

## Overview

### The Committee's Inspection of Detention Centres

#### Background

- 1.1 The Committee inspected five detention centres in 1998.<sup>1</sup> In its report, *Immigration Detention Centres Inspection Report August 1998*, the Committee recommended that it continue to monitor detention practices.
- 1.2 The Minister, in his September 1999 response to the Committee's report, agreed with this recommendation. As a consequence, the Committee decided to conduct inspections of the detention centres at Perth, Port Hedland, Curtin, Broome and Darwin in November 1999; Woomera in January 2000; and Villawood and Maribyrnong in February 2000. In March 2000 the Committee inspected the facility used as a temporary detention centre on Christmas Island.
- 1.3 The Committee's inspections of facilities in Western Australia and the Northern Territory took place between 10 and 12 November 1999, at a time when the volume of unauthorised entries to Australia was rising rapidly.<sup>2</sup> Between 1 July 1998 and 30 June 1999 there were 926 unauthorised arrivals by sea. Between 1 July 1999 and the beginning of the Committee's inspections on 10 November, over 1,600 more suspected unlawful non-citizens had arrived and been detained.
- 1.4 The Committee therefore was able to observe the detention process under extreme pressure from new arrivals, and the activities at the new centres

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1 Perth, Port Hedland, Villawood, Maribyrnong, Willie Creek.

2 Details of the 1999/2000 inspection visits to the centres are at Appendix A and B respectively.

opened to alleviate this pressure; RAAF Base Curtin (near Derby, WA) and Woomera in South Australia.

- 1.5 The Committee notes the reported volatility of the situation at some centres subsequent to its inspections. It would appear that tensions have not diminished despite efforts by DIMA. The Committee regrets these occurrences, and notes that litigation arising from them is proceeding.

## Committee's Approach

- 1.6 In the course of the inspection visits the Committee did not seek information on individual cases, nor did it receive such information. This report therefore focuses on the operations of the centres, rather than on the detainees. The physical structure and administrative arrangements of most centres were detailed in the Committee's previous *Immigration Detention Centres Inspection Report* and are generally not discussed in the current report. The Committee's assessment of the overall arrangements at the Department of Immigration and Multicultural Affairs (DIMA) centres is in Chapter 2, *Management of DIMA Facilities*.

## The Centres

- 1.7 The prime function of each of the DIMA centres is detention of suspected unlawful non-citizens, some of whom may attempt to establish grounds for entry to Australia. Perth is a small purpose-built establishment with a predominantly short-term transitory population. Villawood and Maribyrnong are larger, and Port Hedland is the largest of the permanent centres. Curtin, although already accommodating unlawful non-citizens, was still being established at the time of the Committee's visit, as was Woomera. The temporary facilities on Christmas Island were not being used for detention purposes when the Committee visited. The arrangements at remote centres where detainees had arrived by boat and the Committee's assessment of these centres is in *Part 1: "Boat People"*. The urban detention establishments in Perth, Villawood and Maribyrnong are examined in *Part 2: Urban Centres*.
- 1.8 Facilities operated under the auspices of the Australian Fisheries Management Authority (AFMA) use provisions of the migration legislation to detain fishers who have infringed Australia's borders. Unlike the detainees at DIMA centres, those at the AFMA facilities generally do not apply to remain in Australia. The Committee inspected two such facilities, at Willie Creek (Broome, WA) and Darwin.
- 1.9 The AFMA centre at Willie Creek was, at the time of the Committee's visit, involved in processing a boatload of unauthorised arrivals. At Darwin the

Committee inspected the current holding arrangements in Darwin harbour and also a proposed on-land detention site. The Committee's views on these centres are set out in *Part 3: Fishers*.

- 1.10 *Part 4: Offshore detention* concerns the facility on Christmas Island.
- 1.11 In view of the diversity of circumstances and activity, the report discusses each centre separately before drawing some general conclusions about their operation.

## Detention

- 1.12 As an integral aspect of Australia's national sovereignty, the State determines:
- which non-citizens can gain entry to Australia;
  - the conditions under which non-citizens are admitted or permitted to remain; and
  - the conditions under which they may be deported or removed.<sup>3</sup>
- 1.13 Under Australia's *Migration Act 1958*, all non-citizens who are in Australia unlawfully must be detained and, unless they are granted permission to remain in Australia, must be removed from Australia as soon as is practicable.<sup>4</sup>
- 1.14 Those who may be detained include people who have:
- overstayed their visas, or breached the conditions of their visas, and are awaiting travel arrangements to be made for their supervised departure from Australia, or
  - arrived in Australia with a defective visa (which includes visas obtained fraudulently, or visas inappropriate to their circumstances), and who in some instances, must be detained until granted an entry permit or removed from Australia,<sup>5</sup> or
  - arrived without visas.<sup>6</sup>

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3 *Robtelmes v Brenan (1906) 4 CLR 395*.

