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Performance Audit

Management of the Detention Centre Contracts—Part A

**Department of Immigration and
Multicultural and Indigenous Affairs**

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of Australia 2004

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Canberra ACT
18 June 2004

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in the Department of Immigration and Multicultural and Indigenous Affairs in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit and the accompanying brochure. The report is titled *Management of the Detention Centre Contracts—Part A*.

Following its tabling in Parliament, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely



P. J. Barrett
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office. The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits and financial statement audits of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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Contents

Abbreviations / Glossary.....	7
Summary and Recommendations	9
Summary	11
Background	11
Audit objective and scope	12
Key Findings.....	13
Contracting for detention services (Chapter 3)	13
Contract structure (Chapter 4)	15
Managing contract delivery (Chapter 5).....	17
Funding and payment processes (Chapter 6).....	19
Detention infrastructure (Chapter 7).....	20
Contract renewal (Chapter 8).....	22
Overall conclusion	22
Agency response.....	24
Recommendations.....	26
Audit Findings and Conclusions	29
1. Introduction.....	31
Introduction.....	31
Audit objective and scope	31
Audit methodology.....	32
Report structure.....	34
2. Background	35
Legislative framework.....	35
Detainee population	36
Places of immigration detention	42
Alternative places of detention	44
Detention contract history.....	45
Detention costs.....	48
Public interest and review	48
3. Contracting for Detention Services	49
Introduction.....	49
Contract structure.....	50
Intended contractual outcomes	51
4. Contract Structure	75
Introduction.....	75
Other drafting issues	88
Conclusion.....	89
5. Managing Contract Delivery	91
Introduction.....	91
6. Funding and Payment Processes	115
Introduction.....	115
Conclusion.....	129

7. Detention Infrastructure	131
Introduction	131
Conclusion	154
8. Contract Renewal	156
Introduction	156
Conclusion	160
Appendices	161
Appendix 1: Meaningful Activities for Detainees	163
Appendix 2: Case study - Extract of immigration record of an adult male detainee	164
Appendix 3: Detainee Population	165
Appendix 4: Public Reviews	167
Appendix 5: Migration Series Instructions	170
Appendix 6: Standards and measures	171
Appendix 7: Performance Linked Fee Paid	211
Appendix 8: Default notice cure findings	212
Appendix 9: Agency Response	213
Index	219
Series Titles	220
Better Practice Guides	224

Abbreviations / Glossary

ACM	Australasian Correctional Management Pty Ltd
ACS	Australasian Correctional Services Pty Ltd.
the Act	<i>The Migration Act 1958</i>
Contract Administrator	A senior DIMIA officer with overall responsibility for contract management.
the Contractor	ACM—Australasian Correctional Management Pty Ltd
the Detention Agreements	The series of contracts between DIMIA and ACS, consisting of the General Agreement, the Detention Services Contract and the Occupation Licencing Agreement.
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
DIMIA Business Manager	Departmental officer in the immigration detention facilities
Finance	Department of Finance and Administration
IDAG	Immigration Detention Advisory Group
IDC	Immigration Detention Centre
IDF	Immigration Detention Facility
IDS	Immigration Detention Standards
IRPC	Immigration Reception and Processing Centre
MOU	Memorandum of Understanding

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.¹ 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 (ACS²). 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

¹ Section 196.

² Although the contract is with ACS, services are delivered through ACS's operational company Australasian Correctional Management (ACM) which, in January 2004 changed its name to the GEO Group Australia. For ease of understanding, and to reflect operational realities, the contractor will be referred to as ACM throughout this report.

detention services, Group 4 Falck Global Solutions Pty Ltd³, 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.

³ Group 4 was subsequently renamed to Global Solutions Limited (GSL).

Key Findings

10. 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 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, 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.⁴

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

⁴ The General Agreement provides for savings achieved through operational efficiencies to be shared at an agreed ratio between the Commonwealth and Contractor.

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 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 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

Recommendation No.1
Para. 3.28

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.

DIMIA response: 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.

Recommendation No.2
Para. 3.35

The ANAO recommends that DIMIA document its strategies for the detention service function and develop a robust contract management plan for delivering detention services.

DIMIA response: 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.

Recommendation No.3
Para. 3.70

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.

DIMIA response: DIMIA agrees with this recommendation and will more effectively build in and document targeted research into comparable environments into its policy and procedures.

Recommendation No.4
Para. 6.41 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.

DIMIA response: DIMIA agrees with this recommendation. Existing procedures for checking and certifying invoices will be reviewed and more formally documented.

Recommendation No.5
Para. 7.67 The ANAO recommends that DIMIA develop an asset management plan for the detention infrastructure assets that includes:

- forecasts for acquiring, operating, maintaining and disposing of assets, including financial impacts;
- a statement of the risks involved in operating the assets; and
- targets and measures to be used for monitoring the contribution of each major asset to the detention objectives.

DIMIA response: DIMIA agrees with this recommendation. The existing framework for managing assets will be reviewed and a more detailed plan developed consistent with this recommendation.

Recommendation No.6
Para. 7.74 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.

DIMIA response: DIMIA agrees with this recommendation and will engage with relevant stakeholders to try and develop standards for providing infrastructure.

Audit Findings and Conclusions

1. Introduction

This chapter introduces the performance audit of the Management of the Detention Centre Contracts – Part A. It sets out the objective, scope and methodology of the audit and outlines the structure for the rest of the report.

Introduction

1.1 Under the *Migration Act 1958* (the Act), all unlawful non-citizens in mainland Australia must be detained and, unless they become lawful through the grant of a visa, they must be removed as soon as practicable. Mandatory detention applies to all types of unlawful non-citizens. This includes non-citizens who arrive legally and subsequently become illegal through overstaying their visa or breaching their conditions, and those who arrive in Australia without valid entry documentation. The legislative arrangements are discussed further in Chapter 2.

1.2 Unlawful non-citizens can be given ‘lawful status’ through the grant of a bridging visa. Bridging visas allow certain non-citizens to remain in the community, rather than in detention, while their immigration position is finalised.

1.3 The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) is responsible for administering immigration detention under the Act. In 1997 DIMIA contracted the provision of detention services at all mainland immigration detention facilities to Australasian Correctional Service (ACS).⁵ ACS managed the facilities through a sub-contract to its operational company, Australasian Correctional Management (ACM).⁶ Under the contract ACM provided detention services, including guarding and security, the provision of food and medical services, education and recreation, and escort and transportation services.

Audit objective and scope

1.4 The objective of the audit was to assess the effectiveness of DIMIA’s management of the detention centre contracts. The focus of the audit was the contract between DIMIA and ACM. In particular the ANAO examined:

⁵ The detention agreements also apply to Christmas Island and Cocos Island. However, these were not examined as part of the audit.

⁶ Although the contract is with ACS, services are delivered through ACS’s operational company ACM (which, in January 2004 changed its name to the GEO Group Australia). For ease of understanding, and to reflect operational realities, the contractor will be referred to as ACM throughout this report.

- DIMIA's strategic approach to the management and coordination of the contract;
- how DIMIA defined the services to be delivered by ACS;
- 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.

1.5 The audit examined DIMIA's management of the contract. Accordingly, the audit focused on assessing the specification of the services to be provided and how DIMIA assured themselves of the provision of those services. The audit did not look at, and therefore does not comment on, the quality of the services provided within the centres.

1.6 The audit examined the contract with ACM for the mainland detention centres open from February 1997 to February 2004, excluding Christmas Island. 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.

1.7 The ANAO also did not investigate allegations made against DIMIA or ACM of misconduct within the centres. Separate investigations of these allegations have been undertaken by the appropriate agencies.

Audit methodology

1.8 The audit methodology consisted of fieldwork in DIMIA offices (both Central Office and some regional offices), immigration detention facilities, and ACM Head Office. Within DIMIA, fieldwork included an examination of the procedures, guidelines and policies that govern the management of the detention centre contracts, and of relevant documentation and information systems associated with the management of the detention centre contracts. The ANAO also undertook an examination of the invoice payments against contract deliverables and the processes used by DIMIA to assure themselves that correct payments were being made.

1.9 The ANAO visited all five mainland detention facilities which were operational at the time of the audit⁷, as well as the Arthur Gorrie Correctional

⁷ Villawood (Sydney), Perth, Maribyrnong (Melbourne), Baxter (Port Augusta) and Port Hedland.

Centre⁸ used to house adult male detainees in Queensland. The ANAO conducted a number of interviews with DIMIA and ACM staff at the facilities. At ACM Head Office in Sydney, the ANAO examined procedures, guidelines and policies that govern the operations of the centres, as well as relevant documentation associated with the management of the contract with DIMIA.

1.10 The ANAO also visited Fulham Correctional Facility in Victoria and interviewed the staff⁹. As well, the ANAO held interviews with the Commonwealth Ombudsman, the Human Rights Commissioner and the Privacy Commissioner.

1.11 The ANAO did not conduct interviews with any of the detainees accommodated in the detention centres.

1.12 The audit was conducted in accordance with ANAO auditing standards at a cost of \$536 000.

⁸ DIMIA purchases places from the Queensland Government for detainees at this centre, which is run by ACM. The detainees are housed in a separate wing of the prison but are subject to the same operational conditions as the other prisoners.

⁹ Fulham Correctional Facility is operated by ACM through a contract with Victoria Corrections.

Report structure

1.13 The structure of the report is illustrated below.

Figure 1.1

Report Structure

Chapter 1 - Introduction <ul style="list-style-type: none">• Audit methodology• Audit scope• Audit objectives		
Chapter 2 - Background <ul style="list-style-type: none">• Statistical information• Legislative framework• Detention centres• Contract history		
Chapter 3 - Contracting for Detention Services <ul style="list-style-type: none">• Risk management and planning• Strategic planning• Coordination arrangements• Research		
Chapter 4 Contract Structure <ul style="list-style-type: none">• Statement of services to be provided• Performance measures• Contractual processes for communication• Contract variation and amendment	Chapter 5 Managing Contract Delivery <ul style="list-style-type: none">• Information collection• Information analysis• Performance monitoring• Managing underperformance	Chapter 6 Funding and payment processes <ul style="list-style-type: none">• Financial reporting• Procedures for payment• Profit sharing
Chapter 7 Detention Infrastructure <ul style="list-style-type: none">• Strategic management of infrastructure• Ownership of facilities• Minor new works• Repairs and maintenance	Chapter 8 Contract Renewal <ul style="list-style-type: none">• Contractual process• Negotiations• Transition planning	

Source: ANAO

2. Background

This chapter provides an overview of immigration detention, including the legislative framework, the detainee population, the detention facilities and a brief history of the detention services contract.

Legislative framework

2.1 Since 1994, the *Migration Act 1958* (the Act) has required that all non-citizens who are unlawfully in mainland Australia must be detained.¹⁰ The Act also requires that an unlawful non-citizen, unless they are granted permission to remain in Australia, they must be removed as soon as practical.¹¹

2.2 The Minister for Immigration and Multicultural and Indigenous Affairs (the Minister) has additional responsibilities for unaccompanied children under the *Immigration (Guardianship of Children) Act 1946* (IGOC Act). The IGOC Act confers legal guardianship for certain unaccompanied children on the Minister, which gives the Minister certain rights and powers. The Minister has delegated most of his/her guardianship powers and functions to DIMIA managers and deputy managers in each detention facility, and to various officers of the State or Territory departments responsible for child welfare.

2.3 Immigration detention is characterised as administrative, rather than punitive, in nature.¹² The Act requires that unlawful non-citizens be detained until they are granted a visa or removed/deported from Australia. Immigration detention has no fixed cessation date, although a detainee may request to be removed at any time.

2.4 DIMIA advised that it seeks to ensure that people in detention are able to have as normal a life as is possible given the circumstances, and that family groups remain together, as far as possible. Although the Act prohibits work or vocational education, voluntary activities for a nominal reward¹³ and adult learning classes are available. All detainees have access to excursions and external schooling is available to most children. The majority of detainees have shared ablution and recreation facilities, and cannot cook their own meals.

¹⁰ Section 196 of the Act.

¹¹ Section 198 of the Act.

¹² *Chu Kheng Lim v Minister of Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1.

¹³ Discussed further in Appendix 1.

Detainee population

Categories of immigration detainees

2.5 There are three broad categories of unlawful non-citizens who are required to be detained under the Act.

- Persons whose visas have expired. These are located by DIMIA or other law enforcement agencies in the community. The majority are granted a bridging visa and make their own arrangements for immediate departure. Those who do not or cannot depart immediately are liable to be detained.¹⁴
- People whose visas have been cancelled, or have ceased by operation of law.¹⁵
- Unauthorised arrivals, who are people who have entered Australia illegally without a visa (by boat or air).

2.6 Unlawful non-citizens may become lawful if they are granted a bridging visa. Bridging visas are used while an application for a substantive visa is being processed, or while arrangements are made to leave Australia. Access to bridging visas is limited for unauthorised arrivals. Bridging visas may also be granted to non-citizens held in correctional facilities.

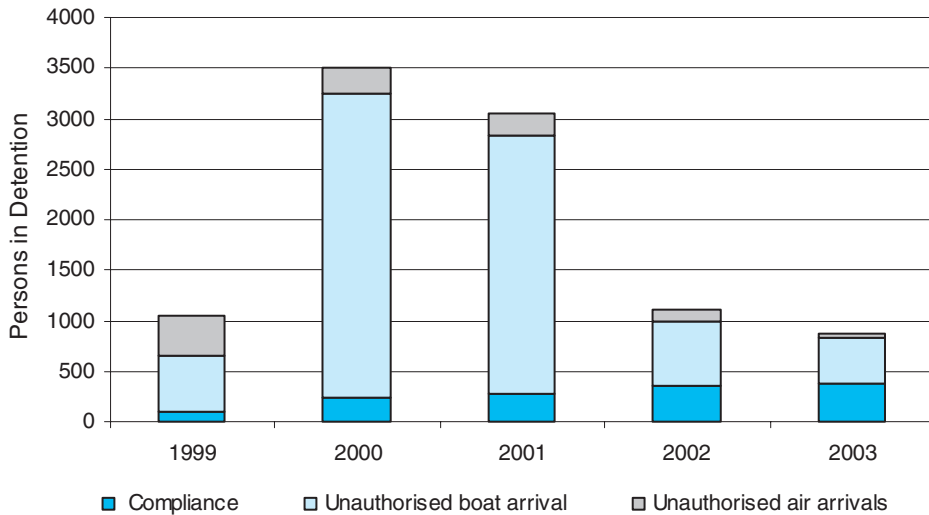
2.7 Detainees may apply for certain substantive visas, and DIMIA gives priority to processing applications from people in detention. Detainees whose applications are unsuccessful at the primary stage may seek full merit review through the Refugee Review Tribunal (RRT) or the Migration Review Tribunal (MRT). If unsuccessful, detainees can, and often do, seek judicial review of decisions in relevant courts. The Minister also has limited public interest discretions available to substitute a decision of a review tribunal with a more favourable decision.

Numbers in detention

2.8 Detainee numbers are variable. Not only do the overall numbers of detainees change over time but the type of detainees also change. Figure 2.1 depicts the total number of detainees at 30 June of each year since 1999, divided into visa cancellations/expirations (compliance), unauthorised boat arrivals and unauthorised air arrivals.

¹⁴ Referred to generally and throughout this report as ‘compliance cases’.

¹⁵ Also known as ‘compliance cases’.

Figure 2.1**Persons in detention at 30 June**

Source: ANAO analysis of DIMIA data.

2.9 Not all detainees are unauthorised arrivals, but any change in the numbers of unauthorised arrivals has been the single most important factor in determining the numbers in immigration detention over the life of the contract. While the numbers of overstayers and visa cancellations has varied for a variety of reasons (discussed below) the greatest fluctuations in detainee numbers occurred as a result of fluctuations in the number of unauthorised arrivals.

2.10 Figure 2.2 illustrates the number of persons in detention since 1989. The peak in the overall numbers in detention represented in this graph, coincides with the peak of unauthorised boat arrivals in 1999–00 and 2000–01. The increase in boat arrivals represented a ten-fold increase on numbers from the early 1990s.

Figure 2.2

Number of persons in detention, December 1989—March 2004



Source: ANAO analysis of DIMIA data.

2.11 The overall decrease in the number of persons in detention has been assisted by the absence of unauthorised boat arrivals within the Australian migration zone since the arrival of a boat at Christmas Island on 22 August 2001. On 1 July 2003, a boat from Indonesia was intercepted within the migration zone and the passengers were taken to Christmas Island for processing.

Factors influencing the nature and number of the population

2.12 A variety of factors can affect the number and nature of people in detention. External factors, for example, conflict or economic decline in a region, can increase both the number of non-citizens seeking to arrive in Australia unlawfully, and the number of non-citizens already in Australia who remain and/or work without authorisation. Changes in Australian migration policy, some of which are listed below, and the compliance activities undertaken by the department also affect the number and nature of the detainee population.

September 2001 excision

2.13 Laws in force from 27 September 2001 deem certain islands off Australia's mainland to be 'excised offshore places'. The enactment of this legislation provides different arrangements for unlawful entrants who enter Australia's migration zone at these places. If an unlawful non-citizen arrives at an excised offshore place, the legislation prohibits them from making a valid

application for an Australian visa. Any unlawful non-citizen arriving at an excised offshore place is re-located to a declared country (currently Papua New Guinea [PNG] and Nauru). This has significantly reduced the number of new unauthorised boat arrivals in mainland immigration detention facilities.

Ex-prisoners

2.14 Non-citizens who are convicted of a crime in Australia, and are imprisoned for greater than 12 months, may have their visa cancelled. For example, by having their visa cancelled for failing to meet the character requirements in section 501 of the Act. As a consequence, after completing their sentence they become unlawful non-citizens who must be detained and removed. Before 2001, these people generally remained in a state correctional facility until removed from Australia.

2.15 However, a meeting of the State Corrective Services Ministers on 26 June 2001 resolved to advise the Commonwealth that the jurisdictions will not accept DIMIA detainees who have not been charged with a criminal offence, unless there are exceptional circumstances. The Ministers also resolved that, from 31 October 2001, jurisdictions will hold potential deportees whose sentences are completed for three months from the date they complete their sentence, unless there are 'exceptional circumstances'. This has resulted in an increased number of potentially high-risk detainees in detention facilities.¹⁶

Length of detention

2.16 The Act does not specify an explicit length of time a detainee is to be held, although detainees can generally be removed from Australia at their own request at any time. There are two main factors influencing the length of time a person remains in detention: the time taken to make and review the visa decision; and the ease or difficulty of removing a person from Australia.

2.17 For unauthorised boat arrivals, processing times will have a direct impact on the length of time people spend in detention. During the time of peak unauthorised boat arrivals in 1999–2001, there was pressure on DIMIA's processing capability. In 2000, DIMIA established a Boats Taskforce to address the need for streamlined processing and increased the number of protection visa decision makers.

2.18 By mid 2001, the time taken for the department to process protection visa applications for 80 per cent of applicants had decreased from an average of seven and a half months to twelve and a half weeks. This improvement in processing visas was achieved in the 12-month period when around 4400 temporary protection visas were granted.

¹⁶ Appendix 2 provides a case study of a potentially high-risk detainee.

2.19 By the end of 2001, the significant reduction in processing times meant there was greater throughput in detention facilities. Many detainees were in facilities for a short period and then released into the community on a visa.

- in 1999–2000, 790 temporary protection visas were granted;
- in 2000–2001, this had increased to 4382.

2.20 However, for many detainees in the general population, the length of time in detention may be more directly related to the choice to pursue appeals through the courts. The timetable of the Courts may mean that the period of time to resolve the appeals is extended. A detainee is not available for enforced removal until after DIMIA have finalised the primary visa decision and any subsequent appeal process. This includes merit review by the Administrative Appeals Tribunal (AAT), Refugee Review Tribunal (RRT) or the Migration Review Tribunal (MRT), and any application for judicial review by the Federal or High Court.¹⁷ There has been an increase in applications to the Federal Court for review of RRT or MRT decisions over the past few years. Figure 2.3 summarises the number of detainees with matters before the courts.

Figure 2.3

Number of detainees with outstanding legal matters as at 17 March 2004

	AAT	Full Magistrates Court	Federal Court	Full Federal Court	High Court	Other	Total
NSW	3	21	33	15	11	4	87
QLD	0	0	1	0	1	1	3
SA	1	4	20	10	26	4	65
VIC	4	8	11	6	4	1	34
WA	3	8	28	11	50	1	101
Total	11	41	93	42	92	11	290

Source: DIMIA.

2.21 In October 2001, a privative clause was added to the Act in an attempt to limit the ability of the courts to conduct judicial review of visa related decisions. The effect of this clause was significantly limited by a decision of the High Court in February 2003.¹⁸ As a result, detainees can conduct court

¹⁷ Section 153 of the Act provided that DIMIA can remove an unlawful non-citizen with active court proceedings, unless a court has specifically ordered that this not occur. As a matter of policy, DIMIA does not remove persons seeking judicial review except in exceptional circumstances.

¹⁸ Plaintiff S157/2002 v Commonwealth of Australia [2003] HCA 2 (4 February 2003).

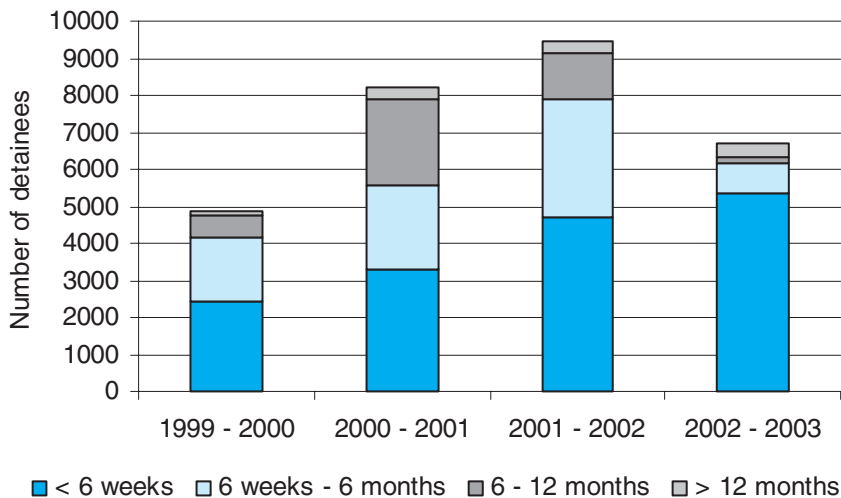
challenges to avoid deportation or removal, significantly increasing the length of time spent in detention. In 2002–03, the Federal Magistrates Court and the Federal Court took approximately 5.3 months on average to resolve migration appeals.

2.22 The other main influence on the length of time spent in detention is the time taken to remove a detainee after the visa process, and appeals, are finally determined. There can be difficulties in identifying a detainee, or obtaining travel documents that will be accepted by the destination country. Detainees who refuse to cooperate with the removal process can also significantly add to the time required for a removal. DIMIA has negotiated memoranda of understanding with some countries to facilitate removal procedures.

2.23 Figure 2.4 portrays the length of time spent in detention by financial year since 1999–2000, for people who were removed or released during that financial year. The majority of detainees removed within six weeks are compliance cases, whereas the majority of those who have been in detention for more than 12 months are unauthorised boat arrivals.

Figure 2.4

Number of detainees, by length of time in detention before release or removal and year of release or removal 1999–2000 to 2002–2003



Source: ANAO analysis of DIMIA data.

Places of immigration detention

Detention centres

2.24 DIMIA operate two different types of detention centres. Immigration detention centres are generally located in urban areas and mainly accommodate overstayers, people in breach of their visa conditions or people refused entry at airports. The majority of people detained at these centres will only be held for short periods as their removal or immigration status can be quickly finalised. Immigration Reception and Processing Centres (IRPC) are primarily used to house unauthorised boat arrivals. People detained in these centres are usually held for longer periods as the determination of the immigration status or the arrangements for their removal from Australia can be more complex. As discussed above (paragraph 2.8) detainee populations are variable. Changes in the number and type of detainee will affect the population of the individual centres. Appendix 3 illustrates the changes in total population at the operational centres over the life of DIMIA's contract with ACM.

2.25 Immigration Detention Centres (IDC) are located in Melbourne (Maribyrnong), Sydney (Villawood) and Perth. There are currently Immigration Reception and Processing Centres at Port Hedland¹⁹ (Western Australia) and at Baxter²⁰, near Port Augusta (South Australia). During the life of the contract with ACM, IRPCs were opened at Woomera (South Australia) and Curtin (near Derby, Western Australia). These centres have now been mothballed. A new immigration reception and processing centre is being constructed on Christmas Island. There is also a temporary facility located on Cocos Island.

2.26 Queensland does not currently have any dedicated immigration detention facilities. According to DIMIA, the largest group of unlawful non-citizens in Queensland is made up of illegal workers in rural areas. Detainees are held in a prison (primarily a dedicated wing of the Arthur Gorrie Correctional Centre in Brisbane), placed in the city watch house, in local motels (for women and children) or transferred to an interstate facility. DIMIA has obtained government approval to build a 200-bed immigration detention centre in Queensland, and has selected a preferred site and a preferred design consultant.

¹⁹ The ANAO notes the announcement in the 2004–05 budget that Port Hedland IRPC will be mothballed. In May 2004, action was underway to decommission and mothball the Port Hedland detention facility and residential housing project.

²⁰ The term Immigration Detention Facility (IDF) applies to Baxter and identifies the possibility that the facility could be used to detain all categories of immigration detainees. However, at the time of the audit, the population at Baxter was a majority of unauthorised boat arrivals.

2.27 Tasmania and the Northern Territory do not have immigration detention facilities, although a facility has previously been proposed for Darwin. Unlawful non-citizens in Tasmania and the Northern Territory are held in police watch houses or alternative accommodation, or moved to a detention facility interstate before being removed from Australia.

2.28 During the life of the contract there were women and children detainees in Residential Housing Projects at Woomera, Port Augusta and Port Hedland. The facilities at Woomera and Curtin were commissioned in 1999 in response to the sharp increase in unauthorised boat arrivals. Contingency facilities were developed in Darwin (HMAS Coonawarra), and near Singleton (New South Wales), but did not become operational. Operating dates for the detention facilities are shown in Figure 2.5 below.

Figure 2.5

Detention centres operational during the contract period

	Detention facility	1997	1998				1999				2000				2001				2002				2003			
		Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
1	Villawood IDC																									
2	Maribyrnong IDC																									
3	Perth IDC																									
4	Port Hedland IRPC																									
5	Curtin IRPC																									
6	Woomera IRPC																									
7	Cocos Island																									
8	Christmas Island																									
9	Woomera Residential Housing Project																									
10	Baxter IDF																									
11	Port Augusta RHP																									
12	Port Hedland RHP																									

Source: ANAO from DIMIA data.

2.29 The detention facilities vary greatly in design and age. Figure 2.6 provides a summary of the facilities.

Figure 2.6

Overview of design and age of detention facilities

Immigration Detention Facility	Date built	Description	Maximum capacity
Villawood – Stage 1	1976	Dormitory accommodation	72
Villawood – Stage 2	1960	Hostel style accommodation – Originally Westbridge Migrant Centre constructed circa 1920	200
Refurbished Villawood – Stage 1	1999	Dormitory and Hostel accommodation	112
Refurbished Villawood – Stage 2	2000	Hostel style accommodation	400
Villawood – Stage 3	2001	Hostel style accommodation	180
Maribyrnong	1966	Hostel style accommodation – purpose built as a detention facility	80
Perth	1981	Hostel style accommodation – purpose built detention facility	64
Port Hedland	1960s	Hostel style accommodation – accommodation originally used as BHP miners' quarters	820
Baxter	2002	Hostel style accommodation – Mix of new and second hand demountable accommodation, purposed designed for immigration detention	1200
Woomera	1999	Second hand demountable buildings – purpose designed for immigration detention. Closed in April 2003	1200
Curtin	1995	Originally RAAF base. From September 2002 no longer used as an Immigration Detention Centre.	800

Source: ANAO from DIMIA data.

Alternative places of detention

2.30 The Act requires that an unlawful non-citizen must be kept in immigration detention. While most detainees are placed in immigration detention centres, in certain circumstances, DIMIA may consider alternative arrangements for some detainees. Under section 5 of the Act, immigration detention can be maintained by individuals either being:

- in the company of, and restrained by, an officer, or another person directed by the Secretary (a 'designated person'); or

- being held by, or on behalf of an officer, in an immigration detention centre or various other places, including any place approved by the Minister in writing.

2.31 Alternative places of detention provide some flexibility to meet practical and special needs relating to immigration detainees. Alternative places of detention range from Residential Housing Projects (RHP) established by the department through to motels where, for example detainees may spend one night while on transit to a detention facility or awaiting removal from Australia. The first RHP was established as a trial in August 2001 in the Woomera township. The initial trial established family-style accommodation in the township for up to 25 women and children. Further RHP's were established in 2003 at Port Hedland and at Port Augusta. The RHP at Woomera has also been expanded and subsequently mothballed in December 2003.

2.32 A range of alternative detention options have been explored and introduced since the commencement of the detention services contract. In December 2002, the alternative detention arrangements for unaccompanied minors, women and accompanied children were formalised in departmental procedures. Consideration of more formal arrangements for alternative detention in the community, with the assistance of community organisations, has also been progressed from 2003.

Detention contract history

Australian Protective Services

2.33 Until the end of 1997 the security at Australia's detention facilities was managed on behalf of DIMIA by Australian Protective Services (APS), a federal 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.

ACM contract

2.34 In 1997, 17 companies were invited to prepare a proposal to provide immigration detention services. Five proposals were lodged. In February 1998, the provision of detention services was formally contracted to Australian Correctional Services Pty Ltd (ACS). DIMIA advised that the detention agreements were initiated in response to the whole of Government approach to service delivery enunciated in the then National Commission of Audit (1996). For the first time, detention service delivery requirements were formally documented. At the time the request for proposal was released it was

envisioned that the contract would operate at a cost of around \$14 million and serve approximately 700 detainees, mainly compliance cases.

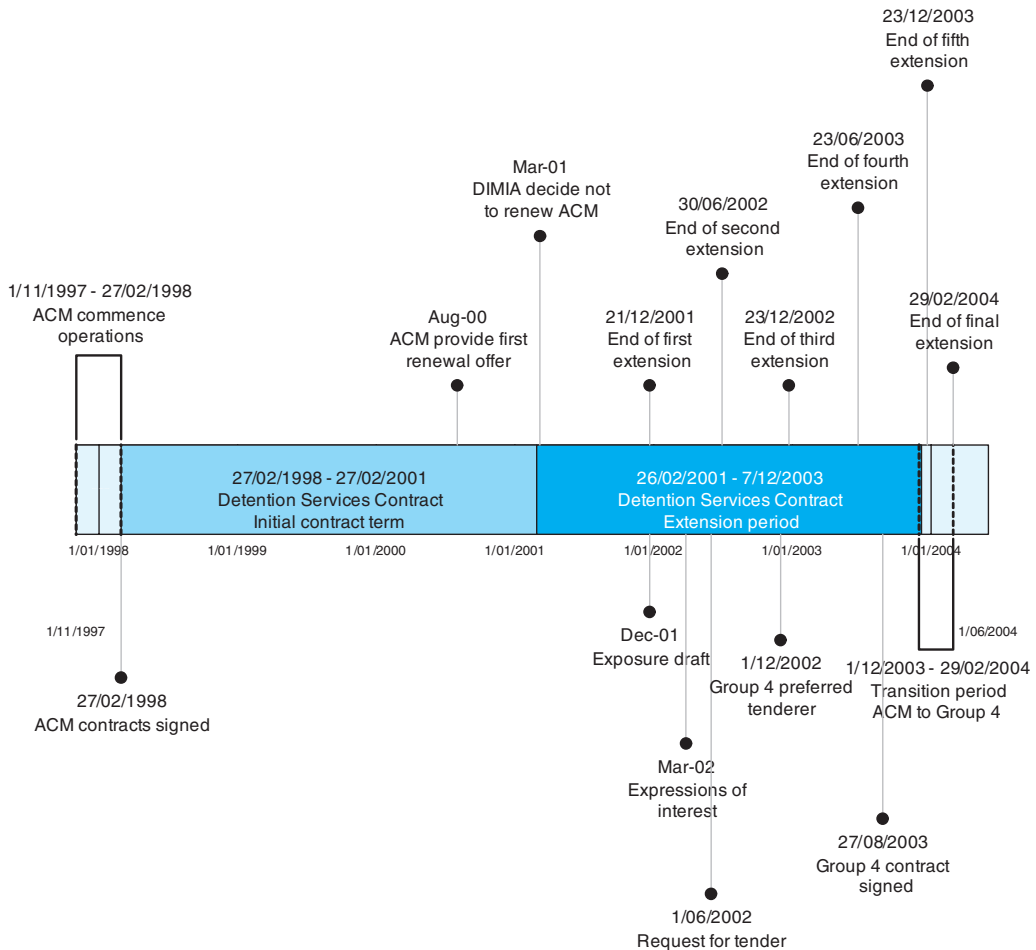
2.35 ACS and DIMIA entered into a 10 year General Agreement, which defines the general relationship between ACS and the Commonwealth. Under the umbrella of the general agreement, ACS entered into a detention services contract for the facilities Port Hedland, Villawood, Maribyrnong and Perth. Supplementary agreements were established for Woomera, Curtin, Baxter and Christmas Island. DIMIA and ACS also entered into an occupation licence agreement, authorising ACS to use immigration detention facilities.

2.36 ACS managed the facilities through a sub-contract to its operational company ACM.²¹ The detention services contract was initially for three years, but was extended as a result of negotiations with ACM, a tender process, negotiations with the preferred tenderer and the formal contract transition period. DIMIA's stated approach to the contracting out of detention and transport services was to enter into a 'strategic alliance' with ACS rather than a strictly contract driven relationship.²²

2.37 Details of the history of the Detention Services Contract between DIMIA and ACM is illustrated by the following timeline:

²¹ Although the contract is with ACS, services are delivered through ACS's operational company ACM (which, in January 2004 changed its name to the GEO Group Australia). For ease of understanding, and to reflect operational realities, the contractor will be referred to as ACM throughout this report.

²² Foreword to the General Agreement.

Figure 2.7**Detention services contract timeline**

Source: ANAO from DIMIA and ACM data.

New contract

2.38 On 22 December 2002, DIMIA announced that Group 4 Falck Global Solutions Pty Ltd (Group 4) was the preferred tenderer, and commenced negotiations with them in January 2003. The new Detention Services Contract between DIMIA and Group 4 was signed on 27 August 2003. Following the signing of the contract Group 4 was renamed Global Solutions Limited—Australia (GSL). Immigration detention facilities were transferred to GSL over a period of three months, commencing 1 December 2003. The transfer of facilities to GSL was completed on 29 February 2004.

Detention costs

2.39 Payments to ACM for detention services have been approximately \$500 million over the life of the contract,²³ not including the cost of repairs and maintenance, new infrastructure and use of consultants. This amount does not include the cost of managing the contract.

2.40 During the life of the contract, the number of DIMIA staff working on immigration detention has increased, in response to the sharp increase in unauthorised boat arrivals. In 1997-98, the detention sub-program reported an actual staffing number of 15.²⁴ At the time of the audit, there were approximately 150 DIMIA staff working on detention. DIMIA also advised that resourcing steadily increased, in response to additional infrastructure requirements, and increasingly more complex detention management issues.

2.41 There is provision in the Act²⁵ to recover detention costs from detainees, at an amount not to exceed the cost to the Commonwealth. A daily amount for each Immigration Detention Facility is fixed by the Minister. People who are found to be refugees are not subject to these charges. Although there is provision in the Act to recover these debts by selling a detainee's assets, normally the debts are only enforced if a person later seeks to enter Australia lawfully.

