

CHAPTER 7

OUTSOURCING OF MANAGEMENT OF IMMIGRATION DETENTION CENTRES

7.1 This chapter considers the issues raised in submissions and evidence in relation to the outsourcing of management and service provision at immigration detention centres.

7.2 During the inquiry many witnesses opposed the use of private contractors and attributed many of the difficulties in the management of immigration detention to outsourcing. The views expressed by the Social Justice Committee (SJC) of the Conference of Leaders of Religious Institutes (NSW) exemplified these concerns:

The outsourcing of detention can service to compromise fundamental human rights of detainees. Privatisation and outsourcing are often justified on the grounds that they facilitate higher efficiency and less expense in the provision of services. However, outsourcing... also serves to lower standards, and to limit the accountability of detention centre operators... CLRI asserts that as deprivation of liberty constitutes a serious restriction of a fundamental human right itself, the conditions under which detention centres operate must be open to scrutiny. We are concerned that a private company, with an obligation to its shareholders to make a profit, may place more emphasis on financial efficiency and profitability than on optimum conditions for detention.¹

7.3 The evidence to this inquiry indicates that the removal of direct ministerial control and the reliance of generalised immigration detention standards has increased the risk of inhumane treatment. This may be attributed to a number of specific factors. However, the core issue is whether it is sound public policy to outsource a public function as inherently complex as immigration detention, which involves a highly diverse, complex and vulnerable population.

Background

7.4 The provision of detention services at immigration detention facilities in Australia has been outsourced to private organisations since November 1997. Between November 1997 and February 2004 detention services were provided at all mainland immigration detention centres by Australasian Correctional Services (ACS). ACS provided these services through its operational arm, Australasian Correctional Management (ACM). ACS/ACM is now known as GEO Australia Pty Ltd (GEO).²

1 SJC, *Submission 171*, p.2

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

7.5 A new detention services contract (parts of which are commercial-in-confidence) was signed between the Commonwealth of Australia and Group 4 Falck Pty Ltd on 27 August 2003. Group 4 Falck subsequently changed its name to Global Solutions Limited (Australia) Pty Ltd. Global Solutions Limited (Australia) Pty Ltd (GSL) is the wholly-owned Australian subsidiary of Global Solutions Limited of the UK.³ Between 1 December 2003 and 29 February 2004, the provision of detention services at Australia's immigration detention centres was progressively transitioned from GEO to GSL.⁴

7.6 The term of the detention services contract is four years (until August 2007), with an option for the Commonwealth to extend for a further period of up to three years. The annual cost of providing immigration detention services through the contract is approximately \$90 million, not including the cost of overheads and contract administration.⁵

7.7 The contract requires that GSL provide a custodial service for people held in immigration detention and take responsibility for the security, custody, health and welfare of detainees delivered into its custody by DIMIA. GSL has no role in, or responsibility for, establishing identity or providing any service or function that relates to the application of the Migration Act.⁶

7.8 The service provider must exercise a duty of care, but ultimate responsibility for immigration detainees remains with the Commonwealth and DIMIA is responsible under the Migration Act for administering immigration detention.⁷ Schedule 2, clause 4.1.2, of the detention service contract recognises that the duty to detain unlawful non-citizens:

... imposes particular responsibilities on the Commonwealth 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. The Commonwealth exercises this duty of care through the Department.

3 The Global Solutions Limited website accessed on 19 January 2006 reports that GSL was purchased in July 2004 by two private equity investors, Englefield Capital and Electra Partners Europe. See http://www.gslglobal.com/press_centre/introduction.asp

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

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

6 Palmer Report, p. 60.

7 *Submission 205*, p. 45. Schedule 2, clause 4.1.2 Detention Services Contract reported in Mr M. Palmer, *Report on the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, 6 July 2005, p. 67; See also DIMIA evidence to Joint Standing Committee on Migration, *Detention Centre Contracts: Review of Audit report No.1 2005-2006, Management of the Detention Centre Contracts – Part B*, November 2005, Canberra, p.25.

7.9 GSL has the capacity to subcontract key services and has engaged four major subcontractors to assist in the following areas: provision of facilities management (Tempo Facilities Management); catering (Delaware North Australia); healthcare (IHMS, a subsidiary of International-SOS); and psychological counselling services (PSS, a subsidiary of Davidson Trahaire).⁸

7.10 Detention services are provided in accordance with the Immigration Detention Standards (the IDS), which were developed by DIMIA in consultation with the Commonwealth Ombudsman's Office and the Human Rights and Equal Opportunity Commission (HREOC). The IDS form the basis of the contract between DIMIA and GSL. The IDS relate to the standard of care and quality of life expected in immigration detention facilities in Australia.⁹

7.11 Under the contract, GSL are prevented from discussing publicly their policies and procedures. However, its website contains the following information:

It is a sensitive and complex contract, and GSL must comply at all times with the Immigration Detention Standards in performing its obligations ... The company is rigorously monitored. Extensive training prior to starting their employment and then throughout their careers ensures that management and staff fully understand their responsibilities under the contract and the unique nature of administrative detention.¹⁰

7.12 Representatives from GSL appeared before the committee at one of its public hearings for the current inquiry. Mr Peter Olszak, Managing Director of GSL, told the committee that GSL 'continually strive[s] to meet [its] contractual requirements, and part of this process is a regular review of [its] operational procedures'.¹¹

7.13 Mr Olszak noted the complexity of the detention services contract:

This is a complex and sensitive contract in which parliament and the community rightly show great interest. We are working in a difficult environment, but I believe that by any balanced measure GSL has performed to, and in some cases exceeded, its tendered offerings in seeking to meet the needs of detainees and DIMIA.¹²

7.14 Mr Olszak also provided the committee with some information regarding the practical workings of the detention services contract. In relation to the reporting of breaches of the contract, Mr Olszak advised that, in the last 12 months, GSL has 'been

8 www.gslpl.com.au/gsl/contracts/contracts.asp (accessed 28 September 2005).

9 http://www.immi.gov.au/detention/standards_index.htm (accessed 4 October 2005).

10 www.gslpl.com.au/gsl/contracts/contracts.asp (accessed 28 September 2005).

11 *Committee Hansard*, 8 November 2005, p. 2.

12 *Committee Hansard*, 8 November 2005, p. 3.

sanctioned for not performing to the particular standards¹³ under the contract. A representative from DIMIA elaborated on the sanctions process:

It is assessed on a quarterly basis. The incidents and activities are assessed each quarter and anything that, in our view, has led to a breach of one of the Immigration Detention Standards, which are a schedule to the contract, may lead to a sanction.¹⁴

7.15 Mr Olszak outlined the reporting mechanism related to 'breaches' of the contract:

There is a pretty involved reporting structure around the reporting of incidents. Different incidents have a reporting time frame. For major incidents it is within the hour. For minor incidents it can be within an extended period of time. That is the first thing. On a day-to-day basis, we report through to DIMIA any particular incidents that may or may not reflect any possible failure by GSL. If there is a whole raft of incidents we are duty bound to report those. With regard to the quarterly reports, by going through our reports and the DIMIA centre managers reports, DIMIA will then determine if there are to be any sanctions applied.¹⁵

7.16 A representative from DIMIA confirmed that a monetary value is usually attached to any sanctions and that this is 'deducted from the percentage of the payments which are at risk'.¹⁶

Recent reports relating to outsourcing arrangements

7.17 A series of recent reports, including reports by the ANAO and the Palmer Report, have been highly critical of both the operations of immigration detention centres and the contracts that underpin those operations. Many submissions and witnesses to this inquiry suggested that the ANAO reports and the Palmer Report provide a damning critique of the commercial relationship between DIMIA and its service provider, GSL.¹⁷ Some of the main findings and recommendations from these reports are discussed briefly below.

