

The Auditor-General  
Audit Report No.1 2005–06  
Performance Audit

## **Management of the Detention Centre Contracts—Part B**

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

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of Australia 2005

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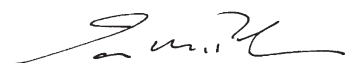
Canberra ACT  
7 July 2005

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 B*.

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

Yours sincerely



Ian McPhee  
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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## Abbreviations / Glossary

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|                        |  |
|------------------------|--|
| CMG                    | Contract Management Group  |
| COG                    | Contract Operations Group  |
| Contract Administrator | A senior DIMIA officer with overall responsibility for contract management             |
| DIMIA                  | Department of Immigration and Multicultural and Indigenous Affairs                     |
| DTMT                   | Detention Transition Management Team   |
| FMA Act                | <i>Financial Management and Accountability Act 1997</i>                                |
| GEO                    | GEO Australia Pty Ltd  |
| GSL                    | Global Solutions Limited Australia Pty Ltd   |
| IDC                    | Immigration Detention Centre   |
| IDF                    | Immigration Detention Facility   |
| IDS                    | Immigration Detention Standards  |
| Report No.54           | ANAO Report No.54; 2003–04: <i>Management of the Detention Centre Contracts—Part A</i> |
| Service Provider       | GSL—Global Solutions Limited Australia Pty Ltd   |
| the Act                | <i>The Migration Act 1958</i>  |
| the Contractor         | GSL—Global Solutions Limited Australia Pty Ltd   |
| the Contract           | The Detention Services Contract between DIMIA and GSL                                  |
| UADD                   | Unauthorised Arrivals and Detention Division   |





# **Summary and Recommendations**



# Summary

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## Background

1. Since 1994, the *Migration Act 1958* (the Act) has required that all non-citizens who are unlawfully in Australia must be detained. The purpose of immigration detention is twofold; to determine the immigration status of an unlawful non-citizen, and to allow for the removal of an unlawful non-citizen who is not permitted to remain. The current Migration Amendment (Detention Arrangements) Bill 2005 proposes amendments to the Act to provide greater flexibility and transparency in the administration of the detention of persons known or reasonably suspected to be unlawful non-citizens.<sup>1</sup>
2. Since November 1997, the provision of detention services at the immigration detention facilities has been outsourced to private organisations. For the period between November 1997 to February 2004 detention services were provided at all mainland immigration detention facilities by Australasian Correctional Services (ACS). ACS provided these services through its operational arm, Australasian Correctional Management (ACM). ACS/ACM are now known as GEO Australia Pty Ltd.
3. A new Detention Services Contract (the Contract) was signed between DIMIA and Group 4 Falck on 27 August 2003. Group 4 Falck subsequently changed its name to Global Solutions Limited (GSL). Between 1 December 2003 and 29 February 2004 the provision of detention services at Australia's immigration detention centres was progressively transitioned from GEO to GSL.
4. The term of the Contract is four years, with an option for the Commonwealth to extend for a further period of three years. The cost of providing detention services through the Contract is approximately \$90 million annually, not including the cost of overheads and contract administration.
5. Management of detention centres through outsourced arrangements is a complex task since it involves the delivery of human services in a network of centres across Australia, and including Christmas Island.

## Audit objective and scope

6. A performance audit of the management of the Detention Centre Contracts was listed in the 2003–04 Audit Work Program as a potential audit.

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<sup>1</sup> Migration Amendment (Detention Arrangements) Bill 2005, Explanatory Memorandum <[http://parlinfoweb.aph.gov.au/piweb/view\\_document.aspx?ID=2058&TABLE=EMS](http://parlinfoweb.aph.gov.au/piweb/view_document.aspx?ID=2058&TABLE=EMS)>.

The audit work program proposed that the audit would be conducted in two parts. The first part would focus on DIMIA's management of the detention centre contracts with the then detention service provider, GEO Australia. The second part would concentrate on how well any lessons learned from the first contract, were translated into improvements with the new contract.

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

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

9. The objective of this second audit was therefore amended: 'to assess DIMIA's management of detention services through the Contract, including the transition period and the implementation of lessons learned from the previous contract.'

10. Specifically the ANAO considered:

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

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

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

## Proceedings in the Federal Court of Australia

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

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

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

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

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

# Key Findings

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## Transition to new provider (Chapter 2)

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

## The Detention Services Contract (Chapter 3)

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

18. The key legal instrument in articulating these obligations is the Contract. In general terms, the Contract is better structured than the previous detention agreements, in the sense that the high level obligations to be borne by the parties are at one level of the Contract. The Contract also contains more information about detention services than the old detention agreements. However, the ANAO found that the Contract does not adequately specify key responsibilities that are to be met, either by DIMIA or GSL. In particular, clear and consistent definitions are not provided for health standards that are central to detainee welfare. For example; Duty of Care, and the specific obligations for a subcontractor supplying psychological services are not consistent with the department's Immigration Detention Standards. The audit found that the Contract does not clearly specify mechanisms for the ongoing monitoring of subcontractor arrangements, for compliance with intended outcomes.

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

## Liability, indemnity and insurance (Chapter 4)

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

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

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

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

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

## Performance information and contract monitoring (Chapter 5)

### Contract standards and measures

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

26. In developing the Contract, DIMIA sought to establish a range of standards and measures by which to measure performance. Schedule 3 of the Contract lists 148 standards and 243 measures and Schedule 2 contains more than 300 descriptions of detention services. The ANAO found that terms such as ‘timely’, ‘appropriate’, ‘relevant’, ‘adequate’ and ‘as soon as possible’ are used in the standards and/or measures and these are not defined to allow their assessment. The standards also contain conditions and provisos, which mean that proving that the standard should have been met in a particular instance would be difficult. In some instances, experts rather than DIMIA general administrators, would be required to assess the standards relating to food, health, hygiene and Occupational Health and Safety.

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

### **Contract monitoring**

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

29. While assessment by exception enables DIMIA to identify extremely poor quality service delivery, there are two weaknesses with this approach. First, at a number of points in the monitoring and reporting process, DIMIA officials exercise considerable discretion as to what is reported. Secondly, the lack of clarity in the performance standards and measures in the Contract itself means that it is not possible for DIMIA’s staff to assess the ongoing performance of the Services Provider objectively, based on the performance reporting.

### **Contract administration (Chapter 6)**

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

### **Financial framework and reporting**

31. DIMIA’s output 1.3.5 (detention) was funded at \$120.5 million for 2004–05. The contribution that detention makes towards DIMIA’s outcome is stated in the department’s Portfolio Budget Statements as providing lawful, appropriate, humane and efficient detention of unlawful non-citizens. The ANAO found that DIMIA’s internal monitoring and reporting arrangements



did not further define, nor measure lawful, appropriate, humane or efficient detention.

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

## **Cost of detention**

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

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

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

## **Invoice procedures**

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

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

## **Asset management**

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

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

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

## **Overall audit conclusion**

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

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

about the quality of services being delivered and their costs to allow a value-for-money calculation.

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

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

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

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

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

## Agency response

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

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

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

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

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

## ANAO comment

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

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

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

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

57. In its assessment of the Contract the ANAO was, therefore, looking for service standards that articulated the expected level and quality of service to be delivered by GSL. The ANAO found that DIMIA's Immigration Detention Standards generally did not meet these criteria. Among other things, clear and consistent definitions are not provided for health standards.<sup>2</sup> DIMIA highlights the challenges it has set itself in evaluating GSL's performance, 'given the volume of standards to be met'. The number and type of performance information is properly a matter for departmental judgement. However, when specified, performance information should be measurable and be designed to assist the department to manage the Contract, including monitoring GSL's performance.

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

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<sup>2</sup> The Commonwealth Ombudsman has similarly expressed a view that the health standards could be more consistent.

administration. The four areas highlighted for improvement in ANAO recommendations are:

- the insurance, liability and indemnity regime in the Contract;
- the planning, performance information and monitoring arrangements, to provide a basis for systematic and objective monitoring and management of the detention function;
- the financial reporting of the detention function; and
- the management of Commonwealth Equipment and assets at each detention facility, specifically the development of a comprehensive asset register.

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

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

# Recommendations

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**Recommendation  
No.1  
Para 4.62**

The ANAO recommends that DIMIA review the insurance, liability and indemnity regime in the Contract and, informed by a clear allocation of risks, develop clearer mechanisms for determining:

- the amount of costs for repair or rectification of damage to Detention Facilities and Commonwealth Equipment following an Incident; and
- the Services Provider's and Commonwealth indemnities and liabilities under the Contract for the purposes of insurance.

*DIMIA Response:* Agree.

**Recommendation  
No.2  
Para 5.87**

The ANAO recommends that DIMIA review and revise its planning, performance information and monitoring arrangements so they provide the basis for managing and monitoring the performance of its detention function in a systematic and objective way.

*DIMIA Response:* Agree.

**Recommendation  
No.3  
Para 6.23**

The ANAO recommends that DIMIA comprehensively review the ongoing financial reporting of the detention function and include:

- consideration of the ongoing financial commitment as well as a cost-benefit analysis of the total costs of administration; and
- provision of explicit links between financial and non-financial performance information.

*DIMIA Response:* Agree.

**Recommendation  
No.4  
Para 6.47**

The ANAO recommends, as a matter of priority, that DIMIA develop a comprehensive asset register for all Commonwealth Equipment at each of the detention facilities.

*DIMIA Response:* Agree.





## **Audit Findings and Conclusions**



# 1. Introduction

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*This chapter introduces the performance audit of the Management of the Detention Centre Contracts—Part B. It sets out the objective, scope and methodology of the audit.*

## Background

**1.1** The *Migration Act 1958* (the Migration Act) requires that 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 from Australia 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 current Migration Amendment (Detention Arrangements) Bill 2005 proposes amendments to the Act to provide greater flexibility and transparency in the administration of the detention of persons known or reasonably suspected to be unlawful non-citizens.<sup>3</sup>

**1.2** Unlawful non-citizens may 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 Migration Act. Since 1997, detention services have been provided at immigration detention facilities through outsourced arrangements. Until February 2004, the GEO Group Australia (GEO) provided detention services. Provision of detention services was transferred to GSL Australia Pty Ltd (GSL) between December 2003 and February 2004.

**1.4** More detail of the environment in which the detention centres operate can be found in Chapter 2 of ANAO Audit Report No.54 2003–2004 Management of the Detention Centre Contracts—Part A (Report No.54).<sup>4</sup>

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<sup>3</sup> Migration Amendment (Detention Arrangements) Bill 2005, Explanatory Memorandum <[http://parlinfoweb.aph.gov.au/piweb/view\\_document.aspx?ID=2058&TABLE=EMS](http://parlinfoweb.aph.gov.au/piweb/view_document.aspx?ID=2058&TABLE=EMS)>.

<sup>4</sup> Available at: <<http://www.anao.gov.au/WebSite.nsf/Publications/BF7B1AE59CA8BED0CA256EB6006F8A65>>.

Introduction

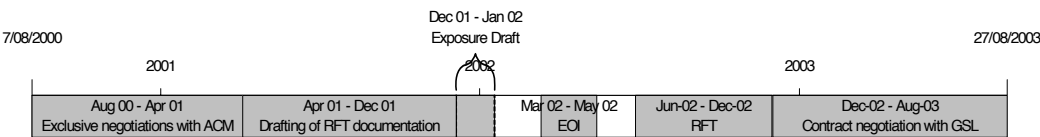
1.5 In mid-2001, DIMIA could not be certain that the agreements with GEO were continuing to provide ‘best value for money’, and decided to re-tender the contract for detention services. The tender, evaluation and contract negotiation began in December 2001, and the new Detention Services Contract (the Contract) was signed on 27 August 2003. The term of the Contract is four years, with the option of a three-year extension. The Contract superseded the previous agreement that was signed on 27 February 1998 and completed six years later on 29 February 2004.

1.6 The 2004–05 Portfolio Budget Statements (PBS)<sup>5</sup> estimated the overall cost of detention to be \$124<sup>6</sup> million for that year, with payments under the Contract expected to exceed \$90 million.

1.7 An extensive development process was undertaken to establish the Contract. Figure 1.1 shows the key steps in the process, culminating in the announcement of GSL as the successful tenderer in December 2002.

Figure 1.1

Timeline for Contract renewal



Source: ANAO from DIMIA data.

1.8 Contract negotiations took place with GSL from December 2002 until the Contract was signed on 27 August 2003. GEO continued to manage the centres throughout this period until the transition, which began in December 2003 and was completed on 29 February 2004.

The first contract management audit

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

<sup>5</sup> Page 106, DIMIA 2004–05 PBS. Discussed in more detail in Chapter 6.

<sup>6</sup> The 2005–06 PBS subsequently revised this figure downwards to \$120.5 million.

**1.10** Audit Report No.54, on the first contract, was tabled in Parliament on 18 June 2004. The audit found, among other things, that the previous detention agreements described the services and service outputs only in very general terms. The Immigration Detention Standards (IDS) were intended to further describe the standards to which the services were to be provided. However, the IDS and subsequent measures did not give sufficiently detailed qualitative and quantitative requirements for delivery of the detention services. There were ambiguities in the language used in the IDS, and in the performance measures.

**1.11** In the previous contract with GEO, service delivery was assessed against the IDS and the performance measures. However, the performance measures did not provide adequate coverage to assess performance against all of the IDS, nor did the measures and benchmarks provide quantifiable targets or agreed methods of assessment.

**1.12** In responding to that report, DIMIA said:

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.

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.

## Audit objective and scope

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

**1.14** The objective of this audit was therefore amended: 'to assess DIMIA's management of detention services through the contract, including the transition period and the implementation of lessons learned from the previous contract.'

**1.15** Specifically the ANAO considered:

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

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

**1.17** The scope included Australia's mainland immigration detention centres, including the Christmas Island Immigration Reception and Processing Centre and the Residential Housing Project at Port Augusta in South Australia. 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.

## **Audit methodology**

**1.18** The audit methodology consisted of fieldwork in DIMIA offices (both Central Office and some regional offices) and the immigration detention facilities. Within DIMIA, fieldwork included examination of the procedures, guidelines and policies that governed the transition and ongoing management of the detention centre contracts and an examination of relevant documentation and information systems. As well, the ANAO held discussions with DIMIA staff, GSL staff and other key stakeholders.

**1.19** At DIMIA's request, all interviews were conducted in the presence of a representative from the Unauthorised Arrivals and Detention Division (UADD).

**1.20** The ANAO visited all four operational mainland immigration detention facilities, as well as the immigration reception and processing centre on Christmas Island.

**1.21** The ANAO did not conduct interviews with any of the detainees housed in the detention centres.

**1.22** The audit was conducted in accordance with ANAO auditing standards at a cost of \$444 659.

## Use of consultants

**1.23** The legal firm of Corrs, Chambers Westgarth was contracted by the ANAO to the audit, to provide specialised assistance in examining the provisions of the Contract, including the indemnity, insurance and liability regime in the Contract.

## Proceedings in the Federal Court of Australia

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

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

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

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

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

## 2. Transition to a New Service Provider

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*DIMIA's management of the transition of detention services to the new provider is examined in this chapter.*

### Introduction

**2.1** Arrangements for transferring the immigration detention facilities to a new service provider began during contract negotiations with GSL. The formal transition phase commenced after the contract was signed on 27 August 2003. Transition was completed with the handover of the final centre from GEO to GSL on 29 February 2004.<sup>7</sup>

**2.2** In examining DIMIA's management of the transition process, the ANAO considered:

- planning for transition;
- the transition process;
- the costs of transition; and
- evaluation and capture of lessons learned.

### Planning for transition

**2.3** The transition of detention services to the new Services Provider presented several risks to DIMIA, including;

- coordination of the activities of the outgoing and incoming service providers, while maintaining an uninterrupted flow of services to the Detainees; and
- failure or delays in transition of the centres.

**2.4** In planning for the transfer of detention services to a new provider, DIMIA advised that its objective was to do so without incident and with minimal impact on provision of detention services to the Detainees. A comprehensive planning process was undertaken to assist in the achievement of the objective.

### Coordinated planning for transition

**2.5** In June 2003, a steering committee and working group, drawn from representatives of DIMIA, the preferred tenderer (GSL) and the (then) existing

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<sup>7</sup> The schedule of transition is at Appendix 1.



services provider (GEO) was established to plan and oversee management of the transition process. In September 2003, to facilitate DIMIA's management of transition, the Contract Administrator established a Detention Transition Management Team (DTMT) within DIMIA. The role of the DTMT was to coordinate and manage all aspects of the transition.

### *Risk and task management*

**2.6** A risk assessment was completed with the involvement of all three parties before the transition process. DIMIA coordinated the assessment and required GSL and GEO to develop individual actions against a risk assessment template. The risk assessment template developed by DIMIA, listed common risks and treatments, and the three separate risk assessments formed the overall risk management plan.

**2.7** The transition risks identified in DIMIA's templates did not provide an assessment of the likelihood of identified risks occurring. The likelihood of risks occurring is important information, used to establish a priority for implementing mitigation strategies, and to identify the necessary resource levels for monitoring each risk.

**2.8** The DTMT also maintained a register of tasks for completion during transition. The register outlined a description of identified transition issues, the responsible party, timeline for completion and the current status.

**2.9** The register of transition issues was a useful way to manage problems as they were identified, as well as the progress of tasks to be completed. The register identified operational level tasks that were relevant to achieving a successful transition. However, there was no apparent connection between the issues register and the overall risk assessment for the transition process. Better practice would have linked the issues register to the overall risk management plan for the project, providing a higher level of assurance that all identified risks were being monitored and managed.

## **The transition process**

### **Detention Services Contract Transition Manual**

**2.10** The Detention Services Contract Transition Manual, (the Manual) developed by DIMIA in consultation with GSL and GEO, outlined the procedures to be adhered to in the lead up to, and during the transition period. The Manual set out the roles, responsibilities and procedures for all parties for the handover of each centre.

**2.11** However, all parties did not sign the Manual until 28 February 2004; the day before transition of the final centre. DIMIA advised the ANAO that

there was an 'in principle' agreement between the parties to be bound by the provisions of the Manual at the beginning of transition.

**2.12** There is a risk associated with not having a formal set of procedures, including roles and responsibilities, agreed at the beginning of a complex and phased transition process. A finalised agreement provides greater certainty for all stakeholders, and allows for any amendments made throughout the process to be recorded and agreed. DIMIA indicated that 'signing the transition manual would have been a priority had DIMIA found that there was a lack of commitment to or adherence to the agreed procedures'.

**2.13** DIMIA advised the ANAO that protocols outlined in the Manual may have been endorsed through verbal discussion and agreement from the relevant parties at tripartite meetings rather than through a formal signature process. DIMIA was unable to provide any evidence of agreement, verbal or written.

**2.14** An agreed approach to the procedures in the Manual may have provided early warning of the difficulties that emerged with regard to transfer of assets and finalisation of Schedule 6,<sup>8</sup> and the implementation plan outlined at Schedule 4 of the Contract. These are discussed in more detail in the next sections.

### *Schedule 6—Commonwealth Equipment*

**2.15** During preparation of tender documentation (April 01 to June 02), DIMIA was aware that ownership of assets at the detention facilities was an area that was not entirely settled. Prior to transition, which began at Maribyrnong in December 2003, GSL also informed DIMIA that assets listed in the Contract at Schedule 6—List of Commonwealth Equipment, were also listed on GEO's list of assets offered for sale to GSL.

**2.16** Although there were early indications of discrepancies with the equipment listed in Schedule 6, DIMIA proceeded with contract signature, without a full reconciliation of the Commonwealth's assets. During the transition, GSL made arrangements to purchase assets from GEO in order to begin operations. The assets purchased included a number of assets listed in Schedule 6 as Commonwealth Equipment.

**2.17** DIMIA's internal auditors (Ernst and Young), commented on the operational transition of the centres, and noted that 'asset reconciliation at all centres [had] been an issue that [had] taken considerable effort to resolve to the satisfaction of all three parties'.<sup>9</sup> The inability to clearly identify the ownership

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<sup>8</sup> Commonwealth Equipment listed in Schedule 6 is valued at \$1 407 099.

<sup>9</sup> Ernst and Young; Transition of the Villawood Immigration Detention Centre—29 February 2004.

of the equipment at the detention facilities resulted in the transition of the centre at Port Hedland without full asset reconciliation. DIMIA and GSL agreed to use a Significant Value Asset Register at the time of transition and committed to reconstruct the detailed asset register in the future.

**2.18** At the time of audit fieldwork, asset reconciliation and finalisation of Schedule 6 was still not complete, some 17 months after the Contract was signed. Asset management and finalisation of Schedule 6 are discussed in more detail at paragraphs 4.3 (chapter 4—Liability, Indemnity and Insurance), and 6.40 (chapter 6—Contract Administration).

#### *Schedule 4—Implementation of Detention Services*

**2.19** The Contract, (at Clause 3.1.1) states that ‘the implementation of the Detention Services will be conducted in a manner and by the deadlines specified in Schedule 4: Implementation Plan.’ The ANAO found that Schedule 4 only listed the deadlines for key activities in the transition rather than clearly describing GSL’s requirements and the manner in which implementation of services should occur.

**2.20** The ANAO notes observations made in the transition report that GSL had not been adequately prepared for the transfer of some centres. In particular, ‘that better planning and resourcing [from GSL] was required’. As well, the report suggested that following the transfer of Maribyrnong, DIMIA recognised that the Manual ‘did not reflect a comprehensive transitioning in by GSL.’