Public interest and review

2.42 Since 1997, immigration detention has been the subject of external reviews and public scrutiny. International bodies such as the United Nations High Commissioner for Refugees and the United Nations working group on Arbitrary Detention have access to the centres. Relevant reviews, and a brief description, are summarised in Appendix 4. Specific complaints, made by or on behalf of individuals in detention, are made directly to DIMIA, the Commonwealth Ombudsman, or the Human Rights Commissioner. In addition, the Immigration Detention Advisory Group was created in February 2001 to advise the Minister on the appropriateness and adequacy of services, accommodation and amenity at immigration detention facilities.

²³ This figure includes payments related to the detention services provided at Christmas Island and Cocos Island.

²⁴ DIMIA Annual Report 1997-98 Sub-program 2.2 Detention.

²⁵ Subsection 208(1).

3. Contracting for Detention Services

This chapter provides an overview of DIMIA's contracting for detention services. Topics examined include the intended contractual outcomes expected, risk management, planning and research into immigration detention.

Introduction

3.1 The Government indicated in the 1996–97 Budget Papers that it would be moving to competitive tendering for the provision of immigration detention services. In April 1997, DIMIA issued a request for proposal for the provision of the required services.

3.2 Prior to November 1997, the Australian Protective Service (APS), an agency within the Attorney-General's portfolio, provided all custodial services relating to detainees through a contract with DIMIA. DIMIA exercised overall control of the Port Hedland Immigration Reception and Processing Centre (IRPC) and immigration detention centres (IDCs) through a centre manager and other support staff. DIMIA contracted directly for catering and linen services for the Port Hedland centre, and arranged service delivery through the APS for all other locations. The APS did not submit a proposal to provide services in the 1997 request for proposal.

3.3 In February 1998, DIMIA entered into a whole-of-service contract with Australasian Correctional Services Pty Ltd (ACS) for the provision of detention and transport services (including removal of illegal non-citizens from Australia). ACS provided services through its operational arm, Australasian Correctional Management Pty Ltd (ACM).²⁶

3.4 ACM commenced operations on 15 November 1997²⁷, although the contract was not formally signed until 27 February 1998.²⁸ At that time, there were four dedicated detention facilities: Villawood (Sydney), Maribyrnong (Melbourne), Perth and Port Hedland (Western Australia). The Villawood, Maribyrnong and Perth centres were, and still are, used mainly for compliance

²⁶ Although the contract is with ACS, services are delivered through ACS's operational company ACM (which, in January 2004 changed its name to the GEO Group Australia). For ease of understanding, and to reflect operational realities, the contractor will be referred to as ACM throughout this report.

²⁷ ACS commenced operations at Villawood on this date, followed by Maribyrnong on 15 December 1997, and Perth and Port Hedland on 22 December 1997.

²⁸ The circumstances of contract formation are discussed in more detail in Chapter 2.

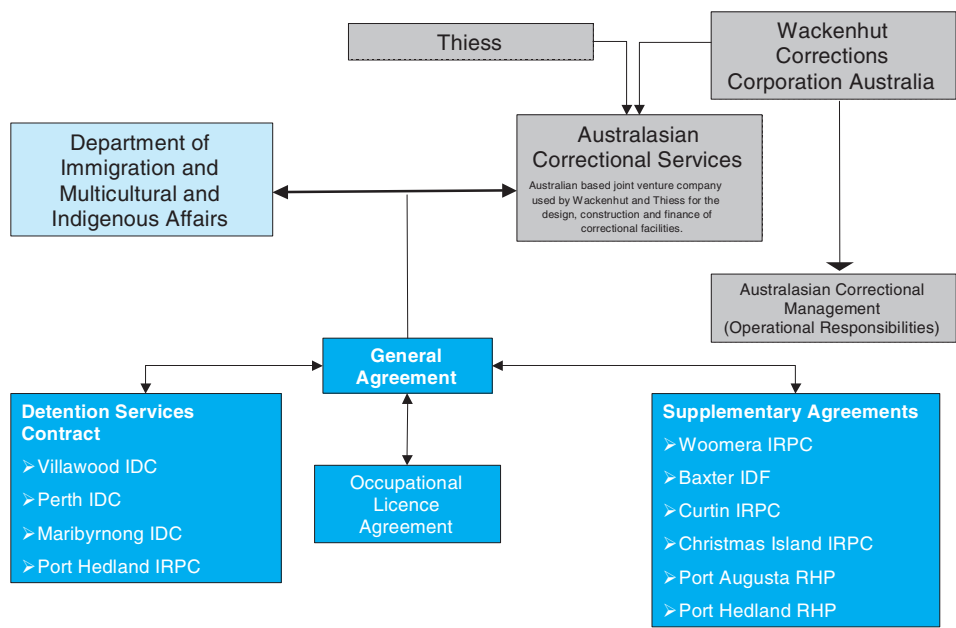
cases.²⁹ The Port Hedland centre was, and still is, used primarily for unauthorised boat arrivals.³⁰

Contract structure

3.5 The detention contract was between the Commonwealth of Australia (the Commonwealth) and ACS. ACS has relationships with other corporate entities and the relevant structures are shown in Figure 3.1.

Figure 3.1

Detention contract structure



Source: ANAO based on DIMIA and ACM information.

3.6 ACS is a joint venture between Wackenhut Corrections Corporation Australia and Thiess Pty Ltd. Thiess was involved because the original proposal contemplated infrastructure development. ACS also had a

²⁹ Visa overstayers and others who arrived lawfully in Australia but have subsequently been found to be in breach of their visa conditions.

³⁰ Immigration detainees are also held at the Arthur Gorrie Correctional Centre in Brisbane. DIMIA has an agreement with the Queensland State Government, which has contracted the management of this facility to ACM.

relationship with Pacific Rim Employment Pty Ltd³¹ (not shown above) to staff the immigration detention facilities.

3.7 The contract consisted of a General Agreement, which describes the relationship between the parties and the general terms and conditions. Under the umbrella of the General Agreement, there was a Detention Services Contract for the original four facilities, and an Occupational Licence Agreement providing the contractor with the authority to conduct operations on Commonwealth property. There were also Supplementary Agreements for the detention centres at Woomera, Baxter, Curtin, Christmas Island and the residential housing projects at Port Augusta and Port Hedland.

3.8 The General Agreement is for 10 years³², and continues even though ACS no longer provides the detention services. The Detention Services Contract, Occupational Licence Agreement and Supplementary Agreements were scheduled to terminate on 22 December 2000, but have been extended six times to allow for the renegotiation, re-tender and transition to a new service provider.³³ All agreements (except the General Agreement) were terminated on 29 February 2004.

3.9 The services to be delivered by ACM are found in various places in the contractual framework. The General Agreement provides broadly for the delivery of a detention service, which is defined to mean a service relevant to the Australian immigration detention and removal function, which the contractor provides under a service contract. In determining the respective roles of the General Agreement and subsequent Detention Services Contract, the General Agreement states that each service contract is to describe the nature of the service to be provided by the contractor.

Intended contractual outcomes

3.10 The overall objective of the General Agreement was to deliver high quality detention services with ongoing cost reductions. Contracting out detention services also provided an opportunity to replace the previous service delivery arrangements, and formalise detention service requirements into a set of principles and standards. DIMIA advised the ANAO that it considered this approach to be a significant step forward from where it was in 1996. DIMIA's approach to the contract is outlined in the General Agreement as follows:

the Commonwealth wishes to enter into a long term relationship with the Contractor for the provision of Services under separate Services Contracts, and

³¹ Pacific Rim Employment Pty Ltd is a wholly owned subsidiary of Wackenhut Corrections Corporation Australia.

³² Commencing from the date it was signed; 27 February 1998.

³³ See the timeline in Chapter 2.

each party enters into this Agreement as a commitment between both Parties to communicate and work together in an open and cooperative manner towards the shared goal of providing high quality Services with ongoing cost reductions.

3.11 The Detention Services Contract required ACM to provide detention services in accordance with the Immigration Detention Standards and maintain the detention facilities. Detention services were defined as:

.... to encompass all that is required to provide care and security for detainees from the point of transfer of a detainee from the Commonwealth to the Contractor to completion of removal or release from Detention.³⁴

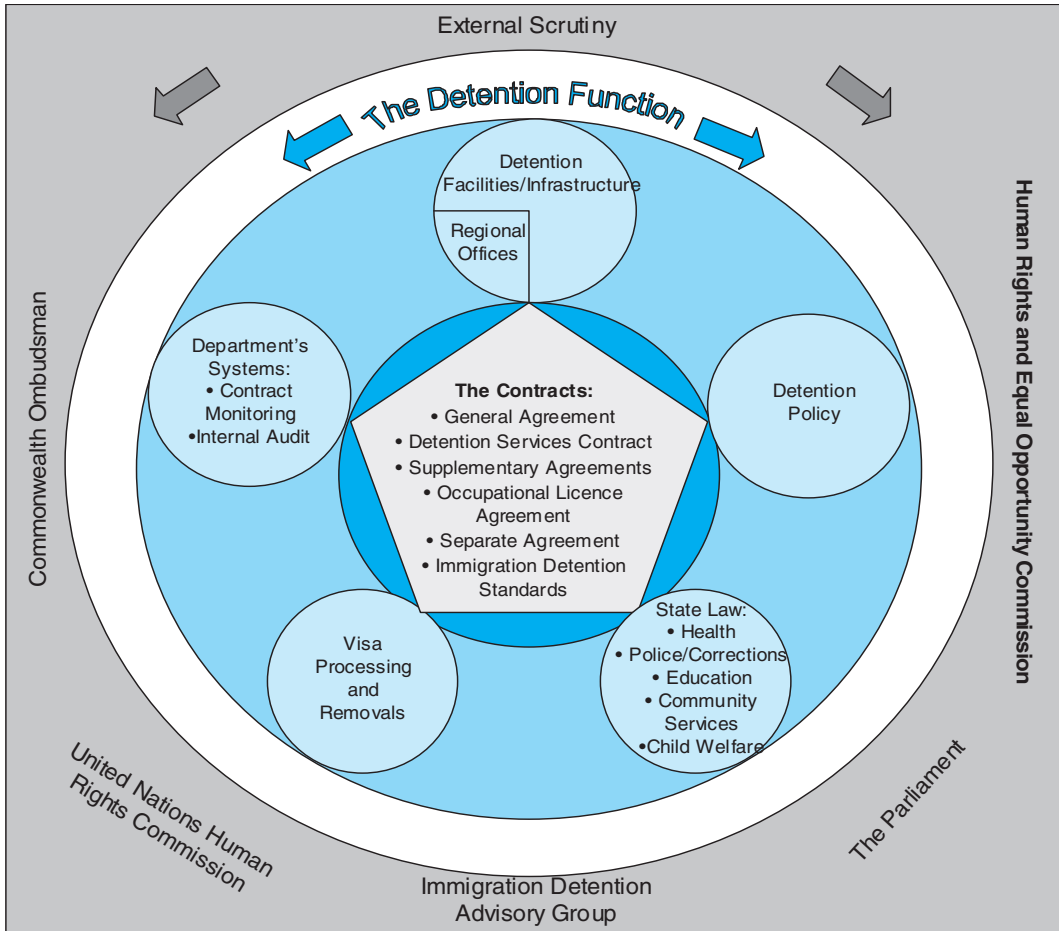
3.12 In practice, detention services include transport services, guarding, interpretation and translation, catering, cleaning, education, welfare, health services, escort or transport services, and any other service necessary to enable delivery of detention services in accordance with the Immigration Detention Standards (discussed in more detail in Chapter 4).

3.13 Under the DIMIA-ACS General Agreement, a variety of factors lead to a complex legal and administrative framework for contracted services. Relevant factors are that:

- key deliverables under the contract are governed by state legislation covering health, police, education and community services;
- provision of services is required for people of different cultures;
- in the Immigration Reception and Processing Centres there is direct management through central office, while in the Immigration Detention Centres, management is coordinated through DIMIA's regional (state) office structures;
- there are both short and long stay detainees made up of single males and females as well as family groups; and
- there is a high level of public scrutiny.

3.14 Figure 3.2 shows the key elements of this environment.

³⁴ Section 3.1.1(a) of the General Agreement.

Figure 3.2**Detention contract environment**

Source: ANAO based on DIMIA information.

3.15 Against this backdrop, the ANAO examined DIMIA's approach to managing key aspects of its contract with ACM including the links to external agencies and internal decision-making. Specifically, the ANAO considered the following questions:

- Were the risks associated with contracting out detention services identified, documented, analysed, evaluated, treated and monitored?
- Was there a strategy that described the means by which the objectives of the contract were to be achieved?
- Did DIMIA establish coordination arrangements with external agencies?

- Were DIMIA's internal coordination arrangements for contract management adequate?
- Did DIMIA conduct research into immigration detention?

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

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.

Risk management

3.16 A range of benefits was expected from outsourcing detention services, including ongoing cost reductions and the provision of high-quality services. However, the transfer of service delivery from the public sector to the private sector, with the signing of the ACM contract in 1998, required a new suite of risks to be considered. DIMIA advised the ANAO that the contract itself was a response to the risks involved with the previously fragmented service delivery arrangements, which had no statements of requirement.

3.17 In contracting out detention services, DIMIA would have been expected to prepare for the new purchaser-provider relationship by, for example:

- identifying and documenting the risks involved in possible events or actions;
- analysing the underlying causes of identified risks to assist measurement and treatment;
- measuring the likelihood and consequences of the risks identified;
- putting in place treatments to reduce the risks, including an estimate of the likely costs of mitigation activities; and
- implementing procedures for monitoring and reviewing the effectiveness of the treatments and ongoing identification of changes to the risk profile.

3.18 There were inherent risks involved in transferring detention services wholly to the private sector, and other risks have emerged over the life of the contract. These risks are summarised in Figure 3.3.

Figure 3.3

ANAO abridged risk analysis of the detention function

Risk	Nature of the risk	Action to be taken in respect of Risks	✓ = satisfactory ✗ = not satisfactory P = partially satisfied	ANAO comment
Program integrity (Compliance with the Act)	Inherent in transferring services to the private sector.	Identified	✓	DIMIA has identified and acted to address major risks to program integrity over the life of the contract by providing additional detention facilities/capacity at Curtin, Woomera, Baxter and Christmas Island, as and when required. However, DIMIA has not formally documented the risk and, as a result, analysis and evaluation tends to be conducted on an informal (non-recorded) basis within the department.
		Documented	✗	
		Analysed	P	
		Evaluated	P	
		Treated	✓	
		Monitored	✓	
Mixed expectations	Inherent in the provision of detention services.	Identified	✓	Government, citizens and other stakeholders all expect different results from government contracting in general. Public policy advocates, interest groups and other stakeholders have additional, and potentially incompatible, expectations for the contracting out of detention services. DIMIA has responded to those risks through increased resourcing of the detention function and establishing a 'public scrutiny' section in the Unauthorised Arrivals and Detention Division. ³⁵
		Documented	✗	
		Analysed	P	
		Evaluated	✗	
		Treated	✓	
		Monitored	P	

³⁵ The public scrutiny section is discussed in more detail in Chapter 5.

Risk	Nature of the risk	Action to be taken in respect of Risks	✓ = satisfactory ✗ = not satisfactory P = partially satisfied	ANAO comment
Legislative overlap	Inherent in detention services.	Identified	✓	Providing detention services under contract is subject to the provisions of the common law and to specific state legislation dealing with health, education, police services, child protection, youth and community affairs and occupational health and safety. These establish a complex legal framework with additional responsibilities and potentially conflicting requirements. DIMIA has managed this risk through increased resourcing and focus on the legal framework and through establishing Memoranda of Understanding (MOUs), although most remain unfinished (see Figure 3.5).
		Documented	P	
		Analysed	✓	
		Evaluated	✗	
		Treated	✓	
		Monitored	✓	
Fragmented accountability	Inherent in geographically dispersed service delivery.	Identified	P	There are few formal arrangements between state offices, which are responsible for contract management at detention centres, and Central Office, which directly controls the reception and processing centres. Coordination arrangements are discussed in more detail at paragraph 3.42.
		Documented	P	
		Analysed	✗	
		Evaluated	✗	
		Treated	P	
		Monitored	✗	
Change in detainee profile	Inherent, but especially apparent from 26 June 2001. ³⁶	Identified	✓	The detainee profile has changed over time. Although the analysis has not been formally documented, the department has acted to construct additional management units at most centres and Residential Housing Projects. Substantial numbers of detainees of character concern have been released into immigration detention. However the audit found there was no formal mechanism to deal with this risk, nor with parole conditions (see case study at Appendix 2).
		Documented	✗	
		Analysed	✗	
		Evaluated	P	
		Treated	✓	
		Monitored	✗	

³⁶ The State Corrective Services Ministers' meeting of 26 June 2001 resolved to advise the Commonwealth that the jurisdictions will not accept DIMIA detainees who have not been charged with a criminal offence, unless there are exceptional circumstances. Further, from 31 October 2001, jurisdictions will hold potential deportees whose sentences are completed only for three months from the date they complete their sentence, unless there are 'exceptional circumstances'.

Risk	Nature of the risk	Action to be taken in respect of Risks	✓ = satisfactory ✗ = not satisfactory P = partially satisfied	ANAO comment
Impact of detention infrastructure on other DIMIA operations	Inherent	Identified	P	The major metropolitan centres of Melbourne, Perth and Brisbane have limited access to detention infrastructure. This affects compliance operations in those states and represents a risk to program integrity. The long-term detention strategy proposes construction of new facilities to address this risk.
		Documented	P	
		Analysed	✓	
		Evaluated	✗	
		Treated	P	
		Monitored	✗	
Suitability of detention infrastructure	Inherent/ Emerged over time.	Identified	P	Significant sections of detention infrastructure have deteriorated over time. Additional centres were added, as required at Baxter, Curtin, Woomera and Christmas Island. However, no standards for detention infrastructure have been developed (see Chapter 7 for detailed discussion of detention infrastructure).
		Documented	P	
		Analysed	✗	
		Evaluated	✗	
		Treated	P	
		Monitored	P	
Contraband and Crime in the centres	Inherent, and drugs have emerged over time.	Identified	✓	DIMIA has recognised the risk and is progressively introducing a range of initiatives, including more consistent entry regimes, additional management units, installing x-ray machines at all facilities, and engaging with police authorities to clear centres of drugs.
		Documented	✗	
		Analysed	✗	
		Evaluated	✗	
		Treated	✓	
		Monitored	✗	
Risk of detainee inactivity.	Inherent limitation in the Act.	Identified	✓	The Act specifically prohibits work and vocational education for adults in immigration detention. ACM operated a reward scheme for detainees to earn points through meaningful activities (see Appendix 1). However not all detainees could participate in the scheme. DIMIA has also increased the focus of monitoring efforts to ensure recreational and educational programs are provided in the centres.
		Documented	✗	
		Analysed	✗	
		Evaluated	✗	
		Treated	P	
		Monitored	✗	

Source: ANAO analysis of DIMIA data.

3.19 As highlighted in Figure 3.3, DIMIA acted appropriately to deal with risks to program integrity as they materialised. The ANAO noted that DIMIA also covered other risks through operational risk plans being completed by ACM, and contingency planning for major events and further boat arrivals.

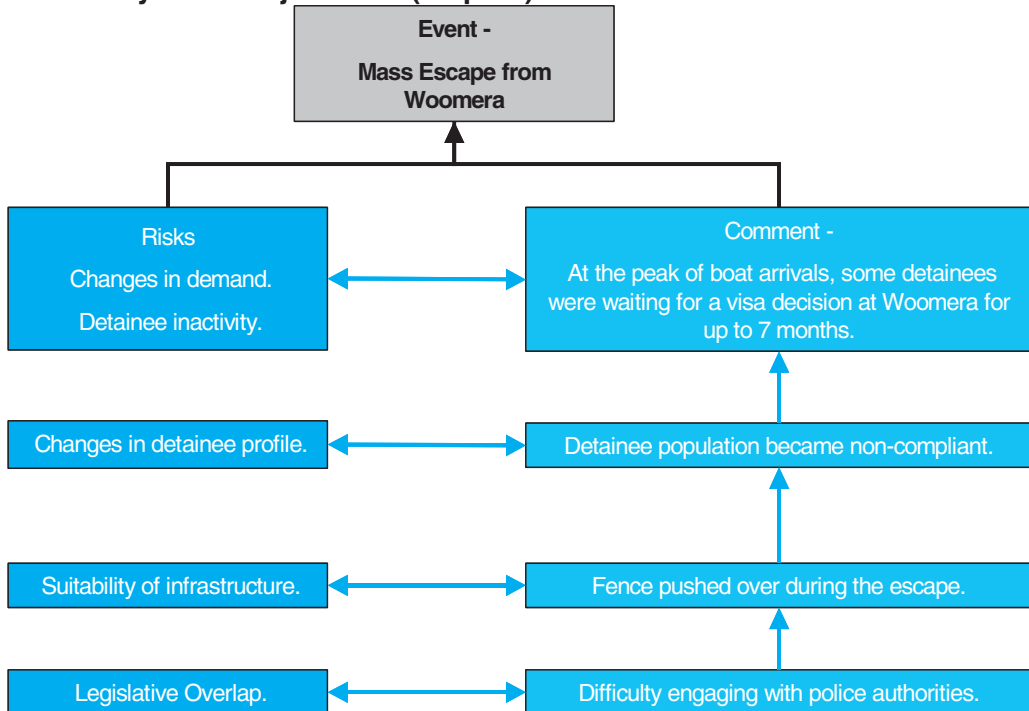
3.20 However, the majority of these risks were managed in response to an incident or event. Consequently, DIMIA's management of the program,

together with the delivery of services under the contract and the prioritisation of tasks, was based on corporate knowledge and experience of perceived risk, rather than systematic risk analysis, evaluation, treatment and monitoring. These basic steps are an integral part of contract management, and are especially relevant in this case given the complexity of the task and the numerous stakeholders involved.

3.21 The process of identifying, prioritising, monitoring and reporting risks provides management with information necessary to make informed decisions. Notwithstanding DIMIA's responsive approach to dealing with risks, the ANAO found that DIMIA had not:

- identified and documented the risks associated with the transition of service provision from wholly within the public sector to the private sector;
- measured the likelihood of these risks crystallising and their potential impact;
- decided on the levels of risk acceptable to DIMIA and its ability to reduce the incidence and impact of unacceptable risks; nor
- developed treatment plans to reduce unacceptable risks. In particular, the ANAO found that there was no mechanism for monitoring and reviewing the risk profile. There was, for example, no provision to allocate responsibility between DIMIA and ACM to control new risks that emerged during the course of the contract.

3.22 The ANAO recognises that unforeseen events do occur and it is not possible or justified to eliminate all risks. However, 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. The analysis in Figure 3.4 highlights how untreated risks early in the life of the contract crystallised during the mass escape from Woomera in June 2000.

Figure 3.4**Risk analysis of major event (ex-post)**

Source: ANAO analysis based on DIMIA information.

3.23 This analysis demonstrates that risk management, even after the event, can help identify areas for the attention of senior managers. DIMIA commissioned a consultant to review the circumstances of several major incidents that occurred at Woomera, Port Hedland and Curtin at about this time, including the incident described in Figure 3.4. One of the recommendations of the consultant's report, dated February 2001, deals with risk management. It reads as follows:

That as a matter of urgency, DIMIA conducts a Risk Management Review of the Detention Services Function to identify:

- all areas/issues that attract risk;
- the consequences of the risk should it emerge;
- the likelihood of the risk occurring;
- the treatments required to prevent the risk occurring; and
- the contingency plans required to deal with any critical incident that occurs, despite the best efforts of all treatments.

That this Risk Management review take account of the issue of risk to the community of any critical incident and the necessary protocols and

memoranda of understanding required with other agencies to support DIMIA's treatments and contingency planning. That in light of recent experience, the risk of mass escape and other critical incidents that could potentially involve large numbers of detainees, such as mass disobedience within the centres and large scale medical emergencies be factored into the Risk Management Review for the development of treatments and contingency plans.

That as an outcome of this review, a work plan with responsibilities and accountabilities be developed to implement the treatments identified and the required contingency plans.

3.24 In response to this report, DIMIA conducted risk management reviews at the Woomera and Villawood detention facilities, and increased the levels of contingency planning for possible future events. There was also evidence of progress with Memoranda of Understanding (MOUs) (discussed in more detail at paragraph 3.37). However, the ANAO found that the risk management reviews conducted at Woomera and Villawood in April and May 2002 focused mainly on risks involved in transferring to the new provider.

3.25 DIMIA also recognised that one of its major risks required attention, namely, the length of time it was taking to process visas. It devoted additional resources to training and deploying additional decision-makers, reducing the time taken for primary decisions from a high of seven and a half months, down to twelve and a half weeks.³⁷

3.26 However, the consultant's recommendation that DIMIA urgently review all areas and issues in the detention services function that attract risk was not pursued. There would have been advantages for DIMIA in fully implementing this recommendation, because a comprehensive risk management system can be used to identify, and determine the importance of, factors critical to achieving detention objectives.

3.27 The ANAO considers that a more consistent approach to risk management is required to appropriately address program risks. This would require more systematic risk management planning by DIMIA, consistent with its approach to agency-wide risk plans, as a means of ensuring consideration of risks from both an enterprise-wide and a whole-of-government perspective.

³⁷ The ANAO noted that other factors, such as access to appeal processes, which DIMIA cannot control then became the determinant of the time spent in detention.

Recommendation No.1

3.28 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, monitoring, analysis and review, as well as consideration of whole-of-government risks.

DIMIA response:

3.29 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.

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

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.

Detention strategy and planning

3.30 Establishing a robust strategy is essential to planning and monitoring agency operations. At a practical level, a detention strategy would draw on the risk assessment and address the objectives that the program and contract are intended to achieve. It should include:

- unambiguous descriptions of the outcomes intended in the contract, the achievement of which would contribute to DIMIA's strategic goals;
- the actions necessary to achieve these strategic goals and the outputs and/or services they are expected to produce;
- performance indicators and measures; and
- ongoing monitoring of the plan.

3.31 It should also include a clear statement of roles and responsibilities, both between the contractor and DIMIA, and between DIMIA and external entities, where those relationships would impact on the management of the contract.

3.32 The lack of a documented strategy means that it is not possible for DIMIA or its stakeholders to assess the extent to which the program and contract activities are achieving the desired results. This is a significant omission from DIMIA's corporate governance framework.

3.33 The ANAO notes that one of the objectives of contracting out detention services was to achieve ongoing cost reductions. DIMIA is seeking to balance compliance with the Migration Act 1958 (the Act), with the identification and implementation of initiatives that preserve or enhance the integrity of the system, and at the same time deliver cost reductions. Although operational pressures have clearly intervened, the ANAO found that DIMIA cannot determine whether cost reductions have been or are being achieved.

3.34 DIMIA advised the ANAO that, in response to the increased number of asylum seekers arriving by boat in 1999–2000, the detention objectives were changed from those stated above to ensuring there was adequate detention capacity to accommodate the sudden influx of arrivals. The ANAO found that these revised objectives were not documented, nor was there relevant performance information established to support them. The method of communicating the new objectives to external stakeholders was also not clear.

Recommendation No.2

3.35 The ANAO recommends that DIMIA document its strategies for the detention services contract and develop a robust contract management plan for delivering detention services.

DIMIA response:

3.36 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.

Did DIMIA establish coordination arrangements with external agencies?

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

Coordination arrangements and establishing MOUs

3.37 Providing detention services under contract is subject to specific state legislation dealing with health, education, police services, child protection, youth and community affairs, and occupational health and safety. These establish a complex administrative framework. As the sole Commonwealth agency responsible for the provision of detention services in detention centres,

DIMIA is responsible for liaising and coordinating with a wide range of organisations and stakeholders with an interest in, or responsibility for, some aspect of delivery, supervision or review of detention services.

3.38 It is important that the role of coordinating the activities of external agencies is undertaken effectively. Sound communication between different levels of government means that those involved in detention services receive the information they need to carry out their responsibilities and make informed decisions. Well-constructed MOUs assist this by clearly identifying responsibility and providing the necessary accountability for performance.

3.39 DIMIA advised that it has pursued a two-stage approach to developing coordination mechanisms with relevant external stakeholders. The first stage was to establish a working relationship with the relevant parties, for example, by engaging in planning exercises with South Australian police authorities before introducing a formal MOU.

3.40 The second stage involved establishing formal MOUs. Notwithstanding this, the extent to which DIMIA has liaised with other agencies has varied. Figure 3.5 illustrates the progress DIMIA has made in introducing MOUs.

Figure 3.5

DIMIA MOUs dealing with immigration detention

Agency	Subject	Status	Comment
Australian Federal Police	Security	In progress	Negotiations commenced 9 April 2001 and are ongoing.
NSW Department of Community Services	Child protection	In progress	Negotiations commenced March 2001. Revised draft provided in April 2003. DIMIA advised of difficulty continuing negotiations pending NSW government's advice regarding its approach to agreements with DIMIA.
NSW Police	Policing services	In progress	DIMIA advised of extensive negotiations with NSW Police and AFP on draft agreement during 2002–03. NSW Police advised DIMIA of difficulty concluding pending whole-of-government approach being determined by NSW.
NSW Corrections	Hold and transfer	In progress	DIMIA advised of difficulty concluding pending whole-of-government approach being determined by NSW. DIMIA advised that currently, cooperation is generally positive.
NSW Health	Oversight of health care arrangements	In abeyance	DIMIA contacted NSW Health in January 2003. NSW Health advised DIMIA that an MOU was not needed.
NSW Education	Schooling	Signed 28 June 2002	Children commenced in external schools in July 2002.

Agency	Subject	Status	Comment
Australian Red Cross (ARC)	Messaging and tracing services	Signed 7 May 2003	Formal discussions held quarterly in line with MOU review arrangements. ARC provides quarterly reports.
Victoria Department of Health Services	Child protection and health	In progress	Negotiations commenced in March 2001. Latest draft dated April 2004. DIMIA advised that agreement is close to finalisation.
Victoria Police	Policing services	On hold	DIMIA reported that Victoria Police does not see the need for an MOU. Victoria Police has had formal protocol for responding to emergency situations at MIDC since 1999. DIMIA described relationship as strong.
Victoria Corrections	Hold and transfer	In progress	MOU discussion commenced in 2001. DIMIA advised that negotiations are progressing well and that it has established regular meetings with Victoria Corrections to monitor arrangements and forecast future needs.
Victoria Education	Schooling	Signed 5 February 2003	Children commenced in external schools in October 2002.
WA Department for Community Development	Child protection	In progress	DIMIA advised that since March 2004, the agreement has been finalised subject to WA Government clearance processes.
WA Police	Policing services	In progress	Negotiations commenced on 27 March 2001 and have continued through 2003.
WA Corrections	Hold and transfer	In progress	DIMIA advised that WA objects to holding immigration detainees in prison without recorded conviction.
WA Health	Oversight of health care arrangements	In progress	WA Government has recently indicated interest in a more formalised arrangement.
WA Education	Schooling	In progress	DIMIA described access to community schools in WA as good. Children from Curtin IRPC attended school from 2001 and Port Hedland in 2002. Negotiations commenced in November 2002, and DIMIA advised these are likely to be concluded by letters rather than MOU.
SA Department of Human Services	Child protection and welfare	Child protection MOU signed 2001. MOU arrangements for minors in foster care detention under FAYS signed March 2004.	DIMIA described cooperation as good and arrangements working well. DIMIA advised that up to 14 minors have been in care under the arrangement with FAYS since January 2002.
SA Police	Security	Operational.	DIMIA advised that operational relationship is strong and agreement essentially finalised subject to resolution of indemnity coverage. DIMIA is contributing to a State Police capacity. Arrangements being monitored and reviewed.

Agency	Subject	Status	Comment
SA Corrections	Hold and transfer	In progress	Commenced in April 2001. Concerns to be addressed include the holding immigration detainees in correctional facilities unless charged/serving sentence.
SA Health	Oversight of health care arrangements	In progress	Negotiations commenced in 2003. DIMIA described these as progressing well.
QLD Corrections	Arrangements for immigration detainees being held in Arthur Gorrie Corrections Centre	In progress	Service Level Agreement (SLA) expired in 1995. Arrangements continued until new SLA was agreed and made ready for signature in April 2002. SLA is now finalised, subject to agreement on indemnity.
Qld Police	Use of Police Facilities		DIMIA advised an MOU is not required.
NT Police	Use of Police Facilities		DIMIA advised an MOU is not required.

Source: ANAO analysis of DIMIA data.

3.41 The number of liaison arrangements not formally agreed with the relevant agencies increases the risk that stakeholders, responsible for overseeing detention services, may not be properly engaged. Given DIMIA's overall leadership and coordination role, the ANAO suggests that DIMIA formalise MOUs with relevant agencies as soon as possible to provide greater assurance that they are engaged in a timely and appropriate way.

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

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 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.

Internal coordination arrangements

3.42 Internal coordination is an element of corporate governance, which is the means by which different sections of an organisation are directed, controlled and held to account. It is concerned with structures and processes for decision-making, and with the controls and behaviour within organisations that support effective accountability for performance outputs and outcomes.

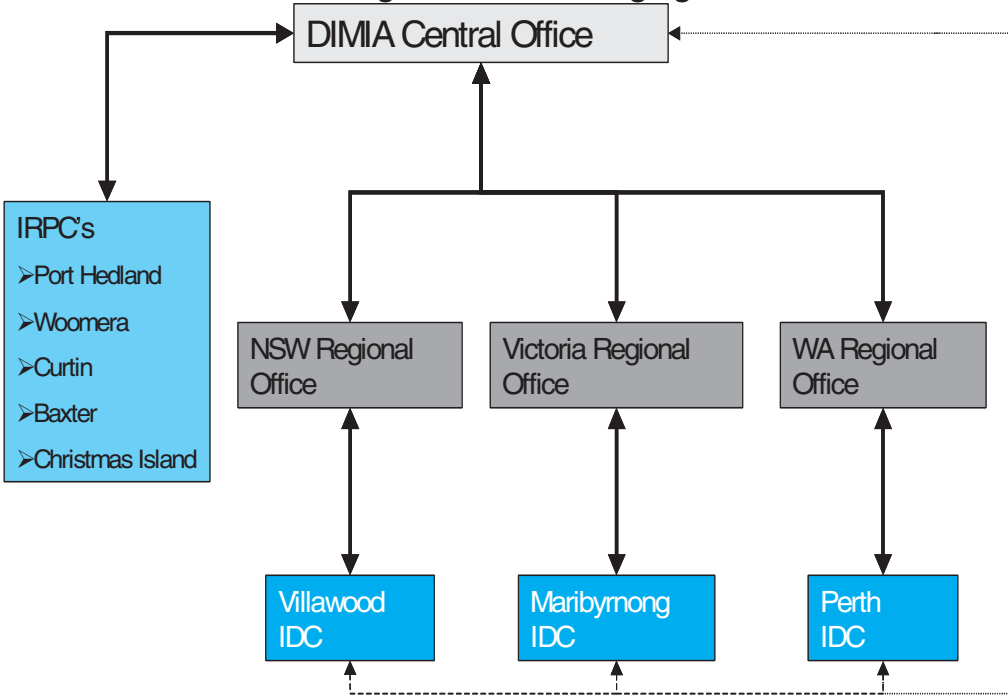
3.43 Internal coordination is relevant to both the operations of, and accountability for, the Detention Services Contract. It provides a structure for managers to make informed decisions with the assurance that proper controls are operating and that risks are managed properly. Internal coordination also provides DIMIA management with assurance regarding the performance of the department in achieving detention objectives, compliance with legislation and the effectiveness of operations.

Organisational structure

3.44 The immigration detention centres (Villawood, Maribyrnong and Perth) report directly to the relevant DIMIA state (regional) office. The immigration reception and processing centres (Port Hedland, Baxter and Christmas Island) report directly to DIMIA Central Office. The detention centres can and do report directly to Central Office, through the on-site DIMIA business manager. An ACM centre manager liaises with the DIMIA business manager in providing services, but is directly accountable to the managing director of ACM. Figure 3.6 depicts the internal coordination arrangements for managing detention.

Figure 3.6

Internal coordination arrangements for managing detention



Source: ANAO based on DIMIA information.

