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DEFENCE AND TRADE HUMAN RIGHTS SUBCOMMITTEE

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detention centres**

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JOINT COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

Human Rights Subcommittee

Monday, 19 August 2002

Members: Senator Ferguson (*Chair*), Mr Brereton (*Deputy Chair*), Senators Bartlett, Bolkus, Cook, Eggleston, Evans, Harradine, Hutchins, Sandy Macdonald, O'Brien and Payne and Mr Baird, Mr Baldwin, Mr Beazley, Mr Bevis, Mr Edwards, Mr Laurie Ferguson, Mrs Gash, Mr Hawker, Mr Jull, Mr Lindsay, Mrs Moylan, Mr Nairn, Mr Price, Mr Prosser, Mr Bruce Scott, Mr Snowdon, Mr Somlyay and Mr Cameron Thompson

Subcommittee members: Senator Payne (*Chair*), Senators Bartlett, Bolkus, Ferguson and Harradine and Mr Baird, Mr Brereton, Mr Ferguson, Mr Lindsay, Mrs Moylan, Mr Price, Mr Somlyay and Mr Cameron Thompson

Senators and members in attendance: Senators Bartlett, Harradine and Payne and Mr Baird, Mr Brereton, Mr Price and Mr Cameron Thompson

Terms of reference for the inquiry:

Aspects of HREOC's annual report 2000-01 concerning immigration detention centres.

WITNESSES

ELLIS, Ms Mary-Anne, Acting First Assistant Secretary, Offshore Centre Management and Infrastructure Division, Department of Immigration and Multicultural and Indigenous Affairs17

GODWIN, Ms Philippa Margaret, First Assistant Secretary, Unauthorised Arrivals and Detention Division, Department of Immigration and Multicultural and Indigenous Affairs17

GREAVES, Ms Rosemary May, Assistant Secretary, Detention Policy Branch, Department of Immigration and Multicultural and Indigenous Affairs17

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Committee met at 10.43 a.m.

CHAIR—I convene this public hearing into a review of aspects of the *Annual Report of the Human Rights and Equal Opportunity Commission 2000-01* concerning conditions in immigration detention centres and the treatment of detainees. I apologise most profusely to my colleagues, to Dr Ozdowski and to those members of the public and the media who were waiting for this meeting to begin. I indicated that I was involved in an important meeting of my Senate Liberal Party colleagues, which was the subject of much public discussion. I am sure those of you who were aware of that will understand that I could not leave before its conclusion.

After visiting a number of immigration detention centres in the first months of last year, the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade tabled its report on those visits in 2001. That report is entitled *A report on visits to immigration detention centres*. The visits made a strong impression on committee members and this was reflected in the report and in our recommendations. We currently look forward to the government's response to that report, which we understand is to be tabled in the near future. Our interest in conditions in immigration centres is ongoing and we will continue to monitor developments concerning them. Other organisations with an interest in human rights are also, quite rightly, monitoring developments closely. We will seek to broaden our understanding through their insights also. The Human Rights and Equal Opportunity Commission has a key role in observing and reporting on conditions in immigration centres and on the treatment of detainees, particularly in its current inquiry process.

[10.45 a.m.]

OZDOWSKI, Dr Sev, Human Rights Commissioner, Human Rights and Equal Opportunity Commission

CHAIR—I welcome Dr Ozdowski to the table. The committee intends to conduct today's proceedings in public, although should you wish at any stage to give any evidence in private, you may ask to do so and we will give consideration to that request.

Dr Ozdowski—Thank you, Madam Chair. Mr Stephen Duffield sends his apologies. He could not come as he is unwell.

CHAIR—Thank you. Although the committee does not require you to give evidence on oath, I should remind you that these hearings are legal proceedings of the parliament and therefore warrant the same respect as proceedings of the House. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. I now invite you to make some opening remarks before we proceed to questions.

Dr Ozdowski—Thank you very much for the invitation to appear here. I took on the role of Human Rights Commissioner in December, about 1½ years ago. One of the first tasks that I undertook was to make a number of visits to detention centres to familiarise myself with what was happening there. I have been quite concerned by what I have seen. My concern coincided quite closely with the report your committee published. My report on my visits in 2001 is about ready to be tabled in parliament.

During my visits, I particularly became concerned about the issue of children in detention and I instituted a formal inquiry to look into that matter. That inquiry is still collecting evidence. We have finished the public hearings; however, there are two important hearings still in front of us. One will be with DIMIA representatives and the other with ACM representatives. We are also receiving some written documents from both DIMIA and ACM, so it is too early to draw conclusions. I will not be able to discuss at this meeting what I have found in the context of the inquiry; although, if you would like to know more about the methodology I am following, your questions would be most welcome. However, during the recent visits to detention centres, I made some general observations and I am most willing to share them with you.

CHAIR—Thank you. Indeed, I invite you to share those observations with us and then we will begin with questions.

Dr Ozdowski—In 2001, I basically visited all the centres starting with Woomera, Maribyrnong, Curtin, Port Hedland, Perth, Villawood, Christmas Island and Cocos Island. It was a different time then from what is happening there now. I was certainly concerned with a range of issues like prolonged detention. At that stage, there were already people spending quite considerable periods of time in detention. I was concerned about the issues of access to legal assistance, about judicial review of decisions regarding people in detention and about access to information and contact. I was quite concerned about the available educational facilities and recreational facilities. There was overcrowding of accommodation. There were issues of

treating people with respect, especially the use of numbers rather than names across the whole system. There were, of course, health issues, and there were also emerging mental health issues. In my latest visit, I made different observations.

CHAIR—Which detention centre was your latest visit to?

Dr Ozdowski—I visited again all the detention centres.

CHAIR—You have done another round?

Dr Ozdowski—I have done another round. Basically, each year I am trying to go to all of them. I finished that on Friday. Last Thursday and Friday, I spent two days in the Villawood detention centre as part of the second round. The second round indicated to me that some of the earlier problems like overcrowding had disappeared but new problems had emerged that were especially difficult to handle. The key problem at the moment, as I see it, is the mental health of people in detention centres, especially in isolated detention centres. To be perfectly honest, it looks to me as though especially Woomera, Curtin and Port Hedland are a bit like mental hospitals, only without proper staff to run mental hospitals and without proper facilities. This issue is certainly a new issue. It is a different issue that did not exist one year ago. My view is that this is really associated with the length of detention. At the moment, the vast majority of those in detention are long-termers and also without hope. Most of the people have lost applications for refugee status in Australia or are going through the protracted process of appeals. So the situation at the moment is clearly different from the one I saw one year ago.

CHAIR—Thank you, Dr Ozdowski. When you make comments in relation to mental health issues, what medically qualified specialists or psychologists is the commission working with in its inspection process, in its reporting process?

Dr Ozdowski—In my inquiry into children in detention, I asked Professor Trang Thomas, who is a professor of psychology from Melbourne, to take part in all visits to the detention centres. Also, in the context of the inquiry, we received quite a lot of evidence from qualified psychologists. However, my general observations related to my own observations as well to the way people were interacting with me.

CHAIR—Having made visits over an extended period—as you say, making several rounds—do you feel comfortable making those comparisons on the interactions?

Dr Ozdowski—Yes. The difference was that one year ago there were people who had been there for relatively short periods of time. There were people who were in separation detention who were still without their first assessment. Most of them had been there for under three months, and quite often when you spoke with them they said that they were grateful to Australia for offering this initial protection and they were very hopeful. At the moment, there are no such people in detention centres. So, wherever you go, you meet only with people who have spent a considerable period of time in there—and I am talking about isolated detention centres. I am not talking so much about the Villawood and Maribyrnong and Perth detention centres, because the population there is very different. However, when it comes to isolated detention centres, they are really people who have lost all hope.

CHAIR—Does HREOC have the right or the opportunity to visit those people on Manus Island or in Nauru?

Dr Ozdowski—I sought assistance from the Department of Immigration and Multicultural and Indigenous Affairs to visit those centres, but the department's response was to say, 'It's not in our jurisdiction because—

CHAIR—Meaning Australia's jurisdiction or the department's jurisdiction?

Dr Ozdowski—It is not in the jurisdiction of the Human Rights and Equal Opportunity Commission, because of the geographical location. However, there is still some doubt with our legislation, which says that the level of control exercised by the Australian authorities is of key importance. So we are still exploring these issues to establish what level of control is exercised over Manus and Nauru by the department of immigration. Perhaps after we have determined that issue, we will be able to either assert our jurisdiction or give it away.

Mr PRICE—Have you sought a legal opinion on that matter?

Dr Ozdowski—Yes, we sought a legal opinion and the opinion said exactly what I am saying.

Mr PRICE—Have you written to the minister about the opinion that you have received?

Dr Ozdowski—No, I did not write to him; I wrote to the department of immigration, seeking their assistance with the facilitation of my visit in the context of that inquiry. The department's response was that they had also sought a legal opinion and that their legal opinion advised them that we do not have a jurisdiction.

