

**Report of an Own Motion Investigation into
The Department of Immigration and
Multicultural Affairs'
Immigration Detention Centres**

Report under section 35A of the *Ombudsman Act 1976*

March 2001

EXECUTIVE SUMMARY

The role of Commonwealth Ombudsman is to impartially investigate complaints, assist in resolution of disputes, and address defective administration where it is found in Commonwealth agencies. The role of the Ombudsman is also to stimulate and lead change by identifying the matters causing difficulties. The Ombudsman's "own motion" capacity is an important recognition of that role.

In September 1999 I decided to conduct an own motion investigation into the management and operation of the Immigration Detention Centres (IDCs) following complaints and a number of reported incidents including escapes and allegations of assault on detainees. At the same time, I also decided to conduct a separate own motion investigation into the holding of immigration detainees in prisons.

My investigation revealed evidence at every IDC of self-harm, damage to property, fights and assaults, which suggested that there were systemic deficiencies in the management of the detainees, including individuals and groups, staff, women and children. I have separately commenced an own motion investigation into the management and follow up of IDC Incident Reports in the light of the number and nature of those made over the last 18 months.

Successive Governments have endorsed Australia's policy and practice of mandatory detention for unlawful non-citizens until a visa is granted or they are removed or deported from Australia. This report does not question this policy. Rather, it focuses on whether, in terms of section 15(1) of the Ombudsman Act, the administration of the policy has been unreasonable or whether its implementation has resulted in unintended consequences.

In regard to the latter, it is arguable in my view whether the policy behind the enabling legislation fully envisaged that detention could be for significant periods (while most detainees spend less than 12 months in detention it is not uncommon for some to spend longer), particularly as little distinction appears to have been made in the treatment of people more at risk during their detention such as women and children. Nearly 800 women and children were in detention at 30 June 2000, or about 20% of the total population of detainees.

Flowing from this, if it is accepted that the policy and law did envisage these circumstances, what should be required of reasonable administration in terms of the structure and nature of detention, that is -

accommodation, facilities and security and the timeliness of visa application and review processes?

This report has not attempted to answer these questions definitively. However, in my view, those detained against their will are entitled to expect that there will be a reasonable standard of care provided for them in terms of accommodation, facilities, security, health, welfare and protection from harm; as well as reasonable timeliness of application and review processes.

DIMA has submitted that in light of the unprecedented surge of arrivals in late 1999 and the requirements of the law giving effect to mandatory detention the amenity and security provided were "as reasonable as the circumstances allowed". The evidence available to me suggests that what was provided in late 1999 to mid 2000 was not adequate at that time, especially at Woomera where large numbers of detainees were held.

In particular, in my view, DIMA should have also been more sensitive to the need for special provision to be made to better cater for the needs of women and children and others at risk, living in a communal detention environment. If amenity and security had been better, while there is no guarantee that custody of a large number of persons from diverse backgrounds would be incident free, there would have been a greater possibility that the number of incidents would have been reduced.

The report does not question, also, the practice of successive governments that has involved the detention of many unlawful arrivals in facilities in remote localities. The remote location of a facility should not however, in my view, be argued in mitigation as to why reasonable accommodation, facilities and security are not available.

The loss of liberty and personal freedom associated with detaining persons in a secure institution is akin to the situation of prisoners held in prisons. However, unlike criminals who have been extended the full protection of the law before being incarcerated, and who, as prisoners, are exposed to significant checks and balances which have been built up over time reflecting decisions of the courts and community expectations, immigration detainees appear to have lesser rights and are held in an environment which appears to involve a weaker accountability framework.

I question that the reality of the government policy of mandatory detention was for a weaker accountability process than that applied to prisoners held in the criminal justice system. In my view, it should be at least as extensive, having regard to the significant impact it has on the

lives of a growing number of people, many of whom will eventually become fully fledged Australian citizens.

My investigation was primarily focussed on the period from September 1999 to September 2000 during which my officers' inspections took place and when most of the interviews were gathered. I am mindful that this was the period in which DIMA was very stretched because of the significant surge in unauthorised boat arrivals in late 1999 and early 2000.

I acknowledge that DIMA has put a significant effort into improving the detention environment over the past twelve months. I am also encouraged by the wide range of improvements proposed or underway since my own motion investigation commenced.

DIMA has cooperated during my investigation and provided extensive comments in the later stages. This has been very much appreciated.

The Minister for Immigration and Multicultural Affairs, the Hon Philip Ruddock MP also requested that I consult with him before I form a final opinion, in terms of subsection 8(9) of the Ombudsman Act. This consultation took place on 26 February 2001.

RECOMMENDATIONS

I make the following recommendations. DIMA's responses to my recommendations are included in italics:

1. **DIMA maintain strategic and contingency/surge planning to provide capacity for the reasonable accommodation and management of volatile and potentially large numbers of unlawful non-citizen arrivals.**

DIMA has long had contingency plans in place for unauthorised boat arrivals and detention accommodation overall is constantly under review to best manage capacity, security and amenity.

The Government's long term detention strategy was announced in the 2000-01 Budget including funding additional detention facilities in Brisbane and Darwin to meet anticipated needs on a national basis.

The third quarter of 1999 saw an unprecedented and unpredictable influx of unauthorised boat arrivals. In the circumstances, rapid action was taken to comply with legal obligations, to provide reasonable accommodation, amenity and security and to significantly re-engineer and expedite visa processing.

In the case of the Woomera centre, once basic infrastructure was in place, attention turned more directly to improving amenity. There have been significant improvements at the Woomera centre during the last year and plans for further improvements are well advanced.

In the event that any future extraordinary surge in unauthorised boat arrivals is not and cannot be predicted on the basis of information available to DIMA, DIMA's response would focus, first, on ensuring that legal obligations are met. Accommodation and administrative processes would necessarily be as reasonable as the circumstances at that time allowed.

2. **DIMA ensure that the number and use of trained staff for processing detainee applications is adequate and continue to seek further whole of government solutions to reduce the time spent in detention.**

DIMA has sufficient trained staff to handle large numbers of applications from both unauthorised arrivals and people in the community within reasonable time standards based on the experience with protection visa

application rates and composition since August 1999. The detention caseload, and in particular unauthorised boat arrival cases, have always had the highest priority in the onshore protection program. DIMA has been funded for processing onshore protection cases on an output-based resource model since the mid 1990s.

Longer processing times for applications from boat arrivals in detention during the latter half of 1999 and in the first half of 2000 were attributable to a large range of factors, many outside DIMA's direct control, and not primarily to resource based delays.

DIMA has reviewed all aspects of protection visa processing to achieve efficiency while maintaining effectiveness and integrity of the process. This has resulted in processing targets being established whilst recognising that processing of unauthorised boat arrivals can vary significantly, subject to nationality and a range of other factors outside DIMA's control. Funding provided by the Government recognises the complexity of these processes.

DIMA alone cannot provide whole of government solutions in some of the areas suggested, for example, resourcing the courts and tribunals.

3. DIMA reassess the accommodation and conditions in IDCs to avoid overcrowding and provide appropriately for families, women, children and individuals with special needs, to ensure that they are not exposed to harm.

New detention centres are planned for Darwin and Brisbane and older centres, in particular Villawood, are to be upgraded.

A range of strategies address situations where notional occupancy is exceeded, for example, transfer of detainees to other centres.

A range of facilities and programs for families, women and children is in place in detention facilities and their review is ongoing. ACM has been asked to review as a matter of urgency all support programs for children, and for women and children. In the newer centres in particular, programs and facilities continue to be developed and enhanced.

Completion of upgrades to facilities at Villawood and Woomera over the next two to three months will provide further flexibility to respond to the needs of women and children. An area within the Port Hedland centre for recreational use by women and children only will be established.

To the extent possible, DIMA will continue to take steps to ensure that infrastructure development at each of the centres takes account of the desirability of having separate facilities available for women and children, recognising that there are cost implications, both infrastructural and operational. These issues will also be taken into account in the development of new centres.

4. DIMA pursue alternatives to detention for families; women at risk; children, and individuals with special needs, outside the major detention centres.