3.45 The ANAO notes that DIMIA's contract administrator has direct control over the reception and processing centres but no formal control over the detention centres. The decentralised nature of DIMIA's detention operations means that, to accurately and consistently apply legislation and policy for administrative mechanisms, it is important to coordinate the roles and responsibilities of Central Office, regional offices, DIMIA on-site business managers and contractors staff.

3.46 The ANAO found that the input of the DIMIA immigration detention facilities and regional office staff to contract management are not formally defined. However, within the above structure, on-site business managers (through regional offices in the case of detention centres) are guided by several Migration Series Instructions dealing with detention.³⁸ DIMIA has also issued a Detention Managers Handbook (the handbook).³⁹ The objective of the handbook is to present information that is easily located by function, easy to understand and useful.⁴⁰

3.47 These publications and documents indicate that the role of on-site managers includes monitoring the performance of ACM and to facilitate DIMIA business at the centres. Their responsibilities have two formal and substantive elements expressed in various places in the instructions and the handbook. The ANAO collated and summarised the available guidance to produce Figure 3.7, which lists the core areas of responsibility.

³⁸ Appendix 5 has a complete list of Migration Series Instructions dealing with rules, policies and procedures for detention.

³⁹ First published in December 2001.

⁴⁰ Paragraph 8 of the introduction of the handbook indicates that it is vital the procedures in the handbook are followed.

Figure 3.7

Responsibilities of DIMIA on-site business managers

Contract management responsibilities	Facilitate DIMIA business at the detention facility
<p>Supervise ACM in the provision of detention services in accordance with the immigration Detention Standards. These services are to encompass all that is required to provide care and security for detainees from the point of transfer of a detainee at admission to the centre to completion of removal or release from detention. Detention services include:</p> <ul style="list-style-type: none"> • transport services; • guarding; • interpretation and translation; • catering; • cleaning; • education; • welfare; • health services; • escort or transport services not otherwise included in transport services; • any other service necessary to enable delivery of detention services in accordance with the Immigration Detention Standards; and • all necessary organisational requirements to ensure these services are delivered, eg, staff training. 	<p>Manage DIMIA business at the centre, including:</p> <ul style="list-style-type: none"> • resolve and manage contentious, high-profile or special needs cases; • manage Commonwealth assets; • liaise with local communities; • chair internal and external consultative committees, resolve complaints and facilitate access to other DIMIA personnel where needed; • monitor TPV outcomes. This involves ensuring that the primary decision of a visa application is communicated to a detainee, and appropriate processes are in place to respond to that decision through either release or detention management;⁴¹ • assess Bridging visa E Subclass 051 applications;⁴² • ensure comprehensive understanding of relevant MOUs and agreements; • deal with special requests from detainees, such as requests for marriage, attending family functions or participation in community activities; • manage media, ombudsman, Human Rights and Equal Opportunity Commission and private enquiries and/or visits; • coordinate the escort, transfer or removal of high-risk detainee cases; and • ensure detention centre staff act within the powers conferred upon them, including but not limited to the use of search powers, restraints and transfer to management units.

Source: compiled by ANAO from DIMIA data.

⁴¹ Chapter 3 of the handbook indicates that the responsible case officer will fax the primary decision to the immigration detention facility.

⁴² Chapter 4 (paragraph 5) of the handbook indicates that the DIMIA manager at the relevant detention facility has the delegation to assess the application for a bridging visa against the provisions of the Act and the Migration Regulations. DIMIA transferred this function to central office on 5 August 2003. A new Migration Series Instruction was issued; MSI 384 Bridging Visa E 051—Legislation and Guidelines which indicates that the Director Detention Operations now assesses and decides all BVE applications.

3.48 The ANAO notes that the detention centres, and reception and processing centres, are diverse in operational culture and widely geographically separated. The managers have very restricted decision-making powers in regard to resource allocation, and very narrow financial delegations (see Chapter 6). In substantive terms, the responsibilities listed above impose a very wide range of duties and responsibilities on the management of the centres. These responsibilities have a common core, to manage DIMIA's business at the detention facility. However, in practice, detention facility managers report to at least one division in Central Office and, in the case of detention centres, also through regional offices. This leads to multiple and inefficient lines of communication between the individual centres and Central Office. As well, it can mean that the roles of Central Office, regional offices and on-site business managers are not always clear or coordinated.

3.49 Earlier (in Figure 3.3), the ANAO noted that fragmented accountability represented a risk to the management of this contract. In subsequent discussions, the ANAO concluded that DIMIA had a reactive approach to risk management rather than a systematic process of identifying, prioritising, monitoring and reporting risks. This reactive approach to managing risks meant that DIMIA's, and hence the Commonwealth's risks under its duty of care to detainees, were not formally addressed. The audit found a lack of clarity within DIMIA about duty of care responsibilities.

Duty of care

3.50 The Commonwealth, through DIMIA, owes a duty of care to detainees. DIMIA accepts this, and also considers that this duty of care is met, even though DIMIA arranged for ACM to perform many of its functions.

3.51 The Schedule to the Immigration Detention Standards contains a series of 'principles underlying care and security', which include propositions, that in operating detention facilities, the service provider is under a duty of care in relation to detainees, and that ultimate responsibility for the detainees remains with DIMIA at all times.

3.52 Interviews with DIMIA on-site business managers indicated that they are reluctant to intervene in some issues in detention centres, in case the intervention has the effect of moving responsibility for the action from ACM to the Commonwealth. However, because DIMIA retains a duty to detainees, in some circumstances this may translate into a duty to take practical action. Liability in that situation cannot be avoided by refusing to act. DIMIA advised that 'duty of care' is complex in the outsourced detention arrangements. Guidance for detention centre managers, collated by the ANAO and

summarised in Figure 3.7 are of limited value in clarifying responsibilities for duty of care.⁴³

3.53 Lack of clarity about DIMIA's duty of care to detainees also extends to case officers, who are not generally located at the centres. On several occasions ACM made recommendations to DIMIA about the management and health care needs of certain detainees. However, in one case where the arguments presented to move a detainee closer to specialist medical care appeared compelling, the case officer effectively overruled the advice of both ACM and DIMIA's own psychologist. This suggests that roles and responsibilities, and DIMIA's duty of care to detainees, are not well understood throughout DIMIA. This presents a significant risk to the Commonwealth.

Uncertain accountability arrangements

3.54 The capacity of the business managers to respond to their responsibilities can also be limited by other operational pressures not provided for in the contract or the handbook. For example, ACM's Policy and Procedures Manual covers contingency responses. The ACM policy indicates that an operational commander will assume overall command of the scene. However, ACM's powers do not extend beyond the boundary of a centre. During the disturbances at the Villawood centre on 31 December 2002, DIMIA managers were required to assume additional responsibility for directing emergency services personnel outside the centre boundary. The ANAO was unable to locate a DIMIA policy or document detailing responsibilities for contingencies and emergencies. This increases the potential for confusion about who is responsible for taking action in the event of an emergency.

3.55 The ANAO also found that systems for incorporating important findings from external investigations into standard monitoring procedures are not well defined. For example, in a recent investigation, the NSW Deputy State Coroner commented that he believed it to be the Commonwealth's responsibility to ensure that best practice detoxification procedures (for drug-affected detainees) are implemented. The ANAO acknowledges that the implementation of these procedures would have been a responsibility of ACM. However, the audit was unable to determine whether, and in what way, DIMIA assured itself of ongoing implementation of better practice in operation across all of the detention facilities in light of the coroner's findings.

3.56 As a further example of a lack of clarity in roles and responsibilities, the ANAO noted that several overseas removals⁴⁴ had to be abandoned at short

⁴³ The ANAO notes that MSIs 234, 370 and 371 have sections dealing with duty of care. However, MSI 234 does not discuss the involvement of the detention services provider, and MSI's 370 and 371 deal with unaccompanied wards and alternative places of detention.

⁴⁴ An overseas removal occurs when an unlawful non-citizen is removed to their country of origin. The ANAO did not specifically examine the removals process.

notice. One case in particular was cancelled because the State Office staff arranging the removal were not aware that an MOU had been negotiated with a particular country about the number of deportees that could be accepted at any one time.

3.57 The ANAO concluded that responsibility for delivering services under the contract and for monitoring (see Chapter 5)—for which ultimately the contract administrator is accountable—is shared in different ways between the DIMIA business manager, the ACM centre manager, State and regional managers (where applicable) and DIMIA Central Office. The audit found that important aspects of roles and responsibilities, particularly where the duty of care and accountability responsibilities begin and end between DIMIA and ACM, have not been adequately communicated to DIMIA business managers.

Contract management skills and knowledge

3.58 In its report on Contract Management in the Australian Public Service, the Joint Committee of Public Accounts and Audit noted that:

Contract managers in performing their tasks must have knowledge and skills ranging from interpersonal, communication, negotiation, project management and legal.⁴⁵

3.59 Sound corporate governance in administering the detention centre contract requires DIMIA officers to take account of the wider context of detention administration. This includes the necessary linkages and interdependencies with its other activities, such as visa processing and removals, as well as compliance activities. These linkages must continue to be supported through the corporate governance framework, as they are a key mechanism underpinning the administration of the contract. This mechanism bears directly on the administration of detention legislation and policy, and therefore on public accountability.

3.60 The increasing complexity of contract management in the detention environment, the changing nature of detention regulation, and the consequential changes to administrative practices, have increased the pressures on DIMIA to ensure it is building a viable professional workforce in managing the detention function. Contract management training, reinforced by documentation and manuals, is a key measure to ensure that staff have the technical and administrative skills required to provide authoritative and clear directions to the contractor, and to assist the contract administrator to manage the contract.

⁴⁵ Joint Committee of Public Accounts and Audit Report 379, 2000, *Contract Management in the Australian Public Service*, October, p. 89.

3.61 The audit found that none of the on-site DIMIA business managers, and few Central Office staff, had received formal training in contract management. Those personnel who had received contract management training had received generic training only, and not training tailored to the requirements of managing the complex requirements of detention centres. The ANAO also notes that the handbook was not published until December 2001, some four years after the contract started. It has not been amended since, and many of its chapters are now out of date.

3.62 The ANAO acknowledges that sources of information, other than the Migration Series Instructions and the handbook, instruct DIMIA staff on correct procedures. Monitoring visits from Central Office, on-the-job training and the provisions of the contract itself all serve an important function. However, the need for contract management training, supported by instructions and a handbook, is important and cannot be met adequately by officers having to draw on multiple and discrete sources.

3.63 The ANAO considers that DIMIA has not yet established a sound framework for the strategic control and delivery of training and supporting documentation in managing the Detention Services Contract. The handbook is potentially a valuable vehicle to provide direction and an additional measure of accountability, but it was delivered late in the life of the first contract and has not been amended since being published. This means that it does not accurately reflect the current organisation, systems and risk environment. This diminishes the strength of the corporate framework being promoted by other DIMIA processes and structures, such as the visits by Central Office monitoring teams.

3.64 DIMIA has advised that it is providing more systematic training in conjunction with the new contract.

Did DIMIA conduct research into immigration detention?

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 a lack of 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.

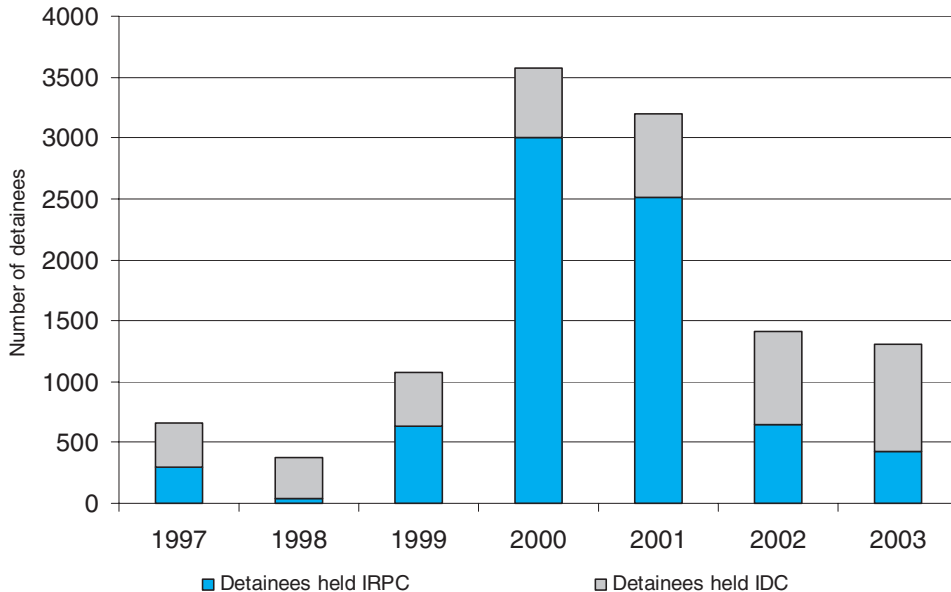
3.65 The ANAO acknowledges that DIMIA faces a complex task in managing a contract to provide a diverse portfolio of human and security services at widely separated points around Australia. The ANAO has already indicated that with such diversity, a systematic and structured approach to management makes it more likely that strategies, risk management and overall effort are appropriate to the task to be managed. One approach to inform

decision-making in such a complex area of public administration is to conduct research into immigration detention.

3.66 At the peak of boat arrivals in 2000, there were approximately 3 700 people in detention from 77 different countries. Figure 3.8 illustrates the number of people in detention over the life of the first contract.

Figure 3.8

Number of detainees, at 30 June, 1997–2003



Source: ANAO analysis of DIMIA data.

3.67 Payments under the contract with ACM exceeded \$470 million⁴⁶, to provide security, food, shelter, medical and dental, translating and interpreting services, schooling and activities for detainees. Figure 3.8 illustrates that the number of people in detention has risen and fallen over the years, depending upon a range of (mostly external) push and pull factors. Managing this volatility has been an important element of Australia's immigration policy in the past, and will remain an important feature of DIMIA's responsibilities for the foreseeable future.

3.68 Prisons serve as a useful comparison to immigration detention, and DIMIA advised that it considered hospitals to be a helpful benchmark. The ANAO notes that significant changes have been introduced to state prisons

⁴⁶ This amount does not include repairs and maintenance, minor and major new works, contract administration, nor the cost of visa processing and review processes.

over the last 10 years whereby ‘They welcome scrutiny and challenges to old practices’.⁴⁷ The ANAO appreciates that some of the initiatives available to corrections agencies, particularly in being able to provide a ‘structured day’ for prisoners, are not available for immigration detention, where paid employment and vocational training for adults are prohibited under the Act. Nevertheless, detention carries potential risks to the detainees and to the Commonwealth, and the longer the period of detention, the greater the potential risk.

3.69 DIMIA has an objective of delivering quality detention services and it has wide experience in managing detention facilities. However, in managing the first contract, these two strands have not been drawn together to answer questions of whether immigration detention aims to provide ‘humane containment’⁴⁸ or something more than that. Dedicated research into immigration detention is one way to provide appropriate assurance that immigration detention, which is funded by substantial Commonwealth investment, is addressing risks to the Commonwealth and delivering the kind of socio-economic results the Government requires and must be able to demonstrate. It also provides a sound basis for evaluating the effectiveness of the program and is a springboard for developing future policy directions and operations.

Recommendation No.3

3.70 The ANAO recommends that DIMIA consider the benefits of sound conduct 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.

DIMIA response:

3.71 DIMIA agrees with this recommendation and will more effectively build in and document targeted research into comparable environments into its policy and procedures.

⁴⁷ John Brian Griffin, CEO CORE, 2000, Innovations in correctional services—an excursion through the changing prisons culture of Victoria, the Public Correctional Enterprise, and Department of Justice Australia. From papers presented to the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders.

⁴⁸ John Brian Griffin, CEO CORE, 2000, Innovations in correctional services—an excursion through the changing prisons culture of Victoria, the Public Correctional Enterprise, and Department of Justice Australia. From papers presented to the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders.

4. Contract Structure

This chapter reviews the structure and contents of the contracts between DIMIA and ACM.

Introduction

4.1 The provision of detention services was set out in the detention agreements between DIMIA and ACM, which consisted of:

- the General Agreement;
- the Detention Services Contract for four centres;⁴⁹
- the Occupation Licence Agreement; and
- Supplementary Agreements for Curtin, Woomera and Baxter.

4.2 A contract is the means by which parties agree to the goods and services to be provided. A key characteristic of a contract is that the parties involved are bound to mutually agreed obligations. One of the essential matters that need to be dealt with in a contract is the specification of the services to be provided, including the objectives and deliverables, and including specification of quantity and quality standards where relevant.

4.3 Ideally, the standards of service are specified in a way that enables an objective determination as to whether the standards have been met. Unless this is done, it is difficult to assess whether the contractor has performed their obligations.

4.4 The detention agreements had a multi-tiered method of specifying outcomes. The services to be provided were described in very general terms in the General Agreement and the Detention Services Contract. The standard to which the services were provided was then intended to be further articulated by the Immigration Detention Standards (IDS). Compliance with the IDS was measured by separate performance measures, which were then fed into a performance-linked fee matrix.⁵⁰ The framework is shown in Figure 4.1.

⁴⁹ The original centres were Villawood, Maribyrnong, Port Hedland and Perth.

⁵⁰ The matrix linked specific performance measures to positive or negative benchmark performance points in order to calculate the performance-linked fee.

Figure 4.1

DIMIA's framework of measures and standards for specifying contractual outcomes and deliverables

Layer of contract deliverable	DIMIA definition	ANAO comment
Specification of services to be delivered	The description of the contract deliverables	Found in a variety of places in the General Agreement and Detention Services Contract. Expressed in general terms as broad contractual outcomes.
Immigration Detention Standard	The standard to which the service is to be provided	Intended to be a further clarification of the contract deliverables. However, the IDS were not clear statements of requirements for either inputs or outputs.
Performance measure	The way in which performance is to be assessed against the IDS	The performance measures did not cover most of the IDS. The measures and benchmarks did not provide quantifiable targets and agreed methods of assessment.
Performance benchmark	The performance target	
Measure	The number of instances or period of time which do not reach the benchmark	
Benchmark performance points	The negative or positive performance points, which determine the performance fee paid to ACM	

Source: ANAO analysis of DIMIA information.

4.5 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?
- Did the detention agreements specify the standard to which services will be delivered, and contain performance measures able to measure the service delivery?
- Did the detention agreements contain mechanisms for managing underperformance by the contractor?

- Did the detention agreements set up structures for communication between the contractor and DIMIA?
- Did the detention agreements contain mechanisms for dealing with changes?

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

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).

4.6 The ANAO notes that the detention agreements were designed to focus on the outcomes to be provided, without specifying how ACM was to deliver those outcomes. Contract deliverables can be expressed as one, or a combination of, the following:

- outputs, (for example the number of new arrivals assisted with English language skills);
- activities that produce outputs (for example an education program); and/or
- inputs required to produce an output (for example qualified teachers, books, and personal computers).

4.7 The ANAO examined the specification of the required services and the performance measures in the context of an outcomes-based contract, and the subsequent necessary balance between provider flexibility and purchaser oversight.

Service requirements in the detention agreements

4.8 The services that were to be delivered by ACM are found in several places in the contractual framework. The General Agreement broadly provided for delivering a Detention Service, which was defined to mean a service relevant to the Australian immigration detention and removal function, which the contractor provides under a service contract. The General Agreement stated that each service contract is to describe the nature of the service to be provided by the contractor.

4.9 The Detention Services Contract for the four original centres required ACM to provide detention services in accordance with the Immigration

Detention Standards.⁵¹ DIMIA advised the ANAO that while the service specification in the Detention Services Contract was general, the specific service delivery outcomes were set out in the IDS. The IDS are discussed in more detail below.

Maintenance of facilities

4.10 Clause 3.1.1(b) required ACM to maintain the detention facilities. There was considerable detail in both the Detention Services Contract (at clause 3.9), and the Occupation Licence Agreement regarding maintenance of the facilities. However, as discussed in Chapter 7, there was ambiguity in the agreements about the division of responsibility for infrastructure works, including repairs and maintenance.

Transport services

4.11 There was also ambiguity in the detention agreements about the transport service to be provided. While certain transportation of detainees was considered to be part of the detention services, other transportation fell within the definition of 'Transport Services' in clause 3.1.2 of the Detention Services Contract. The definition was important because transport services are paid by DIMIA separately, whereas the transportation included in the detention services was included in the Detention Service Fee. Although the detention agreements were initially unclear, the ANAO notes that DIMIA and ACM partially resolved the issue through subsequent discussions. However, as a result of the initial ambiguity, DIMIA's checking processes for the provision of transport services have been extensive and inefficient.⁵² Funding of transport services is discussed in more detail in Chapter 6.

⁵¹ Clause 3.1.1 (a) of the Detention Services Contract.

⁵² DIMIA advise that the new contract specifically addresses and clarifies this issue.

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?

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, 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.

4.12 The measurement of contractor performance relies on comparisons. Standards, benchmarks and targets provide a basis for such comparisons. Standards relate to pre-defined levels of excellence and combined with time, cost and quality performance measures can be used to measure progress in delivering outputs or inputs. For example:

- outputs - the number of new arrivals passing an accredited course in English as a second language; or
- inputs - access to 20 hours per week of accredited training.

4.13 Performance measures, based on those standards, should be measurable statements describing actions or events with attributes that are verifiable, relevant and unambiguous.⁵³ In order to ensure services are delivered to achieve the program objective, detention agreements would need to:

- specify the standard to which the detention services are to be provided;
- include verifiable and unambiguous performance measures that cover key aspects of service delivery; and
- contain a clear and reliable method of assessment.

4.14 The overarching requirements for performance are in the General Agreement, which stated that ACM must comply with legislation, policy, procedures, industry best practice and the IDS when delivering services. The details of the required service standards were set out in the IDS, which outlined the quality of services to be provided at the detention facilities. The

⁵³ ANAO, 2001, *Better Practice Guide to Contract Management*, p. 48.

IDS were developed in consultation with the Commonwealth Ombudsman and were set specific to each service contract. All supplementary service contracts have adopted the IDS set out in the original Detention Services Contract. There were 13 general categories of IDS, covering 107 sub-standards. The IDS must always be met, except where it is demonstrated that the security and good order of the detention facility would otherwise be compromised.⁵⁴

4.15 The ANAO examined the IDS, the performance benchmark and the performance measures from the performance-linked fee matrix, and assessed them against the following criteria:

1. The ANAO expected the IDS to:

- be comprehensively and accurately translated into performance measures.

2. The ANAO expected the performance measures to:

- be clear and unambiguous in terms of timeliness, cost and quality;
- use quantifiable benchmarks or targets; and
- include a reliable and verifiable method of assessment.

4.16 The ANAO found that the IDS were not clear statements of detention service requirements for either outputs or inputs. Rather, key IDS contained general statements, or activities, and used ambiguous language to define the nature and level of service required. For example, IDS 4: Social Interaction states:

...all detainees have access to education, recreation and leisure programs and facilities which provide them with the opportunity to utilise their time in detention in a constructive and beneficial manner

4.17 In this example the level of performance expected to be delivered by ACM is not clearly defined at either the output or input level. As the IDS describes an activity, it is not possible for DIMIA to measure ACM's progress against a pre-determined standard. The ANAO's assessment of other IDS, and the relevant performance measures, is presented in full at Appendix 6.

4.18 The performance measures did not always list quantifiable targets or detailed statements that give meaning to the IDS. Many of the performance measures did not clearly specify how ACM's performance was to be measured against the set standards. There were ambiguities and a lack of definition in many of the assessment methods, in particular, the use of a 'qualitative assessment' without further elaboration.

⁵⁴ Schedule to the Immigration Detention Standards.

4.19 The performance measure only measured breaches of an individual's rights, and not the quality of the service provided. The ANAO believes there are instances where the provision of service to detainees did not conform with the prescribed IDS. However, the subjective nature of the performance measures results in these issues not being assessed. For example, the use of fellow detainees as interpreters was not in conflict with the IDS, but raised serious questions of detainee dignity and privacy.

4.20 The contract structure had a funnelling effect, where the general discursion in the IDS was condensed into one or two measures that fed into the performance-linked fee. As a result, some parts of the IDS were not translated into a performance measure. Some 38 of the 107 IDS sub-standards were not covered by performance measures and a further 37 were only partially covered. Where part of an IDS was not included in a performance measure, DIMIA did not have any contractual means of enforcing compliance with that part of the IDS. In attempting to circumvent this difficulty, DIMIA has used a range of non-punitive methods to ensure compliance. For example, DIMIA aimed to establish a close relationship with ACM staff, both at the senior levels through the Contract Operations Group and the Contract Monitoring Group, and at the operational level with on-site DIMIA business managers.

4.21 Detention centres have supplemented the lack of detail provided by the measures by developing their own sub-criteria to expand the IDS. This had the potential for inconsistent assessment of ACM's performance across the detention facilities, putting the validity of the performance assessment at risk.

4.22 DIMIA advised that the service specifications and the required service standards in the new contract are a considerable improvement on those in the ACM detention agreements. DIMIA also advise that the performance measures in the new contract are clearer and more detailed.

Review of performance measures

4.23 Clause 7 of the General Agreement stated that the performance measures are effective from the commencement date at each of the centres, and required the contract administrator to 'certify the performance measures and the IDS within three months of the commencement of each service year'. The contractor was to receive the performance measures and the IDS for the required year within one month of the commencement of the service term. Clause 3.3(b) of the Detention Services Contract stated that 'the IDS, the Operational Orders and Performance Measures will be reviewed by the parties on each anniversary of the Commencement Date'.

4.24 Both ACM and DIMIA contemplated refining and adjusting the performance measures as early as September 1998. In 1999, DIMIA acknowledged the lack of flexibility in the performance measures, and the

potential for the performance assessment to not accurately reflect DIMIA's satisfaction with the service delivery. In late 1999 and early 2000 DIMIA and ACM again discussed amending the benchmarks and performance measures. In early 2000, DIMIA made a strategic decision not to alter the existing detention agreements, but to implement change through the negotiations surrounding the Detention Services Contract renewal. As a result, changes and refinements to the practical operation of the performance measures were made outside the detention agreements.⁵⁵ However, the annual reviews required under the Detention Services Contract were not conducted and no contractual amendments to the performance measures were made.

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

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.

4.25 As discussed above, the overarching requirements for performance in the General Agreement provided a background for the service requirements in the Detention Services Contract, which were then described in more detail in the IDS. The IDS were translated into performance measures, which were then fed into a performance-linked fee matrix that linked specific performance measures to positive or negative benchmark performance points. Performance points were tallied on a quarterly basis and were used to calculate the performance fee portion of the payment.

Performance-linked fee

4.26 Under the General Agreement, the contractor put at risk a percentage of the yearly service fee as a commitment to achieving the quality outcomes. This was the performance-linked fee, which was three per cent of the quarterly service fee payable to the contractor. The three per cent was calculated for each invoice, and was not paid to ACM until the quarterly performance assessment had been made.

4.27 ACM's performance was assessed through the performance measure and translated into the performance benchmark to determine a number of instances where sanctionable behaviour occurred. Each instance resulted in an allocation of benchmark performance points. In relation to nine performance

⁵⁵ For example, increased specification in the requirement to maintain detainee records (IDS 7.3), which occurred during 2001.

measures, total compliance with the measure resulted in positive benchmark performance points. Negative points could have an impact only to the maximum amount of the three per cent fee. Points could be carried over to the next quarter, but only to the end of the year.

4.28 The positive and negative benchmark points for the quarter were totalled and added to the balance of benchmark points from the previous quarter to calculate the performance-linked fee. If negative, the total was given a value of \$1000 per point⁵⁶, and that value was subtracted from the performance linked fee. If the value was more than the total performance fee, the balance of negative performance points was carried over to the next quarter. Points could not be carried over the end of a contract year, when the balance is re-set to zero.

4.29 The ANAO found that the performance linked-fee was an ineffective mechanism for imposing sanctions for persistent below-standard service delivery, or for improving contractor performance. As the amount of the service fee related to performance was quarantined to a maximum of three per cent of the fee, in theory a contractor would have been able to assess the loss of the performance fee against the increased profitability of providing a sub-standard service. However, the ANAO notes that the existence of the more serious remedies (for example, the default notice discussed below) provided DIMIA with sufficient contractual power to ensure the contractor did not do so.

4.30 DIMIA advise that there is a new structure applying financial sanctions in the new contract. The changes have addressed the issues raised by the ANAO in relation to the ACM detention agreements.

Notification of assessment

4.31 The main formal mechanism for advising ACM of its performance was a quarterly assessment certificate. The certificate was issued by DIMIA and included:

- the balance of benchmark points at the start of the quarter;
- any above or below benchmark points achieved during that quarter;
- the balance of benchmark points for the quarter;
- any performance linked fee payable; and
- any points to be carried over to the next quarter.

⁵⁶ The amount at the start of the contract, which has been adjusted for the consumer price index (CPI) in accordance with the contract.

4.32 Under the General Agreement the quarterly assessment certificate was to be issued within 10 days from the end of the quarter. As discussed in Chapter 5, this was acknowledged by both parties to be an unworkably short time frame.

Other penalties

4.33 Under the General Agreement, DIMIA could issue a default notice when a default event occurred. A default event could be a General Default or a Services Default. Services Defaults were defined in the Detention Services Contract, and included both quantifiable major breaches against the IDS, and persistent below-benchmark performance. After a default notice had been issued, ACM had a certain period of time to remedy the default. If the default was not remedied to its satisfaction, DIMIA could:

- (a) deduct money from the Performance Security Bond⁵⁷;
- (b) terminate all or part of this General Agreement or part or all of any service contract;
- (c) sue the contractor for compensation arising directly or indirectly out of that default;
- (d) request the contractor to take such action as the contract administrator considers is reasonable in the circumstances to remedy or cure the default; or
- (e) resort to any other remedies available to the contract administrator under this agreement, a service contract, or in law or equity.

4.34 A default could also result in a reduction in the service fee for the relevant period. Under this mechanism, DIMIA was able to reduce the service fee proportionate to the service not provided by ACM. The rationale for the reduced service fee was that it reflected the diminished value of services that did not comply.

4.35 Both the default process and the reduction in service fee gave DIMIA the ability to impose heavy sanctions on ACM for failures in service delivery. DIMIA's use of these facilities is discussed further in Chapter 5.

⁵⁷ The Performance Security Bond is provided by the contractor in accordance with clause 7.7 of the General Agreement to assure performance under the contract. DIMIA may deduct certain amounts, including compensation for a default, from the Performance Security Bond.

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

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 Monitoring Group, and at the operational level with on-site DIMIA business managers. These groups were the main scheduled vehicles 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 (CMG) and the Contract Operations Group (COG) lacked an agreed formal basis beyond having discussions at the meetings. Agreed, formal procedures would have provided greater direction and authority for the two groups and facilitated management of the contract.

4.36 DIMIA provided the ANAO with documents outlining its understanding of the operations of COG and CMG. These documents were drafted in 2001 and 2002, but there was no evidence of ACM's formal agreement to the described procedures.

4.37 Agreed procedures for the COG and CMG would have provided greater direction and authority for the two groups, addressing key features such as:

- the individual roles of the COG and CMG;
- terms of reference for each group;
- the structure of the groups and their relationship to each other;
- membership, including any technical advisers or observers;
- the role of the chair, individual members and the secretariat;
- ability to call extraordinary meetings;
- how decisions are to be reached (consensus or majority vote, for example); and
- annual evaluation of the progress or achievement of the two groups.

4.38 Under the General Agreement, ACM had to provide DIMIA access to the premises at all times, and also maintain sufficient data and audit trails to validate the delivery of services against the IDS. IDS 13.1 required that DIMIA had full access to all relevant data to ensure that monitoring against these standards can take place. This requirement was reflected in ACM's Detention Services Operating Manual.

4.39 The performance measures required ACM to report any ‘major incident’ that may affect service delivery.⁵⁸ ACM also had to immediately report any major incident or material problem under the IDS. The ANAO found that it was not always clear what constituted an incident. A ‘major incident’ was not defined in the body of the Detention Services Contract. The IDS had definitions of ‘incident’, ‘major incident/disturbance’ and ‘minor incident/ disturbance’. However it is not clear whether the definitions in the IDS applied to the rest of the Detention Services Contract. Even under the definitions, there was scope for considerable difference in interpretation. As a result of this ambiguity, DIMIA and ACM refined the requirement to report incidents through agreement, largely in response to specific issues that gave rise to differences in interpretation.

4.40 The General Agreement required ACM, in submitting its monthly invoice, to include an assessment of their performance. The clause relating to self-assessment was contained within the Financial Management section of the General Agreement and required ACM to include with its monthly invoice:

- evidence of the delivery of detention services; and
- evidence of how the delivery of the detention services performs against the performance measures and the IDS.

4.41 For self-assessment to be an effective part of a comprehensive performance monitoring strategy it needs to be given sufficient prominence within the strategy. The ANAO found no evidence that the self-assessment system was ever used; this is discussed further in Chapter 5. The ANAO considers that specifying the requirement for self-assessment in the performance section of the detention agreements would have enhanced its effectiveness as a performance monitoring tool.

4.42 In 2001, the Commonwealth Ombudsman examined DIMIA’s self-assessment approach and considered there was an incentive to under-reporting. The Ombudsman subsequently recommended that the requirement be removed from a renewed or new contract.⁵⁹ DIMIA advised the ANAO that the requirement for a monthly self-assessment as part of the invoicing procedures has been removed from the new detention services contract.

⁵⁸ Major incidents must be reported immediately verbally and in full detail in writing within 12 hours. Standard incidents must be reported within 24 hours.

⁵⁹ Report of an Own Motion Investigation into Immigration Detention Centres, Commonwealth Ombudsman, March 2001, p. 25.

Did the detention agreements contain mechanisms for dealing with changes?

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 through formal contract amendments, thus carrying additional risks. Both DIMIA and ACM identified further gaps and ambiguities in the detention agreements and there were also 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.

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 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 monitored and assessed; the service requirements differed markedly from centre to centre; and an uncertain legal position if amendments in writing (which are not known to DIMIA as formal contract variations) had the effect in law of formal amendments. DIMIA advised that it considered the issues 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.

4.43 Detention services are provided within a continually changing environment, with a number of external factors that affect the delivery of services under the detention agreements. The ANAO expected to find that the contracts allowed for variation where necessary, and that DIMIA considered using those processes during periods of change.

4.44 The General Agreement provided that the agreement, or any Detention Services Contract, may be varied if agreed in writing, and signed, by both parties. There was a process to propose, accept or reject any variation. ACM and DIMIA agreed to one variation in June 2001 through the exchange of letters. This variation deleted clause 6.1.1, which related to the development of infrastructure, from the General Agreement.

4.45 Over the life of the contract, changes in the detainee profile⁶⁰ impacted on the service delivery requirements. However, the June 2001 contract variation was the only one agreed to, despite both parties identifying further gaps and ambiguities in the detention agreements. DIMIA advised that a decision was made to drive change through the contract renewal process, rather than amend the existing Detention Services Contract as amendments to

⁶⁰ See Chapter 2 for details of increased detainee numbers and changes in the phases of the contract.

the contractual requirements and structure were not considered to be an appropriate solution.

4.46 As well, when delivering services under a service contract, the contractor had to comply with all relevant legislation, policy and procedures, and provide all services efficiently, and in accordance with industry best practice and the IDS. ‘Industry best practice’ was defined to be ‘the highest standard of managing and operating detention facilities achieved by operators of similar facilities in Australia and internationally’.⁶¹ This did not have a clear interpretation and DIMIA has not indicated how this section of the Detention Services Contract was intended to work.

4.47 The ANAO was unable to identify standard procedures for informing ACM of changes in legislation, policy and procedures. In practice, broad issues such as the changing migration environment were discussed at the Contract Management Group and the Contract Operations Group. Although some legislative changes affecting operations were communicated in detail to ACM, for example, amendments allowing strip-searching of detainees, there is no evidence that this communication was routine for all legislative changes or changes to the Migration Series Instructions.

4.48 Contract amendments can be used not only to change the service requirements, but also to clarify ambiguities or gaps that were not foreseen at the time of contract drafting.⁶² As suggested above, the lack of formal amendments suggests solutions to changing service requirements were negotiated on an ad hoc basis, and this carried additional risks.