4 DIMA Fact Sheet 82 *Immigration Detention*.

5 Joint Standing Committee on Migration, *Asylum, Border Control and Detention*, 1994, p.12.

6 Bridging visas may be granted to enable visa applicants to remain in the community lawfully while any outstanding applications or appeals are being finalised.

## Detention Administration

- 1.15 The two Federal authorities responsible for the administration and management of detention centres in Australia are the Department of Immigration and Multicultural Affairs (DIMA) and the Australian Fisheries Management Authority (AFMA).
- 1.16 AFMA is a Commonwealth statutory body, established in 1992 under the *Fisheries Administration Act 1991*, which manages Commonwealth fisheries under the *Fisheries Management Act 1991*.<sup>7</sup>
- 1.17 AFMA delegates many of the administrative responsibilities for the fishing vessels to officers of the WA and NT fisheries departments. Fishing boats intercepted fishing illegally in the Australian Fishing Zone (AFZ) by a Navy or Australian Customs Service vessel are detained by the relevant State/Territory Fisheries authorities while an investigation is conducted into the alleged offence.
- 1.18 In the absence of detention powers in fisheries legislation, the fishers are detained using immigration powers.<sup>8</sup> The Border Protection Legislation Amendment Bill 1999, which had not been proclaimed at the time of the Committee's visit, proposes specific powers of detention under fisheries legislation, but limited to seven days. Subsequent detention would remain under the immigration powers.
- 1.19 AFMA has entered into contracts with private companies to provide the day to day caretaking services for the fishers and their boats.
- 1.20 DIMA is responsible for detention at Immigration Detention Centres (IDC). Since December 1997, however, at its IDCs:
- “Australasian Correctional Services (ACS) is contracted to deliver a range of services required at IDCs, including guarding, catering and providing health, welfare and educational services.
- Actual service delivery has been subcontracted to Australasian Correctional Management Pty Ltd (ACM), the operational arm of ACS.”<sup>9</sup>
- 1.21 DIMA staff remain on location and are solely responsible for all immigration-related matters, as well as the monitoring of delivery services to detainees by the ACS. The standard of care is defined by DIMA in the Immigration Detention Standards. These standards are designed to

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7 Joint Standing Committee on Migration, *Immigration Detention Centres Inspection Report*, 1998.

8 Commonwealth Ombudsman, *Administrative Arrangements for Indonesian Fishermen Detained in Australian Waters*, para 5.1.

9 DIMA, *Annual Report*, 1998/99.

ensure that the needs of the detainees are met in a culturally appropriate manner, while at the same time providing safe and secure detention.

- 1.22 ACS must meet this standard in order to comply with the Government's duty of care obligations. These are included in the contractual agreements with ACS.
- 1.23 The Committee discusses this arrangement in Chapter 2 *Management of DIMA Facilities*.

## Detention Locations

- 1.24 DIMA maintains four principal detention centres:
- Villawood IDC (Sydney) was established in 1976 with a capacity of about 270 people.
  - Maribyrnong IDC (Melbourne) was established in 1966, and has a capacity of about 80 people.
  - Perth IDC was established in 1991 with a capacity of about 40 people.
  - Port Hedland Immigration Reception and Processing Centre (IRPC) in Western Australia was established in 1991 with a capacity for over 800 people.<sup>10</sup>
- 1.25 DIMA has also leased accommodation at the Curtin RAAF Air Base near Derby in Western Australia (last used in 1995) which can accommodate approximately 1,000 detainees. The centre at Woomera in South Australia has a projected capacity of up to 2,000 detainees.
- 1.26 DIMA hires the Christmas Island community sports centre from the Shire of Christmas Island as temporary detention accommodation until detainees can be relocated to mainland centres.
- 1.27 AFMA is responsible for the detention of predominantly Indonesian nationals and the impounding of their fishing vessels at the following caretaker facilities:
- Willie Creek (Broome, Western Australia). Boats are held in the estuary. Fishers are free to leave their boats but must remain within the secured facility.
  - Darwin Harbour. Boats are moored within a defined quarantine area and the fishers remain on board.

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10 *Protecting the Border: Immigration Compliance, DIMA, 1999.*

- 1.28 AFMA is currently investigating the provision of an on-shore detention facility at Darwin.

