

STATEMENT BY THE AUSTRALIAN NATIONAL CONTACT POINT  
'GSL AUSTRALIA SPECIFIC INSTANCE'

**Introduction**

1. In June 2005, the Australian National Contact Point (ANCP) for the OECD Guidelines for Multinational Enterprises ("the Guidelines": [Attachment A](#)) received a submission from several Australian and overseas non-government organisations ("the complainants")<sup>1</sup> alleging that a UK-controlled multinational, Global Solutions Limited, in providing immigration detention services to the Australian Government through its Australian incorporated wholly-owned subsidiary GSL (Australia) Pty Ltd ("GSL Australia")<sup>2</sup>, had breached the Human Rights and Consumer Interests provisions<sup>3</sup> of the Guidelines.
2. The submission alleged that GSL Australia:
  - in detaining children was complicit in violations of the 1989 Convention on the Rights of the Child particularly where there is no legal limit on the length of the detention;
  - was acquiescing in the mandatory detention of asylum seekers and was therefore complicit in subjecting detainees to a regime of indefinite and arbitrary detention in contravention of Article 9 of the 1996 International Covenant on Civil and Political Rights and Article 9 of the 1948 Universal Declaration of Human Rights. Furthermore, this regime is allegedly punitive in nature and is thus in contravention of Article 31 of the 1951 Convention relating to the Status of Refugees;
  - did not adequately respect the human rights of those detained in its operation of Australian immigration detention facilities; and
  - was misstating its operations in a way that was 'deceptive, misleading, fraudulent, or unfair' by claiming to be 'committed to promoting best practice in human rights in its policies, procedures and practices'.

**ANCP Processes**

3. In accordance with the ANCP's published procedures for handling specific instances, the ANCP commenced an initial assessment as to whether the issues raised warranted further consideration as a specific instance under the Guidelines. The ANCP's fact finding included meeting separately with representatives of the complainants and GSL Australia on 4 July 2005 in Melbourne, and a follow-up meeting with the complainants and their nominated

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<sup>1</sup> The complainants are the Brotherhood of St Laurence, Children Out of Detention (ChilOut), the Human Rights Council of Australia, the International Commission of Jurists (ICJ – Switzerland) and Rights & Accountability in Development (RAID – UK).

<sup>2</sup> Although GSL Australia operates some State Government prisons and prisoner transportation services, the complaint concerned its activities as the provider of immigration detention services to the Australian Government.

<sup>3</sup> See § 2 of Chapter II and § 4 of Chapter VII respectively ('The OECD Guidelines for Multinational Enterprises – Revision 2000', OECD, Paris, 2000).

experts on 11 July 2005 in Sydney. Following the Sydney meeting, the complainants lodged a supplementary submission that focussed on GSL Australia's operations. The issues raised in both submissions were complex and sensitive.

4. On 1 August 2005, the ANCP determined that it would be appropriate to accept as a specific instance those matters raised by the complainants that could be shown to relate directly to the conduct of GSL Australia and were within its control. Those matters included arrangements in respect of children and the general detainee population, staff training, implementation and monitoring of operational procedures, information provision to detainees, psychiatric and mental health services, and the utilisation of the Management Support Units and Red One Compound. The ANCP proposed that the specific instance should not focus on isolated cases or where the risk of re-occurrence in the future has been or is being addressed through other means<sup>4</sup>. The ANCP reasoned that this would allow the parties to concentrate on those GSL Australia activities that have the greatest likelihood of being resolved through mediation.
5. The ANCP also determined that it would be inappropriate to accept those parts of the complainants' submission that sought to address the Australian Government's mandatory detention policy because the Guidelines do not provide an appropriate avenue to review a host government's domestic policy settings. The complainants disputed this determination, reiterating that the Guidelines state that the right of governments to 'prescribe conditions under which multinational enterprises operate within their jurisdictions is subject to international law'. The ANCP also ruled out portions of the supplementary submission that related to the activities of a previous detention centre operator.
6. On 10 August 2005 and 19 August 2005, the complainants and GSL Australia respectively agreed to participate in the specific instance. To facilitate a shared understanding of the issues under consideration, on 24 August 2005, the ANCP proposed an approach to progress the specific instance and circulated a 'Preliminary list of issues within GSL Australia's control' to the parties.
7. On 21 October 2005, the ANCP circulated an updated list of issues within GSL Australia's control in conjunction with the parties' respective views. This was followed by an exchange of information to enable the parties to be able to understand the procedures and practices associated with managing immigration

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<sup>4</sup> In the lead up to the complaint and during the specific instance, there were a number of official inquiries (that is, parallel processes) related to immigration administration and GSL Australia's administration of immigration detention facilities in Australia. Prominent examples include the Palmer and Hamburger inquiries commissioned by the Australian Government and an own-motion study by the Australian National Audit Office. The Commonwealth Ombudsman was also asked by the Government to review particular immigration cases including the Vivian Alvarez (Solon) case, other immigration detention cases identified where the persons detained had been released from detention with their files marked 'not unlawful' and the cases of detainees who have been in detention for two years or more. Consequent changes to the administration of immigration detention policy (say, in relation to families and children) and procedures have had a bearing on the issues considered by this specific instance.