Other drafting issues

4.49 Australia is a signatory to many international agreements that are applicable in the detention environment. DIMIA advised the ANAO that Australia’s international obligations informed the drafting of both the detention agreements and the immigration detention standards. The contract provided that Australia’s international obligations were to inform the approach to delivering detention services. This contractual provision was unclear and the ANAO was unable to determine the extent to which international obligations would influence or assist either DIMIA or the

⁶¹ Clause 1.1 of the General Agreement.

⁶² Specific issues that the ANAO has identified as potential issues for variation are:

- transport of located unlawful non-citizens from a metropolitan location to the detention centre;
- responsibility for detainees before they formally arrive at a centre, in particular hospital costs for injuries while being transported by ACM to a detention centre; and
- responsibility for the cost of detainee transport to various activities, in particular non-immigration-related court appearances;

contractor in providing detention services. As well, the ANAO found no evidence outlining how DIMIA assured itself that ACM's performance assisted in meeting those international obligations.

4.50 The General Agreement defined 'year' as a year of a service contract starting on the commencement date of that contract. The commencement date of the Detention Services Contract was the date it is signed, that is, 27 February 1998. The Supplementary Agreements had separate commencement dates. The definition of year meant that all the requirements in the General Agreement and Detention Services Contract that were based on a year should be for a year running from 27 February. However, it appears both parties used a calendar year. Clauses affected were:

- Detention Services Contract, clause 4.6—CPI adjustment;
- General Agreement, clause 3.2—Sharing of cost savings refers to both 'calendar year' and 'year';
- General Agreement, clause 7.4—Annual review of performance measures and IDS; and
- General Agreement, clause 7.5—Calculation and payment of the performance-linked fee.

Conclusion

4.51 Because the detention agreements were outcome-based, with DIMIA requiring ACM to deliver a service to a general standard without specifying how that was to be done, ACM had greater flexibility in its service delivery. However, the detention agreements with ACM lacked specificity in both the nature and the quality of the service to be delivered.

4.52 The risks associated with general outcomes, in particular the risk of services not being delivered, could have been addressed with appropriate performance measures. However, the IDS and subsequent measures did not give sufficiently detailed quantitative requirements for delivering detention services at either the input or the output levels. There were ambiguities in the language used in the IDS, the performance measures and the benchmark indicators. This meant that it was not possible for DIMIA to measure ACM's progress against pre-determined standards.

4.53 DIMIA's strategies to specify service requirements outside the detention agreements are noted in Chapter 5. Although these strategies were refined and improved over the life of the detention agreements, the lack of contract specification carried inherent risks. Relying on discussions between the parties risked ad hoc solutions, which were not aligned with DIMIA's

strategic objectives, and risked fragmented and fluctuating contract deliverables across detention facilities and over time.

4.54 Of the 107 sub-standards in the IDS, 38 were not covered, and only 37 were partially covered, by a performance measure, leaving DIMIA without the contractual ability to impose a financial sanction on the contractor for a breach of major areas of service delivery.

4.55 The structure of the performance measures increased the risk of inadequate monitoring, as non-specific performance measures are more difficult to monitor than rigid quantitative measures. Each set of circumstances must be taken into account when determining whether the level of service had been adequate and reasonable. Although this can result in a flexible and dynamic contract partnership, it is labour-intensive. In assessing non-specific performance measures, it is also essential for the assessor to have a thorough knowledge of the overall program objectives, and how the contract is expected to enable those objectives to be achieved.

5. Managing Contract Delivery

This chapter examines DIMIA's management of ACM's delivery of services under the detention agreements, in particular, DIMIA's collection and analysis of performance information and its subsequent use of that information to monitor ACM's progress against contract deliverables.

Introduction

5.1 Under the detention agreements, DIMIA required the contractor to deliver certain outcomes, without specifying in detail how those outcomes are to be achieved (see Chapter 4). To ensure that outcomes were delivered in accordance with the detention agreements, the ANAO expected DIMIA to have had administrative processes to manage service delivery in the following key areas:

Information collection.

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

Information analysis

- Did DIMIA analyse complaints and use that analysis to improve service delivery?
- Did DIMIA effectively analyse the information collected to assess the contractor's performance?

Rewards and penalties

- Did DIMIA use the performance-linked fee to provide an incentive for ACM to deliver continuous high standard services?
- Did DIMIA effectively use the available penalties for serious performance breaches?

Departmental performance information

- Did DIMIA have sufficient performance information in its annual report and Portfolio Budget Statements?

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

The ANAO 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 a service delivery failure has occurred.

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.

5.2 The ANAO expected that based on its assessment of risk,⁶³ DIMIA would have a planned and continuous program for collecting information on specific areas of detention management to facilitate effective contract management. Such a program would include: mechanisms for the detention service provider to report on operations within a centre, including its own performance; regular internal monitoring of contractor performance; and subsequent reporting, targeted towards identified areas of highest risk.

5.3 DIMIA's systems for collecting information were:

- the Contract Management Group (CMG) and the Contract Operations Group (COG);
- incident reports
- Central Office monitoring visits;
- specific audits;
- DIMIA on-site business managers' monthly reports;
- weekly teleconferences; and
- investigations into specific events.

⁶³ Risk management is addressed in Chapter 3.

Contract Management Group and Contract Operations Group

5.4 As discussed in Chapter 4, section 4.1 of the General Agreement provided for the parties to establish a management committee with agreed structures and functions. From 2001, governance arrangements for the detention agreements included the CMG and COG. DIMIA and ACM used these groups as a primary mechanism to discuss service delivery issues and performance standards.

5.5 The CMG met quarterly. It was designed to be a forum for senior representatives of DIMIA and the contractor to discuss strategic issues relating to the detention agreements, the delivery of detention services or the relationship between the parties.⁶⁴ It considered service delivery performance issues and addressed the more substantive operational issues raised by ACM or DIMIA. The CMG also provided feedback to ACM where service levels warrant and managed contract issues such as Supplementary Agreements and financial matters.

5.6 DIMIA described the COG as a high-level monthly meeting that considered operational issues.⁶⁵ The Detention Management Section (DMS) in Central Office provided the secretariat, and prepared material on more complex and sensitive operational and service delivery matters for consideration by the CMG and COG. DMS staff gathered information and documentation on service provision, then analysed and assessed it for possible inclusion on the COG agenda. DMS staff tracked progress of all COG agenda

⁶⁴ CMG consists of:

- The Contract Administrator—Chairperson;
- The CEO or nominee of the detention services provider;
- Detention Infrastructure Branch Representative;
- Assistant Secretary, Unauthorised Arrivals and Detention Services;
- Director, Detention Operations Section;
- Director, Detention Management Section; and
- Assistant Secretary, Detention Policy Branch.

⁶⁵ The COG consists of:

- Assistant Secretary, Unauthorised Arrivals and Detention Services—Chairperson;
- Detention Infrastructure Branch Representative;
- Director, Detention Operations Section;
- Director, Detention Management Section;
- Assistant Secretary, Detention Policy Branch, as required; and
- Detention service provider's operational representatives, including General Manager Detention Services.

items, and considered matters progressed through the COG in preparation of the formal quarterly performance assessment. There were no DIMIA members from State offices on COG or CMG.

5.7 As discussed in Chapter 4, the ANAO found no evidence that the procedures for COG and CMG set out by DIMIA in 2002 were agreed to by ACM. The ANAO also found that, although the COG and CMG had on occasions considered high-level and strategic contract management issues, both groups focused on issues arising from incident reports.

5.8 At April 2003, COG and CMG assisted in coordinating a joint response to planned disturbances at all the centres. Other issues were discussed at COG and CMG over a length of time without resolution, for example repairs and maintenance and transport costs as follows:

- Repairs and maintenance. The ANAO found that processes for determining DIMIA and contractor liability for repairs and maintenance were poorly defined. Disputes over repairs and maintenance were ongoing for the life of the detention agreements.
- Transport costs. The detention agreements did not specify what types of transport services were included in the standard services fee. The definition of metropolitan and non-metropolitan transport for detainees was not formally resolved through contract amendment, although DIMIA and ACM partially resolved the issue through subsequent discussions. As a result of the initial ambiguity, DIMIA's checking processes for 'in scope' and 'out of scope' services have been extensive and inefficient.

5.9 The ANAO notes that although these issues consistently required attention from senior staff members in both organisations, a contract variation to provide additional clarity was not pursued or achieved.

Incident reports

5.10 The Immigration Detention Standards (IDS) define an incident to be a variation from the day-to-day routine of the facility which threatens, or has the potential to threaten, the good order of the facility. Although the detention agreements provided some examples of incidents, the list was limited to examples of incidents which may threaten good order of the facility. Initially, in accordance with the agreements, the reports identified variations from expected results. Over time, they became extensive and complete operational data.

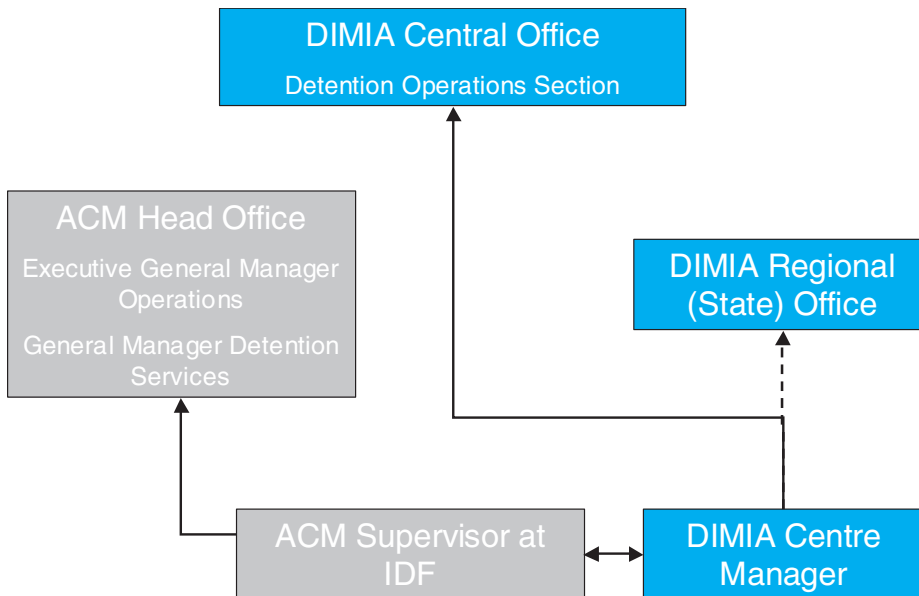
5.11 In 2002, DIMIA stated that ‘under the contract, ACM was required to keep [the department] fully informed of all aspects of service delivery through the provision of incident reports.’⁶⁶ The ANAO notes that overall service delivery requirements are broader than the incidents defined in the agreements.

5.12 The ANAO found there were incidents that ACM did not consider serious enough to warrant reporting, but that DIMIA considered should have been reported. DIMIA did not develop a formal agreement with ACM; nor until 2002, did it issue supporting information to its own staff at the centres, to make it clear which events were to be classified as incidents. This made it difficult for both the on-site DIMIA staff and ACM to meet DIMIA’s expectations for information regarding the delivery of detention services.

5.13 Incident reports were created by the relevant ACM supervisor at the detention facility, and faxed to various parts of ACM and DIMIA as shown in Figure 5.1. State offices also receive incident reports, although not invariably. Individual detention facilities had additional arrangements, for example, at Baxter there was a local arrangement that if an incident report was to be created, the on-call DIMIA officer was notified of the incident.

Figure 5.1

Movement of incident reports



Source: ANAO analysis of DIMIA information.

⁶⁶ DIMIA submission 185 to the Human Rights and Equal Opportunity Commission’s National Inquiry into Children in Immigration Detention, p.37.

5.14 Incident reports were not computerised, although this was contemplated in the Detention Services Contract.⁶⁷ A system of faxing incident reports is time-consuming, expensive and relatively insecure, compared with providing the reports electronically. There was no automatically generated trail to record that Central Office was receiving the reports, although the reports were manually numbered and any gaps noted and followed up by Central Office. DIMIA advised that the computerisation of incident reports is a requirement under the new contract.

5.15 If an incident report required further action, this was noted. Additional reports were produced if a particular incident required further resolution. ACM reviewed incident reports to ensure the recommendations were implemented and there was follow-up, before they were closed. DIMIA Central Office marked incident reports for follow-up if required, and noted when the follow-up incident report was received. It regularly checked whether all follow-up reports were received.

5.16 Although DIMIA relied heavily on incident reports for information, it has had ongoing concerns over the quality and timeliness of reports. Almost all DIMIA on-site business managers related to ANAO concerns about the thoroughness and accuracy of incident reports. DIMIA on-site business managers have edited and amended incident reports to bring them to a point where they would fulfil DIMIA's information requirements. Despite these concerns, DIMIA did not amend the contractual framework for incident reporting, or put in place an electronic transmission system. DIMIA advised that the lack of formal amendments to the detention agreements was a result of its deliberate decision to drive change through the new contract. The lack of formal contract variations is discussed in more detail in Chapter 4.

Emergency notification

5.17 Under the detention agreements, ACM had to immediately report any major incident or material problem, and generally did so promptly and fully. ACM managers expressed concern to ANAO over DIMIA centre staff not being on-site, and occasionally not being contactable out of hours.

⁶⁷ Clause 4.3 (Reporting and Monitoring) of the General Agreement indicates that the contractor must provide reports in a medium that allows DIMIA to access the information in the manner that best fulfils the requirements of the IDS and includes, without limitation, electronic access. The contractor must reasonably maintain sufficient data and audit trails for the purposes of validating the delivery of services against the IDS.

Monthly self-assessment

5.18 As discussed in Chapter 4, the General Agreement required ACM to provide a report on its own performance with its invoices. The ANAO found that these reports were not supplied. Therefore, DIMIA was unable use them to monitor the standard of service delivery against the IDS. DIMIA advised that it did not use the existing process because it considered it unworkable and of limited value. Nevertheless, the inclusion of the requirement for self-assessment into the overall assessment of contractor performance would have increased the effectiveness of this tool.

Central Office monitoring visits

5.19 In the first two years there was no planned monitoring of ACM's performance. Since 2002, DIMIA has regularly sent Central Office monitors to the detention facilities and there has been a monitoring plan setting out when monitors are to visit. Until recently, monitors were not given specific performance management training. However, a training program is now in place.

5.20 From early 2003, monitoring schedules were prepared for each monitoring visit. The schedules addressed specific issues identified through incident reports, monthly managers' reports, previous monitoring visits, or other means such as Ombudsman enquiries. Although specific areas were identified, monitors did not have comprehensive guidelines on how to assess whether a specific service is being delivered to the required standard. DIMIA is starting to develop test processes for monitoring.

5.21 Monitors addressed ongoing issues, and also selected areas of higher risk identified in the week or two before the visit. However, risks were not identified in accordance with program objectives on an annual basis or over the life of the Detention Services Contract. The lack of training for monitors for most of the contract period potentially diminished the usefulness of information collected on monitoring visits.

Specific audits

5.22 DIMIA also conducted a program of investigations or audits into specific issues.⁶⁸ These investigations were conducted by DIMIA staff, or by one of a standing expert panel of consultants assembled by DIMIA to provide a range of independent expertise. Panel audits usually operated from terms of reference and had specified criteria to measure performance. External experts were used when DIMIA considered it did not have the necessary expertise, for example, in the area of mental health.

5.23 Audits were commenced in response to ongoing or immediate concerns. Issues that were considered to have a public interest factor, or were the subject of external scrutiny, were given priority. Audits were not connected to an overall strategic monitoring plan.

Monthly report

5.24 DIMIA on-site business managers completed a monthly report and forwarded it to the monitoring sub-section in Central Office. The monthly report was one of the key tools used to inform the Contract Administrator of contractor performance. Although Central Office created a pro forma, on-site managers did not use it consistently. The monthly reports varied greatly in quality between detention facilities and within the same detention facility over time. The reports usually covered one-off incidents, or specific breaches, but did not consistently include a considered assessment of the quality of service delivery against the performance measures. The reports were not always delivered to Central Office in a timely fashion. DIMIA advised that the timeliness of the monthly reports was directly linked to the operational pressures being experienced.

5.25 The monthly reports were the main mechanism for regular internal reporting. DIMIA on-site business managers faced a number of difficulties in adequately monitoring ACM's service delivery, which are discussed in more detail below. Monthly reports were not a complete assessment of contractor performance because they did not comprehensively address the standard of service delivery, they varied greatly in quality between centres and over time, and they focussed more on exceptional events and breaches of performance standards than on regular assessment of the quality of service delivery.

⁶⁸ For example, audits have covered detainee property, detainee records and health services.

Inherent difficulties faced by on-site managers

5.26 According to the Detention Managers Handbook (the handbook), contract management is a key responsibility of DIMIA on-site business managers. However, their ability to monitor service delivery and provide a comprehensive monthly report to Central Office has been hindered by:

- insufficient information from Central Office on the expected standards and priority that is to be given to reports;
- no, or insufficient, training in contract management;
- lack of specificity and clarity in the IDS and related performance measures;
- no translation of the IDS into specific elements of service delivery;
- ambiguities in the detention agreements relating to roles and responsibilities of ACM and DIMIA; and
- an increased workload, with monitoring given a lower priority than detainee management and ad hoc responses to specific internal or external queries.

5.27 DIMIA on-site business managers have attempted to resolve the above issues on an ad hoc basis. One approach was to negotiate a resolution of the specific issue, either at the centre level or between Central Office and ACM management. This carried a risk that after negotiating a solution with specific personnel, the solution is lost when the personnel change. Another approach was to not report issues that have little hope of being resolved.⁶⁹

5.28 In response to the recommendation of the Flood Report⁷⁰, DIMIA introduced deputy centre managers. However, the creation of the extra positions coincided with an increase in enquiries from the Human Rights and Equal Opportunity Commission and the Ombudsman, which meant that deputy centre managers couldn't devote as much time to monitoring as originally anticipated. Although deputy centre managers were intended to undertake monitoring, apart from a briefing before they take up their position, they were not given detailed guidance on how to monitor the contract. Although individual detention facilities have attempted to provide a more

⁶⁹ For example, the standard of cleanliness of one dormitory in Stage 1 of the Villawood Immigration Detention Centre is considerably below the requirements of basic hygiene. However the detainee population in that dormitory, and the infrastructure, make it almost impossible to keep this dormitory clean. The centre manager acknowledges this and does not report the state of the dormitory as a breach by ACM.

⁷⁰ Philip Flood AO, Report of Inquiry into Immigration Detention Procedures, 2001.

comprehensive monitoring structure, there was no central guidance on how to assess risk and identify areas that require closer monitoring.⁷¹

Other regular reporting

5.29 There were weekly teleconferences between DIMIA on-site business managers and Central Office where managers provided an overview of service delivery at their centre and reported on any relevant issues. There were also fortnightly teleconferences that focus specifically on the care and management of children. With the exception of the teleconference dealing with issues related to unaccompanied minors, notes, rather than formal minutes, were taken at the teleconferences.

Investigations into specific events

5.30 DIMIA investigated certain specific incidents, in particular, escapes, riots and other serious disturbances, where it considered that ACM may have breached its duty of care or other significant elements of the IDS. Investigations were normally done on behalf of DIMIA by expert consultants under contract. DIMIA has a panel of experts, and used panel members on a number of occasions, for example, to investigate incidents such as escapes from Villawood Immigration Detention Centre and Woomera Immigration Reception and Processing Centre. Normally terms of reference were drafted to set the boundaries of the investigation. Investigations generally included recommendations for action by ACM and/or DIMIA.

⁷¹ At the Port Hedland Immigration Reception and Processing Centre, the deputy manager monitors repairs and maintenance each week, which translates into a visit to each accommodation block each month. Because there is no clearly defined measure in the contract, the Port Hedland centre has tended to develop its own sub-criteria in order to form an opinion on the standards being achieved by the contractor. At the Baxter centre, the deputy manager is responsible for all aspects of contract monitoring, and regularly checks compounds, conducts random audits (eg, property files) and checks the incident reports every morning.

5.31 Designated ACM investigators also investigated certain major incidents. The DIMIA and ACM investigations often ran in parallel, and there was considerable duplication of effort. In early 2003, a protocol was finalised for sharing draft reports. ACM advised that the investigators worked well with DIMIA consultants on the ground, sharing information, interviewing jointly and generally agreeing on the factual basis of the incident.

5.32 DIMIA did not have set criteria for determining whether an incident would be separately investigated. The results of an investigation were fed into the performance monitoring system. If an investigation report recommended that ACM take action, the matter was followed up through COG and CMG. If a recommendation was for DIMIA to take further action, there was no formal system for monitoring the implementation of that recommendation.

Exception reporting: Monthly reports, teleconferences

5.33 The monthly report, teleconferences and the investigations into specific events were largely exception reporting. Exception reporting is a standard contract management tool. A system of better practice exception reporting seeks to maintain the contractor's operational flexibility, while ensuring that the contracting agency collects sufficient information to monitor the contractor's performance in defined key areas.

5.34 Exception reporting carries certain risks; for example, on-going substandard performance in a critical area of service delivery, such as health care, will not be recognised until it results in a specific trigger event. To operate as an effective information collection and performance monitoring tool, exception reporting should be complemented by other mechanisms. DIMIA's program of planned audits and monitoring, although not commencing until late in the Detention Services Contract term, operated as an effective complement to monitor the overall standard of service delivery.

5.35 DIMIA's system of detainee case management also complemented exception reporting, by focusing on individual detainees and their treatment within a centre. Individual case management is a useful tool for checking that service provision, as perceived by the detainee, is up to the requisite standard. Over the term of the detention agreements, DIMIA had increasingly become aware of the importance of individual management and personal detainee contact, and significantly improved case management as a result. Generally, individual management plans were prepared for certain detainees considered to be at higher risk; although the Baxter centre has individual management plans for all detainees.

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

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.

5.36 As well as forming an essential component of detainee management, an effective complaints mechanism, along with complaints made to external bodies, is a useful tool for an agency to collect information about service delivery. The ANAO expected to find that DIMIA had:

- a process for ACM to record, process and resolve complaints by detainees;
- a system for monitoring the results of that process;
- a system for analysing complaints made to external bodies; and
- a process for considering issues raised by detainees in the context of ACM's service delivery.

Complaints

5.37 Detainees were able to comment or complain about the conditions of detention to DIMIA or ACM staff on any matter. Copies of all complaints were registered at the relevant centre, and passed to either the DIMIA or ACM representative at that centre for resolution. Copies of complaints that did not go to the DIMIA on-site business manager initially were provided by ACM once they were resolved. If a complaint was not passed to DIMIA, there was no mechanism for finding out about it. Where the existence of a complaint became known through other sources, the failure of ACM to report the complaint was noted as a performance breach.

5.38 There was no formal requirement for either DIMIA or ACM to systematically review complaints. However, DIMIA on-site business managers undertook some reviews. For example, the Villawood manager advised that complaints were normally reviewed every couple of months to check that ACM had taken appropriate action. If a complaint resulted in issues that were not resolved, and the manager considered further action was necessary (either for improvement or penalty), it was raised in the monthly report and, subsequently, for inclusion at the COG meetings.

5.39 There were other mechanisms for the detainees to complain to the service provider or DIMIA. Each detention facility had a detainee committee that normally met monthly with community, service provider and DIMIA representatives. Detainees could also make informal verbal complaints to service provider and DIMIA staff. DIMIA policy required on-site business managers to maintain a detainee contact program, involving a schedule of meetings with detainees, although in smaller centres a formal schedule was not used.

5.40 DIMIA developed a Complaints Handling Mechanism Policy in 2000 and forwarded it to ACM to implement in detention facilities on 9 March 2000. The ANAO found that the policy has not been adopted in all detention facilities. Nor is it incorporated into the handbook.

Scrutiny by external bodies

5.41 Detainees have the right to complain to external bodies such as the Commonwealth Ombudsman and the Human Rights Commissioner. They did not have to raise the matter with ACM or DIMIA before raising an issue with these external bodies. Complaints from external bodies such as the Ombudsman, are forwarded to the Privacy and Freedom of Information Section in DIMIA Central Office. Complaints concerning immigration detention, are passed to the public scrutiny section within the Unauthorised Arrivals and Detention Division. DIMIA's public scrutiny section then gathers the information from the relevant area of the Unauthorised Arrivals and Detention Division and attempts to resolve complaints received. DIMIA advised that information gathered by the public scrutiny section is provided to COG where appropriate.

5.42 The Immigration Detention Advisory Group is another means of externally scrutinising detention conditions. This group was created in February 2001 to advise the Minister on the appropriateness and adequacy of services, accommodation and facilities at immigration detention facilities. The group can access immigration detention facilities at any time and without prior notice. During these visits, group members talk to individual detainees and detainee representative committees, then report to the Minister, either orally or in writing. Specific changes, or general policy approaches, may flow from the recommendations contained in these reports. In addition, the Immigration Detention Advisory Group may pass information on specific concerns to senior DIMIA staff.

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

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 whether the standard of service delivery was of the required quality.

5.43 To achieve the stated objectives of high-quality service delivery with ongoing cost reductions⁷², it was important that DIMIA had an ongoing program to accurately assess the service provider's performance. Sufficient performance information was required to measure the quality of ACM's service delivery and, in a broader sense, determine how the program objectives were being met. The ANAO expected to find:

- a rigorous process to assess and evaluate the information collected; and
- analysis of the information collected to identify ongoing or systemic issues affecting service delivery.

⁷² As stated in clause 3.1 of the General Agreement.

Issue identification

5.44 The analysis of service delivery information was the responsibility of DIMIA's Monitoring Sub-section, which was set up within the Detention Operations Section in January 2001. DIMIA stated that contract monitoring was also conducted before this date. The Monitoring Sub-section analysed the information received through incident reports, monthly reports, complaints and audits for issues that could constitute a performance breach. If it required further information, the sub-section used a variety of sources, including ACM, DIMIA on-site business managers and expert investigators. A major incidents sub-section was established in September 2001 to provide additional monitoring capability. DIMIA advised that analysis was done in accordance with a monitoring plan, which at the time of the audit was in an early stage of development.

5.45 Analysis of incident reports was undertaken using an Incident Tracking Database. This is a separate database used by DIMIA's Central Office, and incident reports were entered manually after the faxed copy was received. The Incident Tracking Database is not linked to DIMIA's Integrated Client Service Environment (ICSE), although a detainee's ICSE identifying number was manually added to any record relating to that detainee. Reports were entered in batches, and at the time of the audit there was a delay of one to two months for entering information for the larger centres. The Incident Tracking Database started on 1 March 2001, with a narrative included in the database from July 2002. The narrative was based on summary information from the incident report, which was re-summarised when it was entered into the Incident Tracking Database. Re-entering information is labour-intensive and risks losing or distorting information.

5.46 Performance issues can be marked in the Incident Tracking Database, although this was mainly used to mark incident reports that were not provided in the required time frame. A wide range of queries can be run from the database to analyse the reported incidents. The ANAO found no evidence that DIMIA regularly used this analysis to focus senior managers on areas of service delivery that may require attention.

5.47 The Ombudsman, Privacy and Freedom of Information Section has a database that registers complaints received by DIMIA through third parties (such as the Ombudsman, the Human Rights and Equal Opportunity Commission and the Privacy Commissioner). The section provided a quarterly report to the DIMIA Secretary summarising the complaint information. DIMIA's Public Scrutiny Section, which deals only with complaints about immigration detention, also tracks complaints. However, there was no standard process for DIMIA to analyse the occurrence of these complaints and identify systemic issues.

5.48 The ANAO found that there were no stated criteria or defined processes for analysing and assessing information. Information analysis was undertaken against the performance measures in the Detention Services Contract, which specified how the delivery of the service was measured against the IDS. There were no guidelines for analysing the information collected and assessing its relevance to service delivery.

Assurance of service quality in key areas

Focus on outcomes

5.49 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 outcomes or 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 outcomes or outputs, including appropriate service quality measures.

5.50 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.

5.51 An outcomes-based approach is more difficult to monitor, and carries the highest risk of substandard delivery where the services to be provided:

- are non-quantitative;
- are provided repeatedly but with a constantly changing specification;
- require a more subjective assessment of adequacy; and
- rely to a certain extent on the development of interpersonal relationships.

5.52 Therefore, aspects of the detention services that are least amenable to outcome-based monitoring are education and health services. To assure itself that education and health standards are provided to the required standard, DIMIA could use specific quality assurance processes. This could consist of articulating more specific standards, developing a monitoring program focused on quality assurance rather than exception reporting, or identifying a contractor's quality assurance processes which could be relied on for monitoring purposes.

5.53 DIMIA advised that it considers monitoring the qualifications of ACM staff members working in these areas, and audits of these services by expert panel members, provides adequate assurance that health and education services are being provided to the required standard. The ANAO notes that audits by expert panel members for health services did not commence until 2001, and were infrequent until 2003 when the number of audits increased. The ANAO also notes that this approach has not been evaluated nor has it been subject to a risk assessment.

5.54 Other than the general statements in the IDS, the ANAO found that DIMIA did not further articulate the requisite standards for health and education services.⁷³ Without specific requirements, the nature of health services in particular, makes it extremely difficult to detect inadequate service. Unlike more concrete services, to retrospectively assess a suspected incident of inadequate health provision requires, at a minimum, specialist knowledge and a subjective assessment from the perspective of the recipient of the health service.

5.55 Although DIMIA could generally identify and respond to outright failures in service delivery, it could not assure itself through the development of relevant, credible and timely performance information that education and health services were being provided to the required standard. There were no quality assurance processes to monitor health services. The monitoring that occurred, was based on notified incidents.

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

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.

⁷³ **IDS 8.3 Health Care needs.**

8.3.1 The care needs of each new detainee are identified by qualified medical personnel as soon as possible after being taken into detention. The medical officer has regard not only to the detainee's physical and mental health, but also the safety and welfare of other detainees, visitors and staff.

8.3.2 Detainees who require specialist treatment are referred or transferred to specialist institutions or to community hospitals.

8.3.3 The care needs of each detainee are regularly monitored.

8.3.4 All detainees are provided with necessary medical or other health care when required.

8.3.5 Detainees are provided with reasonable dental treatment necessary for the preservation of dental health.

IDS 9.4.1:

9.4.1 Social and educational programs appropriate to the child's age and abilities are available to all children in detention.

5.56 DIMIA used its analysis of information to calculate a performance-linked fee. The ANAO expected to find that:

- the performance-linked fee operated as an appropriate mechanism for obtaining a high standard of contractor performance;
- DIMIA's calculation of the performance-linked fee was transparent and consistent; and
- notification of the assessment to ACM was accurate and timely.

5.57 As discussed in Chapter 4, three per cent of the quarterly service fee payable to the service provider was linked to performance. The amount of performance-linked fee to be returned to ACM was calculated by allocating positive and negative performance benchmark points. Appendix 7 contains a list of performance assessments with the percentage performance fee paid to ACM, by quarter.

5.58 Whether a particular issue warrants a formal performance breach was judged on a case-by-case basis, taking into account environmental circumstances at the time, with the DIMIA contract administrator ultimately making the decision. Monitoring staff prepared a draft assessment for the contract administrator, but did not retain supporting documentation on why those incidents were assessed to be performance breaches. There were no formal rules or criteria to determine whether an incident was a performance breach that should be subject to penalty.

5.59 In DIMIA's calculations, one event could incur negative points under a number of IDS and related performance measures. If an event was given smaller penalties under multiple penalty provisions, it could have a greater impact than an event sanctioned, albeit heavily, under only one provision. This would have the effect of distorting the weightings given to the sanctions by the performance-linked fee matrix.

5.60 Incidents were not closed to penalties after the certificate for the relevant quarter had been issued and the performance-linked payment made. DIMIA and ACM re-visited events and prior assessments and made adjustments in the current quarter's assessment. Some incidents that potentially required ongoing investigation (including by expert consultants) were assessed, and penalties allocated, over a year after the incident occurred. ACM also had an opportunity to refute the allocation of points for certain incidents, and this could result in an adjustment. The adjustment occurred in the quarter when DIMIA agreed with ACM's rebuttal, either in whole or in part. As an example, Figure 5.2 illustrates a summary of the performance assessment for the quarter ending December 2001, with multiple sanctions and adjustments.

Figure 5.2

Summary of performance assessment for quarter ended 31 December 2001

Incident	Relevant IDS for sanction	Negative points	Positive points not awarded	Later adjustments
Treatment of 5 detainees	Dignity	5		
Lack of on-site interpreters	Privacy	10		
Action taken after alleged sexual assaults on minors	Safety		2	
Alleged assault on detainee by ACM officer ⁷⁴	Safety		2	
Alleged assault on minor by ACM officer ⁷⁵	Safety, Competency of staff, Discipline and control, Use of force	10	4	
Lack of police checks	Personal attributes	378		Resolved in December 2003 ⁷⁶
Escape from Concord hospital	Security	5	2	
Escape of 6 detainees from Woomera	Security	6		
One escape from Curtin	Security	1		
Two missing gold coins	Detainee property Monitoring and reporting	6		
Missing items (AGCC)	Detainee property	1		1 point returned March 02 quarter
Aborted removal—wrong documents	Transport	10	2	
Inappropriately handcuffed	Instruments of restraint	5		
Minor's broken foot not x-rayed	Health care	5		
Self-harm threat, Curtin	Health care	5		
Food contamination, Woomera	Food	2		
14 minors self-harm	Unaccompanied minors	2		
Three late incident reports	Monitoring and reporting	15		9 points returned March 02 quarter
Reporting 5 detainees had escaped when 6 had	Monitoring and reporting	5		

⁷⁴ DIMIA advises that at the time of the assessment, the incident was an allegation and the subject of independent investigation.

⁷⁵ The assessment notes ACM's disciplinary proceedings and that the matter was referred to the AFP for investigation.

⁷⁶ The issue of lack of police clearances for ACM staff affected performance fee calculations from December 2001 to December 2002. After negotiations, final performance-linked fee certificates were issued for those quarters on 2 December 2003.

Figure 5.2 (Continued)**Summary of performance assessment for quarter ended 31 December 2001**

Reconciliation of Points			
Total negative points (less those later returned):	-461		
Points returned from previous assessments:	<u>+27</u>		
Total Points	-434		
Value of performance-linked fee for quarter (3% of service fee)		\$947 653	
Less -434 points at \$1094.17 each		(\$474 870)	
Less backdated CPI adjustment ⁷⁷		<u>(\$34 608)</u>	
Total Performance Fee Payable		\$438 175	

Source: ANAO analysis based on DIMIA information.

5.61 Retrospective adjustments to a quarterly assessment meant the assessment could not accurately reflect ACM's performance in the relevant quarter. It also prevented DIMIA tracing any improvement or deterioration in the general quality of service delivery over time. Because adjustments were allocated to the relevant performance measure, it was difficult to trace changes in ACM's performance against a specific element of service delivery.

5.62 Not all identified performance breaches were penalised in a quarterly assessment. The DIMIA contract administrator could choose not to apply a sanction for a matter that had been identified as a performance breach, or could choose not to apply the maximum penalty. Although the flexibility to not apply the full available sanction allowed DIMIA to recognise extenuating circumstances, an inconsistent application of penalties risked blurring the department's focus on improving service delivery in areas of high risk.

5.63 Because the performance assessment and, ultimately, the allocation of penalty points, were based on identifiable breaches of an IDS, DIMIA's approach was to punish noticeable breaches rather than reward continual high-quality service delivery. Innovations in service delivery were not recognised by the performance-linked fee system. High performance in one area, which resulted in positive points, was nullified by a breach in another area, which resulted in negative points.

5.64 Although the application of penalties was a crucial part of the detention agreements, it was not clear that the sanctions applied had any impact on improving contractor performance. There was a risk that DIMIA used more resources in applying sanctions than was warranted by the improvement to the core business of delivering detention services.

⁷⁷ The value of a performance point was originally \$1000 and increased annually with the CPI.