CHAIR—Do you have any particular observations to make in relation to children, as you have observed them from visit to visit?

Dr Ozdowski—I would not like to do it now, because most of the information I have is in the context of the inquiry I am conducting. Consequently, the process is not finished at the moment, so I would not like to put the whole inquiry in jeopardy.

CHAIR—I understand. I do not want you to prejudice the process.

Dr Ozdowski—However, I can certainly say two things. Schooling did not improve between my first and second visits. Possibly the only exception to that statement is that some children are able now to go to school. That is happening in Curtin and Port Hedland and more recently it is starting to happen in Villawood. However, my view would be that all kids who are subject to long-term detention should be able to access outside schooling.

Mr PRICE—Hear, hear!

Dr Ozdowski—It is simply not possible to provide proper schooling for children in detention facilities.

CHAIR—Thank you very much.

Mr BRERETON—What percentage of children in the system at the moment would have access to schooling facilities?

Dr Ozdowski—When I started the inquiry, there were about 560 children in detention. At the moment there are only 120, but the numbers do change daily, so please seek the updated numbers from the department of immigration. As far as I am aware—if my memory serves me well—at Curtin about 14 children are going to a local school in Derby. Not all the children were allowed to go to that school. In Port Hedland, the local Catholic school invited children to go there, so I would say the majority of children in Port Hedland at the moment are going to that school. But, again, I would need to check that.

Mr BRERETON—But across the system, it is most likely that the majority of children are still not accessing school facilities?

Dr Ozdowski—They would be accessing the schooling which is available in the detention camps, which I found to be highly unsatisfactory.

Mr BAIRD—On that question, which ones still do not have access to outside schools?

Dr Ozdowski—There is partial access in Curtin, going to Derby, which is a Western Australia government school, and in Port Hedland, which is the Catholic school across the road. They do not have access to government schooling in Woomera. In Villawood, some children—I think four of them—were allowed to go to the local school.

Mr BAIRD—First of all, when we were doing the report last time, you were one of the people that had quite an influence on this committee in terms of your recommendation that applications should be processed within three months and that, if they were not processed within three months, when able to be they should be referred to some independent person. That appeared, almost verbatim, as you had recommended it, in our report, yet, when the report was issued, you made no public comment to support it. Is there a reason for that?

Mr PRICE—We will give you an opportunity now!

Dr Ozdowski—I am just thinking of whether there was a reason for it. I do not remember whether I issued a press statement at that stage or not. But I thought your report was such a good report, and it was a parliamentary report, so there was possibly no need—

Mr PRICE—Mr Baird is satisfied now.

Mr BAIRD—Thank you.

CHAIR—Settle please, ladies and gentlemen!

Dr Ozdowski—The more I listen and talk to people, the more I believe that that three-month period is as much as people can take. I will just give you an example from when I went to

Cocos Island. The detention centre over there is rather unusual because it does not have razor wire—it does not have any fencing, as a matter of fact—and it is located very close to a beautiful beach on the Indian Ocean. People can go and fish, and I saw some Vietnamese people fishing there. But, when I interviewed people after four months in detention, almost every second one of them cried. The conditions are not that crucial if it is for a reasonably short period of time. When it goes further, we are playing a totally different ball game.

Mr BAIRD—I do not know whether you are interested in the new UK requirement that a primary application should be processed within two months and appeals within four, making a total of six months. They have a percentage within each year to reach the target where all will be completed in that time, which is interesting. Can I ask you what your views are on the UNHCR report that was brought down in terms of the visited detention centres?

Dr Ozdowski—Yes, I met with the judge. I found that report to be basically accurately reflecting the general situation which is happening. Some comments made by the judge—relating, say, to the guns or other issues—were unfortunate and incorrect, and I think this partly undermines the report.

Mr BAIRD—My final question is in relation to the psychological trauma that you noticed. Our report actually did comment on that, and it is now 12 months ago that we completed our report. We did spend quite a bit of time in our report commenting directly on the fact that there was a number that seemed to us to be suffering from significant depression. I am surprised that you did not see that 12 months ago as being an effect.

Dr Ozdowski—I saw it, but it was mitigated by a number of people who were not displaying it. The picture was much more diverse. There were people who still were functioning well and, yes, there were people who clearly displayed various signs of stress. What has happened since then, basically, is that it is almost impossible to find people who are able to behave in the way we would behave. The stress, especially in the three desert centres, is just written all over them.

Mr BAIRD—Thank you.

CHAIR—Senator Harradine, I understand you have come to an agreement with Mr Price.

Senator HARRADINE—He has put me in the seat. Dr Ozdowski, HREOC has conciliation functions. In this situation, you have a serious outcome of long periods of detention. Is it appropriate that HREOC uses that conciliation function and enters into negotiations with the government—or the other arm of the government, the department—to ensure that that is overcome? Otherwise, how are we going to get to the situation where there is a rapid and appropriate consideration of the appeals that are currently afoot?

Dr Ozdowski—Yes, we do have a conciliation function, but this links to individual complaints. I am not involved with complaint handling by the commission, but we regularly receive complaints from detainees. They are handled under separate procedure which is under the president of the commission—the president is responsible for complaint handling—and each individual complaint is addressed. When we find that there were breaches of either ICCPR or of some other human rights instruments, we attempt to conciliate with the department of

immigration. Quite often, however, we do not go very far because we are told that the department, as a policy issue, does not conciliate complaints.

Senator HARRADINE—I notice in your report that you detailed some of the individual complaints, and the concern was that the treatment given was inconsistent with our international obligations. I am just looking for a way of getting that circuit-breaker; no doubt everybody is looking for a way of getting the circuit-breaker. Do you have a recommendation as to how the detention periods can be reduced so that this dreadful result of serious mental illness does not occur?

Dr Ozdowski—Some other countries do also have a mandatory detention regime, and one of the countries in my mind is Sweden. However, the Swedish mandatory detention is for a very short period of time and with the right of judicial review, so it works very differently. Possibly, in order to shorten the period, we would need to establish legislatively some kinds of benchmarks which would require the department to adhere to it, and lack of adherence should automatically spark a judicial review. Basically, if you would like to keep a person in detention over a certain period of time, you should be required to obtain the authority of a judge or magistrate to keep that person, and there should be some good reasons why that person is kept in there over a certain period of time.

Mr PRICE—Regarding adults—or children, for that matter—did you observe any playing soccer, volleyball, table tennis, badminton or cricket or swimming?

Dr Ozdowski—Yes, I saw people playing soccer. I saw people playing some sports, but it was more during the time of my previous visit. I recollect in one instance during my recent visit in Woomera that there was soccer being played in the evening.

Mr PRICE—It is pretty broken ground to play soccer on, wouldn't you say?

Dr Ozdowski—If you fell down, you could end up as a hospital case.

Mr PRICE—When we were considering the report, we were tossing around the idea of having an inspector-general of detention centres. You may be aware that in Western Australian and New South Wales prison systems there is concurrent jurisdiction both for an inspector-general of prisons and the ombudsman. Have you considered beefing up the supervision of detention centres with the position of an inspector-general? Are you able to say whether or not you would be in favour of such a position?

Dr Ozdowski—I know the Western Australian situation. As a matter of fact, on one of my visits to Curtin, the inspector-general accompanied me. He asked me if he would be allowed; I asked the minister and the minister allowed it. It depends on what kind of detention policy we will have in the future. If we continue with the present detention policy, I think we should have an independent inspector-general, or similar body, which is able to properly investigate what is going on. In terms of the Human Rights and Equal Opportunity Commission, I am visiting the centres once a year. I do not have the range of powers that the inspector-general in Western Australia has. For me, it is very difficult to get access to records. I also have some other issues on my plate. So I think this kind of position would certainly add to the accountability of detention centres.

Mr PRICE—I have a couple of questions about the physical condition of detention centres. I noticed that in the unaccompanied minor section in Woomera there were double bunks crowded into those cabins or whatever you call them. I sought, in our eight hours of questioning of the department and ACM, to get an understanding of whether the Commonwealth had to meet relevant health and occupational safety requirements and building codes either of the state in which the detention centre was located or of the local government. At Villawood there was what seemed to be significant overcrowding. If it were a youth hostel or an aged persons hostel, I am sure the state—with TV cameras blazing—would have it closed down. What is the status of detention centres in terms of meeting the requirements of state and local government and indeed our own Commonwealth legislation?

Dr Ozdowski—At the moment, I do not believe that there is overcrowding in detention centres—at least, during my last visit, I did not see any overcrowding. One year ago, when I was visiting different centres, there was clearly overcrowding. For example, there were over 20 people sleeping in one of the dongas in Curtin. There were double bunks, plus mattresses on the floor, so there was clearly overcrowding. I cannot comment on state or local government laws—I am not aware enough about them—but in terms of our own Disability Discrimination Act, we certainly would not be meeting most of the requirements which are imposed on public buildings. We are looking at that issue, because—as you know—section 58 of the Migration Act excludes the application of the Disability Discrimination Act. We are seeking legal advice as to whether it applies to people only when they are applying to migrate to Australia or whether it also applies to conditions in detention centres.