**2.21** Inclusion of a description of requirements would have provided DIMIA with a greater ability to enforce GSL transition obligations. The ANAO acknowledges DIMIA efforts during transition to further engage GSL in preparing for the transition of the centres. However, the ANAO considers that a formal requirement in the Contract to actively participate in the planning and preparation for transfer would have assisted in transition.

## **Transition costs**

**2.22** Activity-based costing data from DIMIA’s systems indicates an overall cost of transition at \$5 064 466. However, these figures attribute costs only to broad activities, including contract drafting and negotiation, making it difficult to identify the specific costs related to the operational transition of the facilities, particularly departmental administration costs. For example, DIMIA records also indicate the transition was managed within the department by the DTMT, which comprised six full-time staff for 12 months. ANAO calculations based on per capita figures and including DIMIA overheads, indicates an additional cost of approximate \$900 000.

**2.23** The ongoing cooperation of the previous detention services provider throughout the transition was considered a significant contributor to a successful transition. In recognition of this and the impact of transition on the outgoing service provider, the Tender Steering Committee agreed to additional payments for transition and contract completion.

**2.24** These payments and the cost of transition will be examined and reported on separately in more detail as part of the ANAO's audit of the management of the tender process.

## **Evaluation and lessons learned**

**2.25** The transition of detention services to a new provider is a complex and high-risk undertaking. It is therefore better practice to seek to harness and use, key lessons each time the cycle of transition to a new provider is completed.

**2.26** DIMIA produced an Operational Transition of Detention Centres Report. The report details the transition of all centres, it outlines the procedures engaged at each centre, and discusses the circumstances that arose during the transition.

**2.27** The report will serve as a sound basis on which to plan future transition undertakings.

## **Conclusion**

**2.28** Transfer of detention facilities to the new Services Provider was achieved with minimal disruption to the Detainees. Overall there was sound planning and preparation. However, the costs, at approximately \$6 million, were significant.

## 3. The Detention Services Contract

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*This chapter examines the Contract for the delivery of detention services at Australia's Immigration Detention Facilities.*

### Introduction

**3.1** A contract is a legally enforceable set of terms and conditions.<sup>10</sup> It is the key instrument for articulating service delivery obligations and is the foundation for managing the relationship with the Services Provider. Therefore, a contract should clearly articulate service delivery requirements, as well as the mechanisms for administering the terms and conditions of the agreement. Contracts also provide a framework for planning, task allocation and risk allocation.<sup>11</sup>

**3.2** The ANAO examined DIMIA's incorporation of the available guidance and the extent to which its experience in managing detention services through contracted arrangements was evident through:

- the structure of the Detention Services Contract (the Contract);
- clear and consistent definition of the services to be provided;
- clear allocation of roles and responsibilities for service delivery arrangements, including third parties; and
- a systematic and structured approach to contract administration.

### Structure of the Contract

**3.3** The Detention Services Contract (the Contract) between DIMIA and GSL sets out the obligations of both parties in a single document. This differs from the previous documents for the delivery of detention services that were made up of three separate agreements. The Contract includes 12 schedules, which also provide more information about detention services and the obligations of the Services Provider.

**3.4** The structure of the Contract is illustrated in more detail in Figure 3.1.

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<sup>10</sup> N. Seddon, *Government Contracts Federal State and Local 3<sup>rd</sup> Edition*, The Federation Press 2004, p.21.

<sup>11</sup> Joint Committee Public Accounts and Audit, *Contract Management in the Australian Public Service*, Commonwealth of Australia, 2000, paragraph 1.24.

**Figure 3.1**

**Structure of the Contract**

| Contract Reference   | Definition of Services  |
|--|---|
| Clause 1.1<br>The Main Body of the Contract                                  | Detention services are defined as being ‘the detention services described in Schedule 2: Detention Services’  |
| Schedule 2<br>The Description of Detention Services                          | Schedule 2 provides general descriptions and background information about the particular services to be provided. The information contained in Schedule 2 has been developed with regard to the Statement of Requirement outlined by DIMIA in the Request for Tender. Schedule 2 also refers to Schedule 3 for additional details about the services to be provided.  |
| Schedule 3<br>The Standards and Performance Measures                         | Schedule 3 contains the IDS, which are identified as being the standards that govern provision of detention services. The standards are described as outcome standards that relate to the quality of care and quality of life expected in immigration detention facilities in Australia. Schedule 3 states that the standards must be met in all circumstances except where it is demonstrated that the security and good order of the immigration detention facility would otherwise be compromised. |
| Operational Procedures<br>GSL’s Procedures for Delivering Detention Services | Clause 2.4.2 requires the service provider to prepare Operational Procedures in accordance with the requirements of the IDS to be approved by the Contract Administrator. Once approved, delivery of detention services must be in accordance with the operational procedures and is a further description of the detention services to be provided.  |

Source: ANAO from the Contract

**3.5** The Contract and its schedules are large and complex and there are 200 operational procedure documents and other attachments. Clause 2.4.5 of the contract sets out an order of precedence to help interpret the Contract:

In the event of ambiguity or inconsistency between:

- the contract clauses and Schedule 2: Detention Services;
- the Immigration Detention Standards; and
- the Operational Procedures,

a descending order of precedence applies, so that the provisions of the earlier named document to the extent of any such inconsistency prevails. The Services Provider must promptly advise the Commonwealth of any perceived inconsistency or ambiguity and must negotiate in good faith any amendments or variations to these documents to address any such inconsistency or ambiguity.

**3.6** To be successful, this layered approach requires the use of common definitions of services and clear links between the schedules.

## **Clarity and consistency of service delivery requirements**

**3.7** DIMIA advised the ANAO that the Contract is a non-prescriptive outcomes based contract. DIMIA relies on the Services Provider's skill and expertise to provide detention services and provision of these services must comply with the obligations outlined in the Contract and Schedules.

**3.8** For this approach to be successful, the ANAO expected to find that service delivery requirements in the Contract were internally consistent and clearly articulated. Because the provision of health services is central to detainee welfare, the ANAO focused on:

- health services; and
- the merit points scheme—which is a system that allows detainees to participate in 'meaningful activities' in exchange for merit points.

## **Consistency of service delivery requirements—health services**

**3.9** The ANAO examined the definitions of service delivery requirements throughout the Contract to determine whether they were consistent. The ANAO identified inconsistent descriptions of expected services. Figure 3.2 below, contains extracts of several descriptions from the contract referring to the provision of health services.

**Figure 3.2**

**Description of the standard for health services**

| Section                                    | Description  | ANAO comment  |
|--|--|---|
| Sch 2—Part 7<br>Care Needs:<br>Health Care | 'The Department expects that detainees should be able to access....a level and standard and timeliness of health services....broadly consistent with that available in the Australian community'   | Obligations such as these are unclear, as there are many variances in the standard and timeliness of availability of health services within the Australian community. |
| Sch 3—<br>Performance<br>Measures          | In this section, the Service Provider is required to provide detainees with access to 'timely and effective primary health care'. The explanatory note to this states that 'the level of primary health care.... should sit broadly within the norms of primary health care available to...the Australian community through a General Practitioner, or a community health centre.' | DIMIA has not specified clear descriptions and standards for the provision of health services under the Contract.   |

Source: ANAO analysis

**3.10** The layered approach to defining obligations to be fulfilled by the Services Provider described in Figure 3.1 is dependent upon the Contract clearly defining services and deliverables. As described in Figure 3.2, the ANAO found that the standards for expected quality in health services was not specified consistently in the Contract. Apart from the difficulty in determining the standard required under the above regime, the specified standard of health services, 'health services ... broadly consistent with that available in the Australian community' can be specific to location. For example, the standard of health care available to the Australian community in metropolitan areas can be quite different to the standard of care available to the Australian community in remote locations such as Christmas Island or Port Augusta. The imprecise description of the expected quality standard makes the practical implementation and provision of the required services difficult.

**Clarity of service delivery requirements—the merit points scheme**

**3.11** All detention centres operate reward and recognition schemes for detainees. These schemes allow detainees to undertake meaningful activities, such as cleaning or cooking, in exchange for points. The points can be used to purchase small items from the Services Provider (generally confectionery, toiletries and cigarettes). In some centres, points can also be used to buy goods from shops outside the centre.

**3.12** The *Migration Act 1958* (the Migration Act) prohibits detainees from working. DIMIA advised, on the basis of their own legal advice, it does not regard these schemes as paid employment. The scheme has been operational since the previous detention service contract and was established primarily to



provide detainees with occupation and a sense of ownership of the detention facilities. Although the scheme is not regarded as paid employment, the activities are required to be done to a specified standard, and are checked by the Services Provider's staff.

**3.13** Generally, one hour's work receives one point, which has a nominal approximate value of \$1.00. Dollars 'earned' are paid into trust accounts, and the goods purchased are 'priced' at the cost value for the Services Provider. When a detainee is transferred between facilities, their points are also transferred. When a detainee leaves detention, their points are exchanged for cash.

**3.14** During audit fieldwork, the ANAO found that GSL was permitting the transfer of merit points and funds between detainee accounts. This was being done at the request of detainees to allow for repayment of debts between them, or for special external purchases, which had been arranged on their behalf.

**3.15** DIMIA centre staff were unsure whether the practice of transferring points between detainees was permitted or not permitted by different sections of GSL's Operational Procedures. As well, the ANAO found evidence that the Services Provider was converting detainee points to cash, at times other than on departure from the detention facility. This matter was ultimately resolved following intervention and clarification from DIMIA staff at central office.

**3.16** The merit points scheme contributes to detainee welfare. However, DIMIA's objectives for the scheme have not been reflected in the provisions of the Contract. In its current form, the scheme represents a risk to the Commonwealth as the distinction between 'meaningful activity' and 'paid employment' is not made clear. Without further guidance, it would be difficult for the Services Provider to ensure it is managing the scheme according to DIMIA's objectives and within the legal framework of Commonwealth and State legislation.

**3.17** This could be addressed through the development of provisions in the Contract that articulate DIMIA's intended approach, which captures the broad objectives of the scheme and has regard to the provisions of the applicable legislation.

## **Allocation of the roles and responsibilities for service delivery, including third parties**

**3.18** The primary instrument governing the provision of detention services is the Contract. Other agreements have also been required to facilitate delivery of specialised detention services. When the provision of services entails the coordination of more than the main provider, risks to service delivery and quality increase. Therefore, the ANAO expected to find well-defined roles and

responsibilities and clearly specified mechanisms and agreements to govern the use of third parties in the delivery of detention services.

## **Primary roles and responsibilities**

**3.19** The roles and responsibilities of the Services Provider are described at various places within the Contract, particularly at Schedule 2. Paragraph 1.8 of Schedule 2 provides that:

The scope of the responsibilities of the Services Provider includes all that is required to ensure that all necessary services<sup>12</sup> can be delivered ...

**3.20** The Contract stipulates that the delivery of detention services is to be in accordance with the Immigration Detention Standards (IDS) and related performance measures, as well as the legal and policy framework applicable to the detention environment.

**3.21** The ANAO found that although the Contract allocates wide-ranging responsibilities to the Services Provider, there are elements of service delivery for which there are shared responsibilities. Duty of Care is an example of an element of detention services for which there is shared responsibility.

**3.22** DIMIA advised the ANAO that ‘the department accepts that it retains ultimate Duty of Care to detainees, but fulfils many aspects of this (without absolving itself of ultimate responsibility) by engaging and monitoring a detention services provider who, via the Detention Services Contract, shares responsibility and liability in some ways.’

**3.23** The ANAO examined the Contract to see whether it clearly defined specific accountability obligations or responsibilities relating to Duty of Care. Figure 3.3 contains relevant extracts from the Contract related to Duty of Care.

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<sup>12</sup> Paragraph 1.8 of Schedule 2 also provides that ‘services to be provided at each of the facilities are wide-ranging and include, but are not limited to, security and safety, consumable items ... and ancillary services ...’

**Figure 3.3****Contract extracts related to Duty of Care**

| Contract Reference                                    | Description   |
|---|---|
| The Body of the Contract—<br>Clause 3.5               | ‘... the Commonwealth is relying on the skill and expertise of the Service Provider’  |
| Schedule 2—<br>Clause 4.1.2                           | While not absolving itself of these responsibilities, the Department, in turn, exercises its duty of care commitments through the engagement of a competent Services Provider within the framework of relevant legislation, comprehensive contractual obligations, the Immigration Detention Standards and associated performance measures. |
| Schedule 3<br>Immigration Detention<br>Standard—1.3.1 | The day-to-day needs of detainees are met.  |
| Schedule 3<br>The Performance Measure—<br>1.3.1       | No substantiated instance where a detainee could not have their day-to-day care needs met   |

Source: ANAO analysis

**3.24** The Contract states that DIMIA will discharge its Duty of Care obligations by relying on the expertise of the Services Provider. The ANAO found that the Immigration Detention Standards and Performance Measures, which are to inform the Services Provider of the service delivery requirements, identify only the broad requirement of meeting day-to-day needs of detainees without specifying actual responsibilities and accountabilities.

**3.25** Reliance on the Services Provider’s expertise and local knowledge encourages the Services Provider to determine the day-to-day needs of the detainees for the purposes of service delivery. However, DIMIA’s own, separate determination of day-to-day needs is then used in the assessment of Services Provider performance. (Monitoring and measurement of Services Provider’s performance is discussed in more detail in chapter 5).

**3.26** The ANAO considers that some additional DIMIA guidance and clarification is required to clarify actual service delivery responsibilities and accountabilities in the Contract. The additional guidance should reduce the likelihood of non-delivery of detention services through misunderstanding of what is actually required.

## **Subcontractors**

**3.27** The Request for Tender (RFT) documentation allowed for the delivery of services through subcontractors and required tenderers to identify which elements of detention services would be delivered through subcontracted arrangements. In its tender response, GSL elected to deliver the key detention services of food, health and maintenance through subcontractors.

**3.28** The ANAO considers that it would have been appropriate for DIMIA to confirm, prior to executing the Contract, that the commitments made by GSL had been agreed with its nominated subcontractors, and were supported by appropriate contractual arrangements.

**3.29** DIMIA advised the ANAO that it 'does not have a direct contractual relationship with any subcontractor employed by GSL ... GSL retains responsibility for ensuring all services are delivered in accordance with the IDS, and the engagement of subcontractors in no way diminishes [that] responsibility.'

### *Confirmation of subcontractor arrangements*

**3.30** DIMIA advised the ANAO that in its response to the request for tender, GSL outlined its intention to engage three subcontractors to provide specific services, if awarded the Contract. These subcontracted services were to be food, health, and maintenance services. DIMIA also advised that the original health services subcontractor that subsequently withdrew from the tender process, had identified mental health and psychological well being of the detainees as requiring specialist attention. As a result this subcontractor intended to further subcontract out the provision of psychological and counselling services to a specialised service provider.

**3.31** Following the announcement of GSL as the preferred tenderer, the original health services subcontractor withdrew from the arrangement and, in June 2003, GSL selected an alternative health services subcontractor. As part of that selection process GSL decided to engage a specialist mental health provider as a separate subcontractor rather than through a sub-subcontracting arrangement previously proposed and accepted by DIMIA.

**3.32** DIMIA advised that it was satisfied with the subcontracting arrangements outlined in the response to the RFT. However, the Contract Administrator provided no additional written approval to GSL for the engagement of the nominated subcontractors. This is relevant because there were now four primary subcontractors, not three as initially intended.

**3.33** DIMIA advised that when confirming the subcontractor arrangements in September 2003, some 4 weeks after the Contract was signed, GSL did not expect that the subcontract for the delivery of psychological services was likely to exceed the \$3 million threshold specified in the Contract (and in the RFT).

As a result, the psychological services subcontract was not subject to the required financial and probity checks.

**3.34** These circumstances highlight the importance of identifying, and formally documenting risks to service delivery before the Contract is signed. Such an assessment is likely to have identified that other threshold indicators, in addition to a financial limit, might better inform DIMIA of the risks to service delivery. The use of a financial threshold is one of a number of indicators that can be used in determining the overall risks of providing psychological services through sub-contracted arrangements. However, it is not of itself able to provide a comprehensive assessment of the appropriateness and quality of the services being delivered. Collection of additional performance information, where it is appropriate and cost-effective to do so, would broaden, and therefore enhance DIMIA's understanding of the provision of psychological services to Detainees.

*Confirmation of subcontract compliance with main contract*

**3.35** The Contract, at section 3.4 imposes conditions for the engagement of subcontractors. In particular, clauses 3.4.2 and 3.4.3 (respectively) require:

The services provider must all times comply with the Government's procurement guidelines as notified from time-to-time in writing to the Services Provider by the Contract Administrator, in undertaking the engagement of subcontractors and must obtain the prior written approval of the Contract Administrator ... for any subcontract where the payments under that subcontract are likely to exceed \$3 million in any financial year.

The terms and conditions of any contract with a subcontractor, must include obligations and rights equivalent to and consistent with those imposed or granted by the services provider under this Contract including but not limited to those relating to privacy, probity, identity and financial standing.

**3.36** DIMIA is not a party to the subcontract agreements and the Contract does not require copies of the subcontracts to be provided to DIMIA. The Contract does not provide a mechanism for review of the terms and conditions in the subcontracts to assess compliance with clause 3.4.3. The ANAO found that it was necessary for DIMIA to obtain agreement from GSL for such an assessment to take place. Following agreement with GSL in March 2004, DIMIA engaged AGS to undertake the review of the relevant subcontracts.

**3.37** The review report found that the specific rights and obligations were substantially different in a number of areas; particularly the IDS and performance measures were not applied in the case of the subcontract for psychological services. The ANAO found no evidence of follow up reports, nor were the risks flowing from this review incorporated into the risk management plan, completed in November 2004.

**3.38** The ANAO acknowledges DIMIA's response, highlighting comments from AGS, which states that the psychological services subcontract provided 'flexibility for the Services Provider to manage the delivery of services to ensure compliance with the requirements of the Detention Services Contract.' The ANAO notes that the AGS report goes on to state that this flexibility 'may require additional payments...' The ANAO also notes that the AGS advice states that at the time the review was conducted—May 2004, some nine months after the Contract had been signed— 'the reporting and performance management arrangements are still to be agreed between the parties ...'

**3.39** In terms of the whole supply chain for delivery of detention services, the extent to which DIMIA retains control of resources can be a determinant of overall service quality. DIMIA's approach has been to adopt a single business focus and hold the (prime) contractor accountable for provision of services to the required standard.

**3.40** However, the ANAO found that DIMIA has experienced difficulty with the delivery of services delivered through sub-contracted arrangements. For example, at the Baxter Immigration Detention Facility. There have been complaints about the quality, quantity and appropriateness of food being served since the Contract began. In February 2004 the DIMIA centre manager reported that 'GSL does not appear to have much power to direct changes on the part of kitchen staff employed by their subcontractor'.

**3.41** The provision of food, health and psychological services are central to detainee welfare, and are often the focus of external review agencies. The ANAO acknowledge the establishment, in February 2005, of a quarterly committee involving representatives from DIMIA, GSL and the subcontractors to review performance and improve communication between all parties. However, considers there is considerable scope for DIMIA to improve the management of risks associated with the contractual arrangements with subcontractors. In particular, the results of DIMIA's own reviews should be included in the risk identification process and plans for treatment of these risks implemented and monitored.

#### *Arrangements with State Agencies—Memoranda of understanding*

**3.42** 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 providing 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, aspects of delivery, supervision or review of detention services. For this reason the

ANAO examined the extent to which Memoranda of Understanding had been formally finalised and implemented.

**3.43** Of critical importance is the extent to which the Services Provider can rely on agreements between the Commonwealth and other jurisdictions that identify roles and responsibilities and clarify policies and laws.

**3.44** DIMIA has previously 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, before introducing a formal Memorandum of Understanding. The ANAO found that in the context of emergency planning, the working relationships exist and regular emergency planning exercises are conducted.

**3.45** The ANAO notes that the ‘memoranda of understanding or other arrangements negotiated between the Commonwealth and the State and Territory government agencies’ referred to in the Contract, are in various states of development. Eighteen months after the Contract was signed, and seven years after detention services were initially outsourced, 11 out of 21 agreements (listed in ANAO Report No.54) are not yet finalised. This presents a difficulty for the Services Provider, and a risk for DIMIA, should there be attempts to rely on these agreements. The ANAO notes that these agreements, and the negotiations to finalise them are between DIMIA and the relevant authorities and do not include the Services Provider.

**3.46** The extent to which ‘such instruments’ have additional legal force under the Contract, beyond that contained in the relevant legislation, or the instruments themselves when they are finalised, is not clear. The status of the memoranda of understanding is one of a number of examples in the Contract where the Services Provider has to comply with vague descriptions of various documents, policies, or laws.

**3.47** At section 19.1.3, the Contract states that ‘the parties submit to the non-exclusive jurisdiction of the courts of Australia’. It is possible given the unclear descriptions discussed above, that there may be inconsistency between the various Commonwealth, State and Territory laws that apply to this Contract. Ordinarily, in a contract such as this, the parties select a particular jurisdiction whose laws they agree apply to the contract. In the absence of a selection of a particular jurisdiction, if there is a dispute, it may become necessary to determine which law applies to the Contract. Given the location of the centres and having regard to the different types of services being delivered under the Contract, this may not be easily resolved.

**3.48** DIMIA advised that in this context it intends to rely on the *Commonwealth Places (Application of Laws) Act 1970* s4(1). In view of this, it would be prudent for agreement to be obtained from the Services Provider and an amendment inserted into the Contract.