Notification of assessment

5.65 The main formal mechanism for advising ACM of its performance was the quarterly assessment certificate. The quarterly assessment certificate was to be issued within 10 days from the end of a quarter. This was acknowledged by both parties to be an unworkably short time frame. Accordingly, finalisation of the quarterly assessments has not been timely. In August 2003, the assessments for the first two quarters of 2003 had not yet been finalised. Figure 5.3 illustrates a sample of the timeliness of quarterly performance assessments (for December of each year).

Figure 5.3
Finalisation of quarterly performance assessment

Quarter ended	Assessment due	Date sent to ACM	Days late
December 1999	10 January 2000	17 February 2000	37
December 2000	10 January 2001	18 April 2001	98
December 2001	10 January 2002	8 May 2002	118
December 2002	10 January 2003	2 December 2003	327 ⁷⁸

Source: ANAO analysis of DIMIA data.

5.66 The quarterly certificate, although a critical formal performance assessment, essentially reflected the unstructured and exceptions-based nature of DIMIA’s monitoring. The ANAO notes that the time delay experienced with the quarter ending December 2002 was directly linked to the time taken to resolve a dispute over specific sanctions imposed, which DIMIA sought to finalise prior to issuing the performance assessment. However, the time delays experienced in other quarters prevented the performance assessment being used to improve contractor performance. There was also an additional administrative burden on ACM if it attempted to argue, or rebut, the substance of a quarterly assessment, where the incidents may have occurred several months earlier.

⁷⁸ The delay in this performance assessment was largely caused by negotiations surrounding a single issue (penalties for lapses in ACM staff police clearances) that affected performance fees for the quarters from 1 October 2001 to 31 December 2002.

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

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

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 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.

5.67 The General Agreement provided for penalties in the case of serious performance breaches or outright failure of service delivery. The ANAO expected to find systems for the appropriate use of these contract mechanisms, to sanction more serious performance breaches that may have occurred.

5.68 Under the General Agreement, DIMIA could issue a default notice when a default event occurred. The default process allowed DIMIA to heavily penalise ACM for failures in service delivery. Over the life of the Detention Services Contract, DIMIA issued one default notice (on 20 August 2001) for continued below-benchmark performance. ACM rectified the matter within the extended cure period. The default notice produced an improvement in the relevant aspects of service delivery, which was accepted by DIMIA. The circumstances surrounding the issue of the default notice are discussed further in Chapter 7 in the context of DIMIA's integration of detention planning with detention infrastructure.

5.69 A default could also result in a reduction to the service fee for the relevant period. Under the General Agreement, DIMIA could reduce the service fee proportionate to the service not provided by the contractor. This mechanism was not used.

5.70 Although the more serious penalties were not widely used, the ANAO notes that a large percentage of the performance fee was withheld for the March 2002 and June 2002 quarters. The ANAO found no evidence that the use of more serious mechanisms to address apparent persistent underperformance were considered. 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.

Did DIMIA have sufficient performance information in its annual report and PBS?

DIMIA's published performance information on detention services is limited. More information relating to contract management would provide a higher level of assurance about DIMIA's accountability obligations to the Parliament and the community for overseeing the operation of the detention agreements.

5.71 As indicated in Chapter 3, responsibility is shared within DIMIA for responding to emergent risks and meeting the expectations of different stakeholders. In other chapters the ANAO notes the work of a number of levels of government with either a responsibility or a role in managing the detention function. These other bodies complement the contract monitoring and accountability processes of DIMIA.

5.72 The ANAO acknowledges the DIMIA's annual report contains some analysis and useful descriptions of initiatives the department is taking in the delivery of the detention function. While other agencies such as the Ombudsman and the Human Rights and Equal Opportunity Commission, report frequently on aspects of detention services, the information communicated to the Parliament by DIMIA in its annual report and Portfolio Budget Statements (PBS) is limited because of the reporting of measures DIMIA cannot control. For example, the reported result of 184 640 detainee days in 2002–03 is a function of the number of boat arrivals and their length of stay in detention, neither of which DIMIA can control.

5.73 To provide higher levels of assurance over DIMIA's accountability obligations to the Parliament and the community for overseeing the operation of the detention agreements, the ANAO suggests that DIMIA revise its reporting of detention to the Parliament each year to include:

- the major results identified by its monitoring program for the year;
- details of the funding outlays for the operation of the detention agreements;
- particulars of the extent of performance payments and sanctions made for performance in excess of, or below, the standard set out in the contractual agreements; and
- the principal achievements of the contractor and the department in enhancing the efficiency and effectiveness of detention operations.

6. Funding and Payment Processes

This chapter analyses the funding arrangements for the Detention Services Contract, including DIMIA's financial reporting and delegations and controls. The savings share, which was designed to return a proportion of any cost savings to the Commonwealth of Australia (the Commonwealth) is also examined.

Introduction

6.1 DIMIA's funding for detention services, payment of accounts and the financial administration of the contract are important administrative functions. Payments for detention services were in the vicinity of \$470 million over the life of the first contract⁷⁹, (excluding the cost of repairs and maintenance, new infrastructure and the use of consultants⁸⁰). Total outgoings for detention services and related ancillaries⁸¹ (not including capital expenditure) reached approximately \$580 million over the same period, taking into account return of the Commonwealth's savings share.⁸²

6.2 On 27 February 1998, DIMIA entered into a 10-year General Agreement with Australian Correctional Services Pty Ltd (ACS) to provide detention services to the Commonwealth. Services were to be provided through Australasian Correctional Management (ACM), the operational arm of ACS.⁸³ The agreement reflected the objectives of the Commonwealth, including the shared goal of providing high-quality services with ongoing cost reductions. In acknowledgement of the relationship necessary for cost reductions, ACM agreed to share with the Commonwealth any savings achieved, at a proportion to be agreed between the parties in each Detention Services Contract.

⁷⁹ This amount does not include payments made for the offshore management of asylum seekers (currently located at Papua New Guinea and Nauru), nor the costs of holding detainees in state facilities, such as the Arthur Gorrie Correctional Centre in Queensland.

⁸⁰ Consultants were used at various stages of the contract to conduct investigations, audits and other reports on the detention centres.

⁸¹ Including repairs and maintenance, escorts and removals, additional medical expenses and salaries associated with contract administration.

⁸² Exact figures are difficult to determine due to a number of factors:

- DIMIA's transition to a new financial system in 1999;
- some data, such as the cost of removals is not centrally held; and
- the cost of contract administration has been estimated by the ANAO based on staffing levels and does not include corporate overheads such as rent, rates, information technology support or staff travel.

⁸³ The actual delivery of service was provided by ACM, which is the operational arm of ACS. This report refers to ACM when describing both the contractual partner and the service provider. In January 2004, ACM was renamed as the GEO Group Australia, Pty. Ltd.

6.3 The Detention Services Contract set out the funding basis⁸⁴ for detention services at the original four facilities. There were Supplementary Agreements for Baxter, Woomera, Curtin and Christmas Island. Each centre was funded on a 'per diem' basis (for each day), and these were arranged in payment bands according to the capacity of the centres.⁸⁵ Some transport and removal costs were also calculated on a per diem basis. For other services outside the scope of the Detention Services Contract, for example, purchase of assets, payments to the contractor were made on the basis of 'cost plus 7 per cent', except for 'out of scope'⁸⁶ transport services, where funding, as part of the agreement was based on 'cost plus 10 per cent'.

6.4 The Detention Services Contract also provided for a performance-linked fee of three per cent of each invoice, which was withheld from payments to the contractor. The withheld amounts remained 'at risk' until the completion of a quarterly assessment of the contractor's performance, measured against a performance-linked fee matrix of performance points set out in the contract. The value for each above or below benchmark performance point was initially set at \$1000 per point, indexed to the CPI, and as a result of indexation, at the end of the contract was valued at \$1162.50.

6.5 For each quarter, DIMIA calculated and paid ACM the performance-linked fee payable for that quarter, subject to resolving any disputes. For the year ending 31 March, ACM was paid the balance of the performance-linked fee payable and the balance of benchmark performance points was re-set to zero.⁸⁷ (The operation and use of the performance-linked fee in dispute resolution is discussed in more detail in Chapter 5.)

6.6 Savings over and above a pre-agreed profit margin (discussed in a later section of this chapter) in delivering detention services were shared between the Commonwealth and ACM. The sharing was on the basis of 60 per cent to the Commonwealth and 40 per cent to ACM, calculated on the actual dollar value of the savings achieved. As well, the contract specified that any savings achieved, or additional costs incurred in delivering third party transport services, was to be shared between the Commonwealth and ACM in the ratio of 80 per cent to the Commonwealth and 20 per cent to ACM.

⁸⁴ The detention services fee is the payment per detainee day for each detention facility, covering the cost of providing all detention services. Additional payments may be made to cover costs relating to the hospitalisation of detainees above certain limits.

⁸⁵ Except Baxter Immigration Detention Facility and the Immigration Reception and Processing Centre at Christmas Island. Funding for Baxter is calculated according to a component formula based on an operating fee, a compound fee and a variable fee per detainee. Funding for Christmas Island is funded on the basis of 'cost plus' a set percentage.

⁸⁶ The definition of 'out of scope' services is discussed in later sections of this chapter.

⁸⁷ Any benchmark performance points unused at each quarter can be rolled over to subsequent quarters until the end of the period (31 March).

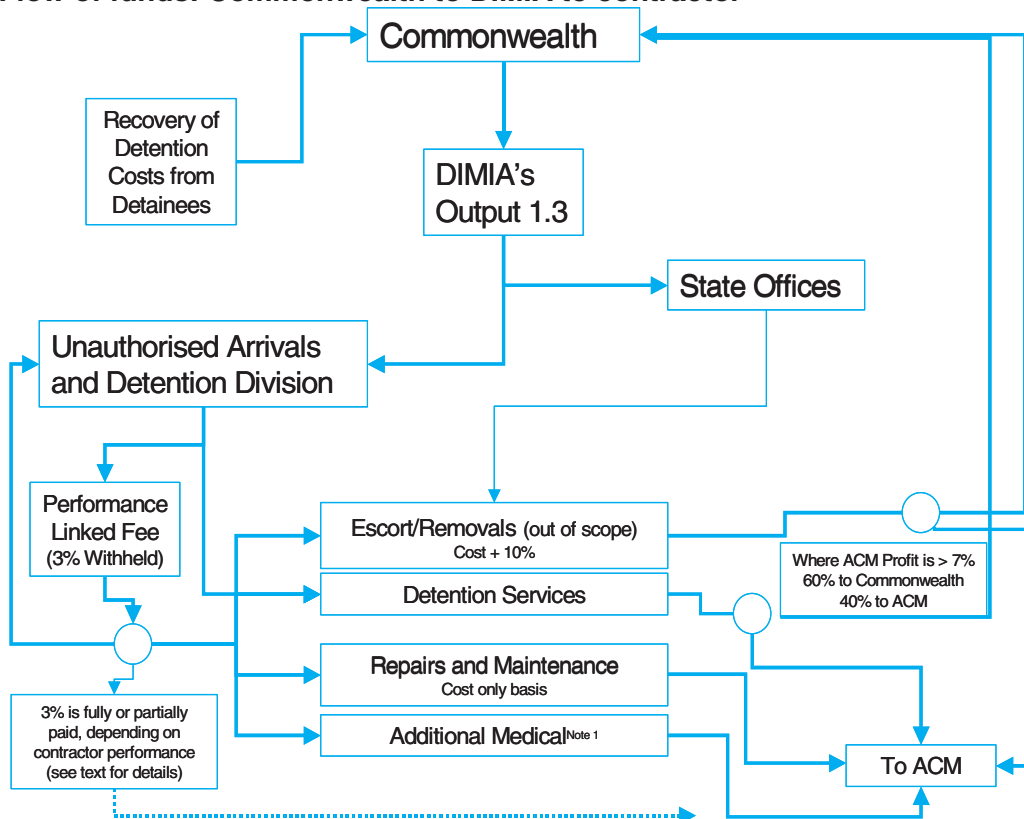
6.7 DIMIA's Central Office manages the overall funding and payment of invoices for detention services, including removals, detention centre escorts involving appearances in courts and tribunals, medical and hospital, repairs and maintenance, vehicle lease and interpreter costs. DIMIA's State offices manage the cost of compliance escorts (not involving appearance in court or tribunal) and the removal of detainees being held at detention centres and other places of detention.

6.8 *The Migration Act 1958* (the Act) also provides for recovering detention costs from detainees at an amount not exceeding the cost to the Commonwealth.⁸⁸

6.9 Figure 6.1 illustrates the flow of funds from the Commonwealth to DIMIA to the contractor.

Figure 6.1

Flow of funds: Commonwealth to DIMIA to contractor



Note 1: Additional hospitalisation and associated medical costs were calculated under a separate formula
Source: ANAO analysis based on DIMIA information.

⁸⁸ Recovery of detention costs from detainees is outside the scope of this audit.

6.10 The ANAO examined DIMIA's procedures and processes to determine whether responsibility for managing funding and payments was structured in a way that reflected clear responsibilities and accountabilities. The ANAO considered the following key questions:

- Was there an appropriate financial reporting framework?
- Were financial delegations clear and appropriate?
- Were there comprehensive procedures and instructions for paying invoices?
- Were the savings share arrangements managed to protect the interests of the Commonwealth?

Financial reporting

6.11 The focus of reforms in the Australian Public Service over recent years has been the establishment of a performance culture supported by clear lines of accountability. Agencies require a range of performance information for internal program management purposes and external reporting and accountability. In this context, to effectively and efficiently administer the financial commitments associated with detention, DIMIA required appropriate information relating to financial risks as well as for strategic and operational purposes including, asset management.

Was there an appropriate financial reporting framework for contract management?

Recently, DIMIA's internal reporting in relation to its financial commitments for the detention contract has improved. Prior to this, 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.

Overall and annual financial commitment

6.12 The financial commitments administered through the contract and related ancillaries ranged from very small amounts through to tens of millions of dollars in annual operating costs and infrastructure development. Figure 6.2 depicts the annual and overall costs of delivering detention services (not including capital expenditure).⁸⁹

Figure 6.2

Annual and overall costs of delivering detention services⁹⁰

Function/Year	1998 ^{Note 1} (\$'000)	1999 (\$'000)	2000 (\$'000)	2001 (\$'000)	2002 (\$'000)	2003 (\$'000)	2004 ^{Note 2} (\$'000)	Total (\$'000)
Temporary alternative	—	6	(1 496)	2 728	874	33	1 631	3 776
Operational cost	10 672	42 938	89 845	82 607	105 597	98 745	39 647	470 051
Repairs and maintenance	0	0	854	185	1 049	1 873	246	4 207
Escorts/Guards Local	613	782	4 345	12 626	11 017	9 352	(674)	38 061
Removals ⁹¹	0	3	546	5 558	6 027	638	161	12 933
Medical and hospital	0	17	96	1 414	2 089	1 981	622	6 219
Consultants	—	—	—	2 050	1 000	—	—	3 050
Contract administration ⁹²	1 050	2 806	8 618	8 618	9 070	8 759	4 028	42 949
Totals	12 335	46 552	102 808	115 786	136 723	121 381	45 661	581 246

Note 1. Part year data—from commencement of operations in November 1997 to 30 June 1998

Note 2. Part year data—from 1 July 2003 to 30 November 2003. Payments to new contractor commenced in December 2003

Source: ANAO from DIMIA data.

6.13 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, and the payments for repairs and maintenance, and for

⁸⁹ Does not include the costs of visa processing, assistance schemes and review processes.

⁹⁰ Year ending 30 June except where noted.

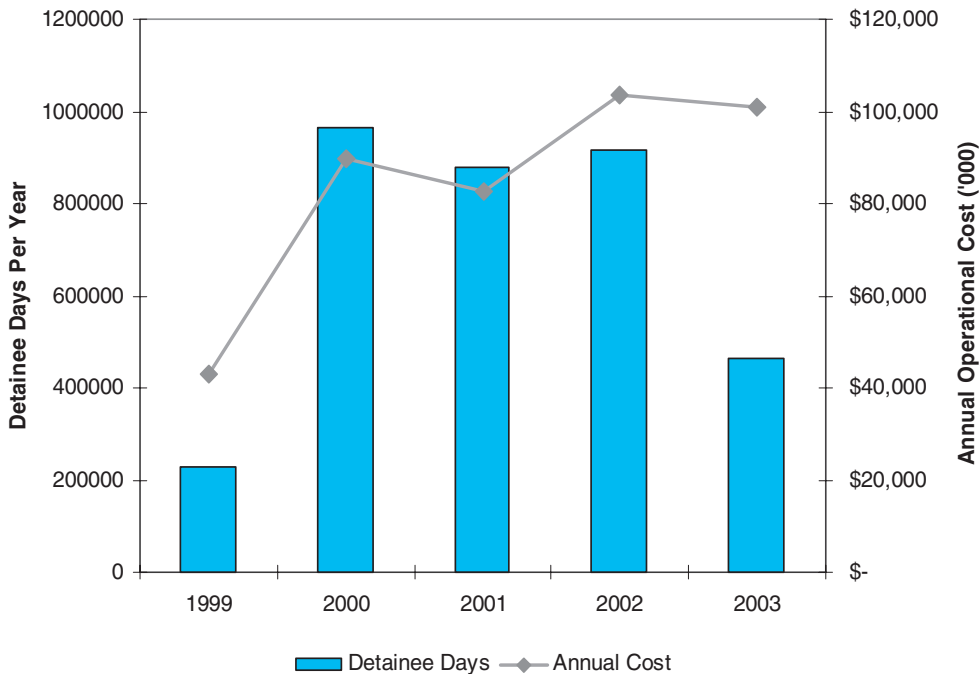
⁹¹ There is no centrally held data on the cost of removals. These are ANAO estimates based on figures obtained from DIMIA staff at Sydney airport.

⁹² Approximate costs of contract administration, consisting of direct salary costs for staff employed by Unauthorised Arrivals and Detention Division only, ie does not include the cost of corporate and other overheads, nor the costs of regional (state) office staff. Staffing levels have increased from 15 Average Staffing Level (ASL) at contract commencement to 150 ASL at the time of the audit. Not all staff are directly involved in contract administration, but are concerned in some way with the administration of detention.

escorts and removals. Of these, the operational cost of the contract was the most significant. As indicated earlier, the detention facilities are funded on a 'per diem' rate⁹³. The ANAO found that the cost of detention, per detainee, per day has increased over the life of the contract. Figure 6.3 illustrates the operational cost of detention for the full years⁹⁴ of the contract.

Figure 6.3

Detainee days and contract operational costs at 30 June



Source: ANAO analysis of DIMIA data.

6.14 Figure 6.3 illustrates that for the first four years, the operational cost of the contract moved approximately in proportion to the number of detainee days being funded. However, in 2002;

- a repricing agreement was negotiated with ACM;
- Woomera was being phased out and Curtin closed; and
- Baxter opened under a different funding formula.

⁹³ Except as noted earlier, at Baxter, where the number of detainees is one of the variables which make up the operational cost of the contract.

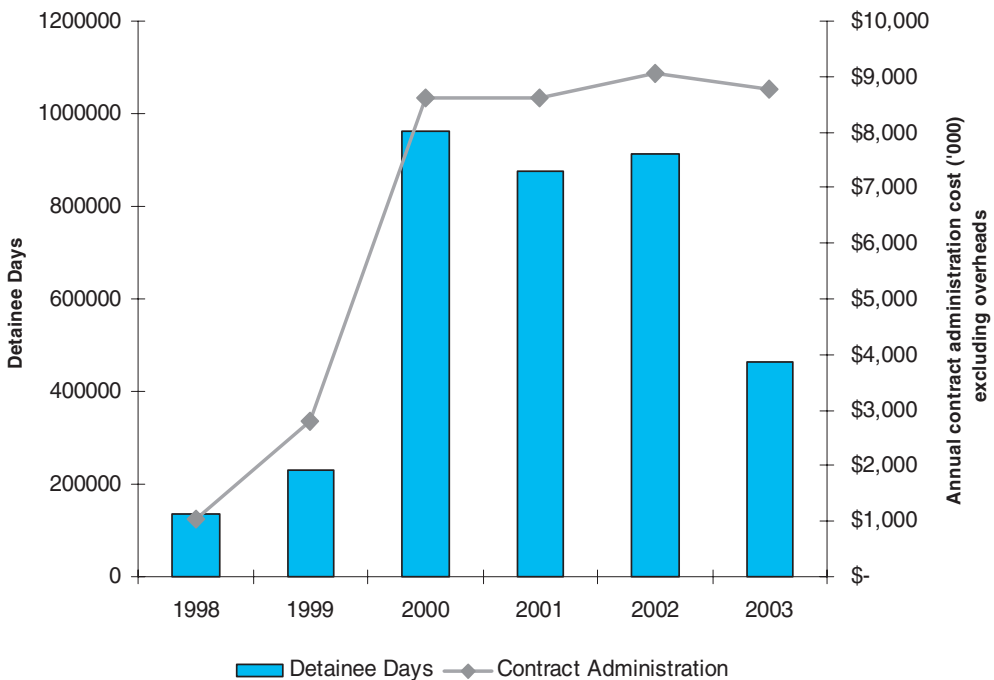
⁹⁴ Does not include partial years of contracting 1998 and 2004.

6.15 As a result, in 2003 when the number of detainee days fell by 49 per cent between 2002 and 2003, the cost to the Commonwealth fell by only 2.6 per cent for the corresponding period. The ANAO acknowledges that there are many fixed costs associated with detention centres, which will not be influenced by a fall in detention numbers. However, the level of financial reporting undertaken within the department does not provide senior managers with trend analysis. Such analysis would provide a higher level of assurance that fixed costs and new funding arrangements were the only underlying causes of contract costs being held relatively constant, against a rapidly falling detention population. It would also provide assurance that this was a planned outcome.

6.16 The ANAO also found that the costs of contract administration increased, and not always in proportion to the level of contracting activity. Figure 6.4 illustrates the costs of contract administration⁹⁵ and the number of detainees held for each year of the contract.

Figure 6.4

Detainee days funded and contract administration costs at 30 June



Source: ANAO analysis of DIMIA data.

⁹⁵ As indicated earlier, this is direct salary costs only with no corporate overheads attributed.

6.17 DIMIA advised that investments in contract administration coincided with higher levels of public scrutiny from external agencies, the change in detainee profile and broader work required. DIMIA also advised that the magnitude of the contract itself was a contributing factor to the costs of contract administration, and that staffing is considered every year as part of the budget process. However, DIMIA's systems and the level of financial reporting and analysis undertaken did not provide assurance that increased investment in contract administration was producing greater levels of operating efficiency.

6.18 DIMIA's objective of achieving quality services with ongoing cost reductions through the outsourcing arrangements had the potential to significantly affect the program. However, the audit found no evidence that it was pursued in a systematic way. The ANAO acknowledges that limited funds were returned to the Commonwealth through the savings share arrangements (discussed below), and the significant operational pressures that emerged about 18 months after the contract commenced, changed the focus to Australia's detention capacity. However, this change in focus was not reflected in the General Agreement and DIMIA has not reported against the initial cost reduction objective.

6.19 Chapter 3 highlighted the lack of a contract management plan and risk assessments related to providing detention services. Figures 6.2, 6.3 and 6.4 illustrate emerging risks. Repairs and maintenance and administration costs increased appreciably over the life of the contract, but reporting structures were not designed to focus senior management on the implications of this for managing assets and the overall budget position. (Asset management is discussed in more detail in Chapter 7.)

6.20 The ANAO noted that, recently, DIMIA has acted to monitor the financial aspects of the contract more closely. Monitoring of budget figures against actual expenditure is more extensive, and provides useful information about the contract and other direct costs at both program and cost centre level. The ANAO considers that the individual financial reports currently in use, could be drawn together into an overall financial reporting framework consistent with the detention strategy and contract management plan now under development. The identification of appropriate management objectives, and related financial performance measures, would contribute to improved financial management and better address the management of financial risk.

Were financial delegations clear and appropriate?

Financial delegations were set at a relatively low level of financial expenditure, which had not been subject to indexation or needs assessment over the life of the contract.

6.21 Under the contract, the Commonwealth was liable for the cost of complying with any requirements of statute or regulation, of any government agency, relating to the detention facilities. The Detention Services Agreement requires that the contractor must seek prior approval from the Contract Administrator when the cost of repairs exceeds \$5000. The ANAO notes that the supplementary agreement for the Curtin Immigration Reception and Processing Centre set the prior approval limit at \$500.

6.22 The financial delegations under the contract made it difficult to manage the operations and provision of facilities at the centres. For example, a NSW State Government authority recommended that the children's playground at Villawood Immigration Detention Centre be covered by shadecloth. The cost of this was more than \$5 000, which could not be authorised by local or regional managers under the terms of the contract. The approval processes through the regional office and Central Office led to installation delays of approximately 12 months, which meant the playground was unusable for this time. This caused inconvenience for detainees and staff, out of proportion to the amount of funding above \$5 000 that was required.

6.23 The ANAO notes that the \$5 000 limit was specified in the original contract and was not indexed to the CPI in line with other fees such as the detention and transport services fees. It was also not subject to a needs assessment to ensure that the process continued to meet DIMIA's needs.

6.24 As outlined in Chapter 3, the provision of detention services under contract involves an extensive network of internal and external stakeholders. Immigration detention centre managers are responsible to a DIMIA state director rather than being directly accountable to DIMIA's contract administrator. This structure underpins DIMIA's accountability arrangements for detention services at the detention centres. Although managers at the immigration reception and processing centres also operate under the same delegation restrictions, they report directly to DIMIA's contract administrator in Central Office.

6.25 The ANAO is aware of better practice in corrections facilities, where local managers are provided with an annual budget for repairs and maintenance and minor improvements, and where central offices have clear formal systems for centrally overseeing and analysing all expenditure. This better practice typically requires that all responsible facilities regularly submit repairs, maintenance and minor improvement plans that have been reviewed by senior managers, and regularly updated. It provides an assurance that all

facilities are working towards minimum standards in planned repairs to properly maintain assets. Such an arrangement would also avoid delays for such relatively minor matters as providing shade cloth, as they could be funded directly without the need for cumbersome approval processes.

6.26 The ANAO suggests that implementing a system of financial delegations in line with better practice would assist DIMIA's on-site managers to perform their duties, and allow them to be more responsive to emergent needs.

Were there comprehensive procedures and instructions for paying invoices?

There were comprehensive payment procedures and instructions. However, the control framework did not adequately protect areas of significant financial risk. There was 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 achieved.

6.27 Section 44 of the Financial Management and Accountability Act (FMA) imposes an obligation on the chief executive of each agency to 'manage the affairs of the Agency in a way that promotes the proper use of the Commonwealth resources for which the Chief Executive is responsible.' Section 48 requires agency chief executives to keep accounts and records in accordance with the Finance Minister's orders. The orders require chief executives to ensure that the accounts and records of the agency 'properly record and explain the Agency's transactions.'

6.28 The FMA Regulations further provide that chief executives are authorised to issue Chief Executive Instructions to officials in their agency on any matter necessary or convenient for carrying out or giving effect to the FMA Act or the Regulations; for ensuring or promoting the proper use and management of public money, public property and other resources of the Commonwealth; and for proper accountability for that use and their management.⁹⁶

6.29 DIMIA has issued comprehensive Chief Executive Instructions in relation to paying accounts and more detailed guidance for the payment of invoices is contained in the Detention Managers Handbook (the handbook). Notwithstanding this guidance, senior officials have relied on certification of invoices by local managers to assess whether services were being delivered in accordance with the terms of the contract. However, the ANAO found that it was difficult for DIMIA state office staff, and on-site managers, to verify that services were received for payments made.

⁹⁶ Regulation 6(1).

6.30 For example, the requirements of the contract for local transport of detainees were unworkable for both DIMIA and ACM. Detainees are frequently moved in and out of the centres for various reasons, such as, to attend court or consular visits, for review body hearings, or for medical and dental treatment. These movements require transport and a varying number of escorts, depending on the security assessment of the detainees. Uncertainty over which parts of the capital cities constitute the metropolitan area was compounded by disputes over which particular transport requirements were already included in payments to the contractor as part of the detention services fee.

6.31 The issue was discussed at the Contract Operations Group (COG)⁹⁷ on several occasions early in the contract and was partially resolved in July 1999. It was decided that any return trip escort of a detainee for immigration purposes during the period of detention would attract an additional fee (on a cost plus 10 per cent basis), thereby categorising it as an 'out of scope' service. The ANAO notes that 'out of scope' was not defined in this context, but was used as a term of convenience. This type of escort includes travel between the detention centre and a DIMIA office or consulate offices, and escorts to and from tribunal or court hearings. However, all escorts within cities (where detention facilities are located) that collect detainees for admission to the immigration detention centre⁹⁸ or delivery to their final destination⁹⁹ were not separately chargeable, as DIMIA considered them to be included in the detention services fee. The definition of 'cities' in this context was not resolved as part of this process and, at the time of the audit, remained unresolved.

6.32 This arrangement introduced several complexities to the certification of invoices for both the detention services fee and the additional invoices for escort services. Controls were required to provide assurances over:

- the definition of city or, more precisely, some boundary describing services that fall within and out of the intended definition;
- the number of services that were provided; and
- whether the number of escorts was appropriate for the service provided.

6.33 The ANAO found that there were ongoing disputes over a proportion of invoices as a result of the lack of agreement about boundaries around metropolitan centres.

⁹⁷ See Chapter 5 for a description and discussion of the Contract Operations Group.

⁹⁸ For example, from the airport, DIMIA office or police station.

⁹⁹ For example, to the airport for removal to country of origin.

6.34 As well, there are 20 000 detainee movements in and out of Villawood Immigration Detention Centre in a given year. This number of services is difficult to monitor. The procedures observed by the ANAO at Villawood involved checking ACM invoices to ensure the detainee was in detention at the time of the service. Resources did not permit more detailed checking and verification of the details of each service and the number of escorts was not possible. The ANAO also found that there were inconsistent practices for verifying invoices across the detention facilities.

6.35 The ANAO noted that payments for 'out of scope' escort services exceeded \$36 million across all centres for the life of the contract. Further, the agreement discussed above was not incorporated into a formal contract amendment, and the definition of 'out of scope' relied upon a letter written from DIMIA to ACM in July 1999. It was not incorporated in any training manuals or procedures, nor was it contained in the handbook. Under these circumstances, it is difficult to conclude that the financial controls were adequate. DIMIA has advised that it has engaged the department's internal auditors to provide further advice on controls over the financial aspects of detention services payments.

6.36 The ANAO also found that the number of admissions to, and discharges from, the urban detention centres made the overall certification of the Detention Services Contract problematic. The basis for payment was 'per detainee day' and this was defined to be from 'midnight to midnight'. Procedures for this involved checking the ACM invoice against the ACM midnight census. However, the number of movements at the large urban detention centres meant that the midnight census would have rarely, if ever, corresponded to the number of detainee days.

6.37 The ANAO notes that clauses 11.3 and 11.4 of the General Agreement indicate requirements for the contractor to supply a correctly rendered invoice accompanied by documentation providing evidence of the service delivered.

6.38 A DIMIA internal audit review conducted in January 2002 pointed out where, and when, invoices had not been correctly rendered. DIMIA management rejected the advice from internal audit on the basis that the requirements of ensuring invoices were correctly rendered were impractical. This resulted in 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 achieved.

6.39 The ANAO considers that contract payment procedures required closer management attention. In an area of significant financial risk, the contract was unclear and was not amended. The nature of the services being delivered; that certain people were in a given place at a particular time, or have been transported elsewhere with or without an escort, were being certified correct

some days after the event. Therefore, it was difficult for most (and impossible for some) on-site managers to verify that full value was received for payments made. Where DIMIA relies on certifications or sign-offs by local managers, and these form an integral part of the control framework, it would be prudent to introduce means of periodically verifying that the procedures detailed in Chief Executive Instructions and the handbook are working as intended, and are effective.

6.40 Since the first contract is now complete, the ANAO suggests (rather than recommends) that relevant definitions, particularly of metropolitan areas for escort and transport services, are included in the new contract.

Recommendation No.4

6.41 The ANAO recommends that, where local managers rely on the checking and certification of invoices, procedures be introduced to periodically verify that controls have been implemented and are effective.

DIMIA response:

6.42 DIMIA agrees with this recommendation. Existing procedures for checking and certifying invoices will be reviewed and more formally documented.

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

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, when potential returns were at their peak.

6.43 The General Agreement states:

In acknowledgment of the cooperative relationship necessary for cost reductions, the Contractor agrees to share with the Commonwealth any savings achieved at a proportion to be agreed between the Parties in each service contract.

6.44 The Detention Services Contract specifies that savings achieved in the delivery of detention services was to be on the basis of 60 per cent to the Commonwealth and 40 per cent to ACM, calculated on the actual dollar value of the savings achieved. Efficiencies achieved or additional costs incurred in the delivery of third party transport services was to be shared between the

Commonwealth and the contractor in the ratio of 80 per cent to the Commonwealth and 20 per cent to the contractor.¹⁰⁰

6.45 DIMIA advised that the purpose of the savings share elements of the contract, was not only to achieve cost reductions but was also to avoid ACM achieving abnormal or excessive profits. DIMIA also advised that following the re-pricing negotiations in 2002, the savings share component was not as relevant, as the re-pricing demonstrated more appropriate pricing of service delivery. Notwithstanding this advice, the ANAO observed that in January 2003, DIMIA formally requested additional information from ACM about the calculation of the savings share.

6.46 Figure 6.5 summarises the Commonwealth's savings share from detention services over the life of the contract.

Figure 6.5

Annual operational payment and saving share returned to the Commonwealth

Year ending 30 June	1998 ^{Note 1} (\$'000)	1999 (\$'000)	2000 (\$'000)	2001 (\$'000)	2002 (\$'000)	2003 (\$'000)	2004 ^{Note 2} (\$'000)	Total (\$'000)
Operational cost	10 672	42 938	89 845	82 607	105 597	98 745	39 647	470 051
Applicable saving share returned to Commonwealth	110	294	7 226	1 507	0	0	0	9 137
Proportion of operational cost returned	1.03%	0.68%	8.04%	1.82%	0%	0%	0%	1.94%

Note 1. Part year data—from commencement of operations in November 1997 to 30 June 1998.

Note 2. Part year data—from 1 July 2003 to 30 November 2003. Payments to new contractor commenced in December 2003.

Source: ANAO from DIMIA data.

6.47 The ANAO found that for the first four (reporting) years of the contract, ACM and DIMIA achieved reasonable saving shares from operational costs. However, there were no reports identifying third party transport savings or excess costs for any year of the contract.

6.48 The General Agreement states that 'the savings achieved or the excess costs identified will be calculated monthly and the Contractor will provide sufficient evidence for the identification of the savings or the excess costs'. The audit revealed that late in the life of the first contract (January 2003), DIMIA

¹⁰⁰ This refers to third party transport services that are outside those specified in the Schedule (detention services fee).

formally requested additional information from ACM about the savings share. However, in the period leading up to that request, DIMIA had:

- issued ACM with a default notice (August 2001);
- withheld the performance fees for the quarters ending March and June 2002; and
- signalled an intention to retrospectively apply further sanctions.

6.49 The effectiveness of this approach as a method of monitoring the contract is discussed in more detail in Chapter 5. However, in the context of managing the relationship necessary to achieve savings shares, ACM's response indicated that it had made provisions¹⁰¹ in the company's accounts as a result of DIMIA withholding performance fees, and the prospect of further retrospective adjustments to the performance-linked fee. Where there is uncertainty over future income streams, the accounting standards require the creation of provisions and ACM was entirely within its rights to create provisions in the (then) uncertain environment caused by retrospective sanctions.

6.50 The practical effect of provisions can be to reduce the amount of revenue available for distribution as profit, so there were no savings available to share with the Commonwealth. ACM's response also suggested that it reserved the right to recalculate, and seek to recover previous savings shares forwarded to DIMIA if further sanctions were applied retrospectively. ACM indicated to the ANAO that a reputable accounting firm audits these records and this includes annual verification of the accuracy of the savings share calculation.

