



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS,
DEFENCE AND TRADE

HUMAN RIGHTS SUBCOMMITTEE

**Reference: Aspects of HREOC's annual report 2000-01 concerning immigration
detention centres**

WEDNESDAY, 18 SEPTEMBER 2002

CANBERRA

BY AUTHORITY OF THE PARLIAMENT

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to: **<http://search.aph.gov.au>**

JOINT COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

Human Rights Subcommittee

Wednesday, 18 September 2002

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

Senators and members in attendance: Senators Ferguson, Harradine, Hutchins and Payne and Mr Baird, Mrs Moylan, Mr Price and Mr Cameron Thompson

Terms of reference for the inquiry:

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.

WITNESSES

DAVIS, Mr Stephen Donald, First Assistant Secretary, Unauthorised Arrivals and Detention Division, Department of Immigration and Multicultural and Indigenous Affairs.....53

ELLIS, Ms Mary-Anne, Acting First Assistant Secretary, Offshore Centre Management and Infrastructure Division, Department of Immigration and Multicultural and Indigenous Affairs53

GODWIN, Ms Philippa Margaret, Deputy Secretary, Department of Immigration and Multicultural and Indigenous Affairs.....53

GREAVES, Ms Rosemary May, Assistant Secretary, Detention Policy Branch, Department of Immigration and Multicultural and Indigenous Affairs53

McMAHON, Mr Vincent, Acting Deputy Secretary, Department of Immigration and Multicultural and Indigenous Affairs.....53

Subcommittee met at 4.40 p.m.

DAVIS, Mr Stephen Donald, First Assistant Secretary, Unauthorised Arrivals and Detention Division, Department of Immigration and Multicultural and Indigenous Affairs

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, Deputy Secretary, 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 call the meeting to order and thank the representatives of the Department of Immigration and Multicultural and Indigenous Affairs for returning this afternoon to continue giving evidence as part of our ongoing review of conditions in immigration detention centres and the treatment of detainees as raised in the Human Rights and Equal Opportunity Commission's 2000-01 annual report. The committee intends to conduct today's proceedings in public, although of course should you wish at any stage to give evidence in private, you may ask to do so and we will consider that request.

Although the committee does not require you to give evidence on oath, I will 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 parliament. I will ask if there are any opening remarks that you wish to make. First of all, I want to welcome Ms Godwin in her new capacity as deputy secretary of the department and congratulate you on that appointment, Ms Godwin.

Ms Godwin—Thank you.

CHAIR—The committee, as you will recall, asked on the previous occasion the status of the government's response to the subcommittee's report on visits to immigration detention centres from last year. We understand that that has been amended. DIMIA is back with something else for consideration, and I wonder whether you can provide us with an update on that.

Ms Godwin—I might ask Ms Greaves to comment.

Ms Greaves—We are waiting for final clearance. We hope that it will be tabled very soon.

CHAIR—Do you expect that the committee might see it before we conclude this set of hearings on the follow-up? It is a serious question. It is very difficult for us to complete the report.

Ms Greaves—We are pressing for it to be cleared as soon as possible. We are hoping to send it to you as soon as possible, but it is a little out of our hands.

CHAIR—We thank you for the public version, as it is entitled, of the report on the evaluation of the trial for alternative detention arrangements for women and children in Woomera. As we were advised that sensitive information has been removed from that document, it has been made a public document of this committee. We appreciate that. We understand that you have some answers to questions on notice for us.

Ms Godwin—I do, Madam Chair. I have another copy of that public version of the evaluation as part of that. I will table them now.

CHAIR—Thank you very much. Are there any comments you wish to make before I seek questions from my colleagues? What I will indicate is that, as ever—I say this to both my colleagues, as there is a significant number here this afternoon, and our witnesses—we are extremely pressed for time. It is always the case and we understand that we ask a lot of you in a short space of time. But we need to ask concise questions in some semblance of order and get concise answers.

Ms Godwin—Thanks, Madam Chair. I do not want to say anything by way of general remarks. There is one issue that came up last time that, with your agreement, I would like to provide a bit more information about, if I could. One of the questions that came up last time was the question of access to education outside detention centres. I think I said at the time that in Victoria children in Maribyrnong IDC go to schools in the community. I mentioned that they are attending Catholic schools and not the state school. But I need to expand on that just a little if I may. The arrangement for children at Maribyrnong IDC to attend external schooling has been in place since at least the beginning of 1998. Children have attended a local Catholic primary school in accordance with arrangements made between the department and the individual school. These arrangements were again formalised around three years ago after a period during which there were no children at the IDC, and there had not therefore been a need to access the school. In total, around 12 children have had access to these arrangements. Those relatively low numbers reflect the low numbers of children in the IDC.