## Specification of mechanisms for contract administration

**3.49** In its report on Contract Management in the Australian Public Service the Joint Committee for Public Accounts and Audit indicated the importance of clear contractual specifications for ongoing contract management success:

drafting appropriate and effective contract specifications is considered to be the key element from which all other contracting responsibilities are tied.

**3.50** Clear contract specifications provide the foundation for the development of administrative process over the life of the contract. In its report, the JCPAA considered four key features of contract management that required clear contractual specification:

- allocation of risk within the contract;
- the quality, and monitoring of performance measures;
- payment schedules are a key part of any contract; and
- effective monitoring and communication protocols.

**3.51** The ANAO acknowledges that there is no single contracting approach appropriate for every type of contract, with factors such as risk, complexity, value, the degree of flexibility needed and the amount of management input required being key considerations. However, sound contract management mechanisms are a key means to ensure effective implementation of the detention program.

**3.52** Accordingly the subsequent chapters of this report examine risk allocation (in the context of the insurance and indemnity framework), performance measurement and monitoring, and contract administration arrangements, including payment procedures.

## Conclusion

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

**3.54** The key legal instrument in articulating these obligations is the Contract. In general terms, the Contract is better structured than the previous detention agreements, in the sense that the high level obligations to be borne by the parties are at one level of the Contract. The Contract also contains more information than the old detention agreements. However, the ANAO found that the Contract does not adequately specify key responsibilities that are to be



met, either by DIMIA or GSL. In particular, clear and consistent definitions are not provided for health standards that are central to detainee welfare. For example Duty of Care, and the specific obligations for a subcontractor supplying psychological services are not consistent with the department's Immigration Detention Standards. The audit found that the Contract does not clearly specify mechanisms for the ongoing monitoring of subcontractor arrangements, for compliance with intended outcomes.

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

## 4. Liability, Indemnity and Insurance

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*This chapter examines the operation of liability, indemnity and insurance clauses in the Contract.*

### Introduction

**4.1** The ANAO examined the liability, indemnity and insurance regime of the Contract to determine what and on what basis insurance obligations have been imposed on the Services Provider. The ANAO expected to find that the Contract reflected the identified risks to the Commonwealth and the Services Provider and that appropriate insurance obligations had been imposed, informed by a risk assessment.

**4.2** DIMIA's processes for identifying risks will be examined in more detail in the separate audit of the tender for this Contract.<sup>13</sup> Where this chapter discusses risks, the apparent (insurable) risks to the Commonwealth, and the liability, indemnity and insurance clauses of the Contract, are the reference points.

**4.3** The total financial exposure to the Commonwealth arising from damage to Detention Facilities and Equipment,<sup>14</sup> is approximately \$160 million. There are other risks that can arise through claims for negligence, breach of duty or public liability generally.

### Liability, indemnity and insurance—key concepts

**4.4** The indemnity, liability and insurance regime in the Contract is lengthy. To assist in the interpretation of the discussion in this chapter, a simplified explanation of key concepts is at Figure 4.1 below:

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<sup>13</sup> The ANAO audit of the Management of the Tender for the Detention Services Contract—due to be tabled in late 2005.

<sup>14</sup> These are defined terms in the Contract:

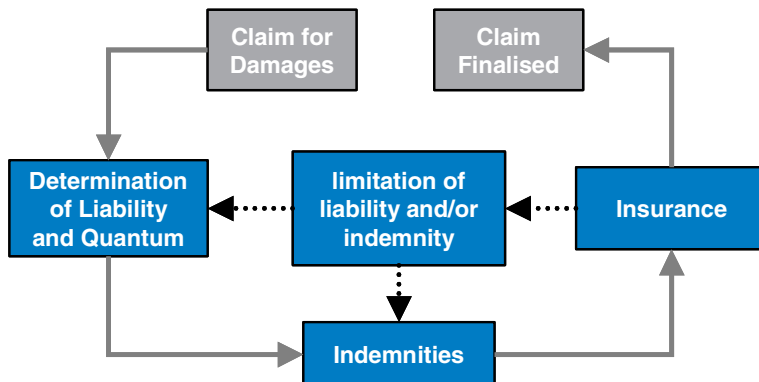
- Detention Facilities is 'the facilities, including fixed assets described in Schedule 1: Detention Facilities.
- Commonwealth Equipment is 'equipment that the Commonwealth agrees to license to the Services Provider as at the Commencement Date as set out in Schedule 6: Commonwealth Equipment.
- At the time of audit fieldwork, ownership of the assets at Schedule 6 was not settled. This is discussed further at Chapter 5, paragraph 6.41.

**Figure 4.1****Liability, insurance and indemnity—key concepts**

| Key Concept             | Explanation  |
|-------------------------|--|
| Liability               | Liability can arise under tort (common law), by reason of breach of statute, or under the Contract.  |
| Indemnity               | Indemnity is an arrangement where one party (the indemnifier) agrees to pay another (the indemnified) to compensate for a loss. The purpose of an indemnity agreement is to transfer the risk of financial loss from one party to the other. Indemnities are usually, sought to be supported by relevant insurance policies. |
| Insurance               | Insurance is a method of transferring the financial cost arising from a specified risk or incident to an insurer, in return for a premium.   |
| Limitation of liability | Insurance policies normally contain a limit stating the maximum amount insurers will pay for any single event, or for all events occurring in a single policy period. As a general proposition, limitations on liability should be expressed subject to the availability of insurance.                                       |

Source: ANAO

**4.5** An illustration of the operation of these concepts as a ‘system’ is shown in Figure 4.2:

**Figure 4.2****Illustration of a liability, indemnity and insurance framework**

Source: ANAO

**Claims history**

**4.6** The requirement for government agencies to manage indemnities and insurances carefully arises from the need to protect the Commonwealth from unnecessary financial exposure. At the time of the audit, the largest single event insurance claim from a detention centre was \$953 000 as a result of a disturbance at Woomera in 2000. Claims in the amount of \$2.3 million were

made following disturbances at the centres in 2001 and \$13.6 million following disturbances in 2002.

4.7 DIMIA’s experience with insurance claims indicates that a rigorous process was needed to determine the appropriate liability, indemnity and insurance regime in the Contract. DIMIA’s process for arriving at the regime will be examined in more detail in the separate audit of the tender for this Contract. This chapter focuses on the operation of the regime that came into force when the Contract was signed on 27 August 2003.

**Analysis of the liability, indemnity and insurance regime**

4.8 The ANAO examined relevant clauses in the Contract to determine how liability, indemnity and insurance are dealt with. The ANAO focused on:

- the mechanism for determining liability; and
- the operation of the indemnities and limitations on liability and insurance.

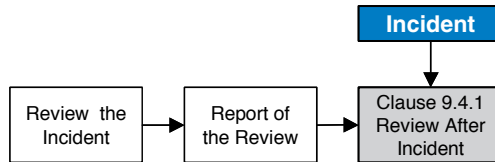
4.9 To illustrate the operation of the clauses and sub-clauses, simplified ‘steps’ and flow charts have been developed by the ANAO and are used in the discussion below. The model chosen is intended to provide an overview of complex, interconnected clauses, which collectively comprise a risk allocation and risk management regime, and cannot easily be extended to represent the precise detail of the clauses. More detailed comments have been provided separately to DIMIA.

4.10 The following ‘key’ is provided to assist in interpretation of the charts. The colours are intended to highlight the level of risk to the Commonwealth.

| Description   | Risk Indicator |
|---|----------------|
| Contract clauses adequate   |                |
| Clauses require subjective judgement  | Moderate Risk  |
| Contract clauses less than adequate   | Medium Risk    |
| Contract provisions substantially ineffective or render other clauses inoperative | High Risk      |

**Mechanism for determining liability**

4.11 As foreshadowed above (paragraph 4.6), the history of insurance claims in detention centres indicates that Commonwealth exposures are mainly related to ‘Incidents’ at the centres. The provisions of the Contract that apply specifically to Incidents are within clause 9. The first relevant clause is Clause 9.4, which provides for a review to be conducted following an Incident. The process set out within this clause is illustrated in Figure 4.3.

**Figure 4.3****The review mechanism**

Source: ANAO from the Contract

**4.12** The review and report sub-processes are appropriate steps. However, the review mechanism is only the first part of a larger process, which considers (potentially) the imposition of a substantial liability on the Services Provider. It is important, therefore, that subjective interpretation in the definition and reporting of Incidents is minimised as far as possible. Incidents need to be explicitly listed in the Contract and readily classified.

### *Definition of Incidents*

**4.13** Incident is a defined term for the purposes of the Contract; it is defined to be a ‘minor, major or critical incident’. These terms are separately defined in Attachment A to Schedule 3.<sup>15</sup> Reporting of Incidents is also covered in Part 16 of Schedule 2.<sup>16</sup> Clause 16.1.5 provides short definitions of critical, major and minor incidents. As previously discussed (in Chapter 2, paragraph 3.5), the ANAO notes that section 2.4.5 of the Contract establishes a hierarchy where Schedule 2 takes precedence over Schedule 3. In this context, the sections in Part 16 of Schedule 2 introduce a number of concepts and obligations for the Services Provider that differ from Attachment A to Schedule 3. For example, clause 16.1.5 of Schedule 2 describes ‘medical emergency’ as a Major Incident. However, Attachment A to Schedule 3 indicates that ‘serious illness or injury’ is a Critical Incident.

**4.14** Overall, the differences between definition of Incidents in Schedules 2 and 3, and the definitions at Attachment A to Schedule 3 introduce a number of uncertainties:

- there is no material difference between the definitions of a Major or Critical Incident;
- there are overlaps and ‘catch-all’ examples that will not assist in the subsequent application of insurance clauses should it be necessary. For example, ‘other major disturbance’ is listed as a ‘Major’ Incident. Flood, cyclone or earthquakes are both Critical and Major Incidents; and

<sup>15</sup> Schedule 3 contains the Immigration Detention Standards, the Performance Measures and the Performance Linked Fee Matrix.

<sup>16</sup> Schedule 2 contains descriptions of Detention Services.

- in the event that an Incident is not listed in Schedule 2 or Schedule 3 as either a Major or a Critical incident, a subjective judgement would need to be formed as to the nature of the incident.

**4.15** The ANAO concluded that the definition of Incident within the Contract is unclear. There are a number of different descriptions of an Incident in various places in the Contract. The descriptions that do exist are not a good foundation for assessment of what may or may not be an Incident for the purposes of the insurance, liability and indemnity regime.

## **Determining liability for costs from defects and damage**

**4.16** Determining liability is a very important concept in risk management and insurance. Liability can arise through common law or through the terms of the Contract or by breach of duty. Clause 9.4.2 is concerned with contractual liability. This clause introduces the concept of defects in, or damage to, the Detention Facilities or Commonwealth Equipment, as a result of an Incident.

**4.17** Clause 9.4.2 is limited only to damages to Facilities and Equipment. Incidents that could generate other claims, in addition to those involving the repair of Facilities and Equipment, are defined in the Contract. However, there is no mechanism in the Contract to determine liability for events such as personal injury claims. Such events would be dealt with by the court system. The appropriate balance between the common law, and allocating liability through the Contract, will depend on DIMIA's assessment of the risks and benefits involved. This will be examined in more detail in the separate audit of the management of the Tender for the Detention Services Contract.

**4.18** Clause 9.4.2(c) provides for an independent advisor, appointed by the Contract Administrator, to form an opinion regarding, among other things, liability for the damages incurred. However, the act of forming an opinion does not provide a clear mechanism to precisely determine the amount that the Services Provider is to be liable for, in respect of defects and damage repairs.

**4.19** As well, clause 9.4.2 does not specify that the opinion of the independent advisor is binding on either party. The DIMIA Contract Administrator, in the exercise of powers specified at Section 17.2 of the Contract, is also not able to give direction to the Services Provider based on the opinion of the independent advisor.<sup>17</sup> Thus, the opinion of the independent advisor is of limited contractual value.

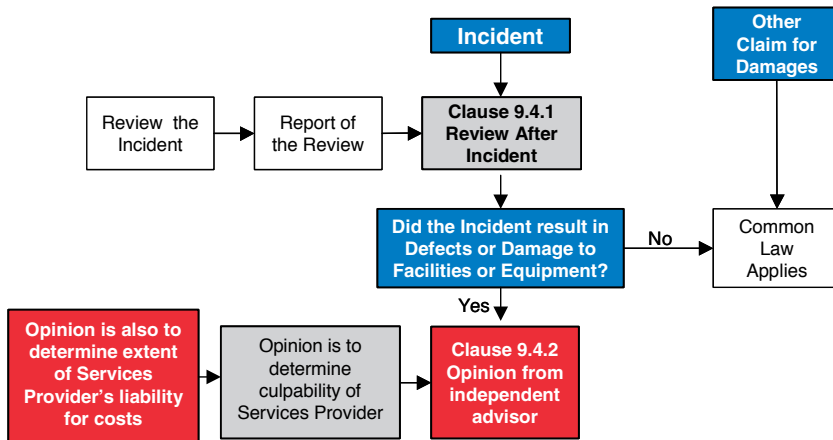
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<sup>17</sup> There is also the prospect that the dispute procedures set out at Clause 17.5 of the Contract could engage. Clause 17.5 provides for an arbitration process between the parties and in drafting the Contract, it was envisaged that, if there were disputes over the operation of clause 9.4.2, clause 17.5 could be invoked by either party. If a mutually agreeable outcome cannot be negotiated, the end result of the dispute procedures at 17.5 is that legal proceedings will commence.

4.20 The process is illustrated in Figure 4.4.

**Figure 4.4**

**Process for determining liability**



Source: ANAO from the Contract

4.21 Clause 9.4.2 is deficient. It does not specify a mechanism to determine the amount that the Services Provider is liable for, or that the opinion of the independent advisor is binding. This represents a high risk to the Commonwealth. DIMIA's claims history indicates that liabilities, and the amounts to be allocated following Incidents are significant. DIMIA's experience with allocating liability for claims under the previous contract shows that it has taken up to 4 years to finalise Incident related claims. The uncertain process for allocating liability in this Contract influences the effectiveness of subsequent clauses.

## Repairs to Facilities and Commonwealth Equipment

4.22 Clause 9.5 details actions to follow an Incident and is primarily concerned with repairs to Facilities and Equipment. The sub-clauses are designed to:

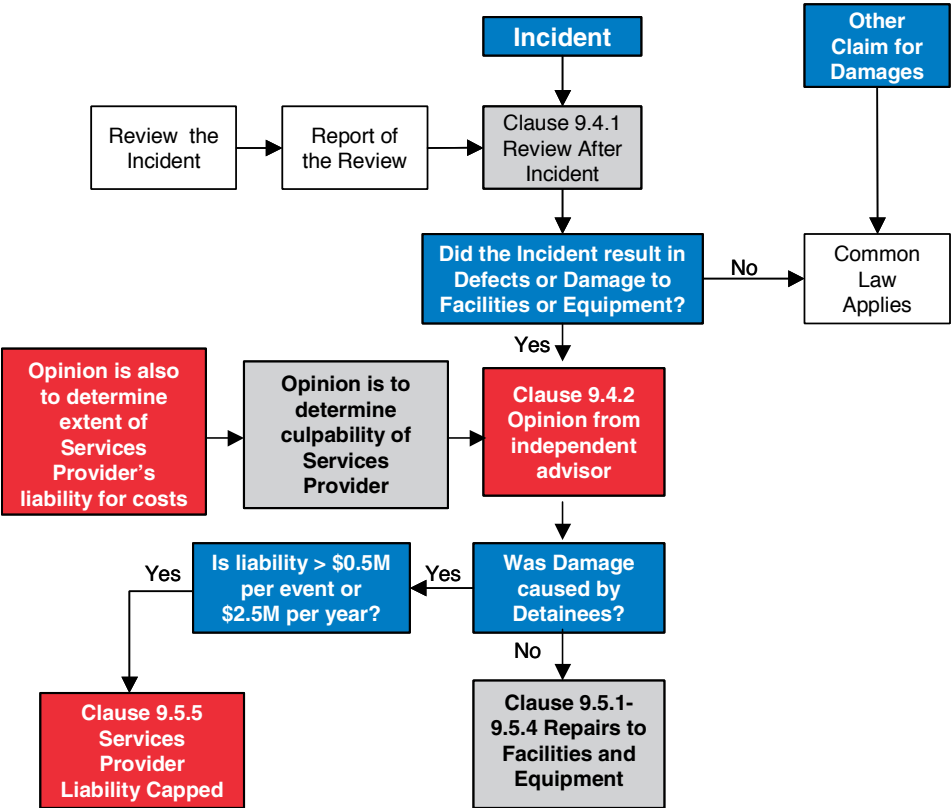
- make the detention Facility and Commonwealth Equipment 'safe and secure' (clause 9.5.1);
- facilitate commencement of work to repair or rectify 'defects or damage' (clause 9.5.2); and
- provide a cap on the Services Provider's liability in circumstances where damage to Facilities or Equipment is caused by detainees (clause 9.5.5).

4.23 Clause 9.5.5 states:<sup>18</sup>

**Notwithstanding any other provision in this Contract** but subject to clause 9.5.6, the Services Provider’s liability for costs under this clause 9.5 and Damages under this Contract, where the costs or Damages relate to repairs to or rectification of defects or damage caused by Detainees to Detention Facilities **or** Commonwealth Equipment in relation to which a review under clause 9.4.1 is undertaken, will be limited to \$500 000 per event and \$2.5 million in any Financial Year.....’

4.24 The conjunction of clause 9.5 with the preceding relevant clauses is summarised in Figure 4.5.

**Figure 4.5**  
**Repairs to Detention Facilities and Commonwealth Equipment (intended)**



Source: ANAO from the Contract

<sup>18</sup> Emphasis markings added by the ANAO.



**4.25** The ANAO found that the interaction of clause 9.5 with relevant preceding clauses caused two problems:

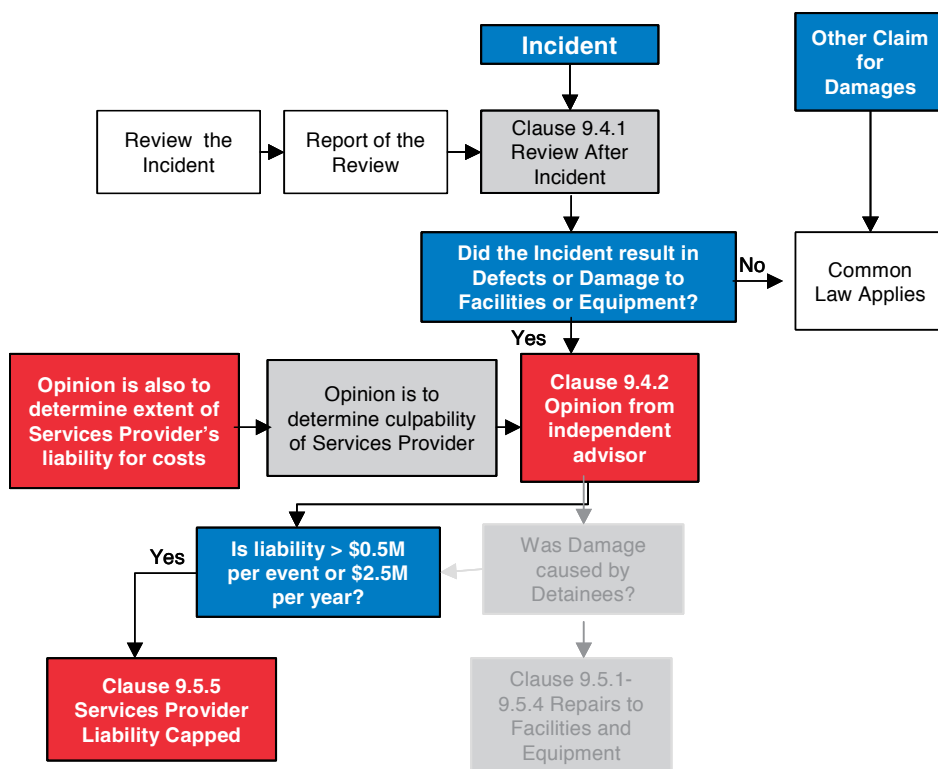
- ‘safe and secure’ and ‘defects and damage’ repairs are not defined in 9.5 or preceding clauses. In particular, clause 9.4.2 makes no such distinction and this is the clause that the independent advisor depends upon to form an opinion on the nature of the damages; and
- clause 9.5.5 confuses the concepts of ‘costs’ and ‘damages’. Earlier related clauses refer to the ‘cost’ or ‘amount’ of repairs, while clause 9.5.5 also refers to ‘Damages under the Contract’. ‘Damages’ is a defined term in the contract; it includes ‘liabilities, expenses, losses, damages and costs (including legal costs)’.

**4.26** Therefore, it is not clear what type of repairs the cap on the Services Provider’s liability applies to.

**4.27** Clause 9.5.5 has other consequences. It was intended to cap the Services Provider’s liability to the stated amounts, in circumstances where damage to Facilities or Equipment was caused by Detainees, as shown in Figure 3.5. However, the ANAO found that clause 9.5.5 overrides other relevant clauses and, in doing so, broadens the scope for the cap on the Services Provider liability to include any claim for damage. Figure 4.6 illustrates the likely operation of clause 9.5.5 in conjunction with the preceding clauses.

**Figure 4.6**

## Repairs to Detention Facilities and Commonwealth Equipment (likely outcome)



Source: ANAO from the Contract

**4.28** The ambiguity that arises from clause 9.5.5 means that its scope is now far wider than originally intended. In particular, it is in conflict with clause 16 that describes the general limitation on the Services Provider liability. The implications of clause 16 being subject to clause 9.5.5 are discussed in more detail at paragraph 4.40 below, following the discussion of indemnities and insurance.