6.51 The ANAO accepts ACM's audited statements, but notes that the contract provided DIMIA with access to contractor records, and DIMIA did not exercise its right to examine the contractor's records.

Conclusion

6.52 The ANAO concluded that DIMIA's monitoring and management of the savings share system was inconsistent. The calculation of savings was also affected by provisions in ACM's accounts, which were an attempt by ACM to allow for DIMIA's retrospective application of contractual sanctions. At the same time, the contract provided easy access to contractor records. However, DIMIA did not use this option and therefore had no assurance, beyond that provided by third party auditors, that the Commonwealth's interests were protected. This applied to the Commonwealth's share of monies that may have

¹⁰¹ In this context, provisions are defined in AASB 1044 at paragraph 3.1.1 as: 'liabilities for which the amount or timing of the future sacrifice of economic benefits that will be made is uncertain.'

been owed to it through the size and scale of detention operations payments in 2002 and 2003. It was also relevant for the provision of third party transport services.

6.53 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 recognises the recent efforts to introduce financial reporting practices that are better related to the financial risks involved. However, for the majority of the life of the contract between DIMIA and ACM there was a low level of assurance that the financial controls operated as intended. Performance measures and reporting in relation to the financial aspects of the contract were limited. Delegations were not reviewed, important definitions were lacking, monthly reports from the contractor were not supplied as required, and DIMIA did not actively pursue information available to it under the contract.

7. Detention Infrastructure

This chapter examines DIMIA's management of the detention infrastructure through the contract and the impact of the existing detention facilities on service delivery.

Introduction

7.1 Detention infrastructure was specifically addressed in various places in the detention agreements. The General Agreement indicated that the Commonwealth of Australia (the Commonwealth) may require the provider to develop and own new detention facilities.

7.2 The Detention Services Contract described arrangements for ACM¹⁰² to:

- modify the detention infrastructure; and
- repair and maintain infrastructure assets.

7.3 The Occupational Licence Agreement allowed ACM to use the facilities for 'the purposes of complying with its obligations under the Detention Agreements.' In addition, the Detention Services Contract specified the Immigration Detention Standards (IDS), the achievement of which is influenced by the design and condition of the immigration detention facilities (IDF).

7.4 The achievement of the IDS introduces several complexities for infrastructure management. This report notes in Chapter 3 that the contract is managed on a national basis, but DIMIA regional offices manage the urban facilities to take account of differences in detainee population. The IDS do not refer to differences in detainee population, nor to a particular infrastructure type. However, they require the provision of facilities for services to detainees such as education, medical, recreation, as well as provision of security, and other amenities. The ANAO acknowledges that DIMIA face a complex task in managing detention infrastructure, the bulk of which was not purpose built or designed, and is reaching the end of useful lifecycles.

7.5 As noted in Chapter 3, the detention agreements took practical effect from 15 November 1997, before the contract was signed in February 1998. At the time, detention infrastructure comprised facilities at the Port Hedland Immigration Reception and Processing Centre (Port Hedland), Villawood Immigration Detention Centre (Villawood), Maribyrnong Immigration Detention Centre (Maribyrnong) and Perth Immigration Detention Centre

¹⁰² The actual delivery of service under the contract was provided by Australasian Correctional Management Pty Ltd (ACM), which is the operational arm of Australasian Correctional Services Pty Ltd, the contracted partner. This report refers to ACM as both the contractual partner and the service provider.

(Perth). Later, immigration detention facilities at Curtin, Woomera, Baxter and Christmas and Cocos Islands were constructed.

7.6 In examining DIMIA's approach to managing detention infrastructure through the contract, the ANAO looked for processes to guide the development and acquisition, maintenance, and operation of the above assets. Specifically, the ANAO considered the following.

- *Infrastructure Arrangements.* Were the roles and responsibilities for managing the aspects of detention infrastructure that were specified in the detention contracts clearly defined?
- *Infrastructure Improvements.* Did the administrative arrangements for managing those aspects of detention infrastructure specified in the contracts affect the quality of detention infrastructure?
- *Asset Management.* Did DIMIA have an asset management plan for the detention facilities to inform itself and ACM of the need for maintenance and/or upgrade?
- *Impact on detention operations.* Did DIMIA manage the impact of the quality of the detention infrastructure on ACM's ability to operate the centres?

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

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.

Roles and responsibilities—DIMIA and Finance

7.7 As discussed in Chapter 3, DIMIA, as the sole Commonwealth agency for providing detention services in detention centres, is responsible for liaising and coordinating with a wide range of organisations and stakeholders that have responsibility for some aspect of detention services. One of the stakeholders involved in developing and providing detention infrastructure at the time of initial contract formation was the Department of Finance and Administration (Finance).

7.8 Finance was the nominal owner of three of the initial detention facilities prior to contract formation and in the period leading up to the transfer of detention infrastructure to DIMIA in 2002.

7.9 DIMIA on behalf of the Commonwealth, entered into an Occupation Licence Agreement with its provider to use the detention infrastructure. Parallel to this, and in accord with the Commonwealth Property Principles of 1996, Finance listed the detention infrastructure assets for sale as part of the Commonwealth's program of property sale and leaseback. In March 1999, Finance offered rental subsidies to agencies whose accommodation arrangements were covered by a commercial lease. This prompted both agencies to negotiate a formalised agreement in relation to the detention facilities. Finance advised that, throughout the negotiations, the detention facilities were operated under an arrangement consistent with a triple net lease.¹⁰³

7.10 Attempts were made in 2001 to formalise these arrangements through a memorandum of understanding (MOU), but this was never achieved. DIMIA advised that the MOU was not finalised because the terms and conditions underpinning the agreement were not acceptable from an operational perspective and failed to take into account all of the complexities of the service delivery requirements.

7.11 Progress towards an MOU ceased after it was agreed that the returns to the Commonwealth generated by the detention facilities met the threshold identified in the Commonwealth Property Principles, and that continued Commonwealth ownership of immigration detention facilities was warranted.¹⁰⁴ Consequently, the three initial detention centres were removed from the Commonwealth Divestment Program. In 2002 they were listed on DIMIA's asset register, and nominal ownership of the detention facilities was transferred. The ANAO notes that Finance retains involvement in detention infrastructure through the construction of the new facility at Christmas Island.

7.12 Over the life of the contract, several detention infrastructure projects were managed by Finance and several were managed by DIMIA. Figure 7.1 lists the major projects under the heading of the department responsible for its management.

¹⁰³ A triple net lease allocates responsibility for all ongoing costs, including repairs and maintenance, associated with the facility to the operator.

¹⁰⁴ It was also noted that any new facilities should be established by the Government on Commonwealth land and retained in Commonwealth ownership.

Figure 7.1**Major infrastructure projects by managing authority**

Year	Infrastructure projects managed by DIMIA	Infrastructure projects managed by Finance
1998	<i>Redevelopment of Villawood IDC¹⁰⁵</i> Accommodation and security Villawood Stage 1	
1999	Expansion of Curtin facility	
2000	Construction at Woomera IRPC (continued until 2002)	<i>Refurbishment of the kitchen at Port Hedland IRPC¹⁰⁶</i>
2001	Establishment of Woomera RHP Perth IDC upgrade Construction of Baxter IDF (continued until 2002) Construction of VIDC stage 3 and management unit Development of Coonawarra and Singleton contingency centres	Construction of fence at Port Hedland IRPC Construction of fence at Maribyrnong IDC Site clearance at VIDC
2002 (Ownership of Assets Transferred to DIMIA)	Refurbishment of Management support unit at Port Hedland IRPC (completed in 2003) Management Unit at Woomera IRPC	
2003	Construction of RHPs at Port Hedland and Port Augusta. Refurbishment of Perth IDC kitchen Villawood fire safety upgrade Reconstruction of fire damaged compounds at Villawood and Baxter Expansion of Woomera RHP Refurbishment of kitchen at Port Hedland IRPC (completed in 2004) Construction of Christmas Island IRPC (ongoing)	Construction of Christmas Island IRPC

Source: ANAO from information provided by DIMIA and Finance.

¹⁰⁵ This project did not go ahead. See paragraph 7.29 for further discussion.

¹⁰⁶ This project was delayed several times. Discussed in more detail at paragraph 7.54.

7.13 The audit found, that notwithstanding the construction and development which took place at Curtin and Woomera to accommodate the surge in arrivals in 1999–2000, there was uncertainty over whether and how to proceed with other major projects. The redevelopment of Villawood announced in the 1998–99 budget did not proceed, and the kitchen at Port Hedland was delayed. From the Commonwealth’s perspective there was duplication of effort resulting in inefficiency in the allocation and use of resources.

7.14 The audit found that the lack of a formal and documented agreement between the parties detailing management roles and responsibilities, limited the available planning strategies. As well, there were no costing baselines established and hence there is insufficient information available to determine the contribution of infrastructure to overall cost reductions, capacity enhancements or detainee amenity.

Roles and responsibilities—DIMIA and ACM

7.15 Both the Detention Services Contract and the Occupation Licence Agreement outlined the roles and responsibilities of DIMIA and the contractor in relation to the ongoing management of the detention facilities.

7.16 The Occupation Licence Agreement stated that ACM was liable for the costs associated with general maintenance¹⁰⁷ and repairs resulting from acts or omissions by its staff, subcontractors, detainees and any other person to whom ACM granted access to the facility.¹⁰⁸ However, the ANAO found that the specification of the roles and responsibilities of DIMIA and ACM lacked clarity, and the administrative processes in place did not establish accountability and responsibility for the resources needed to manage the facilities. Repairs and maintenance and infrastructure modifications provide specific examples, which are discussed in more detail below.

Repairs and maintenance

7.17 The Detention Services Contract required ACM to keep the detention facility in good and substantial repair and condition, consistent with the facility’s condition at the start date or consistent with the facility’s condition as it is modified from time to time.¹⁰⁹ Although ACM carried out due diligence checks prior to signing the contract, and these reports provided detailed assessments of the condition of the detention facilities, DIMIA did not. As well, there were no records of when repairs and maintenance of the facilities had

¹⁰⁷ As specified in clause 3.9.1 (b)(c) and (e) of the Detention Services Contract.

¹⁰⁸ As specified in clause 3.9.1 (d) of the Detention Services Contract.

¹⁰⁹ Clause 3.9.1 (a) of the Detention Services Contract

taken place, other than the limited information in DIMIA's financial records. The absence of such records makes it difficult to undertake an objective assessment of the contractor's performance in the area of repairs and maintenance.

7.18 The ANAO found that disputes over repairs and maintenance were frequent and ongoing for the life of the detention agreements. DIMIA advised that the majority of these disputes were over different interpretations of what constituted detainee damage. However, there were also disputes over the difference between repairs and maintenance and the completion of minor new works and modifications (discussed at paragraph 7.22).

7.19 The Detention Services Contract also provides that ACM must seek prior approval from the contract administrator for any major asset items requiring replacement or rectification of any defect or damage, where the cost of repair is more than \$5000 (clause 3.9.4). This requirement (discussed in more detail in Chapter 6) also caused lengthy delays in providing essential elements of infrastructure to enable the delivery of services to detainees.

7.20 In some cases the repair and maintenance programs, detailed in the contract and undertaken at each centre, were not consistent with the requirements generally accepted for facilities of their type. In November 2002, DIMIA commissioned an external agency to undertake a lifecycle analysis report. The draft report described the demountable buildings being used as 'throwaway' type facilities.¹¹⁰ The same report goes on to say that the 'life expectancy of centres supported by demountable buildings is very low ... [and] should have a very low maintenance strategy applied to them'.

7.21 DIMIA advised that the new contract for detention services includes a minimum maintenance performance standard for the management of the facilities.

Modifications

7.22 The Detention Services Contract (clause 3.9.6) allows ACM to make modifications to a detention facility if:

- i) it first consults with the contract administrator; and
- ii) the contract administrator gives prior written consent, which the contract administrator may withhold where the contract administrator is of the opinion that the Modifications will not allow the detention facility to meet the Immigration Detention Standards or will reduce the value of the Detention Facility to the Commonwealth.

¹¹⁰ The Baxter facility comprises only demountable buildings. Other facilities, such as Villawood, use demountables to supplement existing infrastructure on site.

7.23 The approval process for infrastructure modifications involved the contractor presenting a business case (at its own costs, including the costs of DIMIA's consultants) to the contract administrator.

7.24 Following approval, the cost of the modifications were at DIMIA's expense and were to be carried out in accordance with all relevant requirements, including statutory requirements and those of the contract administrator.

7.25 DIMIA advised that it was continually frustrated by the failure of ACM to observe the requirements under clause 3.9.6 for the approval for modifications. DIMIA stated that ACM did not regularly submit a business case before actually doing the work. Thus new works that should have had a business case put forward, were detected through repair and maintenance invoices, when they were actually minor works. In some cases, centre managers approved these works without reference to Central Office and DIMIA ended up meeting the costs. The issue of invoice verification is discussed in detail in Chapter 6.

7.26 DIMIA estimated that, since 2002, there were approximately 40 instances of minor new works being carried out without Central Office approval where payment has been disputed. The majority of the modifications undertaken over the life of the contract have been aimed at meeting workplace health and safety requirements as well as at improving operations and detainee amenity. The ANAO received advice from ACM that it supports this view. However, ACM contended that the delays, generally associated with DIMIA approval, put them at risk from a public liability perspective through increased risk of injury to staff and detainees.

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?

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.

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 have 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.

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.

Asset management plan and contract management

7.27 The age, condition and geographic distribution of the detention facilities, together with their importance in supporting the delivery of basic amenity to the detainees suggests the need for an asset management plan. Ideally, asset management plans include:

- long-term and short-term forecasts for acquiring, operating, maintaining and disposing of assets, including the impact on capital and cash flow;
- the role of the contractor and other stakeholders in repairs and maintenance and/or refurbishment of infrastructure assets;
- definitions of the level of service provided by each asset;
- statements of the risks involved in operating each asset;
- justification of the contribution that each asset makes to the overall detention objectives;
- the targets and measures to be used for monitoring the condition and contribution of each asset; and
- the monitoring and measures to be used to assess the contractor's performance in fulfilling its responsibilities for detention infrastructure.

7.28 The ANAO found there were no clear or coordinated asset management plans for detention infrastructure assets. Information about the condition of the assets and amounts spent on refurbishment or repairs and maintenance is held in various places, but there is no documentation or analysis to enable assessment of the assets against the criteria detailed above.

Redevelopment

7.29 The 1997 request for proposal for the provision of detention and transfer services included a requirement for prospective tenderers to provide ‘details of any envisaged programs for detention facilities infrastructure development or rationalisation.’ Evaluation of the proposals was undertaken on a basis of:

- a) net benefit to the Commonwealth of any financing proposals; and
- b) net benefit to the Commonwealth of any infrastructure proposals.

7.30 The tender provided by ACM¹¹¹ included a general proposal for the development and rationalisation of the existing detention facilities. Specifically the tender included an infrastructure proposal for the requirement to relocate the Westbridge [Villawood] facility, which was anticipated at the time. The tender included discussions on alternative sites for the facility.

7.31 In 1998, the then Minister announced ACM as the ‘successful tenderer for the outsourcing of the Department’s detention services and related infrastructure development.’ The 1998–99 Budget included measures for the redevelopment of Villawood, and indicated that ‘DIMA is negotiating details of a ‘build, own and operate’ agreement under which its detention services provider will finance the construction and maintenance of the redeveloped facility.’

7.32 The Minister’s statement also provided important details about the proposed redevelopment:

- the redevelopment would cost \$35 million, be completed in mid-1999 and be undertaken in conjunction with ACM;
- the redevelopment would provide a more secure facility, while also addressing the needs of detainees with divergent language, religious and cultural backgrounds;

¹¹¹ The negotiations regarding infrastructure development were between DIMIA and ACS. ACS was a business venture consisting of both ACM and Theiss specifically constructed to accommodate the need for infrastructure development. However, for consistency with the rest of the report ACM will be used.

- negotiations were proceeding for ACM to finance, construct and maintain the new centre, as well as provide detention services for the Commonwealth; and
- the Commonwealth would therefore avoid the high up-front costs of such a major capital development. ACM would operate the new facility and the Commonwealth would pay only an annual charge for using it.

7.33 In February 1998, DIMIA gave ACM verbal instruction to proceed with design plans for the Villawood facility. The ANAO is not aware of any measures put in place by DIMIA following the verbal instruction, to protect the Commonwealth during the negotiation process should a successful outcome not be achieved.

7.34 DIMIA engaged the assistance of a financial adviser in relation to the project in May 1998. While the proposal submitted as part of the initial tender process was assessed as providing 'net benefit' to the Commonwealth, DIMIA has advised that their independent advisor assessed ACM's proposal for the redevelopment as not being cost effective. DIMIA has also advised that potential issues related to the detention services provider also owning the detention infrastructure, was another factor in the discussions surrounding the redevelopment of Villawood.

7.35 On the basis of legal advice, the consultant's analysis and the concerns surrounding the ownership issues, contract negotiations with ACM related to infrastructure development were terminated, and the redevelopment of the Villawood facility did not proceed at that time. On 8 May 2000, DIMIA wrote to ACM to inform the company that '...we have decided that ACM is not to be engaged under the General Agreement to develop long term new infrastructure at Villawood'. The ANAO has been unable to find evidence of DIMIA considering any other proposals for the redevelopment of Villawood following the breakdown of negotiations with ACM. DIMIA advised that, at the time of the Minister's announcement of the redevelopment, it was negotiating exclusively with ACM for the provision of these infrastructure services; and the outstanding issues at the time of the decision not to proceed with ACM, prevented consideration of any further proposals at that time. At the time of the audit DIMIA was still progressing these issues, to enable the redevelopment of Villawood to commence.

7.36 ACM submitted an invoice to DIMIA on 30 June 1999 for \$878 864 for design and development work in relation to Villawood completed to that date. Following the decision not to proceed with the redevelopment, ACM submitted a final claim of \$1.428 million for work undertaken (including the amount of the invoice of 30 June 1999 which at that time remained unpaid). In September 2000, following negotiations with DIMIA, ACM was paid \$1 million in full and final payment for the design and development work it had

undertaken in relation to the project.¹¹² The ANAO notes that this payment was made some 16 months after the initial invoice was submitted.

7.37 The ANAO also notes that a contract relevant to the development of the facility was never executed. The ANAO found no evidence of DIMIA implementing formal arrangements with ACM in relation to the preliminary design work that would guide and control administrative arrangements in the absence of a contract.

7.38 Following the decision not to proceed with the redevelopment at that time, in the 2001–02 financial year, DIMIA managed the installation of new Palisade fencing, lighting and other security systems at two of the compounds at Villawood, as well as the provision of additional accommodation blocks. However, the Minister’s 1998 objective of achieving a more secure facility, which better supported the delivery of detention services, was not achieved. The ANAO notes that there have been multiple escapes from this facility (see Figure 7.2). Since the Minister’s anticipated completion of the Villawood redevelopment in mid-1999, there have been 82 escapes from the facility.¹¹³ ACM was ultimately issued with a default notice under the terms of the contract for poor performance in the area of safety and security. The default notice is discussed in more detail in a later section of this chapter.

Figure 7.2

Escapes from Villawood Immigration Detention Centre over the life of the contract

<i>Financial Year ending 30 June</i>	<i>Number of escapes¹</i>
<i>1999</i>	<i>29</i>
<i>2000</i>	<i>12</i>
<i>2001</i>	<i>26</i>
<i>2002</i>	<i>48</i>
<i>2003</i>	<i>14</i>
<i>2004²</i>	<i>3</i>

Notes:

1. These figures do not include escapes while detainees were in transit to or from Villawood.

2. As at 24 March 2004.

Source: ANAO analysis of DIMIA data.

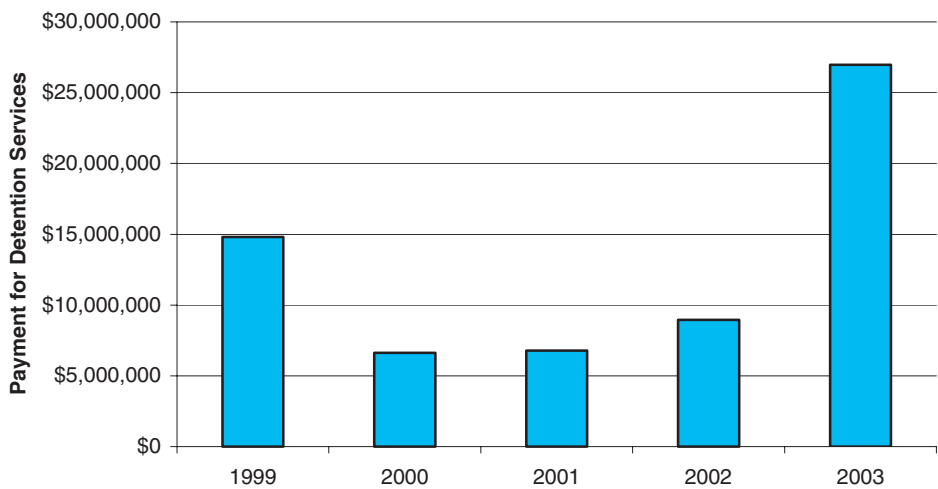
¹¹² Subsequently, in October 2000, DIMIA wrote to ACS to remind the company that all intellectual property in the design work remained with the Commonwealth.

¹¹³ Not including escapes that occurred in 1999 or those who escaped in transit or while detained outside Villawood.

7.39 In addition to the impact on security issues, the decision not to continue with the redevelopment at Villawood, at the time of the 1998 announcement, has also affected the operational costs at the centre. The ANAO also found that the cost of providing detention services at Villawood has increased over time, especially since 2002. ACM advised the ANAO that the pre-2002 running costs at Villawood exceeded the detention services fee. In 2002, ACM negotiated a repricing agreement, which resulted in a higher payment per detainee per day, and better reflected the actual operational costs of the centre. Figure 7.3 shows the total amount of the detention fees paid to ACM over the life of the contract at Villawood.¹¹⁴

Figure 7.3

Payments for detention services at the Villawood facility¹¹⁵, year ended 30 June



Note: Payments in 2003 included a once off payment representing the backdated payment for detention services following the repricing agreement and additional payments made to ACM during the transition period.

Source: ANAO analysis of DIMIA data.

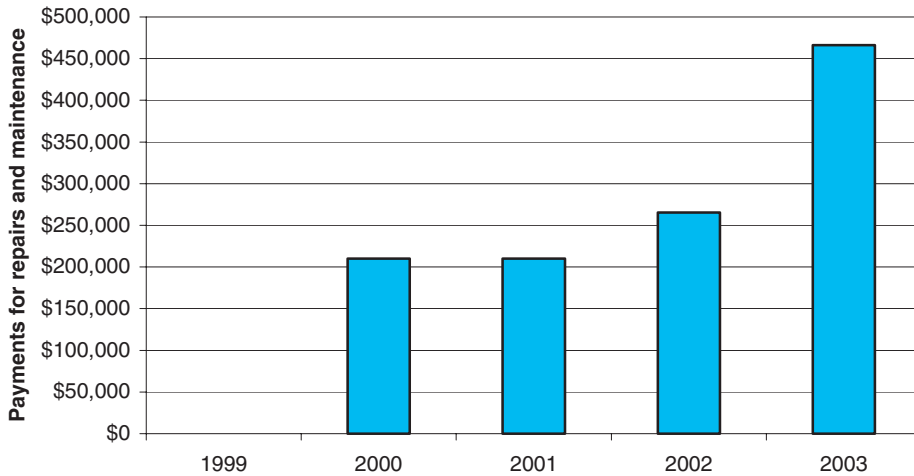
7.40 The cost of repairs and maintenance at Villawood has also increased over time. Records indicate that there was no money spent for the years ended 30 June 1998 and 30 June 1999. However, as shown in Figure 7.4, for the year ended 30 June 2003, repairs and maintenance at Villawood totalled some \$463 000, an increase of \$200 000 over the previous year.

¹¹⁴ This amount does not include repairs and maintenance of the facility.

¹¹⁵ Complete years only shown above.

Figure 7.4

Payments for repairs and maintenance at the Villawood facility, year ended 30 June



Note: Repair and maintenance costs did occur during 1999. However, these costs may or may not have been included in the detention services fee 1999 due to the limitations with the department's financial reporting systems in that period.

Source: ANAO analysis of DIMIA data.

7.41 Figures 7.3 and 7.4 illustrate that as the Villawood centre has aged, its running costs have increased substantially, both in terms of operational costs and repairs and maintenance.

Construction

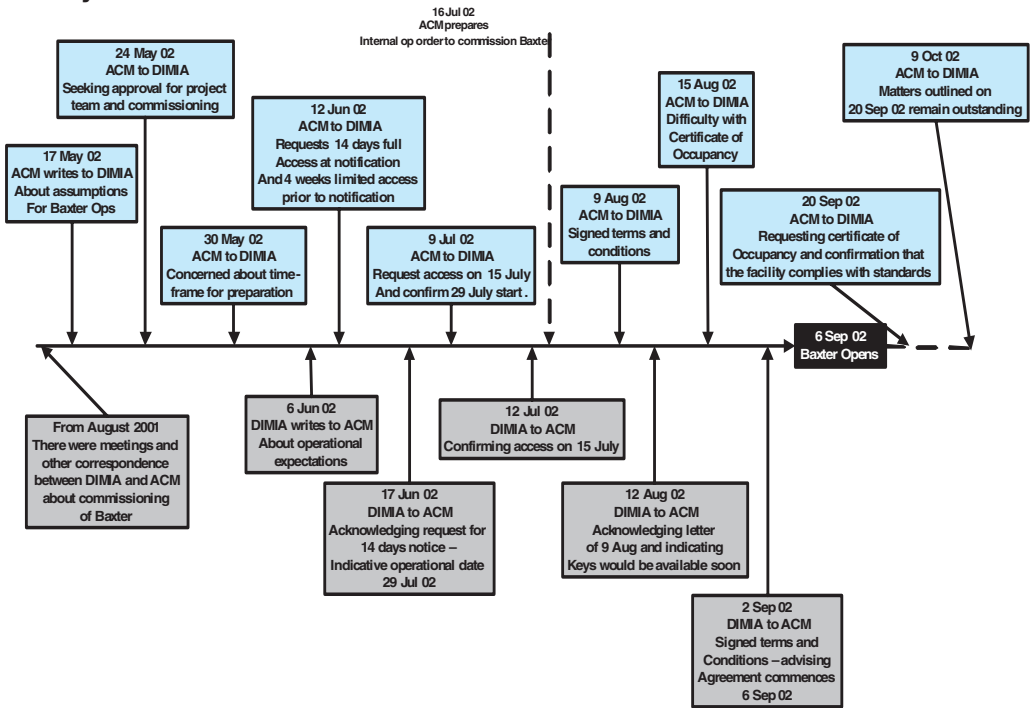
7.42 DIMIA's decision making concerning new detention infrastructure involves consideration, and the setting of relative priorities of bids within the department, by its finance committee. Projects that are of sufficient importance or that otherwise cannot be funded from internal sources are presented to the Government for consideration through the Budget process. A recent example of this was the residential housing projects in Port Augusta, which was separately funded by the Government in the 2003–04 Budget at a cost of \$1.6 million.

7.43 Notwithstanding this process, where decisions are made to proceed with new facilities such as the new detention centre at Baxter, the ANAO expected to find analysis of the costs and benefits, including consideration of investment in newer technologies against forecast operational costs. In addition, to assist the provision of high quality detention services, at the best available price for the Commonwealth, the ANAO would also expect that the analysis would include consultations with the contractor.

7.44 The ANAO acknowledge that DIMIA sought input from external consultants on the design and security elements for the construction of the Baxter Immigration Detention Facility (Baxter). However, DIMIA advised the ANAO that there had been a conscious effort on the Commonwealth’s behalf to ensure that the operator did not use the opportunity of major development works to engage in risk minimisation of their commercial position, through suggesting specific inclusions or variations to design that would maximise their profit advantage.

7.45 However, this approach led to some difficulties in the commissioning of the new facility at Baxter. Figure 7.5 provides a timeline of communications between DIMIA and ACM.

Figure 7.5
Correspondence timeline concerning the commissioning of the Baxter facility



Source: ANAO based on DIMIA and ACM documents.

7.46 Figure 7.5 illustrates that there were significant issues outstanding when the centre opened. In particular, ACM commenced operations without a Certificate of Occupancy and without confirmation that the buildings complied, or were exempt from compliance, with the Building Code of Australia. This had ongoing implications for the company’s insurance coverage in the event of accident, a major fire or disturbance. DIMIA advised the ANAO that a certificate of occupancy was not necessary prior to the

commissioning of Baxter, as it had advice from its own consultants that the facility met industry standards.

7.47 The ANAO acknowledges that planning and construction of the Baxter facility commenced when DIMIA was operating under extreme pressure. However, following the reduced number of boat arrivals, the construction of the facility shifted from being a contingency facility to a long-term detention facility, and construction time was extended.

Minor new works

7.48 The age of the detention facilities and delays, experienced in the major redevelopment of the existing facilities, have resulted in a continuous program of minor new works at the facilities. The minor new works have been undertaken either to update existing infrastructure that has deteriorated past a useful state or to respond to specific needs created by a changing population. The fit-out of the management support unit and the refurbishment of the kitchen at the Port Hedland are examples of the minor new works that have been undertaken at the facilities.

Port Hedland Management Support Unit

7.49 DIMIA allocated \$3.8 million to refurbish a new management support unit at Port Hedland.¹¹⁶ The result is a modern management unit that contrasts with the rest of the facility, where large sections of the infrastructure are nearing the end of their economic life. DIMIA's long-term detention strategy indicated that Port Hedland will be decommissioned within the next five to eight years.

7.50 The ANAO acknowledges that the development of infrastructure has a long lead-time, especially in remote locations, and that difficult choices need to be made in an environment of limited resource availability. While there are complications associated with development decisions for sections of infrastructure within a facility with a limited lifespan, the ANAO found limited analysis of the costs and benefits of refurbishing the management support unit, where its useful life is greater than the facility in which it is located.

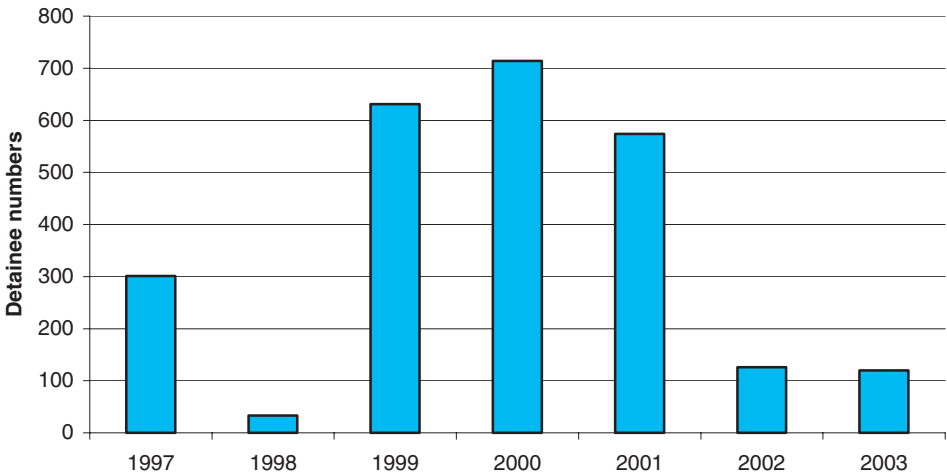
7.51 DIMIA advised that the refurbishment was undertaken so that the unit would meet the Building Code of Australia regulations, and the design specifications were guided by those regulations. As well, the decision to refurbish the existing structure was an attempt to achieve cost efficiency, rather than building a custom designed facility.

¹¹⁶ A management unit is an accommodation block used by the contractor to effectively manage detainees who have been identified as representing a risk to other detainees in the facility.

7.52 The management support unit refurbishment was to assist ACM to manage high-risk detainees, many of whom were present during the peak period of unauthorised boat arrivals. It was also to provide additional options for the accommodation of specific groups of detainees including families. Figure 7.6 summarises the number of detainees held in the Port Hedland facility over the life of the contract.

Figure 7.6

Number of detainees at Port Hedland over the life of the contract, at 30 June



Source: ANAO analysis based on DIMIA information.

7.53 The ANAO notes that the management support unit was ready for service in June 2003 but it was not commissioned for use until December 2003. ACM advised that the transition period and the opening of two new residential housing projects placed extreme pressure on its personnel resources. The staff requirement to open the management support unit prior to transition would have compromised the security of other facilities. In addition ACM observed, and brought to the attention of DIMIA, several faults within the management support unit. ACM maintain that the time taken by DIMIA to rectify these faults also contributed to the delays experienced in opening the facilities. DIMIA advised the ANAO that all reasonable faults in the facility were recorded and arrangements were put in place for rectification. The faults that were identified were largely due to teething issues that are covered under warranty.

Kitchen at Port Hedland

7.54 A refurbishment of the kitchen at Port Hedland had been planned for approximately four years. Finance advised that in January 2000 agreement was

reached to provide funding for the kitchen of up to \$2.8 million. However, pre design work for the project included a new building on a new site within the facility with estimated costs of approximately \$6 million. Finance advised the ANAO that, in order for DIMIA's preferred option to proceed, DIMIA needed to contribute funding to the project that was commensurate with its desired scope of work. The total redevelopment of the kitchen did not proceed.

7.55 One million dollars was provided for the refurbishment in the 2000–01 Budget but was not spent in that year and so was transferred to the 2001–02 Budget, and then to the 2002–03 Budget. The ANAO notes that in a minute to the Minister regarding the 2003–04 Budget submission, DIMIA indicated that it was investigating cheaper options 'to cater for lower populations than a full scale kitchen refurbishment'. The refurbishment of the kitchen is expected to be completed by mid 2004 at a cost of \$2.6 million.

7.56 DIMIA has advised that the food preparation area in the replacement kitchen was built to cater for around 400 persons per sitting. With the centre at full capacity the entire population can be fed by implementing a two sitting system. In addition to the upgrade of the kitchen, the mess area has been refurbished and hardened.

7.57 The ANAO has found no evidence of analysis, involving ACM and sections of DIMIA responsible for detention infrastructure, operations and policy, detailing expectations for the Port Hedland facility. The ANAO acknowledges that the refurbishment of the management support unit and the kitchen at Port Hedland were independent projects. The refurbishment of the management support unit indicates a long-term view that contrasts with both the overall life expectancy of the facility and the deferred and re-active approach to the kitchen refurbishment. This implies difficulties in alignment between sections of the department separately responsible for detention infrastructure, operations and policy.

Asset values and depreciation

7.58 Figure 7.7 summarises the book values of the assets (that is, the written-down value of the assets after depreciation has been deducted at 30 June each year).

Figure 7.7**Detention centre asset values**

Detention centre assets transferred from Finance							
Book value at 30 June		1998 (\$'000)	1999 (\$'000)	2000 (\$'000)	2001 (\$'000)	2002 (\$'000)	2003 (\$'000)
Land	<i>Maribyrnong</i>	215	265	579	579	560	560
	<i>Villawood</i>	13 000	13 000	13 000	13 000	14 917	14 917
	<i>Port Hedland</i>	380	380	300	285	1 188	1 188
Buildings	<i>Maribyrnong</i>	2 335	2 197	2 137	3 708	3 985	3 416
	<i>Villawood</i>	Zero Value	Zero Value	Zero Value	Zero Value	2 134	1 829
	<i>Port Hedland</i>	9 420	8 947	6 554	5 666	6 092	4 815
	<i>Perth</i> ^{Note 1}	290	290	290	290	520	446
Other detention infrastructure assets							
Land	<i>Port Hedland</i>					215	215
Buildings	<i>Baxter</i>						17 751
	<i>Woomera</i>					9 023	2 739
	<i>Curtin</i>					2 873	2 117
	<i>Coonawarra</i>						3 956
	<i>Port Hedland</i>					822	1 141
	<i>Villawood</i>					1 745	1 499
	Total					44 074	56 589

Note 1: Commonwealth Office, Baker Road, Perth Domestic Airport

Source: ANAO based on Finance and DIMIA data.