Mr PRICE—In those instances where you were able to observe overcrowding, what was breached in that overcrowding or was nothing breached?

Dr Ozdowski—Basically, one could say that people are living in inhuman conditions. One could pin it to a number of articles of the ICCPR or, in the case of children, to the Convention on the Rights of the Child and claim it. When I spoke with ACM officers or DIMIA officers the previous year, they quite often said that it was because of choice. For example, a group of unaccompanied young Afghans decided to stay in one particular place rather than be allocated with other detainees of different nationalities. I met recently one of the men who was in that particular donga, who is now in Brisbane. He told me that it was not really a choice, because they were badly treated in different accommodation areas, so basically for safety they decided to stay together.

Mr PRICE—At Woomera, the bubbler that serviced the unaccompanied minors was external to their accommodation. In my observation, it was filthy and provided lukewarm water. In your recent visits, were you able to look at that? Has there been any change to that?

Dr Ozdowski—I cannot comment, because I did not see that particular bubbler. The last time I was in Woomera, water did not appear to be a problem. On the date when I was visiting for half a day, there was no water because of a failing or some fault in the piping, but it was immediately repaired. But, again, it possibly goes to the fact that one year ago it was a relatively new facility, and it was overcrowded on top of that. Now it is more established. I cannot confirm whether the bubbler is still like that.

Mr PRICE—You may be aware that when we were considering our report, the minister had announced the so-called family pilot in Woomera. Although the committee indicated that the condition of families was a priority for it, we made no specific recommendations because of waiting to see how that pilot worked. Are you able to comment or to give the committee the benefit of your views about how effective or ineffective the pilot has proved to be to date?

Dr Ozdowski—I would not like to comment in detail, because the evidence we collected related to the inquiry into children in immigration detention. However, the department of immigration has asked us recently for exemptions from the application of the Sex Discrimination Act. Last year we granted such an exemption and that allowed the department to discriminate against fathers and children over the age of 13. They could not participate in that particular pilot. The department asked us for an extension of that exemption. We agreed to only a temporary exemption until we have a chance to look at the report which the department commissioned to evaluate that centre. There is a possibility that we will need to look at how it works, but at the moment we have doubts about how successful the project is.

Mr PRICE—When is that report expected? How long is the exemption that you have granted?

Dr Ozdowski—I think the report is in the hands of the department of immigration at the moment, so I suggest you ask them. They would be better able to respond to that.

Mr PRICE—I promise you I will.

Dr Ozdowski—We granted the exemption for either 2½ or three months only, so it will allow us to look into the matter in much more detail.

Mr PRICE—What is the rough expiry date?

Dr Ozdowski—It has expired.

Mr PRICE—It has expired again?

Dr Ozdowski—Yes, our exemption has expired. The department wrote to us, I think a few days before the expiry date, asking for an extension. We considered the issue and we said that we did not have enough facts on our hands to be able to grant it for a full year. So we have granted only a temporary exemption until we can ascertain the facts.

Mr PRICE—I apologise, Madam Chair, but I am confused about when the latest extension of the exemption expires.

Dr Ozdowski—Just a week or two weeks ago. I think it was sometime in early August, if my memory serves me well. I think we granted the temporary exemption until October.

Mr CAMERON THOMPSON—I would like to look at the issue of the education of the children. Could you, firstly, comment on the facilities within the camps? Is the problem with them educational inadequacy—in other words, are they, from an educational point of view,

poorly set up—or is it because of the physiological impact of being there in the camp and not being able to go outside to go to school?

Dr Ozdowski—There are a multitude of problems, but again it is an issue which I am addressing in great detail in the context of my inquiries, so I would prefer to leave it on a general level. It certainly relates to the mental health of the children and it also relates to the quality of the premises and equipment, the issue of having a curriculum and often the issue of having teachers available. It is a very complex issue.

Mr CAMERON THOMPSON—Has an effort been made since the issue was raised in this forum and since your first visit? Did you see, during your second visit, that an effort had been made to improve the educational facilities in those centres?

Dr Ozdowski—No, I did not see a marked improvement—with the exception of where children were allowed to go to outside schools.

Mr CAMERON THOMPSON—So the internal ones had no change, basically.

Dr Ozdowski—I did not see substantial improvements. On the contrary, possibly the situation has become more difficult, mainly because the number of children is smaller. Consequently, the size and economy of it makes much more difficult the delivery of education which would be suited to different ages, skills and so on.

Mr CAMERON THOMPSON—Can you give me an idea of what the educational needs of those children are? What is their educational standard? Are they after very basic, early primary type education or is there a much higher level of education that is being sought?

Dr Ozdowski—They have exactly the same needs as children who are arriving in Australia as migrants and who have access to special educational centres which offer catch-up programs both in English language and in other skills. Basically, within half a year or up to a year they are able to swim in our public schools without any difficulty.

Mr CAMERON THOMPSON—As far as utilising the local schools is concerned, in the ones where they are doing that are language issues or educational expectations causing any difficulties?

Dr Ozdowski—You are now going to the materials I acquired directly as a result of my inquiries, so I would prefer not to say any more about it.

Mr CAMERON THOMPSON—I would like to know.

Dr Ozdowski—You will certainly know when you see our report. I am still awaiting evidence from the Department of Immigration and Multicultural and Indigenous Affairs and also from ACM. I need to wait for all the evidence. At the moment what I have is what I saw when I visited the schools, when I spoke to the children and when I visited the detention centres; so I do not have the full evidence on it.

Mr CAMERON THOMPSON—Among the children themselves was that a common goal: to get to a local school? Was that an issue that they were keen on?

Dr Ozdowski—They love going to local schools.

Senator BARTLETT—As I understand it, the Department of Immigration and Multicultural and Indigenous Affairs has just developed some new immigration detention standards which you had some input into. Are they now at a level that you believe is appropriate? Leaving aside the question of whether or not the centres actually meet those standards, are those standards themselves suitable?

Dr Ozdowski—We had some input into them. As a matter of fact, we provided the department with quite lengthy commentary and we had meetings in Canberra to discuss it. However, we are not privy to the final outcome of our input so I cannot comment about the current standards.

Senator BARTLETT—I presume that is something you would be having a close look at once they are finalised.

Dr Ozdowski—I am awaiting, with interest, looking at them.

Senator BARTLETT—When I look at your report and some of the ongoing reports from the human rights commission there seem to be a couple of issues that keep being repeated—and this might go a bit to what Senator Harradine was asking—for example, in terms of failure to inform detainees of their right to legal advice. I now recognise that, with changes to the law, that is not necessarily a legal obligation on the department, but it seems to be a concern that you raise repeatedly. Is there any movement in relation to that or is that just one of those stand-offs where you keep pointing it out and the department keeps saying that it is not a breach?

Dr Ozdowski—I would have to say, with regret, that it is possibly a stand-off area. It is possibly our area of most frequent debate. It is an area where we do not see the department moving significantly to accommodate our concerns.

Senator BARTLETT—One issue that has come up a lot in the debate in recent times is not just the conditions in the various centres but the length of time that people are in there. I think you referred to that yourself in your opening comments. I have a specific question and then a general one relating to this issue. I know that in the Perth detention centre in particular, which I have been to a couple of times and which is very small, there is only a small number of people, but there are a few who have been there for quite a prolonged period of time. Do you take specific interest in individual cases like that, where someone is in a place like Perth for two or three years, and advocate or pressure the department in relation to that or do you take more of a broad brush approach?

Dr Ozdowski—What I usually do after my visits to the centres is write a letter to the secretary of the department spelling out the key concerns I have. If there are individual cases in which I do not have jurisdiction but which are of particular humanitarian concern to me, I write to the minister and ask the minister to exercise his discretion and look into the case. I have

written a number of letters dealing especially with families or cases which look to me to be very harsh.

Senator BARTLETT—Would that include some people in the Perth centre?

Dr Ozdowski—Yes, there was a person in the Perth centre about whom I wrote.

Senator BARTLETT—I turn now to broader questions on this matter. As I understand it, most of the people now in detention in Australia on the mainland are people who have been through most of the assessment criteria and are basically just sitting there—and particularly with Iraqis there are a lot of difficulties with them being returned. Is there any particular comment you have on that situation: where people have already been in detention for some years and have no apparent end date for their incarceration?

Dr Ozdowski—My view is that the longer people are in detention the more mentally damaged they are. In circumstances where you have families especially, but not only families, who went through the process and were unsuccessful and who cannot be returned, I think they should be afforded a bridging visa and they should be able to wait in the community until conditions change. There is a whole range of systems we could use to ensure that they do not abscond, but I think keeping them in detention centres, especially young people, is inhuman and creates enormous damage to them in the long term.

Senator BARTLETT—Are there any specific human rights obligations or conventions that we breach by maintaining that indefinite imprisonment of people?