Recently, however, circumstances changed, which meant that different arrangements had to be sought. At the time they were approached—it was around mid-second term this year—we had three children who needed access to schooling but the school did not have any vacancies. In addition, one of the children required access to secondary schooling. Further, the family with the children had also expressed a preference that the children not go to a Catholic school because the family is Muslim. I guess that is an understandable position on their part. In view of this, the department considered that the external schooling arrangements needed reviewing. Access to state schools was considered more appropriate and would also address the issues of access for children to secondary schools. We are currently in negotiations with the state education department. Those negotiations are well advanced. We expect to be able to access state education for children of school age in the Maribyrnong IDC. Hopefully, the aim on both our part and the education department's part is that we will conclude those arrangements in time for children to start at the beginning of the next school term.

Currently, the schooling situation in Victoria for children in immigration detention is that two children are attending an external kindergarten and have been going there since April this year. There are two children in a family in alternative detention who are attending a primary school near their place of residence. The three school age children that I mentioned in the IDC are currently being provided with programs within the centre by a qualified teacher employed for that purpose while the negotiations are going on with the education department. So I just wanted to clarify that. We have been using the access to the Catholic school up until about the middle of second term. Then, as I say, because of those changed circumstances, we have now opened negotiations with the state education department. So there are three children currently at the centre who are getting programs within the centre, which is unusual. We have not normally done that. I just wanted to clarify it because I did say they were going out.

CHAIR—Indeed. Are any of the answers you provided to us today on education matters?

Ms Godwin—Yes. You asked last time, I think, for a table which—

CHAIR—I might ask for them to be copied so that members can have a look at them. I know Mr Price has a particular interest in this area.

Mr PRICE—Yes. And Senator Harradine.

CHAIR—And Senator Harradine, indeed; I am sorry. The committee has a particular interest in this area.

Mr PRICE—What is the table?

Ms Godwin—You will recall that you asked for a breakdown of the number of the children in the centre by school stage and how many of them were going out to school and how many of them were not. We have provided a table that goes pre-primary, primary, secondary, total numbers et cetera.

Mr PRICE—Thank you.

Ms Godwin—Hopefully, that will give us an overview. The table is footnoted, though, and I need to make this point: it was done as at 30 August. It included numbers for Curtin. Of course, the people from Curtin are now being moved. We now have a number of children at Baxter. So it is not exactly contemporaneous, but if you wanted us to, we can update it at a point in time.

CHAIR—Mr Price, did you want to continue with questions in that area?

Mr PRICE—On education?

CHAIR—Yes.

Mr PRICE—Most certainly, thank you. So you are negotiating with Victoria, and that is good to hear. What is the status of the other states, such as Western Australia and New South Wales?

Ms Godwin—To start with Western Australia, all of the children who are now in detention in Western Australia are at Port Hedland. I think all bar three of the children at Port Hedland are going out to schools at Port Hedland.

CHAIR—That is the Catholic school?

Ms Godwin—That is the Catholic school.

CHAIR—And Christmas Island?

Ms Godwin—No. Christmas Island counts separately. I think there are six school age children at Christmas Island. They are all going out to school.

Mr PRICE—What assurance can you provide to the committee that children going to school outside these detention centres is not being used as a system of reward and punishment? In other words, some of the children are held back in detention as a punishment. What are the processes you have in place that detect whether that happens or ensures that it does not?

Ms Godwin—Well, it is my understanding that it is not used as a punishment. It is not used formally as a reward. As we talked about before in relation to Curtin—I will talk a little about Villawood in a moment because it is in a slightly different situation—the arrangement with the school at Derby was that they wanted the children to be school ready and have a level of English which would mean that the children could integrate reasonably readily into the school program. Therefore, an arrangement was developed whereby the program at the centre focused on helping the children become school ready. Now it did inevitably, I think, encourage children in the centre to attend the program in the centre because they wanted to increase their skills so that they would be able to go out to school. I think we started off with three children going to school some time early last year. By the time we moved the people from Curtin, I think about half of the children were going out to school. So that was 13 or 15 or something like that. So the number has increased over time as the children became school ready and their English language skills improved. You asked whether it is used as a reward. No, it is not formally used as a reward.

Mr PRICE—What assurance can you provide to us that keeping children away from school on certain days is not being used as punishment? What systems do you have in place to detect whether or not your contracted provider is using such a methodology?

Ms Godwin—Well, we have the normal monitoring mechanisms. The centre manager, as you know, is in situ, and monitors the performance. If they had concerns of that sort, that would be raised with the service provider. We have reports from those centre managers on a regular basis and from time to time we have monitors.

Mr PRICE—So management is walking around among people?

Ms Godwin—It is close interaction with the service provider, looking at the services they are providing, focusing on what is happening and why it is happening.

Mr PRICE—I place on record my concern about the allegation that children are being rewarded and punished in that way. When we last met, I was endeavouring to get from you the information about what the Commonwealth is paying these schools. With great respect, you were answering my questions on the basis of what a normal parent would do—that is, you provide uniforms, books and bags so that they can go to school. Specifically, of the schools in which the department is currently having detention centre children being placed, what additional assistance are you as a department providing those schools as a function of them having those children?

Ms Godwin—One of the answers to questions on notice that we have provided goes to that point, Mr Price. Essentially, as I said last time—it is a point I need to make again—it depends a bit on what the arrangements are with individual schools and what they have sought by way of appropriate costs. For instance, at Curtin, we paid the local school fees, uniforms, equipment and for excursions.