7.59 Figure 7.7 illustrates that DIMIA has invested substantially in elements of detention infrastructure since 2002, in particular, in the Baxter facility and the residential housing projects. These improvements have been, in part, a response to the increasing complexities in the detainee caseload. The ANAO also notes that these improvements have been directed towards accommodating unauthorised boat arrivals rather than visa overstayers.

7.60 Figure 7.7 also illustrates that the buildings at Villawood were valued at less than those at the Maribyrnong facility at 30 June 2003. Given that Villawood is a much larger facility, this indicates that the Villawood buildings have depreciated substantially. On the same day, the detainee population at Maribyrnong was 53 (76 per cent of its capacity) while at Villawood it was

544 (77 per cent of its capacity). As noted earlier in this chapter, there were delays in redeveloping Villawood. The significant depreciation in the value of this asset is demonstrated by its current condition. The infrastructure at Villawood, in particular the dormitory accommodation in Stage 1, limited the ability of ACM to meet the requirements under the IDS and had implications for the quality of services provided to detainees. Therefore, any assessment of the performance of the contractor against this aspect of the IDS was ineffective and not completed.

Evaluation of infrastructure contribution to performance

7.61 Detention infrastructure is a key component in providing detention services, especially given that the detention environment is subject to change at short notice. As well, there are a number of key stakeholders, including the Minister, DIMIA, the contractor, and the detainee population, that must be considered. The ability of the infrastructure to meet the needs of key stakeholders is essential to the successful provision of detention services. Regular evaluation of the performance of the infrastructure in contributing to detention services is necessary to ensure that it keeps pace with the changing environment.

7.62 While DIMIA has advised that its Long Term Detention Strategy and the Capital Planning Process provides opportunities to evaluate infrastructure needs, DIMIA has not considered and assessed in a systematic way the infrastructure needs of key stakeholders in the detention environment. The Detention Services Contract provided for the contractor to identify and submit business cases to make modifications to the detention infrastructure (discussed at paragraph 7.22). However, the absence of a regular and structured infrastructure evaluation process of stakeholder needs has meant that there have been limited opportunities for DIMIA to initiate infrastructure modifications as the needs of key stakeholders have changed.

7.63 Regular evaluation would allow DIMIA to make more informed decisions about infrastructure investment so that the needs of detainees and other key stakeholders are met. The absence of performance information and analysis constrains the knowledge base and suggests an acceptance of incremental change which places at risk the ability of detention infrastructure to keep pace with the changes in the detention environment.

Evaluation of contractor performance

7.64 The ANAO found that DIMIA did not regularly assess contractor performance relevant to detention infrastructure except through the IDS which, as discussed in Chapter 5, was limited through a range of factors.

7.65 While contractor performance in relation to infrastructure was included as part of the high-level monitoring undertaken by Central Office at each of the centres, regular day-to-day monitoring was coordinated and undertaken by onsite DIMIA management staff. There were no documented guidelines outlining a consistent set of procedures to be used across all centres for the evaluation of contractor performance in regard to infrastructure management. The monitoring undertaken was coordinated and undertaken by onsite DIMIA management staff, but there were no regular reports that informed central office of the nature of the work being undertaken. There was limited training and guidance provided to the staff onsite at the centres.

7.66 The absence of documented guidelines for monitoring the contractor's infrastructure management resulted in inconsistency across the centres. During the audit the ANAO observed staff at various centres using different means to monitor the repairs and maintenance undertaken by ACM at the centres. Inconsistent monitoring of repairs and maintenance does not provide adequate assurance that Commonwealth investments are being protected.

Recommendation No.5

7.67 The ANAO recommends that DIMIA develop an asset management plan for its detention infrastructure assets that includes:

- forecasts for acquiring, operating, maintaining and disposing of assets, including financial impacts;
- a statement of the risks involved in operating the assets; and
- targets and measures to be used for monitoring the contribution of each asset to the detention objectives.

DIMIA response:

7.68 DIMIA agrees with this recommendation. The existing framework for managing assets will be reviewed and a more detailed plan developed consistent with this recommendation.

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

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 IDS, as well as the cost-effective delivery of these services.

Infrastructure standards

7.69 The contract specifies standards relevant to the provision of detention services in the IDS, listed as a schedule to the contract. The ANAO found that the IDS did not specify standards specifically related to detention infrastructure and there were no Australian standards or better practice related to providing detention infrastructure identified in the detention agreements. However, as previously discussed (paragraph 7.21) DIMIA advises that the new contract includes a public works based set of minimum performance standards.

7.70 The ANAO also found that IDS 7.7 specified that the accommodation provided to detainees is to be of the standards and requirements set out in the Commonwealth Occupational Health and Safety (Commonwealth Employment) Act. The relevance of this Act to the provision of detention accommodation is unclear. As well, there were no documents outlining how this standard should be applied to the provision of detention infrastructure.

7.71 During the audit the ANAO held discussions with DIMIA regarding relevant standards applicable to detention infrastructure. DIMIA advised that infrastructure management standards were implemented for some elements of detention infrastructure. In April 2002, DIMIA suggested introducing facility management standards at the Curtin Immigration Reception and Processing Centre, similar to those in place at NSW public schools. DIMIA advised that ACM rejected the implementation of these standards at that time. However, DIMIA did implement infrastructure standards for the provision of health facilities across all the centres.

7.72 At various stages throughout the audit, DIMIA referred to the appropriateness of applying correctional standards in the detention facilities. The original request for the proposal stipulated that DIMIA wished to ‘draw on the custodial or security service expertise of the successful organisation’, and the standard guidelines for corrections in Australia were an attachment to the document. However, there was no clear view as to whether correctional standards were appropriate in an immigration detention environment, and DIMIA’s application of such standards has been inconsistent. DIMIA does not agree with suggestions that correctional facility standards alone are appropriate for detainee amenity and personal accommodation in the detention facilities. At the same time, DIMIA suggested that the use of fire extinguishers and hoses, instead of automated fire protection devices in the accommodation blocks at Baxter is appropriate, as it is consistent with correctional facility standards.

7.73 The absence of agreed standards relating to detention infrastructure creates a challenging management environment. The assessment of whether or not infrastructure is adequate is open to individual judgement and

interpretation, placing both the Commonwealth and the contractor at risk. For example, the destruction of one accommodation block in Stage 1 at Villawood significantly reduced its nominal capacity. While some of the lower risk detainees were moved to other areas of the centre, the majority of detainees remained in Stage 1. Since there are no contractually agreed standards to guide the amount of living space required by each detainee, the number of detainees placed in an accommodation block is dictated by operational requirements.

Recommendation No.6

7.74 The ANAO recommends that DIMIA, in consultation with its detention services contractor and other key stakeholders, develop and agree on appropriate standards for providing infrastructure in the detention facilities.

DIMIA response:

7.75 DIMIA agrees with this recommendation and will engage with relevant stakeholders to try and develop standards for providing infrastructure.

Safety and security of the facilities

7.76 The design of detention infrastructure has impacted on the operations of the facilities. The safety and security of the centres, and the cost to provide these services, are highly contingent on the design of the facility.

7.77 Facility design directly impacts on the staffing levels required to maintain a secure environment. The use of technology can reduce the number of static posts throughout the centre, thereby reducing the overall number of detention officers required to maintain a secure environment. Any reduction (or increase) in the overall staffing numbers has a direct impact on the operational (contract) costs of the centres.

7.78 A security assessment undertaken by ACM prior to the opening of Baxter, details how the design of the facility can hinder security efforts undertaken by the contractor and affect detention operations. Correspondence from ACM to DIMIA indicated concerns with the layout and design of the centre and the impact on the security of the facility. Overall, the issues raised concerned the placement of the accommodation blocks, detainee dining rooms and the officer stations within the individual compounds. ACM contended that the design of the facility compromised the sterile zone of the facilities, resulting in an interrupted line of sight for the detention officers guarding the compound. This would result in the need for additional detention officers to maintain an acceptable level of security. DIMIA has advised that based on independent advice the line of sight issues were addressed by relocating buildings in one compound and by the installation of additional security cameras in other compounds. DIMIA assert that these line of sight issues did not result in the need for additional detention officers.

7.79 As discussed in Chapter 5, DIMIA issued ACM with a default notice in August 2001. A cure plan¹¹⁷ was formulated and the default was rectified to the satisfaction of the Commonwealth. The default notice is an example of how deficiencies in the design of the facilities can affect the safety and security of detention operations in certain facilities. Appendix 8 shows the breakdown of the cure plan findings, identifying responsibility for rectification, and also highlights those findings that were directly related to the detention infrastructure.

7.80 The ANAO notes that there were a total of 58 findings identified in the default notice cure plan (see Appendix 8). DIMIA was responsible for actions relating to 41 per cent (24) of the total findings. Specifically, 37.9 per cent of the total findings (22) were related to the adequacy of infrastructure provided at the Villawood site. Of the 22 infrastructure-related findings, 86.3 per cent were DIMIA's responsibilities.

7.81 The ANAO also notes that certain deficiencies of detention infrastructure detailed in the cure plan had already been drawn to DIMIA's attention. As previously mentioned, the ANAO acknowledge that ACM conducted due diligence checks before signing the contract to provide detention services. It is DIMIA's view that ACM's pricing was submitted on the basis of the infrastructure in situ. However, the ANAO notes that ACM had expressed concern about the detention infrastructure a number of times during the contract, partially in response to the changing nature of the detainee population. As well, consultants commissioned by DIMIA reported on aspects of detention infrastructure at centres across the country.

7.82 DIMIA advised that significant works were undertaken in areas such as fire services as a result of the reports. A detailed room-by-room condition assessment was undertaken in mid-2002, and as a result, an ongoing refurbishment program was tendered as part of the responsibility of the incoming facility operator.

Capacity—Impact of infrastructure on detention operations

7.83 The capacity of the detention facilities is an ongoing issue. DIMIA advised that managing capacity at the centres has been the overriding objective of the department and the detention agreements, especially during 1999–2001. While a fall in the number of boat arrivals has eased the pressures in the reception and processing centres, there have been a number of instances where the limited capacity of the urban detention centres has affected DIMIA's ability

¹¹⁷ A cure plan is a plan proposed by the contractor to remedy a Default. The cure plan is proposed during the cure period and details the time required to cure the default, a work plan setting out of each task to be undertaken and the time required, any temporary measures, and the mechanics for integrating the cure with the continuing provision of services.

to administer immigration law. Compliance activities in some places are designed and executed to align with the capacity needs at the detention centre. Fieldwork is usually managed to keep within the centre's capacity, and when the centre's capacity is exceeded compliance team leaders are asked not to undertake any fieldwork.

7.84 The nominal capacity of the urban detention centres has been exceeded a number of times during the contract. As discussed earlier, following the 2000–01 fires, Stage 1 at Villawood exceeded capacity and there have been occasions where a compliance activity in Victoria resulted in a breach of capacity at the Maribyrnong centre. During a breach, alternative sleeping arrangements must be made to accommodate the additional detainees. There is the potential for this to compromise compliance with occupational health and safety requirements and the IDS. The absence of any agreed standards makes contract management difficult in these situations.

7.85 The storage of detainee property, especially when there are high detainee numbers, is a key area of risk in administering immigration detention. The space set aside for detainee property is limited, especially at the urban centres. Issues arise for unlawful non-citizens who have lived in Australia for extended periods of time and for detainees who have spent lengthy periods in detention. These detainees generally have personal property that needs to be stored. At Maribyrnong, detainees are allocated a locker of the type used in high schools and, when the capacity of this is exceeded, their property is left in an unsecured storage area. Inadequate space for property storage affects the ability to secure detainees' personal items and to minimise the potential for property loss. DIMIA has recognised the need to regularly monitor the processes for storing detainee property and this has been subject to many audits in the centres and in Central Office. However, the underlying problem remains—the lack of capacity.

Conclusion

7.86 The contractor's capacity to deliver detention services has not been assisted by the quality of the existing detention infrastructure and the complexities associated with infrastructure improvement. The age and condition of the existing facilities has affected the provision of cost-effective detention services in accordance with the IDS.

7.87 While the detention agreements provided a basis for infrastructure management, it lacked clarity. DIMIA has not attempted to translate key clauses contained in the contract into effective operational procedures for successful infrastructure management. Absence of such operating procedures means that DIMIA cannot be assured that the infrastructure requirements of the contractor are consistently being fulfilled. As well, the inconsistent

approach taken to applying the contract clauses has meant that DIMIA has not been successful in achieving efficient infrastructure management.

7.88 The provision of detention infrastructure has not been guided by a cohesive management plan that is strategically aligned with the overall objectives of the detention program. Consequently, DIMIA's approach to managing detention infrastructure has been largely reactive. The provision of infrastructure and related services has not been aligned with the operational needs at the centres. Information about the performance of detention infrastructure has been disjointed and has not been drawn together in any meaningful way. As a result, infrastructure decisions made by DIMIA over the life of the contract have not been informed by sound performance information.

8. Contract Renewal

This chapter examines DIMIA's management of the processes surrounding the possible renewal of the Detention Services Contract.

Introduction

8.1 The Detention Services Contract with ACM was for a three-year period from February 1998, with an option for the Commonwealth of Australia (the Commonwealth) to renew.¹¹⁸ DIMIA advised that, during the renewal period, it used the renewal negotiations as a mechanism to improve the contractual structure and thus contractor performance. In this context, the ANAO expected to find that the Detention Services Contract contained a process to allow DIMIA to renew, or extend, the term if appropriate, and that DIMIA followed this process. The ANAO also expected to see a sound basis for not renewing the Detention Services Contract with ACM.

8.2 The three historical phases of the contract period are relevant in discussing DIMIA's use of the renewal process as a means of improvement.

(i) In the first phase, an informal approach to fixing specific issues was considered by both parties to be sufficient. Reviewing the performance measures in accordance with clause 3.3(b)(i) of the Detention Services Contract was discussed. Although both parties intended to review the performance measures, a review was not undertaken.

(ii) During the second phase, when there was a rapid increase in unauthorised boat arrivals, improving overall service quality was given a lower priority by DIMIA than working with the contractor to house and provide basic services for the new arrivals.

(iii) In the third phase, DIMIA considered contract amendments in the context of contract extension or renewal, and decided to drive change through the new contract for detention services. Although specific improvements in service quality were addressed, amendments to the contractual requirements and structure were not considered to be an appropriate solution. This third phase lasted from approximately 2001 to February 2004.

¹¹⁸ The actual delivery of service was provided by Australasian Correctional Management Pty Ltd (ACM), which is the operational arm of Australasian Correctional Services Pty Ltd, the contracted partner. This report refers to ACM as both the contractual partner and the service provider.

Did the contract contain a transparent process for renewal?

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

8.3 The initial Detention Services Contract¹¹⁹ could be renewed for a further term of three years in accordance with the process set out in the General Agreement. The General Agreement allowed the Commonwealth to renew a service contract, but only if:

- the contractor performed all the requirements of the service contract to a satisfactory level;
- the contractor demonstrated that the services it provided under the service contract represent industry best practice; and
- the contractor continued to provide the service at the best value for money to the Commonwealth for subsequent service contract terms.

8.4 In brief, the process for renewal in the General Agreement was as follows.

- The contractor submits an offer to provide the services for a further term, specifying:
 - fees for the further term; and
 - an explanation for any difference between existing fees and the new fees.
- The offer is irrevocable for two months and, during those two months, the Commonwealth must negotiate exclusively with the contractor regarding detention services for the further term.
- If there is no agreement within that two months, the Commonwealth could begin a competitive review process.

Did DIMIA follow the renewal process in the contract?

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

8.5 In accordance with the General Agreement, ACM gave DIMIA an offer for renewal on 7 August 2000. DIMIA used an independent consultant, NM Rothschild & Sons, to provide an expert analysis of the offer. The analysis examined the fee structures, which differed across centres and for different detainee levels, and concluded that real fees in the renewal period would

¹¹⁹ For Villawood, Maribyrnong, Perth and Port Hedland centres.

increase if the detention centres were below 90 per cent capacity. The fees were approximately equivalent if the centres were at 90 per cent capacity, and less for above 90 per cent capacity.

8.6 DIMIA and ACM had exclusive negotiations until March 2001. DIMIA also obtained legal advice on the meaning of the phrase ‘value for money’. In order to ascertain value for money, DIMIA compared current prices, and the existing fee structure with the proposed new structure.

8.7 DIMIA did not attempt to determine a market price for the detention services to ascertain whether ACM’s offer was value for money in the existing market. The Rothschild analysis used a range of benchmarks, taken from aged care facilities and prisons, as an indicator of market comparability. Given the differences between these facilities and immigration detention centres, the use of such benchmarks needs to be carefully considered. DIMIA acknowledges this in its internal analysis, which concluded that the benchmarking band was too wide to determine whether ACM’s offer was competitive or otherwise, merely noting that the offer was within the correct bandwidth.

8.8 As well as not considering market price, DIMIA did not compare the value provided by the ACM offer against any other service delivery model (for example, in-house provision of services, or partial outsourcing). Nor did DIMIA consider the opportunity costs of negotiating a new contract and funding contract transition.

8.9 After analysing ACM’s offer, DIMIA concluded that there was significant doubt as to whether the proposal provided best value for money. As one of the requirements for renewal was not met under the General Agreement, the Commonwealth was unable to renew the Detention Services Contract for a further term.

8.10 DIMIA did not analyse the other two requirements for renewal. As one of the requirements was not met, DIMIA concluded it was under no obligation to consider the other two.

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

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.

8.11 The original Detention Services Contract term ended on 27 February 2001. The Detention Services Contract was extended during negotiations with ACM, the tender process and subsequent negotiations with the preferred

tenderer. A new contract with Group 4 Falck Global Solutions (Group 4)¹²⁰ was signed on 27 August 2003. Formal transition commenced in December 2003. There was therefore a long period in which ACM's future role in the detention services contract was uncertain.

8.12 ACM advised that the impact of this uncertainty had been felt from 2001. Because ACM could not guarantee employment beyond the end of the first extension period, it had difficulty in recruiting and retaining staff. This resulted in the employment of casual or less experienced staff in some centres, with some DIMIA on-site business managers reporting a consequent lower level of service delivery.

8.13 Following DIMIA's non-acceptance of their re-bid for the detention services contract, ACM made a request for the repricing of the detention services fee to cover their costs for the contract extension period. On 6 December 2001, ACM made a series of requests; initially to increase the detention services fee at Maribyrnong, Port Hedland and Perth and later at Villawood, to reflect increasing costs. Negotiations between the two parties took several months. Agreement was finally reached for all centres under review on 5 July 2002.

8.14 In this context, the ANAO expected to find a strategy to manage the extension period that included:

- minimising the chance of a loss in service delivery;
- minimising the risk of increases in operational costs; and
- minimising the impact on DIMIA and detainees.

8.15 The ANAO found that, from September 2001, DIMIA identified and addressed the risks to service delivery that occurred during the period of negotiations from August 2000 to the signing of the new contract in August 2003. DIMIA advised that it was aware of the risks of the contract extension period and, after balancing the risks, decided to proceed with contract extensions. This meant that DIMIA accepted the consequent increase in costs, in order to ensure ongoing service delivery.

8.16 DIMIA developed a transition monitoring plan to more closely monitor the contractor's performance during the transition period. There was also an ongoing program of repairs and maintenance in response to the new contractor's due diligence enquiries. DIMIA engaged Ernst & Young and other consultants to provide advice on its risk exposure during the formal period of contract transition. In October 2002, Ernst & Young identified areas of fiscal risk, which required immediate action, and which posed risks when preparing

¹²⁰ Group 4 was subsequently renamed to Global Solutions Limited. (GSL).

the final payments. DIMIA did not provide a separate strategy for dealing with the risks raised by Ernst & Young, but the evidence shows fiscal risks were addressed as part of the overall risk mitigation strategy.

Conclusion

8.17 The contractual structure contained comprehensive processes for possible renewal of the main Detention Services Contract, which DIMIA followed when considering a renewal. However, these processes were arduous, lengthy, and carried increased risks to service delivery. DIMIA formally identified and addressed the risks associated with the negotiation and extension period.

Canberra ACT
18 June 2004



P. J. Barrett
Auditor-General

Appendices

Appendix 1: Meaningful Activities for Detainees

1. The Baxter and Port Hedland Immigration Reception and Processing Centres and Villawood Immigration Detention Centre operated reward and recognition schemes for detainees. These schemes allowed detainees to undertake meaningful activities, such as cleaning or cooking, in exchange for points. The points could be used to purchase small items from ACM (generally confectionery, toiletries and cigarettes). In some centres, points could also be used to buy goods from shops outside the centre.
2. As the Act prohibits detainees from working, DIMIA (on the basis of legal advice) did not regard these schemes as paid employment. ACM initiated the schemes, primarily in order to provide detainees with occupation and a sense of ownership of the detention facilities. Although the schemes were not paid employment, the activities were required to be done to a specified standard, and were checked by ACM staff.
3. Participation in the schemes was voluntary. ACM advised that more detainees volunteered to undertake meaningful activities than were positions available. Many positions were rotated through the available pool of volunteers, although some positions (for example, those involving food preparation) were limited to detainees with relevant training or experience. ACM also advised that some simple tasks were available for children, to earn the equivalent of pocket money.
4. Generally one hour's work received one point, which had a nominal approximate value of one dollar. Goods were 'priced' at the cost value for ACM. When a detainee was transferred between facilities, their points were also transferred. When a detainee left detention, their points were exchanged for cash.

Appendix 2: Case study—Extract of immigration record of an adult male detainee

Figure A2.1

Date	Event
3 August 1995	Arrived on temporary visa.
3 September 1997	Passport and visa expired.
23 September 1999	Convicted of kidnapping, rape and causing serious injury. Sentenced to 5 years 84 days.
15 October 2002	Released on parole into immigration custody and placed in detention.
5 December 2002	Protection visa application (seeking asylum).
21 May 2003	Protection visa application refused.
28 May 2003	Application to Refugee Review Tribunal.
25 August 2003	Refugee Review Tribunal affirms DIMIA decision.
As at 8 September 2003	DIMIA continuing negotiations with country of origin for the issue of new passport to enable deportation.

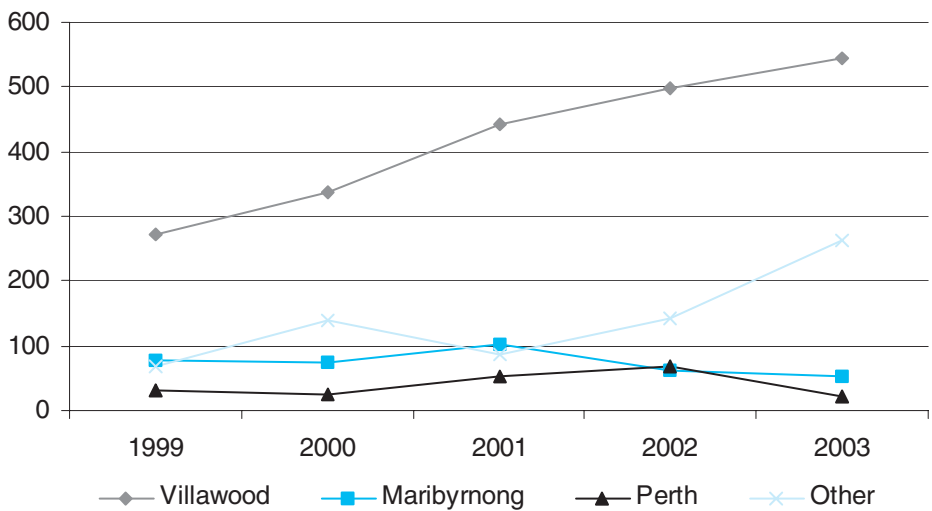
Source: ANAO based on DIMIA information.

Appendix 3: Detainee Population

Figures A3.1 and A3.2 portray the numbers in detention at 30 June of each year from 1999 to 2003. Figure A3.1 depicts the Immigration Detention Centres (IDC), and Figure A3.2 illustrates the Immigration Reception and Processing Centres (IRPC). These figures illustrate that detainee numbers IDC's in have remained steady or risen, where detainee numbers in IRPC's reached a peak in 2000 and have declined markedly since then.

FigureA3.1

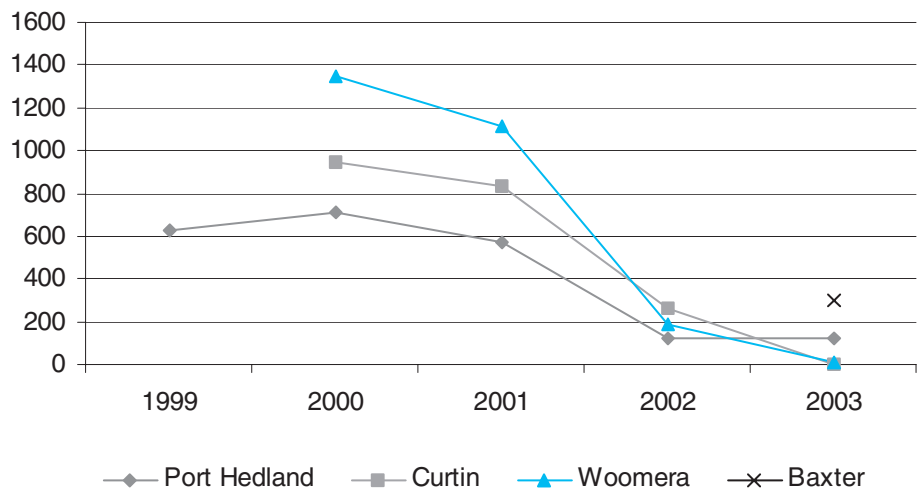
IDCs—Numbers in detention at 30 June each year of the contract period



Source: ANAO analysis of DIMIA Data.

Figure A3.2

IRPCs—Numbers in detention at 30 June each year of the contract period



Source: ANAO analysis of DIMIA data.

Appendix 4: Public Reviews

Figure A4.1

Organisation	Report	Contents
Commonwealth Ombudsman	March 2001 Report of an Own Motion Investigation into Immigration Detainees held in State Correctional Facilities	The report examined the administrative detention of individuals in prisons, including the grounds for holding immigration detainees in prisons, and whether the policies and procedures established by DIMIA were being followed in practice. The report also looked at asylum seekers who were transferred to prisons by DIMIA because of their behaviour in immigration detention centres, and immigration detainees held in prisons following their completion of a custodial sentence and pending deportation from Australia.
	March 2001 Report of an Own Motion Investigation into the Department of Immigration and Multicultural Affairs' Immigration Detention Centres.	The report focused on whether, in terms of section 15(1) of the Ombudsman Act, the administration of the policy of mandatory detention has been unreasonable or whether its implementation has resulted in unintended consequences. The report was the result of an own motion investigation into the management and operation of immigration detention centres following complaints and a number of reported incidents, including escapes and allegations of assault on detainees.
Philip Flood	February 2001 Report of Inquiry into Immigration Detention Procedures	At the request of the Minister, Mr Philip Flood examined the processes in place for identifying, dealing with, reporting on and following up allegations where there was reasonable suspicion of child abuse in immigration detention centres. The report also looked at how well these processes had been followed in cases and advised on any area where processes needed to be improved.
Joint Standing Committee on Migration (JSCM)	September 2000 <i>Not the Hilton</i> Immigration Detention Centres: Inspection Report	The committee examined custodial services operating at detention centres under DIMIA control. The committee had previously examined detention facilities, and had resolved to continue to inspect the centres.

Organisation	Report	Contents
Joint Standing Committee on Foreign Affairs, Defence and Trade Human Rights Sub-committee	October 2003 Statement to the Parliament on the JSCFADT Human Rights Sub-Committee's recent activities concerning conditions within immigration detention centres and the treatment of detainees	Following the June 2001 report the committee sought the update itself on developments concerning conditions in immigration detention centres and the treatment of detainees. During the inquiry the committee reviewed progress that has been made in regard to the recommendations put forward in the 2001 report.
	June 2001 Report on Visits to Immigration Centres	In the context of increasing numbers of arrivals claiming asylum in the later part of 1999, the committee was concerned at reports of conditions at immigration detention centres, and at reports of the treatment of asylum seekers. The committee decided to conduct its own visits to assess conditions at the centres. The committee agreed that, as well as inspecting these centres and speaking to their managers, it should also seek the views of detainees on the conditions and their treatment within the centres.
Human Rights and Equal Opportunity Commission (HREOC)	13 May 2004 <i>A Last Resort?</i> Children in Immigration Detention	The Commissioner inquired into the adequacy and appropriateness of Australia's treatment of child asylum seekers and other children who are, or have been, held in immigration detention.
	22 October 2002 A report on visits to immigration detention facilities by the Human Rights Commissioner.	The report outlined the results of visits to Australia's mainland detention facilities during 2001 and a visit to Christmas Island and Cocos (Keeling) Islands in January 2002. It focused on conditions in detention facilities and formed part of the Commission's regular monitoring of detention centres.
	12 May 1998 <i>Those Who've Come Across the Seas: Detention of Unauthorised Arrivals.</i>	The report dealt with the policy of mandatory detention of most unauthorised arrivals and the conditions of detention for those detained. The report had its origins in the many complaints received by the Commission (58 since November 1990) from or on behalf of hundreds of people in immigration detention centres, half of whom were boat arrivals.
	1998–99 Review of Immigration Detention Centres	At the end of 1997 detention service provision was privatised. In light of the change of operator, the Commission undertook to review the conditions of and treatment in detention. This report detailed the findings of the Human Rights Commissioner's inspections of four immigration detention centres in 1998–99: Villawood in Sydney, Maribyrnong in Melbourne, Port Hedland and Perth in Western Australia.

Organisation	Report	Contents
UN Working Group on Arbitrary Detention	Report from visits May–June 2002	This report was about visits by the working group, which took place from 24 May to 6 June 2002, at the invitation of the Government. The report was in connection with the administrative detention of unauthorised arrivals to the country. Its purpose was to look into the human rights issues concerning the legality of detaining asylum-seekers and the legal guarantees applying to detention in Australia, compared to international standards.

Source: ANAO.

Appendix 5: Migration Series Instructions

DIMIA has advised that a specific project to update, review and revise all detention and removal related MSIs began in July 2003. Instructions have been progressively updated and introduced as highlighted in Figure A5.1.

Figure A5.1

Index of Migration Series Instructions relating to detention

Number	Date of Issue	Topic
6	27 July 94	Removal of Spouses and Dependents who are Lawful Non-citizens
17	3 Aug 94	Issue of documents to facilitate travel for unlawful non-citizens
70	24 Aug 94	The liability of non-citizens to repay costs
125	6 Mar 96	Fingerprinting of detainees
139	6 Jun 96	Release from detention of certain unauthorised arrivals under S72(1)(c)
167	28 Apr 97	Detention of deportees
218	20 Apr 99	Summary of removal procedures in immigration clearance at proclaimed ports
234	12 May 99	General detention procedures
244	24 Jun 99	Transfer of detainees to state prisons
267	10 May 99	Advice of removal arrangements
289	31 Aug 00	Non-citizens held in prisons liable to enforced departure
318	26 Apr 01	Compliance and enforcement overview
321	9 May 01	Detention of unlawful non-citizens
345	16 Jan 02	Powers under S252 of the Migration Act—Entry of Persons to Immigration Detention Centres
346	16 Jan 02	Screening Procedures in relation to detainees
347	16 Jan 02	Strip Search of Immigration Detainees (s252A)
370	2 Dec 02	Procedures for unaccompanied wards in immigration detention facilities
371	2 Dec 02	Alternative places of detention
376	7 May 03	Implementation of enforced departure
384	5 Aug 03	Bridging Visa E (subclass 051) – Legislation and Guidelines

Source: ANAO based on DIMIA information.

Appendix 6: Standards and Measures

Figure A6.1

- ✓ = satisfies criteria
- ✗ = does not satisfy criteria
- P = partially satisfies criteria

Standard	Translated into performance measures	ANAO comment on standard	DIMIA's Performance benchmark	DIMIA's Performance measure	Clear and unambiguous	Uses quantifiable targets and benchmarks	Includes method of assessment	ANAO comment on benchmark and measure
1. Lawfulness of Detention								
1.1 The Contractor must satisfy itself that the detention of any person is authorised by the Migration Act	✓		No detainees found to be unlawfully detained or detained in an unauthorised place	Number of persons found to be unlawfully detained by the service provider	✓	✓	✗	The performance measure does not address standard 1.2 that refers to unauthorised places of detention. (e.g. where a detainee is being held under sub-paragraph (a) of the definition of immigration detention).
1.2 The Contractor must satisfy itself that every place of detention is an authorised place of detention under the Migration Act	P							

Standard	Translated into performance measures	ANAO comment on standard	DIMIA's Performance benchmark	DIMIA's Performance measure	Clear and unambiguous	Uses quantifiable targets and benchmarks	Includes method of assessment	ANAO comment on benchmark and measure
2. Dignity								
2.1 Each detainee is treated with respect and dignity	✓	There is a lack of specificity and clarity in the words 'respect and dignity', which are open to a wide degree of interpretation. The other sub-IDS under this heading do not further articulate the requirement for respect and dignity.	No substantiated complaints relating to non-compliance	Number of substantiated complaints of non-compliance	x	✓	x	Although 'substantiated' is defined in the IDS, it is a circular definition that refers back to a qualitative assessment, and begs the question of who is to sufficiently substantiate such complaints. The performance measure allows for a largely subjective assessment of compliance with the IDS. The performance benchmark and measure do not specifically address most of the issues raised in the IDS. Although the broad nature of the measure means that penalties would be available under the IDS for incidents of breach, there is no specific means of measuring the ongoing quality of performance.
2.2 Services, facilities, activities and programs are based on the concept of individual management and designed to meet the individual needs of detainees and have regard to cultural differences	x							

Standard	Translated into performance measures	ANAO comment on standard	DIMIA's Performance benchmark	DIMIA's Performance measure	Clear and unambiguous	Uses quantifiable targets and benchmarks	Includes method of assessment	ANAO comment on benchmark and measure
3. Privacy								
3.1 Information about detainees is treated in confidence. Information beyond that reasonably required for the detention of the individual and for effective planning and supervision and the management of the detention facility is not collected or retained	P		No disclosure of personal information in breach of the Privacy Act and the IDS	Number of instances where personal information is disclosed in breach of the Commonwealth Information Privacy Principles and the IDS	✓	✓	x	The performance benchmark and performance measure only measure incidents of disclosure of personal information. However the IDS also covers the collection, use, handling and retention of all personal information.
3.2 Personal information held in connection with the delivery of the service is used only for the purposes of fulfilling obligations to deliver the service	P							
3.3 All reasonable measures are taken to ensure that personal information is protected against loss, and against unauthorised access, use, modification, disclosure or other misuse and that only authorised personnel have access to the data	x							

Standard	Translated into performance measures	ANAO comment on standard	DIMIA's Performance benchmark	DIMIA's Performance measure	Clear and unambiguous	Uses quantifiable targets and benchmarks	Includes method of assessment	ANAO comment on benchmark and measure
3.6 Information from a detainee's file is made available to the detainee on request, except where the disclosure of the information is considered to endanger life or physical safety, or is prejudicial to the security or good order of the facility. Any instance where a request for such information is denied is referred to the DIMIA Facility Manager within one day	x							

4. Social Interaction 4.1 Each detainee is able to receive visitors except where the security and good order of the detention facility would be compromised	x	There is a lack of specificity in the phrase 'security and good order'. The considerations that may affect the security and good order of the centre are not clear, and are not defined elsewhere.	Appropriate cultural, educational and recreational activities are available to detainees five days a week	Period where appropriate activities are not available to detainees	x	✓	x	The availability of spiritual and religious activities is not measured. Although the importance of the activity to the detainee is part of the IDS, there is no mechanism to measure detainee satisfaction. The quality of the programs, in particular their ability to allow detainees to utilise their time in a constructive and beneficial manner, is not measured.
	x	4.2 Detainees have access to spiritual, religious and cultural activities of significance to them						
	P	4.3 Detainees are provided with appropriate recreational activities						
	P	4.4 All detainees have access to education, recreation and leisure programs and facilities which provide them the opportunity to utilise their time in detention in a constructive and beneficial manner						
4.5 Detainees are encouraged to participate in such programs	x							
4.6 Detention programs are regularly evaluated	x							

Standard	Translated into performance measures	ANAO comment on standard	DIMIA's Performance benchmark	DIMIA's Performance measure	Clear and unambiguous	Uses quantifiable targets and benchmarks	Includes method of assessment	ANAO comment on benchmark and measure
4.7 Detainees have unlimited access to open air except where the security and good order of the detention facility would be compromised or where the detainee is in isolation detention in which case supervised exercise periods are scheduled	x							
5. Safety								
5.1 Commonwealth Government occupational health and safety standards set out in the Occupational Health and Safety (Commonwealth Employment) Act and its supporting framework of regulations and codes of practice apply to all detention facilities	✓	The standard in 5.2 is wholly subjective, and consequently very difficult to monitor and measure.	No major proven breaches of the OH&S Act 1991 or applicable State or local government legislation	Number of major proven breaches of requirements of relevant legislation	P	✓	x	The ANAO understands that the benchmark for assaults as at 95/96 has not been identified, and the target of 20% less than that figure has not been used.
5.2 Detainees, staff and visitors are safe and feel secure in the facility	x		The number/incident of assaults on or by detainees is 20% less than	Number of assaults on or by detainees	✓	P	x	It is not clear what would be a "major" breach of the relevant legislation.