Dr Ozdowski—The possible thing would be the issue of arbitrariness of the detention, which is part of the ICCPR. Detention not only must be legal—it is legal in Australia because the parliament passed the law—but must not be arbitrary. To avoid being arbitrary, it must be reasonable, necessary and an appropriate means to achieve a legitimate aim. I do not know what that legitimate aim is in the case of the person you described who has spent a long period of time in detention already and who cannot be returned in the present circumstances.

Senator BARTLETT—Can briefly return to the situation of Nauru and Manus Island. You indicated earlier on that, in effect, the department had suggested that it is not in your jurisdiction so it is not really for you to be going there to look around. It is an issue that has come up in other committees with other bodies such as the UNHCR as to who is actually responsible for the running of these places and the conditions there. Could you outline more specifically the processes you followed in trying to gain access to those places? Did you simply make a request that has been denied, have you had a few discussions or have you raised issues with the government in Nauru, for example?

Dr Ozdowski—No, we did not raise the issue with the governments of PNG or Nauru. We first sought legal opinion from quite a distinguished Sydney barrister, and the response we got said that we do have jurisdiction, assuming there was significant control by the department of immigration of the conditions and of what is happening over there. I spoke about the issue with the secretary of the department. I requested formally in writing that the department assist us with our visit in the context of a particular inquiry. The department said that it was outside our geographical jurisdiction, so it will be during the forthcoming public hearings of the department

of immigration in trying to establish the level of control they have on access to detention facilities. One of the ways of testing our jurisdiction would be to receive some complaints alleging violations of human rights. That would be an alternative way of testing our jurisdiction. At the moment, we have not received complaints that could be sustained.

Mr BAIRD—In going through the report, I notice there are a few things that we raised and I wonder whether you have any further comments to make on them. When we went to the various centres, there were a lot of complaints from detainees about the practice of being woken up in the middle of the night for counts as to whether or not they were there. That seemed to disturb people no end. Were you able to observe whether or not that practice has been discontinued?

Dr Ozdowski—My understanding, at least on the basis of what I was told by detainees, is that the practice still exists. When I was visiting Villawood on Friday of last week complaints were made to me that the practice is sometimes quite overburdening, especially one muster which coincides with the evening meal. Every person, including every child, needs to be accounted for in such a muster. If a person will not come then everyone has to wait until everyone turns up. It could mean that people are sometimes standing in the cold weather for one hour or longer. However, I was also told that it very much depends on the individual ACM officers—that most of them are quite human and are able to do it without too much trouble, within 10 to 15 minutes, but that there are some people who take pleasure in prolonging the procedure.

Mr BAIRD—One of the recommendations was that families should be housed together with appropriate family units. Does that situation seem to have improved?

Dr Ozdowski—According to what I have seen, yes, because there are no pressures on accommodation at this stage. I have seen many family units living together. In some circumstances, I also saw one or two families living together in a donga.

Mr BAIRD—We recommended that particular case officers be appointed to individual detainees so that they could be a liaison point for the detainee. I am not sure to what extent that has been approached.

Dr Ozdowski—Sometimes when you search for evidence, it is a bit like a joke. I remember when I lived in communist Poland, there was a joke that in Moscow, in Red Square, they were giving away cars. It was reported on the evening news, so everyone went there. There were no cars. They rang the TV station and asked, ‘Where are the cars being given away?’ The answer was, ‘It’s true, but it’s a bit different. It’s not in Moscow but in Leningrad and it’s not really cars but bikes. As a matter of fact, it’s one bike and it’s not being given away, it was stolen.’ When we talk to the people who are running the centres, we quite often hear one story; when we talk to detainees, we hear a different story. Quite often it is a question of going a bit further and drilling into it. In terms of comments coming from detainees, they know nothing about individual officers being responsible for their cases.

Mr BAIRD—My final question relates to jails and the practice of some people being held in jails for longer than their term. These people were asylum seekers in Australia. This practice should be reviewed to make sure that they are not kept in the jails for longer than their sentences. Has any further work been done on that?

Dr Ozdowski—I do not understand you very well. Are you talking about criminal deportees?

Mr BAIRD—That is true. I am talking about people who came into the country as illegals or asylum seekers—depending on your terminology—and who then, having been convicted of an offence, were put in jail. But because they were illegal migrants, they were kept in the jail for longer than their sentence.

Dr Ozdowski—I cannot comment on that because I do not have the specific data. Also the situation looks different in different states.

Mr PRICE—Did the department at any time raise with you the matter of Juliet block at Port Hedland?

Dr Ozdowski—Yes, I have been to Juliet block. My understanding is that it is not being used at the moment and that it has not been used for a considerable period of time.

Mr PRICE—I think it is fair to say that the committee was concerned about the adults who were locked up for 23 hours out of 24 in Juliet block. Have you investigated any allegations about children being locked up with their parents in Juliet block and, if so, what action have you taken?

Dr Ozdowski—We are in the process of looking at the history of that particular block, and I cannot add any more, except to say my understanding is that it was not in use last year.

Mr PRICE—During the committee's inspections, we obtained evidence that at least one child was locked up for weeks in such conditions. If you wished, I am sure we could make some accommodation to provide you with the details. I apologise for returning to this leeway you are giving the department on the pilot. Is it fair to conclude that, if you decline to give an extension, that would mean the pilot program would close?

Dr Ozdowski—It is up to the department to decide what they will do. They could decide to continue, and they could decide to continue by releasing fathers and boys over 13 into alternative detention. They also could decide to continue in breach of the Sex Discrimination Act. If they continue in breach of the Sex Discrimination Act, we will have to wait for a complaint from a male who is impacted by that discrimination.

Mr PRICE—Can I express the view that, while the pilot is pretty unsatisfactory, it is nevertheless—from my point of view—welcomed as an initiative. But I am deeply offended by the consideration that families do not constitute older brothers and sisters or a father.

Dr Ozdowski—When the pilot was proposed and the department came to us for an exemption, I thought that it was worth trying and I was arguing for those particular exemptions to be granted. I thought there was a hope there. However, at the moment, I am not convinced that it is working satisfactorily, so, before any further long-term exemptions are granted, the Sex Discrimination Commissioner and I would like to have a much better understanding of how it has delivered so far.

Mr PRICE—I would like to finish on the question of temporary visas. As I understand it, some asylum seekers are granted a temporary visa but are not allowed to visit family overseas or family they may have in detention centres. Do you have a view about the status of such visas? Do they in any way breach any human rights conventions or rights of the child? Or is it a matter you have not considered?

Dr Ozdowski—It is a matter that I have not considered. I write from time to time to the minister asking him to grant such visas for people who are in detention, and I welcome it if such visas are granted, especially to families—and I would say this to all families. I have not considered the second issue.

Mr PRICE—Can I draw this to your attention now?

Dr Ozdowski—Yes.

CHAIR—We have very little time, but Mr Thompson has a further question, then we must finish and move on to the department.

Mr CAMERON THOMPSON—I wondered if you have been to have a look at those arrangements that apply in Queensland, where some people are being detained in one of the jails at Wacol?

Dr Ozdowski—Yes, I visited the Arthur Gorrie Correctional Centre twice. Most of the people who are detained there because of immigration matters are criminal deportees. I must say I was, on both occasions, quite impressed at how well it is managed and how reasonable the conditions are there.

Mr CAMERON THOMPSON—Overall, in some of these facilities that you visited, there would have been a lot of overstayers as well as people detained for reasons of illegal immigration. Did you see a lot of overstayers?

Dr Ozdowski—Overstayers would not usually be kept in the desert detention centres; they would be in Villawood, Maribyrnong or Perth. Usually, they do not stay there for a very long time, because they can return to the countries from which they came.

Mr CAMERON THOMPSON—That is an important point, though. Some of your concerns would not apply in those centres?

Dr Ozdowski—Yes, they are two different types of centres. My concerns mainly, but not only, apply to the isolated desert centres.

Mr CAMERON THOMPSON—So, in your view, some of those—for example, Villawood—are operating effectively and without those concerns?

Dr Ozdowski—The mental health of people over there is markedly better.

Mr CAMERON THOMPSON—Can you name which ones?

Dr Ozdowski—The last one I visited was Villawood, and I also visited Villawood a year ago. There were some improvements made. It is still far away from being perfect but, for example, one year ago when I was there there was a major problem with communication, with access to telephones, and this issue has been solved. At the moment, there are enough phones there so that people can communicate with the outside. Also, community groups were allowed to come in to perform concerts. There is much better access to families. When you look at the desert centres, the isolation is one of the issues that contribute to the mental health problems.

Mr CAMERON THOMPSON—Finally, have you had a chance to look at the new centre of Baxter, and what is your impression of that centre?

Dr Ozdowski—I was invited to go there, but I will go there only after people are there.

CHAIR—Dr Ozdowski, thank you very much for your attendance here today. If any matters have been raised during the discussion on which we might need some extra information, our secretariat will write to you about those.

Dr Ozdowski—I would welcome your evidence about Juliet.

CHAIR—Which Mr Price has raised with you?

