion of removal or release action.

## Activities outside the Contract

2.20 Detainees may seek to remain permanently in Australia by applying for visas under Australian migration legislation. There are legislative requirements and procedures that must be satisfied in that event. Many detainees seek to engage Australia's international protection obligations (commonly referred to as "applying for refugee status") and, in some instances, seek access to lawyers to assist them in this process. Responsibility for management of these processes is retained by DIMA and does not form part of ACM's function.

2.21 Activities which are outside the scope of the contract include:

- a) The processing and decision making on applications for visas from persons in immigration detention and on any appeals and litigation related to such decisions;
- b) The conduct of negotiations with foreign governments and international agencies on questions related to the removal from Australia of foreign nationals;
- c) The interpretation of international agreements to which Australia is a party which might impact on the delivery of Australia's immigration detention; and
- d) The conduct of negotiations with State/Territory or Commonwealth agencies on questions related to access to detention centres and the applicability of State/Territory or Commonwealth legislation to Centres.

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## **Contract management**

2.22 By contracting the day-to-day operational sector management to the private sector, DIMA can focus on its case management of each detainee and other core business activities. DIMA advises that the contract with ACS contains a sophisticated reporting and contract management regime which links payment to performance.

2.23 DIMA cites, as a major advantage of its preparation of the tender, the development of the present Immigration Detention Standards (the Standards). These Standards are reproduced as Appendix One of this report. These principles underpin the provision of detention and the standard of care required to be provided by ACM. The Standards represent the benchmark from which not only ACM but also Australia is judged.

2.24 AFMA is the Commonwealth statutory authority responsible for ensuring the sustainable use and efficient management of Commonwealth fishery resources. Caretaker facilities are managed by AFMA in Darwin and also at Willie Creek, Broome. The management of both facilities is examined in Chapter 4.

## **Redevelopment of Villawood and Port Hedland centres**

2.25 The Committee noted that major redevelopment works were planned or underway at the two largest facilities. When completed, these facilities will represent state-of-the-art detention centres and rival the best in the world.

### *Villawood*

2.26 In May 1998, the Minister announced a major redevelopment of this IDC. The \$35 million upgrade, due for completion in mid 1999, will be financed, constructed and maintained by ACS. The Commonwealth will pay an annual charge to ACS for use of the facility and ACM will continue to provide custodial services.

2.27 The existing two part IDC will be replaced by a single, more secure centre providing detention facilities addressing the needs of detainees with divergent language, religious and cultural backgrounds. The new facility will have a capacity of between 300 to 350 detainees which will provide ample scope to accommodate the existing level of detainees as well as any influx through the year 2000 and into the next century.

2.28 The existing complex will be demolished and much of the existing site redeveloped for activities associated with the Olympic Games.

### *Port Hedland*

2.29 At the time of the inspection, members were able to view the final stages of a major refurbishment of the complex. Over \$11.4 million had been expended in improving the standard of accommodation, the security of the complex and the air conditioning and cyclone protection for buildings.

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2.30 Pictures of the complex before and after the refurbishment reproduced at pages... demonstrates the extent of the upgrade.

*Community views about the Port Hedland centre*

2.31 At Port Hedland, the Committee met with the Deputy Mayor and two members of the shire council, to gain the views of the local community. These Council representatives stated that the IRPC was of great benefit to the community and they wanted to keep the function at Port Hedland.

2.32 The centre represents the third largest enterprise in the community generating as much as \$1 million per annum for the local economy. The centre purchases the majority of its goods and services locally and the recent refurbishment was a boon to local small businesses. ACM had recently run job advertisements in the local paper for staff at the centre.

2.33 The Council representatives noted that the wider community did not appear concerned that the centre was in a residential part of town. While some concerns were voiced following rioting several years ago, the only matter that Council would like considered in the future was the possible relocation of the centre to a site closer to the airport.

