



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

**STANDING COMMITTEE ON JUSTICE AND COMMUNITY
SAFETY**

**(Reference: Delays in the commencement of operations
at the Alexander Maconochie Centre)**

Members:

**MRS V DUNNE (The Chair)
MS M PORTER (The Deputy Chair)
MS M HUNTER**

TRANSCRIPT OF EVIDENCE

CANBERRA

FRIDAY, 27 FEBRUARY 2009

**Secretary to the committee:
Mr H Finlay (Ph: 6205 0136)**

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Committee Office of the Legislative Assembly (Ph: 6205 0127).

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Amended 21 January 2009

The committee met at 1.00 pm.

HARGREAVES, MR JOHN, Minister for Corrections

LEON, MS RENÉE, Chief Executive, Department of Justice and Community Safety

FOLPP, MR BARRY, Director Prison Project and Deputy Executive Director, ACT Corrective Services

RYAN, MR JAMES, Executive Director, ACT Corrective Services

HARDY, MS ROBYN, Executive Director, ACT Procurement Solutions, Department of Territory and Municipal Services

THE CHAIR: We will start. I understand that Ms Porter, who has been in estimates hearings all morning, will be a few minutes late. We are quorate for the purposes of taking evidence, so I think that we will start. Welcome everybody to the Standing Committee on Justice and Community Safety inquiry into the commencement of operations at the Alexander Maconochie Centre. I ask whether witnesses have read the privilege card lying on the table before them.

Mr Hargreaves: Yes, we have.

THE CHAIR: Do you understand the implications of the privilege statements therein? I would like to draw particular attention to two aspects of the privilege card, given concerns expressed in the previous hearing about what witnesses should say in light of possible legal proceedings. Firstly, these hearings are protected by absolute privilege. Anything said in these hearings is not admissible in a court. Secondly, if a witness believes that evidence that they are going to give is of particular sensitivity, they may request that the evidence be taken in camera and members will decide later whether that can be published or not.

Welcome, minister and officials, Ms Leon, Mr Ryan. Minister, thank you for coming and making yourself available and for the provision of documents of which there are a substantial amount. I put on record that we as a group have not made our way through all of those documents yet and it may be that, as a result, things may arise and we may have to call you back. I hope that we can minimise that as much as possible but it may be on the cards. Do you want to make any opening statement, minister?

Mr Hargreaves: I will just wait for the fourth estate to be ready. Yes, I would like to make a statement, and here I am. I do appreciate the opportunity of discussing the issue with the committee.

While I have been happy to cooperate with this inquiry, I must point out that it comes at a substantial cost. At the very time when all available resources are being applied to this critical period of getting the AMC up and operational, a significant amount of those resources has been deflected to deal with this inquiry which has to be seen for what it is: a largely counterproductive witch-hunt and a cynical political exercise.

That said, I will now outline to the committee what has happened to the project since being sworn in as Minister for Corrections on 11 November last year, the current situation and what is being done to bring the project to completion and the AMC online. My comments will address two of the inquiry's five terms of reference.

The first term of reference regarding the official opening has been more than adequately dealt with by my colleague the former minister for corrections. Soon after becoming Minister for Corrections, I was advised by ACT Corrective Services that the AMC project was still experiencing substantial delays associated with the installation of security systems and that we were not likely to have prisoners in the facility before January 2009 at the earliest. This project presumed that the 28-day commissioning of the security systems, which was yet to begin, would not uncover any further problems.

I was also briefed on the situation concerning our detainees here in the ACT and with our sentenced prisoners in New South Wales. It was clear that the delays to the completion of the AMC project were impacting on the longstanding issue of overcrowding in the Belconnen Remand Centre and the Symonston Temporary Remand Centre, which have been a concern to me since 1998, when I first encouraged the then Liberal government to build a prison here in the ACT.

At those briefings I expressed my serious concern at this unacceptable situation and requested that every effort be made by all the parties involved to quickly resolve the security system problems and proceed to the 28-day final commissioning period as soon as humanly possible. As apparently had been the case for some months, I was given to understand that resolution of the outstanding problems with the security system was imminent.

Since becoming minister, I have been actively involved in seeking to bring about an end to the delays in the handover of the facility to the ACT government. I instituted weekly ministerial briefings from my department and have maintained close contact with senior officials from ACT Corrective Services and Justice and Community Safety, meeting with them regularly. I have also met personally with senior personnel from the contractor and the subcontractor to express my concern at the delays and to indicate to them the urgency of completing the project.

I was heartened by the decision taken in early January this year to regard the final 28-day commissioning period as having commenced on 5 January and then disappointed to be told that it had to be suspended on 16 January because of continuing problems with the security system. As has been the case for some time, I have repeatedly been informed that ACT Corrective Services had been advised by the contractor that the problems would soon be resolved and that the commissioning period would recommence.

As of today, I understand the security system has not yet been fully commissioned. As I told the *Canberra Times* on Friday, 20 February and as reported the following day, I was hopeful of prisoners moving into the AMC at the end of March and that I was now sceptical, in terms of the contractor and subcontractor's performance to date, of this being achievable. Within the last week I called on my department, in conjunction with the contract manager, the project manager and the Government Solicitor, to explore options to achieve the occupation of the AMC by the end of March.

On 17 February, formal correspondence was delivered to the contractor instructing the company to make good the defects and complete the works. As I understand it, the contract manager has received a response which is being considered. Obviously, there

is little more I can say at this stage, because of contractual, legal and financial constraints and considerations, other than I am determined to see an end to the delays and the AMC's early occupation.

Matters to do with the contract should be addressed after the completion of the contract. They will be the subject of negotiation with the contractor. If the negotiation does not lead to a satisfactory outcome, it may well become subject to arbitration or litigation. And it is for this reason that I cannot say more in terms of the contract or in relation to the current situation, for fear of compromising the territory's position in this matter.

THE CHAIR: Sorry, can I just interpose there, minister?

Mr Hargreaves: I would rather finish this, Madam Chair.

THE CHAIR: Sorry, I would like—

Mr Hargreaves: I think it is a bit rude to interrupt me in the middle of a dissertation.

THE CHAIR: Except that I would like to draw your attention to the comments in relation to absolute privilege of these matters and how that—

Mr Hargreaves: I heard you the first time. I do not need it repeated, thank you. I heard you the first time.

THE CHAIR: Right. That is the view of the committee on these matters.

Mr Hargreaves: No doubt. I would not presume that you would speak anything otherwise. I think I will repeat that paragraph, though.

If the negotiation does not lead to a satisfactory outcome, it may well be subject to arbitration or litigation and it is for this reason that I cannot say more in terms of the contract or in relation to the current situation, for fear of compromising the territory's position in this matter and I would like the committee to respect this position.

Lastly on this point, I notice, from my colleague's appearance before the committee last week, there was a suggestion that the government was using contractors as a scapegoat in all this, implying in some way that someone else was to blame. I was pleased to see the way in which my colleague dealt with this outrageous suggestion. The fact of the matter is, to date, the security system contractor has not been able to deliver the security system. Let me be absolutely clear. There is nothing else holding up the final commissioning of the AMC project.

I turn now to the inquiry's third term of reference regarding the total cost of the delays to the ACT government. The main cost is associated with the delays in maintaining ACT sentenced prisoners in the New South Wales system longer than anticipated. Based on the assumption that all ACT prisoners would be accommodated in the AMC by the end of May 2009, this cost, with offsets associated with the AMC not being occupied sooner, is estimated to be in the order of \$2.333 million. Other costs, covering such items as reopening Quamby, storage, insurance and extension of fees to

the project management consultants and design consultants have been estimated to be in the vicinity of \$1.05 million, making the total cost of delays to be an estimated \$3.383 million. This total amount can be accommodated either by the ACT Corrective Services recurrent budget or, in the case of the insurance and consultancy fees, the capital budget for the project.

In relation to the possible payment of liquidated damages under the prime building contract, the contract makes provision for the payment of liquidated damages at the rate of \$44,000 per day, capped at three per cent of the total value of the project. The total amount of liquidated damages that might be paid would be three per cent of the total contract price, once the project is completed.