Mr PRICE—Okay. But that is what a parent would do. That is absolutely no different from what a parent would pay.

Ms Godwin—Yes.

Mr PRICE—I am obviously grateful that you are doing that. I think you have a responsibility to do so. But in terms of those schools accepting those children, are any additional payments made?

Ms Godwin—No.

Mr PRICE—In the situation where those children were having English language difficulty, if a school was able to provide specialised assistance for those children in the school, maybe at an initial cost to itself, would the department pay? I apologise; I know it is a hypothetical question. Has it arisen, and would you pay?

Ms Godwin—Well, it is hypothetical. In a sense, my answer has to be hypothetical. The position that we have always adopted is that if there is a request for reimbursement of costs or contribution towards costs of that sort, we would examine that request in good faith and we would meet reasonable costs.

We have said in our answer to the question on notice that, as an example, the issue of funding has come up in discussions with the New South Wales state education department. But at this point the position taken was that it was going to be very hard to quantify what those costs would be and that, therefore, we should start the process, see what the costs were and further examine that issue some way down the track. I do not know quite what—

Mr PRICE—That is New South Wales?

Ms Godwin—Yes.

Mr PRICE—What about the other states?

Ms Godwin—As I say, we are in a sense responding to the sorts of issues that they are raising. So if they raise cost issues, we will respond. As I say, our position has been that we will meet reasonable costs. It means that we need to examine whether there is already some provision made in other Commonwealth-state funding arrangements. If there is, what is it? Is there a requirement over and above that? So it is really a question of looking at it case by case and state by state.

Mr PRICE—Of course, ACM claimed that they were providing this wonderful education for the children. I applaud the department in this now apparent shift to go to external schools. Surely that then means that ACM must be saving some money in that expense, or am I wrong? If there is a saving, how is that now being spent? Are more adults being encouraged to participate? What is happening with that little pocket of money or bag of money?

Ms Godwin—I guess there are two points to make. One is that the funding arrangement with ACM is based on an all-inclusive per diem cost. So we do not have a separate fund that we provide them for the purposes of education. It is an all-inclusive cost which they are required to meet to provide all of the services. I think it is not necessarily as straightforward as if children are going out to school; therefore there is not a commensurate requirement within the centres. Our requirement is that, regardless of where children are going to school, or whether they are going to school, ACM is required to provide appropriate services. Villawood is a case in point. We have some children going out to school, but there are other children who are not going out to school. That is a feature of the particular arrangements there at the moment. That means that although there are some children going out to schools, there is also a requirement to go on providing the full range of services within the centre. So, as I say, there is not a direct trade-off in the way that you are proposing.

Mr PRICE—That begs another question, but I will not ask that. My colleagues have been most generous with me.

CHAIR—I will indicate to the committee that Mr Baird and I are required to attend a meeting with the Prime Minister at about five o'clock. I will ask the chair of the joint committee, Senator Ferguson, to chair the subcommittee in my absence. I apologise for that. It is unexpected. I indicate that Mrs Moylan has a question that I think is also in this area. If you want to take this question on notice, that would be fine. In Western Australia, for example, the state school system essentially says it will not take children of detainees, as I understand it, although there have been some taken in Curtin in recent times. But I certainly understand that to be the case in Port Hedland, including for children with special needs. I would be interested to know what efforts the department has made to negotiate with the state departments of education to resolve that problem and what its status is in other states and territories.

Senator FERGUSON—Why don't we hold that question in case you get back so that you can get a direct answer. If you do not get back, we will get an answer and put it in the *Hansard*.

CHAIR—Thank you very much, Senator Ferguson.

Mrs MOYLAN—My question was not in relation to this particular topic. When the Australian Federal Police appeared before us, I asked a number of questions about allegations by detainees in centres about their treatment by the staff of the management. As a committee,

we have actually had letters from people outlining treatment which appears to be quite poor treatment. I was trying to find out what actually happens when these kinds of complaints are lodged. Who is responsible? What are the protocols for dealing with it? I could not get any clear answers. One of the answers was from Mr McDevitt. He said, 'We actually have a protocol.' Then he said, 'But we are negotiating a protocol with New South Wales.' It seems that there has not been one in the past, and that is my question: what in the past has been done to address these issues? Some of the allegations are quite serious. I notice that, on page 63 of the *Hansard*, after some discussion and getting off the point on several occasions, Ms Fagan said they would take my question on notice and give me details.

The other thing that seemed to be quite clear is that the AFP was signalling that it does not really have responsibility for investigating offences against individuals—that is, detainees—outside the ACT. The question really is: where does this leave detainees in terms of being able to have allegations of assault and other offences investigated? I think it is a really serious matter and I would like an answer to it. To date, as I understand it, we have not received an answer.

Ms Godwin—Our position and the requirement of our own staff and of ACM is that any allegation, particularly if it relates to assault, is a matter that should be referred to the state police in the relevant state where the centre is located.