Dr Ozdowski—Yes.

CHAIR—Certainly. On behalf of the committee, I again thank you very much for attending this morning. We understand you are very busy, and we are very grateful for your time.

Dr Ozdowski—Thank you, Madam Chair.

[11.48 a.m.]

ELLIS, Ms Mary-Anne, Acting First Assistant Secretary, Offshore Centre Management and Infrastructure Division, Department of Immigration and Multicultural and Indigenous Affairs

GODWIN, Ms Philippa Margaret, First Assistant Secretary, Unauthorised Arrivals and Detention Division, Department of Immigration and Multicultural and Indigenous Affairs

GREAVES, Ms Rosemary May, Assistant Secretary, Detention Policy Branch, Department of Immigration and Multicultural and Indigenous Affairs

McMAHON, Mr Vincent, Acting Deputy Secretary, Department of Immigration and Multicultural and Indigenous Affairs

CHAIR—I welcome representatives of the Department of Immigration and Multicultural and Indigenous Affairs. Although the committee does not require you to give evidence on oath, I remind you that these hearings are legal proceedings of the parliament and therefore warrant the same respect as proceedings of the parliament itself. The giving of false or misleading evidence is a serious matter and may be regarded as contempt of the parliament. Mr McMahon, I invite you to make some opening remarks, if you wish to do so, and then committee members will have some questions for you.

Mr McMahon—First of all I would like, through you, Madam Chair, to thank the subcommittee for inviting the department to appear before it. In its correspondence with the minister, the subcommittee identified a number of areas in which it was interested, namely: the review of mainland immigration detention facilities, the Woomera alternative detention trial for women and children and the revised immigration detention standards. This statement therefore focuses on these matters. Before updating the subcommittee I would like to advise that the government is still considering its response to the subcommittee's report and has not yet set a date for tabling its response.

CHAIR—We are waiting with baited breath.

Mr PRICE—Does that mean that you have completed your part of it and it is now with the minister?

Mr McMahon—We have certainly had a number of drafts, which turned over as parliament was prorogued. There have been delays in getting the committee up. We have had a number of drafts.

Mr BAIRD—What is the formal requirement in terms of reporting?

CHAIR—Let us let Mr McMahon finish his opening statement and we will come back to that.

Mr McMahon—I would also like to draw the subcommittee's attention to the marked changes in the numbers and profile of those held in immigration detention in Australia since June of last year, when the subcommittee tabled its report. The last suspected illegal entry vessel, SIEV, whose passengers were transferred to the Australian mainland for processing arrived at Christmas Island on 22 August 2001. Since then, no SIEV has reached Australian territory since 9 December 2001 at Cocos Island. The last SIEV attempting to reach Australia was returned to Indonesia on 17 December 2001. The only arrivals since then have been single border-crossers: one across the Torres Strait in December 2001 and one at Ashmore Island in May 2002.

This has meant a declining detainee population as those who have been found to require protection have been released while many others who have not had that protection requirement have been removed from Australia. As at 30 June 2001 there were some 3,200 people detained in immigration detention facilities, of whom 1,500 were awaiting a primary decision on their protection visa applications. As at 9 August 2002 there were 1,276 people detained, of whom only 19 are awaiting a primary decision. Some 700 detainees are awaiting removal. This decline has seen a shift in the relative populations of individual centres. In June last year the Woomera IRPC housed 1,132—more than any other detention facility. On 12 August 2002 it housed only 179 detainees. Villawood now takes its place—

Mr PRICE—Woomera has gone down from 1,200 to what figure?

Mr McMahon—It was 1,132. It is now down to 179.

Mr PRICE—Thank you.

Mr McMahon—Villawood now takes its place as the largest centre, with some 400 detainees, comprising largely overstayers or persons who have otherwise breached their visa conditions. The change in centre demographics has presented differing challenges in the management of the detention population and in the use of the network of detention facilities. One such challenge is securing their cooperation in the removal of the larger number of detainees who have no legal basis for staying in Australia, and particularly those who, as a consequence of their taking advantage of merits and judicial review, have been in detention for lengthy periods.

Australia's capacity to remove unlawful non-citizens can be challenged by a number of factors including: the cumbersome administrative arrangements in receiving countries; difficulties in finalising arrangements for return because of, for example, a state of civil unrest in the destination country; and some countries requiring return to be voluntary. To facilitate the return process, Australia already has in place successful arrangements with some countries to effect return. This includes, more recently, achieving return arrangements to Vietnam. It is also actively pursuing negotiation of arrangements with other countries.

The three largest populations in detention in Australia now are Iraqis, Iranians and Afghans. The government and the department have been active in developing a range of options. Voluntary return of Afghan nationals has now commenced. While the removal of Iraqis, Iranians and some others can be complex, the department continues to have some successes. For

example, Jordan has agreed to facilitate the transit of voluntary returnees travelling to Iraq by the provision of a transit visa and transport to the Iraqi border.

In 2001-02, the department removed 10,810 persons, which covered air and boat unauthorised arrivals and numbers of people located unlawfully in the community. Three hundred and eight unauthorised boat arrivals were removed; 191 were onshore or mainland boat arrivals, including 73 Iranians, 48 Palestinians and 12 Iraqis. A further 117 offshore boat arrivals were removed from Christmas and Cocos (Keeling) Islands. The department liaises closely with foreign missions in Australia to resolve difficulties on a case-by-case basis. Successful removal is, however, not just a matter for the government. Detainees can also help bring their detention to an end by cooperating in the provision of information and documentation to assist in their removal.

On the review of mainland immigration detention facilities, you may know that declining numbers of unauthorised boat arrivals, ageing infrastructure and the changing profile of those remaining in detention gave rise earlier this year to a review of mainland detention facilities. In April this year, Minister Ruddock announced the outcome of this review and changes to the use of the network of facilities. The strategy adopted involved commissioning the Baxter IRPC, mothballing the Curtin IRPC, scaling down the Woomera IRPC with some of the reduced places being mothballed, establishing on Christmas Island Australia's first purpose-designed and -built IRPC and announcing a preferred IRPC site in Darwin at the 11 Mile Antennae Farm.

The mothballing plans are now well advanced and are being coordinated with the commissioning of Baxter. It is expected that detainees will be soon be transferred to Baxter. In designing that facility, the department has drawn lessons from its experience in managing detention in its existing facilities over the last few years. Baxter will provide higher levels of amenity and security than existing IRPCs. There are nine compounds which will allow more flexibility in managing detainees in a more community-oriented environment. It will better accommodate families by having a family designated compound, ensembles to all accommodation and some interconnected rooms. Two of the nine compounds have rooms for people with disabilities. The minister has indicated that he will continue to monitor Australia's detention requirements and ensure both the appropriate management of the detainee population and the availability of additional capacity should the need arise.

Regarding alternative detention arrangements, innovative approaches to alternative detention arrangements are taken within the mandatory detention framework and consistent with the Migration Act 1958. The trial of alternative detention arrangements for women and children commenced in Woomera in August 2001. The trial comprised a maximum of 25 Woomera women and children who were housed under ACM supervision outside the IRPC in a cluster of four three-bedroom houses. Each had a family member remaining at Woomera and an application for protection under consideration, and posed neither health, character nor management risks. Participation in the trial was entirely voluntary. Available housing has not always been used to full capacity with the reduction in persons awaiting a primary decision on their protection visa applications and the limits on eligibility.

An evaluation of the trial was conducted in January and February this year. The evaluation report concluded that, while the model was very costly, the trial was a success for participants, who experienced both psychological and social benefits. Community consultations were also

positive. The implications of the report, including expansion of the eligibility criteria and possible case-by-case participation of those with special needs, are being progressively considered. Other alternative detention arrangements have also been established on a case-by-case basis. For example, earlier this year, most unaccompanied minor children in Woomera IRPC were moved into alternative places of detention, including fostering arrangements in consultation with, and with the cooperation of, the South Australian Department of Human Services.

The immigration detention standards form a key component of the contractual obligations of the detention services provider. They have been very substantially revised in the context of the request for tender for detention services released on 28 June 2002. The tender documents, including the immigration detention standards, are freely available on the department's web site. I understand that the secretariat has accessed the standards on behalf of committee members. In revising the IDS, immigration detention standards and associated performance measures, the department took account of key issues which had emerged over the life of, and its experience in managing and monitoring, the current detention services contract. The department was also guided by the recommendations of the Flood inquiry and various Commonwealth Ombudsman's inquiries. The new standards were developed in consultation with the Commonwealth Ombudsman, the Human Rights and Equal Opportunity Commission and the Immigration Detention Advisory Group.

While the IDS continue to be outcome standards, the revised IDS are more precise and more detailed than the current version. The department has made a clearer distinction between standards and performance measures, with several matters included in the current standards now more appropriately incorporated into the performance measures. The proposed performance measures for each of the standards have been more clearly drafted to avoid misinterpretation. While they are more precise, the department has as far as possible avoided making the measures too prescriptive. This will enable the services provider to determine how best to deliver the service to meet the standard by focusing on the needs of individual detainees and taking into account the difference in each facility's population and infrastructure.