Minister Ruddock has announced that he proposes to trial some different detention arrangements than those which currently exist for women and children with a view to implementing such arrangements on a larger scale if they prove effective. Priority is being given to consultations with the Woomera town community.

5. DIMA put in place memoranda of understanding (MOUs) with State, Federal and Territory police services and other agencies regarding their involvement with IDCs and detainees.

Action had already commenced to formalise arrangements with relevant State, Federal and Territory police services and other outside agencies and DIMA is expediting the development of protocols with relevant agencies regarding their involvement with IDCs and detainees.

6. DIMA improve security in all of the IDCs.

Agreement has been reached for a range of improvements identified and further upgrading of security is underway in the light of the review of security in detention centres undertaken by a high level Government taskforce in June 2000.

7. DIMA review the legal authority to restrain and search detainees.

DIMA is examining a range of measures to ensure appropriate management of detention centres.

8. DIMA take steps to immediately improve morale within IDCs by addressing training and quality of management.

Given the diverse motivations and expectations of unauthorised arrivals, it is unreasonable to expect that DIMA can fully influence morale within detention facilities. Training and the quality of management are but two of a very complex range of factors which can, and at various times do, influence morale in a detention facility.

9. All ACM staff working in detention centres should undergo cultural awareness training on a regular basis and there should be ongoing assessment of the suitability of Australasian Correctional Management (ACM) staff for working in the detention centre environment.

Selection and training of ACM staff is a key component of the detention services contract. Cross-cultural training modules are included in ACM's standard training package. The training program for detention staff is being reviewed to ensure comprehensiveness.

Finally, I have concluded that there is a need for regular inspections of IDCs by my office. This will improve accountability and assist in improving public confidence in the detention program.

BACKGROUND

In February 1998, the Department of Immigration and Multicultural Affairs (DIMA) contracted the delivery of detention services to a private organisation, Australasian Correctional Services Pty Ltd (ACS). The company used its service delivery arm Australasian Correctional Management Pty Ltd (ACM) to deliver these functions. Prior to this contractual arrangement, immigration detention centres (IDCs) and immigration reception and processing centres (IRPCs) were operated by the Australian Protective Service (APS), a Commonwealth Government agency, on behalf of DIMA. For the sake of convenience, both IDCs and IRPCs are referred to as IDCs in this report.

My earlier investigation in October 1998 looked at the conditions of the Perth, Port Hedland, Villawood, and Maribyrnong IDCs after ACM had been managing the IDCs for a period of 9 months. My staff had observed substantial improvements in the management of the IDCs.

The most significant problem identified by my Office at the time of these 1998 inspections was the high population in some centres. Most notably, Perth and Villawood Stage 1 were clearly accommodating more detainees than they had been designed to hold. There were also a number of issues specific to each of the IDCs, which were identified in the report. In light of the move to ACM as contractor, together with the observed improvements to detention services, I decided to continue to monitor detention centre complaints and revisit the IDCs at an appropriate time in the future.

In September 1999 I decided to conduct an own motion investigation into the management and operation of the IDCs following further complaints and a number of publicly reported incidents. At the same time, I also decided to conduct a separate own motion investigation into the holding of immigration detainees in prisons.

Since the commencement of my investigation, an IDC at Curtin RAAF Base (Curtin) near Derby in Western Australia was recommissioned and a new IDC established at Woomera in South Australia, to accommodate the increased number of unlawful non-citizens who have arrived by boat and at airports in Australia since late 1999.

The number of people in detention has steadily increased over the years. Unauthorised arrivals have increased from about 1600 in 1994-95 to over 3000 in 1998-99¹. There were 3,487 people in immigration

¹ Protecting the Border : Immigration Compliance (December 1999 – p2)

detention in IDCs, hospitals and prisons throughout Australia at 30 June 2000. The following table provides a break down of the category of detainees at each of the IDCs as well as those detainees held in hospitals and prisons².

DETAINEE POPULATION 30 JUNE 2000

IDC	Males	Females	Male Children	Female Children	Total
Perth	26	1			27
Port Hedland	542	62	87	42	733
Curtin	662	60	63	41	826
Woomera	1,029	112	122	76	1,339
Maribyrnong	68	8	1	3	80
Villawood	250	57	18	14	339
Arthur Gorrie	11				11
Hospital	11	2	2		15
Prison	111	6			117
Total	2,710	308	293	176	3,487

DIMA has advised that, by 31 December 2000, detainee numbers had been reduced to 2023, with Woomera reduced to 153 persons in detention and Curtin slightly increased to 850.

² DIMA Lesley Daw, Director Detention Operations Section, email 17/8/2000.

The following tables provide details of the length of detention, at 6 June 2000³ and 31 December 2000:⁴

Length of detention at 6/6/2000	Total Population	Length of detention at 31/12/2000	Total Population
<6 weeks	302	< 6 weeks	655
1.5-3 mths	320	1.5 – 3 mths	364
3-6mths	1271	3 – 6 mths	270
6-12 mths	1668	6 – 12 mths	373
>12 mths	179	12 mths	361

It should be recognised that the detainee statistics relate to a great variety of individual situations including people with legitimate claims on Australia's protection; people with serious health problems; families with small children and those who fail the initial screening processes.

Their backgrounds vary considerably. Many simply want to secure a better future for their families. But others have a criminal record, are part of people smuggling organisations or have already had applications refused. Many have been misled about the length of time it takes to process applications. Delays in processing are increased when people arrive with no documents or pretend they are of a different nationality or ethnic group.

³ Figures provided by DIMA Detention Section 21.11.00

⁴ Figures provided by DIMA 24.1.01

LEGISLATIVE FRAMEWORK

DIMA's Responsibilities

Section 189 of the *Migration Act 1958* (the Act) requires an officer of DIMA to detain any person who the officer knows or reasonably suspects to be an unlawful non-citizen as defined by section 14 of the Act. Section 196 of the Act requires that a detained unlawful non-citizen be kept in immigration detention until removed or deported from Australia, or until granted a visa. To be eligible for the grant of a visa, an unlawful non-citizen must meet the criteria for the class of visa set out in the *Migration Regulations* (the Regulations), unless the Minister has decided to exercise one of the public interest discretions available to him under the Act, to grant a visa.

Immigration Detention

Immigration detention is defined in section 5 of the Act as being in the company of, and restrained by, an officer or another person as directed by the Secretary (of DIMA) or being held by or on behalf of an officer in:

1. (i) a detention centre established under the Act;
- (ii) a State or Territory prison or remand centre;
- (iii) a police station or watch house;
- (iv) a vessel; or
- (v) another place approved by the Minister in writing.

Mandatory Detention

Section 189 of the Act prescribes that an unlawful non-citizen must be detained when an officer knows or reasonably suspects that the person is an unlawful non-citizen, or if in Australia, the person would be an unlawful non-citizen. Section 196 requires that an unlawful non-citizen be detained and kept in immigration detention until he or she is removed from Australia, deported or granted a visa.

Recent Amendment to the Migration Act 1958 – Protection Visas

On 20 October 1999, the Migration regulations were amended so that unauthorised arrivals found to be owed protection obligations are only eligible, in the first instance, for the grant of a temporary protection visa, valid for three years, rather than a permanent protection visa.

Temporary protection visa holders are not eligible for the full range of Centrelink benefits, nor can they access the settlement services provided to refugees who enter Australia lawfully. Additionally, holders of Temporary Protection Visas have no right to sponsor their families to

join them in Australia and have no automatic right of re-entry if they depart Australia.

The new visas permit refugees on temporary protection visas to:

- be able to work;
- be eligible for Special Benefit, Rent Assistance, Maternity and Family Allowance and Family Tax Payment;
- gain access to Medicare benefits;
- be eligible for referral to early health assessment and intervention programs;
- be eligible for torture and trauma counselling; and
- be able to apply for a permanent protection visa which may be granted after 30 months, if they still need protection⁵.

Separation Detention

Separation detention is an administrative arrangement that restricts a person or a group of persons to a particular area of a detention facility on initial arrival at or prior to removal from a facility⁶. Detainees are kept separate from the main population of the IDC and are not permitted to make telephone calls to, or correspond with, people in the Australian community. Telephone calls or correspondence to relatives overseas is permitted⁷. Persons in separation detention are able to interact with others at the same stage of processing and have access on request to the Red Cross, HREOC, UNHCR, my office, legal advisers and consular officials.