Mrs MOYLAN—This is part of the problem. It seems that, although that is the understanding, there is nothing in place; there are still only discussions taking place. If you read the *Hansard*, that is the answer we were given—that the discussions were taking place. That implies that at the moment there is nothing in place to deal with these matters. That is how it reads. You might want to go back and actually read the *Hansard* in relation to the answers.

Ms Godwin—I will certainly do that. To try to assist at this point, let me say that there are negotiations going on. There are discussions going on. But I do not think it is therefore true to say that there is nothing in place. In many respects, what we have got is established practices, which we are trying to formalise into MOUs.

Mrs MOYLAN—I understand that. If you read—

ACTING CHAIR (Senator Ferguson)—Please let Ms Godwin finish. I would rather she finished her answer.

Mrs MOYLAN—These questions were all asked, Mr Acting Chairman.

ACTING CHAIR—I understand that. I just want to let her finish her explanation before you question her mid-sentence.

Ms Godwin—Thanks, Mr Acting Chairman. The fact is that cases are referred to the police. The police do investigate them. The action that is taken is clearly a matter for the police. That is if it comes to our attention. That is if the detainee brings it to the attention of staff in the centre, either ourselves or the service provider. On occasions, a detainee may raise a complaint but not directly within the centre. They are able to do that. They can write to either the Ombudsman or the Human Rights and Equal Opportunity Commission. If a complaint came to our notice through that mechanism, we would still then seek to refer that to the police.

The position that the police take is that, just as would happen in the community, they have to make an assessment of the potential seriousness of the allegation and the priority that it will be accorded. In some instances, that means that they will come in and take initial witness statements and a statement from the person making the complaint, but they may subsequently decide not to pursue it. In other cases, they will pursue it. As I say, it is a matter for the police to make that decision. There have been instances where charges have been laid. In one particularly serious case, it was against an officer of the centre. In other instances, there have been altercations between detainees and the detainee may have been charged. So there is, as I say, a practice of referring such things to the police.

Equally, as the AFP have said, there are ongoing negotiations and consultations to try to formalise these arrangements into MOUs with state police and the Federal Police. Those MOUs are an attempt to try to identify the range of issues that would normally be referred to state police, the range of issues that would normally fall within the province of the Australian Federal Police and what the administrative and other responsibilities are of ourselves and the service provider. For instance, if the police need a certain set of information when an allegation is made, that goes to the police so that they do not have to spend time trying to gather basic information that could have been gathered when the complaint was first made, for example. Those discussions are ongoing in New South Wales, South Australia and Western Australia. They are all at different stages of progress, if I can put it that way. But we are looking to try to advance them as quickly as we can.

There are some complex issues that they raise, as you can imagine. There is a question of ensuring a degree of consistency between states. So there is a process of looking at what one state wants and checking that against where we are in discussions with other states. We need to try to end up with, I think, a reasonable degree of consistency across states but also with MOUs that are capable of reflecting any local variations or circumstances that we need to take into account.

Mrs MOYLAN—I have to say again that, if you read the *Hansard*, there was some confusion on the part of the AFP, I thought, in trying to answer my question about what those protocols were. They talked about the protocols but they could not enunciate them. I think that is fair to say. I think the *Hansard* demonstrates that, if you go back and examine it. A question that needs to be asked is: whose responsibility is it to oversee the activities of the managing company of the centres?

Ms Godwin—It is this department's responsibility to manage the contract.

Mrs MOYLAN—It is your responsibility to manage the contract. You said that it does not always come to your attention if there are events that are taking place. Shouldn't you know of every event that takes place where there is a complaint against the keepers of the detainees?

Ms Godwin—I did not say it does not always come to our attention if there is an event. I said complaints are not always raised directly with us or with ACM. There is a process of incident reporting that goes on regularly. There are all sorts of requirements in the contract about incidents that need to be reported and the timeframes within which they need to be reported. We will often follow up those incident reports. In cases of significant incidents, we may in fact instigate an investigation. But if an individual detainee believes that they have a reason for

complaint and want to raise that, they may raise it with us or with ACM within the centre but they may not raise it directly with us. They may, for example, go straight to the Ombudsman or HREOC, which they are perfectly entitled to do. There is information in all the centres explaining to detainees how they can do that. It is really the difference between a detainee indicating that they feel they have a complaint as opposed to us, as you say, knowing what incidents are going on.

Mrs MOYLAN—What is the difference between a complaint and an incident? Couldn't a complaint be about an incident?

Ms Godwin—It could, indeed.

Mrs MOYLAN—So if it was a complaint, you wouldn't necessarily know about it?

Ms Godwin—If an incident occurred that gave rise to a complaint and it all happened simultaneously, yes, we would know about it. But if an incident occurred and it is managed and resolved, or appears to be, but privately the detainee feels that they have been inappropriately treated or whatever, they may raise that directly with us as a complaint or they may go elsewhere. We have had examples, for instance, where a detainee has spoken not to staff in the centre but to an adviser. The adviser has then raised it with centre management. On the basis of that, the complaint has been made to the police. As I say, we may be aware of an incident but it has been resolved. But the fact that an individual detainee feels they have been inappropriately treated may come to our attention during that process but it may not.