THE CHAIR: Sorry, could you say that again, minister? I missed it.

Mr Hargreaves: Yes. The total amount of liquidated damages that might be paid would be three per cent of the total contract price, once the project is completed. The final figure will not be known until all contract variations have been negotiated and agreed to.

Now for the inquiry's fourth term of reference, the impact of the delays on sentenced prisoners currently serving sentences in New South Wales prisons. The ACT sends prisoners to New South Wales on the basis of its authority under section 36 of the Crimes (Sentence Administration) Act 2006. Reciprocal provision is made in New South Wales laws for New South Wales to receive detainees under section 44 of the Crimes (Administration and Sentences) Act 1999 (New South Wales). It is New South Wales legislation. Over the course of the project, ACT sentenced prisoners have been kept informed of progress and developments by way of newsletters.

The only real impact of the delays on our prisoners in New South Wales presumably has been on prisoner expectations that they would soon be returning to the ACT. I say "presumably" because, apart from one or two cases where prisoners have made representation to ACT Corrective Services to return to the ACT for hardship or illness reasons, ACT Corrective Services is not aware of concerns having been raised by our prisoners in New South Wales.

The other point to mention in this context is that late last year New South Wales corrections indicated that they were unable to take any more of our prisoners due to overcrowding in the New South Wales system. While this has added to our own problems at the BRC and the STRC, it has meant that our prisoner payments to New South Wales have decreased.

In terms of the BRC and the STRC, I will now address the inquiry's fifth term of reference, whether the delays in the AMC project have caused or exacerbated human rights breaches at existing ACT Corrective Service facilities. The problems at the BRC were well known and of concern to this government when it came to office. Importantly, it took immediate steps to address those problems; firstly, by deciding to build a prison in the ACT and, secondly, by converting the periodic detention centre at Symonston into a temporary remand centre and later extending it.

More recently, we have reopened the former Quamby Youth Detention Centre to

provide accommodation for adult detainees to help alleviate current pressures. The previous Liberal government was, to say the least, reluctant to build a prison, let alone a human rights compliant one, and its answer to overcrowding at the Belconnen Remand Centre was to incarcerate detainees in the Magistrates Court cells during the night and transport them to the BRC yards for daylight hours—hardly a strategy that supported human rights principles.

Indeed, the committee should note that at the previous election a current Liberal MLA promised to slash over \$1 million from the corrections health budget, no doubt in defence of the right to decent healthcare for prisoners. Madam Chair, if you and your party colleagues got your way after the 2004 election, the prison would never have been built. Under your proposed regime, we would now be facing overcrowded facilities with nowhere to turn to alleviate those pressures.

Speaking of human rights, I might also remind the committee, with respect, that it was this government, the Stanhope Labor government, that enacted the ACT's human rights legislation. For a government so committed to human rights, it is of great concern to me that the AMC, built and to be operated in accordance with human rights principles, has been delayed and that consequently the human rights concerns in relation to our ACT detainees have persisted longer than they ever should have. Contrary to claims by the Liberal Party that the Human Rights Act is a criminal's charter and only fit to be repealed, this government is fervently committed to human rights principles.

The 2007 report of the human rights commissioner's audit of ACT correctional facilities highlighted limitations of operating custodial services in the ACT under current arrangements. The report contained 98 recommendations, 70 of which were agreed to by the government, 10 agreed in principle, 4 agreed in part, 10 noted and 4 not agreed. A large number of the recommendations had already been implemented prior to the audit commencing or its completion.

The Human Rights Commission has conducted three inspections of the ACT remand facilities in recent months, the most recent being last Wednesday. In relation to each occasion, the commissioner reported her concerns or otherwise to me. On 14 November, soon after being appointed minister, I met with the commissioner to discuss her concerns at that time. These mainly related to the ongoing problems associated with overcrowding. After the most recent visit, I again received correspondence, this time expressing satisfaction at the current facilities at Symonston.

Following the January visit, Dr Watchirs reported on additional problems associated with the high temperatures being experienced in Canberra during that month. ACT Corrective Services addressed the high temperatures as best it could by allowing more time out of cells, issuing electric fans, providing flavoured ice, ready access to water and advice to prisoners on how best to keep cool. Indeed, the acting human rights commissioner in January acknowledged the timely response from Corrections to her concerns. The only real solution to the current situation is to get the AMC online and operational. As I have already indicated, positive steps to achieve that outcome are now underway.

I need to make it absolutely clear that, as minister, I will not allow the AMC to

operate until it is safe to do so—safe for the ACT community, safe for the staff of Corrective Services and safe for each of the prisoners and remandees. I am happy to take questions but, if I can, just before that, the secretary can have a copy of that for the ease of Hansard.

THE CHAIR: Thank you very much for that, minister. Just to get it correct in my mind, minister, when did you become the Minister for Corrective Services?

Mr Hargreaves: I think it was 11 November 2008.

THE CHAIR: Thanks. I was not sure of the exact date.

Mr Hargreaves: At about 3 o'clock in the afternoon, to be exact.

MS HUNTER: I want to clarify another point in your statement, minister, when you were talking about ACT payments to New South Wales for ACT prisoners. Did you say that you had calculated that 2.333 million up until May or March?

Mr Hargreaves: The idea was that we were aware that the New South Wales corrective services system had custody of a certain number of prisoners from the ACT and we knew that we would bring them back not in one go but in groups instead.

MS HUNTER: Staggered.

Mr Hargreaves: We then said, “What is the worst-case scenario for that, given that number?” That went through to May 2009. So we had anticipated that all of them would be coming back in that time. What has actually occurred, interestingly, is that some of them have come back earlier than expected: some of them are already back. We do not have the same numbers of people in New South Wales prisons as we had when we made that calculation earlier on.

THE CHAIR: How are they back early? Where are we placing them?

Mr Hargreaves: They are back in the sentenced prison population at the BRC and/or Quamby.

THE CHAIR: Could we just put a pin in that one and come back to it? Minister, thank you for the documentation you have provided. As we have been going through it, I have been asking the committee secretary—it seems that there might be still some gaps in the documentation. I suspect that that is probably an oversight more than anything else.

Mr Hargreaves: Sure.

THE CHAIR: In the things that I have gone through, it is quite clear that there is an ongoing and serious problem with the security system. I suppose that much of what we are going to be doing in this inquiry—which I consider as non-partisan: we put our party affiliations at the door when we come in; I would just like to emphasise that—is to try and get to the bottom of what the problems are, within the realms of maintaining security, of course, and how they might be addressed and when they might be

addressed. That is one of the things that are front-most in my mind. In relation to that, I would like to refer to the minutes of the ACT prison project action plan team meeting of 13 November.

Mr Hargreaves: Can you just hold on for a second, please, Madam Chair? Could we have that folder of the FOI documents that I saw this morning in my office? One of the problems about the layout—let me say this just by way of observation—is that in the past I have been able to do it much more quickly.

THE CHAIR: Yes, I agree. It has been occupying my mind as well, minister. These are FOI documents?

Mr Hargreaves: Yes. This just happens to be a nice collection of the documents so that, when you are talking about the minutes, say, of the meeting of the team or whatever, we can be talking off the same sheet. What was the date?

THE CHAIR: This is the team meeting of 13 November.

Mr Hargreaves: Maybe that is the one that Mr Hanson was wandering around with a little bit before the meeting started. Was that the one?

THE CHAIR: I do not know. Has Mr Hanson got this?

Mr Hargreaves: It is an FOI document. He has got everything; he just has not read it all.

MR HANSON: I have got documents separately through my own FOI.

THE CHAIR: This FOI is your FOI? Okay, thank you.

Mr Hargreaves: You just may have to bear with me until I find it.

MR HANSON: The one I was referring to previously was a site meeting of 11 December. I do not think that this is one that you are referring to, Mrs Dunne.

Mr Hargreaves: I am talking about the one you had in front of you when you were on TV just a minute ago.

MR HANSON: I have got a range of them actually.

Mr Hargreaves: Yes, I thought so.