## The relationship between indemnity and insurance

**4.29** The objectives for the indemnity and insurance regime under this Contract are recorded at clause 16. Clause 16 is subject to a number of other clauses (discussed in more detail at paragraph 4.11 above), but in overall terms, it seeks to achieve:

- the provision of wide-ranging indemnities for the Commonwealth as accepted by the Services Provider (clause 16.1);

- specification of insurances that the Services Provider is required to procure and maintain to stand behind the indemnities (clause 16.2); and
- a Commonwealth indemnity for the Services Provider if the Services Provider liability exceeds \$20 million<sup>19</sup> (clause 16.3).

**4.30** Achieving a balance between these objectives is desirable in a contract such as this, and it requires DIMIA to manage potentially competing considerations. These considerations would include seeking to maximise the protection of the Commonwealth under the Contract, while imposing obligations on the Services Provider that are commercially sensible and reasonably obtainable in the insurances market.

*General indemnity provided by the Services Provider (Clause 16.1)*

**4.31** It is important that indemnity clauses be clear and well written, as it is the mechanism that determines the scope of liability that has been transferred from one party and assumed by the other. At clause 16.1 of the Contract, the Services Provider is the indemnifier and the Commonwealth the indemnified.

**4.32** The indemnity as drafted at clause 16.1 is not clear. It refers specifically to 'Damages' within the clause. By using this term, clause 16.1.1 implies that the indemnity from the Services Provider is to 'hold harmless' the Commonwealth for expenses and losses resulting from the circumstances outlined in the clause, as well as when the Commonwealth has been sued and has to pay damages to a third party.

**4.33** The requirement in the Contract for the Services Provider to provide both third party indemnity and other indemnities in one clause may have adverse consequences. Especially in this case since the Contract does not provide the mechanism for the supplier to have input into any third party litigation. This resulted in a higher cost of insurance being incorporated into the contract price.<sup>20</sup>

**4.34** Clause 16.1.2 extends the amount of the Service Provider indemnity to 'amounts claimed in claims or proceedings by third parties'. This is an additional extension of the indemnity the Service Provider is required to give. Since the courts will rarely award amounts claimed, this has also increased the cost of the Contract, in compensation for increased insurance costs.

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<sup>19</sup> The Commonwealth indemnity applies for amounts over \$20 million, up to a maximum of \$50 million. Liabilities over \$50 million pass back to the Services Provider.

<sup>20</sup> The increased costs of insurance will be examined in more detail in the separate audit of the Management of the Tender for the Detention Services Contract.

*Insurance required by the Services Provider (Clause 16.2)*

**4.35** Clause 16.2 mandates the Service Provider's insurance requirements under the Contract. The commercial rationale or underpinning for the insurance regime in the Contract is that the Commonwealth wishes to be satisfied that the Services Provider has sufficient insurance available to it in connection with events that may occur during the provision of detention services. A more detailed discussion of the insurance clauses is at paragraph 4.48. For the purposes of this analysis, it is sufficient to state that clause 16.2.8 identifies policies of insurance, which at a minimum, the Service Provider is required to effect and maintain. Part of this insurance requirement is that GSL is required to have \$20 million of public liability insurance. The Commonwealth arranges its own insurance cover where necessary, through Comcover.<sup>21</sup>

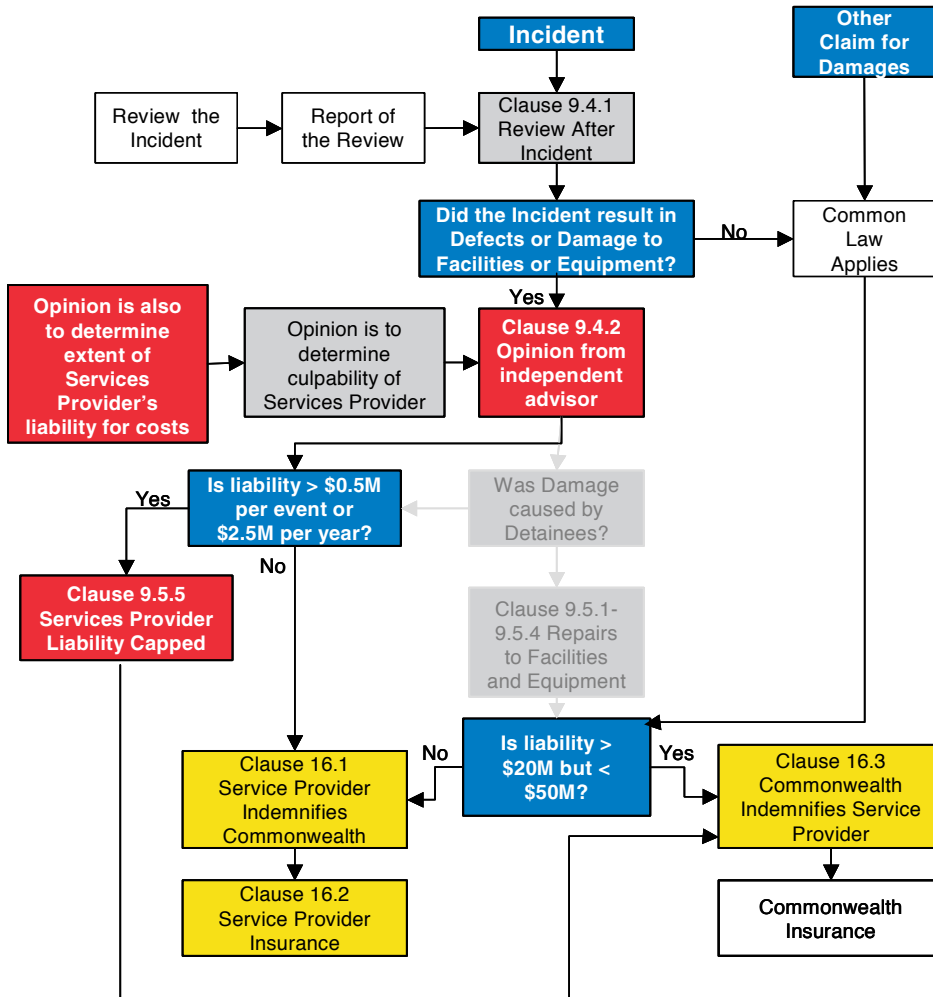
**4.36** The operation of the indemnities and limitations on liability and insurance are shown at Figure 4.7 below:

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<sup>21</sup> This audit did not examine the Commonwealth's insurance arrangements.

**Figure 4.7**

### Key Aspects of the Liability, Indemnity and Insurance Framework in the Contract



Source: ANAO from the Contract

**4.37** The operation of the various elements of the indemnity and insurance provisions of the Contract are shown in Figure 4.7. The intention of the Contract is that:

- for claims where damage is caused by Detainees, the Services Provider's liability is capped at \$0.5 million per event, or \$2.5 million per year. (clause 9.5.5);
- for claims where damage is not caused by Detainees, and the claim is less than \$20 million, the Services Provider indemnifies the Commonwealth (clause 16.1). Clause 16.2 requires the Services

Provider to obtain and maintain \$20 million in public liability insurance to meet such claims;

- for claims where damage is not caused by Detainees, and the claim is greater than \$20 million (but less than \$50 million) the Commonwealth indemnifies the Services Provider (clause 16.3).

**4.38** The actual operation of the liability, indemnity and insurance regime has not been tested under the Contract. However, the ANAO's analysis indicates that there is a significant risk that:

- clause 9.5.5 will come into effect for any damages claim, including claims not arising from Detainee damage;
- the Services Provider's liability will be capped at \$0.5 million per event or \$2.5 million per year for all damages claims;
- the Commonwealth will be deprived of the benefit of the \$20 million in public liability insurance, purchased by the Services Provider, designed to cover claims where Detainees did not cause the damage.

**4.39** For example, if damage to Commonwealth Facilities or Equipment occurred that was not the result of Detainee damage and DIMIA faced a claim for \$12 million:

- the Services Provider would pay a maximum of \$0.5 million;
- the Commonwealth would pay the difference i.e. \$11.5 million; and
- the \$20 million of public liability insurance carried by the Services Provider for such cases would not be utilised. This is contrary to the Commonwealth's interests.

#### *Limitations on liability and indemnity*

**4.40** As discussed at paragraph 4.32 above, Clause 16.1 describes very broad indemnities provided by the Services Provider to the Commonwealth. Clause 16.1 creates a significant exposure for the Services Provider and would possibly have made it very difficult for the Services Provider to obtain full insurance coverage at a reasonable cost (or at all) in respect of the exposure.<sup>22</sup>

**4.41** There are limits on the amounts that the Services Provider is liable to pay which vary under the Contract and are specified within clauses 9.5.5 and 16.3. Comments regarding clause 9.5.5 are at paragraph 4.24 above.<sup>23</sup>

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<sup>22</sup> This will be examined in more detail in the ANAO's audit of the Management of the Tender Process.

<sup>23</sup> In general, all limitations on liability should be expressed subject to the availability of insurance. The Service Provider should only have the benefit of a limit or cap on its liability if insurance is not available. This will be examined in more detail in the ANAO audit of tender for this Contract.

**4.42** In terms of the Service Provider's liability to the Commonwealth under clause 16.3.1(a), the definition of a Claim contained in clause 16.3.1(b) means that the circumstances in which the Services Provider liability is limited are very broad:

**4.43** Clause 16.3.1 (b) states:

The Commonwealth indemnifies the Services Provider from and against any liability, loss, damage, cost (including reasonable legal costs and expenses) or expense which arise out of any claim, demand, suit, action, dispute or proceeding (Claim) against the Services Provider arising out of the Services Provider's performance of the Contract...

**4.44** Clauses 16.3.1(a) and (b) together create a significant unnecessary exposure for the Commonwealth. Because the Services Provider's liability is not effectively limited by this clause it means that the Commonwealth's exposure is also very wide by having to provide indemnity on any occasion the Services Provider may be sued. The Commonwealth indemnity to the Services Provider in clause 16.3.1(b) only comes into affect if the Service Provider's liability exceeds \$20 million.

**4.45** Clause 16.3.2 of the Contract records that the limitations on liability and indemnity in 16.3.1 will not apply if the Service Provider has failed to comply with all of its obligations under clause 16, including complying with reasonable directions from the Commonwealth.

**4.46** In particular, clause 16.3.2(b) states that the indemnity will not apply if the incident:

...falls outside the scope of the terms and conditions of Part 2 of the Comcover policy manual, as amended from time to time.

**4.47** The responsibilities of the parties to the Contract are not clear under this provision.

## Insurance—overall

### General

**4.48** The objective of the insurance framework in the Contract is to protect the interests of the Commonwealth. It is important that all elements of this framework operate as intended so that the Commonwealth is not exposed to unnecessary risks. As discussed at paragraphs 4.31 to 4.34 above, the indemnities that the Services Provider is required to give, are wide ranging. This means that the insurance clauses can be engaged to cover liabilities arising from the mechanism set out in the Contract, or through the Common Law. The ANAO found a number of deficiencies with the clauses at 16.2 as currently phrased, and these are discussed in more detail below.

**4.49** Clause 16.2.1 imposes an obligation upon the Services Provider to identify and insure its 'liabilities under this Contract'. This obligation does not require the Services Provider's liabilities to be identified. A subsequent clause (16.2.8, also discussed paragraph 4.56 below) then lists the minimum insurances the Services Provider is to effect and maintain. The objective of clause 16.2.1 is therefore uncertain, when read in conjunction with clause 16.2.8. The obligation it imposes on the Services Provider is too vague and imprecise to be meaningful and would most probably be effectively unenforceable. A prescriptive insurance regime should be recorded in the Contract—such that both the Commonwealth and the Services Provider know, at the outset, the insurance obligations of the Services Provider.

**4.50** Clause 16.2.1 also engages a time dimension that in turn engages a distinction between different types of insurance policies. Insurance policies other than professional indemnity and possibly medical malpractice are underwritten on an 'occurrence' basis. This means that the policy of insurance on foot at the time of the act or omission which gives rise to the claim will respond to that claim—even if it is made many years later. Professional indemnity and probably, medical malpractice insurance, on the other hand is underwritten on a 'claims made' or 'claims made and notified' basis. This means that it is the policy of insurance on foot at the time a claim is made which will respond to that claim—irrespective of when the act or omission giving rise to the claim occurred. It follows that there is a commercial rationale for requiring the Services Provider to maintain professional indemnity and probably medical malpractice insurance for a period of seven years after the expiration of the Contract because it may (and often is the case) that a claim is made at a later point in time. It is therefore only necessary that the seven-year requirement in clause 16.2.1 relate only to professional indemnity and medical malpractice insurance. Such a requirement for all applicable insurances is simply at additional cost to the Commonwealth without any additional benefit.

**4.51** Clause 16.2.2 is derived from clause 16.2.1 and requires that insurance policies cover 'direct and' public liability. In clause 16.2.2 it is not clear what is meant by 'direct and' in this context. Further confusion is created with the use of the words 'to the extent applicable', which are meaningless in the context of clause 16.2.2, without reference to whose decision it is regarding the applicability of insurance policies and what is the measure of the extent. Being derived from clause 16.2.1, it suffers from the same unclear language and the ANAO considers that it is likely that clause 16.2.2 will also be unenforceable due to uncertainty.

**4.52** The objective of clause 16.2.3 is to ensure that subcontractors to the Services Provider carry essentially the same insurance as that of the Services



Provider. However, the essential wording in the clause for imposing the insurance requirements is unsatisfactory;

...insurance policies of the types and with the amounts of cover that a prudent operator in the relevant field would from time to time consider normal and adequate cover...

**4.53** This raises subjective questions about what a prudent operator is, what it should and should not do and what is the relevant field for the purposes of the clause. The answers to these questions can vary significantly and therefore the wording within the clause does not achieve the Commonwealth's objective.

### **Certificates of currency**

**4.54** Part of this framework is Clause 16.2.5 of the Contract, which imposes upon the Services Provider an obligation to provide evidence to the Commonwealth that the requisite insurances have been effected. This is intended to provide a high level of assurance that the Commonwealth may rely on specific insurances of the service provider in the event of a claim. The nature of the evidence required by clause 16.2.5 is certificates of currency from the insurers.

**4.55** The ANAO considers that certificates of currency are of limited utility. Generally, certificates of currency will specify that a given class of insurance has been effected with a specified insurer for a given sum and the period of insurance. Certificates of currency do not provide information about the scope or nature of the insurance or whether it meets the Commonwealth's insurance needs. Insurance policies may be written with exclusions, conditions and deductibles that serve to substantially limit the cover available. Better practice would require that this obligation should be expressed in terms of the Services Provider being required to provide to the Commonwealth (if requested) copies of the policies. It might also include specifying that any insurer of any policy of the service provider should not have less than an 'A' rating. The purpose of this is to enable the Commonwealth to consider the policies, form a view about whether they are adequate for the Commonwealth's purposes, and be satisfied as to the financial strength of the insurer.

### **Additional insurances**

**4.56** Clause 16.2.8 identifies policies of insurance, which at a minimum, the Services Provider is required to effect and maintain. Clause 16.2.9 states that, notwithstanding clause 16.2.8, the obligation remains upon the Services Provider to independently form a view about the adequacy of the insurances specified at clause 16.2.8 and, if necessary, effect further or other insurances. This requires the Services Provider to make judgements that are difficult to make.

**4.57** DIMIA should assess the risks and impose upon the Services Provider a regime that DIMIA, on behalf of the Commonwealth, considers addresses those risks. When this is completed, the Services Provider should not be required to further consider additional insurances.

## Conclusion

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

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

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

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

## Recommendation No.1

**4.62** The ANAO recommends that DIMIA review the insurance, liability and indemnity regime in the Contract and, informed by a clear allocation of risks, develop clearer mechanisms for determining:

- the amount of costs for repair or rectification of damage to Detention Facilities and Commonwealth Equipment following an Incident; and
- the Services Provider's and Commonwealth indemnities and liabilities under the Contract for the purposes of insurance.

*DIMIA response:*

Agreed.

**4.63** DIMIA agrees that the management of insurances, liabilities and indemnities to protect the Commonwealth from financial exposure is an important aspect of the Detention Services Contract. The wording of the indemnity and insurance clauses was finalised only after ongoing consultations with a range of other agencies. The complexity in the relevant

provisions is necessary to meet the needs and balance of risks identified by the range of parties involved. The Department considers it appropriate for any review of the insurance, indemnity and liability clauses to be informed by the context in which the clauses were developed. It is anticipated that this context will be reviewed as part of the ANAO's audit of the Detention Centre Contracts Tender Process. DIMIA will further consider the implementation of the recommendation in light of the ANAO's Tender Process audit findings.

*ANAO comment:*

**4.64** The ANAO notes that DIMIA has agreed that the management of insurances, liabilities and indemnities is an important aspect of the Detention Services Contract to protect the Commonwealth from financial exposure. The ANAO concluded that the terms of the liability, indemnity and insurance regime in the Contract are unclear.

**4.65** Although DIMIA's development and negotiation of the current insurance regime will be examined in the ANAO's audit of the Detention Centre Contract Tender Process, the current insurance, liability and indemnity regime is contractually binding and legally enforceable. For this reason, the ANAO considers that any findings related to the previous negotiation processes are not a prerequisite for a review of the insurance, liability and indemnity regime, informed by a clear understanding and allocation of risks. The ANAO considers that given the level of risk to the Commonwealth created by the current regime, DIMIA should act promptly to develop a more suitable insurance, liability and indemnity regime to better protect the Commonwealth's interests.

## 5. Performance Information and Contract Monitoring

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*DIMIA's performance information framework and contract monitoring arrangements for provision of immigration detention services is assessed in this chapter.*

### Introduction

**5.1** A sound performance information framework underpins accountability for results. The foundation for agency accountability and transparency in Commonwealth Government agencies is performance information, with measures and targets presented initially in the Portfolio Budget Statements (PBS) and results provided in an Annual Report.

**5.2** Within this hierarchy, business plans typically provide more detailed performance information. Where services have been outsourced, performance information should be set out in contracts with providers and also be linked through business plans to the outputs and outcomes specified in the PBS.

**5.3** The performance information framework is not an end in itself but provides the basis for monitoring at all levels and for reporting in an Annual Report. It also provides the basis for application of any sanctions or incentives, which is particularly important in effectively managing outsourced arrangements.

**5.4** The ANAO examined DIMIA's performance information and how the provision of immigration detention fits within the outcomes and outputs structure for the department. The ANAO also examined the standards and measures DIMIA used in the Detention Services Contract (the Contract) and the contract monitoring and reporting arrangements in place to manage Services Provider's performance.

### Performance information framework

#### Portfolio Budget Statements

**5.5** Portfolio Budget Statements set out the outcome and outputs that are expected to be achieved/delivered and the related performance indicators that will enable measurement of quantity, quality and effectiveness. Outcomes represent the Government's strategic objectives. They are designed to articulate the desired government impact in a particular policy area and to provide a performance mechanism to assess how well the department's service

delivery contributes to the achievement of government objectives.<sup>24</sup> Outcome statements provide the basis for development of the outputs that contribute to achievement of an outcome. The outcome and outputs specific to detention services are discussed below.

### *Outcome*

**5.6** Outcome statements describe the purposes for which funds are appropriated and, therefore, must be measurable.<sup>25</sup> They must allow for collection of information and measurement of effectiveness of the relevant departmental outputs in contributing to achievement of the desired objectives. DIMIA's PBS for 2004–05 sets out Outcome 1 as 'Contributing to Australia's society and economic advancement through the lawful and orderly entry and stay of people'. The provision of immigration detention contributes to this outcome. However, there is no effectiveness measure for Outcome 1 that links the Detention output (discussed further at paragraph 6.7) to achievement of the outcome. The ANAO acknowledges that all outcomes are likely to be influenced to some extent, by factors beyond the control of the department. However, the effective and accountable use of public resources requires that departments measure and report on their performance. Therefore, effectiveness measures that link the relevant outputs should be defined.

### *Outputs*

**5.7** The departmental output specifically relevant to the immigration detention function is output 1.3.5 'Detention'. The quantity and quality measures for this output and comments on them are set out in Figure 5.1. The ANAO found that the quality measures listed in DIMIA's PBS, and presented below, are activities rather than indicators against which performance can be assessed.

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<sup>24</sup> CPA: *Better Practice in Performance Measurement and Reporting in the Public Sector*, p.141.

<sup>25</sup> ANAO, *Performance Information in Portfolio Budget Statements*, Better Practice Guide, May 2002.

