

# No. 62 2002-03, Management of Selected Aspects of the Family Migration Program

## Summary and Recommendations

### Summary

#### Australia's Migration (non-humanitarian) Program

1. Over the past 50 years, Australia's population has been growing at between one and two per cent per annum. This is one of the fastest rates of population growth amongst developed countries. The main component of Australia's population growth has been natural increase (the difference between births and deaths), which has contributed about two thirds of total population growth since the beginning of the 20<sup>th</sup> century. Net overseas migration has also contributed to natural increase, albeit indirectly, through children born to migrants.<sup>1</sup>

2. However, since 1962, fertility rates have been falling. Population projections from the Australian Bureau of Statistics<sup>2</sup> indicate that continued low fertility, combined with an increase in deaths from an ageing population means that Australia's rate of population growth, as with that of most developed countries, is expected to slow considerably and may reach zero population growth by around the middle of this century.

3. These population factors and others, such as Australia's need for particular skills and the level of demand in family visa categories, form the basis for determining the annual planning levels of Australia's Migration (non-humanitarian) Program. The planning level is set and announced by the Government after a process of analysis of current and expected migration levels; an extensive program of community consultations; and input from various Commonwealth departments, and state and territory governments throughout the course of the year.

4. The Migration (non-humanitarian) Program is governed by the *Migration Act 1958*. It is divided into three streams; skilled, family and special eligibility. The planning level for the 2002-03 Migration Program is set in the range of 100 000 to 110 000 places. It will be maintained at this level for the next four financial years, barring exceptional circumstances.<sup>3</sup> The mid-point of this planning level (105 000) represents an increase of 12 000 (14 per cent) from the 2001-02 Migration Program of 93 000 migrants. This was an increase of 13 per cent over the level recorded in the previous year.

5. Although the Australian Government has an ongoing commitment to Family Migration, in recent times there has been a deliberate focus on skilled migration and the family stream of the migration program. The latter now accounts for just under half of Australia's non-

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humanitarian migrants per year. In 2001–02, 38 090 migrants were selected in the family stream of the migration program. The planning level for the 2002–03 family stream of the migration program is 43 200.

6. The family stream of Australia’s Migration Program enables the reunion of immediate family members of Australian citizens, permanent residents or eligible New Zealand citizens. It consists of four main categories:

- Partner;
- Child;
- Parent; and
- Other family.

## Management of the Migration Program

7. DIMIA is organised around functional processes, where domestic and overseas managers report to both regional and central offices. The achievement of the overall Migration Program as well as corporate policies and procedures are managed through central office. Central office coordinates and distributes individual planning levels (or targets) to DIMIA regional offices and posts. The latter are responsible for the coordination of local resources and for the achievement of local planning levels and targets that feed into the overall program.

8. The environment in which DIMIA manages the Migration Program is complex and diffuse. DIMIA has 72 offices overseas and 14 offices in Australia. These are required to cater for a wide range of cultural and linguistic backgrounds from which DIMIA clients are drawn. Many of DIMIA’s overseas offices have responsibility for a large geographical area. In some cases the local infrastructure is poor, particularly in relation to communications and transport. In addition, there are significant security concerns in overseas locations as well as high levels of attempted fraud. The ANAO noted that documentation supplied in support of some visa applications may be unreliable. In such cases, visa processing becomes more complicated.

## The Review Processes

9. The Government has a commitment to provide review mechanisms for all areas of significant individual decision-making such as taxation, welfare benefits or migration decisions. The major avenue for external review of DIMIA’s family migration decisions is application to the Migration Review Tribunal (MRT). The MRT reviews decisions to refuse or cancel a visa (with the exception of protection visas), and also certain decisions related to sponsorships.

10. The MRT has the power to affirm decisions; make new decisions; or return the case to DIMIA for further processing. In conducting a review, the MRT must apply the relevant law and can only make decisions within criteria set out in the *Migration Act 1958* and regulations. As part of the review process, the MRT must consider all the evidence, including new evidence presented at lodgement, or at a hearing. The MRT does not review the quality of the initial decision. Rather, it reconsiders applications in the light of all evidence, including that which was not available to the primary decision-maker.

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**11.** The Federal Court may also review a migration decision on the grounds that the decision-maker made a jurisdictional error. The court may decide that the decision was made unlawfully, and require that the decision be made again. However, the court cannot assess the merits of a claim, or substitute its own decision for that of the original decision-maker.

**12.** Sections of the *Migration Act 1958*<sup>4</sup> also provide for the review of certain visa decisions by the Administrative Appeals Tribunal (AAT) for certain refusal decisions, for example those made on character grounds.

### Audit objective and scope

**13.** The objective of the audit was to examine the effectiveness and efficiency of DIMIA's decision-making processes and management systems for delivering the parent and partner aspects of the family stream of the migration program. The areas of focus were on the following key questions:

- Does DIMIA have the systems to facilitate decision-making which is internally consistent?
- Does DIMIA have strategies in place to facilitate effective and prompt decision-making?
- How effectively does DIMIA manage relationships with other relevant agencies?

### Audit methodology

**14.** The audit fieldwork involved reviewing documents and holding discussions with managers and program staff at central office, Perth and Melbourne regional offices, the Gateway and Parramatta offices in Sydney, and posts in Manila and Guangzhou. Focus groups with decision-makers were conducted by the ANAO in the regional offices.

**15.** The audit methodology also consisted of ANAO compliance testing of a sample of 208 completed parent and partner visa cases to determine whether decisions were:

- transparent;
- made in accordance with legislation and guidelines; and
- well documented.

**16.** In conducting this audit, and in the examination of case files, ANAO took into account the environmental issues raised by DIMIA. In particular, ANAO noted that different cultures may have different practices for solemnising marriage relationships and determining other family relationships. DIMIA decision-makers take account of these differences in determining whether relationships satisfy the relevant definitions of spouse and other family relationships in the Migration Regulations.

# Key Findings and Overall Conclusion

## Planning and Performance Information

### Overall planning

17. In recent years, DIMIA has successfully planned and introduced improvements to the family stream of the Migration Program. Planning initiatives have led to the clearance of backlogs, improved accessibility through streamlined procedures, and closer scrutiny of visa applications. DIMIA has also undertaken multiple research projects and environmental scans to ensure that an overall strategic focus is maintained. However, the ANAO found that more could be done to clearly define the links between DIMIA's high-level strategies and individual program plans. The department has advised the ANAO that it is reinvigorating its planning framework. A particular focus will be improved links between strategic and operational plans to better identify opportunities for performance improvement in resourcing and coordination and to assist in identifying and assessing risks to the achievement of objectives.

18. The ANAO found that the department has adopted a rigorous approach to setting intake targets (known as the Agreed Indicative Planning Levels – AIPLs) for the family stream of the migration program. The AIPL process is flexible and, in conjunction with new processing efficiencies, has allowed the department to clear its backlog of partner cases. However, current downward trends in lodgements and cases on hand present ongoing challenges for the department achieving overall program targets. It is noted that the family stream comprises just under half of the overall Migration (non-humanitarian) Program.

19. The department has advised the ANAO that current application rates remain steady onshore and are increasing offshore. In future years, AIPLs for the family stream of the migration program will be adjusted to cater for demand. If there is a reduction in applications in the family stream of the migration program, in line with government policy, AIPLs for skilled migration will be increased accordingly.

### Performance information

20. The ANAO found that DIMIA provides high level selected performance information in its Portfolio Budget Statements relating to Outcome 1. At the program level, the quantity indicator used by DIMIA in its Portfolio Budget Statements and Annual Report to measure the performance of the family stream of the migration program is a tangible measure that directly relates to the output and can be directly linked to the program outcome. However, the ANAO found that this program level indicator does not provide information regarding the quantity of work undertaken to support the output. For example, different classes of family entry visas generate differing workloads. Thus overall workload could rise or fall without the overall quantity measure varying. Similarly, visa refusals, as opposed to grants, may generate a higher workload.

21. The ANAO also found that the quality measures being used in the family stream are largely indicators of process. Their focus is on the inputs to the decision-making process, rather than the quality of the outputs delivered and their contribution to the related outcome.

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22. Sound financial performance information is essential so that managers and stakeholders can properly assess the efficiency and cost effectiveness of DIMIA's operations in delivering the Migration Program. This also requires appropriate links between financial and non-financial performance information. However, the audit found that performance results and costing information for the Migration Program were poorly linked for external reporting purposes. Although DIMIA has invested considerable resources in ensuring that it can attribute resources to its activities, financial and non-financial performance information is still not well integrated.

## Service Delivery and the Integrity of Decision Making

### Compliance with procedures

23. The ANAO undertook compliance testing of a sample of 208 completed parent and partner visa cases to ascertain whether decisions were:

- transparent;
- made in accordance with legislation and guidelines; and
- well documented.

24. The ANAO found that DIMIA decision-making was generally sound. However, there were certain elements of the decision-making process that were not transparent, or were not adequately documented on file. In particular, the ANAO found that, in 16 per cent of cases, not all copied documents were certified. In 25 per cent of cases, not all documents provided were translated.

25. DIMIA advised that it is usual practice for locally engaged employees (at overseas posts) to translate key documents where the content is crucial to the decision. They would usually make a file note of the overall results of their check. However, the ANAO found in practice that the standard of documentation varied between DIMIA offices and posts and the use of file notes was not consistent. The ANAO considers that such documentation is a key element of sound administration and accountability. The department has advised that the level of documentation on the paper file is informed by each post/region's Fraud Management Plan and the level of risk associated with the profile of the application.

26. The record of a visa decision is an amalgam of paper and electronic records. DIMIA's approach to record keeping is that electronic records relevant to the decision should be 'printed-to-paper'. In this way, all elements of the decision-making process relating to visa grant, refusal or withdrawal should be available and the formal record properly maintained.

27. The ANAO found that, in close to four per cent of cases, the payment of the initial Visa Application Charge (VAC) had not been documented on the paper file; in close to nine per cent of cases a character check had not been documented; and in about seven per cent of cases a health check had not been documented.

28. The ANAO also found, in cases where interviews were conducted, 41 per cent were not adequately documented. In some cases, there was no record of interview on the paper file. The only evidence that an interview had been undertaken was a reference made to an interview appointment. In other cases, the decision-maker had recorded that an interview had been undertaken. As a result, a decision to grant the visa had been made. However, the

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decision-maker had not prepared a formal record of interview, outlining the reasons for their decision.