THE CHAIR: While you are looking for it, minister, I will read this, because it looks at a lot of things in relation to the master programming, which seems to be the whole process. It is 13 November and it says:

PH advised our Security Consultant (Webb) spent all of last week doing inspections and tests ... They found some 1200 defects, 6 of which were classed as “show-stoppers”, preventing the commencement of the 28 day Performance Evaluation Period ...

Minister, what is a show stopper defect in a security system?

Mr Hargreaves: Just hold the phone a second and I will answer that question for you very shortly. I just want to have another look. Essentially, the defects in their various guises—and you will recall it says that there are some 1,200 defects all up—are in two groups. There are ones that can be fixed without affecting the operation of the facility, the building and the time—maybe one light switch does not work or something like that and you can come back later on and do it. As you can see, the main body of those—

THE CHAIR: Is a light switch part of the security system?

Mr Hargreaves: No. It would not matter. What I am saying is that a lot of the defects that you get are like a little bit of paint not properly put on a door—

THE CHAIR: No, minister; this is about the security.

Mr Hargreaves: Madam Chair, you asked me a question. Let me answer, it will you?

THE CHAIR: I asked you what was a show stopper defect.

Mr Hargreaves: I am trying my best to answer. Those issues, the majority of which are minor things, do not impact on it at all. Show stopper ones are those defects which, without being fixed, will prevent the facility being handed over to the client.

MS PORTER: That makes sense.

Mr Hargreaves: I have got to say this, Madam Chair. You raised the issue of a 13 November team meeting which says that there are six of them. I draw your attention to the minutes of the meeting on 22 January.

THE CHAIR: I have not got those.

Mr Hargreaves: Mr Hanson has, because he is waving them around.

THE CHAIR: You have not provided them to the committee.

Mr Hargreaves: I am going to read it for you, because it is relevant.

THE CHAIR: It seems that all these documents—

Mr Hargreaves: If you do not have the 22nd—

THE CHAIR: They have not been provided to the committee. I have asked Mr Finlay.

Mr Hargreaves: It will be. I will read it to you so that you get the advice. The 13 November document talks about six show stoppers—a whole range of them. I will come to a comment about that in a moment. This one—it is a progress report in exactly the same format as you have got there—says that, by reference to the SKM monitoring and management report of December 2008, PH noted that all routine

inspections by the consultants had been completed; and that—this is the bit—rectification of defects by BLL was virtually complete and the only work still requiring substantial attention was the completion of the security system. That was as at 22 January.

THE CHAIR: Can I stop you there, minister, please. My original question was about Mr Harlow's—PH's—advice from the security consultant. It was not building defects. These were 1,200 security defects. This is the reading:

... our Security Consultant ... spent all of last week doing inspections and tests
...

He was not checking to see whether the paint was there. It is not his job; he is the security consultant. It continues:

They found some 1200 defects, 6 of which were classed as “show-stoppers” ...

Mr Hargreaves: I have answered your question.

THE CHAIR: I ask you again, minister: what is a show stopper security defect?

Mr Hargreaves: I have just told you, Madam Chair. A show stopper defect, regardless—in this particular case, it is the security system itself. You talk about the 1,200 defects—they may well have been security things—but the fact is that they were attended to and fixed as far as we were concerned. The only work requiring substantial attention is the completion of the security system.

One of the concerns I have is that, as with most secure facilities and establishments, I do not believe that it is appropriate for us—when I say “us”, I mean anybody; I am not meaning you or me here—to discuss the intricate details of a security system in a secure facility showing where those defects are in the public arena.

THE CHAIR: I would like to know in general terms what they are.

Mr Hargreaves: Hang on a second, Madam Chair; please do not interrupt me. What I am going to suggest to the committee is this. If the committee is of the view that it really would like to get a handle on the absolute technical pieces that are being attended to at the moment, I would be very pleased to arrange for an in camera briefing by the technical experts so that the details of the system that we are trying to fix are not broadcast to the criminal community in the ACT.

THE CHAIR: I take that point and I thank you for the offer, minister. There is probably space next week that has just freed up in our hearing schedule, so we may take you up on that offer, although we will have a discussion later. Members would be possibly keen to take you up on that. But I would like some sort of general, non-technical, high-level description of what constitutes a show stopper system failure in the security system.

Mr Hargreaves: All right. When we talk about the range of commissioning things, some of the commissioning elements of the prison are linked to another so that the

failure of one particular part of a commissioning may have a cascading effect on the others whilst the others are actually complete. For example, the hydraulic system is completed and is ticked off but if it is linked into the computerised system, and the computerised system is not functioning according to the standards expected of it, it will have a detrimental effect on the hydraulic system, so the doors will not open. That is where we talk about this security system.

The security system itself can cover any range of things. It can cover the intercom system between the buildings, it can cover the alarm system, it can cover the electronic opening of doors and it can cover the monitoring system once the RFID is actually installed—and a whole range of these things. What we have here is the need to have that computer system working in its entirety. With the greatest of respect to the committee, I am reluctant to go down to the detail of that in open meeting.

THE CHAIR: That is fine; that gives me enough understanding and gives members an understanding. Thank you.

Mr Hargreaves: I am very pleased to give you that briefing right now in camera if that is what you want.

THE CHAIR: No. It would be better to get the security people on it. Members have a line of questioning—their own questions. But I will take you up on that later.

Mr Hargreaves: The only other thing I would request, Madam Chair—and I respect that it is the decision of the committee—is that such evidence given to the committee in camera not be authorised for publication—but used for the information of committee members, by all means. That is for the very reason that I am suggesting to the committee an in camera meeting—to preserve the integrity of the security system at a secure establishment and not to allow an inadvertent compromising of that system.

THE CHAIR: Indeed, minister; I agree wholeheartedly. You said in your opening comments that you were pleased that the 28-day commissioning period started on 5 January but everything seems to have gone a bit haywire since then.

Mr Hargreaves: No; it just has not been finished.

THE CHAIR: It just has not worked.

Mr Hargreaves: I did not say “haywire”.

THE CHAIR: No. I admit that it was my word; it was a brief summation of what you had said.

Mr Hargreaves: I do not think so.

THE CHAIR: I want to go to the minutes of the site meeting—meeting No 62 of 5 February. I do not know whether you have that in your FOI things or not, minister. It says, at 8.3, in relation to commissioning,

BF—

who I expect is Mr Folpp—

expressed extreme concern the security system has now been down for 22 days.
Hence the 28 day period has been suspended over this period.

It says:

ACTCS—

Corrective Services—

hosted some visitors to the site yesterday—

which I presume was the visitation by this committee and some other members—

and the system was not operational then as the party could not access several buildings.

That was obvious to us. It continued that somebody, and the initials of the person are given here:

... advised he was locked in a building this morning.

Somebody else, whose initials are given:

... advised as of yesterday some elements were still down, eg iris scan in gatehouse.

I understand that the iris scan is fundamental for letting people in. It continued:

RN advised testing finished yesterday ...

The system was then back up. So the iris scan was up at that stage. It goes on to say in the next paragraph:

TB—

who is the representative of the architect, I think, but I can be corrected if I have got it wrong—

noted although it was agreed at the last site meeting BLL—

Bovis Lend Lease—

would provide a full report on the catastrophic system failures, a very interim report has only been forthcoming from BLL and ACTCS—

Corrective Services—

still has no real idea what went wrong and hence confidence in the system has declined further.

It goes on to repeat an extract from the minutes for the previous meeting, which says:

BLL agreed to provide a full report on the failure including assurances there aren't deeper systematic problems leading to such failures ...

The report said that was noting that someone whose initials are here "has never experienced such absolute system failures before". It continued:

... comments on why redundancy didn't save this situation, future actions to avoid repeat failures, strategy of spares holdings for single point of failures to reduce downtime in the future ...

Then the meeting went on to note that Bovis Lend Lease would be pursued for this report. Minister, has that report been received? And what progress has been made on addressing the catastrophic system failures, which, in the experience of someone—they had never seen such systematic failures before?

Mr Hargreaves: I have not seen it, no.

THE CHAIR: Has it been received?