The Palmer and Comrie Reports

7.18 The Palmer Report identified serious systemic weaknesses in DIMIA and made 49 recommendations for the improvement of DIMIA's culture, processes and

13 *Committee Hansard*, 8 November 2005, p. 6.

14 *Committee Hansard*, 8 November 2005, p. 6.

15 *Committee Hansard*, 8 November 2005, p. 7.

16 *Committee Hansard*, 8 November 2005, p. 7.

17 For example, see Law Institute of Victoria, *Submission 206*, p. 27; Women and Reform of Migration, *Submission 189*, p. 23.

operations. Recommendations in the Comrie Report reinforce a number of the Palmer Report's recommendations.¹⁸

7.19 One of the main findings in the Palmer Report was that the current detention services contract with GSL is 'fundamentally flawed and does not permit delivery of the immigration detention policy outcomes expected by the Government, detainees and the Australian people'.¹⁹ Indeed, the 'unduly rigid, contract-driven approach has placed impediments in the way of achieving many of the required outcomes'.²⁰ Since the performance management regime between DIMIA and GSL 'does not manage performance or service quality or risks in any meaningful way', the entire system is 'ill-conceived' and could 'never deliver to the Commonwealth the information on performance, service quality and risk management' that DIMIA had hoped it would.²¹

7.20 Despite acknowledging that '(m)any of the ingredients seem to be there', the Palmer Report found that:

...the arrangements fall short in delivering an immigration detention environment that is required by the policy and described in the contract. It is too simple to just blame GSL or DIMIA: the situation is both complex and demanding.²²

7.21 Moreover:

DIMIA does not seem to recognise that the nature of the contract determines behaviour. It is not enough to demand in the contract that the service provider act in partnership: there must be a basis for a real partnership that respects the rights and responsibilities of both parties.²³

7.22 The Palmer Report concluded that there is a need to revisit the contractual parameters within which immigration detention services are delivered. One of its main recommended changes included renegotiating the Detention Services Contract so that the outcomes required by the Federal Government's immigration detention policy can be achieved; and the risks to the Commonwealth and GSL, as well as to detainees, are properly managed and protected.²⁴

7.23 Other key recommendations of relevance included:

18 Commonwealth Ombudsman, Media Release, 6 October 2005 at http://www.comb.gov.au/news_current_issues/media_releases/media_release_Alvarez_061005.pdf (accessed 7 December 2005).

19 Palmer Report, p. xiii.

20 Palmer Report, p. 61.

21 Palmer Report, p. 70.

22 Palmer Report, p. 64.

23 Palmer Report, p. 81.

24 Palmer Report, p. 70.

...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 and should be made. [Recommendation 7.5]²⁵

...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... [Recommendation 7.6]²⁶

...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 that would [amongst other things]:

- facilitate delivery of the detention services outcomes required by the Government
- ...
- develop, in consultation with GSL, a new regime of 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
- ...
- foster a shared partnership interest in achieving effective policy outcomes to ensure that the Government's objectives and the high standards of behaviour expected by the Government are met. [Recommendation 7.7]²⁷

ANAO's performance audits

7.24 The ANAO's audit into DIMIA's management of the detention centre contracts has been conducted in three stages. A number of findings in the Palmer and Comrie Reports relate directly to issues raised by the ANAO in its performance audit.

7.25 In 2003-04, the ANAO undertook the first stage (Part A) of a performance audit on the management of detention centre contracts. The report of the Part A audit, Audit Report No. 54, 2003-2004, *Management of the Detention Centre Contracts – Part A* (the Part A Report), was released on 18 June 2004. It focused on DIMIA's management of the detention centre contracts with GEO.²⁸

25 Palmer Report, p. 180.

26 Palmer Report, p. 180.

27 Palmer Report, pp 181-182.

28 ANAO, *Management of Detention Centre Contracts – Part A*, Audit Report No. 54, 2003-2004.

7.26 In 2005-06, the second part of the performance audit (Part B) was conducted. The Part B audit report, Audit Report No. 1, 2005-2006, *Management of the Detention Centre Contracts – Part B* (the Part B Report), was released on 7 July 2005. The objective of this second audit was 'to assess DIMIA's management of detention services through the contract, including the transition period and the implementation of lessons learned from the previous contract'.²⁹

7.27 The Part B audit conducted by ANAO did not separately examine the outcomes of the detention program itself, nor the inherent quality of the services provided. This audit examined DIMIA's management of the contractual arrangements for the delivery of detention services and related performance measures.

7.28 It was initially intended that the Part B audit include an examination of the tender process, however the ANAO subsequently determined that such examination should be undertaken separately. Accordingly, the ANAO is currently undertaking an audit of DIMIA's tender, evaluation and contract negotiation processes and is expected to report in relation to these aspects in the first quarter of 2006.³⁰

Key findings

7.29 The ANAO concluded in both the Part A Report and the Part B Report that DIMIA had been unable to articulate its requirements clearly for the provision of detention services under the contracts with its service providers. While acknowledging that a crucial issue in contractual arrangements is striking an appropriate balance between the degree of purchaser oversight of service delivery and the operational flexibility afforded to contracted parties, both reports highlighted serious deficiencies with this approach and emphasised that it is contingent upon the purchaser being able to clearly specify outputs, including appropriate service quality measures.³¹

7.30 For example, the ANAO found serious flaws with the IDS, the related performance measures and contract monitoring conducted by DIMIA. The ANAO also found that DIMIA had not sufficiently articulated the roles and responsibilities of third parties in the delivery of detention services; nor had it clearly specified mechanisms for the ongoing monitoring of third party arrangements for compliance with intended outcomes.³²

7.31 In the Part A Report, the ANAO found that DIMIA's management of the detention arrangements 'suffered from a lack of clearly identified and articulated

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

30 ANAO, *Management of Detention Centre Contracts – Part B*, Audit Report No. 1 2005-2006, p. 12; DIMIA, 2004-05 Annual Report, p. 393. ANAO advise that publication of this latest report has been delayed until about February 2006.

31 Australian National Audit Office, *Submission 99*, p. 20.

32 Australian National Audit Office, *Submission 99*, pp 10-12 & p. 49.

requirements'.³³ The ANAO also found that DIMIA's management of the program, together with the delivery of services under the contract and the prioritisation of tasks, 'focused on risks that materialised, rather than systematic risk analysis, evaluation, treatment and monitoring'.³⁴

7.32 Despite acknowledging that the current contract with GSL is better structured than previous detention arrangements,³⁵ the Part B Report found that the detention services contract does not adequately specify key responsibilities and expectations for the level and quality of services, either by DIMIA or GSL'.³⁶ In particular, 'clear and consistent definitions are not provided for health standards that are central to detainee welfare'.³⁷ Further, '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'.³⁸

7.33 Rather than DIMIA actively enforcing the performance of GSL, the monitoring of GSL's compliance with its contractual obligations is carried out by an 'exceptions-based' approach. The focus of this approach is the reporting of 'incidents'; DIMIA assumes that detention services are being delivered satisfactorily at each immigration detention centre unless the reporting of an 'incident' (or repeated 'incidents') reveals a problem.³⁹

7.34 At one of the committee's hearings, Mr Steven Lack from the ANAO emphasised this point:

There are issues around risk management – not documenting and treating risks – and contract management... [I]t remains an outcomes focused contract, which we do not have any inherent difficulties with. It is just that, because of the way they have structured that, they cannot measure against those outcome standards. The monitoring remains exception based and is reliant upon identifying incidents. The definition of an 'incident' is unclear.⁴⁰

33 Australian National Audit Office, *Submission 99*, p. 10.

34 Australian National Audit Office, *Submission 99*, p. 10.

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

36 ANAO, *Management of Detention Centre Contracts – Part B*, Audit Report No. 1 2005-2006, pp 14 & 18.

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

38 ANAO, *Management of Detention Centre Contracts – Part B*, Audit Report No. 1 2005-2006, pp 18-19.

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

40 *Committee Hansard*, 7 October 2005, p. 12.