### **Quality assurance (QA)**

29. The ANAO acknowledges the efforts DIMIA has made in assessing and monitoring the quality of its work through QA mechanisms operating in onshore offices and offshore posts. However, the ANAO identified that the department is unable to monitor and compare the quality of processing between its onshore offices and offshore posts owing to the different approaches used in the QA systems. DIMIA advised that separate QA processes are used as a result of the different legislative requirements for the two processing environments.

30. The ANAO also found that DIMIA's current approach to offshore QA was limited as it excluded cases where visas had been refused, and was often conducted without access to the paper file. A more consistent approach to QA, based on the better elements of the onshore and offshore processes, would assist in improving the overall QA process and the department's capacity to monitor quality in the program as a whole. DIMIA has advised it is exploring the introduction of an analytical, risk-based approach to QA.

## Strategies and Controls to Assist Decision-Making

### **The capped visa sub-classes**

31. Delivery of the family stream of the migration program requires close monitoring of the capped visa classes, particularly for parents, and the resultant queues of applicants. In its examination of the granting of visas in the parent category, the ANAO found evidence of a small number of applicants being issued visas through a regional office when their queue date indicated they were not due for visa grant for a number of years. With only 500 parent visas issued last year, the granting of visas out of order creates a risk not only of inequity but also that another individual's visa may be unduly delayed.

32. While the number of available parent visas remains restricted, a queue of parent applicants waiting to have their applications finalised will remain. DIMIA's current administrative system for managing the queue and allocating available parent visas does not allow for automatic monitoring of applicants being placed in the queue and the subsequent grant of a visa. This also increases the risk that visa grants may be made out of order.

33. The ANAO acknowledges that the department has centralised its offshore parent visa caseload and is considering the possibility of doing so for the onshore caseload. DIMIA has advised that it is not possible to develop a system that would guarantee that all parent visas are granted automatically in order. However, the department has plans to introduce changes to its IT system to enhance the management of the parent queue.

### **Delegations**

34. A decision-maker's position number forms the basis of DIMIA's delegation system. The ANAO found that, although the electronic record includes an audit trail of officers involved in processing the application, 39 per cent of paper files examined did not record the decision-maker's position number. We were therefore unable to determine, from the paper file, whether the decisions were made by appropriately delegated decision-makers.

35. The ANAO found inaccuracies in the delegation instruments at a regional office. As well, we found that a single position number had been listed on the delegation instrument twice, at

two different posts. In addition, position numbers operational at one post had been listed as delegated at another post. Notifications of inaccurate entries are collected and corrected in the subsequent instrument. However, the identified inaccuracies still impact on the operational status of DIMIA officers for the duration of the inaccurate delegation instrument.

## Relationships with Third Parties

### Migration Review Tribunal (MRT)

36. The ANAO found that there has been a significant accumulation of review cases before the MRT, with the Tribunal's caseload increasing by 31 per cent over the last two years with consequent adverse effects on MRT finalisation times. At 31 May 2002, the MRT had 8265 cases on hand, 30 per cent of those cases being partner applications. DIMIA advised that the accumulation of cases at the MRT was due, in part, to concerted efforts by the department to clear its own backlogs, especially of partner visa cases. The MRT advised that the increase in the incoming caseload meant there was no capacity for the MRT to clear its own backlog.

37. The ANAO notes that there may be many reasons for sponsors seeking review of the primary decision, which are not necessarily related to perceived errors in the initial decision. As well, the Government recently approved the recruitment of additional MRT members to assist in dealing with the incoming caseload and reducing backlogs.

38. The ANAO also found that, in 2001-02, the MRT overturned 53<sup>5</sup> per cent of all cases considered for review, and that some 74<sup>6</sup> per cent of all partner applications to the MRT were also overturned. The ANAO notes that each review represents additional workload involving an increasing cost burden for the Commonwealth, as the achievement of one migration outcome may, if reviewed, involve multiple expenditures of Commonwealth funds. Government policy is that the \$1400 MRT application fee is refunded where a result favourable to the review applicant is handed down.

39. The ANAO notes that there are a number of feedback mechanisms between DIMIA and the MRT covering strategic issues through to the quality of decision-making. The department advised the ANAO it considers it important that contact between DIMIA and the MRT take account of the need for independence between the two bodies.

### Migration agents

40. Migration agents provide a valuable role in assisting potential migrants to complete and lodge migration applications. While, in the majority of cases, agents can assist DIMIA's processing efficiency by lodging complete applications, the use of certain migration agents may represent an increased risk to the integrity of the family stream of the migration program. At the time of the audit, DIMIA did not have a national database containing information to assist staff in identifying potentially high-risk migration agents. Owing to these data deficiencies, the department has had limited capacity to monitor global trends related to migration agents to enhance program integrity. The ANAO notes that DIMIA is taking steps to rectify this. Funding for a new management system was announced in the 2003-2004 budget papers.

### Health standards for migrants

41. The requirement for migration applicants to meet a health standard for entry into Australia is provided for by section 60 of the *Migration Act 1958*. Section 60 outlines the ability of the Minister to request a health examination if the health, physical or mental condition of a

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visa applicant is relevant to the grant of a visa. The *Migration Act 1958* also states that a specified person must examine the applicant and that the applicant must make every reasonable effort to attend the examination.

42. The ANAO found that the Department of Health and Ageing (DoHA) and Family and Community Services (FaCS) provide advice to DIMIA about health standards for migrants and have been, on occasions, involved in reviews of those standards. However, from the whole of government perspective, there are deficiencies in the approach to the maintenance of health standards for migrants. The ANAO found no evidence that the understandings and protocols between the three departments had been recorded. The latter would enhance the capacity of the Commonwealth to develop cohesive standards and responses to health protocols, for example, in the event of the emergence of a communicable and contagious medical condition. Clear and unambiguous administrative arrangements would provide a description of:

- the communication protocols between the three key stakeholder departments and the identification of roles and responsibilities;
- a current analysis of risks to the Commonwealth; and
- governance and monitoring arrangements, to provide assurance to senior management and responsible Ministers that key risks are being addressed in a timely manner.

### **Estimation of Health costs**

43. The health requirement under the Migration Regulations can be waived in some family migration cases where compelling and compassionate circumstances exist; provided there is no undue cost to the Australian community, or the waiver does not cause undue prejudice to the access to health care or community services of an Australian citizen or permanent resident.<sup>7</sup> The ANAO identified areas for improvement in the estimation of costs of health conditions of migrant applicants. In particular:

- Medical Officers of the Commonwealth (MOCs) are using costing guidelines that were prepared by Health Outcomes International (a company which specialises in health economics). In preparing the guidelines, Health Outcomes International consulted widely with FaCS and DoHA. However, the guidelines have not yet been agreed; and
- the cost estimates prepared by MOCs, based on these guidelines, is not always documented.

44. Clear, comprehensive and consistent guidance on estimating the likely lifetime community cost of medical conditions of migrants is critical if waiver provisions are to be applied equitably and if appropriate accountability is to be maintained. The ANAO was unable to determine whether current DIMIA guidance provides a sound and sufficient basis for the effective and accountable administration of the health waiver provisions. Also, the failure of MOCs to consistently record the basis of calculations, and the absence of appropriate quality control measures, create difficulties in maintaining consistency and proper accountability.

### **Cost of health waivers**

45. The ANAO found that data was incomplete on the number, costs and nature of health waivers granted to migration applicants. This is a significant difficulty for effective program administration, because the cost to the Commonwealth of granting of health waivers is not

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known. As well, appropriate measures to ensure accountability and quality control cannot be identified and implemented.

46. The ANAO also found that relevant agencies are unable to determine what impact, if any, the granting of health waivers may have on the provision of health and community services to the broader Australian community. Data on the waivers granted has not been provided to agencies with the responsibility for planning and delivering community health and care services.

## Overall Conclusion

47. In recent years, there have been improvements in the efficiency and effectiveness of the family stream of the Migration Program. After examining a sample of visa cases, the ANAO concluded that decision-making by DIMIA officials was generally sound, although there are elements of the Department's administrative systems which require attention at the first opportunity, including;

- the lack of documentation which supports certain elements of the decision-making processes. The variable standard of record keeping makes it difficult to assess the merits and risks attached to particular decisions;
- the administrative systems for managing the queue and allocating visas in queue date order do not have the functionality to enable DIMIA to continually monitor, or automatically allocate, visa places in queue date order, thereby potentially compromising the queuing process; and
- greater consistency between the department's existing offshore and onshore quality assurance processes would also support the maintenance of appropriate standards and continuous improvement in applications processing.

48. Current health risk assessments for migrants and the roles and responsibilities for each of the stakeholder departments are poorly defined. DIMIA does not have reliable information on the number and type of health waivers that are granted to new migrants. The costing guidelines currently in use have not been agreed by relevant agencies. DIMIA, DoHA and FaCS are seeking to improve cooperation and information exchange. This should be resolved as a matter of priority to protect the various interests of the Commonwealth.

## DIMIA Response

49. A detailed response from the department is reproduced in full at Appendix 8. Overall, the department commented:

The Department is pleased that the report found there have been recent improvements in the efficiency and effectiveness of the program and that overall decision-making is sound.

We note that the audit found there were a few matters of an administrative nature that should be addressed. Action is already in hand to implement these recommendations and in some cases is well advanced. There are also suggestions for improvements such as more formal links with the Departments of Health and Ageing and Family and Community Services in relation to health requirements and procedures for waiver which we support and have already taken steps to achieve.

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The Department is committed to a process of continuous improvement and in that spirit appreciates the work that has been undertaken by the Australian National Audit Office.

## Recommendations

Set out below are the ANAO's recommendations aimed at improving management of the family stream of the migration program in DIMIA. The key recommendation is number five; others are focused on improvements to performance information, record keeping and quality assurance. Report paragraph references are also included.