The greater degree of specificity in the standards and the clearer link between the IDS and performance measures, we hope, will enable the department to be more precise in its monitoring of service delivery. Tenders for the detention services contract close on 22 August 2002. We expect that the new contract and the revised IDS will become operational before the end of 2002. We are now happy to take questions.

CHAIR—Thank you very much. I have a couple of quick questions based on some of your remarks this morning and then we will go to my colleagues' questions. You mentioned that those who have been in centres long term are predominantly Iraqi, Iranian and Afghani and that Jordan was facilitating the removal of Iraqi detainees by providing—I think you said—transit visas and transport to the Iraqi border. What happens to them when they get to the Iraqi border?

Mr McMahon—They cross it. The advice from UNHCR has been that voluntary returns to Iraq are now acceptable.

CHAIR—These are voluntary returns, are they?

Mr McMahon—Yes.

CHAIR—So arrangements are made with the Iraqi government to meet and take the returnees?

Mr McMahon—Ms Godwin may want to comment further but, as I understand it, no arrangements are made. We simply facilitate the movement and they cross the border.

Ms Godwin—There is no formal arrangement. There is quite free movement across the border in that area. Provided Jordan knows that people are voluntarily returning to Iraq, they will facilitate their transit.

CHAIR—So for those who we are deporting as forced returnees, there is no arrangement available for them with Jordan?

Ms Godwin—That goes to the question of whether there is some other location. The requirement in the act—and I think we have probably had this discussion in other sittings—is that people be removed from Australia. We will remove them not only to their country of origin but to anywhere else where they have the lawful right of entry. So some people may well have the lawful right of entry and be removed there as opposed to Iraq. I am not aware of any involuntary return to Iraq. People can return to Iraq voluntarily without difficulty, is our advice.

Mr PRICE—Can there be an involuntary return of an Iraqi to Jordan?

Ms Godwin—If they had the right of lawful residence in Jordan, yes.

Mr PRICE—Have there been any?

Ms Godwin—I am not specifically aware of a case, but it goes to this question of where people have the lawful right of residence. The point we were making before does not go to people who have the lawful right of residence in Jordan; it goes to the question of whether or not people wishing to return voluntarily to Iraq can then transit through Jordan to achieve that outcome. Jordan has indicated that it is happy to assist in that way.

CHAIR—Thank you. Mr McMahon, in your briefing about the status of the various centres you said that detainees would soon be transferred to Baxter. Are those going to be transfers from Woomera or from other centres as well?

Mr McMahon—The minister is yet to come to a conclusion on that. It may involve a number of centres.

Ms Godwin—I will just add that, given we are closing Curtin, clearly we will need to transfer those detainees and there is certainly an expectation that a number of those people will go to Baxter.

CHAIR—In relation to the alternative detention arrangements and the evaluation report on the Woomera trial, is that a report which can be provided to this committee?

Ms Godwin—I would need to take that on notice, if I can. At the moment we are essentially using that as the basis for developing advice to the minister in the context of the overall review of where the detainee population is up to and what is happening, but there are, I would imagine, elements of the report that there would not be any difficulty releasing.

CHAIR—I would appreciate it if you would take that on notice and come back to the committee.

Ms Godwin—Sure.

CHAIR—Mr McMahon, in your comments in relation to the new IDS you said that the revision took account of key issues from the current contract, from the recommendations of the Flood inquiry and from various ombudsman's inquiries.

Mr McMahon—That is correct.

CHAIR—It might not surprise you that this committee might hope that its report had some bearing of the drafting of the new IDS as well.

Ms Godwin—I would like to comment on that.

Mr McMahon—Yes, please do. I am sure that it had extensive effects, Madam Chair.

CHAIR—It was not apparent from your remarks, Mr McMahon.

Ms Godwin—It certainly did play a part, as have a number of comments that other committees have made when visiting. I am particularly reminded of a conversation with this committee about the degree to which you could be precise in the standards. We have tried to take the views that were put to us at that time about the need to be more specific and build that in. So, in a sense, the views of the committee have pervaded a lot of our thinking. There are also references within the standards, in particular, to ways in which detainees should be briefed when they first arrive at centres and kept informed regularly about what is happening to them, what services are available, what the process of their case is and so forth. I know that that was one of the things that this committee was particularly interested in. So there is both the general flavour of some of the issues that this committee raised with us as well as some specific issues.

CHAIR—Thank you, I appreciate that.

Senator BARTLETT—I would like to clarify the status of the new IDS. Has that been finalised and is now in force or does it come into force with the new arrangement?

Mr McMahon—It comes into force with the new contract.

Ms Godwin—They are finalised because they form part of current tender that is under way. So as far as the actual documentation is concerned that is the final statement of the new standards.

Senator BARTLETT—Do they apply to the places on Nauru and Manus Island?

Mr McMahon—As you know, the offshore centres are processing centres, not detention centres. They are run by IOM, not by the Australian government.

Senator BARTLETT—That is a no, is it?

Mr McMahon—Yes, that is a no.

Senator BARTLETT—What is the difference between a processing centre and a detention centre? You are calling the new Christmas Island one a reception and processing centre, aren't you?

Mr McMahon—We detain people under the Migration Act in Australia—'in Australia' refers to Christmas Island and the mainland Australian centres. It is quite clear that people who are in Australia who do not have a lawful stay need to be detained and that is done under a contract with a detention services provider. The people in offshore centres essentially have movement which is restricted on the basis of the visa arrangements in those countries.

Senator BARTLETT—Why are you calling the new one on Christmas Island a reception and processing centre if it is a detention centre?

Mr McMahon—We call all the centres—Woomera, Port Hedland—reception and immigration processing centres, but they are places of detention.

Senator BARTLETT—What is the progress of Christmas Island in terms of completion and expected receipt of people? If no more arrivals occur from offshore between now and then is it just going to stay empty or are you going to transfer people there?

Mr McMahon—The government has not made any decision yet about the specific timing of the commissioning. It is a bit premature. Essentially we are in the early stages of the construction process. It is going to be some time before it is operational.

Senator BARTLETT—Was there not an intent to fast track it or exempt it from federal environment laws to get it completed by November or before the monsoon season?

Mr McMahon—That is correct. In particular it is the earthworks and other parts of it that need to be done and they have been given a very high priority.

Senator BARTLETT—But it might not be operational until some time next year?

Mr McMahon—Yes, it is unlikely to be operational in this calendar year.

Senator BARTLETT—What about the centre in Brisbane that gets floated from time to time? Is that still on the agenda?

Mr McMahon—Yes. The minister has basically entered into a consultation process. He has had community feedback. Quite clearly, from an operational point of view, a detention centre in Brisbane makes a considerable amount of sense. The minister has not yet reached a final view on the community consultations and it is a matter that we would expect to be brought forward in the 2002-03 budget context.

Senator BARTLETT—Can I clarify the situation with regard to the Iranians and Iraqis, in particular, in detention. With the voluntary returns via Jordan—my geography is not particularly good—which part of Iraq does Jordan adjoin? Is it the northern or the southern part?

Ms Godwin—It is the main part of Iraq. Entry to the northern part of Iraq is generally through Turkey.

Senator BARTLETT—Are there similar problems with Iranians in terms of involuntary returns?

Ms Godwin—The Iranian government at the moment requires returns to be voluntary, but if people volunteer there is no problem whatsoever with arranging returns to Iran and in fact nearly 200 Iranians have returned over the last year.

Senator BARTLETT—Is that the same with Afghanistan at the moment? The voluntary returns are fine but involuntary ones are not acceptable as yet?

Ms Godwin—It is not so much a question of them not being acceptable. It is that we are focusing on voluntary returns in cooperation with the Afghan authorities. As you would be aware, the government has made available reintegration packages to assist in that. That package is being progressively offered and taken up by people in immigration detention centres here in Australia and offshore.

Mr BAIRD—How many have accepted?

Ms Godwin—I can only speak for the Australian immigration detention centres at the moment. Mr McMahon might have some comments about offshore, but something like 60 per cent—it might be a bit more than that—of people who have been given a formal offer have accepted the offer and I think about 17 people have already travelled.

Mr McMahon—In the offshore facilities there are around 700 rejected Afghans. There are around 50 people, as I understand it, on the list for return and we have returned a number already. I would expect the number to grow very rapidly shortly because the government has left the offer open for a voluntary return until 30 days after the final decision they receive. As yet no Afghan national on Nauru has had a review decision so they are able to put it off. Notwithstanding that, there has been very substantial interest in return. Once they have their final decisions, which should take place in September or October, then I would expect to see a very substantial increase in interest for return.

Senator BARTLETT—I have a final question about Iraqis and Iranians who are not voluntarily returning. Is there any plan or area of activity in terms of what is to be done with these people? Are you just going to let them sit there and see what happens?