7.35 While acknowledging that assessment by exception allows DIMIA to identify extremely poor quality service delivery, the ANAO was critical of this approach and identified two main weaknesses with it:

First, at a number of points in the monitoring and reporting process, DIMIA officials exercise considerable discretion as to what is reported. Secondly, the lack of clarity in the performance standards and measures in the contract itself means that it is not possible for DIMIA's staff to assess the ongoing performance of the Services Provider objectively, based on the performance reporting.⁴¹

7.36 Across both audit reports, the ANAO made a total of 10 recommendations aimed at improving key aspects of the contract. The ANAO has advised that DIMIA agreed with all its recommendations but the ANAO has not examined, and is therefore unable to comment on, DIMIA's progress in implementing them.⁴²

7.37 In the Part B Report, four key areas for improvement were specifically identified:

- 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.⁴³

7.38 In its Annual Report for 2004-05, DIMIA summarised its response to ANAO's Part B Report:

... the department advised the ANAO that the report did not fully reflect or take account of the complexity of the detention environment. In particular, the services and standards required in immigration detention must meet the needs of persons with a diverse range of backgrounds, and cannot be simply or inflexibly stated.⁴⁴

7.39 The Annual Report noted that DIMIA had accepted the ANAO's four recommendations in its Part B report in full in relation to insurance, liability and indemnities; performance information and contract monitoring; financial reporting;

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

42 ANAO, *Submission 99*, p. 12.

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

44 DIMIA, 2004-05 Annual Report, p. 392.

and asset management.⁴⁵ The Annual Report also stated that 'action' in many of these areas had been 'identified and work progressed'.⁴⁶

The Palmer Implementation Plan

7.40 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 Recommendations of the Palmer Report of the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau (the Palmer Implementation Plan).⁴⁷

7.41 The Palmer Implementation Plan (PIP) sets out the action the Federal Government has already taken, and action that is planned, to address the Palmer Report recommendations, the Comrie Report recommendations,⁴⁸ and the need for broader cultural change within DIMIA.

7.42 The PIP also includes DIMIA's proposed action to address the ANAO's recommendations in the Part B Report. DIMIA has also established the Palmer Programme Office to monitor the progress of, and expenditure against, PIP initiatives.⁴⁹

7.43 A progress report on the PIP is due to be released in September 2006 and is expected to be tabled in Parliament on its release.⁵⁰

Report by Joint Standing Committee on Migration

7.44 On 5 December 2005, the Joint Standing Committee on Migration (JSCM) tabled its report in relation to the review of the ANAO's Part B Report.⁵¹ Several key issues raised in the Part B Report attracted comment from the JSCM and are relevant to this committee's inquiry. These issues are discussed briefly below.

45 DIMIA, 2004-05 Annual Report, p. 392.

46 DIMIA, 2004-05 Annual Report, p. 392.

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

48 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.

49 Joint Standing Committee on Migration, *Detention Centre Contracts, Review of Audit Report No. 1, 2005-2006, Management of the Detention Centre Contracts – Part B*, December 2005, p. 7.

50 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.

51 Joint Standing Committee on Migration, *Detention Centre Contracts, Review of Audit Report No. 1, 2005-2006, Management of the Detention Centre Contracts – Part B*, December 2005.

7.45 In general terms, the JSCM stated that it:

...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.⁵²

7.46 The JSCM acknowledged the cooperative relationship between the ANAO and DIMIA in reviewing current detention arrangements. A representative from DIMIA told the JSCM that:

As announced by the minister last Thursday, Mr Mick Roche, a former Deputy CEO of the Australian Customs Service, Deputy Secretary in the Department of Health and head of the Defence Materiel Organisation, has been engaged to review the functions and operations of detention and compliance activities within the department. Mr Roche will also conduct a review of the detention services contract, and the Australian National Audit Office has already been approached by the department to brief relevant officers about the findings and issues identified through the part B audit.⁵³

7.47 Mr Roche has been engaged as a consultant for a three-month period and is expected to provide a formal report with suggested changes in relation to all aspects of the detention services contract at the end of the review period.⁵⁴ However, the JSCM commented that 'the three-month period allocated for the review may be too short a time for the significant task that Mr Roche is undertaking'.⁵⁵

7.48 The JSCM also noted the involvement of the ANAO in the review being undertaken by Mr Roche.⁵⁶ The JSCM expressed its hope that:

...consultation with the ANAO, which focuses on addressing the issues identified in [the Part B Report], will ensure that DIMIA is fully aware of the issues of concern and the options and approaches available to address the problems in the current arrangements.⁵⁷

7.49 In relation to the ANAO's findings about shortcomings in the insurance, liability and indemnity arrangements between the Commonwealth and GSL, the

52 Joint Standing Committee on Migration, *ibid*, foreword.

53 Joint Standing Committee on Migration, *Committee Hansard*, 10 October 2005, p. 13.

54 Joint Standing Committee on Migration, *Committee Hansard*, 10 October 2005, pp 14-15; Joint Standing Committee on Migration, *Detention Centre Contracts, Review of Audit Report No. 1, 2005-2006, Management of the Detention Centre Contracts – Part B*, December 2005, p. 9.

55 Joint Standing Committee on Migration, *Detention Centre Contracts, Review of Audit Report No. 1, 2005-2006, Management of the Detention Centre Contracts – Part B*, December 2005, p. 32.

56 Joint Standing Committee on Migration, *ibid*, p.10.

57 Joint Standing Committee on Migration, *ibid*, pp 10-11.

JSCM's inquiry heard that DIMIA had not yet taken action to follow up this recommendation. 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.⁵⁸

7.50 The JSCM encouraged 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. It recommended:

...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 1]⁵⁹

7.51 In relation to the ANAO's criticism of the lack of clarity and consistency for monitoring GSL's performance under the detention services contract, the JSCM noted that developing such measures for the delivery of services in a complex environment is not unique. It expressed the hope that DIMIA 'will explore and build upon the range of suggestions made by the ANAO for improving the clarity and consistency of standards and performance measures'.⁶⁰

7.52 The JSCM's view on DIMIA's 'exception-based' approach to monitoring GSL's performance was 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.⁶¹

7.53 The JSCM stated that it would request a briefing from DIMIA to hear, amongst other things, specific examples of DIMIA's 'proactive and systematic' approach to performance monitoring.⁶²

7.54 Finally, the JSCM recommended 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. [Recommendation 2]⁶³

58 Joint Standing Committee on Migration, *ibid*, p.16.

59 Joint Standing Committee on Migration, *ibid*, p. 16.

60 Joint Standing Committee on Migration, *ibid*, p. 21.

61 Joint Standing Committee on Migration, *ibid*, p. 24.

62 Joint Standing Committee on Migration, *ibid*, p. 24.

63 Joint Standing Committee on Migration, *ibid*, p. 33.

Government response to recent reports on outsourcing arrangements

7.55 As outlined previously, the Commonwealth Government has recently announced several administrative and structural changes to take place within DIMIA. Many of these changes reflect the findings and recommendations in the Palmer Report, the Comrie Report and the ANAO's performance audit reports.

7.56 DIMIA provided the committee with information regarding its implementation of recommendations contained in the ANAO's performance audit reports. It advised the committee that it has accepted the ANAO's recommendations in full.⁶⁴

7.57 Specifically, DIMIA informed the committee of progress towards implementing the four recommendations contained in the ANAO's Part B Report as follows:

Recommendation 1 - Insurance, Liability and Indemnity

The current insurance, liability and indemnity regime in the contract will be independently reviewed as part of the detention services contract review process in response to Palmer. The ANAO has been invited to assist the Department in the context of the contract review.