<p><b>Recommendation</b></p> <p><b>No.1</b></p> <p><b>Para. 2.46</b></p>	<p>To allow DIMIA stakeholders to better assess the benefits and costs of the family migration program, the ANAO recommends that DIMIA report and publish additional performance information in its Annual Report including:</p> <ul style="list-style-type: none"> <li>• the aggregate expenditure for the Family Stream of the Migration Program; and</li> <li>• a verifiable quality measure relating to onshore partner interview rates.</li> </ul> <p><b>DIMIA response:</b> The Department agrees to this recommendation.</p>
<p><b>Recommendation</b></p> <p><b>No.2</b></p> <p><b>Para. 3.29</b></p>	<p>Consistent with DIMIA guidance, and in accordance with the level of risk associated with the profile of the application, the ANAO recommends that key processes and decisions made in the assessment of parent and partner visa applications be clearly and accurately documented to ensure appropriate accountability, including transparency.</p> <p><b>DIMIA response:</b> The Department agrees to this recommendation.</p>
<p><b>Recommendation</b></p> <p><b>No.3</b></p> <p><b>Para. 3.45</b></p>	<p>The ANAO recommends that DIMIA assess the benefits and costs of progressively introducing the better elements of its existing onshore and offshore quality assurance processes into a single system to ensure that there is a consistent approach for monitoring and reporting quality across departmental operations.</p> <p><b>DIMIA response:</b> Agree with qualification. DIMIA does not consider that a single system as recommended by the ANAO is feasible. However, DIMIA will seek to achieve a consistency of approach in relation to its quality assurance mechanisms and believes</p>

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	<p>that this will meet the spirit of the ANAO recommendation.</p>
<p><b>Recommendation</b></p> <p><b>No.4</b></p> <p><b>Para. 4.64</b></p>	<p>To enhance the management of the parent visa queue, the ANAO recommends that DIMIA clearly specify the control and monitoring function required from departmental information systems.</p> <p><i>DIMIA response:</i> The Department agrees to this recommendation.</p>
<p><b>Recommendation</b></p> <p><b>No.5</b></p> <p><b>Para. 5.27</b></p>	<p>The ANAO recommends that DIMIA, in consultation with DoHA and FaCS, review and formalise the consultative arrangements for setting health policy for migrants to ensure that Migration Regulations reflect current risks, and the roles and responsibilities of each agency.</p> <p><i>DoHA response:</i> DoHA agrees with the thrust of this recommendation.</p> <p><i>FaCS response:</i> Agree.</p> <p><i>DIMIA response:</i> The Department agrees to this recommendation.</p>

# No. 56 2003-04, Management Processing of Asylum Seekers

## Summary and Recommendations

### Summary

1. The Department of Immigration and Multicultural and Indigenous Affairs' (DIMIA) Onshore Protection Program is an element of Australia's Refugee and Humanitarian Program. It assists people who have arrived within Australia's migration zone either lawfully (and who have been staying in the Australian community) or unlawfully (by air or sea) who make an application for Australia's protection. These people are often referred to as asylum seekers.

2. Australia provides protection for asylum seekers who meet the United Nations definition of a refugee, as defined in the 1951 Convention and 1967 Protocol relating to the Status of Refugees. Asylum seekers who are found to be refugees, may be granted a Temporary Protection Visa (TPV) in the first instance, if they arrived unlawfully. If they arrived lawfully, they may be granted a Permanent Protection Visa. The grant of a Protection Visa (PV) is subject to the applicant meeting health and character requirements.

3. The environment in which DIMIA manages the Onshore Protection Program is complex. The client base is drawn from a wide range of cultural and linguistic backgrounds. In an increasingly volatile and difficult international environment, it is essential that protection against *refoulement* *Refoulement* is the act of returning a refugee to a place where there is a real risk to their life or liberty. be provided to those in need through an efficient and speedy decision-making system. The Onshore Protection Program is centrally managed with Regional Offices in three States, NSW, Victoria and Western Australia responsible for the processing of PV applications.

4. The objective of this audit was to assess the extent to which PV applications in Australia are processed in accordance with relevant laws and policies, and whether DIMIA employs appropriate mechanisms to ensure compliance with those laws and policies.

### Key Findings

#### Compliance with procedures and the integrity of decision-making (Chapter 2)

##### Compliance with procedures

5. The ANAO undertook compliance testing of a sample of 209 completed Protection Visa (PV) applications to assess the key elements of the decision-making process. The ANAO found the results of the compliance testing relating to the timeliness of the processing of applications were in line with the quality measures outlined in DIMIA's Portfolio Budget Statements that measured the timeliness of internal processing. However, the ANAO found

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cases where PV applications took longer to process than the times set down in DIMIA's published performance indicators. These were cases where external factors, including factors outside the Department's control influenced the timeliness of processing PV applications. These included clearances and checks processed by police and health officials in other countries.

6. The ANAO also found that the overall standard of record keeping on the case files of PV applicants was high, 99 per cent of files examined contained a record of the decision and in 92 per cent of cases the reasons for the decision were adequately documented.

7. In most cases, the decision record provided a clear and comprehensive assessment of the applicant's claims against the Refugee Convention, and the reasons for the decision. However, the ANAO found a small number of cases in one of DIMIA's three processing offices, where the decision record for a grant, consisted of a two-page document that referred back to the file for information rather than outlining the reasons for the decision in full. In light of the complexities associated with the processing of PV's, there are risks involved with the use of abbreviated decision records for grants. Using an abbreviated decision record, including for grants, provides a lower level of assurance than the detailed analysis that accompanies the majority of PV decisions.

### Quality assurance

8. The ANAO found that DIMIA has adequate formal and informal quality assurance mechanisms in place to monitor and enhance the quality of decision-making for onshore PV's. The results of DIMIA's formal Onshore Protection Quality Assurance program are communicated to Regional and Central Office managers and any training issues that are identified, are rectified through the provision of training to decision-makers.

### Support for decision-makers (Chapter 3)

9. The ANAO found that the training needs of decision-makers processing PVs are addressed through a Training and Coordination Committee. In addition, an Onshore Protection Training Strategy has been developed that identifies training that has been undertaken, identifies the core competencies required by decision-makers, identifies stakeholders and provides a plan for the implementation of future training programs.

10. Decision-makers have access to a comprehensive and well defined set of procedures and guidelines that are updated to reflect changes to legislation and policy by a dedicated branch in Central Office. However, there were administrative shortcomings. In particular, there was a significant time lag between the announcement of a change in legislation and/or policy and the provision of updated guidance to decision-makers. During focus group discussions with PV decision-makers, staff advised the ANAO that it was difficult, at times, to determine what the current guidance regarding a certain aspect of PV processing was. The ANAO considers that DIMIA's more timely incorporation of policy changes into guidelines would reduce the risk that decisions on PV applications are not in accordance with guidance and legislation.

11. In line with an earlier review undertaken by DIMIA internal audit, the ANAO also identified shortcomings within the Country Information Service (CIS). In particular, the ANAO found that there was a need for an analysis of emerging trends to be undertaken, in addition to historical trends, when assigning priority ratings to countries. This approach would decrease the delays to decision-makers in obtaining up to date and relevant country information. In addition, decision-makers stated that at times the information contained within the CIS did not provide them with the level of detail that they required, and they needed to access other sources of information such as the internet to supplement information gained from the CIS. There is a risk that information gained from sources other than the CIS is not up to date or accurate. One way to mitigate this risk would be to highlight this potential exposure during training sessions.

## Information systems

12. The ANAO found that, overall, DIMIA had a number of information systems that supported the Onshore Protection Branch. Central Office primarily uses the Integrated Client Service Environment (ICSE) for reporting, which allows the analysis of statistical data and reports to provide quantitative information. Regional Offices have developed local systems, which are typically excel spreadsheets. The ANAO notes that locally developed systems require data to be entered twice. This practice carries risks to data quality and has the potential to affect DIMIA's accuracy in management reporting. DIMIA advised that the issue of locally developed and incompatible software will be resolved with the introduction of the Xanadu project later in 2004. The project will introduce a control environment which will not allow for locally developed and incompatible software.

## Managing and monitoring program performance (Chapter 4)

13. The ANAO found that the specification of DIMIA's quantity indicators for the Refugee and Humanitarian (Onshore) Program comply with better practice. The quantity indicators specified are good workload indicators that provide DIMIA with targets to work towards, and assist Parliament to assess the outputs it is purchasing. However, the ANAO found DIMIA's quality indicators, measuring the timeliness of processing for detention and community cases, do not provide a complete indicator of the quality of the decision. Processing PV cases are often complex and there are external factors outside of DIMIA's immediate control that impact on timeliness. These factors include new information presented by the applicant and delays while applicants receive overseas penal clearances and other necessary health and character checks.

14. The ANAO notes, as discussed in Chapter 2, the Onshore Protection Branch has a formal quality assurance program in place. The quality assurance program consists of audits of randomly selected cases, and is undertaken twice yearly by senior Onshore Protection managers in each processing state. The quality assurance program examines a number of aspects, including correct citations in decision records, appropriate level of documentation and whether the correct security checks had been undertaken. The ANAO has made a recommendation that incorporating the results of DIMIA's formal quality assurance would provide a more complete measure of the quality of decision-making.

15. The ANAO found that DIMIA management has access to a number of reports that monitor the progress of PV processing. However, the ANAO notes, as discussed in Chapter 2, the audit found cases where applications took longer to process than the times set down in DIMIA's published performance indicators owing to external factors beyond DIMIA's immediate control. The ANAO has made a recommendation that enhanced monitoring of that part of its caseload where processing times are affected by external factors beyond its immediate control, would enable DIMIA to identify common causes of extended delays and any actions DIMIA could initiate to improve timeliness.

## Managing stakeholder relationships (Chapter 5)

16. The ANAO found that DIMIA has a positive and constructive relationship with the Refugee Review Tribunal (RRT) at the Regional Office level. There is regular communication with the RRT regarding file transfers and training. Both DIMIA and the RRT include each other in consultative meetings with stakeholder groups. However, at the Central Office level, although formal meetings with the RRT are scheduled quarterly, these meetings do not always go ahead. DIMIA advised that its preference was for these meetings to be held bi-annually. The ANAO suggests that the Refugee and Humanitarian Branch discuss with DIMIA's Visa Framework section and the RRT the frequency of formal meetings.

17. Other stakeholders reported to the ANAO that, on the whole, consultation occurred regularly, DIMIA was willing to listen to suggestions made and, where possible, act upon them. The ANAO notes the importance of DIMIA continuing to hold consultative meetings with stakeholders to maintain a constructive and mutually beneficial relationship that enables a productive flow of information.

## Overall conclusion

18. The ANAO concluded that the Onshore processing of asylum seekers is managed well. The overall standard of record keeping, including the documentation of the reasons for decisions was high. This reflects DIMIA's decision to use higher level and more experienced officers to make decisions in processing PV applications. These officers are also supported with appropriate training and guidelines.

