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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**

THURSDAY, 26 SEPTEMBER 2002

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JOINT COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

Human Rights Subcommittee

Thursday, 26 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 Bolkus, Bartlett, Ferguson and Harradine and Mr Baird, Mr Brereton, Mr Ferguson, Mr Lindsay, Mr Moylan, Mr Price, Mr Somlyay and Mr Cameron Thompson

Senators and members in attendance: Senators Bolkus, Ferguson, Harradine and Payne and Mr Baird and Mr Laurie Ferguson

Terms of reference for the inquiry:

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

WITNESSES

McLEOD, Mr Ronald Neville, Commonwealth Ombudsman73

WINDER, Mr Oliver, Deputy Commonwealth Ombudsman73

Subcommittee met at 11.43 a.m.**McLEOD, Mr Ronald Neville, Commonwealth Ombudsman****WINDER, Mr Oliver, Deputy Commonwealth Ombudsman**

CHAIR—The Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade has an ongoing interest in immigration detention centres. The subcommittee visited a number of detention centres last year. We were pleased to note some references to our report on these visits in your last annual report. The Commonwealth Ombudsman has an important role in monitoring conditions in immigration detention centres and in providing an avenue for individual detainees to make a complaint and to have it investigated. We are interested today in learning more about this process and about your recent and current investigations into detention centres. I declare open this public hearing of the Joint Standing Committee on Foreign Affairs, Defence and Trade's Human Rights Subcommittee on 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.

The committee intends to conduct today's proceedings in public. However, 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. 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 welcome you both. Mr McLeod, would you like to make some opening remarks before members of the committee proceed to questions?

Mr McLeod—Thank you very much for the invitation to come along today, which we were pleased to accept. I thought it might be helpful if I made a few introductory remarks to just sketch in brief the sort of role that we have played in the detention centre area in recent times. I would be very happy to take any questions from the committee. Perhaps in starting I should just make clear to the committee that my office was established essentially to deal with complaints from members of the community in relation to the activities or decisions of any Commonwealth government agency. In excess of 100 Commonwealth organisations are within my jurisdiction. Each year we receive something like 20,000 complaints and we also deal with about another 15,000 general inquiries from members of the public. So we are a smallish office with a fairly large volume of complaints covering the whole gamut of the Commonwealth's administrative activities.

However, over half of those complaints cover matters that relate to Centrelink's programs. That is not surprising when you think that Centrelink have something like seven million-odd people on their books. Around 12 to 15 per cent of our complaints are about the Australian Taxation Office. Again, that office has a very large population base or customer base. The Child Support Agency is our third largest complaint generating agency, with about 10 per cent of our complaints. Between those big three, as we call them, about three-quarters of the complaints load of my office is encompassed.

Immigration, then, is the next of the smaller agencies, smaller in the sense of the volume of complaints that is generated, with only about five per cent of my complaints load. That is, about 1,000 complaints were received in the last year or so in relation to immigration matters. Predominantly those were about visa matters. We received about 150 complaints last year, and will probably do so on a pro rata basis again this year, from people who are in detention centres. The volume of our complaints interest is related to 150 complaints out of 20,000, so the remarks I make are worth looking at against that background. Because they are small in number, that does not mean that they are any less important. Indeed, there are probably some factors associated with the circumstances in detention centres that might suggest that perhaps we do not receive as many complaints on a per capita basis as might be true in the population at large.

The number of complaints on immigration matters has been steadily rising in the last five years. About eight to 10 per cent per annum has been a fairly typical annual increase in complaints on immigration matters. Over the last five years, for example, the volume of complaints has gone up by about 50 per cent. Again, that is probably easily explained by the fact that over that period of time there have been some reductions in the intake targets by government, which has an impact on the length of the queues. That in itself can generate complaints because people see themselves in perhaps lengthening queues. Of course in the last three or four years we have had increases in boat people arrivals that have pushed up the numbers of people in detention centres. So those two factors are clearly responsible for generating more business for my office.

In addition to dealing with complaints, we also have the capacity to undertake own motion inquiries. We have undertaken two or three fairly significant own motion inquiries in the detention centre area over the last year or so. Own motion inquiries are generally directed towards what we believe are some potential systemic weaknesses in the way in which a Commonwealth agency goes about its business, drawing on the experience that we gain in handling individual complaints. We completed two in 2001, one following an investigation we made into conditions in detention centres. We also completed one into the holding of immigration detainees in state correctional institutions.