**Figure 5.1**

**Detention output 2004–05**

| DIMIA measure  | ANAO comment   |
|--|--|
| <p>Quantity<sup>26</sup></p> <p>Unauthorised boat arrival detainee days: 97 000</p> <p>Non-boat detainee days in Immigration Detention Centres and other State facilities: 250 000</p>   | <p>The ANAO recognises that under current guidance it is necessary to specify quantity measures. This indicator could be complemented by others, such as a throughput measure of detainees in detention. Relevant targets and benchmarks for this should be developed to provide a more accurate view of DIMIA's performance.</p>  |
| <p>Quality</p> <p>Formal arrangements in place with relevant State authorities for education, police, corrections, child welfare and health issues.</p> <p>Manage the delivery of detention services in accordance with Immigration Detention Standards and other contractual requirements, with any breaches addressed.</p> <p>All unaccompanied minors and women and children assessed against relevant instructions for alternative detention arrangements.</p> <p>All cases for people in detention reviewed regularly to ensure progress of relevant processes.</p> | <p>Formal arrangements may not have any impact on service quality unless they are exercised and tested, or in some other way can be shown to be operating. The ANAO notes that negotiations with many State authorities have been ongoing since 2001 but remain unfinalised.</p> <p>Managing detention services is discussed in detail later in this chapter (see paragraph 5.53). Based on the findings of this audit, the ANAO considers that it would only be possible to report against this 'indicator' in a very general and subjective manner because of the number and nature of standards, measures and other contractual requirements.</p> <p>The use of terms such as 'relevant' and 'regularly' means it would be difficult to assess whether services had been delivered to the required quality.</p> |

Source: DIMIA PBS 2004–05, p.106.

**5.8** In order to improve both quantity and quality performance information in its PBS, DIMIA needs to define quantity indicators that are within its ability to control. As well, DIMIA should consider developing specific measures regarding the timeliness of processes and to measure the specific contributions of each level of administration (that is, Central Office, State and Territory Office, on-site managers and the contractor) to the successful delivery of quality detention services. Identifying these contributions could form the basis

<sup>26</sup> In the 2005–06 PBS (page 71), DIMIA has included 2 additional quantity indicators to supplement the above. The additional indicators are an improvement.

for development of effectiveness measures to link the detention output to Outcome 1. This would also provide the basis for improving the standards and measures included in the contract. This is discussed in more detail later in this chapter (see paragraph 5.23).

**5.9** DIMIA advised that its Unauthorised Arrivals and Detention Division (UADD) has incorporated the ANAO feedback regarding outcome and output measures into an existing review of measures for detention used in DIMIA's 2005–06 PBS (see footnote 26).

## **Annual report**

**5.10** An agency's Annual Report provides an analysis of performance that considers both success and shortcomings against the framework set out in its PBS. The ANAO examined the performance information reported in DIMIA's 2003–04 Annual Report.

**5.11** As noted in Figure 5.1, Output 1.3.5, lists a quality measure that, 'All unaccompanied minors and women and children assessed against relevant instructions for alternative detention arrangements'. In reporting its performance, DIMIA's Annual Report states that a 'marked reduction in the number of women and children in detention centres' had been achieved. The ANAO considers that a 'marked reduction' is not a clear measure of performance. Moreover, the ANAO notes that DIMIA collects (and could easily report on) the actual figures related to this aspect of performance, which would provide a more accurate reflection of performance achieved.

## **Business Plan**

**5.12** The outcome/output framework specified in agency PBS is designed to provide the starting point for developing specific business plans. These should be based on agency goals and objectives and a risk assessment, and contain strategies to deliver results and services, as well as timeframes and performance indicators so that progress can be assessed regularly.

### *Links to Portfolio Budget Statements*

**5.13** The business plan for the UADD (27 May 2004) lists three outputs: detention of unlawful non-citizens, detention infrastructure and removals. Although they are directly linked to the detention output, these are not the same as the outputs listed in DIMIA's PBS for 2004–05 (see Figure 5.1).

### *Based on risk assessment*

**5.14** The UADD plan does not refer to a risk assessment having been conducted to underpin development of the plan. In the 'improving the delivery of outputs' section of the plan the department has indicated the need to do such a risk assessment. For example, it notes that 'risk and indemnity

assessment to be undertaken' and 'risk management plan to be documented in accordance with departmental policy'. No timeframe given for the completion of a risk assessment and plan. No measures are noted in the 'measuring success' section of the plan relating to completing risk assessments or plans. Given the type of services this output covers, their sensitivity and the resources involved, the conduct of a comprehensive risk assessment is a crucial step to aid sound management. In particular, it would help establish priorities to underpin both performance standards and monitoring against the Contract.

### *Strategies*

**5.15** The UADD plan does not contain strategies to achieve the listed outputs. The section 'improving delivery' lists a range of projects and actions. As well as referring to the need for risk assessment, it refers to a range of tasks to be undertaken, including the need for: new operational procedures; a contract management plan and manual; and an Immigration Detention Centre Documentation Toolkit. No timeframes are provided for completion of any of these projects.

### *Indicators and targets*

**5.16** To provide evidence about performance, performance information needs to be collected and used systematically. Performance indicators are only useful if they can be measured and/or assessed accurately. Development of appropriate targets or other bases of comparison can assist such assessment.

**5.17** The UADD plan includes a section called 'measures and targets' for the listed outputs. The measures for the detention of unlawful non-citizens are generally the same as those in DIMIA's PBS 2004–05. The ANAO comments in Figure 5.1 indicate that it would be difficult for UADD to assess its performance in this area. For detention infrastructure and removals, the measures are general statements only. Because they are not specific and explicit, it would be difficult for DIMIA to determine whether its interventions have achieved the desired result. For example, the measures include: 'infrastructure work program developed and regularly reviewed', 'improved asset management', 'manage the removal of unauthorised boat arrivals and other identified detainees lawfully, humanely and efficiently'.

**5.18** The plan also includes a section on improving delivery of the outputs. The output areas 'documentation', 'active management' and 'workplace of choice' set out a list of projects and activities. The 'measuring success' section of this part of the plan is brief and lists measures such as: 'documentation complete', 'ANAO review of management of second detention services contract'; and 'recruitment and retention of staff'. These measures will not provide a comprehensive view of what the UADD has achieved because they would be difficult to assess, and there are no timeframes or targets.



### *Monitoring against the business plan*

**5.19** The UADD business plan has only been in place since the end of May 2004. At the time of the audit fieldwork DIMIA had not conducted formal monitoring against the plan. However, as discussed above, monitoring against the UADD business plan would be difficult because of the poorly defined indicators and the lack of timeframes.

**5.20** The ANAO acknowledges the recent initiatives of UADD to improve its performance in this area. The Division has recently been restructured and as a result, a governance coordination subsection was formed to coordinate business planning, risk management and statement of program expectations.

## **Contract performance information**

**5.21** When a third party provides services, 'it is important to specify clearly, appropriate performance information and its proper monitoring'.<sup>27</sup> Schedule 3 of the Contract sets out standards, related performance measures and performance points.

**5.22** In examining Schedule 3, the ANAO took account of the need for DIMIA to collect performance information and analyse it cost effectively. While 'there is no ideal number of items of performance information... It is important that agencies do not collect large volumes of performance data which are not strategic or timely, or are simply too hard to interpret and manage.'<sup>28</sup> Clear specification of measurable performance indicators underpins monitoring and helps to minimise disputes between parties to agreements.

**5.23** The ANAO found Schedule 3 of the Contract lists 148 Immigration Detention Standards (IDS) and 243 measures and Schedule 2 contains more than 300 descriptions of detention services. DIMIA advised that the IDS and related performance measures were developed in consultation with external stakeholders including the Commonwealth Ombudsman, the Human Rights and Equal Opportunity Commission (HREOC), and the Immigration Detention Advisory Group (IDAG).

**5.24** The ANAO notes an extract of the comments provided by the Commonwealth Ombudsman:

As a general comment, I am pleased to note the new Standards expand on the previous document and appear to cover a broad range of issues aimed at ensuring the proper care and welfare of immigration detainees. However, I

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<sup>27</sup> ANAO, *Performance Information Principles, Better Practice Guide*, November 1996.

<sup>28</sup> *ibid*, pp.19 and 20.

believe that the Standards could be further improved by enhancing the document's consistency and addressing the specific issues ...<sup>29</sup>

**5.25** The Commonwealth Ombudsman went on to identify specific issues dealing with consistency of the standards, in particular the health standards.

**5.26** The Human Rights Commissioner recommended that:

The standards should be seen as a clear expression of the minimum guaranteed rights of detainees and the expectations of service, facility, activity and program delivery by the detention authorities.<sup>30</sup>

**5.27** The Human Rights Commissioner also requested that:

I would appreciate being consulted during the negotiations for detention facility contracts, particularly relating to the costing of those contracts. I consider this important to ensure that the correct number of health care and education professionals in particular, are factored into the costing for the contract. It would also permit effective evaluation and monitoring of service provision during the life of the contracts.<sup>31</sup>

**5.28** The ANAO findings related to the IDS and performance measures, as well as DIMIA's ability to monitor and report against these standards and measures is discussed in more detail below.

**5.29** The department states in the Contract that:

the following outcome standards relate to the quality of care and the quality of life expected in immigration detention facilities in Australia. These standards must be met in all circumstances except where it is demonstrated that the security and good order of the immigration detention facility would otherwise be compromised.<sup>32</sup>

**5.30** The ANAO noted the use of the term 'outcome standards', and also noted that DIMIA's monitoring and reporting on the activities of the service provider can blur the distinction between inputs and contract outcomes. For example, an extract from the performance report for March 2004, reads as follows:

Ladder left leaning up against a shed. On 9 February 2004 a DIMIA Deputy Manager, noticed that a ladder had been left leaning against the maintenance shed by painting contractors. Both the contractors were inside the shed at the time with no officer escorting them. The ladder was accessible to detainees. This equipment was brought into the facility by a subcontractor and was not properly controlled, supervised or accounted for.

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<sup>29</sup> Commonwealth Ombudsman letter A/01/215 dated 19 October 2001.

<sup>30</sup> Human Rights Commissioner letter dated 26 October 2001.

<sup>31</sup> *ibid.*

<sup>32</sup> DIMIA, Detention Services Contract, 27 August 2003, vol. 1, p.3-2.

**5.31** This 'Incident' was not brought to the Services Provider's attention until May 2004. The ANAO notes that GSL was not sanctioned for this breach.<sup>33</sup> At the same time the example here demonstrates an input focus, rather than monitoring against contract outcome standards. It would have been a simple solution to ask the service provider to take the ladder inside, if the officer thought that there was an immediate risk of the ladder being used in an escape.

**5.32** Better practice indicates that standards are to relate to pre-defined levels of excellence or performance specifications. They are set with the aim of defining the appropriate level of performance that is expected to be delivered.

**5.33** As stated above (see paragraph 5.23), DIMIA has established a range of standards that describe expected performance. Each standard has one or more performance measures related to it. An example of a standard and related measure is set out in Figure 5.2.

**Figure 5.2**

**Example of standard and measure**

| Standard  | Performance measure   |
|---|---|
| Each detainee is treated with dignity and in a humane manner, and is accorded respect; and the individuality of each detainee is recognised and acknowledged. | No substantiated instance of a detainee being humiliated or treated discourteously. |

Source: Detention Services Contract, Standard no. 2.2.2.3, pp.3–26.

**5.34** The ANAO examined a selection of the standards/measures and identified a number of limitations that would affect their usefulness in assessing contractor performance. Similar issues were identified in ANAO Report No.54, 2003–04 (Report No.54) and have previously been raised in a Management Initiated Review undertaken by the department's internal auditors in March 1999.

**5.35** In its examination of the IDS and performance measures contained in the Contract with the previous detention services provider, the ANAO stated that 'the IDS used ambiguous language ... [and] many of the performance measures did not specify a target that needed to be achieved or articulate the method of assessment.'<sup>34</sup> The report also stated that the IDS described an

<sup>33</sup> Sanctions available to the contract administrator for an incident such as this include reductions in the services fees of up to \$10 000.

<sup>34</sup> ANAO Report No.54 2003–2004, p.79.

activity and therefore, 'it is not possible for DIMIA to measure [the detention services provider's] progress against a pre-determined standard.'<sup>35</sup>

**5.36** At the time of DIMIA's Management Initiated Review, 'the performance assessment process was perceived by the department to be excessively labour intensive and failed to adequately reflect [the detention services provider's] performance.' It was envisaged that the review would help DIMIA develop improved performance assessment methods. The review found that 'performance measures required streamlining, and could be improved'.<sup>36</sup>

**5.37** Figure 5.3 and Figure 5.4 below set out a sample of the standards and measures for food and individual health and provide ANAO comment on each. The ANAO selected food and health services because DIMIA informally considered these to be areas of risk. There are three standards relating to food and six relating to individual health. There are a number of standards relating to individual health that deal with personal hygiene, self-harm, the care of minors and special care needs.

**5.38** Another way of examining DIMIA's priorities is to consider the range of relative weights of penalty points that may be applied in the event of failures in service delivery. Maximum penalty points generally apply to failure to report an Incident, rather than outright failure in critical services such as food and health. This is discussed in more detail below (see paragraph 5.61).

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<sup>35</sup> ANAO Report No.54 2003–2004, p.80.

<sup>36</sup> *Detention Service Provider Performance Assessment and Measurement Process*—Draft Report; 1999.

**Figure 5.3****Extract of DIMIA standards and measures for food**

| Standard<br>2.2.2.1  | Measure(s)  | ANAO Comment   |
|--|---|--|
| <p>Taking account of cultural requirements and the institutional setting, detainees are provided with a choice of food that is nutritional, adequate for health and well being; dietary specific where required, for example, for religious or medical reasons; stored, prepared, transported according to relevant laws, regulations and standards; and in sufficient quantities.</p> | <p>(1) No substantiated instance of a detainee not having access to food of this kind; or any food handling hygiene, safety, equipment storage, preparation and transporting practices contrary to relevant laws, regulations and standards.</p> <p>(2) The department is provided with evidence that menus are developed and regularly reviewed in consultation with dietitians and nutritionists, and with input from the detainees; and strategies are in place and implemented which recognise and cater for such aspects of the detention environment as the peculiarities of the institutional setting, arrival of detainees outside established meal times, religious festivals and between meal snacks.</p> | <p>The standard is very broad and includes conditions. This means it would be difficult to judge whether it had been met.</p> <p>Reference to a nationally accredited standard, would clearly specify an expected minimum standard for service delivery and would allow for measurement of performance.</p> <p>Any assessment of whether the standard had been breached would need to be undertaken by an expert, because, for example, a general administrator would not be qualified to judge whether all the conditions had been met.</p> <p>The measures do not clarify what is expected of the Services Provider.</p> |

Source: ANAO from the GSL Contract.

**Figure 5.4**

**DIMIA standards and measures for individual health**

| Standard<br>2.2.1.3.1   | Measure  | ANAO Comment   |
|---|--|--|
| The individual health care needs of detainees are recognised and managed effectively, appropriately and in a timely manner  | No substantiated instance of the individual health needs of a detainee not being recognised and effectively managed. | A number of terms in this standard have not been defined—‘effectively’, ‘appropriately’ and ‘timely’. This would make it difficult to assess whether performance had met the standard. The measure does not provide clarification. |
| Standard<br>2.2.1.3.2   | Measure  | ANAO Comment   |
| A detainee can expect to be consulted and informed about his/her medical condition and treatment, including transfer for medical reasons, in a language or in terms that he/she understands; and that the communication of such information and advice will be consistent with the requirements to maintain accuracy and his/her privacy. | No substantiated instance of a detainee not being appropriately consulted and informed.                              | The standard contains unclear terminology. This standard would be difficult to assess because it would rely on an absence of complaints. Lack of complaints does not mean the standard has been met.                               |
| Standard<br>2.2.1.3.3   | Measure  | ANAO Comment   |
| Detainees have the opportunity to be examined by a medical officer of the same gender, if they so wish and as far as practical.   | No substantiated instance of a detainee not having such an opportunity, as appropriate and where practicable.        | Because access to a same gender practitioner is contingent on it being practical, it would not be clear whether this standard had been met or not.   |

Source: ANAO from GSL Contract—Schedule 3.

**5.39** While the ANAO has not listed every standard and measure from the Contract or commented on each of them, the comments made apply to the majority of the performance information listed in Schedule 3. Overall, the issues are that:

- there is a large number of standards and related measures—this makes it difficult to manage and interpret the information in a systematic and cost effective way;

- terms such as 'timely', 'appropriate', relevant, 'adequate' and 'as soon as possible' are used in the standards and/or measures and are not defined to allow their assessment;
- the standards contain conditions and provisos that would make it difficult to prove, that the standard should have been met in a particular instance and would therefore negatively impact on application of sanctions;
- many standards could only be assessed by experts rather than by general administrators; and
- evidence to substantiate whether standards had been met or not would be difficult to collect and/or prove.

**5.40** Figure 5.5, using the individual health care standard as an example, illustrates the issues listed above (see paragraph 5.39).

**Figure 5.5**

**DIMIA's Contract Performance Information**

| DIMIA's Standard and Measure for individual health services   | ANAO Comment   |
|---|--|
| <p><b>Immigration Detention Standard (IDS)</b></p> <p>The individual health care needs of detainees are recognised and managed effectively, appropriately and in a timely manner.</p> <p><b>Performance Measure</b></p> <p>No substantiated instance of the individual health needs of a detainee not being recognised and effectively managed.</p> <p><b>Monitoring</b></p> <p>DIMIA monitors the performance of GSL in providing health services by using information provided by GSL on Incidents and independent and expert opinion commissioned by DIMIA regarding the causes and/or consequences of health Incidents.</p> <p><b>Method of Assessment</b></p> <p>An Incident is a defined term for the purposes of the DIMIA/GSL Contract; it is defined to be a 'Minor, Major or Critical Incident'. Information on incidents is assessed by DIMIA for instances of breaches of the health standard. This information also forms the basis for any sanctions against GSL. However, as summarised in DIMIA's response to this audit 'In assessing the Services Provider's compliance with the relevant performance measures, flexibility in the terminology of the IDS provides discretion to the Department to consider service delivery within the necessary context'.</p> | <p>Such a standard should relate to pre-defined levels of excellence, including minimum requirements. GSL's progress in the provision of health services could only be measured against this standard if the terms 'appropriately' and 'timely' were defined.</p> <p>This 'measure' relies on DIMIA officials being able to recognise a breach of the undefined health standard. Ideally, it would measure changes in the timeliness, cost and/or quality of the actual health service being delivered by GSL.</p> <p>DIMIA has adopted an exceptions-based approach to assessing the performance of GSL. DIMIA assumes that its health 'outcome standard' is being delivered satisfactorily at each IDC unless the reporting of a health Incident (or repeated Incidents) highlights a problem.</p> <p>As indicated above, this method relies on DIMIA officials being able to recognise when GSL is providing inappropriate and untimely health services. The definition of an Incident is also unclear. For example, clause 16.1.5 of Schedule 2 describes 'medical emergency' as a Major Incident while Attachment A to Schedule 3 indicates that 'serious illness or injury' is a Critical Incident. This means that at a number of points in the monitoring and assessment process, DIMIA officials exercise considerable discretion as to what is reported. Reports are necessarily subjective and could lead to difficulties in pursuing sanctions and interpreting liability, indemnity and insurance requirements.</p> |

Source: ANAO analysis.

**5.41** Appendix 2 sets out a selection of DIMIA's standards and measures (the remainder of the food and additional health standards and one from each of Parts 1–8 of Schedule 3) and provides ANAO comment on them.



**5.42** DIMIA advised the ANAO that:

Given the inherent complexity of the immigration environment, the Department considers it impossible to define all service delivery requirements in simplified, hard-and-fast measured ways. Standards require sufficient flexibility to respond to the changing needs of the detainee population and different situations. For example, while it would be possible to draft a requirement that “all detainees sustaining an injury are to be seen by a doctor within two hours”, this would not meet needs in some cases of medical urgency but would be in excess of needs in other cases of minor non-urgent health treatment.

**5.43** As well DIMIA advised that, ‘in assessing the Services Provider’s compliance with the relevant performance measures, flexibility in the terminology of the IDS provides discretion to the Department to consider service delivery within the necessary context.’

**5.44** While the number of standards and performance measures included in the Contract is a matter for departmental judgement, when specified, they should be able to be clearly measured. The flexible and discretionary application of performance standards and measures means that these no longer effectively serve the purpose of standards—a pre-determined level of service delivery—and therefore do not provide DIMIA with assurance that a consistent level of services are being provided.

**5.45** The ANAO also notes that other jurisdictions such as prisons, articulate more specific standards focused on quality assurance rather than exception reporting. An extract from a prison services contract is below:

‘the provider.....must ensure that the health care facilities and services for Prisoners are accredited by an agreed authority body in health care standards by the end of the second year of the Service Term and that such accreditation is maintained and a satisfactory assessment obtained every two years.’<sup>37</sup>

**5.46** Lack of clarity in the performance standards and measures in the Contract means it is difficult for DIMIA to systematically monitor and assess the Services Provider’s performance. The ANAO considers that, although sometimes difficult, it is important to clearly define service requirements and standards to ensure there is a common understanding of the services required.

**5.47** The ANAO recognises that health services for people in detention must be responsive to the unique circumstances, illnesses and needs of detainees/patients. A more practical approach would be to use a balance of

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<sup>37</sup> Prison Services Agreement, Rural Men’s Prison (Victoria), p.260.  
<<http://www.contracts.vic.gov.au/major/50/prison2.pdf>>.

input and output indicators.<sup>38</sup> The ANAO notes similar advice provided to DIMIA by the Human Rights Commissioner in his review of the IDS; namely, the importance of ensuring the correct numbers of health care professionals were factored into the terms of the Contract.

**5.48** The development of robust and meaningful performance measures in providing health services to detainees is a challenge. Measurable inputs include the number of accredited health professionals on stand-by and the number of specialist medical practitioners (psychiatric, dental, optical, and radiological diagnostic services) on-call. These inputs could be complemented with more readily measured contracted outcomes such as detainee satisfaction with the quality and timeliness of health services.

## **Contract performance monitoring and reporting**

**5.49** In Report No.54, the ANAO found that ‘DIMIA had not fully implemented a range of strategies [to collect and analyse information] ... nor were the strategies connected to an overall contract monitoring plan.’