Recommendation 2 - Planning, Performance and Monitoring

The Department is reviewing components of its broad governance framework, including examining options for improved business planning and performance information frameworks.

As well as the independent review, an internal review of the risk management and monitoring plan commenced in October 2005, based on a comprehensive analysis of relevant data from the previous year.

A new business plan for the detention function will be developed in coming weeks to articulate the objectives of the restructured detention services division, and the ANAO's comments will be incorporated into this process.

The Department's internal auditor is currently conducting an audit of risk management processes in the division (and across the Department), and the recommendations arising from that report will also be incorporated into future planning processes.

Recommendation 3 - Financial Reporting

The current detention services contract defines service delivery in a particular environment. If changes are made to the environment, the Department will obviously need to renegotiate costings with the services provider to accommodate these changes. The Department is continuing to pursue value for money outcomes within this context.

64 DIMIA answers to Questions on Notice, 5 December 2005, p. 11. See http://www.aph.gov.au/senate/committee/legcon_ctte/migration/qon/05dec-dimia2.pdf

The Department agrees with the ANAO's recommendations, and further progress will be made towards implementing these suggestions once the new detention environment is defined. In this way costings can be measured in an appropriate, long-term environment.

Costing schedules under the current detention services contract will be independently reviewed as part of the contract review process.

Recommendation 4 - Management of Commonwealth equipment and assets at each detention facility

Joint onsite stocktakes with GSL have been successfully completed for every operational centre, with some outstanding issues being resolved at Baxter IDF.

Common agreement has been reached regarding ownership of assets, including a volume of items in great detail not normally recorded in departmental stocktakes.⁶⁵

7.58 DIMIA also advised that:

More broadly, the Department is responding to criticism of its record-keeping practices raised in both the Palmer and Comrie Reports. A Records Management Improvement Plan (RMIP) is being developed and implemented by the Department in partnership with the National Archives of Australia. Improved records management practices, training, guidelines and systems support will all be addressed through the RMIP.⁶⁶

7.59 At the JSCM's public hearing in relation to its review of the ANAO's Part B Report, a representative from DIMIA informed that committee that:

...[a] governance coordination unit has been established within the detention services division and is contributing in this area. I suggest that one of the biggest things we need to advance, hand-in-hand with the review of the services contract, is an overall contract management framework for getting performance management right with the contracted organisations. We need to have very clearly defined authority and responsibility levels and skill levels with local contract management staff who are in day-to-day contact with GSL managers at local detention services centres. At the same time there needs to be a national account management role to work closely with the CEO level of the contracted organisation but with the right decision-making powers at the appropriate levels so that local issues can be solved quickly and readily on the ground and do not need high-level escalation to get them fixed quickly.⁶⁷

65 DIMIA answers to Questions on Notice, 5 December 2005, pp 11-12. See http://www.aph.gov.au/senate/committee/legcon_ctte/migration/qon/05dec-dimia2.pdf

66 DIMIA answers to Questions on Notice, 5 December 2005, p. 12. See http://www.aph.gov.au/senate/committee/legcon_ctte/migration/qon/05dec-dimia2.pdf

67 Joint Standing Committee on Migration, *Committee Hansard*, 10 October 2005, p. 20.

7.60 At the JSCM's public hearing, representatives from DIMIA also provided the following information on DIMIA's responses to recommendations in the Part B Report and in the Palmer Report:

Given the significance of the Palmer report, the department's efforts have been focused towards addressing these recommendations, many of which involve complex and significant projects. The ANAO's recommendations from the part B report, which were accepted in full by the department, have been incorporated into the follow-up process from the Palmer report. The major component of the department's response to the Palmer report has been the acceptance of Palmer recommendations 7.6 and 7.7 regarding a comprehensive review of the detention services contract. The department acknowledges that there is room for improvement in the management of a function as complex as the immigration detention environment and the current contract forms a key part in maximising performance to clients in detention.⁶⁸

7.61 In response to Recommendation 7.6 of the Palmer Report, DIMIA 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.⁶⁹

7.62 The JSCM noted that:

...DIMIA recognises that 'there is room for improvement in the management of a function as complex as the immigration detention environment' 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 [the Part B Report].⁷⁰

7.63 Further, it expressed the view that it:

...is hopeful that these initiatives will 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.⁷¹

7.64 In an answer to a question on notice from this committee, DIMIA advised that:

68 Joint Standing Committee on Migration, *Committee Hansard*, 10 October 2005, p. 13.

69 Joint Standing Committee on Migration, *Detention Centre Contracts, Review of Audit Report No. 1, 2005-2006, Management of the Detention Centre Contracts – Part B*, December 2005, p. 9.

70 Joint Standing Committee on Migration, *ibid*, p. 32.

71 Joint Standing Committee on Migration, *ibid*, p. 33.

[Mr Roche] is required to provide advice in relation to Palmer Report recommendations 7.5, 7.6 and 7.7 by conducting a review of the current Detention Services Contract. The review will cover matters raised by both Palmer and by the Australian National Audit Office.

The review is also to provide an outline strategy for implementing the recommendations.

[Mr Roche] is also to provide advice in relation to Recommendation 7.3 of the Palmer Report.⁷²

7.65 DIMIA also advised the committee that the maximum total value of the fees payable under the Roche contract is \$198,000 and that the contract is to be completed no later than 31 December 2006, unless extended in writing by agreement. Other than for extension of time, the contract does not provide for renegotiation.⁷³

Criticisms of outsourcing arrangements at immigration detention centres

7.66 Many submissions and witnesses to the inquiry expressed the view that the current arrangements in relation to the management and provision of services at immigration detention centres are highly unsatisfactory and inappropriate. They maintained that outsourcing should not be used by the Commonwealth Government as a mechanism for avoiding responsibility and accountability for the conditions and practices at such facilities.⁷⁴

7.67 Many argued that management and service provision at these facilities should not be outsourced to private third-party entities which are primarily driven by requirements to maximise their profits.⁷⁵ Accordingly, they asserted strongly that direct responsibility for the management of immigration detention centres should revert to the Commonwealth Government.

7.68 These concerns are considered in further detail below.

General observations

7.69 Many submissions and witnesses questioned the feasibility of the Commonwealth Government outsourcing a fundamental public function to care for people. The Bishops Committee for Migrants and Refugees (on behalf of the Australian Catholic Bishops Conference) (the Bishops Committee) made an

72 DIMIA answers to Questions on Notice, 16 December 2005, p. 1. See http://www.aph.gov.au/senate/committee/legcon_ctte/migration/qon/16dec-dimia.pdf

73 DIMIA answers to Questions on Notice, 16 December 2005, p. 1. See http://www.aph.gov.au/senate/committee/legcon_ctte/migration/qon/16dec-dimia.pdf

74 For example, see Ms Gwen Gorman, *Submission 136*, p. 1; Brotherhood of St Laurence, *Submission 175*, p. 4.

75 For example, see Jamal A. Daoud, *Submission 85*, p. 5.

interesting general observation about the merits of outsourcing as a means of providing services to the community:

There is no doubt that some services are better provided by outsourced providers than by government agencies. Such services usually are ones in which the primary measures of performance are quantitative. However, for services in which the primary measures of performance are qualitative, the merits of outsourcing are not as clear-cut. Performance management of immigration detention facilities should be mainly qualitative and thus the merits of outsourcing such a service can be difficult to justify.⁷⁶

7.70 In the context of immigration detention centres, the Bishops Committee noted:

Recent events have illustrated that the quality of service provided in immigration detention facilities has been inadequate. Either the performance of the outsourced provider has not been in accordance with the contract or the contract provisions have been inadequate. In either case the provision of the outsourced management of immigration detention facilities has been unsatisfactory. Either the activity should be brought back 'in-house' or substantial changes should be made to improve outsourced arrangements.⁷⁷

7.71 The Asylum Seeker Resource Centre was particularly scathing in its criticism of the management and provision of services at immigration detention centres by private contractors:

By any criteria, this has been an abysmal failure. Both ACM and GSL have demonstrated their ineptitude and unsuitability to manage immigration detainees.