<p>5.3 All reasonable steps are taken to ensure that:</p> <ul style="list-style-type: none"> • Detainees, staff and visitors are protected from infection • Detainees, staff and visitors are protected from hazards of fire and natural disasters 	x								
	x								
5.4 The security of buildings, contents and people within the facility is safeguarded	x								
5.5 Staff are trained to recognise and deal with the symptoms of depression and psychiatric disorders and to minimise the potential for detainees to do self harm	x								

Standard	Translated into performance measures	ANAO comment on standard	DIMIA's Performance benchmark	DIMIA's Performance measure	Clear and unambiguous	Uses quantifiable targets and benchmarks	Includes method of assessment	ANAO comment on benchmark and measure
6. Selection and Training of Personnel 6.1 Competency requirements 6.1.1 The following form part of the minimum set of competencies required of all staff: <ul style="list-style-type: none"> an ability to supervise detainees, and to interview and counsel where required an ability to set and maintain limits good oral and written communication skills an ability to effectively communicate and work with detainees of a diversity of backgrounds, including an ability to assess detainee needs 	✓		All staff trained in accordance with a training program endorsed by the Department and staff satisfy identified competencies	Number of weeks staff members who are not fully trained or satisfying identified competencies are employed	✓	✓	x	This is an area where it may be appropriate for DIMIA to explicitly identify and rely on the contractor's internal quality assurance procedures for staff training and identifying gaps in staff knowledge. As it stands there is an inherent difficulty in showing that an action by a staff member is linked to a lack of staff training and/or competency.

Standard	Translated into performance measures	ANAO comment on standard	DIMIA's Performance benchmark	DIMIA's Performance measure	Clear and unambiguous	Uses quantifiable targets and benchmarks	Includes method of assessment	ANAO comment on benchmark and measure
6.2 <i>Personal attributes</i> 6.2.1 All staff are, and remain, of good character and good conduct and pass a national police check before appointment	P	The requirements in 6.2.1 and 6.2.2 for 'good' character and good conduct' and to be 'efficient' are not sufficiently specific or clear.	100% of staff employed must clear police and fitness checks every 12 months	Number and period of staff members employed who do not meet character and fitness requirements	P	✓	x	<p>The requirement for "fitness" checking, nor what such checking should entail, is not clearly stated.</p> <p>The requirements for good character and good conduct appear to require more than just passing the police checks.</p> <p>Because the requirements at 6.2.3 would be difficult to measure, it would be appropriate to include a more detailed statement of how the requirements would be manifested and how that was to be measured.</p>
6.2.2 All staff are efficient and have the requisite physical and psychological fitness to carry out the tasks assigned to them	P							

Standard	Translated into performance measures	ANAO comment on standard	DIMIA's Performance benchmark	DIMIA's Performance measure	Clear and unambiguous	Uses quantifiable targets and benchmarks	Includes method of assessment	ANAO comment on benchmark and measure
7.2 Security 7.2.1 Detainees are prevented from escaping from detention either while within the confines of a detention facility or while outside the facility for a specified purpose	✓	The standards are ambiguous in some areas—e.g. it is not clear what is required from staff to constitute their 'utmost'. This is not a measurable standard.	4 detainee escapes from Port Hedland; 2 from each other facility per annum No escapes during transfers No major disturbances, including those which involve property damage or personal injury Operational response in accordance with escalation procedures in Operational Orders	Number of escapes from each facility per annum Number of major disturbances Number of failures to respond in accordance with escalation procedures in Operational Orders	✓	P	x	The definition of 'major disturbance' in the IDS is not clear.

Standard	Translated into performance measures	ANAO comment on standard	DIMIA's Performance benchmark	DIMIA's Performance measure	Clear and unambiguous	Uses quantifiable targets and benchmarks	Includes method of assessment	ANAO comment on benchmark and measure
7.3 Detainee Records 7.3.1 A permanent register is maintained of each person detained in each facility detailing: <ul style="list-style-type: none"> the photographic and biometric identity of the detainee the reasons and authority for detention the date and time of admission medical and welfare records dietary requirements and religious beliefs security assessment fingerprinting 	✓		All detainees have complete detainee records	Number of detainees found on ad hoc audit to have incomplete detainee records	✓	✓	P	Only one method of assessment is included in the performance measure, raising the possibility that failures in record-keeping found through other methods would not be able to be penalised.

Standard	Translated into performance measures	ANAO comment on standard	DIMIA's Performance benchmark	DIMIA's Performance measure	Clear and unambiguous	Uses quantifiable targets and benchmarks	Includes method of assessment	ANAO comment on benchmark and measure
7.5.5 Any money or effects authorised to come into a facility for a detainee are treated in the same way	P							
7.5.6 If a detainee brings in any drugs or medicine, a medical or nursing officer decides what use will be made of them	x							

<p>7.6 <i>Transport of Detainees</i></p> <p>7.6.1 Safe and dignified transport of detainees to and from detention, including the removal from a detention facility to an overseas location</p>	<p>P</p>		<p>All movements of detainees must satisfy relevant provisions of Australian and international transport regulations</p> <p>No major incidents during movement of detainees</p> <p>Major international removals are conducted within the time frames set by the department (as agreed with relevant foreign governments)</p>	<p>Number of breaches of transport regulations</p> <p>Number of movements where major incidents occurred</p> <p>Number of instances where the transport services are not delivered within the agreed time frame for reasons within the contractor's control</p> <p>Number of substantiated reports of unsafe transport of detainees</p>	<p>P</p>	<p>✓</p>	<p>✕</p>	<p>'Safe and dignified' is not further clarified.</p> <p>'Substantiated' and 'unsafe' are ambiguous.</p>
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Standard	Translated into performance measures	ANAO comment on standard	DIMIA's Performance benchmark	DIMIA's Performance measure	Clear and unambiguous	Uses quantifiable targets and benchmarks	Includes method of assessment	ANAO comment on benchmark and measure
7.6.2 When detainees are being transported outside a detention facility they are exposed to public view as little as possible and protected from curiosity and publicity in any form	x							
7.6.3 Detainees are not transported in vehicles with inadequate ventilation or light, or which would in any way subject them to unnecessary physical hardship	x							
7.7 Accommodation 7.7.1 Accommodation provided for detainees meets Commonwealth Occupational Health and Safety requirements set out in the Occupational Health and Safety (Commonwealth Employment) Act and its supporting framework of regulations and codes of practice	P		Adequate, clean and safe accommodation Appropriate maintenance and repair of facility	Number of substantiated reports of inadequate accommodation Instance of material defects, damage and repairs to facility not being undertaken	P	✓	x	The performance measure does not reflect the specific requirements in the IDS. Presumably 'adequate' covers the requirements in the IDS, but this is not clear. The requirement in the performance measure for defects to be 'material' is not a condition of the requirements in the IDS or performance benchmark.

7.7.2 Toilet and sanitary facilities are provided for detainees to use as required, and these are kept in a clean condition	P								
	P								
7.7.3 Adequate bathing and shower installations are provided to enable every detainee to maintain general hygiene by bathing or showering daily at a temperature suitable for the climate									
7.7.4 All parts of the facility are maintained and kept clean at all times	P								

Standard	Translated into performance measures	ANAO comment on standard	DIMIA's Performance benchmark	DIMIA's Performance measure	Clear and unambiguous	Uses quantifiable targets and benchmarks	Includes method of assessment	ANAO comment on benchmark and measure
7.8 <i>Discipline and Control</i> 7.8.1 Discipline is maintained in the interests of management, good order and security of the facility	x	There is a lack of specificity in the phrase "good order and security". The considerations that may affect the security and good order of the centre are not clear, and are not defined elsewhere.	No instances of collective punishment No instances of conduct which does not fully comply with the IDS	Number of instances where disproportionate measures are taken to control detainees	x	✓	x	The performance measure refers back to the IDS, rather than providing a more concrete mechanism to measure performance against the IDS. The performance measure does not refer to most of the elements of the IDS and the performance benchmark.
7.8.2 Collective punishment is not used	✓							
7.8.3 Prolonged solitary confinement, corporal punishment, punishment by placement in a dark cell, reduction of diet, sensory deprivation and all cruel, inhumane or degrading punishments are not used	P							
7.8.4 When detainees are in solitary confinement for security reasons, a qualified medical officer visits daily and ensures that continued separation is not having a deleterious effect on physical or mental health	P							

Standard	Translated into performance measures	ANAO comment on standard	DIMIA's Performance benchmark	DIMIA's Performance measure	Clear and unambiguous	Uses quantifiable targets and benchmarks	Includes method of assessment	ANAO comment on benchmark and measure
<p>7.9.2 Staff have the skills and knowledge to enable them to restrain aggressive detainees. This training emphasises techniques which allow detainees to be restrained with minimum force</p> <p>7.9.3 Staff only use weaponry approved by DIMIA. No staff are issued weaponry unless specifically trained in its use</p> <p>7.9.4 Where weaponry is issued or used it is orally reported to the DIMIA Manager responsible for the detention facility within one hour and a written incident report is provided within 4 hours unless the staff member's shift finishes before that time in which case a written report is provided before the staff member completes the shift</p>	x							
	P							
	P							

<p>7.10 <i>Instruments of Restraint</i></p> <p>7.10.1 Where detainees are uncooperative or disruptive, physical and other forms of restraint are used as a last resort only and to the minimum extent necessary. Chemical restraints are used only under medical or nursing supervision</p>	✓		No instances of conduct which does not comply with the IDS	Number of instances where disproportionate use of instruments of restraint are used.	P	P	✖	<p>The performance measures mention only the disproportionate use of instruments of restraint, and not those circumstances where instruments of restraint are prohibited, or require permission.</p>
	✖							
<p>7.10.2 Instruments of restraint such as handcuffs, chains, irons, straight-jackets and chemicals (such as sedatives) are never applied as punishment</p>	✖							
<p>7.10.3 Instruments of restraint are not used except when approved by the Contractor's Facility Manager when other methods have failed, in order to prevent detainees from injuring themselves, or others, or from damaging property</p>	P							
<p>7.10.4 Instruments for the prevention of escape are used during a transfer or other temporary absence from the detention facility, only where the Contractor's Facility Manager assesses that there is a serious risk of escape</p>								

Standard	Translated into performance measures	ANAO comment on standard	DIMIA's Performance benchmark	DIMIA's Performance measure	Clear and unambiguous	Uses quantifiable targets and benchmarks	Includes method of assessment	ANAO comment on benchmark and measure
7.11 <i>Complaints mechanism</i> 7.11.1 Detainees have the opportunity to comment or complain about the conditions of detention to DIMIA or the service provider on any matter. Provision is made for a detainee to lodge a written complaint in a secure box within the confines of the area of detention. A copy of all complaints lodged is lodged with DIMIA	P		Satisfactory complaints mechanism exists	Period where satisfactory complaints mechanism not available	x	x	x	The performance measure covers only the mechanism, and not instances of it not working, or the requirements (e.g. reporting to DIMIA) that surround that mechanism. It is not clear what is meant by a 'satisfactory' complaints mechanism, nor who makes that assessment.
7.11.2 Material advising of the right to complain to the Ombudsman is available	x							

8. Management of Detainees <i>8.1 Quarantine and Public Health Requirements</i> 8.1.1 The requirements of the Commonwealth Quarantine Act (1908) are met with respect to new detainee arrivals	✓			100% compliance with the Quarantine Act/State/Territory Health Acts/ NHMRC Protocol for Health Screening of Boat People Arriving in Australia	Number of substantiated instances of non-compliance	P	✓	x	
	✓								
	P								
8.1.2 In order to meet the requirements of the respective State Public Health Acts, medical examinations are carried out and appropriate facilities provided									
8.1.3 Where a detainee is found to have an infectious disease, the detainee is treated so as to minimise the possibility of contamination of the detention environment before the detainee is allowed to enter the normal routine of the detention facility									
8.1.4 Detainees isolated for health reasons are afforded all rights and privileges which are accorded to other detainees so long as such rights and privileges do not jeopardise the health of others. Any instances of isolation for health reasons in excess of seven days are notified to the DIMIA Facility Manager with supporting medical certification	x								

Standard	Translated into performance measures	ANAO comment on standard	DIMIA's Performance benchmark	DIMIA's Performance measure	Clear and unambiguous	Uses quantifiable targets and benchmarks	Includes method of assessment	ANAO comment on benchmark and measure
<p><i>8.2 Clothing and Bedding</i></p> <p>8.2.1 Where detainees do not have their own clothing, detainees are provided with adequate clothing suitable for the climate</p> <p>8.2.2 Detainees are required to maintain their personal clothing in a state which is clean and fit for use</p> <p>8.2.3 Every detainee is provided with a separate bed and sufficient bedding. This bedding is clean when issued, kept in good order and changed often enough to ensure its cleanliness</p>	✓		Adequate clothing and bedding and facilities to maintain fitness for use	Number of substantiated reports of inadequacy	x	✓	x	It is not clear what is meant by 'adequate' clothing or bedding.
	P							
	P							

8.3 Health Care Needs 8.3.1 The care needs of each new detainee are identified by qualified medical personnel as soon as possible after being taken into detention. The medical officer has regard not only to the detainee's physical and mental health but also the safety and welfare of other detainees, visitors and staff	P	There is a lack of specification of the required standard of health services. As discussed in Chapter 5, the ANAO considers further specification of service delivery requirements in this high-risk area may be appropriate.	Identification and treatment of all detainees' health care needs are appropriate and timely	Number of instances of non-compliance	✖	✓	✖	The performance benchmark is extremely vague. Although it covers all of the IDS, it does not specifically refer to any of the elements.
	P							
8.3.2 Detainees who require specialist treatment are referred or transferred to specialist institutions or to community hospitals	P							
8.3.3 The care needs of each detainee are regularly monitored	P							
8.3.4 All detainees are provided with necessary medical or other health care when required	P							

Standard	Translated into performance measures	ANAO comment on standard	DIMIA's Performance benchmark	DIMIA's Performance measure	Clear and unambiguous	Uses quantifiable targets and benchmarks	Includes method of assessment	ANAO comment on benchmark and measure
8.3.5 Detainees are provided with reasonable dental treatment necessary for the preservation of dental health	P							
8.4 Food 8.4.1 Every detainee is provided with food of sufficient nutritional value, adequate for health and wellbeing, and which is culturally appropriate	✓		Meals fully comply with nutritional requirements	Number of instances of non-compliance with nutritional requirements	✓	✓	✓	
8.4.2 Three meals a day are provided	x		90% satisfaction with cultural appropriateness and acceptability of meals as measured from surveys/audits and complaint handling mechanisms	% of detainee satisfaction with the cultural appropriateness and acceptability of meals as measured from surveys/audits				
8.4.3 Fresh drinking water is available to every detainee at all times	x							
8.4.4 Special dietary food is provided where it is established that such food is necessary for medical reasons, on account of a detainee's religious beliefs, because the detainee is a vegetarian, or where the detainee has other special needs	P							

8.5 <i>Personal Hygiene</i> 8.5.1 Detainees are responsible for keeping themselves clean, and are provided with toiletries and ablution facilities that are necessary for health and cleanliness	✓				100% compliance with requirements to provide facilities to maintain health and cleanliness	Number of instances of non-compliance	✓	✓	x	
9. Individual Care Needs										
9.1 The individual care needs of detainees with special needs are identified and programs provided to enhance their quality of life and care	-	Certain key terms in this IDS are not sufficiently defined (e.g. individual care needs, special needs).			-	-	-	-	-	This IDS has no performance measure.
9.2 <i>Unaccompanied Minors</i> 9.2.1 Unaccompanied minors are detained under conditions which protect them from harmful influences and which take account of the needs of their particular age and gender	✓				All unaccompanied minors are protected from harmful influences and their particular needs are met.	Number of instances of non-compliance	x	✓	x	

Standard	Translated into performance measures	ANAO comment on standard	DIMIA's Performance benchmark	DIMIA's Performance measure	Clear and unambiguous	Uses quantifiable targets and benchmarks	Includes method of assessment	ANAO comment on benchmark and measure
9.3 <i>Infants and Young Children</i> 9.3.1 The special needs of babies and young children are met	✓	There is a lack of specification in this standard.	The management of all babies and young children meets their needs	Number of instances of non-compliance	x	✓	x	
9.4 <i>Children</i> 9.4.1 Social and educational programs appropriate to the child's age and abilities are available to all children in detention	✓		Social and educational needs of children are met	Number of weeks where appropriate social and educational programs are not available	x	✓	x	
9.4.2 Detainees are responsible for the safety and care of their child(ren) living in detention	x							
9.4.3 Where necessary, help and guidance in parenting skills is provided by appropriately qualified personnel	x							

<p><i>9.5 Expectant Mothers and Infants in Detention</i></p> <p>9.5.1 Expectant mothers have access to necessary ante-natal and post natal services</p>	✓		Expectant mothers and infants in detention have access to ante and post natal services whenever necessary	Number of instances of non-compliance	x	✓	x	
	x							
9.5.2 Arrangements are made, wherever practicable, for children to be born in a hospital outside the detention facility. If a child is born in a detention facility this is not recorded on their birth certificate								
9.5.3 Where a nursing infant is with its mother in detention, provision is made for the child to be cared for by the detainee	x							
<p><i>9.6 Psychiatrically disturbed</i></p> <p>9.6.1 Detainees in need of psychiatric treatment have access to such services</p>	✓		Detainees have access to psychiatric services whenever necessary	Number of instances of non compliance	x	✓	x	It is not clear what is meant by 'access' to services.
	x							
9.6.2 Arrangements are made to move detainees who are found to be severely mentally ill or insane to appropriate establishments for the mentally ill as soon as possible								

Standard	Translated into performance measures	ANAO comment on standard	DIMIA's Performance benchmark	DIMIA's Performance measure	Clear and unambiguous	Uses quantifiable targets and benchmarks	Includes method of assessment	ANAO comment on benchmark and measure
10. Religion								
10.1 Detainees have the right to practise a religion of their choice, and if consistent with detention facility security and good management, join with other persons in practising that religion and possess such articles as are necessary for the practice of that religion	✓	There is a lack of specificity in the phrase 'security and good management'. The considerations that may affect the security and management of the centre are not clear, and are not defined elsewhere.	All detainees have access to available qualified religious representatives and can practise a religion of their choice	Number of instances of non-compliance				
10.2 A qualified religious representative approved under guidelines is allowed to hold regular services and to pay pastoral visits to detainees of the appropriate religion at proper times, so long as it does not interfere with the security and management of the detention facility	✓							

11. Community Contacts				Number of instances of non-compliance	x	✓	x	It is not clear what is meant by 'reasonable' access or facilities.
11.1 Contact between detainees and their families, friends and the community is permitted and encouraged except when in separation detention. The contact is facilitated through detainee access to telephones, through regular visits and letters	P		<p>All detainees permitted reasonable access to family, friends and the community</p> <p>All detainees allowed reasonable facilities to communicate with their diplomatic/ consular representatives</p> <p>All detainees are provided with reasonable facilities to access legal service providers consistent with section 256 of the Migration Act.</p>					

Standard	Translated into performance measures	ANAO comment on standard	DIMIA's Performance benchmark	DIMIA's Performance measure	Clear and unambiguous	Uses quantifiable targets and benchmarks	Includes method of assessment	ANAO comment on benchmark and measure
	<p>11.2 Detainees are allowed reasonable facilities to communicate with the diplomatic and consular representatives of the country to which they belong or with their legal representatives</p> <p>11.3 Detainees are allowed the opportunity to keep informed of current events</p>	<p>✓</p> <p>✗</p>						

12. Notification of Death, Illness, Transfer									
<p>12.1 Upon death, serious illness or serious injury of a detainee, or a detainee's removal to an institution for the treatment of mental illness, the Contractor's Facility Manager arranges as soon as possible, for the information to be conveyed to the person previously designated as next of kin or contact person, where the next of kin or contact person resides in Australia</p> <p>12.2 A detainee is informed as soon as possible following the notification of the death or serious illness of any near relative or member of the detainee's extended family as defined by cultural values of the detainee</p>	✓			✓	Instances of non-compliance	✓	✗		
	✓				100% compliance				

Standard	Translated into performance measures	ANAO comment on standard	DIMIA's Performance benchmark	DIMIA's Performance measure	Clear and unambiguous	Uses quantifiable targets and benchmarks	Includes method of assessment	ANAO comment on benchmark and measure
13. Monitoring and Reporting								
13.1 DIMIA has full access to all relevant data to ensure that monitoring against these standards can take place	✓		CA has access at all times to all data in full detail in writing within 12 hours	Instance of failure to comply with information of data access requests	✓	✓	x	
13.2 The Contractor ensures that adequate reporting against the standards is provided on a regular and agreed basis	✓							

13.3 Any incident or occurrence which threatens or disrupts security and good order, or the health, safety or welfare of detainees is reported fully, in writing, to the DIMIA Facility Manager immediately and in writing within 24 hours	✓		Other incidents reported through the standard Incident Reports within 24 hours Monthly invoices for each facility are accompanied by appropriate reports on facility and detainee management, including evidence certified by the designed Dept representative of service and how the delivery of the service performs against the performance measures Timely provision of information on request needed for the Minister, Ombudsman, HREOC, Privacy Commissioner or other purposes	Instance of failure to report incidents within Agree time frames Instance of failure to comply with monthly invoice reporting requirements				
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Standard	Translated into performance measures	ANAO comment on standard	DIMIA's Performance benchmark	DIMIA's Performance measure	Clear and unambiguous	Uses quantifiable targets and benchmarks	Includes method of assessment	ANAO comment on benchmark and measure
13.4 The Contractor ensures that it responds within agreed time frames to requests for information so as to enable DIMIA to meet Departmental and Government briefing requirements	✓							

Source: ANAO analysis.

Appendix 7: Performance Linked Fee Paid

Figure A7.1

Quarter ending		Percentage performance fee paid to ACM
1998	March	100
	June	100
	September	100
	December	90.5
1999	March	100
	June	48.4
	September	70.6
	December	100
2000	March	100
	June	96.2
	September	93.1
	December	93.0
2001	March	85
	June	89.6
	September	80.5
	December	46.2
2002	March	18.2
	June	6.8
	September	23.3
	December	64.6
2003	March	86.9
	June	88.6
	September	94.1
	December	94.8

Source: ANAO analysis of DIMIA data.

Appendix 8: Default notice cure findings

The following table illustrates responsibility for rectifying the findings detailed in the cure plan for the default notice. A tick illustrates responsibility for the rectification of the finding. In all but two cases either ACM or DIMIA are clearly responsible for specific findings. However, finding 1.20 and 4.3 require both parties to contribute to a successful outcome. The shaded findings illustrate those that are directly related to providing detention infrastructure.

Figure A8.1

ANAO analysis of cure plan

	DIMIA	ACM
1.1	✓	x
1.2	✓	x
1.3	✓	x
1.4	✓	x
1.5	✓	x
1.6	✓	x
1.7	✓	x
1.8	✓	x
1.9	✓	x
1.10	✓	x
1.11	✓	x
1.12	✓	x
1.13	x	x
1.14	x	✓
1.15	x	✓
1.16	x	✓
1.17	x	✓
1.18	✓	x
1.19	x	✓
	Related to infrastructure	

	DIMIA	ACM
1.20	✓	✓
2.1	✓	x
2.2	✓	x
2.3	✓	x
2.4	x	✓
2.5	x	✓
3.1	✓	x
3.2	✓	x
3.3	✓	x
3.4	x	✓
3.5	x	✓
3.6	x	✓
3.7	x	✓
3.8	x	✓
3.9	x	✓
3.1	x	✓
3.11	x	✓
3.12	x	✓
3.13	x	✓

	DIMIA	ACM
3.14	x	✓
3.15	x	✓
4.1	✓	x
4.2	✓	x
4.3	✓	✓
4.4	✓	x
4.5	x	✓
4.6	x	✓
4.7	x	✓
4.8	x	✓
4.9	x	✓
4.1	x	✓
4.11	x	✓
4.12	x	✓
4.13	x	✓
4.14	x	✓
5.1	x	✓
5.2	x	✓
5.3	x	✓
6.1	x	✓

Source: ANAO analysis of DIMIA data.

Appendix 9: Agency Response



Australian Government

Department of Immigration and Multicultural and Indigenous Affairs

Secretary

Mr Pat Barrett AO
Auditor-General
GPO Box 707
Canberra ACT 2601

Dear Mr Barrett

I refer to Mr Steven Lack's letter of 19 April 2004, enclosing a proposed audit report on the management of the detention centre contracts. The proposed report was issued pursuant to section 19 of the *Auditor-General Act 1997*.

I also refer to Mr Greg Watson's letter to Mr Steve Davis of 10 May 2004, advising the department of an extension to 20 May 2004 to reply to the proposed report. Thank you for accepting the department's request for this extension in light of my absence from Australia during the prescribed period for comment.

Please find enclosed the department's response to the proposed report, including:

- a) a response to the report as a whole (Attachment A);
- b) a summary of that response for inclusion in the brochure (Attachment B); and
- c) a response to each of the recommendations (Attachment C).

While the ANAO did not withdraw the report in order to continue with its fieldwork, as requested by the department, officers of your department were very cooperative in meeting with the department to discuss outstanding concerns. I extend my appreciation and thanks in particular to Mr Steven Lack, Mr Greg Watson and Ms Rebecca Collareda.

Yours sincerely

W.J. Farmer

20 May 2004



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1. The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) supports the ANAO's audit of the Management of the Detention Centres Contract (Part A). The contract for detention services is complex and operates within a challenging and unpredictable environment. One of the key challenges of providing detention services is being able to respond flexibly to the individual needs of detainees while also maintaining standards for services across a range of geographically dispersed centres. In such a complex area of public administration, DIMIA welcomes public accountability processes such as this audit.
2. At the outset, DIMIA notes that this audit report focuses on the detention services contract with Australasian Correctional Services Pty Ltd (now called GEO), which ran from November 1997 to February 2004. A new detention services contract and performance monitoring framework has been introduced from December 2003 with a new service provider, GSL (Australia). The ANAO has scheduled an audit to separately examine the effectiveness of DIMIA's management of the new detention services contract.
3. As a result, this audit report does not examine the extent to which recommendations or comments on the previous contract have been addressed in the new detention services contract. Although DIMIA encouraged the ANAO to take a broader focus in the current audit report, primarily to take account of strategic decisions taken by DIMIA to address some issues through the new contract, the ANAO preferred to keep the focus of Part A on the previous contract.
4. DIMIA is of the view that many of the identified areas of concern in this audit have been either progressively addressed or are incorporated into the new contract arrangements with the current detention services provider. As this part of the audit focuses on the past, and does not evaluate improvements in the current arrangements, the complete picture of DIMIA's management will not become clearer until the second part of the audit report is finalised.
5. In assessing DIMIA's management of the previous detention services contract, some elements of this report do not fully appreciate the issues and complexities facing the department. DIMIA recognises that the ANAO was necessarily constrained in its ability to report confidently on all elements of the management of the detention program due to limited direct documentation from earlier periods of the contract. In order to demonstrate DIMIA's management of the contract, a broader range of evidence was required to articulate DIMIA's actions over a very difficult period of detention management.

6. While the report seeks to reflect on the environment and challenges of the time, DIMIA would like to put forward further contextual information to complement the report's findings and analysis. DIMIA considers readers of this report would benefit from taking this information into account in considering the report as a whole.
7. As highlighted above, the management of the detention program needs to be responsive to a range of complex issues, including individual detainee needs, unpredictable changes in unauthorised arrivals, detention facilities occupancy levels and composition, and relationships with a number of external stakeholders. The nature of services being delivered under the detention program also necessarily requires reliance on the expertise and professionalism of providers in the relevant field (including security, accommodation, health and education).
8. In that context, DIMIA approached the development of a detention services contract in 1996 from the basis of establishing a 'strategic partnership'. Key to understanding DIMIA's management of the contract is this notion of alliance with a professional service provider. Such an approach enabled DIMIA and the contractor to share responsibility, establish a firm basis for ongoing delivery of the service, and also meet the government's competitive tendering and contracting objectives. The detention contract was also formulated at a time when outcomes and outputs based contracts, based on the notion of strategic partnership, were in early stages of development.
9. A significant benefit of the detention services contract was that it replaced previous fragmented service delivery arrangements. For the first time, detention service requirements were formalised into a set of principles and standards. The Human Rights Commissioner's 1998-99 Review of Immigration Detention recognised this, stating that "the program improvements noted during inspections in 1998 are attributable in large part to the transfer of detention service provision to ACM and the opportunity that transfer created for DIMIA to design and impose immigration detention standards".
10. Notwithstanding the significant improvements built into the previous detention services contract, experience with managing that contract identified areas where further improvements could be made. This experienced informed the development of the new contract.
11. Immigration detention is a dynamic and unpredictable environment. The focus of service delivery can and does change over time, and sometimes in an unpredictable way. For example, the current detention population is primarily comprises individuals who have been

located as a result of compliance activity. Yet it also includes a group of unsuccessful asylum seekers who arrived by boat and have been pursuing appeals for an extended period of time. From 1999 to 2001, however, DIMIA was faced with an unprecedented number of unauthorised boat arrivals and the necessary focus at that time was providing basic services, such as food and accommodation while the claims of thousands of asylum seekers were expeditiously processed.

12. In that context, it was not appropriate or practical to pursue major improvements to pre-existing infrastructure when there was a clear and urgent need to focus on establishing new and contingency facilities for unauthorised boat arrivals.
13. In addition to these challenges, the contract for immigration detention services—in some key areas—operates in a very different context from many other contracts for government services. Issues such as human dignity, responsiveness to individual needs and humane treatment cannot be fully translated into specific actions or outputs. Individuals deprived of their liberty for administrative purposes are also detained in a different environment from correctional facilities. There is no concept of punishment or rewards, nor the expectation of a structured day. Rather, both DIMIA and the detention services provider must provide an appropriate environment for individuals and families, while also managing the challenges of difficult behaviour in that environment and stresses that impact differently on different people.
14. Specifying exactly the nature and expectations of immigration detention services in a contract, and clearly anticipating infrastructure needs, is therefore a difficult and challenging exercise. A high degree of specificity in some aspects of the contract, or to be too prescriptive on inputs, would limit DIMIA's ability to effectively monitor such 'intangibles' in the detention program and limit the department's capacity to respond appropriately in alliance with its service provider.
15. The detention services contract did, and continues to, focus on the standards to be achieved, with an equally strong focus on discussion and resolution with the services provider. This approach ensures that the contract remains flexible enough to take account of the circumstances and evolving needs, while also establishing a clear framework of expectations about service delivery. Similarly, while DIMIA can continue to improve its planning for infrastructure development and management, the long lead-times in developing detention infrastructure and the dynamic nature of the environment mean not all infrastructure developments can be completed as quickly as may be desirable.

16. As highlighted in the report, DIMIA agrees that there are further improvements that could be made to the contract framework, risk management processes, monitoring arrangements and alignment of detention infrastructure with operational needs. DIMIA recognised this prior to this audit and has progressively implemented a range of measures across each of these areas to more systematically address concerns raised. This process of continuous improvement continues and will benefit further from the findings of this report. To a large extent, this process of consolidation and improvement has been possible due to the more stable detention environment in the last couple of years.
17. Throughout the contract, in particular from 1999, DIMIA has been actively building its capacity to more effectively manage and monitor the detention services contract. The resourcing of the detention function has been significantly enhanced, both to respond to the immediate pressures and to continue to focus on longer term needs. At the same time, and in response to emerging financial risks, DIMIA sought to progressively improve financial reporting and monitoring of detention costs, both at a program and corporate level.
18. From early 2000, in order to minimise potential risk to the Commonwealth and to ensure an effective process to decide upon contract extension or renewal, DIMIA chose to pursue identified key amendments to the contractual framework following the decision on contract extension or renewal. In order to ensure value for money in detention services, in mid 2001, DIMIA decided to go to the market again and conduct a tender for the new detention services contract. Concluding the tender process took longer than originally anticipated. However, in light of the complexity of the program, the value of the contract and the risks inherent in any large tender process, this was preferable to rushing into new arrangements.
19. During the tender process, DIMIA also carefully managed the arrangement with the current contractor to the highest standard of probity, while maintaining efficiency in administration. This included re-pricing of the contract so that it better aligned with the costs of the program, appropriately structuring and pricing agreements for the new facilities established during the contract, and building milestones into the contract extensions after the preferred tenderer for the new contract had been announced. This clearly demonstrates that DIMIA maintained its focus on ensuring delivery of services while carefully managing the risks associated with a tender and transition to a new detention services provider.

20. DIMIA will continue to more clearly document the contract and risk management framework, and further improve alignment of detention infrastructure with immediate operational needs. However it must be recognised that immigration detention is an inherently unpredictable and volatile environment. Even with the implementation of improved systems and procedures, the environment will always have a reactive and 'exceptions-based' component to its management and administration.
21. Better contract and risk management frameworks will also assist DIMIA to more clearly plan for and articulate the objectives of the program, although there will always remain unanticipated challenges. DIMIA's experience demonstrates that these challenges arise from a diversity of sources, ranging from personal response to circumstances, external influences (such as people smuggling networks), changing policy context, and level of support from key stakeholders and related agencies.
22. While a more systematic approach to documenting and responding to these challenges can be articulated, DIMIA's essential approach remains consistent. Namely, DIMIA will continue to implement government policy in the detention program through focussing on meeting immediate needs of individuals in detention, working with the professional staff of the contracted service provider to meet our respective duty of care obligations, carefully and rigorously monitoring the services provider against clearly understood standards, and assuring a high level of responsiveness to public accountability processes.

Index

A

Annual Report, 20-21, 27, 48
Assets, 69, 118, 131
Australasian Correctional
Management, 11-14, 32, 117
Australasian Correctional Services, 7,
11, 31, 45

C

Compliance, 36, 38, 41, 46, 57, 67
Contract Administrator, 13, 15, 17, 22
Contract Management, 54, 65

D

Delegations, 123
Detention Agreements, 12, 15, 77, 79
Detention Centres, 12, 15, 24, 42-44,
49, 51-52, 63, 66, 70, 73, 119, 126
Detention Infrastructure, 131
Detention Services Contract, 49
Detention Standards, 75

F

Funding, 115

G

Governance, 62

I

IDS, 7, 15, 16, 21, 51, 67, 68, 74, 76,
77, 78, 79, 93, 129, 134
Immigration Detention Advisory
Group, 53

M

Migration Zone, 38

O

Outcomes, 91
Outsourcing, 54, 124, 142

P

Performance Linked Fee, 85-86, 215
Performance Monitoring, 15, 88,
103

R

Risk Management, 24, 26, 49, 54, 59-
61, 222

T

Transition, 12, 46, 51, 145, 149, 161-
162

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Summary of Outcomes

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