## ANCP statement: GSL Australia specific instance

detention facilities and to appreciate the concerns and sensitivities of the complainant<sup>5</sup>.

8. The ANCP convened a face-to-face mediation session on 28 February 2006, in Canberra. GSL Australia was represented at the mediation session by its Managing Director, Mr Peter Olszak and its Public Affairs Director, Mr Tim Hall. The complainants were represented by the Manager of Ethical Business at the Brotherhood of St Laurence, Ms Serena Lillywhite, the Executive Director of the Human Rights Council of Australia, Mr Patrick Earle and a member of the International Commission of Jurists, Dr Elizabeth Evatt. The ANCP was assisted by Ms Angela McGrath, Mr Andrew Callaway and Ms Debra Chesters.

### **Outcomes of the Specific Instance**

9. The mediation session was conducted in a spirit that promoted the wellbeing of the detainee population whose care is currently entrusted to GSL Australia. A significant outcome was the value both parties gained in engaging openly on the human rights aspects of GSL Australia's operations. The discussion was frank and robust and enabled consideration of potential solutions.
10. GSL Australia committed to upholding the human rights of those in its care. GSL Australia's Managing Director, Mr Olszak, summed up the company's position by pledging to always consider the question of 'Is it right?' within the framework of human rights and embedding this approach within the company's policy and procedures, including training of its officers. The complainants acknowledged the difficult and changing environment of immigration detention services and offered practical suggestions to assist GSL Australia in utilising human rights experts to interpret human rights standards and in training staff. The mediation session's agreed outcomes are at Attachment B.

### **Summary**

The ANCP congratulates GSL Australia and the complainants for engaging constructively in a manner that will contribute to resolving many of the issues considered in this specific instance. Throughout this process, the parties engaged with goodwill and commonsense. The agreed outcomes provide a basis for GSL Australia to continue to improve its administration of immigration detention services.

This is the first specific instance lodged with the ANCP since the Guidelines were revised in 2000. The ANCP intends to evaluate its processes for handling specific instances in the light of any suggestions that the parties may wish to offer.

Gerry Antioch  
Australian National Contact Point  
6 April 2006

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<sup>5</sup> Among the key pieces of information exchanged were operational procedures applicable to the issues raised and references to the findings of parallel processes and international standards.

**The OECD Guidelines for Multinational Enterprises (the Guidelines)**

The Organisation for Economic Co-operation and Development (OECD) published guidelines for responsible business conduct in 1976 and a revised version was issued in 2000. The Guidelines establish voluntary principles for the activities of multinational enterprises and cover issues including information disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition and taxation. They represent standards of behaviour supplemental to the laws of the countries where the multinational enterprises are based or their activities undertaken.

Thirty nine Governments (30 OECD members and 9 non-members) have agreed to the OECD Guidelines as part of a broader balanced package of rights and commitments called the 'OECD Declaration on International Investment'.

Adhering countries have a National Contact Point whose role is to promote and ensure the effective implementation of the OECD Guidelines, including providing good offices for the handling of specific instances. The ANCP maintains a website at <http://www.ausncp.gov.au>.

Attachment B to the ANCP statement: GSL Australia specific instance



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6 April 2006

Mr Gerry Antioch  
Australian National Contact Point  
General Manager  
Foreign Investment and Trade Policy Division  
The Treasury  
Langton Crescent  
Canberra ACT 2600

Dear Gerry,

Please find attached the 'agreed outcomes' from the mediation session between GSL (Australia) Pty Ltd and the complainants. This document is an accurate record of the agreed outcomes and undertakings made by GSL, and provides a basis for GSL Australia to demonstrate its commitment to operating within a human rights framework.

The undersigned parties endorse this document, agree to it being included in your final statement and being circulated as previously indicated.

Both parties wish to thank the office of the ANCP for the process to date, and in particular the mediation. This has created new opportunities for GSL to engage with the non government sector and for enhanced understanding between the parties. Further, it has identified processes for the future to assist in the ongoing engagement between GSL and the community.