19. Specifically, the training needs of decision-makers are addressed through a Training and Coordination Committee, and decision-makers have access to a comprehensive and well-defined set of procedures and guidelines that are updated to reflect changes to legislation and policy. However, the information contained within DIMIA's CIS does not always provide decision-makers with the level of detail of a situation in a particular country that they required. As a result, decision-makers were required to supplement the information gained from CIS with other sources. This increases the risk that the information is neither up to date nor accurate.

20. The specification of DIMIA's quantity indicators for the Refugee and Humanitarian (Onshore) Program comply with better practice, in that they are good workload indicators that provide DIMIA with targets to work to, and assist Parliament to assess the outputs it is purchasing. However, by only measuring the timeliness of internal processing, the quality indicators do not provide a complete indicator of the quality of the decision. In addition, the ANAO found cases where applications took longer to process than the times set down in DIMIA's published performance indicators owing to external factors. While outside DIMIA's immediate control, enhanced monitoring of this part of its caseload would enable DIMIA to identify common causes of extended delays and take action to improve timeliness.

21. DIMIA has formed positive and constructive relationships with stakeholders, based on the sharing of information and regular consultation. While the frequency of formal consultative meetings needs to be agreed, stakeholders on the whole were satisfied with their level of consultation with DIMIA.

## DIMIA response

22. The processing of asylum claims through the protection visa process is one of the most complex areas of administrative decision making undertaken in the Department. Given the importance of the decisions made in this area, it is understandable that some negative decisions will be contested and that there is continuing public scrutiny of the decision making process. In this context, external reviews, such as this audit by the Australian National Audit Office, can make a useful contribution to the Department's continuing work to maintain the integrity of protection visa processes and to identify any emerging opportunities for improvement.

23. DIMIA welcomes the overall finding of the ANAO that the onshore processing of asylum seekers is managed well and uses experienced officers supported by appropriate training and guidelines. DIMIA notes that the report has identified some opportunities for refinement of existing activity.

24. DIMIA's full response is reproduced in Appendix 3 of this report.

## Recommendations

<b>Recommendation</b>  <b>No.1</b>  <b>Para 4.11</b>	The ANAO recommends that DIMIA expand the quality indicators for its Refugee and Humanitarian program to include a measure that assesses the key indicators of a quality decision against the results of its quality assurance program.  <i>DIMIA Response:</i> Agreed.
<b>Recommendation</b>  <b>No.2</b>  <b>Para 4.18</b>	The ANAO recommends that DIMIA enhance its current monitoring of that part of its caseload where processing times are affected by external factors beyond its immediate control with a view to identifying common causes of extended delay and any actions that could be initiated to improve timeliness.  <i>DIMIA Response:</i> Agreed.

# No. 54 2003-04 Management of the Detention Centre Contracts - Part A

## Summary and Recommendations

### Summary

#### Background

1. Since 1994, the *Migration Act 1958* (the Act) has required that all non-citizens who are unlawfully in Australia must be detained. The purpose of immigration detention is twofold; to determine the immigration status of an unlawful non-citizen, and to allow for the removal of an unlawful non-citizen who is not permitted to remain.
2. Providing services to people in detention including accommodation, security and safety is inherently challenging and was complicated by external factors that arose at certain times during the contract. For example, in 1999-2000 and in 2000-01 there was a surge in the number of unauthorised arrivals seeking asylum in Australia. The number of unauthorised arrivals (by boat) in this period represented a ten-fold increase in the numbers that arrived in the early 1990s, and this resulted in a large increase in the number of people in detention. Since then, the number of persons in detention has declined, largely due to a fall in the number of unauthorised boat arrivals on the Australian mainland since August 2001.
3. Until the end of 1997, the security at Australia's detention facilities was managed on behalf of the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) by the Australian Protective Service, a Commonwealth government agency. Other services at the centres, such as food, medical, education and welfare services were provided either directly by DIMIA or through individual contractors. In February 1998, the provision of detention services at immigration detention facilities was contracted to Australasian Correctional Services Pty Ltd (ACS). This contract was entered into at a time when the public sector had limited experience in contracting with the private sector for delivering services.
4. The contracting out of detention services provided an opportunity to replace the previous service delivery arrangements and, for the first time, detention service requirements were formalised into a set of principles and standards. Australasian Correctional Management (ACM) operated the mainland immigration detention facilities until early 2004. Between 1 December 2003 and 29 February 2004, the new contractor for the provision of detention services, Group 4 Falck Global Solutions Pty Ltd commenced operations.
5. The Detention Services Contract with ACM ran for six years at a cost to the Commonwealth of more than half a billion dollars. The ANAO considers that the cost and the duration of the agreements with ACM justify independent examination of these arrangements.

## Audit objective and scope

6. The objective of the audit was to assess the effectiveness of DIMIA's management of its detention agreements with ACM to operate Australia's mainland immigration detention centres. In particular, the ANAO examined:

- DIMIA's strategic approach to the management and coordination of the contract;
- how DIMIA defined the services to be delivered by ACM;
- the systems in place to monitor and report against contract performance;
- the effectiveness of controls over contract payment arrangements; and
- DIMIA's management of infrastructure through the detention agreements.

7. The audit focussed on DIMIA's management of its contract with ACM, and did not separately examine the outcomes of the detention program, nor the quality of the services provided by ACM. The audit examined DIMIA's contract with ACM for Australia's mainland detention centres. While the detention services contract applies to the facilities on Christmas Island and Cocos Island these were not examined by the ANAO. The ANAO did not examine the arrangements in place for the offshore processing centres outside Australia that are managed by the International Organization for Migration.

8. During the course of the audit, DIMIA requested that particular information should not, pursuant to section 37(2) of the *Auditor General Act 1997*, be included in this report. There were insufficient grounds to support this request.

9. The ANAO intends to conduct a second performance audit of the management of the detention centre contracts. The second audit will be concerned with the transition arrangements to the new provider and management of the second contract.

## Key Findings

1.0 In order to examine DIMIA's management of its contract with ACM, the ANAO asked several key questions in each of the following areas:

- DIMIA's planning and strategy for contracting out its detention services (Chapter 3);
- the structure of the contract between DIMIA and ACM (Chapter 4);
- DIMIA's management of ACM's delivery of services under the contract (Chapter 5);
- DIMIA's processes for making payments to ACM under the contract (Chapter 6);

- DIMIA's approach to managing detention infrastructure through the contract (Chapter 7); and

- DIMIA's procedures to manage any renewal of the contract (Chapter 8).

11. The key questions in each chapter, and the ANAO's related findings, are set out below.

## Contracting for detention services (Chapter 3)

12. The documented objectives of the General Agreement between DIMIA and ACM were to deliver quality detention services with ongoing cost reductions. DIMIA advised that because of large numbers of asylum seekers arriving by boat in 1999-2001, these objectives were changed to focus on ensuring there was adequate detention capacity to accommodate the sudden influx. This indicates a volatile environment involving many jurisdictions and the need to focus on the risks and develop agreed plans that draw together relevant legislation and operations across the department. Such an approach would allow DIMIA to articulate its priorities and allocate resources according to whether cost reductions, quality services, or capacity enhancements, were being pursued.

13. The ANAO considered DIMIA's overall approach to contract management, in particular, the management of risks, strategic planning, internal and external coordination arrangements, as well as the need for research into immigration detention.

*Were the risks associated with contracting out detention services identified, assessed and treated appropriately?*

14. 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. A systematic approach to risk management, including the establishment of an appropriate and documented risk management strategy, should have been an integral part of contract management, given the complexity of the task and the numerous stakeholders involved. Although DIMIA acted appropriately to deal with program and other risks as they occurred, the majority of risks were managed in response to an incident or event. It is better practice to put in place, preferably on an enterprise wide basis, effective preventative action or at least action that minimises and/or ameliorates, a risk event. This applies not just to financial risks but also, importantly, to strategic and operational risks associated with delivery of the services.

*Did DIMIA have a strategy for managing its contract with ACM?*

15. The ANAO found that DIMIA had not developed and documented a strategy for its detention function, nor put in place a contract management plan. Other than the contract itself, there was no documentation of the means by which the detention objectives would be achieved. This meant that DIMIA was not able to assess whether its strategies were actually working in practice. DIMIA did develop a number of operational plans through ACM, and conducted contingency planning for major events and further boat arrivals. The ANAO also notes that DIMIA conducted two workshops in 2000 and 2001 involving all relevant sections of the department to help plan for the management of the detention function.

*Did DIMIA establish coordination arrangements with external agencies?*

16. The ANAO notes that DIMIA has made progress towards introducing a comprehensive range of Memoranda of Understanding (MOU) with a range of external agencies, including

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State Departments, but the extent to which the MOUs have been formally finalised and implemented varies.

*Were DIMIA's internal coordination arrangements for contract management adequate?*

17. The geographic location and operational culture of the immigration detention facilities are diverse, making contract management a complex task. While there were informal arrangements in place, the ANAO found that DIMIA's internal arrangements to coordinate detention services through its contract with ACM were unclear. There was a lack of clarity around the roles and responsibilities of key personnel and very low levels of contract management training for DIMIA officers. Although DIMIA used a range of mechanisms such as teleconferences and Migration Series Instructions (MSIs) to communicate internal roles and responsibilities, a manual for DIMIA centre managers was not issued until December 2001; some four years after the contract commenced. This manual has not been kept up to date.

*Did DIMIA conduct research into immigration detention?*

18. The detainee population has changed over time and at one point there were 77 different nationalities represented in detention centres. Immigration detention is funded by substantial Commonwealth investment and it carries potential risks to the detainees and to the Commonwealth. The ANAO found there was limited research into the management of detention services which could be used to provide a sound basis for evaluating the effectiveness of the program and as guidance for informing future directions and operations.

## Contract structure (Chapter 4)

19. A critical issue in contractual arrangements is striking an appropriate balance between the degree of purchaser oversight of service delivery and the operational flexibility afforded to a contractor. Better practice guidelines consistently state the case for providing reasonable operational flexibility to the provider. Specifying contracts in terms of outputs, not inputs, allows for contractor innovation and consequent efficiency gains. However, this approach is contingent upon the purchaser being able to clearly specify the outputs, including appropriate service quality measures.

20. Contract guidelines also emphasise the ultimate responsibility of the purchaser for service delivery and the importance of performance monitoring. Therefore, in cases where outputs are difficult to define and/or to state unambiguously, it is appropriate for the purchaser to specify and monitor contractor performance based on inputs as well as on how the service is being provided. The ANAO examined the detention agreements between DIMIA and ACM and asked the following key questions.