Detainees remain in separation detention until DIMA determines whether or not they raise claims or provide information that prima facie may engage Australia's international obligations or their eligibility to make another visa application. The Act removes any obligation on DIMA to provide access to legal advice or visa assistance unless specifically requested by the detainee⁸.

Processing Applications

After arrival in Australia, unlawful non-citizens are interviewed by DIMA officers to establish their identity, where they are from, their reasons for being in Australia and if, prima facie, the person may engage Australia's protection obligations. Persons who do not raise claims or information that prima facie may engage Australia's international obligations and do

⁵ DIMA *Fact Sheet 63 Temporary Protection Visas* 21 January 2000.

⁶ Immigration Detention Standards, Schedule, p14 .

⁷ HREOC, *Those who've come across the seas. Detention of unauthorised arrivals*, Commonwealth of Australia, 1998, p131.

⁸ Section 193(2) of the *Migration Act 1958*.

not apply for a protection visa (or any other visa) are removed from Australia as soon as is reasonably practicable.

The interviews are conducted with the assistance of an interpreter and are taped to ensure that there is an accurate record of the interview. A senior DIMA staff member who has training and experience of Australia's international obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees assesses the report of the interview.

Where a person raises claims that prima facie may engage Australia's international obligations they are eligible to use, and are automatically provided with, publicly funded migration agents (usually lawyers) to assist in the preparation and lodging of Protection Visa applications. This occurs at the IDC where the applicants are detained. Migration agents from a contracted Immigration Application Assistance and Advice Scheme (IAAAS) service provider visit the IDC and assist applicants.

Within a few days of lodging their application, applicants are interviewed at the IDC by a DIMA case officer in the presence of their migration agent and an interpreter. DIMA officers travel to the IDC to conduct the interviews from offices around Australia. Front end loading (that is the commencement of concurrent health, security and character checks within 2 to 3 weeks of arrival in the detention facility) was introduced progressively from early 2000 and was fully in place by April 2000. After the interviews have been conducted the case officers assess whether the applicant meets the main refugee criteria and health and character criteria. Applicants must meet all criteria at time of decision to be granted a protection visa. DIMA draws on all available and relevant information concerning the human rights situation in the applicant's home country. Information is available via DIMA's Country Information Service (CIS) which provides current information about political, social and human rights conditions in the applicant's countries of reference.⁹

If the applicant, in the view of the Department, is found to be owed protection obligations under the Convention and Protocol, and meets health and character requirements, the applicant will be granted a protection visa. The person is then released from detention and is free to live anywhere in Australia. In the event that the application is not approved the applicant is entitled to further publicly funded assistance including the preparation and lodging of an application for review of the negative decision to the Refugee Review Tribunal.

⁹ DIMA Fact Sheet No 88, *Processing Unlawful Boat Arrivals*, June 2000.

Those unauthorised arrivals who do not apply for a visa, or whose visa application is rejected finally, including all forms of review, are removed from Australia as soon as reasonably practicable, as required by law.

Contractual Issues

DIMA entered into a contractual agreement with ACS on 27 February 1998 for the provision of detention and transport services throughout Australia. The detention agreement comprises three separate contracts with ACS:

- General Agreement - which sets the scene for the relationship with the contractor;
- Occupation License Agreement - which provides the contractor with the authority to use immigration detention facilities; and
- Detention Services Contract - which sets out the detail of the services to be delivered. This contract has a number of schedules, including the immigration detention standards and performance measures¹⁰.

¹⁰ DIMA, *Detention Agreements between the Commonwealth of Australia and Australasian Correctional Services Pty Ltd*, 27 February 1998.

INVESTIGATION

The Ombudsman inspected both Maribyrnong and Villawood IDCs in May 1999. My staff carried out inspections initially in December 1999 at Maribyrnong, Villawood and Arthur Gorrie Correctional Centre. In July 2000 visits were made to Maribyrnong, Villawood, Perth, Port Hedland, Woomera and Curtin. Details of these facilities are at Attachment 1. During these visits security issues were examined and several recommendations were made to DIMA (see Attachment 2).

My office also examined DIMA departmental files; Immigration Detention Standards; Complaints Handling Mechanisms for IDCs; draft Memoranda of Understanding and protocols between DIMA and State Police; various DIMA instructions; ACM induction briefings for ACM staff; ACM Health Services Policy and Procedure Manual; ACM Handbook for Supervisors; and Detention Agreements between the Commonwealth of Australia and Australasian Correctional Services Pty Ltd.

Informal interviews were conducted with DIMA and ACM staff. Comments and information were also received from a range of individuals and organisations (see Attachment 3). In addition, my staff have interviewed a number of witnesses, including detainees, ACM staff and former employees of ACM.

Copies of ACM incident reports relating to Perth, Port Hedland, Curtin, Woomera, Maribyrnong, and Villawood were available for examination. As the purpose of this investigation was to examine the processes and procedures in place at IDCs, individual incidents were not examined in detail, particularly as to how they were followed up. However, in the light of the nature of many of the incidents reported, I have decided to commence a separate own motion investigation into the management and follow up of incident reports. This investigation is not yet completed.

Complaints received from detainees, other agencies and individuals over the past two years and the issues arising from these complaints were re-examined as part of this investigation. Particular attention was given to the complaints that might suggest underlying systemic problems with the management and operation of the IDCs. 85 complaints relating to detention were received during the period 1 September 1999 to 1 September 2000.

The Evidence

My officers were able to see first hand the conditions and protocols under which unauthorised non-citizens were detained. They were provided with statements from credible people at the centres and other credible witnesses. The evidence considered ranged from the first hand experiences of ACM and DIMA staff, those providing services at centres including nurses, to other involved organisations and individuals, and included some detainees.

DIMA staff at centres and Central Office cooperated fully and their extensive information and comments have been very much appreciated.

General Themes

Overall, the information revealed recurring themes arising from overcrowding, frustrations from delays in processing and problems associated with co-location of a large number of single males with families, women and children in a communal living environment.

Overcrowding was a particular problem at the Villawood Stage 1 and Perth IDCs on a number of occasions and the incident reports reflect that at times the number of detainees accommodated in Stage 1 at Villawood was in excess of the capacity of the facility by as much as 50%. Perth IDC also experienced overcrowding and it was necessary to transfer a number of detainees to Port Hedland on one occasion.

Frustration and distress was evidenced by a number of reports of self-harm, suicide attempts, and damage to the IDC equipment as well as self-imposed hunger strikes. Tensions apparently developed between different ethnic groups within the IDCs and ACM reports contained records of fights, assaults and threats to kill.

Children were not excluded from such tensions as there were reports of a number of children being subject to alleged assaults by adult male detainees and there were also allegations of sexual assault on children.

There were also a number of incident reports involving aggressive behaviour by detainees to both ACM and DIMA staff at the centres, ranging from refusals to comply with staff requests, verbal abuse, threats of assault, and death threats. There were reports of ACM staff, both male and female officers, being assaulted by detainees. Such attacks were said to have come from individuals and groups of detainees. Detainees were also recorded as making a number of escape attempts and escapes from the IDCs.

Strategic and Contingency Planning

Strategic and contingency planning including for unauthorised boat arrivals, has been undertaken at varying levels over many years. For example, DIMA has advised that in the mid 1990s contingency planning took account of a possible continuation of unauthorised arrivals in high numbers and looked to expand capacity for up to 10,000 detainees.

I note that in recent years successful return arrangements and reduced numbers of arrivals saw boat detainee numbers reduce with fewer than 50 detainees in Port Hedland on 30 June 1998. In late 1998 consideration was being given to mothballing this IDC.

I also acknowledge that numbers of arrivals, particularly by boat, has been volatile; that the construction of appropriate facilities requires considerable lead times; and that it does not make sound economic sense to have expensive facilities lying idle for long periods.

However, the issue of overcrowding in most IDCs has been a concern well before the large numbers of boat people started arriving in late 1999. Indeed, My Senior Assistant Ombudsman, Southern Region wrote to DIMA in August 1999 seeking advice on DIMA's contingency plans for dealing with problems in IDCs, including overcrowding. I have also been aware that consideration has been given to replacing Villawood on a greenfields site for some years.