ACM's failings were so serious that DIMIA was forced to choose another contractor... GSL have fared little better... Such failings... should immediately disqualify them from continuing to manage detention centres in Australia. The experiment with private contractors has failed.⁷⁸

7.72 The Federation of Ethnic Communities' Councils of Australia (FECCA) argued that the Federal Government should instigate a full judicial inquiry to examine the management and treatment of detained asylum seekers within all detention centres. FECCA was also mindful of recommendations in the Palmer Report indicating 'the need for a re-examination of the contractual relationship between DIMIA and GSL, to ensure more positive outcomes for asylum seekers within immigration detention facilities'.⁷⁹

76 Bishops Committee for Migrants and Refugees, *Submission 73*, p. 9.

77 Bishops Committee for Migrants and Refugees, *Submission 73*, pp 9-10.

78 Asylum Seeker Resource Centre, *Submission 214*, p. 34.

79 Federation of Ethnic Communities' Councils of Australia, *Submission 101*, p. 5.

7.73 FECCA also stressed the importance of clear guidelines for the management of detention centres:

It is vitally important that there be clear guidelines and protocols for management of detention centres that ensures that human rights are upheld, that people be treated with compassion and concern for their physical, emotional, spiritual and psychological welfare.⁸⁰

7.74 At the Sydney hearing, Mr Abd-Elmasih Malak from FECCA commented on its concerns about the management, and location, of detention centres:

We do not believe the current, private management is appropriate. We do not believe the management is appropriately monitored or that there are any appropriate benchmarks or quality assurance to look after people's human rights—and we do not believe there is the ability to do that. As well, we cannot see the rationale behind having the detention centres as far as possible from other people. We believe that, if we have them as close as possible, like the one at Villawood, that will provide some sort of community support and enable people to recover and move as quickly as possible to successful settlement. I do not know if the private management issue is the reason for that or for anything else, but even if the centres are privately managed we need to have very strong, clear guidelines and management processes and legal professionals and health professionals need to be able to visit.⁸¹

7.75 In a paper comprising part of its submission to this inquiry, Women and Reform of Migration (WRM) provided a comprehensive assessment of the framework relating to the management of immigration detention centres. In its view, '(t)he overall picture of accountability is dismal and raises major questions on whether the system can be effectively changed to at least do what it claims to do'.⁸²

7.76 In WRM's opinion, criticisms by the ANAO in its reports of the contractual arrangements with GSL, reinforced in the Palmer Report, 'could be used to improve the formal processes of administration and internal information flows'.⁸³ WRM also noted that:

The ANAO report is particularly scathing about the contract and the performance indicators that DIMIA requires from GSL who run the facilities for them. Global Solutions further contracts out some services, including healthcare, to other providers, thus stretching the lines of accountability further. Global Solutions is expected to report its own

80 Federation of Ethnic Communities' Councils of Australia, *Submission 101*, p. 5.

81 *Committee Hansard*, 29 September 2005, p. 15.

82 Women and Reform of Migration, *Submission 189*, p. 29.

83 Women and Reform of Migration, *Submission 189*, p. 19.

breaches that incur the fines they have to pay. The ANAO and other critics have pointed out the basic absurdity of this process!⁸⁴

7.77 WRM made a particularly pertinent argument in relation to an important area not specifically dealt with in the ANAO reports or the Palmer Report, that is the lack of external scrutiny of DIMIA:

What neither [the ANAO or Palmer R]eport deals with specifically is the problems that emerge from the limitations of external scrutiny and the limited capacity of any external groups to compel DIMIA to improve or change their processes. For example, the Human Rights and Equal Opportunity Commission (HREOC), the ANAO, and the Commonwealth Ombudsman have no power to compel, only to report, and it is then up to DIMIA or the Government to act... The above reports are also relatively silent on the necessary public scrutiny required to ensure that even their recommendations are acted upon. Sadly, many recommendations they make are not new and there are other reports dating back to the nineties that have been ignored.⁸⁵

7.78 Ms Claire O'Connor, a lawyer who has appeared for and represented many refugees, was critical of the auditing process with respect to immigration detention centre contracts:

In relation to the conditions and the punishment regime once people are in there, I think it is wrong to tender that out to a private company. It means that there is very little or no accountability. I do not think the contract has been viewed properly or that there has been a proper audit of any of the contracts in the areas that related to the conditions in detention.⁸⁶

7.79 Ms O'Connor continued:

If we start with the premise that there is going to be a continuing private contractor, first of all a proper auditing of that system has to be set up for the regulations, not just a ticking of boxes, which I have seen. Up until April this year, one audit has been done of the health services in Baxter, and that audit was appalling. Anyone could have slipped through; Cornelia Rau slipped through that audit..⁸⁷

7.80 The WRM also contended that, while immigration detention centre standards suggest that DIMIA facilities must comply with national and international requirements, there are considerable difficulties in activating such scrutiny:

The external bodies that detention services are subject to scrutiny from to ensure that detainees are treated 'humanely, decently and fairly', are listed as HREOC, the Commonwealth Ombudsman, the United Nations High

84 Women and Reform of Migration, *Submission 189*, p. 25.

85 Women and Reform of Migration, *Submission 189*, p. 19.

86 *Committee Hansard*, 26 September 2005, pp 34- 35.

87 *Committee Hansard*, 26 September 2005, p. 35.

Commissioner for Refugees (UNHCR) and the Immigration Detention Advisory Group (IDAG). Although these bodies have the capacity to review and report, their primary function is to receive and act on complaints. None have the power to compel the government to act on their recommendations and all are government bodies. Under the circumstances, it is most significant that some of these bodies have been highly publicly critical of IDFs and interesting to note that DIMIA and the Government have not been keen to take up the issues and change the processes with any alacrity.⁸⁸

7.81 Therefore, WRM concluded that:

There are... strong signs that more effective monitoring be carried out by DIMIA and more importantly, that there be external reviews on an ongoing basis. Another point to seriously consider is whether contracting out such services to private providers can ever ensure enough accountability. Direct government provision is open to more effective scrutiny as there is no commercial-in-confidence constraint on access to material.⁸⁹

Limited accountability and abrogation of duty of care

7.82 Most submissions and witnesses commenting on the issue of outsourcing were critical of the Commonwealth Government's failure to provide sufficient accountability in relation to immigration detention centres, and to properly discharge its duty of care to detainees.

7.83 The starting point for the Refugee Council of Australia (ROCA) was the broad notion of responsibility for fulfilling Australia's international obligations: that is, the Commonwealth Government is party to certain international treaties and is the entity responsible for compliance with internationally accepted standards; therefore it is directly responsible for ensuring proper effect to those obligations.⁹⁰

7.84 In his submission, Mr Angus Francis summarised the problems associated with outsourcing the management of detention centres as follows:

Instead of ensuring the professionalism and quality of services to detainees, repeated audits by the Australian National Audit Office and now the Palmer Inquiry confirm that the detention service contracts between the Commonwealth and Australasian Correctional Management and the current service provider, GSL, have engendered the abrogation of the Commonwealth's duty of care to detainees. Therefore, although Gleeson CJ in *Behrooz v Secretary, DIMIA* (2004) 208 ALR 271, [21] recently reminded officers that they owed a duty of care to detainees, the reliance on

88 Women and Reform of Migration, *Submission 189*, p. 30.

89 Women and Reform of Migration, *Submission 189*, p. 25.

90 Refugee Council of Australia, *Submission 148*, p. 10.

outsourcing has clouded the duties of those responsible for administering detention centres.⁹¹