*Was there a clear statement of the services to be provided under the detention agreements?*

21. The ANAO notes that DIMIA's detention agreements with ACM were designed to focus on contractual outcomes; the service outputs to be provided. The ANAO was advised that DIMIA's detention agreements described only in general terms the services to be provided by ACM and it was DIMIA's view that detailed quality standards were incorporated in the Immigration Detention Standards (IDS).

*Did the contract specify the standard to which services will be delivered, and contain performance measures able to measure and/or assess the service delivery?*

22. The ANAO found that DIMIA's Immigration Detention Standards (IDS) were not clear statements of detention service requirements. Rather, key IDS listed statements and activities, and used ambiguous language to define the nature and level of service required. In addition, many of the performance measures did not specify a target that needed to be achieved or articulate the method of assessment. From a total of 107 IDS and sub-standards,

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38 were not covered by any performance measures and a further 37 were only partially covered. As the IDS were derived from poorly specified standards and targets, it was difficult for DIMIA to effectively monitor ACM's performance against accepted pre-determined levels of service delivery. Based on this evidence, the ANAO formed the opinion that DIMIA's IDS were not clear statements of detention service requirements for either outputs or inputs.

***Did the detention agreements contain mechanisms for managing underperformance by the contractor?***

23. The ANAO found that the contract contained mechanisms for managing underperformance. Three per cent of the contractor's fee was directly linked to performance. However, the fee at risk and the points method used in calculating its application, meant that, in isolation, it was an ineffective mechanism for sanctioning persistent below-standard delivery. The detention agreements contained other mechanisms for dealing with serious breaches.

***Did the detention agreements set up structures for communication between the contractor and DIMIA?***

24. The general agreement indicated that the parties should establish a management committee with agreed structure and functions prior to the commencement date of the service contract. The membership of the group was agreed in 1997. However, the ANAO found incomplete; and therefore inadequate documentary evidence of the agreement relating to the forum's functions as stipulated in the contract. DIMIA established a close relationship with ACM staff, both at the senior levels, through the Contract Operations Group and the Contract Management Group, and at the operational level with on-site DIMIA business managers. These groups were the main scheduled method for DIMIA and ACM contact. Although it is not essential that such methods of communication are laid down in a contract, the functions and operations of both the Contract Management Group and the Contract Operations Group lacked an agreed formal basis beyond discussions at the meetings. Agreed, formal procedures would have provided greater direction and authority for the two groups and facilitated management of the contract.

***Did the detention agreements contain mechanisms for dealing with changes?***

25. The General Agreement contained a clear mechanism for variation, which was used for one formal amendment. All other changes to service requirements were negotiated through the partnering relationship rather than formal contract amendments, thus carrying additional risks. Both DIMIA and ACM identified further gaps and ambiguities in the detention agreements. As well, there were considerable changes in the service requirements over the life of the detention agreements caused by the increase in unauthorised boat arrivals, the increase in detainees coming directly from state prisons, and the increasing number of long-term detainees.

26. The lack of formal amendments to the contract indicates to the ANAO that suggested solutions to changing service requirements were negotiated on an ad hoc basis. The risks involved in this approach were that; the solutions relied on specific people, and were lost when personnel changed; the solutions did not necessarily fit into DIMIA's overall strategic plans and objectives; any informal requirements were not adequately documented, monitored and assessed; the service requirements differed markedly from centre to centre; and an uncertain legal position could arise if amendments in writing (which were not known to DIMIA as formal contract variations) had the effect in law of formal amendments. DIMIA advised that it considered the issue of contract amendments, but in view of the complex issues arising from consideration of contract extension or renewal, decided to drive change through the new contract for detention services. The ANAO notes that this decision was taken in March 2001 and the new contract was signed in August 2003.

## Managing contract delivery (Chapter 5)

27. Under the detention agreements DIMIA required ACM to deliver certain services. In order to ensure the services were being delivered in accordance with the contract, the ANAO expected to find DIMIA had in place administrative processes to manage its contract with ACM, including the collection and analysis of performance information and the application of incentives and penalties.

### Information collection

*Did DIMIA have processes in place to collect all relevant information for effective contract management?*

28. The audit found that, the majority of methods used by DIMIA to collect information were exception-based. The ANAO acknowledges that exception reporting is a standard contract management tool. However, unless underpinned by quality assurance methods, the use of exception reporting carries the risk of not identifying substandard performance until after a service delivery failure has occurred.

29. From 2001, DIMIA implemented more systematic strategies to allow for more comprehensive information collection. However, at the time of the audit these strategies were not fully implemented across all centres, nor were these strategies connected to an overall contract monitoring plan. As a result, DIMIA could not be assured that all of the information necessary for effective contract management was being collected.

### Information analysis

*Did DIMIA analyse complaints and use that analysis to improve service delivery?*

30. In general, the mechanism for detainees to make complaints to ACM or DIMIA operated effectively. However, while information about specific complaints could be raised at the Contract Operations Group as a service delivery issue, DIMIA did not analyse complaints to identify systemic issues that required attention.

*Did DIMIA effectively analyse the information collected to assess the contractor's performance?*

31. Other than the contract, DIMIA did not have any assessment criteria or standardised process to analyse and assess performance information received from ACM or complaints. DIMIA's analysis was usually linked to identified breaches of a service standard, and did not measure or assess whether the standard of service delivery was of the required quality.

### Rewards and penalties

*Did DIMIA use the performance-linked fee to provide an incentive for ACM to deliver continuous high standard services?*

32. DIMIA did not have formal criteria to determine whether a breach of service performance would be included in the calculation of the performance-linked fee. Calculation of the performance-linked fee could be distorted by the use of multiple, retrospective or discretionary sanctions. The assessment of contractor performance against the performance-linked fee was more closely linked to identifiable breaches than to a continual high standard of service delivery.

*Did DIMIA effectively use the available penalties for serious performance breaches?*

33. DIMIA issued only one default notice, although there were several quarters where the bulk of the performance-linked fee was withheld. DIMIA advised that the use of these penalties took into account the seriousness of the breach, in light of the circumstances of the relevant case.

34. The ANAO notes the more serious penalties were not widely used and that a large percentage of the performance fee was withheld for the March 2002 and June 2002 quarters. The ANAO found no evidence that DIMIA considered using more serious mechanisms to address apparent persistent underperformance. The ANAO also notes that any perceived reluctance by DIMIA to use the default process would have undermined its ability to negotiate service improvements with the contractor.

## Funding and payment processes (Chapter 6)

35. The overall funding of detention, payment of accounts and the financial administration of the contracts are important administrative functions. Payments for detention services have been in the vicinity of \$470 million over the life of the contract (not including the cost of repairs and maintenance, new infrastructure and use of consultants). Total outgoings for detention services and related ancillaries (not including capital expenditure) have reached approximately \$580 million over the same period, taking into account a return of the Commonwealth's share of cost savings.

36. The ANAO examined DIMIA's procedures and processes to determine whether responsibility for managing funding and payments was appropriately structured to provide clarity and accountability to those involved.

### *Was there an appropriate financial reporting framework for contract management?*

37. Recently, DIMIA's internal reporting in relation to its financial commitments for the detention contract has improved. Prior to this improvement, routine management reports contained the average daily costs of detention, but did not include all of the costs of contract administration nor provide trend analysis. The more financially significant of DIMIA's commitments under the contract, and hence the areas of greatest financial risk, involved the operational cost of the contract, the payments for repairs and maintenance, and escorts and removals. Of these, the operational cost of the contract was the most significant. The ANAO found that the cost of detention, per detainee, per day, increased over the life of the contract. The ANAO also found that the costs of contract administration increased, and not always in proportion to the level of contracting activity. DIMIA advised that higher investments in contract administration coincided with higher levels of public scrutiny from external agencies, the requirements of developing a new contract and the demands of dealing with a more complex caseload. However, DIMIA's systems, and the level of financial reporting and analysis undertaken, did not provide assurance that increased investment in contract administration produced greater levels of operating efficiency and effectiveness.

### *Were financial delegations clear and appropriate?*

38. Financial delegations had been set at a relatively low level of financial expenditure, which had not been subject to indexation nor needs assessment over the life of the contract.

### *Were there comprehensive procedures and instructions for payment of invoices?*

39. There were comprehensive payment procedures and instructions. However, the control framework did not adequately protect areas of significant financial risk. There was also a gap in the invoicing procedures where the audit trail between the services provided and payments made did not provide senior managers with assurance that full value for money was being achieved.

### *Were the savings share arrangements managed to protect the interests of the Commonwealth?*

40. The monitoring and management of the savings share arrangements in the contract were not consistent and placed the Commonwealth's share of the savings at risk. One of the two elements of the arrangement was not monitored and yielded no savings. Although the Commonwealth received a savings share in the early part of the contract for the other element of the arrangement, it fell away in the last three years, following the re-pricing of the agreements.

## Detention infrastructure (Chapter 7)

41. In examining DIMIA's approach to managing detention infrastructure through the contract with ACM, the ANAO looked for systematic processes used by DIMIA to guide the development and acquisition, maintenance, and operation of the assets. In doing so, the ANAO acknowledges DIMIA's investment in infrastructure development over the life of the detention agreements. Specifically, the ANAO considered the following key questions.

***Were roles and responsibilities for managing those aspects of detention infrastructure specified in the detention contracts clearly defined?***

42. There was a reactive approach to improving detention infrastructure. The development of detention infrastructure was complicated by the involvement of a number of stakeholders. The ANAO found that roles and responsibilities of the key stakeholders were not formally agreed. The lack of clear and formally agreed responsibilities for particular infrastructure works and repairs and maintenance affected DIMIA's ability to influence the quality of detention services and provide ongoing cost reductions through the contract.

***Did DIMIA have an asset management plan for the detention facilities to inform ACM and itself of the need for maintenance and/or upgrade over the life of the contract?***

43. Over the life of the contract between DIMIA and ACM, there was no coordinated approach to collecting and analysing information to support an asset management plan for the detention facilities. The absence of an asset management plan led to infrastructure decisions being taken with limited regard to how infrastructure quality contributed to overall detention objectives.

44. Australia's detention facilities were old, and in a suboptimal condition at the start of the contract with ACM. The facilities have, on balance, deteriorated over time. While DIMIA has invested significant funding in the development and maintenance of the facilities, detention infrastructure assets have not been subject to a systematic assessment to determine the need for maintenance and upgrade.