Mrs MOYLAN—That is the concern I have. If you are going to manage that, if you are going to oversee what your managing contractors are doing, I would have thought it is fundamental that you know the nature of the complaint. Obviously, if you get a number of complaints that are similar, it would tell you that you have a problem or that there is some kind of problem. If you do not know about those episodes or complaints, you cannot possibly know whether your management is doing what they are contracted to do.

Ms Godwin—Sure. That is why we do take complaints very seriously. As I said, if we think an incident has happened that is particularly serious, we may ourselves instigate an investigation. As I say, if a detainee feels that they have been inappropriately treated but they do not raise it with us, then in the end we are dependent on finding out about it from the detainee or by some other method.

Mrs MOYLAN—That is the point I was trying to get at. I am concerned that there is not a process in place to properly log the complaints, which then means that it is impossible for you to manage situations in relation to the management of centres. You do not know what is going on. I do not want to pursue this any further because I am sure other members have concerns. I want to have on record my concern about that.

Ms Godwin—I want to make one comment. I want to reiterate the point that knowing about an incident and knowing about a complaint are not necessarily the same thing.

Mrs MOYLAN—I understand that.

Ms Godwin—We may well know about an incident and we may well be concerned about the way in which the incident has been handled and, as I say, instigate an investigation of our own. But, as I say, if an incident on its face looks as though it has been appropriately managed and resolved but nonetheless the detainee has a concern, yes, we would want the detainee to come forward and let us know that. If they do, we take those things very seriously. My only point is that if a detainee, for example, does not want to bring it to the attention of management for whatever reason and uses another mechanism, that is their right, and that is appropriate. When that agency draws it to our attention, we nonetheless take it seriously.

ACTING CHAIR—Surely it follows on from Judi's question that one of the reasons you may not know about a complaint is that you have given them the opportunity to bypass the contractors and your department to have an independent person hear their complaint and adjudicate on it. The only way you could know about every complaint would be for either the Ombudsman or that other body to have to tell you of every complaint that is made, wouldn't it? That would be the only way that you could find out?

Ms Godwin—That is right. The only other way would be to make it, in effect, compulsory to report to us before they go to anyone else.

ACTING CHAIR—You are giving them an option so that they do not have to deal with the department or the contractors?

Ms Godwin—If that is their preference. If that is the preference of the detainee, that is right.

Mr PRICE—I have to say that many members felt, in visiting the detention centres, that that information was not readily available.

ACTING CHAIR—At that time.

Mr PRICE—At that time. I want to make a point to follow up Mrs Moylan's point. In her state, in prisons, you not only have an administration of the prison but, like detention centres, you have police coming in to investigate serious things. There is the state Ombudsman, who has a role. There is also an inspector-general of prisons in Western Australia, as is the case in my state. One of the biggest issues about detention centres is this issue about public access and transparency about what goes on. If you are undertaking an MOU with the state police in Western Australia, why wouldn't you also want the extra confidence that an MOU and activity by the inspector-general in WA would provide for the system?

Ms Godwin—You are asking me a question that is more properly a matter for the government.

Mr PRICE—I am sure the government can take the issue but I thought the whole thrust was about having a system in which complaints are able to surface and then appropriately assessed and investigated. Again, as I say, the states, with greater expertise in this area than the Commonwealth, have put this extra layer into the system of an inspector-general, who can make his own inquiries and can undertake inquiries on behalf of the minister. So you do not have yourselves, as it were, with management people in the centre, also doing the investigating in

those cases where you decide to launch an investigation. It is about public confidence in the system as well as, if you like, a degree of redundancy to give people reassurance.

Ms Godwin—I understand the point. Yes, we certainly do instigate investigations if we believe something requires further investigation. But that is not to say that that is the only source of investigation. The Human Rights and Equal Opportunity Commission and the Ombudsman, as well as the Immigration Detention Advisory Group, all have access to detention centres. In the case of HREOC and the Ombudsman, they have statutory responsibilities.

Mr PRICE—I think the independent group was a useful initiative. Some of the people on it are known to us. They have come from different sides of the political equation. But I do not think it is a substitute for what I am talking about. As you know, they also have officially visited the programs. So you actually get someone who is in between the administration. They have a responsibility to report to the administration concerns that are being raised.

ACTING CHAIR—I want to ask a couple of questions about Baxter, which is close to home for me. What are the current numbers in Baxter today, do you know?

Ms Godwin—As at 16 September, which is Monday this week, there were 122 people at Baxter.

ACTING CHAIR—Have they all come from Woomera, or have they come from other centres?

Ms Godwin—No. They have come predominantly from Curtin and some from Woomera.

ACTING CHAIR—Mostly from Curtin flown in to Port Augusta?

Mr PRICE—Flown to Port Augusta. How many children are amongst them?

Ms Godwin—We currently have 33 children at Baxter.

ACTING CHAIR—Is there any agreement with the South Australian education department where those children can receive education outside Baxter in the Port Augusta schools?

Ms Godwin—Not yet. But we are in active consultation and negotiation with the South Australian education officials.