**5.50** The ANAO further concluded that ‘the contractual requirements lacked sufficient specificity to enable DIMIA to adequately monitor the quality ... of services provided.’

**5.51** As well, DIMIA advised that it does not accept the non-delivery of any contracted service and that the department’s monitoring strategy is based on the assumption that the expected standard of service is being provided at all times across all of the centres.

**5.52** In this light, the ANAO examined whether DIMIA had developed a contract monitoring plan setting out its monitoring and reporting arrangements, based on a risk assessment (and taking into account the differences that exist between centres).

## **Contract monitoring in the Contract**

**5.53** Part 16 of Schedule 2 describes the monitoring and reporting activities under the Contract. Clause 16.1.3 states that DIMIA will maintain on site staff to monitor the performance of the Services Provider against the IDS. However, DIMIA will also rely on the Services Provider to keep DIMIA ‘fully and effectively’ informed about the facilities operations.

**5.54** Clauses 16.1.10–16.1.18 outlines the mechanisms through which DIMIA intend to monitor the performance of the Services Provider. The mechanisms specified include:

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<sup>38</sup> *Performance Information in Portfolio Budget Statements* ANAO Better Practice Guide, May 2002.

- information provided by the Services Provider regarding Incidents and complaints;
- independent and expert opinion commissioned by DIMIA regarding the causes and/or consequences of Critical or Major Incidents;
- regular audits by DIMIA staff either onsite or senior departmental staff;
- internal performance audits undertaken by the Services Provider;
- specified information provided by the Services Provider on a monthly basis; and
- management committees providing a forum for discussing delivery of services.

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

**5.56** The description of contract monitoring in the Contract focuses on Incidents rather than on overall performance assessment. While reporting and managing Incidents is important, there is a strong emphasis on this without similar specific attention on being able to assess whether underpinning standards are being met consistently over time. Without this quality assurance perspective, it would be difficult to assess the quality of services being provided to detainees.

**5.57** The use of the expert panel is also focused on the examination of Incidents rather than experts being used to assure DIMIA that the more technical standards, such as those dealing with food, health, hygiene and occupational health and safety have been met.

**5.58** The ANAO also notes that the Contract does not fully describe the intended monitoring arrangements undertaken by DIMIA staff onsite or from Central Office. As well, contract monitoring priorities are not clearly articulated in the Contract. This is discussed in more detail below (paragraph 5.69).

**5.59** The ANAO found that systematic arrangements for monitoring are not specified clearly anywhere in the Contract itself and, as a result, formal arrangements in the form of a Contract Monitoring Plan was developed by DIMIA following transition to the new provider. This plan was finalised in January 2005. The recent finalisation of the plan means that the ANAO has not been able to assess its effectiveness. However, general comments are provided in the following sections.

## **Contract management priorities**

**5.60** Prior to the completion of its risk assessment in November 2004, the department viewed the provision of food and health services as one of the higher risk aspects of providing detention services. Ahead of the implementation of the Contract Monitoring Plan, local DIMIA managers had developed their own priorities for contract monitoring.

**5.61** The Contract itself allocates relative priorities to each of the IDS through the allocation of negative performance points for the purposes of the performance linked fee matrix assessment in the Contract.

**5.62** The allocation of these points is detailed in Schedule 3 of the Contract. The maximum number of negative points that may be allocated for a single breach of an IDS related to health or food is minus 10. The ANAO notes that failing to report a breach incurs a greater penalty with the maximum number of negative points available for a single event of failure to report a breach of the IDS is minus 25.

**5.63** The introduction of the Contract Monitoring Plan in January 2005 identifies, in part, DIMIA's contract monitoring priorities by directing a higher level of resources towards monitoring those risks identified as significant or moderate. However, it is not clear whether the priorities highlighted in the Contract Monitoring Plan have been communicated to the Services Provider as service delivery priorities.

**5.64** The consequences of developing the Contract, with a heavy emphasis on reporting requirements, before producing a monitoring plan based on other risks, are that it is difficult for the Services Provider to determine where to focus attention in providing detention services. Notwithstanding DIMIA's risk assessment, any imbalance in the weighting of penalty points has the potential to drive Services Provider performance in unintended ways. The relative weights described above indicated that it is more than twice as important for DIMIA to find out about a breach of the food standards than the breach itself. This could lead to senior managers in GSL devoting more time to compiling reports about Incidents rather than fixing problems and improving services.

**5.65** Given the large number of IDS in the Contract, earlier, and clearer specification of priorities would assist the Services Provider provide quality detention services in accordance with DIMIA's needs.

## **Contract monitoring plan**

**5.66** DIMIA has contracted out detention services since 1997 and the Contract was in place for more than a year at the time of audit fieldwork. This suggested that the contract monitoring arrangements would be mature and include systematic arrangements for monitoring. These arrangements should

be based on obligations, deliverables and a risk assessment, relating to frequency and level of monitoring and reporting, setting out who is responsible for undertaking the monitoring and to whom findings are reported.

**5.67** As indicated above, the formal Contract Monitoring Plan was not approved and implemented until January 2005, 17 months following Contract signature. Prior to January 2005, locally developed monitoring arrangements were used by DIMIA staff to monitor and report on the Services Provider's performance. DIMIA advised that these arrangements were interim arrangements only. The ANAO found that there were differences in approach to the monitoring of the Services Provider's performance across the centres. Monitoring arrangements ranged from the continued use of transition checklists to ad hoc monitoring of performance based on incidents and complaints.

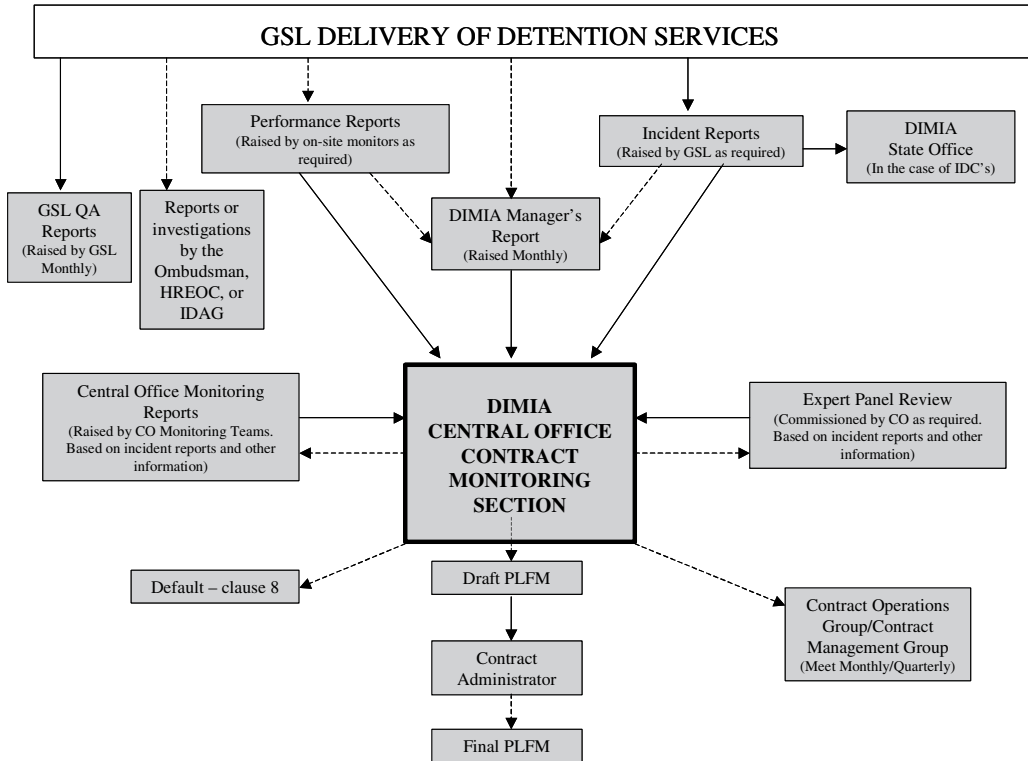
**5.68** The Contract Monitoring Plan approved in January 2005 was based on a risk assessment of each of the IDS. As well as an assessment of service delivery requirements the ANAO considers that the Contract Monitoring Plan would have benefited from an analysis of historical performance information.

### **Current monitoring and reporting arrangements**

**5.69** The contract monitoring and reporting arrangements that were in place at the time Report No.54 was published have continued to be used. Although the number of onsite monitors and case managers has increased considerably. Figure 5.6 illustrates the features of these arrangements.

**Figure 5.6**

**Monitoring and reporting arrangements**



Source: ANAO

**5.70** The focus of these arrangements has remained on reporting Incidents rather than on a systematic approach to assessing the quality of performance and changes in the level of services delivered. As well, at a number of points in the monitoring and reporting process, discretion is exercised as to what is reported. In addition, DIMIA staff at each detention centre are encouraged to solve issues at the local level when possible.

**5.71** The ANAO acknowledge the benefit of resolving issues in this way but considers that, even if an issue is resolved, it is important to capture and report performance information on service delivery, since it impacts the provision of services to Detainees. Otherwise the use of discretion in reporting performance issues to DIMIA Central Office creates a risk that both good and bad performance outcomes will not be identified. The current approach places DIMIA at risk of not achieving a full and objective understanding of Services Provider's performance. The consequences of this are potentially high risk and may impact on the welfare of detainees. This same issue of 'censorship' of performance information was brought to DIMIA's attention in the 1999 Management Initiated Review on performance assessment and measurement.

**5.72** The scope for DIMIA staff, either at the centres or in Central Office to exercise discretion when reporting, means the Contract Administrator cannot be assured of an accurate and complete understanding of the day-to-day performance of the Service Provider at the centres. As well, differences in the experience and management styles of the various centre managers means the Contract Administrator cannot be confident that performance information is being reported consistently across all of the centres to enable an overall assessment of the Service Provider performance.

## **Performance management**

**5.73** Performance based contracts can help ensure standards are met and provide incentive for continuous improvement and innovation. In such contracts, clearly specified and agreed arrangements for sanctions and incentives, that are consistently applied, are important to their success. Contractual arrangements should clearly identify methods for managing Services Provider performance so that there is a shared understanding of the application of the performance management methods. The ANAO examined the two main performance management methods available to DIMIA under the Contract. The ANAO expected that the Contract would clearly outline the application of each of these techniques, as well as identifying an order of priority and guidance about how the two techniques would interact as part of a holistic performance management system. The ANAO findings are outlined below.

### ***Sanctions***

**5.74** The Contract sets out arrangements for sanctions. In particular, in Schedule 3, the number of performance points per occurrence is listed in relation to each measure. This purports to indicate clearly specified arrangements that could be consistently applied in practice. The ANAO considers this is not the case for the following reasons:

- standards and measures are not clearly defined and contain many ambiguities. This makes it difficult in many cases to impose the sanction and, particularly, to enforce it should there be a disagreement as to whether or not a breach has occurred; and
- monitoring arrangements have not been clearly explained in the Contract or elsewhere leading to establishment of local arrangements. Under these local arrangements, the Services Provider's Centre manager and the on-site DIMIA manager may agree priorities in service delivery. A Central Office monitoring team may undertake a performance review against standards not previously agreed as local priorities. This can then lead to the imposition of sanctions on less

important matters even though key areas of risk (agreed informally) are being well managed.

5.75 The ANAO concluded that while relations between DIMIA and the Services Provider were based on 'good-will', sanctions would work reasonably in practice. However, good-will needs to be underwritten by clear roles and guidelines. In the absence of such clarity, should there be a dispute as to whether sanctions should be applied, there is the potential for substantial disagreements, with ongoing implications for the delivery of services to Detainees.

### *Incentives*

5.76 As well as having arrangements in place to sanction the Services Provider for breaches, the Contract also addresses the issue of superior performance. Part 18.1.17 (Business planning process) states 'The department is interested in the service provider planning for, and actually delivering; superior performance...' in two areas. The two areas relate to:

- the implementation and ongoing delivery of special initiatives or services changes; and
- areas not specifically documented in the IDS, 'such as...in the area as sound business management'.

5.77 Clause 18.1.23 indicates that rewards (positive points) can be offset against negative points (sanctions incurred), but, if there is a surplus of positive over negative points, 'the overall positive balance will be carried forward to the next year.' The value of a positive point is not made clear nor is it clear when and in what way, any positive balance will be reconciled.

5.78 As at March 2005, 19 months after the Contract was signed, the issue of rewarding superior performance had not been resolved. There was no definition of superior performance, nor is it clear how superior performance would be rewarded or when. DIMIA advised the ANAO that 'discussions are continuing with GSL about the best way to use the positive points provisions to identify and reward exceptional performance in the second and subsequent years of the Contract.'

## **The Default provisions**

5.79 Clause 8.1 provides DIMIA with the ability to issue the Service Provider with a default notice as a method of managing performance. A Default is defined as 'a failure to deliver the Detention Services in accordance with, or otherwise failure to comply with the requirements of, this Contract'. When a Default occurs the Services Provider must notify DIMIA of the occurrence of the Default. If a Default occurs (whether or not the Services Provider has notified the Contract Administrator of that Default) the



Commonwealth may give the Services Provider a Default Notice, and reduce the Detention Services Fee.

**5.80** If the Commonwealth specifies in the Default Notice that the Services Provider is required to remedy the Default then the Services Provider has a specified time to remedy the Default (Cure Period). If the Services Provider cannot remedy the Default in the Cure Period, a draft Cure Plan must be submitted to the Contract Administrator for approval. The Services Provider must also provide evidence that it has diligently pursued and is continuing to pursue a cure, but that the Default cannot be remedied within the Cure Period. The Contract Administrator then approves the Cure Plan when approving an extension to the Cure Period.

**5.81** The ANAO notes that the Contract only requires the Services Provider to provide a Cure Plan in cases where the Default cannot be remedied within the Cure Period. The ANAO considers that there could be merit in requiring the Services Provider to submit a Cure Plan each time a Default occurs. Not only would this demonstrate the Services Provider's dedication to remedying the problem, but also allow the Contract Administrator to consider the intended course of action taken to remedy the Default.

**5.82** The Contract does not specify mechanisms for monitoring progress against the Cure Plan. Moreover, the ANAO notes that if the Services Provider complies with the Cure Plan but is unable to remedy the Default, the Contract Administrator may, in his/her absolute discretion, give the Services Provider a written notice (Remedy Notice) which:

- (a) acknowledges that the Services Provider has taken action to remedy the Default but that the Default has not been remedied,
- (b) waives the Commonwealth's right to require the Services Provider to take further action to remedy the Default, and
- (c) acknowledges that the Default is deemed to be remedied.

**5.83** Given that Default Notices are issued for serious performance breaches, the ANAO considers that waiving the Commonwealth's right to require the Services Provider to take further action to remedy the Default undermines the effectiveness of this mechanism. As well, deeming that the Default is remedied when the Services Provider was unable to remedy the Default eliminates the need for the Services Provider to meet the performance standards required by the Department and agreed in the Contract.

**5.84** This ambiguity increases the risk of inappropriate or ineffective action resulting in the breach not being remedied. The ANAO suggests that, rather than 'at his or her absolute discretion' DIMIA consider a governance framework for Default Notices that is more focused on achieving a set

outcome. Clearer guidelines would assist in the consistent application of performance management tools under the Contract.

## Conclusion

**5.85** In developing the Contract, DIMIA sought to establish a range of standards and measures by which to measure performance. Schedule 3 of the Contract lists 148 standards and 243 measures and Schedule 2 contains more than 300 descriptions of detention services. The use of terms such as ‘timely’, ‘appropriate’, ‘relevant’, ‘adequate’ and ‘as soon as possible’ are used in the standards and/or measures and these are not defined to allow their assessment. The standards also contain conditions and provisos, which mean that proving that the standard should have been met in a particular instance would be difficult.

**5.86** While there is no ideal number of items of performance information, it is important that DIMIA collects information on the ongoing level of service delivery in detention centres. It should be focused on areas of highest significance and/or risk, timely, and relatively easy to interpret and manage. Clearer specification of measurable performance indicators will underpin monitoring and help to minimise future disputes between DIMIA and GSL should they arise.

## Recommendation No.2

**5.87** The ANAO recommends that DIMIA review and revise its planning, performance information and monitoring arrangements so they provide the basis for managing and monitoring the performance of its detention function in a systematic and objective way.

*DIMIA response:*

Agreed.

**5.88** DIMIA agrees with the ANAO’s recommendation to revise the detention function’s planning processes, and has already commenced this review in the context of developing the 2005–06 Divisional Business Plan. Consideration of meaningful performance measures will be incorporated into this process.

**5.89** DIMIA considers that the comprehensive contract monitoring regime implemented in January 2005 proactively monitors the delivery of services at detention facilities in a systematic and objective way. The ANAO has acknowledged that it has not been able to assess the effectiveness of this plan due to its recent implementation. The Department will review the effectiveness of this monitoring regime, including in accordance with the review mechanism built into the plan.

## 6. Contract Administration

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*This chapter examines DIMIA's ongoing administration of the Contract with respect to financial administration, including asset management and contract maintenance.*

### Introduction

**6.1** Contract administration is concerned with the mechanics of the relationship between the purchaser and the provider, the implementation of procedures defining the interface between them, and the smooth operation of routine administrative functions.<sup>39</sup> Effective contract management plays an important part in achieving successful outcomes under an outsourcing arrangement and is a way of ensuring ongoing value for money.

**6.2** The ANAO examined the contract administration arrangements DIMIA used for the Detention Services Contract (the Contract). This included DIMIA's procedures for:

- monitoring costs, including the Services Provider's appreciation of, and ability to provide invoicing information, including substantiation material DIMIA needed to support its statutory accountability requirements;
- managing assets; and
- maintaining the contract and controlling change.

### Financial management and invoice procedures

#### Financial management

**6.3** DIMIA's management of the funding for detention services, payment of accounts and the financial management of the Contract are important administrative functions because of the level of public funding allocated. Current forecasts indicate that total operational payments for the life of the Contract will exceed \$400 million, and could be higher, if extension options within the Contract are exercised. The ANAO examined DIMIA's framework for financial monitoring and reporting of detention costs.

#### *Financial framework*

**6.4** The *Financial Management and Accountability Act 1997* (FMA Act) sets out the financial management, accountability and audit obligations of

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<sup>39</sup> Principles for service contracts, contract management guidelines—UK Office of Government Commerce—HM Treasury, 2002 p.38.

Australian Government agencies. Among other things, the FMA Act contains provisions that a Chief Executive must manage the affairs of the agency in a way that promotes proper use of Commonwealth resources (Section 44).

**6.5** The Senate Finance and Public Administration Legislation Committee, in its November 2000 report on the Format of the Portfolio Budget Statements, commented that:

Reporting on performance is a cornerstone of the accountability framework. Taxpayers and their parliamentary representatives have a right to feel confident that their dollars are not being wasted but used prudently by public sector entities to deliver outcomes equitably, efficiently and cost-effectively.

### *Output 1.3.5—Detention*

**6.6** DIMIA's output 1.3.5 (detention) was funded at \$120.5 million for 2004–05. Detention's contribution to the outcome is stated as:

Provides lawful, appropriate, humane and efficient detention of unlawful non-citizens.

**6.7** The ANAO examined DIMIA's internal monitoring and reporting arrangements and found they did not further define, or measure 'lawful, appropriate, humane and efficient detention'.

**6.8** DIMIA advised that within UADD, it is reviewing its performance reporting arrangements for detention used by the department in its 2004–05 PBS (discussed in more detail at paragraph 5.5 above). The ANAO supports this initiative and suggests DIMIA consider, a review of output performance—as suggested in the existing statement in its PBS—against efficiency and quality measures. This is discussed in more detail at paragraph 6.19 below.

### *Cost of detention*

**6.9** Report No.54 found there had been a significant fall in the number of detainee days funded under the last year of the previous contract, but that the overall cost to the Commonwealth had not fallen by a corresponding amount. This was as a result of the many fixed costs involved in operating detention centres.

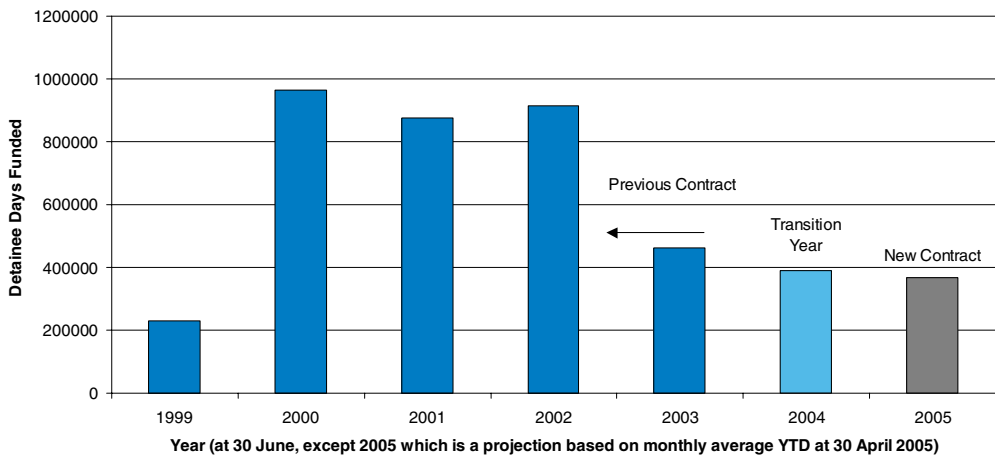
**6.10** The previous audit also found that the costs of contract administration had increased, and not always in proportion to the level of contracted services provided. DIMIA advised that investments in contract administration coincided with higher levels of public scrutiny from external agencies, the change in detainee profile and the broader work required. The level of financial reporting within DIMIA at that time did not provide senior managers with trend analysis to determine whether these were planned outcomes, and did not provide assurance that increased investment in contract administration was producing greater levels of operating efficiency.