Mr Hargreaves: Can I put this to you? Firstly, the department advise me on where they are at every second day. I have not been advised of the details of this, and nor would I expect to, Madam Chair. You mentioned in there one of the defects in the security system, which would be a delight for people in the criminal community to know about, and that is the very point that I made earlier. When we talk about the iris scan not working, that is something I would have preferred not to have been out there in the public arena; now it is. That is the very reason why I said, "Let me give you an in-camera briefing on it."

What we are talking about with these particular notes, and why I was a bit disappointed to see the contents out there in the public arena, is that, in my view, it compromises the integrity of the system. And I do not believe that the use of those documents in the public arena currently by the shadow minister for corrections is particularly responsible. I am saddened that this is the case.

When you come to want to know about the intricacies of this system—and I think it is important that you understand how it works—let us not have a conversation with an expert at this table where it will be broadcast to all and sundry. Have that conversation by all means. If you want to know, for example, where we are at with the hierarchy of the system, where we are at with the intercom parts of the system, where we are at with the locking systems, where we are at with the iris scans, I am happy to provide those pieces of information, but I am unhappy about trying to provide them in an open forum.

THE CHAIR: Minister, can you tell me whether this document, the minutes of the site meeting No 62 of 5 February, was released to Mr Hanson under the Freedom of Information Act?

Mr Hargreaves: I cannot tell you that, Madam Chair, and I cannot tell you that for

this very simple reason: I have absolutely—

THE CHAIR: Can someone in this room tell me that?

Mr Hargreaves: Madam Chair, that is a bit rude. I have absolutely no involvement in the freedom of information process. I have received a copy, as I understand it, of the information given to Mr Hanson, but I have to say that—

MR HANSON: I have site meeting No 62, Madam Chair. Which point are you reading from?

Mr Hargreaves: Do you mind, please, Mr Hanson? I do know, and I have confidence, that the freedom of information officers would give Mr Hanson every document that they have as at the date that he has requested it from. If his request preceded that, the answer would be no.

THE CHAIR: Okay. So Mr Hanson has the document that I just read from. Is there anything exempt from it, Mr Hanson?

MR HANSON: No.

THE CHAIR: Okay. So when it was released there was no security issue—that it was thought to be inappropriate to give Mr Hanson the document, and effectively publish it in the public arena?

Mr Hargreaves: There is a distinct difference in terms of severity, I suppose, between what is regarded as non-releasable under FOI and what is prudent to be released in the public arena once the knowledge has been actually had. I am just uncomfortable about the detail in the open forum. Please understand this, members of the committee. I do not wish anything to be withheld from you. I just would ask that we be prudent about the level of detail on the security system that we go to.

MS HUNTER: Minister, I do understand that, but it is not a state secret that there is going to be an iris scanner.

Mr Hargreaves: No.

MS HUNTER: That is how you get in; that lets people in. That is going to be known, because people will have to go through that entrance to get into the jail. Staff go through there, and visitors. Also, I would not have thought it was an issue just at the moment to be saying that that is not operational. Obviously, I can understand with respect to the detail of how that works—the technical detail—but I guess I would just like to move on rather than get bogged down on this particular point.

Mr Hargreaves: I understand, Ms Hunter, and concur with your view. What I guess I am trying to say is that there are so many different things in this facility which do not apply in other institutions. One of the things is that the singular elements of this computer system are working beautifully in other institutions, but not collectively. It has never been put together into one mosaic. It is the totality of that system which I worry about; that is all.

MS HUNTER: I am just interested in that because at the last hearing I did ask if this system was unique and I was told it was not unique.

Mr Hargreaves: No, I did not say that. I am sorry; I must have—

MS HUNTER: No, you were not at that hearing, minister.

Mr Hargreaves: I was not here and I was not listening in. But I think I may not have been totally clear. There are pieces of the security system—all of them—which are in place in another institution—for example, in Australia and in the US—but they are not together and knitted together in one jigsaw or one mosaic. So if you take the iris scan, yes, it is working beautifully elsewhere. If you take another part of the system, yes, it is working beautifully elsewhere. But they are not necessarily together as one integrated system, and that is the difference between this one—

MS HUNTER: This would have been recognised early on and there would have been some risk assessment done of the fact that this was the first time these different parts were being integrated? I am just interested in the time that was identified to put together a system that had not been put together like that in any other institution, and what sort of discussions or particular focus were put on ensuring that there was enough time to be able to program it to get it right. Where is that plan? I must say that there is a lot of documentation that has been provided, and I thank the department for providing that. But I have not seen a plan—there might be one there—that shows “These were the milestones for the system; by this date we expected this to happen.”

Mr Hargreaves: That is the project plan. This part of it is a unique part of the facility which is sort of not in play. When the specifications were put down, we asked people to quote against those specifications and for the people who win the contract—and I am not a computer expert and I am not an expert judge—you expect them—

MS HUNTER: No. At the end of the day Webb was oversighting that?

Mr Hargreaves: Then, of course, the project plan is put out. I beg your pardon?

MS HUNTER: At the end of the day was Webb subcontracted by Sinclair Knight Merz to be the experts to oversight that plan and to be checking up?

Mr Hargreaves: Yes.

MS HUNTER: Is there a plan where they were—

Mr Hargreaves: I would imagine so, as part of the contract documents. I do not have them myself.

Ms Leon: As I understand it, the way these contractual arrangements work is that it is not for the client to write the plan; it is for the contractor to develop a plan as to how they are going to deliver the project. The contractor tenders for the contract and, in a detailed process that I think we discussed at the last meeting, indicates their capacity to complete each aspect of what is required. It is then up to the contractor and their

subcontractors to develop a plan in order to fulfil that.

MS HUNTER: So a plan was developed?

Ms Leon: I said that is a matter for the contractor, so it is not something that we develop and ask them to implement. They tender for the contract and they then have to implement it. Whether or not there is a plan, you would probably need to ask the contractor.

Mr Hargreaves: Madam Chair, can I just add this, please, and this may help the committee: firstly, the contract was over a very long period of time. There was plenty of time for the subcontractors and contractors to get together and see whether they were going to have difficulty in delivering on the offer that they put on the table. However, there are project milestones which, for the benefit of the committee, I will get for you and we will have them delivered to the secretary so that you can see the time lines in those project milestones.

THE CHAIR: So we do not have those already?

Mr Hargreaves: I do not know if you do and I do not know if you do not, so I will make sure that you do.

THE CHAIR: Ms Porter, do you have any questions on the security system? I want us to deal with the security system and then could we perhaps move on to other things.

MS PORTER: No.

THE CHAIR: Mr Hanson?

MR HANSON: Thank you, yes I do. The question I have refers to one of the six major defects that have been discussed. This is defect 2.6. I will not identify what that is, Mr Hargreaves.

Mr Hargreaves: You have already done so on radio this morning.

MR HANSON: Not that it matters; it was provided in the freedom of information that you have given me.

Mr Hargreaves: Notwithstanding, you have done it, so it is out there now.

MR HANSON: Well, good. I think the community needs to know.

Mr Hargreaves: I would hope you would have a different view for a military establishment.

THE CHAIR: This is a question and answer process. This is not a place for conversation and rhetoric.

Mr Hargreaves: This is not a conversation.

MR HANSON: I am sure when it sticks this will not be an issue. The point is that you described these defects before. You said that these defects, to paraphrase your words almost exactly, “without being fixed prevent the jail from being handed over”, and one of those is defect 2.6. I note also that in one of the site meetings—site meeting No 58—it was said there were six major defects, and it might be able to be handed over in the short term for operational procedures and training.

THE CHAIR: Could you say that again please, Mr Hanson? I do not think I heard that.

MR HANSON: Yes. With respect to defect 2.6, it says it might be able to be handed over in the short term as long as you then change the operational procedures and training for that period. I note in another document, and that is in the brief to you, minister, in December, that it says that on 9 December they indicated that resolution would take 12 months or more. Further, they stated:

This could only occur in the event that the software developer engaged by BL decided to release new software which met the AMC’s requirements.