Mr McMahon—In respect of the Iranians, it is quite clear that there is really nothing stopping them from being returned involuntarily except the agreement of their government. The focus on them has actually revolved around those discussions. As Ms Godwin said, we expect very substantial voluntary return of the Afghans, so that process is working its way through. For the Iraqis, there is the question of choice. If they simply identified who they are, this sometimes facilitates the documentation, and then voluntary return is possible. It is an issue that we continue to work on.

CHAIR—Thank you.

Mr CAMERON THOMPSON—I want to follow up on some of the questions I was asking before about education. What sort of steps have been taken to improve the standards of education available in the detention centres? I am talking about those remote ones that concern Dr Ozdowski.

Ms Godwin—I will get Ms Ellis or Mr McMahon to comment. Our focus has been on three fronts predominantly. The first is to improve the physical facilities available. A fairly major project at Woomera has been the improvement of the available physical facilities there for the provision of education and other programs. That area has been completed. It is now operational and is being fairly extensively utilised. Secondly, we have been working with the service provider to focus on improving service delivery to individual children, the scope and breadth of the programs and the balance between formal classroom and other activities such as access to computers, sports programs, craft, recreation and excursions.

Mr BAIRD—We have heard these comments before. How many are actually in a regular school like most Australians? How many are in less than regular ones? On my visit to Port Hedland a year ago, the children were all in a composite classroom with varying ages. They were certainly not in a regular classroom. What are the numbers that are actually in schools? I know that part of the problem is not with Immigration but with individual education bodies in various states who would not accept them.

Ms Godwin—The third thing we have been doing is to focus precisely on the point that you are touching on, which is how to establish greater access for children to have schooling outside the centres. We have been focusing on the sorts of issues that need to be addressed in that. Taking the Port Hedland example, all of the children of school age at Port Hedland are now going to external schooling. However, as an adjunct to the external schooling, education programs continue to be offered within the centre and for after school arrangements.

Mr PRICE—Is there additional education for those children being provided in the centre?

Ms Godwin—No. There is a range of programs so that, when the kids come back after school, there are things for them to do. The preschool children have access to programs and, of course, the programs area continues to offer programs for adults, not only for children. There continues to be a range of education programs, although the school age children are actually going out to external schooling.

Mr CAMERON THOMPSON—Is that regular, everyday school?

Ms Godwin—Yes, it is just normal school.

Mr CAMERON THOMPSON—Do they attend school on the same basis as ordinary children at Port Hedland?

Ms Godwin—They just go to school, yes.

Mr PRICE—Could you give us a snapshot of the infants, primary and high school?

CHAIR—Do you mean in numbers, Mr Price?

Mr PRICE—Yes. You may not have it now, but if you could just take that on notice.

Mr BAIRD—A breakdown would be of interest in terms of overall numbers that are in regular schools and those that are in the ones within the detention centres.

Ms Godwin—We will give you the stats but, if I could just make the point that, I think at the time of your visit last year to Curtin, we already had a number of children going out to school.

Mr BAIRD—You had none.

Mr PRICE—At Port Hedland there may have been some.

Mr BAIRD—Port Hedland did. In Curtin, there was none.

Ms Godwin—In Curtin, there are certainly children going out to school, and there have been for some considerable period of time. Those two centres have access to some external schooling. The arrangements—

Mr BAIRD—Can I just take you up on that. You might remember, Chair, because you were with us at Curtin, that I visited the school along with Colin Hollis. The teacher there said, ‘I’d point your attention to these four girls who are sitting outside, who are really bright and really need to have access to schooling but can’t get into the schools.’ As I understand it, at that point in time there was no agreement with the Western Australian government. It was not your issue; it was they who were not accepting them. That is what we want to know.

Ms Godwin—It may be a question of timing. I think the access to education at Curtin commenced in about February last year. It may have been slightly after your visit. I cannot remember the date of your visit, in any event.

CHAIR—To facilitate this, can I suggest, Ms Godwin, that you take on notice a question to which your response gives us the numbers of children in the isolated detention centres and the city detention centres in regular school based education—

Mr PRICE—External.

CHAIR—that is what I mean by ‘school based’—and those that are participating in internal programs that DIMIA and providers are running inside detention centres. If that can be broken down by school category—that is, infants, primary and secondary—that would be helpful.

Ms Godwin—Sure.

Mr PRICE—Also, have agreements been made with all states to facilitate school based education?

Ms Godwin—No, we are still in discussions in South Australia where we do not yet have access to external school based education.

Mr PRICE—Is that the only state?

Ms Godwin—Yes.

Mr PRICE—So there are MOUs for the rest.

Ms Godwin—No, there are no MOUs, but the kids are actually going out to school. In Victoria, they go out to school, but I think they are not using the state education program there. They are using private schools; in particular, the Catholic education system. In any event, it is going out to normal schools.

Mr PRICE—What is the intention of the department? Does the department have a plan to negotiate with each of the states a memorandum of understanding that would facilitate this school based education that we are talking about?

Ms Godwin—To perhaps just turn it around slightly—and I am not trying to be difficult here—our objective is to get appropriate education programs available for all children. The needs of the children vary according to things like how long they are going to be there, what their education background is and so forth. We have some children, for example, going out to school in New South Wales, but not all of the children there because, if children are only going to be in detention for a fairly short period of time, the discussions indicated that it could be disruptive to have kids going in and out of the schools for only fairly short periods of time.

CHAIR—For the schools themselves as well as for the children.

Ms Godwin—Yes, that is right.

Mr PRICE—Gee whiz! In my electorate, I have schools with high transitory school populations. It is just a matter of daily life for them. If I could be fair to the obsessions of Senator Harradine, the thing that we are really concerned about is the fact that the children are entitled—no matter where they are—to have access to education, whether they are in a centre for two months or two years.

Ms Godwin—I do not disagree with you, Mr Price. The point I was making was that we are in many respects dependent on what the local schools are themselves indicating that they are

able to manage. Our objective is to work both with the local schools and within the centres to achieve exactly the objective you are pointing to—that is, that the children should have access to appropriate education programs. If that cannot be outside, for whatever reason, then there should be appropriate education programs provided within the centres. It is a question of the balance between the two.

Mr BAIRD—Isn't it a question as to where the problem is occurring? As I recall from our last visit, some of the state governments were not providing it for various reasons. Is that still the problem—that the state governments will not provide it—or have we not negotiated or—

Ms Godwin—The outstanding issue is in South Australia at the moment where we do not have access to external schooling. There is a range of issues that feed into that. Clearly last year when we had very large numbers of children, but only in detention for fairly short periods of time, the issue for education departments was would they be in a position to actually accommodate large numbers of children moving through in that sort of way, particularly in environments where they did not necessarily have lots of capacity themselves or specialist English language programs if the children needed them. Now we are in a different situation. We have smaller numbers of children in detention and we are working through in all of the states for appropriate access. Mr Price's question was: is it our objective to negotiate MOUs everywhere? Ideally, yes, we would like to have formal MOUs. I guess our focus at this point has been trying to get practical arrangements in place so that they actually fit the kids.

Mr PRICE—I may be overreacting. When we went around detention centres we were told education was not a problem. The committee made its observations and drew very different conclusions. What do you mean by 'appropriate education'? That term terrifies me a little bit.

Ms Godwin—It depends entirely on the needs, I think, of the particular detainee population at the time and the children within it. If you have large numbers of people—as we had last year—who were coming into detention, being processed and going out again within a reasonably short period of time—

Mr PRICE—What do you call 'reasonably'?

Ms Godwin—Many of those people were in detention for only 10 or 12 weeks, 14 weeks, 16 weeks.

Mr BAIRD—There was a mixture of girls that the teachers in Curtin pointed out, saying, 'This is a real tragedy. These girls are very bright. They have been here for several years and they can't go to the local school.' I think that is the type of thing that Mr Price and I are concerned about in terms of follow-up of the report.

Ms Godwin—Sure, and my point about that particular situation was that, not long after your visit, they in fact achieved access to schooling.

Mr BAIRD—That is good.

Ms Godwin—Numbers of children have been going to the high school. The arrangement in Curtin was, in consultation with the schools, that they wanted the programs within the centres to

focus on helping the children to develop appropriate English language skills so that they could then transition into the local school with a degree of ease, and that became the focus of the education program—to work in consultation with the local schools so that the kids could move through from the program they were receiving in the centre to access to external schooling. When I talk about appropriate programs, Mr Price, it is that sort of balancing that varies from centre to centre according to what else is available. Clearly in South Australia, where we do not yet have access to external schooling for any of the children, there has to be a much greater focus on a comprehensive program within the centres.

Mr PRICE—I am not aware of all states, and I apologise, but most schools have budgets and, if they have the money and there are special needs for a group of children, they can often buy the services—that is, get in a specialist casual teacher or whatever. What money do you provide to those schools to facilitate the obligations you as a department have for the education of the children?