I will mention two or three items of major concern for my office that came out of those reports. We felt that, given a policy of mandatory detention, which it is not our place to be critical of, we believe it was not acceptable that detainees should be held in substandard conditions where there were potentially risks of their exposure to harm of one kind or another. We also felt that detainees appeared to have lesser rights, and were held in an environment which appeared to have a weaker accountability framework surrounding it, than was typically the case with criminals held in state prisons.

We felt that there was room to improve the level of care afforded to women and children in particular, whom we saw as high risk detainees. We believe that detainees should no longer be sent to state prisons other than for those cases where serious criminal behaviour could be demonstrated. We also believe that the department ought to be increasing its efforts to arrive at memorandums of understanding with the state police and other authorities so that the demarcation of responsibility between state authorities and the Commonwealth could be more clearly defined.

Those two reports were made public at the time. We also completed an own motion investigation into what we described as incident reporting in the detention centres. Incident reports are documents that are produced or meant to be produced when an incident occurs in a detention centre that is noteworthy of being recorded. That information then provides a means of being able to audit circumstances that can arise from time to time and provide an important means of management feedback both to the contractor responsible for managing the centres and to the department being responsible for the overall circumstances in the centres.

Our main concerns which were expressed in that report were that, given our knowledge through public reports of a considerable number of disturbances that had been reported in certain centres, in a number of cases we were unable to find incident reports covering those reported circumstances, which raises a question about how thoroughly the reports were being prepared and how useful they would therefore be as a kind of management feedback. We felt that the handling of detainee complaints could be improved. We believe that there should be better linkages both between incident reports and the lodgment of complaints as a means of informing higher management as to concerns and issues that were emerging within the centres. We also had some concerns about the level of understanding within the centres of our existence and the fact that we had certain roles and powers that could be exercised in appropriate cases providing detainees understood they had the right of access to my office.

More recently, we have been following up on the recommendations in those reports to be satisfied as to what progress has been made by the department in implementing a number of the recommendations which the department indicated were going to be adopted. We have also been embarking upon a further round of visits to all of the detention centres, including Christmas Island, although we have not visited Arthur Gorrie in Queensland in the last 12 months and we have not visited Baxter yet.

Senator FERGUSON—Arthur Gorrie?

Mr McLeod—Arthur Gorrie is the name of a state correctional institution in Queensland.

Senator FERGUSON—But it is not a detention centre?

Mr McLeod—There is a special wing in the state prison to handle detainees, yes. Finally, we made a submission to HREOC in relation to its own motion inquiry into children in detention centres. It was largely factual. It outlined the sorts of experiences that we had and the comments we had made in the course of our various investigations. We have a copy of our submission to HREOC, if you would like me to make that available to the committee.

CHAIR—Thank you. That would be helpful.

Mr McLeod—We have also got copies of the two major own motion investigations that we conducted last year.

CHAIR—As a submission to the HREOC inquiry, that would now be a public document?

Mr McLeod—Yes. I would like to also present you with our reports, which were public reports at the time, as background reading on our report into detention centres and on our report into the use of state correctional institutions.

CHAIR—Thank you very much, Mr McLeod. Mr Winder, did you wish to add anything?

Mr Winder—No, I do not think so. Thank you, Chair.

CHAIR—I thank you for that very comprehensive statement. I think it is of great assistance to the committee in a number of key areas. I am certainly very grateful for it. Before I go to Senator Harradine and Senator Bolkus, both of whom have time pressures, I wanted to ask you about the alternative detention arrangements that were in place in Woomera for women and children in recent times and which have recently been evaluated. Has the office of the Ombudsman had an opportunity to review that?

Mr McLeod—We have not reviewed it in a detailed sense as part of a formal investigation. It was part of the department's and the minister's response to our earlier recommendation, which was to the effect that women and children should be able to be segregated. The minister indicated that he was undertaking a trial. We have followed that with considerable interest. To the best of our knowledge, the trial is considered to be very satisfactory both from the department's point of view and from my point of view in terms of providing a more suitable environment for holding women and children in custody. But we would have liked to have seen that go beyond a trial and be adopted as a more robust element of the government's detention policy.

CHAIR—I think it is fair to say that that is a matter of current discussion.

Senator HARRADINE—You were saying that there were how many complaints from persons within detention?

Mr McLeod—About 150 per annum.

Senator HARRADINE—Of them, how many were resolved to the satisfaction of the complainant?

Mr Winder—I do not have that detail for you, Senator, I am sorry. I would have to get it for you.