So we are talking about extensive delays; I imagine that we are talking about 12 months, or potentially more. I note that thus far we have had significant delays—17 that are listed in the documents here. We know it is over a number of months. So are we going to be accepting the prison with this defect or are we going to be rectifying the defect before we do so? If we do accept this prison with a defect, what assurances are you going to give us that in doing so it meets your definition of “short term” and that those operational procedures and training will be adequate to ensure that the prison is safe?

Mr Hargreaves: In Mr Hanson’s media release today, he talked about the minutes of that particular meeting. It is the only piece of paper in three centimetres of FOI documents that talks about a defect taking 12 months to fix. In all of the other papers after that it does not talk about taking 12 months to fix.

THE CHAIR: Oh good. So how long will it take?

Mr Hargreaves: In fact—I am answering his questions—on 23 December, he omits to say, it says it will be some months before prisoners will be admitted to the AMC. We knew that. On 12 January, it says it is anticipated that the first prisoners will be moved into the AMC in February-March 2009. On 22 January 2009, it says it is anticipated that the first prisoners will be moved into the AMC in late February, early March. Those clearly are an indication that those defects will not necessarily delay the entry of prisoners into the AMC.

MR HANSON: Madam Chair, can I just correct the record there?

Mr Hargreaves: I am trying to answer your question, Mr Hanson. This is the important—

MR HANSON: He said that that is the only document—

THE CHAIR: Stop now, both of you.

Mr Hargreaves: I am sorry, I will talk to you.

THE CHAIR: I would like to interpose because I want to run this as smoothly as possible with questions and answers and not points. Mr Hanson asked you a question about the defect and—

Mr Hargreaves: Yes, and I want to answer it.

THE CHAIR: Okay. I would like an answer to Mr Hanson's question. His question was, "This defect that it is reported it is going to take 12 months to fix, is it going to take 12 months to fix and, if it is, are you going to take over the prison with that defect in play?" I think that is the summation of Mr Hanson's question.

Mr Hargreaves: I have been trying my best to answer your question, Madam Chair, and Mr Hanson's question, with some considerable difficulty. He talks about the technical component of the security system. It has already been agreed with the contractor to be set aside for rectification, post project completion, after the AMC becomes operational. The nature of the defect is such that it will not prevent the operation of the prison. The client—that is us—regards project delivery with this defect as acceptable as it poses minimal risks to the operation of the facility. This is a highly technical matter and further details in relation to it can be provided by technical experts.

The point that I was trying to make was that if you read the rest of the FOI documents in the context of that particular one you will see that the confidence that that particular defect will not prevent the AMC from becoming operational is clear in those other documents. Any other interpretation is just mischievous.

THE CHAIR: Minister, this committee—Mr Finlay has just confirmed this—has not received any copies of ministerial briefs that relate to the terms of reference of the inquiry. So you and Mr Hanson are having a conversation about something this committee has not had an opportunity to see. Could those briefs be provided to the minister? I did read way back somewhere in this set of documentation that monthly reporting to the minister was mandatory and you are now saying you are being reported to more frequently than that. So there must be a substantial set of briefs that we have not seen.

Mr Hargreaves: Not necessarily. I think this would be fruitful if the committee was to get a copy of all of the documents that Mr Hanson has under FOI. I will cause to be created a folder with all of that information in it.

THE CHAIR: That would be very handy; thank you.

Mr Hargreaves: I just ask for a day or so for the photocopying—that is all; it is about three centimetres worth of pages. But I also need to clarify a comment you just made about me saying that I wanted to have monthly, at least, updates and I changed that.

THE CHAIR: No, it says in the minutes here somewhere.

Mr Hargreaves: I know, and I do not disagree with that. It is just that the committee is not as up to date with that as I am because I am in the middle of it. And I am very happy to table something which will give you an indication of the involvement I have had.

I have asked that I be briefed every two days, but not necessarily in writing because I think that is just putting the officers to too much work. I want them to get on and open the facility, so I have asked for it. Now I wish to table a document which has my involvement with the project from 13 November, which was two days after taking over the portfolio, through to 26 February this year, and it has the dates of the briefings. When we talk about this year and “detailed briefing”, that is a verbal detailed briefing to me asking about specific things. So I am happy to have the committee know and therefore see the extent to which I have been involved in this process all the way—

THE CHAIR: Good on you. Thanks, minister.

Mr Hargreaves: because I have been accused of not being involved as much as I could have been and I would like to squash that. The secretary can have that sheet of paper.

THE CHAIR: Can I go back to Mr Hanson’s question, though, because I do not think that—

Mr Hargreaves: I answered it.

THE CHAIR: I do not think it has been answered. I think he had a specific question: is it still going to be a problem for 12 months?

Mr Hargreaves: The one sheet of paper in the FOI documents that refers to the possibility of a 12-month resolution has to be considered in these contexts. The first one is that it is the only document in there.

MR HANSON: I can show you two—

THE CHAIR: Minister, stop now. I have asked a direct question—

Mr Hargreaves: No. You cannot ask me a question, Madam Chair, and not allow me to answer it. If I do not answer it to your satisfaction, that is your bad luck.

THE CHAIR: No. I am sorry but this is not question time in the Assembly; this is—

Mr Hargreaves: I am not. I am trying to give you an answer to your question.

THE CHAIR: My question, and Mr Hanson’s question, is about what I gather is called defect 2.6. It has been said in a briefing that it will be an ongoing problem for 12 months. Is it still your belief or the belief of the department that it will be an ongoing problem for 12 months and, if so, how will you take over the prison with that ongoing defect?

Mr Hargreaves: I am trying to answer your question and, Madam Chair, I am not going to answer the question just the way you want it answered. I will answer it the best way I can and it goes like this. The subsequent papers in the FOI documents indicate that there will be a possible opening of the facility—or not opening; a receipt of prisoners into the facility—in February/March in both instances. That indicates to me—and then I have sought clarification of that—that the defect will not compromise the security or the operation. That is clear and the answer I gave to Mr Hanson was, and I will repeat it: the nature of the defect is such that it will not prevent the operation of the prison. The client regards project delivery of this—with this defect—as acceptable as it poses minimal risk to the operation of the facility.

THE CHAIR: What I am hearing, minister, is that the defect will be ongoing.

Mr Hargreaves: I have not received any indication about the length of time that it would take, except to say this—and this is on the public record because I am sure I—

MR HANSON: Yes, you did; you got it on 9 December.

Mr Hargreaves: Mr Hanson, please! I have said this, I am pretty sure, in the chamber and, if not, definitely in the media. The dates are roughly to this date. Around 19 or 20 December and/or around 28 or 29, thereabouts, of November, I had my conversations with the contractor and the subcontractor and impressed upon them that we needed to do two things. We needed to get on and have the facility available to receive people from New South Wales and the BRC. The second one was to enter into any discussions around the application of contractual issues to do with clause 2.6. It was agreed at that time that all of the players and stakeholders would go to that aim.

I was then advised at that time—not by my department, I might tell you, but by the contractor or subcontractor—that the issue around the security system could take either two weeks or four weeks to resolve. I have said that on the public record because that was the information I received at the time.

THE CHAIR: That was in December, was it?

Mr Hargreaves: No. I cannot tell you the time. I can tell you that it was just after a meeting with either the contractor or the subcontractor and they appear at different dates and the dates are with the secretary, so I cannot tell you.

MS HUNTER: Minister, what is your latest advice?

Mr Hargreaves: My latest advice is that receipt of prisoners and/or remandees in late March is still a viable possibility. I have said in the public arena—and in the chamber I suspect—that I am a little sceptical about this, as I am sure we all are. However, as each day goes by I am becoming more confident that that might be a possibility; it might be a probability more than a possibility. I am getting greater confidence as each day goes by. As the system is tested for its stability and as each day goes by and the system continues to be stable, that is a good sign.

MS HUNTER: So it would be an incorrect statement to say that defect 2.6 will mean

that the prison does not open before December?

Mr Hargreaves: Correct. You are correct, Ms Hunter.

THE CHAIR: Is defect 2.6 one of the six show stoppers?

Mr Hargreaves: It is “the” show stopper remaining.