45. The age and configuration of the existing detention infrastructure did not assist ACM in providing high quality detention services. The risks involved in using poorly designed or no longer appropriate facilities were not methodically monitored, nor were the costs being incurred in operation, maintenance and upgrade. Major improvements to the facilities, which could have yielded cost savings to the Commonwealth, have been delayed. As a result, a reactive approach involving minor works and emergency repairs was necessary.

***Did DIMIA manage the impact of the quality of the detention infrastructure on ACM's ability to operate the centres?***

46. Shortcomings in both design and specific aspects of the existing detention infrastructure adversely affected operations at the centres. Better management of detention infrastructure would have assisted the achievement of higher quality detention services in accordance with DIMIA's Immigration Detention Standards, as well as the cost-effective delivery of these services.

## Contract renewal (Chapter 8)

47. The Detention Services Contract was for a three-year period from February 1998, with an option for the Commonwealth to renew.

*Did the contract contain a transparent process for renewal?*

48. The procedure under the Detention Services Contract was clear and set out the rights and responsibilities of both parties.

*Did DIMIA follow the renewal process in the contract?*

49. The ANAO found that DIMIA followed the process for the renewal of the Detention Services Contract outlined in the contract.

*Did DIMIA have a strategy to minimise the risk to service delivery during the negotiation period?*

50. DIMIA developed a strategy to identify and minimise possible risks to service delivery during the extension and negotiation period from August 2000 to August 2003. ACM advised that, during this period, it faced difficulty in attracting and retaining qualified staff and this led to increased costs.

## Overall conclusion

51. The ANAO acknowledges that the contract with ACM was entered into at a time when the public sector had limited experience in large scale contracting with the private sector for delivering services. Indeed, it was because of this lack of experience that several publications were produced including the Joint Committee of Public Accounts and Audit report on *Contract Management in the Australian Public Service* in 2000 and the ANAO's better practice guide on *Contract Management* in 2001.

52. The ANAO also acknowledges that, once the contract was in place, external factors influenced operational requirements resulting in considerable pressure on DIMIA in relation to the delivery of the detention program. Risks became more apparent and service delivery expectations evolved. For these reasons, the ANAO focused on DIMIA's ongoing management of its contract with ACM. In particular, the audit addressed how DIMIA administered this contract over a six-year period from 1998 to 2004 to: monitor progress and re-align its objectives; take into account known and emerging risks; and capture and use of the growing amount of information and better practice guidance on contract management.

53. The ANAO concluded that DIMIA's management of its contract with ACM suffered from a lack of clearly identified and articulated requirements. Through the life of the contract, considerable time and resources were expended by both DIMIA and ACM managing the emerging issues from an increasing workload. However, DIMIA did not take the initiative and clarify its objectives. DIMIA decided not to amend the contract to establish clear expectations of the services to be delivered, or refine the standards it used to monitor and report on ACM's performance. These shortcomings adversely affected DIMIA's ability to: assess overall service delivery; determine the quality of service required and delivered in key areas; manage shared responsibilities; and establish priorities for improvement.

54. DIMIA's overall objectives in contracting out detention services were not clearly, or consistently, articulated over the life of the contract. After the contract was in place for about 18 months, an unexpected increase in unauthorised boat numbers tested the delivery of services being provided by ACM. DIMIA responded by re-aligning its objective of delivering high quality services at a reduced cost, to focus on ensuring adequate infrastructure to house the new arrivals. Documentation of these objectives and plans articulating how they were to

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be prioritised, achieved and measured, was not available. Neither was this new alignment reflected in the contract with ACM. As a result, there was insufficient relevant and credible information and reporting by DIMIA to support a firm conclusion about whether, and which, objectives were being met.

55. Prior to entering into the contract with ACM, DIMIA did not identify and document the risks associated with the private provision of detention services. More importantly there was no mechanism for monitoring and reviewing the risk profile as it changed over time. There was for example, no provision to allocate responsibility between DIMIA and ACM to control new risks that arose during the contract, before they materialised.

56. The detention agreements were based on the concept of a partnership; with the contractual agreements requiring ACM to deliver broadly stated contractual outcomes. While this gave greater flexibility to both parties, the contractual requirements lacked sufficient specificity to enable DIMIA to adequately monitor the quality and nature of the services provided by ACM. DIMIA responded to this lack of specificity by developing approaches, which relied on the cooperation of the detention services provider to monitor and improve contractor performance. This reactive approach meant that DIMIA's contract management was not based on any pre-determined assessment of DIMIA's requirements.

57. An important element of the accountability framework in managing contracts on behalf of the Commonwealth is to ensure that the interests of the Commonwealth are protected as far as possible. The ANAO concluded that there was a low level of assurance that the financial aspects of the contract operated as intended. Although there have been improvements in recent times, for the most part, financial performance measures and reporting in respect of the detention contract were limited. As well, DIMIA did not actively manage the savings share arrangements to protect the interests of the Commonwealth. The costs of the contract itself, and contract administration increased over the life of the contract, and not always in proportion to the level of contracting activity. The ANAO notes that, over the life of the contract, the human resources used by DIMIA to manage the detention function, including contract monitoring, increased from a section in DIMIA with 15 staff to a division with 150.

58. While the contract provided a basis for infrastructure management, it lacked clarity about DIMIA and ACM responsibilities. DIMIA did not translate key clauses contained in the contract into effective operational procedures for successful infrastructure management. ACM's ability to deliver detention services was not assisted by the quality of the existing detention infrastructure and the complexities associated with infrastructure improvement. While there was executive level oversight, DIMIA did not have a management plan that was strategically aligned to the overall objectives of its detention program. Consequently, the ANAO concluded that DIMIA's approach to managing detention infrastructure over the life of the contract was reactive.

59. The ANAO made six recommendations aimed at; improving DIMIA's risk management and planning; developing its knowledge base to improve contract management; controls for invoicing procedures; asset management plans and detention infrastructure standards.

## Agency response

60. DIMIA welcomes this first part of the ANAO audit of the management of the detention centres contract. DIMIA is of the view that many of the identified areas of concern either have been or are being addressed in the management of the new detention centres contract. As this audit has been split into two stages, a complete picture of DIMIA's management of the contract will be clearer following the second audit report.

61. DIMIA agrees with the recommendations but, importantly, DIMIA also notes that the report does not fully reflect and take account of the complexity of the environment and the nature of the previous detention contract. In particular, there were significant and unpredictable changes to the detention environment following the unprecedented numbers of arrivals in 1999-2001 and the focus necessarily was on meeting basic needs. The detention services

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contract in question was also specifically founded on the concept of strategic partnership between the department and the contractor. While improvements to the contracting framework were deliberately built into the current contract, the 'partnership' approach to the previous contract meant that many aspects of the contract were intended to be flexibly addressed through negotiation and discussion.

62. The environment for contracting out of detention services has changed considerably since 1997. DIMIA has also improved its processes and procedures in its management of the current contract. While DIMIA does not agree with all aspects of this report, DIMIA supports the recommendations and will continue to incorporate a strong focus on risk management, procedures and planning into its management of the detention program.

## Recommendations

<p><b>Recommendation</b></p> <p>No.1</p> <p>Para. 3.28</p>	<p>The ANAO recommends that DIMIA address the risks associated with the detention service function in a more systematic manner. This would involve a comprehensive risk assessment of the detention service function and an appropriate risk management strategy, including risk identification, treatment, analysis, monitoring, and review, as well as consideration of whole-of-government risks.</p>
	<p><b><i>DIMIA response:</i></b> DIMIA agrees with this recommendation. DIMIA has already demonstrated a more systematic approach to risk management as can be seen in the conclusions in Chapter 8, and will continue to improve its risk management framework.</p>
<p><b>Recommendation</b></p> <p>No.2</p> <p>Para. 3.35</p>	<p>The ANAO recommends that DIMIA document its strategies for the detention service function and develop a robust contract management plan for delivering detention services.</p>
	<p><b><i>DIMIA response:</i></b> DIMIA agrees with this recommendation. While aspects of this recommendation are already documented, DIMIA agrees with the recommendation to bring together and enhance the documentation.</p>
<p><b>Recommendation</b></p> <p>No.3</p> <p>Para. 3.70</p>	<p>The ANAO recommends that DIMIA consider the benefits of sound research into immigration detention services, particularly the risks to the Commonwealth of long-term detention, and directed towards developing the knowledge base needed to improve contract management in the detention environment.</p>
	<p><b><i>DIMIA response:</i></b> DIMIA agrees with this recommendation and will more effectively build in and document targeted research into comparable environments into its policy and procedures.</p>
<p><b>Recommendation</b></p> <p>No.4</p> <p>Para. 6.41</p>	<p>The ANAO recommends that, where local managers place reliance on the checking and certification of invoices, procedures be introduced to periodically verify that adequate controls have been implemented and are effective.</p>
	<p><b><i>DIMIA response:</i></b> DIMIA agrees with this recommendation. Existing procedures for checking and certifying invoices will be reviewed and more formally documented.</p>

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<p><b>Recommendation</b></p> <p><b>No.5</b></p> <p><b>Para. 7.67</b></p>	<p>The ANAO recommends that DIMIA develop an asset management plan for the detention infrastructure assets that includes:</p> <p>forecasts for acquiring, operating, maintaining and disposing of assets, including financial impacts;</p> <p>a statement of the risks involved in operating the assets; and</p> <p>targets and measures to be used for monitoring the contribution of each major asset to the detention objectives.</p>
	<p><b><i>DIMIA response:</i></b> DIMIA agrees with this recommendation. The existing framework for managing assets will be reviewed and a more detailed plan developed consistent with this recommendation.</p>
<p><b>Recommendation</b></p> <p><b>No.6</b></p> <p><b>Para. 7.74</b></p>	<p>The ANAO recommends that DIMIA, in consultation with the contractor and other key stakeholders, develop and agree on appropriate standards for providing infrastructure in the detention facilities.</p>
	<p><b><i>DIMIA response:</i></b> DIMIA agrees with this recommendation and will engage with relevant stakeholders to try and develop standards for providing infrastructure.</p>

# No. 1 2005-06, Management of the Detention Centre Contracts - Part B

## Summary and Recommendations

### Summary

#### Background

1. Since 1994, the *Migration Act 1958* (the Act) has required that all non-citizens who are unlawfully in Australia must be detained. The purpose of immigration detention is twofold; to determine the immigration status of an unlawful non-citizen, and to allow for the removal of an unlawful non-citizen who is not permitted to remain. The current Migration Amendment (Detention Arrangements) Bill 2005 proposes amendments to the Act to provide greater flexibility and transparency in the administration of the detention of persons known or reasonably suspected to be unlawful non-citizens.
2. Since November 1997, the provision of detention services at the immigration detention facilities has been outsourced to private organisations. For the period between November 1997 to February 2004 detention services were provided at all mainland immigration detention facilities by Australasian Correctional Services (ACS). ACS provided these services through its operational arm, Australasian Correctional Management (ACM). ACS/ACM are now known as GEO Australia Pty Ltd.
3. A new Detention Services Contract (the Contract) was signed between DIMIA and Group 4 Falck on 27 August 2003. Group 4 Falck subsequently changed its name to Global Solutions Limited (GSL). 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. The term of the Contract is four years, with an option for the Commonwealth to extend for a further period of three years. The cost of providing detention services through the Contract is approximately \$90 million annually, not including the cost of overheads and contract administration.