DIMA has acknowledged that accommodation at Villawood Stage 1, Maribyrnong and Perth IDCs have, from time to time, been above "notional" levels. I suggest that accommodation of some 50 people at Villawood Stage 1 on mattresses on the floor in late 1999 is rather more than notional. In my view, overcrowding in many IDCs has been a systemic deficiency.

Refugees from the Middle East had arrived in small numbers in a number of boats earlier in 1999, while unlawful refugee movements to Australia from South East Asia by air remained static. In light of the steady increase in unlawful arrivals by boat from the Middle East in the first half of 1999, well organised attempts by more substantial boats should not, in my view, have been unexpected. This and other indicators pointed to the increase in numbers arriving by boat in August continuing at a high level.

I am mindful that 1999 was a year of considerable complexity for DIMA. In March/April 1999 Australia responded to a request by UNHCR to contribute to temporary safe haven for some 4000 Kosovars who started arriving in early May. And following the violence in East Timor in

August 1999, the Minister offered temporary safe haven to East Timorese on 14 September 1999.

Nevertheless, it is clear that while strategic planning, including resource allocation, and whole of government consideration of the issues associated with large numbers of unlawful boat arrivals, improved markedly after the middle of 1999, DIMA was simply not expecting the very considerable surge in numbers that arrived towards the end of the year.

DIMA has stressed that it and the Government had retained a prudent detection and processing capacity well in excess of historical needs and reasonable forecasts, to ensure that it could respond to a significant fluctuation in arrivals. DIMA has also argued that, in what it describes as an unprecedented emergency situation it responded to amenity and security as well as the circumstances allowed. I acknowledge that once the decision to open Woomera was made its construction was expedited by DIMA.

Nevertheless, given a policy of mandatory detention, it is not acceptable, in my view, that a sudden surge, however great, excuses the detention of unlawful non-citizens in accommodation and facilities that are substandard or overcrowded which potentially increases the risk of exposure of detainees to harm.

However, I am pleased to note that DIMA announced a 10 year strategic plan in May 2000, and that DIMA was successful in securing funding in the 2000-2001 budget for additional detention facilities in Brisbane (200 detainees) and Darwin(500 beds with a further 1500 beds to accommodate peaks in boat arrivals in the future) to meet anticipated needs on a national basis; and that in the previous budget a major upgrade of Villawood was announced.

Women at Risk and Children

There were nearly 800 women and children in detention centres at 30 June 2000, living in close association with 2700 males, most of whom were unaccompanied. Women who do not have a partner, family friend or male relative accompanying them and their children, or young unattached children, are at greater risk in a detention environment than single adult males or larger family units.

While there are some separate facilities at some of the IDCs (see Attachment 1), evidence taken from detainees, employees and former employees of ACM together with the appraisal of incident reports, indicates there were a worrying number of reports of indecent assault

and threats towards unattached women and children who represent the groups at highest risk.

In my view, the accommodation and monitoring/care arrangements at IDCs did not come up to what I would regard as a minimum acceptable standard to ensure that those at greatest risk are not exposed to harm. This was particularly the case at Woomera IDC.

I consider that remedial action needs to be undertaken by DIMA to provide separate accommodation, dining, recreational areas and increased preventative monitoring for families, women and children in all IDCs where they may be detained.

DIMA has provided details of further work being undertaken to cater for families and women and children in IDCs. While these are constructive steps, in my opinion, the nature of the evidence argues strongly for families, women and children to be moved to separate detention facilities where they would not be exposed to the potential harm that is apparent where they are detained for lengthy periods in free contact with large numbers of single males.

Long Term Detention

While I recognise that detention periods can be extended when refused applicants enter the appeals process, it is clear that the long-term detention of immigration detainees is a source of frustration, despondency and depression often resulting in drastic action being taken by the detainees. This I note has been manifested in many recorded incidents of self-harm, hunger strikes and attempted suicide.

DIMA is aware of the consequences of long-term detention and has incorporated into its detention standards requirements for ACM staff to be trained to recognise and deal with symptoms of depression and psychiatric disorders and to minimise the potential for detainees to inflict self-harm. However, it would appear to be a growing source of problems and unrest within the detention environment.

My office has previously reviewed the Onshore Protection area in DIMA on two occasions, in 1997 and in 1999. Concerns were identified in regard to resourcing and training of staff in that area. These matters were brought to the attention of DIMA. It is clear that until the backlog of applications from persons in detention are addressed, this issue will continue to remain a source of unrest within the IDCs.

I note in this regard that the Senate Legal and Constitutional Reference Committee also recommended that, "...the Government ensures

decision-makers are well enough resourced to facilitate proper assessment of claims for refugee status”¹¹.

The handling of long term detainees has been a problem for some years, and this is a matter for concern. It is arguable that legal precedent implies that it is unreasonable to hold people in detention for periods beyond which it is reasonably necessary to process their applications (see for example *MIMA v Betkhoshabeh* [1999] FCA 980 (20.7.99)). DIMA agrees with this view but notes that, in practice, periods required to reach a primary decision can be lengthy for reasons beyond DIMA’s control.

While I recognise the difficulties and complexity associated with the detention of young children, I question whether better solutions could not be found for families with young children so that they are not compelled to grow up in detention. In this regard, DIMA has advised on 2 February 2001 that of the population still in detention at that time, seven children were born in detention and remained in detention, the oldest having been some 19 months in detention. Also, while I hope that this is an isolated case, I am aware of a child born in detention in July 1996 and still in detention in April 2000.

I acknowledge that the management of long term cases is a complex issue and that DIMA has been active in expediting Federal Court litigation and negotiations with foreign governments. However, a solution that would make a significant contribution towards addressing the problem is to adequately resource all areas of Government which impact on the timeliness of the detention process. This should include tribunals, courts, lawyers, DIMA and other agencies’ resources devoted to achieve outcomes, described by DIMA as out of its control.

In addition to provision of additional processing resources, in my view, DIMA should also develop and implement other contributory solutions such as:

- more adequate monitoring than in the past of those receiving negative advice on their applications;
- better separate detention for the longer term detainees with improved security with a view to also limiting their influence on more compliant detainees; and
- better detention solutions for families/women and children.

¹¹ SLCRC, *A Sanctuary under Review. An Examination of Australia’s Refugee and Humanitarian Determination Processes*, June 2000, p 416.

Morale and Cultural Issues

It is clear from the recent disturbances in detention centres that morale in IDCs is a significant issue. My staff noted a marked difference in morale of detainees and the mood within the various IDCs during inspections. For example, Woomera IDC presented as a stark place lacking warmth or a sense of community. By way of contrast, Curtin had a good sense of community and a family atmosphere clearly engendered by a caring management. This has also been borne out by evidence obtained from witnesses, including ACM employees.

What makes the difference? It was not just more well established infrastructure. Education facilities, for example, were more cheerful and conducive to influencing the conduct of children and adults at Curtin, as they were to a slightly lesser extent at Port Hedland. They were limited at Woomera and satisfactory at Maribyrnong.

It is important to provide adequate recreational activities for detainees including sport and handicraft. These need not be at great cost and my staff noted the use of outdoor areas at Curtin for growing vegetables and flowers; playing sport; and groups meeting and exercising. Again by way of contrast Woomera provided little that was visible in the way of constructive activities.

I also consider that providing opportunities for religious observance is important. This should cater for all detainees not just the majority who currently are Muslims. Appropriate accommodation should be set aside to ensure that space be made available for detainees to follow their own religious observances. While I note that this does appear to take place in most detention centres, it was limited in Woomera.

While Curtin is seen as perhaps the most suitable of the larger detention centres because of its friendly and low key environment my staff are advised that it is most likely to be closed in the longer term. By way of contrast, Woomera warranted a great deal of effort to upgrade it to make it a more humane and harmonious environment suitable for longer-term detention.

Attitudes and cultural issues within ACM staff that I have mentioned earlier, may also contribute to poor morale, particularly at Woomera. It is also fair to say that this problem is not solely confined to Woomera, but has been a source of complaint for all IDCs over the past year save for the Arthur Gorrie Correctional Centre.