ACTING CHAIR—Why didn't the negotiation take place before people came to Baxter, knowing 12 months ago that it was going to be used?

Ms Godwin—We have been talking to the education department for some while. This goes to a point that we touched on last time we were here. In some respects, the response of education departments depends a bit on the sort of numbers they are dealing with. Early on, when it was not possible for us to tell them what sorts of numbers and the breakdown between primary and secondary and so forth, it was difficult for them to think about what that would mean in a Port

Augusta context. So the discussions have been most intensive since we have started to firm up on the actual transition plans for Baxter. They are well advanced. We are talking to the Catholic education system as well as the state education system.

ACTING CHAIR—Have you got any idea what your proposed numbers might be, say, in two months?

Ms Godwin—Yes, we do. We anticipate that the numbers at Baxter, once we have concluded all of the transfers—and of course they will fluctuate as time goes by—will be a population of around 270, maybe up to 280 or maybe a little bit less than 270. But it would be that sort of number.

ACTING CHAIR—Are all the people who have been moved to Baxter long-term detainees who are waiting for appeals et cetera?

Ms Godwin—Given that they have all come from either Curtin or Woomera—I am not sure whether there are any transfers from Port Hedland—they would all be relatively long-term detainees who have been refused at primary level, probably at review. A number of them would be available for removal but a number of them would be still proceeding with other forms of appeal through the courts, for example.

ACTING CHAIR—What were the teething problems in the first couple of days?

Ms Godwin—I will ask Mr Davis to comment.

Mr Davis—I think a range of issues arose in the first few days. There were a combination of matters around some aspects of the infrastructure. Some showers were not working, and a few things of that nature, which Ms Ellis may have more details on. Generally speaking, it had a different look and feel. The layout of the centre is that it is a nine-compound centre with, I guess, smaller populations and less interaction across the different population groups. I think some of the issues arose because of the different nature of that look and feel. In terms of the sorts of things that were being worked through over the last week or so, there were things like the recreation activities. The gym, for example, has only been open and available in the last couple of days. It was not available when people first went in there. Education was commenced earlier this week. That was brought on stream this week. Things like excursions and other activities, particularly around the recreation type areas, are still evolving and being developed. They probably are not in the full swing of a centre that has been operating for some time. As I said, showers—

ACTING CHAIR—I am surprised that showers would not be working.

Mr Davis—That was actually a compound that was not being occupied. We had half a dozen showers about which for some reason there was a problem. But that was fixed very quickly. We sorted that out very quickly. It was not actually one of the compounds that was occupied. It was fixed.

ACTING CHAIR—Teething problems were reported in the first couple of days but there was no explanation given as to what those problems were. I just wondered whether they were

serious. Can you tell me whether inside Baxter itself you have areas that are separated. Do you keep people separated? For instance, do you keep Iraqis and Iranians and others in different compounds, or are they mixed together?

Ms Godwin—There are essentially four compounds operating out of the nine. Two will be for families and two will be essentially for single men. The allocation between those compounds is partly trying to balance up the population between them. One of the opportunities we have at Baxter is to give people a reasonable amount of space. We do not have to just fill up a compound. There is also a bit of choice. Of the two family compounds, there is some choice as to which one people go into. But in terms essentially of nationality groups, there would be a degree of mixture in each of the compounds.

ACTING CHAIR—Can they see out of these compounds?

Mr McMahon—There are a couple of compounds from which they can. But they are not the ones being used at the moment.

Mr PRICE—There are two that cannot?

Mr McMahon—There are two that can.

Mr PRICE—Two you can see out of or two you cannot?

Mr McMahon—No. There are nine compounds. From most of the compounds you cannot. Essentially, they are built like a big U. It is a closed U. They have very large green fields in the middle. The idea was to build it around the philosophy of a community inside there. In addition, it needs to be considered in the context that these are compounds within a compound. Therefore, people are not meant to stay there the whole time. They move out of that area for education and other activities within the centre. Of course when they are outside for those activities, they have a pretty clear view. Obviously, trees and all that sort of stuff are there. There is a much higher level of amenity in that respect.

ACTING CHAIR—I am conscious of the time. I think we have a maximum of 10 minutes left. I want to give Mr Thompson a chance to ask questions. I want to ask one question about Christmas Island. At what stage are we up to at Christmas Island as far as the new processing centre is concerned?

Mr McMahon—The ground work is being done. We are still finalising the plans et cetera. But there has been a substantial movement of equipment and a lot of preparation done by way of clearing. Essentially we are back before government finalising designs et cetera.

ACTING CHAIR—Are there any arguments with Christmas Island Phosphate? Have they been solved?

Mr McMahon—The issues raised by PRL are actually before us. It was agreed that there would be an independent process in respect of the level of compensation. That is the main issue which arose in respect of the resumption of the land. We expect that independent process to deliver a result. It is the process they agreed to.

ACTING CHAIR—And a possible date to be ready for first intake or any intake at all?

Mr McMahan—We are not projecting that far out at the moment.

Mr CAMERON THOMPSON—I wanted to ask about Manus and Nauru. I have been reading various reports about the numbers of people there found to be genuine refugees. How many such numbers are there and what is the progress in finding them permanent settlement?