5. Management of detention centres through outsourced arrangements is a complex task since it involves the delivery of human services in a network of centres across Australia, and including Christmas Island.

## Audit objective and scope

6. A performance audit of the management of the Detention Centre Contracts was listed in the 2003-04 Audit Work Program as a potential audit. The audit work program proposed that the audit would be conducted in two parts. The first part would focus on DIMIA's management of the detention centre contracts with the then detention service provider, GEO Australia. The second part would concentrate on how well any lessons learned from the first contract, were translated into improvements with the new contract.

7. On 18 June 2004, ANAO Audit Report No.54 of 2003-04 *Management of the Detention Centre Contracts—Part A*, (Report No.54) was tabled in Parliament. In its response to Report 54, DIMIA stated that 'experience with managing [the previous] contract identified areas where further improvements could be made. This experience informed the development of the new contract.'

8. The original objective of this second ANAO audit was to assess DIMIA's management of detention services through the Contract, including the tender process, transition period and implementation of lessons learned from the previous contract. However, in November 2004, it became clear that in order to provide a high level of assurance to DIMIA and to the Parliament over the probity of the tender process, a separate audit of the tender process would be required. An audit of the tender, evaluation and contract negotiation processes is in progress and it is expected that this report will be tabled separately, later in 2005.

9. The objective of this second audit was therefore amended: '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.'

10. Specifically the ANAO considered:

- transition to a new service provider;
- the Detention Services Contract;
- risk allocation through liability, indemnity and insurance;
- performance information and contract monitoring; and
- contract administration.

11. The audit did not separately examine the outcomes of the detention program, nor the inherent quality of the services provided. The audit examined DIMIA's management of the contractual arrangements for the delivery of detention services and related performance measures.

12. The scope included Australia's mainland immigration detention centres, including the Christmas Island Immigration Reception and Processing Centre and the Residential Housing Project at Port Augusta, South Australia. The ANAO did not examine the arrangements in place for the offshore processing centres outside of Australia that are managed by the International Organization for Migration.

## Proceedings in the Federal Court of Australia

### *S v Secretary, Department of Immigration and Multicultural and Indigenous Affairs [2005] FCA 549 (5 May 2005)*

13. In February 2005, two detainees from the Baxter Immigration Detention Facility commenced proceedings in the Federal Court against the Secretary of DIMIA, alleging negligence. The judgement in relation to this case, contains a discussion of outsourced arrangements and the provision of certain aspects of detention services, which are relevant to the findings and conclusions of this audit.

## The inquiry into the detention of an Australian permanent resident

14. On 8 February 2005, the Minister for Immigration and Multicultural and Indigenous Affairs announced that an inquiry would be conducted into the detention of an Australian permanent resident, Ms. Cornelia Rau. The Minister announced that 'The Inquiry will investigate, examine and report on matters relating to the case of Cornelia Rau, including in particular the actions of DIMIA and relevant State agencies, during the period March 2004 to February 2005.' Although the inquiry is not being conducted publicly, the Minister has stated that the findings of the report will be made available publicly.

15. This audit did not examine whether individuals were lawfully detained. The ANAO does note however (in Figure A2.1—schedule part 2, standard 2.1.2.1), that while all detainees should be held on DIMIA's advice, the appropriate performance measure in the Contract relies on the Services Provider satisfying itself that the person is lawfully detained.

## Key Findings

### Transition to new provider (Chapter 2)

16. The ANAO found that the transition of the detention facilities to the new Services Provider was achieved without incident and with minimal disruption to the Detainees. Overall, there was sound planning and preparation. However the costs, at approximately \$6 million, were significant.

### The Detention Services Contract (Chapter 3)

17. DIMIA has supplied detention services through outsourced arrangements since 1997. In this purchaser/provider environment the department has a responsibility to ensure that the provider, currently GSL, is aware of its obligations. In the case of detention centres this involves the delivery of human services in a complex legal environment, including Commonwealth and State legislation.

18. The key legal instrument in articulating these obligations is the Contract. In general terms, the Contract is better structured than the previous detention agreements, in the sense that the high level obligations to be borne by the parties are at one level of the Contract. The Contract also contains more information about detention services than the old detention agreements. However, the ANAO found that the Contract does not adequately specify key responsibilities that are to be met, either by DIMIA or GSL. In particular, clear and consistent definitions are not provided for health standards that are central to detainee welfare. For example; Duty of

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Care, and the specific obligations for a subcontractor supplying psychological services are not consistent with the department's Immigration Detention Standards. The audit found that the Contract does not clearly specify mechanisms for the ongoing monitoring of subcontractor arrangements, for compliance with intended outcomes.

19. The provision of detention services is subject to a range of State specific legislation. Although detention services have been delivered under outsourced arrangements for the past seven years, DIMIA is yet to finalise more than half of the relevant agreements with State agencies. In addition, the extent to which the Services Provider can rely on agreements between the Commonwealth and other jurisdictions is not clear.

## Liability, indemnity and insurance (Chapter 4)

20. Since 2000, claims of approximately \$16.9 million have been paid out or settled by the Commonwealth following disturbances that resulted in damage to the detention centres. The terms and conditions attached to insurances, liabilities and indemnities are therefore of considerable significance in safeguarding the Commonwealth's interests.

21. The ANAO's examination of the liability, indemnity and insurance regime in the Contract revealed three significant shortcomings. First, the definition of an Incident in the Contract is unclear. The use of different descriptions of an Incident in various places in the Contract means that reporting can be subjective and lead to difficulties in interpreting liability, indemnity and insurance requirements.

22. Secondly, the Contract does not identify a mechanism to determine the amount that the Services Provider is liable for in respect of damages incurred. Nor does the Contract specify that the amount of damage as determined by the independent advisor is binding on both DIMIA and the Services Provider.

23. Thirdly, in the event of a claim arising from damage other than that caused by Detainees, the Commonwealth's interests are unprotected by the Services Provider's insurance.

24. The end result of an unclear liability, indemnity and insurance regime in the Contract, is that it is not possible for the Commonwealth to know with any certainty what events are covered by the Services Provider's insurance and to what extent the cover that has been obtained is limited or qualified.

## Performance information and contract monitoring (Chapter 5)

### Contract standards and measures

25. For service based contracts, such as that between DIMIA and GSL, performance indicators should be clear and measurable statements that assist both the purchaser and provider to assess whether or not performance has been satisfactory. While there is no ideal number of items of performance information it is important that agencies collect performance data that is focused on areas of highest significance and/or risk, timely, and relatively easy to interpret and manage. Clear specification of measurable performance indicators underpins monitoring and helps to minimise disputes between parties to agreements.

26. In developing the Contract, DIMIA sought to establish a range of standards and measures by which to measure performance. Schedule 3 of the Contract lists 148 standards and 243 measures and Schedule 2 contains more than 300 descriptions of detention services. The ANAO found that terms such as 'timely', 'appropriate', 'relevant', 'adequate' and 'as soon as possible' are used in the standards and/or measures and these are not defined to allow their assessment. The standards also contain conditions and provisos, which mean that proving

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that the standard should have been met in a particular instance would be difficult. In some instances, experts rather than DIMIA general administrators, would be required to assess the standards relating to food, health, hygiene and Occupational Health and Safety.

27. The ANAO found that evidence to substantiate whether standards had been met or not would be difficult to collect. This will have an impact on the application of sanctions.

### Contract monitoring

28. DIMIA has adopted an exceptions-based approach to assessing the performance of GSL, whereby the focus of monitoring arrangements is the reporting of Incidents. The department assumes that detention services are being delivered satisfactorily at each immigration detention centre unless the reporting of an Incident (or repeated Incidents) highlights a problem.

29. While assessment by exception enables DIMIA to identify extremely poor quality service delivery, there are two weaknesses with this approach. 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.

## Contract administration (Chapter 6)

30. Effective contract administration plays an important part in achieving successful outcomes under an outsourcing arrangement and is a way of ensuring ongoing value-for-money (VFM).

### Financial framework and reporting

31. DIMIA's output 1.3.5 (detention) was funded at \$120.5 million for 2004-05. The contribution that detention makes towards DIMIA's outcome is stated in the department's Portfolio Budget Statements as providing lawful, appropriate, humane and efficient detention of unlawful non-citizens. The ANAO found that DIMIA's internal monitoring and reporting arrangements did not further define, nor measure lawful, appropriate, humane or efficient detention.

32. One of the objectives of contract administration is to demonstrate on-going VFM through the pursuit of objectives and strategies. The ANAO found no evidence that DIMIA's internal reporting arrangements monitored the extent to which expenditure under output 1.3.5 was contributing to the on-going achievement of VFM, while assisting in the achievement of the overall outcome.

### Cost of detention

33. The ANAO found that payments for detention operations have increased under the Contract. At the same time, the detention population has declined slightly since 2003. DIMIA does not have a routine management report that explains the increased costs. ANAO examination of the figures indicates that it is as a result of the new funding formula in the Contract, higher costs associated with the Residential Housing Project and the Christmas Island Immigration Reception and Processing Centre.

34. DIMIA's contract administration (overhead) costs have also increased substantially. These increases are in contrast to the slight decline in detainee days funded over the same period. In the last full financial year of the previous contract, the cost of detention overheads, which includes the costs of DIMIA central office staff, administration and travel, was \$20 million. On current projections, overhead costs for year ended 30 June 2005 will reach \$30 million. DIMIA does not have a management report that demonstrates whether or not the increased

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investments in contract administration are producing greater levels of operating efficiency.