MRS DUNNE: It is “the” show stopper—

Mr Hargreaves: It was, until a resolution of part of—as I tried to say before, it is a mosaic, right? When it gets to a certain point in that, where the core part of 2.6 has been addressed, it ceases to become a show stopper and then ceases to become a minor defect issue. We have passed that point, as I understand it.

MR HANSON: Madam Chair, could I just correct the record. In the answer the minister gave he said that in the freedom of information documents I had received it had only been referred to once in December. That is not true. In the minutes of site meeting 61, which I believe the committee has got, you will see at 8.3:

The meeting noted discussion out-of-session will clarify the ACTCS—

That is, Corrective Services—

requirements for item 2.6 ... with respect to BLL/Chubbs projection for completion of this defect after Completion before either May 2009 or December 2009.

That is referred to in numerous documents.

MS PORTER: I am getting very confused about all these numbers and I just want some clarification. The first document you read from was which minute?

MR HANSON: The first document I read from was a briefing to the minister of 15 December, which you do not have. The second is the minutes of site meeting 61 dated 22 January.

MS PORTER: The other one was the site minutes —

MR HANSON: No, the other one that I referred to which we have talked about—the fact that they could only do this for a short time and they only might be able to do it—was site minutes 58.

MS PORTER: I just wanted some clarification because there were numbers floating around.

Mr Hargreaves: What date was the site meeting for you now?

MR HANSON: It was 27 November.

Mr Hargreaves: Yes, that is what I thought. Madam Chair, I need to draw the

committee's attention to the dates of the documents that Mr Hanson is referring to: 27 November last year, 15 December last year and 22 January—that is a month ago. There have been people working furiously to get this position solved. I do not think there is really a lot of point in arguing what was the case in November when these people are—

MR HANSON: Is it still December is the question I asked, minister?

Mr Hargreaves: Mr Hanson, I am talking to the chair, please. We have had people working furiously on this thing and I have indicated all the way along the line the most recent advices that I have received on this, and the most recent advice I have is that we have a very strong possibility of having the facility open to receive prisoners at the end of March.

THE CHAIR: Okay. In relation to defect 2.6 and the other five show stoppers that were referred to in November, could the committee be briefed on what those six show stopper defects were—I understand that 2.6 was one of them; this would be part of the briefing that we will probably have next week—the extent to which they have been resolved and whether we still have six show stopper defects?

Mr Hargreaves: Madam Chair, absolutely I have them in front of me, but I do not want to put them on the public record now. I would be delighted to give the committee this information in camera because the information being released will compromise the security system.

THE CHAIR: That is why I asked for it essentially on notice.

Mr Hargreaves: I am very happy to have the committee know that, yes. If the secretary would like to liaise with my office on when the committee is okay for the in camera thing, we would be delighted to cooperate.

THE CHAIR: Okay. Just on the question of show stopper defects, the last of these site meetings that the committee has is 5 February. You are saying that we are not up to date, minister, because here it talks about catastrophic system failures. Are we still having catastrophic system failures?

Mr Hargreaves: I have had none reported to me in my verbal briefings in the department, so no.

THE CHAIR: So was it reported to you—

Mr Hargreaves: I have never heard that word used in my company, quite frankly. It has never been used in my company.

THE CHAIR: Okay—absolute system failure?

Mr Hargreaves: No, it has never been used in my company. I have had briefings on this aspect, that aspect and the consequences of this failing on something else, but nobody has used the words 'catastrophe' or 'catastrophic' in my hearing and nobody has said that this is total system failure.

THE CHAIR: Okay. I think this will be one of the issues that we would want to deal with in this hearing that we have. Are there other questions on the security system?

MS HUNTER: Mine is more to do with the contract and money being paid.

Mr Hargreaves: Okay. I will see if I can help you.

MS HUNTER: How much money has the ACT government paid specifically for the security system so far and how much is still to be paid?

Mr Hargreaves: Ms Hardy from Procurement Solutions will join us. But we need to look at this against the background of the client relationship; how does that work? I do not know if the committee has been apprised of that. We—corrective services, that is—are the ultimate client. The agent for the client on the management of the contract is Procurement Solutions, which is an arm of TAMS, and then, of course, you have got the contractors, subcontractors and all the rest of it. As with most contracts, there is a total package in the contract and sometimes it is very difficult to isolate a particular cost that has had flow down effects. Ms Hardy will address your question.

Ms Hardy: What the minister said then was quite correct. We are actually paying contractually for the main contractor and he is paying his subcontractor for the security system; so we cannot find, through that sort of mechanism, what we would be actually paying for the security system, as it were. There are sets of completion milestones and the contractor will be billing us at a certain time for works that they have undertaken. But to actually get a figure of what we are paying there would be extremely difficult.

Mr Hargreaves: Our relationship is with the contractor. We say, “Please provide that.” We do not have a clue.

MS HUNTER: I do understand the contractual relationship; I am quite clear on that.

Mr Hargreaves: We would not ask that question.

MS HUNTER: But what I am trying to understand is that, at the end of the day, ACT taxpayers, through the government, are paying for a prison. It is a building with lots of furniture and fittings and so forth and a security system. I am assuming that, in the contract with Bovis Lend Lease, there is a way of payment that is linked to certain things being done.

Mr Hargreaves: The only information we have is the information which of course you are entitled to and that is: what are the elements of the contract? A company will quote us for elements of a contract, the aggregation of which is what we end up paying out. And then we will pay out progress payments along the way. The split down of those costs can have a number of effects to it. Very rarely is it the actual amount that is in the initial contract, particularly on a project of this size, when we are trying to build an actual little village, rather than just a building.

What happens is that, at the conclusion of the contract, there is a negotiation about the

total cost, because some of the costs are associated with non-productive days, for example, and they have to be brought into account. We will not know the answer to the question about what element of the contract is attributed to this particular piece until the end.

MS HUNTER: I will put it another way then.

Mr Hargreaves: But the contract and the bits in it are on the basic system; so you can see the details of it there.

THE CHAIR: We are working our way through the contracts.

Mr Hargreaves: You have got a copy of it. It should be sitting up in it.

MS HUNTER: So far how much money has the ACT government, through Procurement Solutions or whatever the process is, paid to Bovis Lend Lease?

Mr Hargreaves: Just for the total contract? We will get that information for you. We are happy to do it. I do not know whether we have got it right now.

MS HUNTER: Does anybody know?

Ms Hardy: I would not have it as of today, no. I would have to take that on notice as of today because, as you can imagine, progress claims come in monthly and I would have to get you that.

Mr Hargreaves: We will happily get it to you.

THE CHAIR: Are we still paying progress payments to the contractors?

Mr Hargreaves: We should be, I would imagine. Why not?

Ms Hardy: The last progress payment came in—

Mr Hargreaves: Zero?

Ms Hardy: Zero, at the last payment.

MS HUNTER: So that would be the amount we would want from last year?

Mr Hargreaves: We will get you the total amount that we have paid to the contractor, and happily.

MS HUNTER: And some idea of what has been paid to date and then, taking aside that there might be some negotiations at the end of the day on wet days and so on under the contract, what is the remaining amount?

Ms Hardy: What is outstanding?

MS HUNTER: What is outstanding that we said under the contract we would pay?

Ms Hardy: I will take that on notice and get back to you.

MS HUNTER: I am just trying to get a handle on this \$44,000 a day that was in the contract. Does that work, with the ACT government withholding part of its final payment to cover that cost or contractually you have to pay the full amount and then you have to take action to get it back?

Mr Hargreaves: That is correct. And what happens, in fact, is that we agree on progress payments; they are made. The progress payments have been completed, from what I understand. However, what happens is that at the conclusion of the contract, the negotiations commence with the subcontractors, with the contractors, and ourselves with the contractor on agreed—using your words because it is reasonably demonstrative—wet days, for example, or costs incurred by the contractor over which they had no control and that we have agreed could be taken into account. Those calculations happen after the thing is completed.

Ms Leon: I might try to clarify this issue.

MS HUNTER: Sure.

Ms Leon: We have withheld the last progress payment. And we are still withholding it until the matter is resolved.

Mr Hargreaves: There you go.