**6.11** The ANAO examined the number of detainee days, the operational costs of detention and the overhead costs, and compared these with the equivalent data from the previous contract. The results are reproduced in Figures 6.1 to 6.3.

**6.12** The annual number of detainee days funded under the old contract and the new Contract is shown in Figure 6.1.

**Figure 6.1**

### Annual Number of Detainee Days Funded 1999–2005

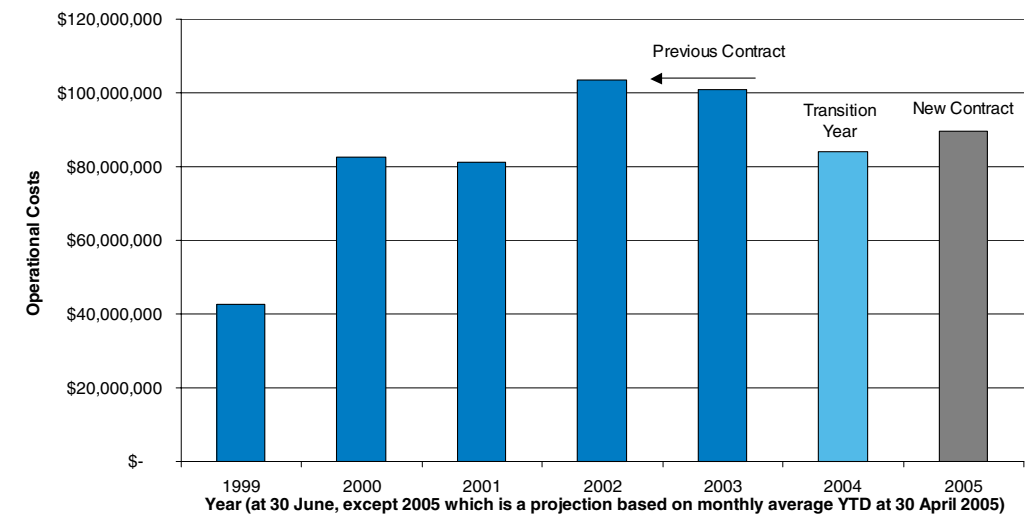


Note: GEO was the detention service provider between 1999–2003. Transition between the two providers occurred December 2003–February 2004. The current Service Provider is GSL.

Source: ANAO from DIMIA data.

**6.13** If current trends continue throughout the remainder of 2005, the total number of detainee days funded will be less than the number of days funded in 2004. The operational costs of detention, that is, the overall payment for detention services through the Contract is shown in Figure 6.2.

**Figure 6.2**  
**Operational Costs of Detention 1999–2005**

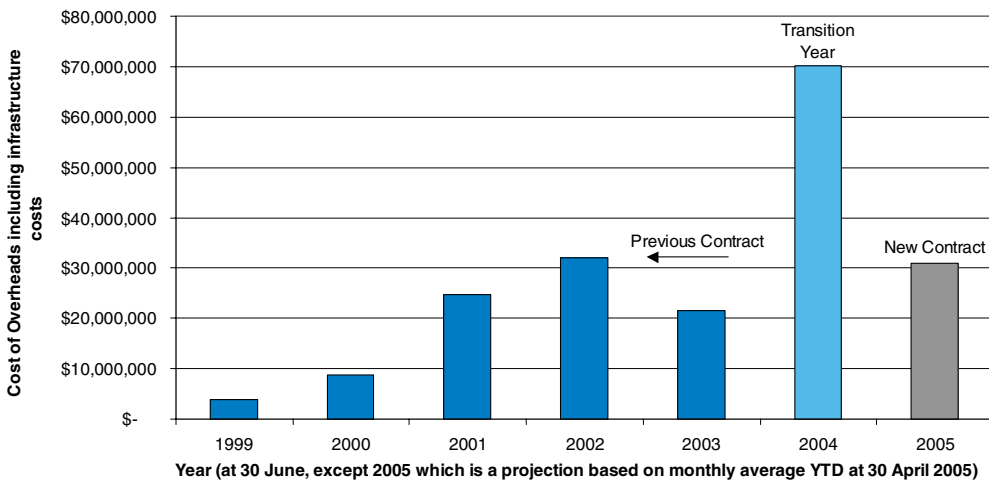


Note: GEO was the detention service provider between 1999–2003. Transition between the two providers occurred December 2003–February 2004. The current Service Provider is GSL.

Source: ANAO from DIMIA data

**6.14** DIMIA payments for detention operations show an upward trend under the new Contract (2005). DIMIA does not have a routine management report that explains the upward trend. However, ANAO examination of the data indicates that it is as a result of the revised funding formula in the new Contract. As well, there have been some one off payments involving closure of the Port Hedland facility, and higher costs associated with alternative detention arrangements at the Residential Housing Project and the Christmas Island Immigration Reception and Processing Centre.

**6.15** The cost of detention overheads is shown at Figure 6.3.

**Figure 6.3****Cost of Detention Overheads 1999–2005**

Note: GEO was the detention service provider between 1999–2003. Transition between the two providers occurred December 2003–February 2004. The current Service Provider is GSL. High overhead costs in 2004 are due to transition costs and payments, which will be examined in more detail in the separate audit of DIMIA's Management of the Tender for the Detention Services Contract.

Source: ANAO from DIMIA data.

**6.16** Inputs to detention overheads include infrastructure costs, central office operating costs; the costs of consultants and of APS staff in Central Office employed to monitor and manage the contract. These overhead costs do not include the cost of DIMIA regional office staff, employed at the state-operated centres of Villawood, Maribyrnong and Perth to manage the detainees and monitor the Contract.

**6.17** Since the Contract began, DIMIA has added five additional case officers and contract monitors at Baxter, five at Villawood, two at Maribyrnong and one at Perth. The cost of the additional staff at Villawood, Maribyrnong and Perth are not reflected in the overhead costs shown at Figure 6.3. The ANAO estimated the additional cost of these overheads to be approximately \$1 million per year.

**6.18** Report No.54 found that DIMIA could not demonstrate that (earlier) increased investments in contract administration were producing greater levels of operating efficiency. This audit found that contract administration costs have also increased under the Contract and DIMIA does not have a management report that explains the increase. On current projections, overhead costs for year ended 30 June 2005 will exceed \$30 million. These increases are in contrast to a fall in the level of contracting activity over the same period. This continues a trend of rising administration costs against a falling number of detainee days observed in the last year of the previous

contract. The ANAO notes that the Port Hedland centre closed over this period and this should have yielded some economies of scale.

### *Links between financial and non-financial performance information*

**6.19** Although DIMIA has recognised in its PBS that there is a need to report on the contribution of detention to the department's outcome, particularly the lawfulness, appropriateness and efficiency of detention, there is no internal DIMIA report that analyses the detention function in this way. Although in overall terms, DIMIA's internal Executive Financial Report reports provide assurance that the detention budget will not expend more than has been approved, it is simply a statement of financial performance.

**6.20** The report provides analysis of the variances between budget and actual expenditure. However, variance analysis is limited in the context of detention services since, among other things, it cannot convey the cost of providing quality services. That is, it does not provide information on the degree to which 'lawful, appropriate, humane and efficient detention of unlawful non-citizens' is being achieved, as indicated in the PBS.

**6.21** The ANAO considers that a clearer focus on the key risks, such as the increasing costs of contract administration, would provide greater assurance that the DIMIA Executive is adequately monitoring the level of operating efficiency. This would also allow a clearer demonstration of ongoing value-for-money in detention services, as well as compliance with Section 44 of the FMA.

**6.22** The ANAO concluded that there are gaps in the financial monitoring and reporting documentation that would be expected for such a large and complex function as detention services. The ANAO noted, in particular, a lack of documented budgetary management information that separates the cost of the contract from the cost of its administration. Such reporting documentation would be able to demonstrate, firstly the need for increased investments in contract administration, and subsequently where these have produced improvements in quality.

## **Recommendation No.3**

**6.23** The ANAO recommends that DIMIA comprehensively review the ongoing financial reporting of the detention function and include:

- consideration of the ongoing financial commitment as well as a cost-benefit analysis of the total costs of administration; and
- provision of explicit links between financial and non-financial performance information.

### *DIMIA response:*

**6.24** Agreed.



**6.25** DIMIA notes the ANAO's concerns regarding the detention function's financial reporting. The ANAO's comments will be utilised to review the financial and non-financial performance information for the detention function, in conjunction with the new financial reporting requirements driven by the Department of Finance, which are scheduled to come into effect from July 2005.

## **Invoice procedures**

**6.26** Sections 5 and 6, and Schedule 7 of the Contract set out funding arrangements and provisions in respect of rendering and paying invoices, which recognise that DIMIA requires the capacity to verify service fees and charges. These requirements have been included in the Contract to support DIMIA's ability to ensure payments are made in accordance with accountability requirements and sound administrative practice.

**6.27** However, provision of accurate and appropriately substantiated and detailed invoices has proven to be an area of difficulty, particularly in the initial phases of service delivery. In some cases, payment of all or part of invoices to the value of approximately \$1.5 million was withheld, pending receipt of adequate supporting documentation. This, together with delays in obtaining complete and reliable information to help verify the quantity and type of maintenance services delivered, has created difficulty for DIMIA in ensuring payments are made in accordance with contract provisions.

**6.28** The timeliness and effectiveness of the subsequent verification has been significantly hindered by inconsistencies and lack of clarity in the Contract. The major areas for resolution involved:

- the definition of metropolitan and regional areas in relation to escorts; and
- classification of maintenance work as either Urgent Minor Repairs or planned maintenance (for which separate payments are made under the Contract).

### *Cost of Escort services—metropolitan and regional areas*

**6.29** The ANAO found that as it stands, the Contract does not define the boundaries of the relevant metropolitan areas and the ANAO considers that 'region' is a less defined term in this contract than it was in the previous contract with GEO. This lack of clarity in the Contract led to the number of unpaid invoices for escort services reaching \$1 million, before the institution of the Contract Finance Group.

**6.30** The ANAO notes that DIMIA is planning to correct this anomaly through negotiation with the Service Provider and subsequently in a planned variation to the contract.

### *Cost of Urgent Minor Repairs invoices*

**6.31** Services Provider and Commonwealth obligations for repairs and maintenance are set out in different sections of the Contract. Part 4 of the Contract deals with 'Detention Facilities and Commonwealth Equipment'. Sections 4.4, 4.5 and 4.6 deal respectively with Modifications, Maintenance and a Maintenance Management Plan. 'Repairs to detention facilities and Commonwealth equipment' are also dealt with separately under clause 9.5. These are important aspects that are set out more comprehensively than they were in the previous contract. Schedule 5 contains additional and detailed clauses imposing obligations on the service provider in respect of maintaining the facilities, and Schedule 7 contains payment arrangements.

**6.32** As well, Schedules 2 and 3 contain additional maintenance information and obligations. The ANAO considers that given the creation of Schedule 5, it would have been better to incorporate all of maintenance material into the first part of Schedule 5. To include material about the same subject in different places in a contract usually gives rise to ambiguity and confusion. An ambiguity the ANAO identified concerned the differences in operation between two sections of the contract; Urgent and Minor Repairs and the Preventative Planned Maintenance Program as set out respectively at clauses 12.2.3 (a) and (b) of Schedule 2.

**6.33** The Commonwealth pays a fixed monthly amount for the Preventative and Planned Maintenance Program, and these payments continued to be made although difficulties were being experienced in finalising the Preventative and Planned Maintenance Program. Figure 6.4 shows the monthly amounts paid by DIMIA to the contractor since the first centre (MIDC) transitioned in December 2003.

**Figure 6.4****Preventative Planned Maintenance Payments**

| Centre       | MIDC<br>(\$)     | PIDC<br>(\$)   | PHIRPC<br>(\$) | BIDF<br>(\$)     | VIDC<br>(\$)     | Total<br>(\$)    |
|--------------|------------------|----------------|----------------|------------------|------------------|------------------|
| 1 Dec 2003   | 70 982           |                |                |                  |                  | 70 982           |
| 1 Jan 2004   | 70 982           | 62 002         | 182 030        |                  |                  | 315 014          |
| 1 Feb 2004   | 70 982           | 62 002         | 182 030        | 145 899          |                  | 460 913          |
| 1 Mar 2004   | 70 982           | 62 002         | 182 030        | 145 899          | 178 992          | 639 905          |
| 1 Apr 2004   | 70 982           | 62 002         | 182 030        | 145 899          | 178 992          | 639 905          |
| 1 May 2004   | 70 982           | 62 002         | 182 030        | 145 899          | 178 992          | 639 905          |
| 1 June 2004  | 70 982           | 62 002         |                | 145 899          | 178 992          | 457 875          |
| 1 July 2004  | 70 982           | 62 002         |                | 145 899          | 178 992          | 457 875          |
| 1 Aug 2004   | 70 982           | 62 002         |                | 145 899          | 178 992          | 457 875          |
| 1 Sept 2004  | 70 982           | 62 002         |                | 145 899          | 178 992          | 457 875          |
| 1 Oct 2004   | 70 982           | 62 002         |                | 145 899          | 178 992          | 457 875          |
| 1 Nov 2004   | 70 982           | 62 002         |                | 145 899          | 178 992          | 457 875          |
| 1 Dec 2004   | 70 982           | 62 002         |                | 145 899          | 178 992          | 457 875          |
| 1 Jan 2005   | 70 982           | 62 002         |                | 145 899          | 178 992          | 457 875          |
| 1 Feb 2005   | 70 982           | 62 002         |                | 145 899          | 178 992          | 457 875          |
| 1 Mar 2005   | 70 982           | 62 002         |                | 145 899          | 178 992          | 457 875          |
| 1 Apr 2005   | 70 982           | 62 002         |                | 145 899          | 178 992          | 457 875          |
| <b>Total</b> | <b>1 206 694</b> | <b>992 032</b> | <b>910 150</b> | <b>2 188 485</b> | <b>2 505 888</b> | <b>7 803 249</b> |

Notes: MIDC—Maribyrnong Immigration Detention Centre; PIDC—Perth Immigration Detention Centre; PHIRPC—Port Hedland Immigration Reception and Processing Centre; BIDF—Baxter Immigration Detention Facility; VIDC—Villawood Immigration Detention Centre.

Source: ANAO from DIMIA data.

**6.34** The ANAO found that because of the contractual ambiguities and lack of agreement as to what is included under Preventative and Planned Maintenance Program, a large number of Urgent and Minor Repairs invoices are now in dispute.

**6.35** Clauses 12.2.5 and 12.2.6 of Schedule 2 in the Contract indicate that verification of these amounts will take place through a quarterly report from the contractor, and a system of ad hoc audits by DIMIA.

**6.36** Clause 4.6.1 indicates that the maintenance management plan (which is understood to be the Preventative Planned Maintenance Plan) was to be submitted to the Contract Administrator no later than 30 days after the last commencement date set out in the implementation plan, making that due date

30 March 2004. However, Schedule 4 states that a maintenance management plan is to be provided three months after the implementation date, making that due date 1 December 2003. Further, DIMIA advised the ANAO that ‘in fact, a third date was understood by both parties to be the date of provision for the maintenance management plan. This date was to be three months after the last commencement date (that is, end May 2004)’. DIMIA was unable to provide any documentary evidence of this agreement to the third date. DIMIA advised that ‘this understood date of provision [would] be proposed as a contract variation’.

**6.37** However, the ANAO noted that the Preventative and Planned Maintenance Plan had, as at January 2005, only achieved partial agreement between DIMIA and the Services Provider and that limited monitoring of the maintenance of the facility had been undertaken. The ANAO notes, also that the contract contains incentives to shift maintenance expenses to Urgent and Minor Repairs.

**6.38** The ANAO found that centre staff were forwarding invoices for the Preventative and Planned Maintenance Program to DIMIA Central Office for payment in accordance with the terms of the contract. As well, DIMIA centre staff are forwarding Urgent and Minor Repairs invoices to Central Office for further processing. As at December 2004, the total of unpaid Urgent and Minor Repairs invoices was \$362 000. The finalisation of these invoices is causing ongoing administrative effort for the department.

## Asset management

**6.39** The Commonwealth has licensed the Services Provider, under provisions of the Contract, to occupy and use the Detention Facilities for the purpose of complying with its obligations for the duration of the detention services term. Clause 4.1.3 provides that the Detention Facilities include the buildings, fixtures, fittings and associated engineering services, the grounds and the infrastructure located within the boundaries of the Detention Facilities.

**6.40** In addition, at clause 4.7.1, the Commonwealth grants the Services Provider a licence, at no additional cost, to use Commonwealth Equipment at the relevant Detention Facilities. Schedule 6 of the Contract specifies the quantity and related value of each item considered to be Commonwealth Equipment.

**6.41** During preparation of tender documentation (April 01 to June 02), DIMIA acknowledged that ownership of assets at the Detention Facilities was an area that was not entirely settled. Prior to transition, which began at Maribyrnong in December 2003, GSL informed DIMIA that assets listed in the Contract at Schedule 6—List of Commonwealth Equipment, were also listed on GEO’s list of assets offered for sale to GSL.

**6.42** Notwithstanding these early indications of a discrepancy with the equipment listed in Schedule 6,<sup>40</sup> DIMIA proceeded with the transition of the centres without clarifying the ownership of the equipment. During the transition, GSL made arrangements to purchase assets from GEO in order to begin operations. The assets purchased included a number of assets listed in Schedule 6 as Commonwealth Equipment.

**6.43** DIMIA's internal auditors (Ernst and Young), commented on the operational transition of the centres, and noted that 'asset reconciliation at all centres [had] been an issue that [had] taken considerable effort to resolve to the satisfaction of all three parties'.<sup>41</sup> The inability to clearly identify the ownership of the equipment at the detention facilities resulted in the transition of the centre at Port Hedland without full asset reconciliation. DIMIA and GSL agreed to use a Significant Value Asset Register at the time of transition and committed to reconstruct the detailed asset register in the future.

**6.44** At the time of the ANAO's audit fieldwork negotiations were ongoing with regard finalising an accurate asset register, Schedule 6 for inclusion in the Contract and settlement of the additional expenses GSL incurred at the time of transition.

**6.45** Report No.54 found that DIMIA had no coordinated approach to collecting and analysing information to support an asset management plan for the detention centres. The report recommended that 'DIMIA develop an asset management plan for its detention infrastructure'. The ANAO is aware that DIMIA is currently progressing an asset management plan in line with this recommendation.

**6.46** However, the ongoing difficulties over ownership of Commonwealth assets, as highlighted by the transition process, expose DIMIA to financial and operational risks, particularly in the areas of insurance and maintenance. The ANAO considers that a comprehensive and accurate asset register is needed to enable the effective control and management of these assets. This register should form part an overall asset management plan.

## Recommendation No.4

**6.47** The ANAO recommends, as a matter of priority, that DIMIA develop a comprehensive asset register for all Commonwealth Equipment at each of the detention facilities.

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<sup>40</sup> Commonwealth Equipment listed in Schedule 6 is valued at \$1 407 099.

<sup>41</sup> Ernst and Young; Transition of the Villawood Immigration Detention Centre—29 February 2004.

*DIMIA response:*

**6.48** Agreed.

**6.49** In response to the ANAO's audit of the Detention Centre Contracts—Part A, DIMIA acknowledged the need to develop a comprehensive asset register and has already taken steps to achieve this, including by conducting a series of joint onsite stocktakes with GSL. Stocktakes have been successfully completed at three centres, with additional joint stocktakes being undertaken for remaining centres in the coming months.

## **Contract maintenance and change control**

**6.50** Contractual relationships evolve and must respond to changes in the business environment and also in the event that both parties agree that additional clarity is needed. The Contract document itself must be capable of evolving efficiently and effectively through formal change control procedures and mutual consent.<sup>42</sup>

**6.51** Section 14.1 of the Contract outlines the processes for notification of a change proposal. Clause 14.1.1 gives the Commonwealth the ability to amend the Contract or to initiate change to the Contract because of a Change in Law or a Change in Policy. Clause 14.1.2 allows the Services Provider to prepare notification to the Commonwealth if they believe that a Change in Law or a Change in Policy has occurred and they have not been duly notified.

**6.52** In the previous contract, change management was divided into three sections:

- dealing with changes in Law (and policy);
- changes in standards and performance; and
- changes to 'other contractual obligations'.

**6.53** Clause 14 of the Contract has combined these types of changes into one clause and incorporates an overall process for managing change. The ANAO considers that Clause 14 is not as clear as the processes it replaced.

**6.54** For example, while it may be possible for DIMIA to 'notify' the Services Provider about a change in the law that is due to take effect prior to the date the law comes into operation, it is not clear what the 'effective date' of a proposal by DIMIA to amend the contract would be. The date of effect would be the date of the change in law.

**6.55** In Report No.54, the ANAO found that, although DIMIA negotiated other changes and clarifications to service requirements informally throughout

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<sup>42</sup> Contract Management Guidelines: Principles or service contracts, Office of Government Commerce.

the life of the contract with GEO, the mechanism for variation contained in the General Agreement was used for one formal amendment.