**35.** The ANAO found that DIMIA's reporting of financial information does not allow DIMIA's executive to monitor key risks, such as the rising costs of contract administration. In particular, there is a lack of management information that separates the cost of the Contract from the cost of its administration. Such reporting documentation would enable DIMIA to clarify; first the need for increased investments in contract administration, and subsequently where these have produced improvements in efficiency and/or quality of service delivery.

### Invoice procedures

**36.** The ANAO found that invoicing procedures were generally sound. Where difficulties have arisen as a result of ambiguities in the Contract, particularly with invoices for transport and escort of detainees; DIMIA is negotiating with the Services Provider to amend the Contract.

**37.** One ambiguity in the Contract that had not been fully resolved, as at January 2005, was the unclear distinction between what is to be considered an urgent and minor repair over planned maintenance. Although approximately \$7.8 million has been paid for planned maintenance since the Contract began, the inability of both parties to agree on maintenance plans meant that, at December 2004, some \$362 000 of invoices for urgent and minor repairs were unpaid. Finalisation of these invoices is causing ongoing administrative effort for the department.

### Asset management

**38.** During the preparation of tender documentation, the question of ownership of assets at the detention facilities was acknowledged by DIMIA as an area that was not entirely settled. Prior to transition, GSL informed DIMIA that assets listed in the Contract at Schedule 6 at a total value of \$1.4 million, were also listed on GEO's list of assets offered for sale to GSL.

**39.** Notwithstanding early indications of uncertainty of ownership of the assets in Schedule 6, DIMIA proceeded with the transition of the centres without clarifying further, the ownership of the equipment. During the transition, GSL made arrangements to purchase assets from GEO in order to begin operations. The assets purchased included a number of assets listed as Commonwealth Equipment at Schedule 6.

**40.** The ANAO found that at the time of contract signature, DIMIA did not have an accurate list of Commonwealth assets as stated in Schedule 6 of the Contract. At the time of audit fieldwork, DIMIA and GSL were involved in processes agreed between them to resolve the difficulties. This will involve compensation payments from the Commonwealth to GSL for the assets that were incorrectly shown as property of the Commonwealth.

## Overall audit conclusion

**41.** In August 2003, DIMIA entered into a contract with GSL to provide services to people in detention. With operating costs approaching \$100 million per year, the Contract involves the delivery of security and transport services as well as human services including health and food in a sensitive manner. When it signed this Contract, DIMIA had more than 6 years of experience in contracting out detention services.

**42.** Lessons learned from the previous arrangements are apparent in the general structure of the Contract and it contains more information about detention services, but this has not provided the expected benefits. In particular, the Contract does not establish clear expectations for the level and quality of services to be delivered; mechanisms to protect the Commonwealth's interests are not clear; and there is insufficient information about the quality of services being delivered and their costs to allow a value-for-money calculation.

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**43.** Discussions with DIMIA senior management revealed that the quality of food and health services is considered to be central to the overall well being of detainees. However, DIMIA has put in place 148 standards, 243 measures and more than 300 descriptions of detention services with, up until January 2005, equal emphasis on each one. Assessing the performance of GSL would be more straightforward if these standards were risk based, better defined and more easily measured.

**44.** DIMIA advised that it is not possible to define these requirements in simplified ways, and that it was a misconception that services, standards and reporting can be simply and inflexibly stated. The ANAO considers that, although sometimes difficult, it is important to clearly define service requirements and standards to ensure there is a common understanding of the services required. The number of standards and performance measures included in the Contract is properly a matter for departmental judgement but, when specified, they should be able to be reliably measured.

**45.** DIMIA's monitoring of GSL's performance focuses on Incidents (with considerable discretion on reporting and what is an Incident) and, as a consequence, DIMIA is not able to provide assurance that all its standards are being met as expected.

**46.** An important element of the accountability framework in managing contracts on behalf of the Commonwealth is to ensure that the interests of the Commonwealth are protected as far as possible. The ANAO concluded that the terms of the liability, indemnity and insurance regime in the Contract are unclear to the point that it is not possible for the Commonwealth to know with any certainty what insurances are effected, what risks are covered, and to what extent the insurance cover that has been obtained is limited or qualified.

**47.** Although DIMIA has publicly stated the need to report on 'efficient' detention, the cost and productivity data available indicate that contract administration costs have risen appreciably over the life of the Contract, against a falling detainee population. However, DIMIA does not have sufficient relevant and credible information about the quality of services being delivered and their costs, to determine whether the delivery of detention services is improving over time, or other factors are resulting in increased costs.

## Agency response

**48.** The Department welcomes the ANAO's audit of the current Detention Services Contract (DSC) early in the life of the contract, as this process will enable DIMIA to review its ongoing management of the detention function in accordance with ANAO best practice.

**49.** This DSC has built on the strengths of the previous contract, but provides the Services Provider with a greater clarity of the performance expectations and service standards to be delivered. The outcomes focus of the standards reflects the Government's expectations of appropriate service delivery, while also creating flexibility for the Services Provider to respond innovatively to the challenging environment of immigration detention.

**50.** The Department considers that the ANAO's report does not fully reflect or take account of the complexity of the detention environment. Within immigration detention, the needs of persons with a diverse range of backgrounds and a potentially infinite range of individual care and welfare needs must be managed within detention arrangements. The Department aims to provide services to these individuals that are effective and responsive to a changing detainee population, whilst also satisfying the Government's international obligations, extensive scrutiny from external bodies and the expectations of the Australian public and parliament.

**51.** The services and standards required in this environment cannot be simply and inflexibly stated in quantitative terms, which is at the core of many of the critical comments in the ANAO's report. The Department considers that a number of these issues identified by the ANAO are in fact differences of approach or opinion and cannot be easily resolved.

52. DIMIA considers that this DSC is a significant improvement from the previous contract. Under the DSC the Department has fostered strong and cooperative working relations with the Services Provider, based on a shared understanding of the outcomes to be achieved and with a focus on continuous improvement of service delivery on the ground.

## ANAO comment

53. The inherent challenges involved in the provision of detention services in a complex legal environment, and at centres widely separated from each other in different Australian States, has been acknowledged by the ANAO in this report and extensively in the earlier report in this series. The findings and conclusions of both reports have been formed in this context.

54. DIMIA has engaged an external provider (GSL Australia Pty Ltd) to deliver detention services, including security, health care, and other human services. The contract term is four years and could operate for seven years, if extension options within the Contract are exercised. Payments for operations under the Contract for the year ended 30 June 2005 will reach \$90 million, and contract administration costs will exceed \$30 million.

55. DIMIA's response refers to a number of audit findings arising as a result of differences in approach or opinion. In particular, DIMIA has advised that the outcomes focus of the standards to be delivered under the Contract reflects the Government's expectations of appropriate service delivery, while also creating flexibility for the Services Provider to respond innovatively to the challenging environment of immigration detention. In addition, DIMIA has advised that the services, standards and reporting required in this environment cannot be simply and inflexibly stated in quantitative terms.

56. The ANAO acknowledges that a key issue in contractual arrangements is striking an appropriate balance between the degree of purchaser oversight of service delivery and the operational flexibility afforded to a contractor. By specifying service requirements in terms of contractual outcomes, not inputs, DIMIA has provided for the possibility of GSL innovation and consequent efficiency gains. However, DIMIA's approach is contingent upon the contracted outcomes being expressed in measurable terms.

57. In its assessment of the Contract the ANAO was, therefore, looking for service standards that articulated the expected level and quality of service to be delivered by GSL. The ANAO found that DIMIA's Immigration Detention Standards generally did not meet these criteria. Among other things, clear and consistent definitions are not provided for health standards. DIMIA highlights the challenges it has set itself in evaluating GSL's performance, 'given the volume of standards to be met'. The number and type of performance information is properly a matter for departmental judgement. However, when specified, performance information should be measurable and be designed to assist the department to manage the Contract, including monitoring GSL's performance.

58. In its response DIMIA concludes that this Contract is a significant improvement from the previous contract. The ANAO has acknowledged the consolidation of multiple agreements into one document and the inclusion of more descriptive information about detention services as improvements in the Contract. However, as noted in this report, the ANAO considers that there is scope to considerably improve key aspects of the Contract and contract administration. The four areas highlighted for improvement in ANAO recommendations are:

- 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.

59. These recommendations are derived from sound principles used to guide the administration of complex service contracts and are intended to facilitate DIMIA's oversight of detention services in Australia. The department agreed with all four recommendations.

60. DIMIA's full response is attached at Appendix 3.

## Recommendations

<p><b>Recommendation</b> <b>No.1</b> <b>Para 4.62</b></p>	<p>The ANAO recommends that DIMIA review the insurance, liability and indemnity regime in the Contract and, informed by a clear allocation of risks, develop clearer mechanisms for determining:</p> <ul style="list-style-type: none"> <li>• the amount of costs for repair or rectification of damage to Detention Facilities and Commonwealth Equipment following an Incident; and</li> <li>• the Services Provider's and Commonwealth indemnities and liabilities under the Contract for the purposes of insurance.</li> </ul>
<p><b><i>DIMIA Response:</i></b> Agree.</p>	
<p><b>Recommendation</b> <b>No.2</b> <b>Para 5.87</b></p>	<p>The ANAO recommends that DIMIA review and revise its planning, performance information and monitoring arrangements so they provide the basis for managing and monitoring the performance of its detention function in a systematic and objective way.</p>
<p><b><i>DIMIA Response:</i></b> Agree.</p>	
<p><b>Recommendation</b> <b>No.3</b> <b>Para 6.23</b></p>	<p>The ANAO recommends that DIMIA comprehensively review the ongoing financial reporting of the detention function and include:</p> <ul style="list-style-type: none"> <li>• consideration of the ongoing financial commitment as well as a cost-benefit analysis of the total costs of administration; and</li> <li>• provision of explicit links between financial and non-financial performance information.</li> </ul>
<p><b><i>DIMIA Response:</i></b> Agree.</p>	
<p><b>Recommendation</b> <b>No.4</b> <b>Para 6.47</b></p>	<p>The ANAO recommends, as a matter of priority, that DIMIA develop a comprehensive asset register for all Commonwealth Equipment at each of the detention facilities.</p>
<p><b><i>DIMIA Response:</i></b> Agree.</p>	