Ms Godwin—The funding arrangements vary according to the requirements of individual schools and systems. It is not necessarily always the case that the children will need specialist assistance once they get to school. That is the point I was making about Curtin: the schools were saying, ‘We don’t have a specialist English language program, so if the children can be brought up to scratch in the centre then that will help transition into the schools.’ That became the focus.

Mr PRICE—Wouldn’t it be better if the school could provide it and get them out of the detention centre? What is your budget for schools? A simple question: to date, how much you have spent on schools?

Ms Godwin—We do not have a separate budget for schools; we have an arrangement with the service provider.

Mr PRICE—So, if the burden is a little difficult for a local school, your department is offering nothing else to these schools to meet the needs of these children—zero, nil, none?

CHAIR—Let Ms Godwin answer, please.

Mr PRICE—I was just trying to help.

Ms Godwin—As I say, the arrangements vary from state to state and depend on the requirements of the individual schools or systems. If they require—

Mr PRICE—You are saying zero.

CHAIR—Can you please let Ms Godwin finish?

Mr PRICE—I understand Commonwealth-state arrangements for funding of schools; I am very interested in them.

Ms Godwin—I am not saying there is not anything being paid to the schools, but the way in which it is being paid varies according to the requirements of the schools. For instance, in schools where the requirement is that we make sure the children have uniforms and books and pay whatever the local fee is, that is being done through local arrangements between the centre and the schools. It is not as simple as saying that it is a Commonwealth-state funding issue. There are a variety of arrangements which go to meeting the costs of the children attending the schools.

CHAIR—Mr Price, would it be helpful if Ms Godwin provided us with some information on those issues on notice?

Mr PRICE—Yes.

CHAIR—That would be about the sorts of individual arrangements that you have just referred to verbally.

Ms Godwin—Sure.

Senator HARRADINE—I will be very brief. The questions that I wanted to ask have been asked, except I wanted to raise the question of extending the intake quotas for refugees. For example, after the minister's visit to Africa to certain refugee camps, has there been any consideration given to extending or lifting the quota?

Mr McMahan—The minister has announced the program for this year, which is 12,000 plus any carryover. To my knowledge, there is no specific consideration of varying that. We do have arrangements—

Senator HARRADINE—Just remind me, what is that compared with last year?

Mr McMahan—It is 12,000. The overall refugee and humanitarian program is 12,000 places.

Senator HARRADINE—That has not changed since last year?

Mr McMahan—No.

Senator HARRADINE—That is what I am asking. Is there any intention of lifting that?

Mr PRICE—I think the answer is no.

Mr McMahan—To my knowledge, no.

CHAIR—Is that a question that you would like to pursue for the committee, Mr McMahan, and give us a formal response?

Mr McMahan—I will take it on notice. Can I register the fact that there are carryover arrangements between years so that, depending on the nature of a particular year, we may or

may not exceed the 12,000 program. For example, last year the program—from memory—was about 12,350.

CHAIR—I am guided by the committee, but clearly we are running slightly over time. I acknowledge also that we commenced late. Should we take another five minutes? I know Mr Baird has some questions, and I understand Mr Price has some questions.

Mr BAIRD—I would like to, because you arrived a little late—

CHAIR—Can I get an agreement on that before we go charging off?

Mr BAIRD—Yes.

CHAIR—If we take another five minutes then, if necessary, we can meet again with representatives of DIMIA. I am sure they would be thrilled to come back in the future!

Mr BAIRD—What I would like to focus on, because of the limited time, is a matter raised by the Human Rights Commissioner—I think you arrived a bit late for that. He talked of the concerns he had about the psychological wellbeing of people there. This relates to recommendation 10 on processing and the question of those who cannot be returned because the country will not accept them. Because there are limited numbers now, and you have not had so many, does that give you an opportunity to look at the ways in which processing could be speeded up and case officers referred so that people know what is happening to them? Are you attracted by the British decision to implement a two-plus-four rule—two months for the primary decision and four months for the appeals? Sixty-five per cent will meet that target this year, and those who have not had a decision within six months can actually work. Has there been attention to what we can do to speed up the process and try to address the basis for this psychological problem you have with long-term detainees?

Mr McMahon—First of all, there is no intention to move to a numeric based processing regime like that. Of course there are considerable financial pressures—

Mr BAIRD—Are you ruling it out arbitrarily? The British have introduced it and apparently there is widespread agreement this is a good way to go. Not only that, they have got 65 per cent meeting it this year, and the aim is 75 per cent by 2004. Isn't that a good way in which you could start to improve the whole processing aspect?

Mr McMahon—I was really just reflecting on the fact that the government has already exerted, through the purchasing agreement arrangements, quite strong pressure on us to perform and to process quickly. In the overwhelming number of cases that has actually happened. If you look at the experience at the moment there are only 19 people who do not have a primary decision.

Mr BAIRD—But isn't now the time to implement changes so that you can avoid these long waiting times for primary decisions that go on for months and sometimes into years, and the same with appeals?

Mr McMahan—At the peak of our processing we had 80 per cent of people receiving decisions within 13 to 14 weeks. In fact, the delays within detention centres have not in general related to the primary processing but have been in respect of appeals before the courts or of the review process. There are sometimes delays which are quite specific which are related to profile checking or whatever—in other words, where there are issues of security sitting behind it. The government is clear that it has a very strong interest in making sure that the processing is transacted as quickly as possible. The delays that took place in many respects reflected the massive increase in numbers that took place.

Mr BAIRD—But if you look at the number for the UK, which is expected to be close to 80,000 this year, and compare it to ours, and they have an objective of two-plus-four, what is so hard about our situation that we cannot implement a similar type of system?

Mr McMahan—What I am saying is that the financial incentives are there for actually quite quick processing, and I think it has taken place.

Mr BAIRD—So you actually agree with our recommendation 10, that where possible there should be a time limit on the period applicants are required to spend in administrative detention? I think we set a period of three months.

Mr McMahan—I agree with the proposition that we should be doing everything we can to make sure that the processing period of time, particularly primary processing, is minimised. But, in respect of that specific recommendation, the idea that you would allow people outside of detention—which I think that recommendation referred to—simply because—

Mr BAIRD—It did not at all; it just said that should be the objective. That is the same as with the British model.

Mr McMahan—It is quite clear that the government is determined to keep the processing period down. You asked in the second part of the question about the psychological elements. Do you want to make a comment on that, Ms Godwin?

Mr BAIRD—That is my last question. I have no further questions after this answer.

CHAIR—We will conclude after this.

Ms Godwin—I only want to say that clearly the shorter the time people can be in detention the better. That is why most of the focus last year went into processing people, so that, if they were going to get a visa, they got it as quickly as they possibly could. If you look at the figures that were in our opening statement, you will see that it is clear that very significant numbers of people who entered detention last year left it within a relatively short period of time, many of them with visas, and a much smaller number of them left the country.

The vast majority of the people who are in detention for lengthy periods of time—and it is true that there are numbers of people in detention who have been there for 12 months or more—are available for removal. So the focus there has been on two fronts. One is providing as much support as possible while they remain in detention, and all detention centres continue to have access to psychological services: psychologists, doctors, nurses, activities programs and so

forth. The other focus is on encouraging people to make the shift and voluntarily depart, because for many of them that will be the quickest way to bring their detention to an end. Many of them can depart and a number of people have departed. We are continuing to work intensively with people in detention now who are available for removal to encourage them to work through that process.

CHAIR—Thank you. On that note we will conclude but with the rider that we may need to pursue further issues on another occasion.

Mr PRICE—Yes, I have other questions.

CHAIR—Thank you, Mr Price. I do appreciate that. I would like to thank you, Mr McMahon, and your colleagues for attending this morning and assisting the committee. I would like to thank my colleagues for their support today.

Mr PRICE—Will you, Madam Chair, be on time for the next meeting; if I could just make a polite inquiry?

CHAIR—Unless they call another Senate party meeting to select the government's nominee for president, yes, Mr Price. You have taken a series of questions on notice—I think three or so—and we would appreciate your responses on those as soon as possible.

Mr McMahon—Can I just clarify a point. Are we coming back—is that what you are saying—or are you reserving the right to call us back?

CHAIR—The committee will reserve that right.

Mr PRICE—I will be disappointed if you do not.

CHAIR—Indeed, and we will make those arrangements at a private meeting.

Mr McMahon—It may be possible for Mr Price to give some further questions on notice for us to deal with.

CHAIR—Yes, we may be able to facilitate it in that way. You gave us one document, 'Summary of Facilities, Services and Activities Available to Detainees'. Did you table that?

Ms Greaves—No, I do not think so.

CHAIR—We requested it. Is it a public document?

Ms Godwin—It is usually public. I was just not aware that we were tabling it, that is all. But if it is the standard facilities table then, yes, it is a public document.

CHAIR—It is this document here.

Ms Godwin—Yes, that document is public.

CHAIR—All right. The committee will take that as a tabled document. We thank you very much for your assistance. I thank all those who participated today and I thank the secretariat for its support.

Resolved (on motion by **Senator Harradine**):

That this subcommittee authorises publication of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 12.43 p.m.