Yours sincerely

Peter Olszak  
Managing Director  
GSL (Australia) Pty Ltd

Serena Lillywhite  
Manager Ethical Business  
Brotherhood of St Laurence  
For the complainants

*OECD Guidelines for  
Multinational Enterprises*

Specific instance involving GSL (Australia)  
Pty Ltd and the complainants

Agreed outcomes of mediation meeting

April 2006

## **INTRODUCTION**

This document is a record of the agreed outcomes reached between GSL (Australia) Pty Ltd (“GSL”) and the complainants during the mediation meeting held on Tuesday 28 February, 2006, at the Department of Treasury, Canberra. Present at the mediation were:

Mr. Gerry Antioch – Australian National Contact Point (ANCP)

Ms. Angela McGrath – office of the ANCP

Ms. Debra Chesters – office of the ANCP

Mr. Andrew Callaway – office of the ANCP

M. Peter Olszak – Managing Director, GSL

Mr. Tim Hall – Director, Public Affairs, GSL

Dr. Elizabeth Evatt – International Commission of Jurists

Mr. Patrick Earle – Human Rights Council of Australia

Ms. Serena Lillywhite – Brotherhood of St Laurence

Additional recommendations were tabled by the complainants during the meeting.

An opening statement and relevant documents relating to human rights standards adopted by the United Nations General Assembly were also tabled.

The discussion was open and frank, and based on a shared commitment by all to promote adherence to universally recognised standards of human rights. It was acknowledged that there had been many positive changes since the complaint was lodged, not least that children were no longer being detained in detention centres. In this time there have been a number of reports such as the Palmer Report, and court cases that have highlighted many of the issues at the heart of the complaint.

The protracted tender and negotiation period for the contract, and the constantly changing nature of the demands being placed on the detention services provider, and its own learning from the experience highlighted for the complainants the considerable scope for the company in deciding what services it will offer and how. For all involved there seemed to be a shared understanding at the conclusion of the meeting of the value of international human rights standards in determining the companies own decision making processes.

The meeting took place between 10.00 am and 2.45 pm. Discussion of some issues of concern will require further time and consideration. There was willingness from all involved to canvass the range of issues involved in the original complaint – from the contractual issues through to operating protocols and the changing patterns of immigration detention. It was agreed that an atmosphere of direct dialogue between the complainants (and others concerned) and the company on these issues was engendered by the meeting and should be fostered to address continuing concerns. This provides scope for GSL to engage more closely with the complainants, or other appropriate external groups, in the future to ensure outcomes reached are implemented and a culture of transparency and accountability fostered.

At the conclusion of the meeting it was agreed by all parties that there would be value in the NCP forwarding a copy of his statement to the Department of Immigration and Multicultural Affairs, the Commonwealth Ombudsman, IDAG and HREOC.

### **General agreement**

1. GSL acknowledged the value of using a human rights framework as the appropriate standard to guide operations and assist the company ‘do the right thing’ in all aspects of operation and service delivery.

## Attachment B to the ANCP statement: GSL Australia specific instance

2. GSL acknowledged that as a corporation it had its own responsibilities and should be accountable for these responsibilities. How it understood and implemented its responsibilities was a key factor in its corporate reputation, which is central to its business success.
3. GSL agreed to ensure the contract renegotiation, and the final contract with DIMA (should GSL successfully tender) make reference to human rights standards and appropriate international conventions as the appropriate framework for a service delivery model in all areas of detention and deportation.
4. GSL agreed to ensure that the contract renegotiation process with DIMA (should GSL successfully tender) include the experiences and learning's that GSL has had with regards to the management of detention centres and their use of isolation facilities, and concerns raised regarding compliance with human rights standards.
5. GSL agreed that some of the issues discussed at the meeting needed further consideration and the input of external advice. GSL expressed the willingness to have a more ongoing dialogue on the issues discussed with those with relevant expertise and knowledge.

### **Training**

6. GSL acknowledged the value of deepening the knowledge of understanding of human rights standards of all GSL staff, from senior management down given the nature of the industry that GSL was involved in.
7. GSL agreed to enhance the training curriculum it provides to its staff through the inclusion of appropriate human rights materials and references.
8. GSL agreed to liaise with DIMA to ensure that training delivered via the DIMA Training Initiative recognises the increasingly diverse detainee population, includes human rights standards, and utilises a human rights framework in training.
9. GSL agreed to make their training curriculum, manuals and materials available to external human rights trainers for review and comment.
10. GSL agreed to seek input from human rights experts to deliver human rights training as appropriate (the complainants offered to recommend appropriate trainers).
11. GSL agreed that staff with particular duties in relation to detainees may have a need for more specialised and in-depth human rights trainings.
12. GSL acknowledged that human rights training delivered to all GSL staff would assist in 'embedding' a corporate culture that values a human rights framework in service delivery and operations.
13. GSL agreed to develop systems to monitor and evaluate the effectiveness of its training in meeting desired organisational and individual behavioural and attitudinal changes.