7.85 Mr Francis also argued that the Commonwealth Government's approach to immigration detention centres has resulted in the executive asserting its authority to detain and remove people, independent of the courts and Parliament. For example, 'the executive bias in the administration of the detention power is apparent in the fact that DIMIA has eschewed the making of regulations... to govern the operation of detention centres in favour of policy documents (the Immigration Detention Standards) and contracts with the detention service providers'.⁹²

7.86 In effect, therefore, the current system involves Commonwealth officers operating within a legislative framework in which few conditions attach to the exercise of detention (and removal) powers, and within a wider administrative framework in which the executive asserts that it is the principal arbiter of the proper exercise of powers of detention (and exclusion/expulsion).⁹³

7.87 The Refugee Advocacy Service of South Australia (RASSA) also made strong criticisms of outsourcing arrangements which, in its view, have resulted in avoidance of responsibilities:

It has been the experience of RASSA that DIMIA officers, and in particular those in management positions at the Detention centres, have tried to hide behind the veil that the company which has been contracted to run the Detention centres is responsible for all matters concerning detention under the Migration Act. DIMIA has used this excuse to try and escape its responsibilities under the Migration Act and not to be accountable for its role in relation to detention. There has been an ongoing lack of transparency in the decision-making processes of DIMIA.⁹⁴

7.88 Further:

...contracts which have been largely drafted by the Commonwealth and entered into by the Commonwealth are quite inadequate in relation to clearly setting out standards required in detention and the appropriate demarcation of responsibilities between the parties. We refer to the comments and recommendations of the Palmer Inquiry in this respect.⁹⁵

7.89 The Social Justice Committee of the Conference of Leaders of Religious Institutes in New South Wales (CLRINSW) argued that the outsourcing of detention 'can serve to compromise the fundamental human rights of detainees'.⁹⁶ While

91 Mr Angus Francis, *Submission 234*, p. 4.

92 Mr Angus Francis, *Submission 234*, p. 10.

93 Mr Angus Francis, *Submission 234*, p. 10.

94 Refugee Advocacy Service of South Australia, *Submission 51*, p. 8.

95 Refugee Advocacy Service of South Australia, *Submission 51*, p. 8.

96 Conference of Leaders of Religious Institutes in New South Wales, *Submission 171*, p. 6.

privatisation and outsourcing might be 'justified on the grounds that they facilitate higher efficiency and less expense in the provision of services', in the case of management of detention centres, outsourcing 'also serves to lower standards, and to limit the accountability of detention centre operators'. This is because the Commonwealth Government and the private contractors 'can avoid giving out information about their operations, because of commercial confidentiality'.⁹⁷

7.90 HREOC expressed its concerns in relation to the management of immigration centres as follows:

The Commission is concerned that it remains the case that the manner in which detention centres are managed is largely unregulated by legislation and does not have the transparency and accountability required by Australian public servants in the provision of government services and programs.⁹⁸

7.91 In her submission, Dr Margaret Kelly argued that the Commonwealth Government is ultimately responsible for immigration detention centres. Therefore, she recommended that the contract with GSL should be either terminated or bought out:

It should be transparently and clearly accountable for them. In order for this to occur, the government itself should operate and maintain any such detention centres, and documentation concerning them, while protecting individual privacy and security matters, should be made publicly available. The contracting-out system is opaque. It is by no means certain to what extent DIMIA knows what occurs in the centres; it is by no means clear that the government currently has any timely mechanism for responding to problems in such centres, and under the contract it is most likely prevented from certain action. As it is, the government wears the flak from any failures or perceptions of failures in the running of these centres. While it is also clear that it is difficult to recruit personnel for distant centres, the government should establish its own protection and maintenance, and perhaps medical service for the centres. The government should be clearly and unequivocally responsible to the Australian people for these centres, and the contract should be rescinded or bought out.⁹⁹

7.92 The Law Council of Australia (the Law Council) agreed that there is a fundamental problem with the notion of outsourcing a public service function to care for people to a private entity. It argued that to do so 'is at the peril of discharging the duty of government effectively'.¹⁰⁰

97 Conference of Leaders of Religious Institutes in New South Wales, *Submission 171*, p. 6.

98 Human Rights and Equal Opportunities Commission, *Submission 199*, p. 9.

99 Dr Margaret Kelly, *Submission 103*, pp 21-22.

100 Law Council of Australia, *Submission 233*, p. 8.

7.93 Ms Frederika Steen emphasised that there have always been fundamental problems with the outsourcing of the detention centre function:

DIMIA supervision of the contract to manage remote detention centres and services from a Canberra base was always likely to suffer from a huge culture gap. It was new territory and very unfamiliar and there was no expertise to support effective management. Out of sight was largely out of mind. Outsourcing was somewhat confused with washing ones hands of a matter, and relinquishing responsibility.¹⁰¹

7.94 CLRINSW stressed that ultimate responsibility lies with the Commonwealth Government:

These criticisms are not levelled at [private contractors], but rather at the intention behind contracting out of services which are legitimately those of governments. CLRI[NSW] asserts that as deprivation of liberty constitutes a serious restriction of a fundamental human right in itself, the conditions under which detention centres operate must be open to public scrutiny. We are concerned that a private company, with an obligation to its shareholders to make a profit, may place more emphasis on financial efficiency and profitability than on optimum conditions for detainees.¹⁰²

7.95 The Law Institute of Victoria (LIV) suggested that the nature of private companies providing critical public services, such as the detention and care of immigration detainees, is fundamentally at odds with the commercial realities of providing a human service.¹⁰³

7.96 At the hearing in Melbourne, Ms Maria Jockel, appearing on behalf of the Law Council of Australia and the Law Institute of Victoria, provided arguments opposing the current arrangements with respect to immigration detention:

Regarding the role of detention, the Law Council of Australia is concerned that no minimum standards of detention have been prescribed. We know that it has been outsourced to a private organisation and that does not sit consistently with the responsibilities that the Commonwealth has, which include a duty of care. There is a legal duty to take care of people who are in detention. The Law Institute [of Victoria] argues that minimum standards must be adhered to. They should be transparent and capable of being known to the public so that the detention policy, if it is to continue, will be more accountable. The excesses that have occurred, as are evident from the Palmer inquiry and other inquiries, are simply no longer acceptable to the Australian community.¹⁰⁴

7.97 Ms Jockel went on to say:

101 Ms Frederika Steen, *Submission 224*, p. 13.

102 Conference of Leaders of Religious Institutes in New South Wales, *Submission 171*, p. 6.

103 Law Institute of Victoria, *Submission 206*, p. 28.

104 *Committee Hansard*, 27 September 2005, p. 75.

Insofar as the issues of performance standards and measures are concerned, there is a real concern, as I said earlier, in regard to a mechanism which basically outsources detention policies yet seems to have very few measures in regard to performance. The Law Council is of the view that, if detention is going to continue to be outsourced – which is obviously a topical issue – one should adopt a qualitative measure of service provision. It should be transparent; people should be accountable. The Law Council makes a number of recommendations in the substantive paper on how that could take place. The current system is clearly not working, and that is quite evident from the Palmer inquiry.¹⁰⁵

7.98 At the Adelaide hearing, Mr Graham Harbord from the Refugee Advocacy Service of South Australia told the committee that:

...from the very start, when detention centres were set up in the outback away from any legal access, there has been a culture of concealment, obstruction and prevention of due process and proper legal representation.¹⁰⁶

7.99 Further, Mr Harbord noted the confusion that exists in determining who has responsibility for certain aspects of the immigration detention system:

Another feature of the whole regime has been that at times we do not know if it is DIMIA, ACM or GSL who are providing the obstruction. There is a lot of duckshoving that goes on and hiding behind the cloak of who might be responsible for certain facilities within the detention centre.¹⁰⁷

Profit motive

7.100 Many submissions pointed of course to the fact that the making of a profit by GSL is its main motivation in managing immigration detention centres.¹⁰⁸ A key finding in the ANAO's Part B report was that 'payments for detention operations have increased under the Contract [with GSL]. At the same time, the detention population has declined slightly since 2003'.¹⁰⁹

7.101 The Australian Psychological Society offered the following opinion:

It is the opinion of the APS that the outsourcing of management of immigration detention centres increases the risk that they are not managed in a way that is consistent with international treaties, conventions and guidelines that are concerned with the rights and wellbeing of people

105 *Committee Hansard*, 27 September 2005, pp 75-76.