My staff were impressed by the proactive management of the DIMA Business Manager at Curtin and consequently, concluded that a factor

contributing to better morale and cultural recognition at the IDCs could be related to the experience and quality of the DIMA managers.

While I recognise that there have been improvements made to facilities and programs in recent times, particularly at Woomera, morale is not just about “bricks and mortar”, but about treating detainees with respect and dignity.

Timeliness

DIMA's target in 1999-2000 for processing Protection Visa (PV) applications once lodged by persons in detention is that 80% of applications from applicants in detention were to be finalised within 42 days of lodgement¹². An analysis of the detention primary protection visa caseload at 30 June 2000 shows that this standard has not been met and that there were lengthy delays in processing of applications (see table¹³).

AGE ANALYSIS OF DETENTION PRIMARY PV CASELOAD ON HAND AS AT 30 JUNE 2000

Age	No. of Applications	% of Applications
<1 month	592	24.6
1 month to 3 months	736	30.6
3 months to 6 months	835	34.7
6 months to 1 year	213	8.8
>1 year	32	1.3
TOTAL ON HAND	2408	100

In 1999/2000 less than 50% of primary applications were finalised within the service standards of 42 days for applicants in detention and 90 days for others applying onshore¹⁴. DIMA acknowledges that a less than optimal result is due to delays in obtaining supporting and verifying information and in undertaking mandatory checking processes which are outside its control.

DIMA has advised that processing is also delayed by many recent boat arrivals not having documentation or other proof of identity and extensive checking being required to confirm basic identity and nationality claims and to identify people of character concern. DIMA

¹² DIMA's 1999-2000 Annual Report p49

¹³ (Source: Outcomes Reporting Section, December 2000)

¹⁴ Lesley Daw, letter of 17 August 2000

has stated that detention cases, and unauthorised boat arrivals in particular, have been and continue to be the highest priority in the onshore protection program.

Since commencing the investigation, I note there has been an improvement in processing times. DIMA has advised that the 45% of arrivals July to October 2000 who had at that time received a primary decision have been in detention for less than 2 weeks on average prior to making an application with an average of less than 5 weeks between application and primary decision. However, at 31 December 2000, there were still a total of 5235 primary Protection Visa applications on hand of which 750 were in detention and 1700 were East Timorese in the community. The balance were applicants at large in the community.

In my view, the timeliness of the application process is a fundamental causal factor behind the events that give rise to many of the incident reports. Clearly, there will always be some incidents arising out of detention, contributed to by the frustration and disappointment of people who are detained against their will. However, the length of time that they are detained clearly affects the levels of anxiety, depression and/or anger experienced by detainees which can then influence their behaviour.

DIMA has acknowledged that resources were a factor, including that the number of case managers did not increase as quickly as might have been desired during the second half of 1999. DIMA advises that there was a steady increase in decision makers/case officers from less than 50 in July 1999 to 106 in June 2000.

I consider that appropriate levels of resources should be provided to maintain the primary process to a reasonable standard, such as the six weeks identified by DIMA. To the extent that the Department is able to process applications more quickly, the increased throughput of detainees will reduce the pressure on the detention facilities and lessen the need for expensive capital works involved in increasing their capacity.

DIMA maintains that there is currently adequate processing capacity within Onshore Protection. We will continue to monitor this issue.

ACM Contract

Performance issues

DIMA's approach to the contracting out of detention and transport services was to enter into a 'strategic alliance' with ACS rather than a strictly contract driven relationship although it is underpinned by a

Specific Detention Service Contract. DIMA has stated that this relationship is expected to deliver a high level of quality in the services provided and in the accountability of the services, with the benefit of cost and efficiency savings to the Commonwealth in the long term; the detention agreement is not prescriptive on how the services are to be delivered but is prescriptive in terms of accountability; and the focus is on the service provider's performance and the need to achieve quality outcomes¹⁵. DIMA has emphasised that, within the 'strategic alliance' framework, strict contractual arrangements are in force.

The general agreement specifies that a performance review will evaluate the service delivery performance of ACS against the performance measures for the services. The detention standards were developed by DIMA during the course of 1997 and incorporate a substantial number of amendments following consultation with my office. DIMA has released the contracts in an edited format into the public arena but has omitted: timeframes for performance; payment amounts; guarantees; detention services fee; performance measures; benchmark performance points; cure periods (time permitted to rectify a default); and milestone dates from the implementation plan. DIMA has declined to make this information publicly available for legal and 'commercial-in-confidence' reasons. DIMA advises that the main reason that the contract has not been disclosed in full at this time is because the Commonwealth is currently involved in litigation with one of the unsuccessful tenderers. DIMA states that it has received legal advice that to release the contract in full could compromise the Commonwealth's position.

It is possible that the contractual terms that impose penalties on ACM if their performance results in escapes and other incidents could produce an incentive to ACM staff that would lead to under reporting. In my view, it is important that in negotiating any renewal or new contract that any incentives to under reporting be removed. I will be considering this issue in my own motion investigation into incident reports.

While I do not see the role of my Office as participating in the assessment of the ACM performance in meeting the detention standards, my Office does respond to complaints about administrative issues and provides feedback to DIMA where we see an underlying cause that is capable of correction. I have raised the issue of the need to have a clear framework for DIMA to produce some public reporting arrangement of its own to indicate where performance targets were not being met.

¹⁵ DIMA, *Detention Agreements between the Commonwealth of Australia and Australasian Correctional Services Pty Ltd*, 27 February 1998

DIMA has provided additional resources and restructured the Detention Operations Section. DIMA has stated that it will explore what opportunities exist for public reporting against the Immigration Detention Standards. It also proposes to strengthen performance monitoring of ACM by increasing operational meetings at IDCs.

Staff Cultural Issues

While the Immigration Detention Standards require ACM staff to have an understanding and appreciation of the diversity and cultural backgrounds of detainees,¹⁶ evidence and documents provided from a wide range of sources, including detainees and ACM employees, suggest that within the detention environment there are cultural or attitudinal problems with some ACM staff.

Information of racial abuse, insensitivity and inappropriate comments, as well as a heavy-handed approach have been brought to my attention in relation to all IDCs.

Examples of this, provided by witnesses, were a poem and drawings purportedly by ACM officers, which I was advised, were widely available within the Woomera IDC.

While I have been requested by witnesses not to pursue individual complaints, largely because of the fear of retribution raised by detainees, former detainees, ACM officers and former officers, evidence taken from credible witnesses about the inappropriate use of force, unnecessary “trashing” of rooms for no apparent reason and the alleged harassment of detainees by some ACM staff raise questions about the attitudinal behaviour and training of the staff.

Clearly, behaviour of this nature demonstrates that greater efforts are needed to create a cultural awareness which avoids any suggestion of antagonism or harassment by staff towards detainees.

One of the difficulties ACM has had to contend with has been the need to provide extra staff on short notice, particularly after Woomera and Curtin were commissioned. Many of these personnel were prison officers drawn from ACM’s private prisons whose background and training would not necessarily readily equip them to work in a detention centre where the environment and the nature of the detainees differs markedly from a prison (or at least it should).

I consider that this issue is best addressed by ensuring that ACM staff receive regular training in cultural awareness and conducting ongoing

¹⁶ Immigration Detention Standards, Schedule, p 5.

assessment of the suitability of ACM staff for working within the detention centre environment.

Duty of Care

The immigration detention standards stipulate that, "In its operation of detention facilities the service provider [ACS] will be under a duty of care in relation to the detainees". The contract further stipulates that ACS "... is responsible for the care, supervision, control and welfare of Detainees"¹⁷. While the contract states that, "Ultimate responsibility for the detainees remains with DIMA at all times"¹⁸, the general agreement provides for ACS to indemnify the Commonwealth against all damages for which the Commonwealth is or may become liable, including the acts or omissions of ACS, its personnel or subcontractors¹⁹.