Senator HARRADINE—Thank you.

Mr McLeod—A number of them, I guess, were resolved in the sense that we completed our investigations, Senator. I guess it is the nature of our business that you cannot always correct situations that have occurred. But they were resolved in the sense that the complainants appeared to be satisfied with the response they received from our office without necessarily saying that in a large number of cases the circumstances that gave rise to the complaint were able to be corrected entirely.

Senator HARRADINE—And the time frame between the lodgment of the complaint and the resolution thereof?

Mr McLeod—Again, we do not have those figures broken down for the detention complaints. We could certainly give that to the committee. As a general response, immigration complaints do tend as a generality to be more complex than many of the other complaints we get. They do not always deal with black and whites. They can involve more difficult investigations. It is not a question of just turning a benefit around if it appears to have been inappropriately applied, which is a much more straightforward, factually-based thing. My office does pride itself on being very responsive in being able to deal with complaints. We do deal with the vast bulk of our complaints in what I would regard as a very short time frame. I would not claim that immigration complaints as a class are capable of being dealt with as quickly as the generality of our other complaints; they do tend to be a bit more time consuming. Some of them that do involve the detention centres, of course, involve circumstances that exist in remote localities. It is not always easy for my office to get a feeling for an issue on the ground quickly. But we do the best we can.

Senator HARRADINE—In your report you refer to the fact that the existence of the Ombudsman and the powers are not as well understood or known. Of the complainants, do you ask, ‘Well, how did you get to know us?’ I am talking about the detainees and the areas. In other words, is there any better way to be able to publicise the fact that the Ombudsman is available to receive complaints?

Mr McLeod—I am not sure that we ask complainants that question as a matter of course. In the investigation of a number of them it would become apparent how the person became aware of the existence of our office. We do have an agreement with the department of immigration and with ACM, the contractor, to display in all of the detention centres on noticeboards information about the existence of our office and how they can telephone our office on a free call number. I think the support groups in the community who are working with the detainees would generally understand the knowledge of our office and our role reasonably well. I understand that detainees are provided, when they arrive in detention centres, with an information booklet that is in a number of languages. It sets out a whole range of administrative arrangements associated with their custody in the detention centre. Included in that booklet is a reference to the existence of our office and our role and how we could be contacted. With people coming and going in the detention centres and with the population changing its mix, I think I would have to accept the fact that there would be many detainees who would not quickly understand and appreciate fully the nature of our office and the role that we play. But there is that publicity that I have mentioned.

When we visit the centres, it is generally made known that officers from my organisation are visiting. There are usually opportunities for detainees to be invited to meet with my representatives if any of them have any concerns that they would like to have addressed on the ground. So they are some of the measures we are taking to try to spread the word.

CHAIR—Thank you, Mr McLeod. Just for the record, Mr Winder has tabled a copy of the poster that you place in detention centres.

Senator BOLKUS—I will start by asking to what extent you can actually investigate the conduct of ACM.

Mr McLeod—We do not have any inhibitions in investigating any decisions or any actions of the contractor in relation to their management of detainees in the centre. Our jurisdiction in that regard has not been challenged, as it has been in some other areas of government where contractors are now performing work that was previously provided by government employees. The department is comfortable that it has to be accountable for the actions of ACM. ACM understands that we have a legitimate right to seek information and be provided with it. If ACM or its employees were to refuse to provide us with any assistance or material, I do have powers under my act to formally summon them to cooperate. But it has not been necessary to use those powers. I think there is a good understanding that those reserve powers are there and can be used. So there is little point in resisting cooperation with our office.

Senator BOLKUS—You mention problems with the collation of incident reports. Can you elaborate somewhat on that?

Mr McLeod—I think the picture we found was one that did not fill us entirely with confidence—that incident reports were in fact being prepared in all cases and that recordable incidents were occurring. We felt that the procedures governing the nature of matters that should be reported left some room for improvement. We did not believe that either ACM or the department were gaining value out of drawing on the information that was being created in the incident reports to help to identify recurring problems or systemic weaknesses that were not apparent.

Senator BOLKUS—They were not taken seriously, in other words?

Mr McLeod—I am not sure that they were not taken seriously. I think the importance of them and the value of them as an important source document on things that may be going wrong in a detention centre did not appear to be grasped by either ACM or the department. We made recommendations to the effect that the system needed to be beefed up, improved, and that there be stronger accountability mechanisms both for the department in terms of ACM's performance and for our office in being able to oversee the performance of both the department and ACM.