Mr McMahan—I am not sure whether I have the numbers in that format. There are 1,122 on Nauru and Manus; 931 of them are on Nauru and 191 are on Manus. There have been, in effect, 152 people transferred to Australia for protection in Australia. I think 194 have gone to New Zealand. Eight people have gone to Sweden. I do not know whether I actually have the number in respect of the residual people who have not been found to be refugees, but I would hazard a guess that at least 700 of those remaining have now either had a primary decision finding them not to be refugees or requiring protection or have actually had a review decision as well. I can find the number here if I look through these tables.

ACTING CHAIR—So it is somewhere around 700?

Mr McMahan—It is 700 to 800 that have basically had a primary decision saying they have no claim to protection or that they have had a review which has reached the final stage. The review decisions have only been coming down in big numbers for the Afghans in the last six weeks or so. We hope to have completed all decisions virtually this month. Obviously, we are starting with people returning home. We have had 40 people already who have taken up voluntary return. I know of another 170 people on the books who have asked to be returned. A good number of them are Afghans.

Mr CAMERON THOMPSON—My question was specifically about those that had been found to be genuine refugees and what progress was being made with them. You have given me figures that 152 have transferred to Australia, 194 to New Zealand and eight to Sweden. How many does that leave who are genuine cases that are still to be processed?

Mr McMahan—I would guess around 220.

Mr CAMERON THOMPSON—So they have been found to be genuine refugees and we are still waiting on what to do with them?

Mr McMahan—Yes.

Mr CAMERON THOMPSON—How much longer before it is decided what is going to be happening with them?

Mr McMahan—There are at least three or four other countries who are still considering intakes. Essentially, they have very similar processes to us. We have actually provided health clearances ahead of time for everybody. Nevertheless, some countries have their own health clearance requirements. In general, where other countries are taking them, it is on the basis of relationships. They need to establish the validity of those relationships. Sometimes, for example, they have not mentioned that they have a relative anywhere. Then they will make a

claim that it is a relative. The relative has a different name from the one they give. There are all those sorts of issues that need to be resolved.

There are countries like New Zealand which have periodic intakes. They do not take them continuously. For example, the next intake for New Zealand is actually in January next year. Essentially, it will go through that matching process in the way it takes them. The Australian government has basically put a priority in respect of the processing or the resettlement of those people. Those who have been brought to Australia to date have generally had immediate family connections or there have been some particularly compassionate circumstances. Examples are serious illness or whatever. The people remaining are those who have more distant relatives or whatever or, indeed, no relatives. New Zealand has been extremely helpful in taking people with no or distant family connections because they are the group that most often are difficult to place. They have taken a group, which is extremely helpful from our point of view, leaving the residual of people who do have family connections of one type or another.

Mr CAMERON THOMPSON—What other countries are considering options for resettlement?

Mr McMahan—There are a number of other countries. I am a bit loath to actually name them until they make a decision themselves about whether they want to resettle. It may be counterproductive on my part to mention them. I think you could say that there is an interest in respect of where there are relatives in respect of a number of traditional migrant receiving countries.

Mr CAMERON THOMPSON—Apart from the ones you have named, like New Zealand and Sweden, are there any that are clearly identifiable that there would be no problem naming?

Mr McMahan—I just have a preference for not mentioning them.

Mr PRICE—So it is clear on the public record, can you give me an assurance that no child is held back from school as a form of punishment by ACM, or would you prefer to take that on notice and investigate it?

Ms Godwin—I will take it on notice and check. But it is certainly not a policy that they would be held back for that purpose.

Mr PRICE—Can you tell me why HREOC is claiming that it has no jurisdiction in Nauru and Manus when Federal Police and ASIO are there? Why hasn't the department got on to that?

Mr McMahan—The legal advice on that is quite clear to us. Unless a body in Australia, a government body, has extraterritoriality, then they do not have it. There is no provision within the mandate of HREOC for that.

Mr PRICE—Does that apply to the Ombudsman?

Mr McMahan—The Ombudsman does have a provision. Consequently—

Mr PRICE—Has the Ombudsman been there?

Mr McMahon—No, the Ombudsman has not been there. But I would say this: irrespective of whether or not they have an ability to oversee activities in respect of those functions, you could not presume that anyone would be able to go there because of the visa and other requirements.

Mr PRICE—We will not get into an argument. Can I just ask about Juliet block. I understand it is no longer used for punishment. How many children were actually incarcerated in Juliet block?

Ms Godwin—I would have to take that on notice and go back through records.

Mr PRICE—How was that authorised? Did you authorise the incarceration of any children?

Ms Godwin—I do not refer to it as incarceration. Nor were people transferred to Juliet block for punishment. Juliet block was used as part of the range of accommodation that was available at Port Hedland. It has been out of commission for a year or more because—

Mr PRICE—I think only you would say it was not used as punishment. Why were people transported there from other detention centres for a period of a couple of weeks, put in the cells and then transported back? Anyway, we can quibble about that. It does not matter. Who authorised it? Who was the one who made the decision? Did someone in the department authorise the removal of children for that incarceration?