Despite this indemnity, DIMA has a duty of care to ensure that detainees are kept and maintained in a safe and secure environment. The report of the Parliamentary Joint Standing Committee on Migration titled *Immigration Detention Centres Inspection Report* supported this view when it stated that "... the Australian Government and ACM, as service provider, have a duty of care to detainees and all actions relating to the detention and care of detainees must be consistent with the relevant Commonwealth and State laws"²⁰.

DIMA has clearly taken responsibility for detainees' care, supervision and control by placing them under immigration detention. I consider that this places DIMA in the role of having a special and more stringent "non-delegable" duty of care. High Court rulings indicate that in certain categories of cases the nature of the relationship between the parties would give rise to this more stringent responsibility. This is spelt out in *Burnie Port Authority v General Jones Pty Ltd* (1994) 179 CLR 520. In this case their Honours defined the relevant inquiry, as being whether there is a special dependence or vulnerability on the part of that person to whom the duty is said to be owed²¹. This test would seem to be satisfied by immigration detainees.

In the case of *Kondis* (1984) 154 CLR 672 Mason J. explained that a "personal" non-delegable duty of care differs from the basic duty under negligence law as, rather than requiring DIMA to "take reasonable care", it requires it "to ensure that reasonable care is taken". The

¹⁷ Immigration Detention Standards, Schedule, p 1.

¹⁸ *ibid.*

¹⁹ General Agreement, pp 51-52.

²⁰ JSC on Migration, *Immigration Detention Centres Inspection Report*, House of Representatives, August 1998, p 5.

²¹ *Burnie Port Authority v General Jones Pty Ltd* (1994) 179 CLR 520 p 520.

wording of Mason J in *Stevens v Brodribb Sawmilling Co Pty Ltd*²² can equally be applied to DIMA's arrangement with ACS. His Honour stated that "... a principal who engages another to perform work will be liable for the negligence of the person so engaged ..." regardless of the fact that a principal may have exercised reasonable care in the selection of the other party²³.

In my view (which DIMA accepts), DIMA is not able to pass on its duty of care to ACS but rather, remains responsible notwithstanding its contractual arrangements with ACS. The existence of any contractual arrangements, MOU or other link, financial or otherwise, between DIMA and ACS is irrelevant to DIMA's non-delegable duty of care.

I also consider that DIMA's duty of care towards detainees requires it to ensure that detainees are held in a safe and secure environment. This is why I have provided comments on specific security issues in relation to each IDC. Detainees should not be held in an environment where the security is vulnerable to escape bids, thereby putting detainees, ACM personnel and innocent bystanders at risk.

Holding of Detainees in Prisons and Policy Custody

While DIMA has guidelines on holding detainees in prisons and police custody, this is an area that warrants review. I have also conducted an own motion investigation into DIMA's holding of detainees in prisons following a number of complaints on this issue.

It is undesirable, in my view, to hold normal detainees in prisons such as in the case with Arthur Gorrie Correctional Centre, where they mix with convicted or remand prisoners. Such an arrangement blurs the distinction between the different status of detainees and criminals; it exposes them to an environment of the criminal culture and helps to encourage a belief in the community that detainees are being treated no differently to convicted criminals.

Authority to restrain

On many occasions DIMA and ACM staff restrain or take disciplinary action against detainees. This can take the form of use of force to remove or restrain, handcuff, or to forcibly place a detainee in a more restrictive detention facility such as isolation.

While it appears that a number of provisions of the Act confer some powers in this regard, it is arguable whether they clearly express or

²² *Stevens v Brodribb Sawmilling Co Pty Ltd* (1986) 160 CLR 16

²³ *Stevens v Brodribb Sawmilling Co Pty Ltd* (1986) 160 CLR 16,32.

particularise adequately the methods of restraint or punishment that might be imposed.

Moreover, the Act does not appear to provide staff with the powers to conduct intrusive searches of the detainees or to search visitors to IDCs for drugs, weapons and the like.

In my view, the Act should be reviewed and if necessary amended to provide appropriate powers and comprehensive guidelines on the exercise of these powers should be made available to staff and the public.

Relationships with Other Agencies

State and Territory Police

The Act states that a member of the Australian Federal Police or of a police force of a State or an internal Territory is deemed to be an Immigration Officer. As such they have the power to detain persons who are or are suspected to be illegal immigrants and take them into custody. Additionally, an Immigration Officer may request another Immigration Officer to take a detainee into custody and hold them in police custody or transfer them to some other place of detention such as a prison.

My investigation of the incident at Maribyrnong Detention Centre on 22 July 1999 and the number of incident reports from the various IDCs recording the involvement of State Police have highlighted the importance of DIMA entering into memoranda of understanding (MOUs) with police services in relation to their role in assisting DIMA and to establish guidelines for dealing with those matters which warrant the involvement of State and Territory Police. This should also include the Australian Federal Police because of its role on Christmas Island and the ACT.

In addition, it is important that State and Territory police have a clear understanding of their role when called upon by DIMA. This is best established by developing a formal agreement with the respective police services.

I note that DIMA advised my office in November 1999 that it is currently negotiating a MOU with the South Australian Police and that once this MOU is finalised it will be used as a template to negotiate similar arrangements with the other State police forces. Further correspondence took place with DIMA on this issue in February 2000 and was raised in meetings in August 1999 and June 2000. DIMA advise that the draft MOU is currently being fine-tuned.

Australian Protective Service (APS)

As with State and Territory police, the Act also provides for Protective Service Officers for the purposes of the *Australian Protective Service Act 1987* to be considered as Immigration Officers.

There was a MOU between APS and DIMA when APS was responsible for the management of detention centres. However, this MOU expired at the end of 1997 when ACS became responsible for these services.

There is also a need for DIMA to have an MOU with the APS. There does not appear to be a clear understanding of the role the APS would play should an incident occur. In my opinion, it is essential that the APS role be clearly documented in a written MOU to formalise their role and responsibilities whilst acting as Immigration Officers or in assisting DIMA to staff IDCs.

Use of Firearms by APS

During my officers' inspection of the Woomera IDC armed APS guards were observed patrolling the perimeter fence. When they questioned the appropriateness of the APS guards carrying firearms, the APS acknowledged that the firearms would not be used in the event of a breakout and that there was a contingency plan to collect the firearms and secure them elsewhere if such an event occurred. Given this arrangement, it appeared that the firearms had a substantially greater potential for risk to life than their usefulness. Strengthening the perimeter fence would also reduce the need for the existence of an armed presence in any event.

I consider that firearms are not appropriate in a detention environment and should not be used or carried by ACM or APS staff. If a matter is of sufficient seriousness to warrant the use of firearms, State Police should be requested to intervene.

DIMA has advised that, following our raising the matter, APS personnel stationed at Woomera will not carry firearms. This highlights the importance of having a clearly defined MOU governing the role and conduct of APS when used in a support role at IDCs.

Department of Defence

The Curtin IDC was commissioned in September 1999 and DIMA developed a MOU with the Department of Defence (DOD), which covers part of the RAAF Curtin base. Other parts of the Air Base are prohibited areas under the Defence Act and the Commonwealth Crimes Act.

DIMA has advised that it is looking to the continued use of the Curtin IDC for the time being, until more long-term arrangements are made.

The Woomera IDC was commissioned in November 1999 and DIMA has established an MOU with the DOD, which covers the area of the centre on DOD land. The centre is being expanded and I understand that DIMA is looking to the continued use of this IDC.

ATTACHMENT 1**IDC ACCOMMODATION AND FACILITIES****Perth IDC**

The Perth IDC is located at the Perth airport and is of brick construction. The IDC was built in 1981 and has a capacity of 40 persons and can accommodate 32 single males and 8 single females. There are no separate recreational areas for women and children and in order to use the existing facilities they require an escort by ACM staff. The centre is not designed to provide accommodation for families. However, during their visit my staff observed that the female dormitory was being used to accommodate a mother and her young daughter.

Port Hedland IDC

The Port Hedland IDC is located in Dempster Street, Cooke Point, in a residential area of Port Hedland. The IDC was previously a mining company's single men's quarters and was purchased in 1991. The centre has a capacity of 950 persons. It encompasses an area of more than 3 hectares and includes a number of two storey brick accommodation blocks with ancillary buildings including a dining and kitchen area, freezer room and maintenance sheds.