Senator BOLKUS—You have given us those recommendations, have you?

Mr McLeod—We have not given you anything about that report, but we could provide you with a separate document that has not been published but can be made available to the committee for your use.

CHAIR—On a confidential basis, Mr McLeod.

Mr McLeod—Yes. We will test it out with the department. It may be that the department does not have difficulties in your using it in whatever way you see fit.

Senator BOLKUS—I have a couple of questions before I have to leave. When did you actually make those recommendations?

Mr Winder—In November 2001.

Senator BOLKUS—And have they been picked up since?

Mr McLeod—A number of the recommendations have been adopted. But we are in the process of confirming with the department the extent to which in the passage of time matters that they indicated they were implementing had in fact been implemented.

Senator BOLKUS—That is probably something we can take up too. My last question is that you mentioned you can actually pursue private contractors with the department and you deal with ACM. I notice you have not mentioned Manus or Nauru, where you have Australian government officials—Immigration, APS, ASIO or whatever—contracting to IOM. Have you taken a decision to not look at how IOM is operating there and how those centres are operating in those two places?

Mr McLeod—I guess we have been concentrating on the detention centres nearer to home and the ones that do not raise questions about jurisdiction that those localities might. I am not aware that we have received any specific complaints from either of those centres.

Senator BOLKUS—You probably do not know about them.

Mr McLeod—That may well be the case. The short answer is that we have not addressed them as part of our investigation program at this stage.

Senator BOLKUS—Have you decided not to, or will you? To me, it seems you would have to.

Mr McLeod—It is still an open question in the sense that we have not consciously excluded them nor have we taken to finality to our own satisfaction whether or not we would have jurisdiction to deal with matters from those facilities.

Senator BOLKUS—I will interrupt there. You do have Australian government personnel overseeing, if not operating, the centres. Why wouldn't you?

Mr McLeod—There are some interesting legal issues there that would need to be teased out that I prefer not to comment on off the cuff. It is not an open and shut case that we would have jurisdiction in those places.

CHAIR—Would you like Mr McLeod to perhaps take your questions on notice? If you do not want to comment on an off the cuff basis, we understand.

Mr McLeod—I am happy to come back with answers.

CHAIR—Thank you very much.

Mr BAIRD—I am interested in pursuing three things. Firstly, you said that you did not regard some of the accommodation as being appropriate. I would like to flesh out what you

meant by that. Secondly, in terms of the accommodation provided that you thought was less than that provided in state correctional institutions, which ones did you compare it with? The third question relates to women and children. What was your recommendation at the bottom line? I am sorry to put the three together rather than having three goes at it.

Senator FERGUSON—In relation to Mr Baird's first question about conditions, I think the term you used was 'substandard conditions'. Can you tell us in your answer what criteria you used to determine that the standards were substandard?

Mr McLeod—I would start by saying that you have to understand that that report on the detention centres was released in March 2001. It was drawing on our experience with detention centres as they were prior to that date.

Senator FERGUSON—All of them?

Mr McLeod—Yes, going back to some visits we made in the year 2000. We have separately acknowledged that in the period between then and now some substantial improvements have been made in detention centres. That is observable to us. A number of the conditions that we observed and which we commented on in our reports have been corrected. Woomera, at the stage we were looking at it, was going through the early stages of a major upgrade. I think the fact that that was occurring was an acknowledgment on the part of the government that the conditions initially at Woomera when its role expanded were not entirely satisfactory.

Our concerns about the women and children were essentially related to our view at the time that women and children were unprotected in the circumstances in which those detention centres existed at the time. In other words, we felt there were other options that could have been available to the department to better house women and children in circumstances where they were not as exposed to risks that might exist—risks of assault and risks of interference in what was predominantly a large, single male, mixed population of detainees.

CHAIR—Mixed in terms of nationalities?

Mr McLeod—Mixed in terms of nationalities, racial origins, religious convictions and so on. In the early days, as I say, going back to 2000 and early 2001, it seemed to us that a detainee was a detainee; there was not a great deal of evidence of differential treatment of groups of detainees who were seen to be more at risk than others. We saw women and children as particular classes of detainees who we thought were at risk and warranted arrangements that reduced that risk. The housing of women and children outside the main detention centre, as in the trial in Woomera, obviously is one strategy that can be adopted. I think in the new detention centre in South Australia the centre itself is much more segmented in a way that enables the management of different classes of detainees in a self-contained, self-protective environment. They were the sort of things that we were pointing to which we felt needed to be addressed which at that stage had only been addressed in a very limited way.