Ms Godwin—Transfers between centres are always a matter of discussion between us and the service provider, and the allocation of accommodation within the centres is, generally speaking, also done in consultation.

Mr PRICE—So there was no authorisation? In respect of children in particular but also adults, there was no-one in the department who was authorising that who put a signature on a bit of paper and authorised it?

Ms Godwin—I do not wish to quibble, Mr Price, but the fact is that it is not the way transfers happen. If people need to be transferred between centres, there is a process of assessment, discussion and agreement that goes on, just as we have gone through, for example, in transferring people from Curtin now to Baxter. It is about who will go, when they will go and which compound they will go to.

Mr PRICE—Look, which—

ACTING CHAIR—Hang on, Mr Price. Let Ms Godwin finish her answer.

Mr PRICE—But we have very limited time.

ACTING CHAIR—I understand that. But you cannot keep asking questions and then stopping her halfway through answers.

Ms Godwin—I am just making the point that transfers between centres and transfers within centres happen reasonably frequently and, generally speaking, on the basis of discussion about the needs of a particular population at the time. As I say, it is a matter of discussion.

Mr PRICE—But there are other centres where people were locked up 23 hours out of 24 and it was just part of the normal transfer system. Is that what you are really trying to say to me?

Ms Godwin—I am saying transfers happen between and within centres.

Mr PRICE—Of course I know that. Were there blocks other than Juliet where people were incarcerated 23 hours out of 24? Can I get a straight answer?

ACTING CHAIR—Steady on, Mr Price. There is no need—

Mr PRICE—I am entitled to an answer, Acting Chair.

ACTING CHAIR—All right. You are. But you do not have to harass the witness.

Mr PRICE—I am not harassing; I am seeking answers.

ACTING CHAIR—Well, you are harassing.

Ms Godwin—There is a variety of accommodation in different centres. You have seen the centres, as you know—different people who have been in accommodation for different periods for different purposes. To say there was any other centre, I cannot answer that because I would have to go and look at the records of individual centres and individual detainees.

Mr PRICE—I suspect the answer is no. But I would be grateful if you would. You are not disputing that Juliet block on occasions was used to incarcerate asylum seekers for 23 hours out of 24. Even your own contractor told us that on site. All I am asking is whether there was an authorisation procedure in which your department was involved for transferring people from one detention centre to Juliet block while it was being used for this purpose.

Ms Godwin—Transfers between centres are a matter of agreement. So there would have been discussions between the department and the service provider.

Mr PRICE—I understand that there would have been discussions. I am asking you: did anyone in the department put their name—that is, a signature—on a bit of paper authorising it, or was it the case that it was exclusively the contractor's?

Ms Godwin—I am saying it is neither. There is a process of discussion about transfer—

Mr PRICE—So there is no paper trail of authorisation?

Ms Godwin—There is no formal requirement to authorise. It is a matter of discussion and debate and agreement about where people are. The other point I should make is that your question presumes that Juliet block, by definition, always had people—

Mr PRICE—No, I didn't—whilst it was being used for that purpose. It was used. Are you not disputing that it was used?

Ms Godwin—No. There may well have been some detainees for which that was the nature of their detention at that time. But there are other people in Juliet—people at different times who would not have been—

Mr PRICE—We won't play with the situation because we both know of the situation we are talking about.

ACTING CHAIR—Let us not put words into Ms Godwin's mouth.

Mr McMahon—I would make a correction. I have redone some arithmetic here. I remembered that some of the people transferred to New Zealand were in fact not refugees. I deducted them off the total. But the number of people who I think are at Manus and Nauru who have been found to require protection would be 340.

ACTING CHAIR—You gave a figure of 220.

Mr McMahon—I gave a figure of 220.

ACTING CHAIR—So that is correct. Ms Godwin, you said you would check your records for Mr Price. When you check your records, could you also check the last time Juliet block housed anybody, if the records show how often prior to that time Juliet block was used to house detainees.

Mr PRICE—That would be useful.

ACTING CHAIR—The last time it was used, and, if we are going to get down to the nitty-gritty, how often it was used prior to that? That might give us some idea.

Mr PRICE—And how many children.

ACTING CHAIR—And if there were children. I think we had better stop.

Resolved (on motion by **Mr Price**, seconded by **Mrs Moylan**):

That submission No. 3 from DIMIA dated 18 September be received as evidence to the review of aspects of the 2000-01 Annual Report of the Human Rights and Equal Opportunity Commission concerning conditions in immigration detention centres and the treatment of detainees, and authorised for publication.

Ms Godwin—We did not answer what Senator Payne in effect asked. But we will provide some comments on that.

ACTING CHAIR—I am sorry about that. We are out of time.

Ms Godwin—We will put an answer on notice.

ACTING CHAIR—Thanks. I forgot about Senator Payne’s question. We were getting a bit carried away with others.

Resolved (on motion by **Mr Price**):

That this subcommittee authorises publication of the evidence taken at the public hearing this day.

Subcommittee adjourned at 5.42 p.m.