### **Monitoring the implementation of GSL procedures**

14. GSL agreed to seek external advice to determine if the operations of the GSL Compliance and Audit Unit adequately encompass a human rights framework for monitoring and auditing purposes.

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15. GSL indicated it was willing to make its own ‘random audits’ available for external scrutiny.
16. GSL indicated it was changing its complaints monitoring system so that it could monitor the number and nature of complaints and responses to complaints more effectively and would be establishing targets for reduction in complaints.
17. GSL agreed to review the terms of reference and composition of its Community Advisory Committee to enhance external engagement (the complainants offered to suggest additional community representatives).
18. GSL agreed to expand their planned / forthcoming ‘client survey’ to include input and feedback from community visitors to the detention centres (the complainants offered to provide names of key community visitors).
19. GSL agreed that the existing ‘infringement mechanisms’ for identifying, reporting and responding to infringements needs to be made clearer to all GSL staff. International human rights standards were the agreed framework for the management and disciplining of staff alleged to have engaged in the ill-treatment of detainees.

**Adequacy of information provision and access to interpreters**

20. GSL undertook to improve the ‘induction handbook’ for detainees, and to ensure it is available in the appropriate languages.
21. GSL undertook to evaluate detainees ‘understanding’ of the induction handbook to ensure the content, expectations and detainees rights and responsibilities were understood.
22. GSL agreed to give consideration to alternative mechanisms to deliver the induction handbook to address literacy issues. Audio presentation was one idea suggested.
23. GSL undertook to consider expansion of the current complaints system to encompass a way to register and respond to the concerns of visitors to the detention centre. GSL would consider ways to convey its commitment that there would be no negative repercussions, such as visiting limitations, placed on visitors who register complaints. A “hotline” was suggested.

**Management Support Unit and Red One Compound**

24. It should be noted that GSL and the complainants were unable to reach agreement about the use of isolation facilities for punitive purposes. GSL reiterated its position that isolation facilities are never used for punitive purposes. The complainants reiterated that feedback from reputable and regular visitors to the centres suggested that facilities were being used for such purposes. It was acknowledged that the use of Red One Compound in particular had been and continues to be a source of particular concern in relation to the human rights of detainees. Agreement was reached on the need for a further review of the GSL protocols governing the use and operations of these facilities.
25. GSL agreed to accept advice from external stakeholders as to how the existing protocols can be improved and streamlined. For example, it was recommended by the complainants that the MSU Transfer and accommodation Guidelines be amended to ensure that women and minors are never placed in the MSU. It was agreed that the

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definition of “good order of the institution” would be reviewed against relevant human rights standards.

26. GSL agreed to give consideration to identifying and disclosing the nature of the ‘structured programs’ that are available to detainees in MSU and Red One.
27. GSL agreed to refer to relevant international human rights standards in drafting protocols for the management and disciplining of staff alleged to have engaged in ill-treatment of detainees.
28. GSL agreed to consider the desirability of reviewing (against relevant human rights standards) the timeframes for the transfer, detention and assessment of detainees in MSU. In particular, endorsement of transfer (recommended change from 48 to 24 hours), final determination (recommended within 24 not 72 hours) and emergency mental health assessments and checks (recommended within 12 not 24 hours).

### **Removal and deportation**

29. It was agreed that removal and deportations in particular raised sensitive and important human rights issues that need to be considered on a case-by-case basis. GSL agreed to consult with DIMA to ensure an appropriate human rights framework is used in developing guidelines and processes for removals and deportations, particularly as they relate to the use of GSL staff as escorts.
30. GSL agreed to ensure that all GSL removal and deportation escorts have received appropriate training and understand the international protocols and human rights standards.
31. GSL undertook to provide a report to DIMA as a matter of course on all deportations and removals in which its officers are involved, and to the extent reasonably possible, in compliance with removal / deportation protocols, and also an assessment of the arrival situation and well being of the person being removed.

### **General conditions and services to detainees**

32. GSL undertook to give consideration to establishing a ‘visitors scheme’ that is more open and could provide feedback and advice to GSL in enhance their risk management process and improve conditions for detainees (the complainants suggested the Victorian Community Visitors Scheme operated by the Office of the Public Advocate as a possible model).
33. GSL indicated a major announcement would be forthcoming with regard to the provision of food in detention centres. Both GSL and the complainants agreed this is a significant issue of detainee dissatisfaction. It was acknowledged that in part this was an issue of infrastructure operated by GSL, but provided by DIMA.
34. GSL undertook to ensure all detainees have regular access to phones and phone cards to enable communication, support and advocacy.