Mr BAIRD—Then the third aspect was that you said that accommodation was often less than it was in the state correctional facilities.

Mr McLeod—I think our comment about the state prisons was more about the accountability framework that exists in relation to the management of prisoners by prison authorities. It covered things like access of visitors, the rights to have communication with the outside world, the right to exercise, the right to have access to health facilities of a particular kind—all of those things that really go to a kind of manifesto of rights and obligations of prisoners. They can be used not only as measures that can be tested to check on the quality of the care that is being provided but also as a framework of rights and obligations for the prisoners themselves. We felt that something like that was really needed in the immigration centres and appeared to be lacking. The accountability arrangements, in our view, were much cruder in a conceptual sense than has grown up over many years in relation to the rights and obligations of criminals in criminal justice institutions.

Senator FERGUSON—I want to follow up on the question of women and children. You use the terms ‘unprotected’ and ‘at risk’. I think you said that women were high-risk detainees. When we made our visits to detention centres in 2000—I think it was 2000.

Mr BAIRD—It was 2001, wasn’t it?

CHAIR—It was 2000 and 2001.

Senator FERGUSON—When we made our visits, when we particularly asked to speak to women and children in groups on their own without ACM or departmental officials present and just with their own interpreters or our interpreters, the issues of personal safety or security within the centres themselves were never raised with us. And that was when they were under their greatest stress and the numbers were at their highest; people were arriving almost en masse at that stage. There was no doubt the system was under enormous strain because they simply were not prepared for the numbers of people that had come and they did not have the facilities. All the detention centres were just about at breaking point with the numbers. So I am surprised to hear you put so much emphasis on the high risk. I can understand you talking about the substandard conditions back then, because some of them were—although I think they are a lot better now—but I am surprised that that has come out. Have you had many complaints from any women or about children, as you said, being unprotected or being at risk, or any incidents reported to you?

Mr McLeod—The short answer is yes. But I need to qualify that by saying that the number is small. I do not think that at any stage have we suggested that the number of incidents of abuse of women and children in detention centres was high. But there were some instances. We felt that the level of risk that the department was carrying by having the facilities of the character that they were at the time was, in my judgment, a higher level of risk than was really warranted.

To be fair, I think the department has been responding to that since by putting in appropriate arrangements that do address that issue. It is a fact that, in the contact we have with the detainees, by far the overwhelming concerns they have are how long they are going to remain in detention and how quickly their visa application will be addressed. There is no question that that is overwhelmingly their concern. Many of them are prepared to live in the conditions they are living in if they feel that that issue is going to be resolved fairly quickly. But, having said that, I think the conditions in the detention centres and matters that go to the safety, health, risk and wellbeing of people who are being taken into the government’s care by a decision of the

government do need to have an appropriate framework so that the government itself is protected against criticism that the people it is holding in custody are not being appropriately cared for.

Senator FERGUSON—I really want to follow that up. What concerned me when you raised the issue of the Arthur Gorrie site is that, in all the time we have ever asked for numbers, we have never received any reports of detainees being held in the Arthur Gorrie centre. I presume it is a very small number. It is a wing. Can you tell us what it is?

Mr Winder—I do not know whether our report mentions a number.

Senator FERGUSON—I think it says up to 36.

Mr Winder—It is a small number. They are kept separate from the rest of the inmates at the facility.

Senator FERGUSON—And it is a modern facility?

Mr Winder—It is a modern facility, but it is a prison.

CHAIR—I may be very wrong, and I stand to be corrected by DIMIA, but I think it is a small adjacent facility for people who are about to be removed. Is that an incorrect understanding?

Mr Winder—I think that could be the case, but I am not sure.

CHAIR—Let us clarify it.

Mr Winder—I do not think it is entirely the case.

CHAIR—We will take clarification from DIMIA on that.

Senator FERGUSON—I think we should because I do not think it has ever been raised.

Mr McLeod—Certainly in law it is classified as an immigration detention centre. It is possible under the Immigration Act, as I understand it, to declare any institution an institution for the purposes of the act. State prisons where detainees are held are normally declared immigration detention centres for that purpose.

Senator FERGUSON—Well, I think we had better get some clarification from the department.

CHAIR—We will do that.