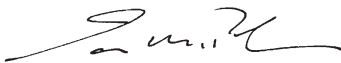
**6.56** The ANAO found clause 14 of the Contract with GSL had been used to a much greater extent than the previous change provisions. DIMIA and GSL have developed a cooperative approach to identifying and resolving contract issues requiring variation. A register of contract issues was developed for discussion at COG. Negotiation of the issues has resulted in development of a Deed of Variation. Deed of Variation No.1<sup>43</sup> contains 12 proposed amendments.

## Conclusion

**6.57** DIMIA has recognised in its Portfolio Budget Statements that, as part of the annual funding provided for detention services, there is a need to report on the contribution of detention to the department's outcome, particularly the lawfulness, appropriateness and efficiency of detention. However, there is no internal DIMIA report that analyses the detention function in this way.

**6.58** DIMIA's internal financial and performance reporting systems also do not allow for the identification, monitoring or analysis of important variations to the detention budget, particularly the increased contract administration costs. This means that, although the number of detainee days funded has declined since the Contract began, DIMIA has limited assurance that the outsourced arrangements for detention services are continuing to provide value for money.

**6.59** As well, the lack of agreement to Schedule 6 at the time the Contract was signed and ongoing negotiations and difficulties in the finalisation of the Preventative and Planned Maintenance Plan have meant that the management of the contract provisions related to the Detention Facilities and Commonwealth Equipment, has been inadequate.



Ian McPhee  
Auditor-General

Canberra ACT  
7 July 2005

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<sup>43</sup> As at 4 May 2005, the Deed of Variation was not yet approved.





# Appendices



## Appendix 1: Transition

### Dates of transition

The transition of the centres occurred in accordance with the following timetable:

- Maribyrnong Immigration Detention Centre—1 December 2003;
- Perth Immigration Detention Centre—8 December 2003;
- Port Hedland Immigration Reception and Processing Centre—15 December 2003;
- Christmas Island Immigration Reception and Processing Centre—17 December 2003;
- Baxter Immigration Detention Facility—19 January 2004; and
- Villawood Immigration Detention Centre—29 February 2004.

## Appendix 2: Performance standards and measures

There are a large number of standards and measures in the Contract and it would not be possible to provide comments against them all in this report. Overall, difficulties with the standards and measures are that:

- the large number of standards and related measures makes it difficult to manage and interpret the information in a systematic and cost effective way;
- terms such as 'timely', 'appropriate', relevant, 'adequate' and 'as soon as possible' are used in the standards and/or measures and are not defined to allow their assessment;
- the standards contain conditions and provisos that would make it difficult to prove, that the standard should have been met in a particular instance and would therefore negatively impact on application of sanctions;
- many standards could only be assessed by experts rather than by general administrators; and
- evidence to substantiate whether standards had been met or not would be difficult to collect and/or prove.

The table below sets out a selection of DIMIA's standards and measures (the remainder of the food and additional health standards and one from each of Parts 1–8 of Schedule 3) and provides ANAO comment on them.

**Figure A2.1****Standards and measures from the Contract**

| Standard   | Measure  | ANAO Comment   |
|--|--|--|
| <b>Schedule part 1. General</b>  |  |  |
| 1.1.3 When not in an approved place of detention, every detainee remains in the company of an officer or another person directed by the Secretary of the department.   | <p>No substantiated instance of the Services Provider (SP) failing to satisfy itself that the person is lawfully detained.</p> <p>No substantiated instance of an unlawful non-citizen not being detained according to the department's advice.</p>                          | <p>That measure is not related to the standard and will not show whether it has been met. The measure needs to be about whether the detainee is accompanied by an appropriate person. As well, the detainee is held on DIMIA's advice. The Contract is not clear on what the Services Provider has to do to be satisfied that the person was appropriately detained.</p>   |
| <b>Schedule part 2. Detainees (Part 2 of Schedule 3 Contains 52 standards)</b>   |  |  |
| 2.1.2.1 Subject to: the good order and security of the detention facility and the safety of all of those within it; detainees' own preference; and relevant provisions of Commonwealth or State/Territory law; detainees are able to retain personal property with them in detention, with the exception of certain items which include but are not limited to money, valuables, documents, and particular items of clothing and other personal effects. | <p>No substantiated instance of arbitrary or unlawful removal, or theft, of a detainee's personal property by the SP.</p> <p>No substantiated instance of a detainee retaining personal property that compromises the good order and security of the detention facility.</p> | <p>It would be difficult to assess whether this standard had been met because it contains a number of provisos, which could be used as reasons a detainee had/had not retained property.</p> <p>It would also be difficult to assess whether or not there were laws that made retaining specific items of property acceptable or not. The standard also includes an exception that means any course of action could be justified.</p> <p>It is difficult to understand what evidence could be used to assess whether the first measure had been achieved. For the second measure, proving that retaining or removing items of property had compromised safety and good order so that a penalty can be imposed on the Services Provider would be very subjective.</p> |

| Standard   | Measure  | ANAO Comment   |
|--|--|--|
| 2.2.1.3.4 Detainees are provided with a level of treatment necessary to the maintenance of dental health, including addressing serious dental conditions with implications for detainees' physical health.   | No substantiated instance of a detainee not being provided with an appropriate level of dental health care, in a timely manner.  | The appropriate level has not been specified so performance against this standard could not be accurately measured.  |
| 2.2.1.3.5 On release into the community or removal from Australia or transfer to a State correctional facility, a detainee is examined by a doctor for fitness to travel and appropriate arrangements are made for referrals/introductory letters. | <p>No substantiated instance of a detainee being released, removed or transferred without medical clearance.</p> <p>No substantiated instance of a detainee being released or removed without being given a referral/introductory letter for their future doctor giving a synopsis of any relevant medical information and instructions on how the doctor may access the detainee's medical records.</p> <p>No substantiated instance of the SP not providing a receiving correctional facility or hospital or medical facility with appropriate and relevant medical information.</p> | It would only be possible to assess whether this standard had been met if good records were maintained and an expert assessed whether arrangements were appropriate. |
| 2.2.1.3.6 On transfer from one detention facility to another, a detainee is examined by a doctor for fitness to travel and appropriate arrangements are made for the transfer of all medical records.  | <p>No substantiated instance of a detainee being transferred from one detention facility to another without medical clearance.</p> <p>No substantiated instance of a detainee's medical records not being transferred to the receiving detention facility.</p>   | It would only be possible to assess whether this standard had been met if good records were maintained and an expert assessed whether arrangements were appropriate. |
| <b>Schedule part 3. Education and other activities</b>   |  |  |
| 3.2.3 Detainees have unlimited access to open air, subject to the security and good order of the detention facility and the safety of all those within it.   | No substantiated instance of a detainee not having unlimited access to open air.   | Because the standard contains a proviso, a restriction of access could be justified on the grounds of safety and good order.   |
| <b>Schedule part 4. Communication and visits</b>   |  |  |
| 4.2.1.1 Detainees are able to maintain a reasonable level of contact with their relatives, friends and community contacts, subject to the good   | No substantiated instance of detainees not being able to maintain such contact.  | Because 'reasonable level' is not defined and the standard contains a proviso, it would be difficult to assess performance   |

| Standard   | Measure   | ANAO Comment   |
|--|---|--|
| order and security of the detention facility or except where a detainee's movement in the facility is restricted for management reasons.   |   | against this standard. The related measure does not help clarify how performance would be assessed against the standard.   |
| <b>Schedule part 5. Facility</b>   |   |  |
| 5.1.1 Taking into account ownership, and to ensure the integrity and amenity of the detention environment and the safety and well-being of persons within it, the infrastructure, facilities, grounds and equipment are maintained in a safe, useable and hygienic condition: compliant with relevant Commonwealth, State/Territory legislation and local authorities by—laws relating but not limited to health, hygiene, vermin control, waste disposal and the protection of the environment; compliant with the Maintenance Performance Standards of Schedule 5B of the Detention Services Contract. | <p>No substantiated instance of relevant legislative requirements not being met.</p> <p>No substantiated instance of: Maintenance Performance Standards not being met; or the general infrastructure, facilities, grounds and equipment not being maintained in safe, useable, hygienic condition appropriate to climatic conditions.</p> <p>No substantiated instance of damage/deterioration with safety implications not being responded to as an urgent and minor repair.</p> <p>No substantiated instance of damage/ deterioration without safety implications and not subject to urgent and minor repair not being added to the Refurbishment and Maintenance Schedule.</p> | <p>The number of conditions in the standard, i.e. taking into account of many elements before a judgement can be made and the breadth of the laws and other standards that are covered would make it difficult to tell whether the standard had been met or to enforce a breach. As well, the fact that the standard includes but is not limited to a range of considerations means that it would be highly likely that breaches could be identified.</p> <p>Using terms such as 'integrity', 'amenity', 'well-being', 'useable', 'hygienic' and 'relevant' that are not defined also mean that it would be difficult to judge whether the standard had been met.</p> <p>The measures do not clarify the standard but rather add to the lack of clarity.</p> |
| <b>Schedule part 6. Security and order</b>   |   |  |
| 6.1.3 The security of detainees during transfers or escorts to other locations is assured.   | <p>No substantiated instance of escape from detention during transfers or escorts.</p> <p>No substantiated instance of the security of a detainee during transfers or escorts being inappropriately managed and, therefore, jeopardised.</p>  | <p>The first measure clarifies the standard, i.e. assured means no escapes. However, the second measure is unclear because 'inappropriately managed' is not defined and therefore a judgement as to whether the measure has been achieved is not possible.</p>   |

| Standard   | Measure  | ANAO Comment  |
|--|--|---|
| <b>Schedule part 7. Staff</b>  |  |   |
| 7.1.1 The numbers and mix of staff in a detention facility are appropriate to the delivery of services in an administrative detention environment and take into account the number and profile of detainee population. | <p>The department is provided with evidence that a strategy is in place and implemented which is designed to address the placement of suitably skilled and knowledgeable staff to ensure the delivery of detention services consistent with these Immigration Detention Standards.</p> <p>No substantiated instance of inappropriate staffing that jeopardises the good order and security of the detention facility.</p>  | <p>While the standard is not well defined, the first measure would assist in identifying whether arrangements were appropriate.</p> <p>The second measure would be difficult to obtain evidence for because a number of factors, not just inappropriate staffing, could affect the good order and security of the facility.</p> <p>The ANAO notes that the majority of the seven standards included in the contract relating to staff are measurable.</p>   |
| <b>Schedule part 8. Complaints mechanism</b>   |  |   |
| 8.1.2 Complaints by detainees are forwarded to the relevant agency in a timely fashion and where appropriate, according to the law.  | <p>No substantiated instance of written communications addressed to: the Services Provider not being dealt with appropriately and responded to in a timely fashion; or HREOC or the Commonwealth Ombudsman not being forwarded promptly to the department; or a specific detainee, from HREOC or the Commonwealth Ombudsman in response to a complaint by that detainee, not being forwarded promptly.</p> <p>No substantiated instance of a known detainee complaint, whether via internal mechanisms or to HREOC or the Commonwealth Ombudsman, not being reported as an incident.</p> | <p>Because 'timely' is not defined and the actual law is not known it would be difficult to assess performance against the standard.</p> <p>Again in the measure the use of terms that are not defined such as 'timely', 'appropriately', and 'promptly' means that it does not contribute to making performance against the standard assessable.</p> <p>The second measure could be seen to encourage the Services Provider to fail to record complaints because the reporting of them attracts a penalty.</p> |

Source: Detention Services Contract, Schedule 3.

Note: Parts 9 and 10 are not examined here because they relate monitoring and reporting and responsibilities of the services provider. They are discussed at paragraph 5.55 in this report.



## Appendix 3: Agency response

Mr Ian McPhee PSM  
Auditor-General  
GPO Box 707  
Canberra ACT 2601

Dear Mr McPhee

I refer to Mr Steven Lack's letter of 13 May 2005 enclosing a proposed audit report on the management of the detention centre contracts.

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).

The ANAO's decision to discuss emerging issues with departmental officers throughout the course of the audit fieldwork has been a welcomed approach and I believe that this has been of benefit to both the ANAO and the Department. Through this approach stronger and more cooperative working relations between the two parties have developed. I extend my appreciation in particular to Mr Steven Lack, Mr Greg Watson and Ms Rebecca Collareda.

Yours sincerely

[signed]

W.J. Farmer

16 June 2005

## **Background / scope**

1. From February 1998 to February 2004 the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) outsourced the delivery of services within immigration detention facilities to Australian Correctional Services (ACS, later known as GEO Australia). The ANAO's audit of the Detention Centre Contracts—Part A examined the Department's management of this contract in detail, and was tabled in June 2004.
2. A new Detention Services Contract (DSC) between the Commonwealth and Group 4 Falck Global Solutions (GSL) was signed on 27 August 2003.
3. The contract took operational effect over a phased period at each centre from December 2003 to February 2004. ANAO fieldwork to assess the Department's management of the new DSC commenced in July 2004, at which time the contract had only been in operation across all centres for a period of six months.
4. Although the ANAO notes the Department's lengthy experience in managing outsourced detention service provision, it must be noted that the Commonwealth is only one party to a new contractual relationship with a Services Provider who, while experienced in institutional settings, was unfamiliar with managing the specific challenges of an administrative detention environment. Given this context, it is understandable that a number of issues have been identified by the ANAO in this report. The Department welcomes this identification process early in the life of the contract, as this will enable DIMIA to review its ongoing management of the detention function in accordance with ANAO best practice.

## **Development of current DSC**

5. Immigration detention is a highly complex environment in which the needs of persons with a diverse range of backgrounds and a potentially infinite range of individual care and welfare needs must be managed within detention arrangements. The Department aims to provide services to these individuals that are effective and responsive to a changing detainee population, whilst also satisfying the Government's international obligations, extensive scrutiny from external bodies and the expectations of the Australian public and parliament.
6. Under the Migration Act 1958 the Department has ultimate duty of care to people in immigration detention. The current DSC is focussed towards outlining all aspects of service delivery necessary to support this to provide for lawful, humane and efficient management of immigration detention, and thereby assist the Commonwealth in meeting its duty of care obligations to those in detention.

7. Schedule 3 of the DSC outlines 148 Immigration Detention Standards (IDS) and 243 performance measures, which were developed in consultation with external stakeholders including the Commonwealth Ombudsman, Human Rights and Equal Opportunity Commission (HREOC) and the Immigration Detention Advisory Group (IDAG).

8. The IDS were developed to articulate the minimum standard of service delivery considered acceptable by the Department. This outcomes focus reflects the Department's primary objective for services to be delivered at all times to an appropriate level. In this contract, the proven failure to deliver a minimum level of services in any circumstance is deemed unacceptable. For this reason, the performance measures against each standard focus on evidence of instances where services have not been delivered according to the specified level.

9. There are areas of the IDS where it is clear that the DSP cannot be fully responsible, so the performance indicators and measures set out for what parts the DSP has responsibility, for example IDS 1.1.1—lawfulness of detention. In this instance, the DSP cannot be held accountable for approving a place of detention, but the Services Provider is still responsible for satisfying themselves that a person is lawfully detained. This is reflected in the measures of the standard.

10. Given the volume of standards to be met, evaluative information regarding the Services Provider's performance is targeted towards instances of non-compliance with the IDS. This exceptions-based reporting highlights to the Department aspects of service delivery, which are not being met to an acceptable level. This allows the Contract Administrator to utilise the available mechanisms under the DSC to take appropriate action, including the application of sanctions against the DSP. In doing so the Contract Administrator identifies to the Services Provider specific instances of unacceptable performance, and reiterates the Department's expectations of the appropriate level of service delivery to be attained.

11. Throughout this report the ANAO has criticised the inclusion of terms such as 'timely' and 'appropriate' in the IDS and measures by claiming that they are not defined to allow their assessment. Given the inherent complexity of the immigration environment, the Department considers it impossible to define all service delivery requirements in simplified, hard-and-fast measured ways. Standards require sufficient flexibility to respond to the changing needs of the detainee population and different situations. For example, while it would be possible to draft a requirement that "all detainees sustaining an injury are to be seen by a doctor within two hours", this would not meet needs in some cases of medical urgency but would be in excess of needs in other cases of minor non-urgent health treatment. In assessing the Services Provider's compliance with the relevant performance measures, flexibility in

the terminology of the IDS provides discretion to the Department to consider service delivery within the necessary context.

12. The services, standards and reporting required in this environment cannot be simply and inflexibly stated in quantitative terms, which is at the core of many of the critical comments in the ANAO's report, particularly those in relation to the IDS. For the most part, the issues highlighted by the ANAO with the standards and measures (which flow through to monitoring and reporting) are not deficiencies but in DIMIA's view are reflections of the inherent complexity and variability of the services required.

### **Detention Services Provider**

13. As Detention Services Provider, GSL is responsible for the provision of detention services across all immigration facilities. In most instances the Services Provider has elected to deliver these services through its own company, for example in the provision of activities and programs to the detainee population. However, in specialist service areas including catering, facilities management and healthcare, GSL has engaged specialist private companies to manage the onsite provision of these services.

14. The Department does not have a direct contractual relationship with any subcontractor employed by GSL. As mentioned above, GSL retains responsibility for ensuring all services are delivered in accordance with the IDS, and the engagement of subcontractors in no way diminishes this responsibility. If a failure in service delivery is identified, the Department will hold GSL responsible, and will take action under the DSC against GSL accordingly.

15. DIMIA has recognised the risks associated with GSL's engagement of subcontractors and has implemented a number of controls to mitigate these risks, including the establishment of a quarterly committee involving representatives from the Department, GSL and the subcontractors to review performance and improve communication between all parties.

16. The DSC also outlines mitigation strategies for managing the risks associated with subcontracts. Clause 3.4.3 of the DSC requires that the terms and conditions of any subcontract under the DSC include "obligations and rights equivalent to and consistent with those imposed on or granted by the Services Provider under this Contract". The Department has previously engaged the Australian Government Solicitor (AGS) to review four subcontracts of operational significance to ensure their consistency with the DSC.

17. In this context the ANAO has referred to the review conducted by AGS, and stated that "The review report found that the specific rights and obligations were substantially different in a number of areas, particularly the

IDS and performance measures were not applied in the case of the subcontract for psychological services". In fact, the advice from AGS noted that the psychological services subcontract provided "flexibility for the Services Provider to manage the delivery of services to ensure compliance with the requirements of the DSC".

## Transition

18. When preparing to implement the new DSC, the Department recognised the substantial risk associated with transitioning six centres from GEO to GSL management. Significant planning and resources were dedicated to effectively managing this process to achieve the outcome of a successful transition with minimal disruption to service delivery and minimal impact on the detainee population.

19. For example, extensive planning and assessment of risks was conducted collaboratively with all three parties (DIMIA, GEO and GSL) to maximise the likelihood of a successful transition. A dedicated DIMIA transition team was established, who worked on site for a substantial period prior to transition to ensure that the centres were prepared for the process to occur, and to ensure DIMIA's risks were minimised. Centres were transitioned on a staggered basis, commencing with the smaller centres of lowest risk, to minimise the potential for disruption across the network and to ensure lessons learnt were incorporated into the procedures for managing transition at larger and more complex centres.

20. This extremely complex process was managed effectively and succeeded in achieving its outcome. While this approach may have increased the costs incurred through the process, the risks associated with failure to transition the centres effectively far outweighed the eventual expenditure, and the Department considers this to be a positive value for money outcome.

## Contract management / monitoring

21. Under the DSC a range of monitoring tools are available to assess the performance of the Services Provider across all centres. Some examples of these assessment tools are:

- Central Office monitoring reports, based on the results of site visits by monitoring teams to carry out a range of audit checks;
- Expert Panel reviews, which are undertaken by independent specialists for a range of purposes;
- Performance reports, which reflect the results of monitoring observations by local DIMIA staff;

- Monthly manager's reports, which outline a broad assessment of performance at the centre over each month from the perspective of the local DIMIA manager; and
- GSL self-reporting across a range of service areas.

22. The focus of monitoring arrangements is to sustain a systematic approach to assessing performance. The 2005 Monitoring Plan provides for a proactive and systematic approach to monitoring, drawing upon the range of monitoring tools outlined above. The plan is based on a risk assessment of 39 key risk areas identified in the DSC, which was completed in consultation with external consultants. While all risks identified in the risk assessment are addressed, the intensity of monitoring varies according to the level of risk, with most resources directed towards those risks identified as 'significant' or 'moderate'.

23. Standard checklists have been distributed to all centres to provide guidance to onsite DIMIA staff in their monitoring activities. These checklists are reviewed on a regular basis to incorporate stakeholder feedback and reflect any changes to the detention environment. The flexibility of these checklists provides the necessary responsiveness in managing the dynamic detention environment.

## **Governance Framework**

24. The ANAO acknowledges that a Governance Coordination Unit (GCU) has been established within the detention division to coordinate business planning processes, comprehensive risk management strategies, and clarification of roles and responsibilities between Central Office, detention centres and regional offices. The objective of the unit is to maintain efficiency within the detention function. Components of the governance framework were implemented progressively during 2004-05.

25. In May 2005, following a review of the framework by internal and external stakeholders, an evolved governance framework was approved for implementation in 2005-06 by the Divisional Executive. Key features of the new framework include:

- improved integration of risk assessment and management into business planning;
- quarterly monitoring of progress against business goals; and
- greater articulation of roles and responsibilities of staff within Central Office, detention centres and regional offices.

26. The Department expects that the implementation of the 2005-06 governance framework will address several of the ANAO's concerns relating

to divisional planning and performance information identified through this report.

## **Conclusion**

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

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