Separation detention facilities were also inspected at the Port Hedland IDC. They consisted of a separate accommodation block and compound fence that prevented viewing by detainees inside or outside the compound. ACM staff were observed near the separation compound fence apparently keeping the long-term detainees from speaking with any new arrivals.

Curtin IDC

Curtin IDC is located on the Curtin RAAF Base 36 kilometres from the township of Derby in Western Australia and was recommissioned in September 1999. The centre includes a number of single storey demountable accommodation buildings with ancillary demountables providing a dining room, kitchen, educational and recreational facilities. The centre has a capacity of 1,200 persons.

Curtin IDC had a separation detention compound consisting of demountables and an internal space between the boundary and internal compound fences. My staff observed that there was a one-strand barbed wire fence supported by star pickets within the separation compound. Despite the white cloth strips attached to the wire and an ACM officer being positioned near the fence, my staff were concerned that the wire represented a safety hazard as it was at about head height

for children. The DIMA Manager advised that the wire had been established to deter detainees from getting too close to the internal fence and a mesh fence of the same height was progressively replacing this fence.

Overall, Curtin gave the impression of being a very well run centre with a more relaxed atmosphere than the other centres.

Woomera IDC

The Woomera IDC is located 3 kilometres from the township of Woomera in South Australia and was commissioned in November 1999. The centre consists of a number of single storey demountable accommodation buildings and two old single storey brick barrack type buildings with ancillary demountables providing a dining room, kitchen, educational and recreational facilities. The centre had a capacity of 1,285 persons at the time of inspection. During their visit to the centre on 3 July 2000 my staff observed that another large compound was being established. They were advised that this will also contain demountable buildings. Overall, the IDC will be able to accommodate up to 2,000 people when current construction is completed in 2001.

Woomera IDC also had a separation detention area. My staff observed that detainees in the designated separation compound, which adjoined a general compound, were able to converse with one another through the wire mesh fence. There was no internal fence in either compound which could provide a buffer between the two compounds. The DIMA Manager explained that ACM staff normally discouraged such interaction between the compounds. At the time of the inspection it was not being used for separation detention but as an extension of the main compound.

Maribyrnong IDC

The Maribyrnong IDC is located at 53 Hampstead Road, Maidstone in a light industrial area of Melbourne. However, residential accommodation is currently being constructed on the adjoining land. The IDC is a single storey brick constructed facility, which was established in 1966 and occupies approximately 0.4 of a hectare in area. It has a capacity for 80 persons. The centre includes provisions for women only dormitory accommodation and there are also four family units.

Villawood IDC

The Villawood IDC is located in Miowera Road in a residential suburb of Sydney. The complex includes two centres known as Stage 1 and Stage 2. The former accommodates high risk and short duration detainees while the latter contains low risk and longer term detainees.

Stage 1 was built in 1976 and comprises single storey brick dormitory accommodation for 75 and a two-storey administration centre. It has an area of 1.35 hectares. The overall appearance was shabby and showed signs of constant wear and tear. It was noted that a new 40 bed demountable was being installed at the time of inspection which will increase the capacity to 115 detainees.

Stage 2 was originally built as a migrant hostel, which was converted in 1991. It covers an area of 3 hectares comprising a number of two storey brick buildings and several temporary demountable buildings with ancillary buildings providing a dining room, school and entry building. It currently has accommodation for 400 people.

Arthur Gorrie Correctional Centre

The Arthur Gorrie Correctional Centre (AGCC) is a maximum security prison run by ACM under contract to the Queensland Correctional Services, located at 3068 Ipswich Road, Wacol, near Brisbane and is primarily a reception and remand facility. It is also used to accommodate a number of immigration detainees. It is about 8 years old designed in conjunction with ACM and operated by ACM.

The centre comprises a number of separate, self contained units with their own outdoor areas, a main reception, modern medical and recreational area and a number of communal grassed areas within the perimeter fence. One self contained unit is designated as an immigration detention centre which can accommodate up to 36 male immigration detainees.

Women and children detained in Queensland are currently accommodated in a local motel before being removed from Australia or taken to another IDC. Selected remand prisoners without any violence or drug related offences may be accommodated in the IDC wing at the discretion of ACM. This arrangement is set out in a now expired memorandum of understanding with the Queensland Correctional Services.

Detainees are able to access the same services as prisoners including education and work programs but are also subject to the same conditions including being locked into their rooms at night and restrictions on telephone calls and visitors. AGCC is not intended to be a long term IDC and asylum seekers are generally transferred to Villawood or another IDC. However, some detainees have been in AGCC for up to two years awaiting criminal deportation.

The detention wing itself is modern and well equipped with detainees having their own rooms with toilet and televisions. Whilst the meals are provided from the prison there are also facilities for detainees to prepare their own food within the unit.

Willie Creek and Darwin

The two Australian Fisheries Management Authority facilities at Willie Creek near Broome and Darwin were not inspected for the purposes of this report. In 1998 the Ombudsman reported on these facilities as part of an investigation of the detention of Indonesian fishermen. The recommendations made in that report have been responded to in a satisfactory manner.

HEALTH SERVICES PROVIDED AT IDCS

Perth

- One General Practitioner available on-site at 8 hours per week and on call 24 hours
- One nurse full time and casual as required and on call 24 hours
- Dental care as required

On-site services: Primary health care, first aid, health education and a mental health nurse.

Port Hedland

- Two General practitioners one male and one female on-site and on call 24 hours
- Six nurses permanent full time and part time 7 days per week and on-call
- Visiting psychologist who attends on an as required basis to see detainees
- Dental care as required.

On-site services: Primary Health care, Health Education and visiting Psychiatrist from Villawood as required.

Curtin

- 1 Full time male General Practitioner available on-site and on call 24 hours
- Nurses according to the population but 10 including Health Services Co-ordinator
- Health Services Co-ordinator for the maximum population 24 hours, 7 days per week
- Dental care as required

On-site services: Primary Health care, Health Education and visiting Psychiatrist from Villawood as required. A mental health nurse is also available on-site.

Woomera

- One full time female General Practitioner and one part time male General Practitioner available on-site and on call 24 hours
- Nurses according to the population but 13 including Health Services Co-ordinator
- Health Services Co-ordinator for a population of 1,740 available on call 24 hours 7 days
- Dental care as required

On-site services: Primary Health care, Health Education and visiting Psychiatrist from Villawood as required. A mental health nurse is also available on-site.

Maribyrnong

- One male General Practitioner with a total of 16 hours per week and on call 24 hours
- Three nurses permanent part time and casual as required and on call
- Dental care as required.

On-site services: Primary Health care, Health Education and a mental health nurse is also available on-site.

Villawood

- One male and one female General Practitioner (the former is a qualified psychiatrist) with a total of 60 hours per week and on call 24 hours
- Seven nurses permanent full time and part time and casual as required 7 days and on call 24 hours
- Clinical Psychologist full time
- Dental care as required

On-site services: Primary Health care, Health Education, a mental health nurse 'shared care' antenatal management.

NOTE

I note that the Joint Standing Committee on Migration in it's report, 'Not the Hilton – Immigration Detention Centres Inspection Report' released in September 2000, recommended that the on-site medical facilities be expanded. I agree with that view.

ATTACHMENT 2**SECURITY ISSUES AT IDCS**

The detention services contract provides that the services are "... to encompass all that is required to provide care and security for detainees from the point of transfer of a detainee from the Commonwealth to the Contractor to completion of removal or release from detention"²⁴.

Detainees are to be prevented from escaping from detention inside and outside the facility, be unable to manufacture weapons, and ACM staff are to monitor tensions within the facility and take action to manage behaviour to prevent disturbances and personal disputes from arising between detainees. In the event that such activities occur, staff are to deal with the matters swiftly and fairly to restore security to all in the facility²⁵.

Perth IDC

The Immigration Detention Standards require the provider to take all reasonable steps to ensure that; "Detainees, staff and visitors are protected from hazards of fire and natural disasters"²⁶

During the inspection on 12 July 2000 my staff were concerned about the evacuation of detainees in the event of a fire, particularly female detainees. The women's dormitory was secured by manual bolts at the top and bottom of the door. This meant that in the event of a fire, the door could not be opened remotely nor was there any means of ascertaining the conditions inside. My staff alerted DIMA to this problem and also suggested that the evacuation procedures needed to be reviewed.