Senator FERGUSON—The only final question I want to ask—

Mr BAIRD—I want to follow up on that. I remember you and I were there at the same time and talking to them. We did actually discuss our concern with the number of unaccompanied

minors that were placed in with all the adult males. I know we discussed putting distinct recommendations, but we really picked it up in terms of supporting the trial at Woomera, which was done subsequently, of blocks within detention centres for the exclusive use of families. So we were aware of it predominantly in the overall context.

Senator FERGUSON—It is fair to say that even in March 2000 when we were there at Woomera they had started to trial families staying together in very small numbers. They did not have enough facilities to do it, but they were moving in that direction.

Mr Winder—Since our report, separate facilities are provided in Villawood, Maribyrnong and Port Hedland for families. There have also been some separate facilities in Perth.

CHAIR—In some cases, that is more because there is now space available due to diminished numbers as well.

Senator FERGUSON—And Woomera they were rebuilding as well. I have one final question: in relation to incident reports, one of the issues you raise about the quality of incident reports—we put this question at the hearing last week about the incident reports—is that it is quite possible, because of things like your notices, for complaints to come direct to you or direct to somebody else. Who else do they go to? They go to the Ombudsman—

Mr Winder—It can go direct to DIMIA.

Senator FERGUSON—Direct to DIMIA. That means there is then at the centre no record of that complaint because there is no obligation on you to actually report back to that centre saying, ‘I have received a report,’ is there?

Mr McLeod—That is true. But it is a fundamental plank of my act that people are entitled to complain to my office and to have it dealt with confidentially. If an incident occurred that generated a complaint, there should be an incident report of the incident, even if there is not knowledge that one of the participants may have complained to my office.

Senator FERGUSON—What if it is an incident involving just a single person and maltreatment or something like that?

CHAIR—They can formally complain to DIMIA.

Senator FERGUSON—Having formally complained to DIMIA and ACM, it can go straight to you, can’t it?

Mr McLeod—Certainly. There would be no way in which the management of the centre would know that such an incident occurred.

Senator FERGUSON—But isn’t that one of the problems we found? They keep a record of incidents of the ones they are aware of. However, it is possible there are other incidents that are occurring which they have no knowledge about without you telling them, ‘I have a received a complaint.’

Mr McLeod—I agree with you. The department would certainly become aware of the fact that we have received a complaint because it is rare that we would deal with a complaint without reference to the department. So we would be seeking some kind of comment, report or provisional material from the department to help us to have some evidentiary material to pursue an investigation on it.

Mr LAURIE FERGUSON—What level of resources would possibly go into those investigations before you do inform them?

Mr McLeod—It would depend on the nature of them. It is hard to answer. Some complaints, because of their nature, can be dealt with relatively quickly by a single investigator. In the main, most investigations are dealt with to finality by a single investigator. The more complicated ones may take two or three months to really get to the bottom of. But those investigators act within a hierarchy. They would have supervisors they would refer to for advice and counselling in the course of their investigation. Our multimember investigations, if you like, would generally be confined to our own motion investigations.

Mr LAURIE FERGUSON—What I am getting at is what level of case might be developed against the department before it had any awareness of the problem? You are telling us that confidentiality demands—

Mr McLeod—A department would generally be aware very early in the piece of the nature of the allegations that are contained in the complaint because that is a fairly early step in our investigation process to give the department an opportunity to give us any information that might be relevant to a matter that has been raised with us. If we are getting towards the conclusion of an investigation and we are inclined to a conclusion that is critical of the agency, we are bound under our legislation to make that inclination known to the agency and to give them an opportunity to respond to potential criticism that we may be raising—that kind of natural justice obligation. Our investigation is then concluded after the department has had an opportunity to respond. Those arrangements taken as a whole do not really leave the department in any sense in the dark about the sorts of things that we are examining. That is not to say that we reveal every bit of information we have gleaned if some of it, in our judgment, should continue to be covered by the code of confidentiality. But that does not generally hinder the sorts of investigations we undertake.

CHAIR—Any further questions? There being no further questions, Mr McLeod and Mr Winder, on behalf of the committee, thank you both very much for appearing before us today. In response to Senator Bolkus, Mr McLeod will take one question on notice, as it were. We will send you a copy of the transcript of evidence so that not only can you clarify that but you can ascertain whether there are any errors of transcription that may need to be corrected.

Resolved (on motion by **Mr Baird**, seconded by **Mr Laurie Ferguson**):

That, pursuant to the power conferred by paragraph 16 of the committee's resolution of appointment, this subcommittee authorises publication of the evidence given before it at public hearing this day.

Subcommittee adjourned at 12.29 p.m.