MS HUNTER: Thank you. There is another point about the contract. Within the contract is there a clause that does allow the ACT government—I guess you have answered it in a way; so I will not go further down that track. You have withheld that last progress payment. Could we have an idea of what that is at the moment?

Mr Hargreaves: Please understand, Ms Hunter, through you, Madam Chair, that the amount is a notional one and a contract one. It is pretty exact but it is there to give an indication of what per day cost is likely to be. But there is also the three per cent cap on contract.

MS HUNTER: So it is only a notional cost; it is not an agreed cost?

Mr Hargreaves: No. This is the figure that we start negotiating about. So you cannot just say, “There were X days; therefore you multiply it by \$44,000 and then that is the figure,” because that is not the figure. Within the context of a three per cent cap on the total cost of the contract—

THE CHAIR: That is a very big figure.

MS HUNTER: It is a very, very big figure.

Mr Hargreaves: Within that total cost of the contract, within that figure, we then start to negotiate which have been acceptable variations and which have not. Those variations which the contract manager agrees on then come off, if that makes sense.

And that is why we do not know what the figure is until the end of the contract.

THE CHAIR: Ms Hunter, I just wanted to point out that in what is called the monitoring and management reports it says that in November 2008 “work is now 99 per cent financially complete”. Presumably we have paid 99 per cent of the contract. “No payments were made in September or October and only a small payment has been made in November as the contractual completion date has passed and the value of liquidated damages hence due exceeds the sum payable under the current progress payments.”

MS HUNTER: Okay. If you were successful in receiving liquidated damages, that amount at this point in time would be more than this last payment. Is that what you mean by that?

THE CHAIR: That is my understanding from reading this.

Mr Hargreaves: We do not know what the negotiated variations are going to be. We just honestly do not know, because what happens is that, in almost every major construction contract, there are obvious variations which we agree with when it pours rain. But there are other variations which are negotiated. Sometimes they are around the edges and sometimes they are not. And so honestly I have not got the faintest idea.

MS HUNTER: There is just one other thing that was in the contract. It was page 67 of the Bovis contract. It was item 51(b). I am not sure whether you are able to find that, Ms Hardy.

Mr Hargreaves: Could you read the clause there, please? What are they looking for?

MS HUNTER: Basically what happened, on page 67 of the Bovis contract, item 51(b), was that there were some lines that were crossed out and they were initialled by the necessary people, I am sure. Why were those taken out? The lines that have been deleted state, “The principal reserves its right to claim general damages if the contractor fails to achieve completion by the contractual completion date as applicable.”

Ms Hardy: Yes, I will answer that. Generally, in normal contracts, there is a provision for either general damages or for liquidated damages. General damages are often used in goods and services kinds of contracts but sometimes, in these kinds of contracts, it is often an either/or situation. You will actually have liquidated damages or you will have general damages. In this particular case, the negotiations were that there would be liquidated damages and not general damages; so the general damages part is struck out.

THE CHAIR: Have you got other stuff on the contract?

MS HUNTER: I wanted to ask some questions about what is in the contracts but, if you wanted to move to another matter, that is fine.

THE CHAIR: Yes, that would be fine. You have seen documents that I have not seen. Yes, go for it. I want to come back to the security systems.

Mr Hargreaves: You have seen documents I have not seen because I do not believe in micromanaging the staff.

MS HUNTER: Obviously what has happened is that the ACT government, through Corrective Services or whatever, have contracted someone who has expertise in large building projects, Sinclair Knight Merz.

Mr Hargreaves: Yes, extensive experience, and, most importantly, in prisons—not just building stuff, in prisons.

MS HUNTER: The contract was signed through Procurement Solutions.

Ms Hardy: Are we talking about which contract?

THE CHAIR: The Sinclair Knight Merz contract.

Ms Hardy: Yes.

MS HUNTER: Who manages this contract? Is it someone within your office? How does that operate? Obviously this is an important contract too.

Mr Hargreaves: That is our audit contract.

MS HUNTER: This is management and expertise. How does negotiating and overseeing this project operate?

Ms Hardy: This goes to the role of Procurement Solutions in assisting Corrective Services in the management of this major project. Sinclair Knight Merz are acting as specialist project director on this particular project because of their extensive experience in large project management and specifically within prison construction. Hence they were engaged to assist both Procurement Solutions and Corrective Services on this particular project.

THE CHAIR: Who is the overall manager? Who is the manager? Who is the boss? Where does the buck stop?

Ms Hardy: In the end, it is Renée Leon, as the Chief Executive of Justice and Community Safety, because basically it is coming out of her budget; so in the end—

THE CHAIR: Congratulations.

MS HUNTER: So regardless of who actually signed this contract within Procurement Solutions that is neither here nor there if it is the department?

Mr Hargreaves: I will put this picture to you on what the relationships are between the people. Procurement Solutions are acting as our agents to get an arrangement going with Sinclair Knight Merz to oversight the provision of these systems. So the practical relationship and conversations are between Sinclair Knight Merz and Corrective Services or through the CEO of JACS, but predominantly through CS.

When it comes to the financial aspects of the contract, the relationship is between Procurement Solutions and SKM but, because there can be a bit of both, there is more often than not a three-way relationship in there.

THE CHAIR: Can somebody draw an org chart?

Ms Leon: Can I explain the general role of Procurement Solutions. Procurement Solutions is a shared service within the ACT government and so whenever Procurement Solutions is acting for one of the ACT government agencies they are acting as our agent. So Ms Hardy in this circumstance is in exactly the same position as if she was the procurement department within the Department of Justice and Community Safety, or as if I had simply outsourced procurement work to a private sector firm. In either case, they are simply acting as my agent and it is still—

MS HUNTER: And I do have a good understanding of Procurement Solutions—

Ms Leon: the client department that has the responsibility.

MS HUNTER: having been at the other end of contracts over many years.

Mr Hargreaves: Yes, you know exactly how it works.

MS HUNTER: So I do have a good handle on that. The point I am trying to get to is: who oversees this contract with Sinclair Knight Merz? Who meets regularly or makes sure that they are also—

Mr Hargreaves: All of the above.

MS HUNTER: So it is a joint thing? There is no one person responsible?

Mr Hargreaves: Yes.

MS HUNTER: It is split responsibility?

Mr Hargreaves: The implications of what they do—

Ms Leon: The responsibility is with me but I do not meet on a day-to-day basis with Sinclair Knight Merz. Corrective Services, which is part of my department, and Procurement Solutions, which is acting as my agent, meet with Sinclair Knight Merz for the daily contract management. But the responsibility for the contract rests with the department.

MS HUNTER: Okay. So now we have got down to it. So it is Corrective Services and Procurement Solutions who are meeting regularly to make sure that this contract is fulfilled.

THE CHAIR: And there is a project unit in Corrective Services.

Mr Hargreaves: The reports that Sinclair Knight Merz generate, or the opinion that they generate in terms of the efficacy of the programs that they are looking at: that

conversation is with Corrective Services, so that if they, for example, clear a certain part of the contract they would do that with Corrective Services.

MS HUNTER: So are you satisfied that Sinclair Knight Merz ensured that they were made aware early on around these security issues, these problems with Chubb?

Mr Hargreaves: Yes.

MS HUNTER: They were asking the questions along the way?

Mr Hargreaves: Yes.

MS HUNTER: So it wasn't Chubb or Bovis Lend Lease who said, "We're behind; there's an issue here"?

Mr Hargreaves: No.

MS HUNTER: Sinclair Knight Merz identified—

Mr Hargreaves: As a matter of fact—

MS HUNTER: And what date did they do that?

Mr Hargreaves: It is along the way. It is a continual process.

MS HUNTER: But when did they first do it?

Mr Hargreaves: When they get to that stage of the construction—I cannot get you an exact date. I will have to look into it. I will have to get back to you, but it is a certain stage in the evolution of that particular facility that we are building. But it needs to be said that the contractor and subcontractor believed at certain points along the way that they had satisfied the specifications. Sinclair Knight Merz disagreed with that and said no, they did not meet the specifications.