106 *Committee Hansard*, 26 September 2005, p. 19.

107 *Committee Hansard*, 26 September 2005, p. 20.

108 For example, see Mr Brian Davies, *Submission 113*, p. 2; Ms Elizabeth Gibbings, *Submission 114*, p. 2; Mr Ian Knowles, *Submission 118*, p. 10; Ms Ruth Graham, *Submission 122*, p. 2.

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

deprived of their liberty, because of the inevitable focus on profitability by nongovernmental security agencies. It is the responsibility of the Australian Government to ensure adherence to these conventions, and this is best ensured when the management of immigration detention centres remains with the Government.¹¹⁰

7.102 The Western Australian Government expressed concern about 'the apparent poor communication between the private operators of [immigration detention] facilities and the Commonwealth authorities'. Further:

Private, profit-making enterprises have been given apparently conflicting roles: where they are charged with security and detention of detainees and their families, and at the same time providing high levels of general welfare and health needs.¹¹¹

7.103 The Western Australian Government also argued that:

If outsourcing of the management of detention centres is to continue, it is incumbent upon the Government to ensure that the welfare of detainees is not compromised for monetary gain. As a democracy we must ensure that standards of decency and decorum are followed at all times. It is also important to ensure that, by regularly monitoring and reviewing the management practices of private operators, transparency is paramount and that they are held to account at all times.¹¹²

7.104 The St Vincent de Paul Society noted its concern that:

... vulnerable traumatised people are in the custody of a company which is motivated by profit, not by care. The commercial framework, including the competitive tendering process, has resulted in negative outcomes for the quality of care experienced by those unable to speak out.¹¹³

7.105 In her submission, Ms Rosi Aryal argued that:

The fact that Global Solutions Limited (GSL) has a contract with the government to have a minimum number of people in detention in order to keep the operation of IDCs profitable is of great concern. Australia's immigration policy should respond to the needs of individuals and groups seeking to establish a safer life here and contribute to our society, not to the needs of a private company seeking to simply maximise profits to its shareholders.¹¹⁴

110 Australian Psychological Society, *Submission 223*, p. 7.

111 Government of Western Australia, *Submission 226*, p. 3.

112 Government of Western Australia, *Submission 226*, p. 4.

113 St Vincent de Paul Society, *Submission 147*, p. 2; see also A Just Australia, *Submission 184*, p. 18; Coalition for the Protection of Asylum Seekers, *Submission 174*, p. 16; Great Lakes Rural Australians for Refugees, *Submission 150*, p. 3.

114 Ms Rosi Aryal, *Submission 98*, p. 2.

7.106 In their submission, Ms Annette Shears and Ms Peta Anne Molloy argued that there 'has been a failure to set measurable standards for the delivery of care in [immigration detention] centres.' Further, the Detention Services Contract 'does not delineate statutory standards enforceable by third parties in the courts'.¹¹⁵

7.107 The Refugee Council of Australia (RCOA) argued that, further to the importance of accountability remaining squarely with the Commonwealth, using private contractors for the provision of detention services is inherently problematic for a number of reasons. These include:

- private contractors are driven by the requirement to maximise profits for their shareholders;
- if contractual requirements are inadequate and fail to comply with certain standards, there is little incentive or compulsion for contractors to ensure compliance with these standards; and
- contracts contain penalty clauses which create a disincentive for contractors to be forthcoming about problems and report incidents.¹¹⁶

Inadequate training of staff

7.108 Some submitters raised the issue of the failure of GSL to recruit and train staff appropriately. For example, Ms Genevieve Caffery argued that detention centres 'should not be run by private concerns with no clear accountability, whose personnel have inadequate training in dealing with people in cross-cultural situations who are already suffering trauma from their prior experiences'.¹¹⁷

7.109 In evidence at the Adelaide hearing, Ms Claire O'Connor concurred:

The case officers do not have the appropriate training and understanding. There are stories all the time about particular case officers who have a consistently ignorant approach to a particular country or regional application—for example, a case officer saying to a detainee: 'Well, I don't believe you were locked up for nothing. What government would waste money locking someone up for no reason?' That is a complete lack of understanding of what happens in Iran.¹¹⁸

7.110 In her submission, Ms Frederika Steen made the following observation:

The transfer of detention services from Australian Protective Services to a for profit contractor, Australian Correctional Services, was not accompanied by essential safeguards about the quality of service required. Staff did not understand and may not have been trained to know that those

115 Ms Annette Shears and Ms Peta Anne Molloy, *Submission 105*, p. 3.

116 Refugee Council of Australia, *Submission 148*, p. 10.

117 Ms Genevieve Caffery, *Submission 78*, p. 1.

118 *Committee Hansard*, 26 September 2005, p. 30.

detained were not criminals. Some staff were belligerently racist and anti Muslim. The culture promoted was a prison culture insensitive to government policy on multiculturalism and apparently oblivious to international conventions on human rights.¹¹⁹

7.111 Ms Gwen Gorman, while noting that outsourcing has been a 'disaster' and that private entities are not accountable to the Minister, to DIMIA, nor to anyone else, pointed out that:

Too many staff are ex-prison officers and assume too much power over the detainees. The outstanding problem is placing people in solitary confinement for perceived misbehaviour without charge or legal authority to do so.¹²⁰

Recommendations for change

7.112 The committee received several suggested recommendations for change to the arrangements relating to immigration detention centres. Some of these suggested changes are outlined below.

7.113 ROCA suggested that the committee 'should recommend that immigration detention centres revert to Commonwealth management under codified minimum conditions and with appropriate scrutiny'.¹²¹

7.114 The Law Council also provided some useful recommendations in relation to how the risks of outsourcing effective management practices might be minimised if outsourcing of this function continues. These included:

- ensuring that the Commonwealth Government is involved in the management of the business;
- the provision of adequate means of monitoring the treatment of detainees (particularly where there are allegations of mistreatment); and
- ensuring that DIMIA is accountable to Parliament in relation to the management of immigration detention centres, notwithstanding that the function is outsourced to a private contractor.¹²²

7.115 In relation to the last dot point above, the Law Council submitted that this might be better achieved by:

- the provision of reports by DIMIA in relation to detention centres at close regular intervals, which are tabled in Parliament;

119 Ms Frederika Steen, *Submission 224*, pp 12-13.

120 Ms Gwen Gorman, *Submission 136*, p. 1.

121 Refugee Council of Australia, *Submission 148*, p. 10.

122 Law Council of Australia, *Submission 233*, p. 9.

- establishing, as a minimum, a charter of rights for detainees to promote uniformity in standards and treatment of detainees across all detention centres, and to provide certainty and accuracy of information to detainees;
- selecting entities that are suitable to run detention centres in a way that does not compromise the Federal Government's duty of care to detainees, with a particular focus on care (as opposed to containment); and
- placing Federal Government officials permanently at the sites of detention centres in order to oversee their operation more closely, effectively and accurately (for example, to perform problem resolution/complaint handling, keep statistics, and to provide management reviews and reports).¹²³

7.116 The Law Council concurred with the findings in the Palmer Report that 'the performance management system does not provide a meaningful evaluation of the quality of the services provided and, in particular, whether the services meet the fundamental needs of detainees'.¹²⁴ The Law Council argued that the performance measures in the Detention Services Contract are highly inadequate:

...minimum standards for detention must be prescribed. Currently, the schedule to the contract between Global Solutions Limited and DIMIA provides performance standards and measures. However, based on the findings of the Palmer Inquiry, the well publicised blunders and mishaps in recent times and the ongoing investigation by the Commonwealth Ombudsman in relation to about 200 detainees who may have been mistakenly detained, the Law Council submits that incorporating standards necessary for the discharge of a public service into the terms of a private contract is not satisfactory.¹²⁵

7.117 The Law Council put forward a number of models which, in its view, should be explored in order to entrench minimum standards in relation to detention services. These included the following:

- the enactment of legislative provisions specifying the minimum standards and rights of detainees in immigration detention in either the Migration Act or the Migration Regulations; or
- a charter in the form of a public document which establishes minimum standards for detention.¹²⁶

7.118 The Law Council submitted that a number of concerns raised in the Palmer Report would be addressed by one of these models.¹²⁷ Significantly, the adoption of

123 Law Council of Australia, *Submission 233*, p. 9.

124 Law Council of Australia, *Submission 233*, p. 7.

125 Law Council of Australia, *Submission 233*, p. 5.

126 Law Council of Australia, *Submission 233*, p. 5.

127 These include Recommendations 4.3, 4.6 and 4.9 of the Palmer Report.

one of the models would also ensure that the rights of detainees in detention centres would be safeguarded.¹²⁸

7.119 Further, A Just Australia argued:

The rationale for outsourcing services is usually economic rationalism – it is claimed to be cheaper to allow private companies to run services. It is generally held that because they are run for profit, they will be run more efficiently and therefore be more cost effective. While it is debatable whether it is morally defensible to allow a company to make profit from the detention of people not charged or found guilty of any offence, the evidence shows that in this case it is not economically defensible. Simply, the outsourcing of immigration detention facilities is incredibly expensive compared to the alternatives.¹²⁹

7.120 LIV recommended that a charter setting out the rights of detainees and responsibilities of DIMIA, compliance and detention officers be incorporated into the Migration Regulations for the protection of detainees.¹³⁰

7.121 A Just Australia's submission recommended that all contracts in relation to outsourcing of detention centre management should be revoked. It added:

DIMIA must relinquish the role of caring for asylum seekers to qualified practitioners in the welfare sector who have viable and affordable alternatives to detention which could solve the serious problems of the current system.¹³¹

7.122 WRM proposed an urgent review by the ANAO of the appropriateness of contracting out the management of immigration detention centres to private organisations and their capacity to further contract services, to examine whether such extended and complex lines of accountability can deliver quality services.¹³²

7.123 Mr Angus Francis argued that, rather than the Federal Government relying on policy documents and the contract with GSL to create broad and unencumbered detention (and removal) powers, the development of clear and legally enforceable obligations and conditions, amenable to judicial review, is required. This would necessitate a profound shift in government policy from undefined and non-statutory powers to a simplified and enforceable statutory duty of care under the Migration Act in relation to detention (and removal).¹³³

128 Law Council of Australia, *Submission 233*, pp.5 & 6.

129 A Just Australia, *Submission 184*, p. 19.

130 Law Institute of Victoria, *Submission 206*, p. 28.

131 A Just Australia, *Submission 184*, p. 19.

132 Women and Reform of Migration, *Submission 189*, p. 20.

133 Mr Angus Francis, *Submission 234*, p. 11.

Committee view

7.124 The committee acknowledges the inherent and diverse challenges involved in the provision of detention services within a complex legal and operational environment, including difficulties arising from the diverse geographic areas in which immigration detention centres are located across Australia.

7.125 However, in the committee's view, the serious condemnation of current contractual arrangements regarding immigration detention centres by submitters to this inquiry and others, including the ANAO, the Palmer Report, and various Federal Court judgements,¹³⁴ is a powerful indicator that fundamental aspects of those arrangements are flawed. The Palmer Report and reports by the ANAO contain many useful recommendations that, if implemented in their entirety, would vastly improve the overall operation of immigration detention centres. In this context, the committee also notes and supports the comments and recommendations by the JSCM in its recent review of the ANAO's Part B Report.

7.126 The committee acknowledges the Commonwealth Government's acceptance of relevant recommendations in the Palmer Report, and all recommendations in the ANAO's Part B Report, and its implementation of a number of initiatives to address the issues identified as highly problematic in those reports. In particular, the committee applauds the Commonwealth Government's decision to undertake a comprehensive review of the detention services contract, and the involvement of both DIMIA and GSL in that review process. The committee awaits the outcome of that review with interest.

7.127 Nevertheless, at a fundamental level, the committee believes that the arrangements in relation to immigration detention centres need to be revisited and improved as a matter of urgency. The contracting-out system is far from transparent and the Commonwealth Government should not continue to 'hide' behind its contracted parties. While the Commonwealth Government's accountability for the management and operation of immigration detention centres is not theoretically minimised by outsourcing – the Commonwealth Government maintains supervision and ultimate control at all times – this has nevertheless been the result in practice. The committee considers that the Commonwealth Government has increasingly evaded its responsibilities in this regard.

7.128 The committee is of the view that the outsourcing of service provision and management of immigration detention centres increases the risk of inconsistency with relevant international treaties, conventions and guidelines concerned with the rights and wellbeing of people deprived of their liberty. The committee agrees with arguments put before it during this inquiry that such fundamental responsibilities and obligations cannot be reconciled with the inevitable focus on profitability by private

134 See, for example, *S v Secretary, Department of Immigration and Multicultural and Indigenous Affairs* [2005] FCA 549 (5 May 2005).

companies that outsourcing brings. It is the responsibility of the Commonwealth Government to ensure absolute adherence to its human rights obligations; the committee agrees with evidence suggesting that this is best ensured by direct management of immigration detention centres by the Commonwealth Government.

7.129 The committee remains unsure exactly when and how the Commonwealth Government's review of the detention services contract, and any changes it brings about, will impact on the existing contractual arrangements. The committee considers that the Commonwealth Government must be involved immediately and more directly in operating and maintaining immigration detention facilities. Regardless of the status of its contractual arrangements with GSL, the Commonwealth Government should be held to account for any shortcomings and failures in the management and operation of immigration detention centres, to date and in the future.

7.130 Notwithstanding the outcome of the review of the detention services contract and the committee's recommendation that responsibility for the management and provision of immigration detention services should revert to the Commonwealth, the committee calls for the establishment of an independent body with ongoing responsibility for monitoring the operation and management of immigration detention centres. Such a body should also be tasked with monitoring and managing the detention services contract to ensure the appropriate and effective provision of immigration detention services.

7.131 The committee also considers that many of the problems associated with the conditions imposed on detainees in the detention centres will remain unresolved until there is created a clear system of detainees rights, which are able to be enforced by third parties. Currently, a detainee's capacity for redress is limited by the fact that key documents are essentially elements of the contract between DIMIA and GSL. It would be preferable therefore, to locate such rights in regulations.

Recommendation 48

7.132 The committee recommends that, as a fundamental overarching principle, direct responsibility for the management and provision of services at immigration detention centres in Australia should revert to the Commonwealth.

Recommendation 49

7.133 The committee recommends that the detention services contract between DIMIA and GSL be redrafted immediately to incorporate all relevant suggestions and recommendations from the Palmer Report, the Hamburger Report and recent ANAO performance audit reports, particularly in relation to performance measures, outcomes, service quality and risk management.

Recommendation 50

7.134 The Committee recommends that a statement of detainees' rights and conditions be established within the Migration Regulations, including clear provisions for the making of complaints to a third party, and third party powers to make rectification orders.

Recommendation 51

7.135 The committee recommends that an independent body be established with ongoing responsibility for monitoring the operation and management of immigration detention centres and the detention services contract.