DIMA has since advised that a new door with an electronic lock has been fitted. Additionally, it intends to hold monthly emergency evacuation drills at the IDC.

I note that my Office received a complaint in March 2000 about the failure of a smoke detector to activate when a detainee had set his bedclothes on fire. DIMA responded promptly to this incident and arranged for all the smoke detectors to be inspected and reset. The incident illustrates the need for regular inspection and maintenance of fire equipment.

²⁴ Detention Services Contract, p 5.

²⁵ Immigration Detention Standards, Schedule, p 5.

²⁶ Immigration Detention Standards, Schedule, p 4.

During the inspection of the Perth IDC my staff observed ACM staff at the centre undergoing training using breathing apparatus and noted that there was a variety of fire fighting equipment located at the IDC.

Port Hedland IDC

Port Hedland was inspected by my staff on 13 July 2000 and while the overall level of security was judged to be satisfactory, it was considered that the perimeter fence could be strengthened by the construction of an additional fence around the boundary of the IDC. This would reduce the likelihood of an escape attempt and the possibility of injury to detainees and staff from such attempts. It was also noted that DIMA intended to upgrade the internal compound fencing so that the accommodation blocks could be isolated for the protection of detainees.

DIMA has since advised that work on internal fencing will be completed by end 2000 and perimeter fencing by the end of this financial year.

Curtin IDC

Curtin was inspected on 14 July 2000 by my staff and they noted that security could be improved by erecting a second perimeter fence. My staff were also shown four new isolation rooms that were being constructed for short-term detainees at risk or presenting behavioural problems. Despite video surveillance being installed, the rooms would not meet all the recommendations of the Royal Commission into Aboriginal Deaths in Custody. We have suggested that the screening in or shielding of the electrical wiring and air-conditioning together with the need to change the mesh on the windows would increase the safety of any detainees occupying these rooms.

DIMA has adopted our comments on the isolation rooms and has removed the wire mesh screens. Perspex has replaced the glass in the windows and arrangements have been made to cover the power cords. Construction will commence on improved perimeter security in January 2001.

Woomera IDC

Woomera IDC was inspected on 3 July 2000. The recent mass escape demonstrated the vulnerability of the perimeter fence of the main compound.

My office has suggested the erection of a fence outside the existing boundary to limit future escapes and the potential injury to detainees and staff arising from such attempts. Also it is considered that the large main compound should be divided by internal fencing to reduce the

number of detainees in each compound and to essentially provide greater protection for those detainees considered to be at risk, for example unaccompanied women and children. This advice was provided on 1 August 2000, prior to the disturbances on 29 August 2000.

DIMA has recently advised that a medium level security perimeter fence has been constructed, and work will shortly commence on internal chain wire fencing within the large main compound.

Installing video surveillance of the guard points leading to the various compounds would provide greater security for detainees and staff by enabling central monitoring of movements. The system should also have the capacity to record so that there is a permanent record in the event that an incident takes place.

It was noted that the Woomera IDC did not have secure observation rooms for the short-term accommodation of detainees at risk or detainees presenting behavioural problems. It appeared that the Police cells at the Woomera Police station were being used for this purpose. My staff suggested that a minimum of four observation rooms would be necessary for the current number of detainees and that the recommendations of the Royal Commission into Aboriginal Deaths in Custody should be incorporated into their design to ensure the security and safety of detainees and staff²⁷.

DIMA has advised that is currently considering the video surveillance and tenders for a six bed secure management unit at Woomera.

Maribyrnong IDC

During the most recent visit to the Maribyrnong IDC on 11 July 2000 my officers noted that there were a number of security issues still outstanding since my report of the investigation into an incident on 22 July 1999. The observation room continues to remain of concern and requires a solid door with shatter proof glass to the observation window. The video camera could also be better positioned to provide a view of the doorway as well as the room.

The perimeter fencing to the main exercise yard has not been strengthened despite a number of escapes from this area. My office has suggested a further fence be erected inside the existing boundary to enable the exercise yard to be used by detainees, particularly as male detainees are currently not able to use this area due to the risk of

²⁷ Commissioner Elliott Johnston, *Royal Commission into Aboriginal Deaths in Custody - National Report Overview and Recommendations*, Australian Government Publishing Service, 1991.

escapes. Improving the perimeter security may contribute to alleviating some of the tensions over the loss of this facility and the limited exercise area currently available. At the moment there are only two small courtyards available for detainees to exercise in the open air. Given that a new subdivision is being developed next door to the centre, this requirement should be given priority.

Additionally, there is no capacity to record the surveillance by the video cameras monitoring the IDC. It is in the interests of all parties that this facility be available so that there is a permanent record should an incident take place.

DIMA has advised that the observation room door has now been replaced with a solid one, with shatterproof glass insert and fine weave mesh protecting the glass. It reported that funds are available to strengthen the perimeter security and this will be given priority. DIMA agreed that this action will allow the exercise yard to be used. Additionally, DIMA is arranging for technical advice to be obtained regarding the capacity of the video cameras to record.

Villawood IDC

My staff visited the Villawood IDC on 19 July 2000 and noted that there was a substantial amount of renovation and improvement taking place at the time. However, it was considered that the perimeter fence for Stage 2 should be upgraded by strengthening both the internal and external fences. This would reduce the likelihood of an escape attempt and the possibility of injury to detainees and staff from such attempts.

We also suggested that the telephones in Stage 1 be moved from the corridor where they are currently located and provide booths, to reduce noise levels and give some privacy to the recipients of calls.

DIMA has advised that a more secure perimeter fence will be provided to Stage 2 and that the suggestion for the relocation of the telephones in Stage 1 will be examined after current work to that area is completed.

Arthur Gorrie Correctional Centre

My staff visited the centre on 21 December 1999. The AGCC is a maximum security prison. Security arrangements for this centre were considered to be adequate.

ATTACHMENT 3**INTERVIEWS**

Australasian Correctional Management staff:

Victor Urdanko, Manager Detention Services
 Dave Gecks, former Centre Manager Maribyrnong IDC
 Charlie Micaloff, Centre Manager, Villawood IDC
 Shane Hamilton, Centre Manager, Perth,
 Robert McKeowan, Centre Manager, Port Hedland,
 Grant Cummins, Centre Manager, Curtin,
 Jim Meakins, Centre Manager, Woomera,
 Anthony Tipper, Centre Manager, Maribyrnong,
 Jim Meakins, Operations Manager, Arthur Gorrie, Brisbane*.

* Jim Meakins moved from the Arthur Gorrie Correctional Centre in Brisbane to the Woomera IDC in January 2000.

Department of Immigration and Multicultural Affairs staff:

Andrew Metcalfe, Deputy Secretary
 Peter Vardos, Assistant Secretary, Unauthorised Arrivals and
 Detention Branch
 Lesley Daw, Director Detention Operations
 Linda Webb, Executive Director, Detention Strategy Group
 Mary-Anne Ellis, Assistant Secretary, Detention Strategy Group
 Nigel Smith, Business Manager, Perth
 Richard Kornarski, Business Manager, Port Hedland
 Greg Wallis, Business Manger, Curtin
 Tony Hamilton-Smith, Business Manager, Woomera
 Peter Smits, Business Manager, Maribyrnong
 Peter Mitchell, Business Manager, Villawood
 Nigel Coupland, Business Manager, Arthur Gorrie, Brisbane

Additionally comments and information was received from the following interested persons and agencies:

Martin Clutterbuck, Co-ordinator, The Refugee Immigration Legal
 Centre, Victoria.
 Heather Gillies, Lawyer, Refugee Advice and Casework Service,
 NSW
 Jorge Aroche, Co-coordinator, Service for the Treatment and
 Rehabilitation of Torture and Trauma Survivors, NSW
 Sergeant Ian Gibson, Western Australian Police, South Hedland
 Martin Studdert, Director, Australian Protective Services,
 Harry Daily, Australian Protective Services

South Australian Police, Woomera
Amnesty International.

Serving and former ACM staff were also interviewed, together
with former detainees.