## Detainees

- 1.29 AFMA detains illegal fishers apprehended in Australian waters under immigration legislation. These detainees numbered 873 in 1997/98 and 279 in 1998/99.<sup>11</sup>

Table 1 Unauthorised Arrivals and Detainees: 1994/95-1999/2000

	UNAUTHORISED ARRIVALS					Persons detained
	By Air		Boats	By Sea		Annual Total*
	Persons	%		Persons	%	
1994/95	485	31	21	1071	69	1697**
1995/96	663	55	14	552	45	1410**
1996/97	1350	79	13	365	21	2460
1997/98	1550	91	13	157	9	2716
1998/99	2106	69	42	926	31	3574***
1999/2000	1694	29	75	4174	71	8205

Source DIMA, *Fact Sheet 81 Unauthorised Arrivals by Air and Sea; Department of the Prime Minister and Cabinet, Prime Minister's Coastal Surveillance Task Force, June 1999. DIMA, Annual Reports 1994/95-1998/99.*  
\* includes overstayers; \*\* excludes Pt Hedland & Curtin; \*\*\*excludes Christmas Island

- 1.30 The total number of persons detained each year by DIMA varies, but has shown an upward trend in the last half of the 1990s. Until 1999/2000 most unauthorised arrivals occurred at airports. Until 1998/99 unauthorised arrivals by sea had been declining.
- 1.31 Unauthorised arrivals are drawn from a wide range of nationalities, and arrive via a variety of countries. For the last three financial years Iraq and Afghanistan have been a major source of unlawful non-citizens, as has China.<sup>12</sup>

11 DIMA, *Annual Report, 19978/98, 1998/99.*

12 DIMA, *Fact Sheet 81 Arrivals by Sea and Arrivals by Air.*

## Duration of Detention<sup>13</sup>

- 1.32 The period of detention continues for as long as:
- it takes to process the claims people may make to stay in Australia including claims which may engage Australia's protection obligations (ie those making claims to be accepted as refugees); and/or
  - it takes arrangements to be made for the removal of detainees if they have no legitimate claim to stay in Australia.
- 1.33 Those who do not make claims which, prima facie, may engage Australia's protection obligations, are quickly removed. In 1998/99 about one third of unauthorised arrivals by boat failed to make claims which would, prima facie, engage Australia's protection obligations and were removed, most within 28 days.<sup>14</sup> As Table 1 shows, the number of unauthorised arrivals by boat has increased markedly since 1998/99. It is expected that this will lead to a slowing in the rate of processing and a consequent increase in the period of detention of those not engaging Australia's protection obligations.
- 1.34 Those with a prima facie claim are kept in detention until their visa application is accepted or rejected. The average processing time in 1998/99 was 50 days, and 70 per cent of applications were determined within three months.<sup>15</sup> Most of those who are unsuccessful at the primary stage move to the *review stage* by applying to the Refugee Review Tribunal (RRT) for further consideration.<sup>16</sup>
- 1.35 The RRT may decide a case on only the written material presented to it, but under those circumstances can only make a decision in favour of the applicant. The RRT may hold a hearing with the detainee and, if necessary, an interpreter. The RRT, based in Sydney, is increasingly using video-conferencing facilities to enable hearings involving detainees at remote locations, such as Pt Hedland. This process is more efficient and less time-consuming than a personal visit to the area by a member of the RRT. The average time taken by the RRT to finalise a detention case is 66 days<sup>17</sup>.

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13 An overview of nationality, duration of detention, etc is at Appendix B. Details of duration of detention are at Appendix C.

14 234 of 336 unauthorised arrivals who did not engage Australia's protection obligations were removed within 28 days. DIMA, *Annual Report 1998/99*, Sub program 2.3 - Unauthorised Arrivals.

15 DIMA *Annual Report 1998/99*, Subprogram 3.2 - Onshore Protection.

16 In 1998/99 there were 5635 appeals lodged with the RRT: DIMA *Annual Report 1998/99*: Subprogram 2.3 - Onshore Protection.

17 RRT Website: *Detention Cases*. [www.rrt.gov.au](http://www.rrt.gov.au)

- 1.36 A small proportion (11%) of unsuccessful applicants to the RRT apply for further judicial reviews through the courts. They remain in detention pending the outcome of those reviews.<sup>18</sup>
- 1.37 The range of individual circumstances means that there is a wide range of periods of detention. DIMA data indicates that in 1998/99 about three-quarters of detainees were in detention for less than one month. These included not only persons seeking refugee status, but also others who had attempted to enter Australia unlawfully, and individuals who had breached their visa requirements.<sup>19</sup>

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18 In 1999/2000 judicial review applications were filed in respect of 11.04 per cent of RRT decisions. RRT Website: *Judicial Review Applications*.

19 DIMA: *Refused Immigration Clearance Report*.