This is the bit that I was trying to allude to earlier on, Madam Chair, and I think it is an important point for the committee to know: when I became minister it occurred to me that there was a conversation going on about whether the specs were being satisfied or not, and that conversation was going nowhere and it was delaying the work that was going on. So I asked for there to be a stakeholder meeting—which did occur but I was not there, so it is not on my list, but I can tell you roughly when it was—where it would be agreed that we would split the problem. The problem was, in my view, in two parts. One was the work to actually resolve the technical problems around 2.6, and the second was whether or not it was part of the specifications because, if it was in, then the financial liability rested with A; if it was not, the financial liability rested with B.

I could see that the whole thing was trading water because of that and I asked them to split this thing: "We'll worry about the contractual arrangements in a different stream; it can go parallel but it's in a different stream of thought." I did get an undertaking from the contractor and the subcontractor and everybody else involved

that they would now put all of their energies into the technical solution and we would move forward. And I have to tell you that the reports that I got after that indicated that that actually started to happen.

THE CHAIR: So the faults like defect 2.6 were decoupled from the contractual wrangling about it?

Mr Hargreaves: Yes, that is what we tried to do and the two processes, if you like, would run parallel but one would not depend on the other for the length of time of resolution.

THE CHAIR: That is right; okay. But using—

Mr Hargreaves: And that was because I intervened in the process to get it done.

THE CHAIR: Using defect 2.6 as an example, what you seem to be saying is that you are prepared to take on the prison even though that defect has not been fixed.

Mr Hargreaves: No. What we were saying was that I was prepared to take on the prison so long as the series of defects which pertained to 2.6 had gone away from being show stoppers. If they continued to be in the show stopper group then, yes, I would not receive the prison over for Corrective Services to receive as a facility. If, on the other hand, the defect, the series of little bits and pieces, was just down to a stage where it would not interfere with the operational efficacy of the facility then, yes, we probably would, and I was asking advice on that along the way.

My advice at the moment, which I read to you earlier on, was that the defects now have gone from the what we call show stopper stuff into the stuff that we can actually open the facility to receive prisoners whilst those defects are being addressed. They will not interfere with the operation of the prison.

MS HUNTER: And all prisoners in all areas?

Mr Hargreaves: Yes. Well, I would expect so. I have not received an official briefing on that but I have to say that that was my expectation, and if that is not so then I will receive a briefing accordingly. But I am not going to take this prison over—Madam Chair, I just want to put this on record for Ms Hunter—if the safety of the community, the prisoners and the officers is in the slightest jeopardy.

THE CHAIR: Mr Hanson, you had a question?

MR HANSON: Yes, I do. It is on 2.6, just going further with it. I do not know whether it is best for Mr Ryan but we will see how we go. My understanding is that, whilst we have this defect, you are going to adjust your operational procedures and your training and this is a short-term solution until you get 2.6—

Mr Hargreaves: No, no, no.

MR HANSON: —fixed; is that correct?

Mr Hargreaves: No. We are not adjusting necessarily. What we are saying is that we can actually receive the thing at this stage of the game—subject to further testing, I have got to tell you. At this stage of the game we are hopeful that we will be able to take delivery of the facility and then move on.

MR HANSON: I saw shakes of head there when you were answering, minister. So you are to change—you are going to take the prison?

Mr Hargreaves: Yes.

MR HANSON: And 2.6 is not working. You are going to—

Mr Hargreaves: No, no, no, no—elements of it, Mr Hanson. It is elements of it. Please, I need you to understand that.

MR HANSON: Defect 2.6 is not working.

THE CHAIR: It is hard for us to understand because we cannot delve down into the detail.

MR HANSON: Anyway, whether it is the whole thing or elements of it, you are going to change, for that period whilst this is not working, your training and your operational procedures, and then, once 2.6 is rectified, in part or in whole, that is when you revert to, I guess, standard operating procedures. Is that the understanding?

Mr Hargreaves: Yes, except to say this: it is not unusual that we would do things like that. I need to draw the committee's attention to the issue of the radio frequency identification system. What that means is that prisoners with certain gradings of RFID can move within the facility unaccompanied. That system is not up and running yet and it is actually a subset, but we can open the prison facility and it just means that prisoners need to be escorted from point A to point B. As the RFID comes online, that ceases to be a necessity. And we are treating the rest of 2.6 in the same way.

MR HANSON: So 2.6 will be dealt with that way?

Mr Hargreaves: Yes.

MR HANSON: In the documents here it refers to that being a short-term solution.

Mr Hargreaves: I would hope so.

MR HANSON: So, that being the case, do you have the latest advice on when 2.6 will be rectified?

Mr Hargreaves: I do not have it, no.

MR HANSON: Do your staff?

Mr Hargreaves: No, we do not.

MR HANSON: So the advice of December: is that accurate or—

Mr Hargreaves: What did you say—December?

MR HANSON: December. You advised previously that it would be December and that is also in the site minutes.

Mr Hargreaves: And I have corrected you on that one already.

MR HANSON: It is also in the site minutes of 22 January.

Mr Hargreaves: I have corrected you on that already, saying to you that in the period well after that my advice was between two weeks and four weeks. That clearly has passed but we are talking about that level of imminence. I can only give to you the most recent information that I have, and that is that the facility, with some optimism, should be available to us at the end of March.

THE CHAIR: So to rectify defect 2.6—

Ms Leon: Can I say that I think that the discussion about 2.6 is very difficult to have without being able to talk about the nature of the defects. I wonder if it might be more productive if we have the conversation about the particular defects in a closed environment when we are able to say what the defect is—

MS PORTER: I think that would be best.

Ms Leon: and therefore what the potential impact on the operation of the prison is.

Mr Hargreaves: And you will see why we can or cannot move forward.

THE CHAIR: I take your point, Ms Leon, but would like to close this by just asking two questions, one of clarification. You said, minister—correct me if I misheard you—that the RFID is a subset of the 2.6 defect?

Mr Hargreaves: No, it is not. It is a subset of the total security system.

THE CHAIR: Okay, that is what I wanted. That is why I wanted some clarification. And is it now not the case that the rectification of 2.6 is dependent upon a particular piece of software which may not be available for some time?

Mr Hargreaves: I would prefer to address that particular question in the in camera piece, if it is okay?

THE CHAIR: Good, thank you. Can I just go back to where we are in the process of commencing effective operations of the prison. The last site meeting that the committee has got that I have seen is 5 February and that was when there was discussion of the catastrophic failure of the system. What progress has been made since 5 February in relation to the 28-day run-in period which includes—correct me if my memory is wrong—the 14 days of staff training and then the five-day fault-free period? Where are we in that?

Mr Hargreaves: We are at the moment in the testing of the system for its stability.

THE CHAIR: That is the 28-day period?

Mr Hargreaves: Yes, in that 28-day period and it is so far looking all right. The ones going back, which is in all the records, where it was firstly tested and it was fine and then a couple of days later it fell over: they have done some work on it. The system testing is not yet completed. It has recommenced and that is the bit I am talking about.

THE CHAIR: It has recommenced? Sorry, that is the question: when did it recommence?

Mr Hargreaves: Yes, and at this stage of the game the stability of the system is looking optimistic but I will not be definitive about that until that whole period has gone and it has been fault free.

THE CHAIR: When did the 28-day period recommence?

Mr Hargreaves: It recommenced this week.

THE CHAIR: Monday? Tuesday?

Mr Folpp: The 28-day commissioning period was halted because of the failures in the system. We did recommence it at the start of this week but we have always been of the view that we did not necessarily just say, “We have stopped the 28-day commissioning period.” We have always been of the view that we have been able to extend that 28-day commissioning period. We are actually so far advanced now that we put between 15 and 20 staff on site this afternoon to do intensive testing. The builder came back to us earlier this week to say that they had confidence in the system. We can talk more a little later about the technical side—what they have actually flown in from America to overcome the problems that they have had. But we are certainly hopeful that we will be able to continue forward and actually recommence all the training for the staff early next week.

THE CHAIR: How much of the 28-day period that commenced on 5 January had elapsed before the system went down?

Mr Folpp: From memory, and I would have to take the question on notice—

THE CHAIR: Yes, just roughly.

Mr Folpp:—I think we commenced the 28-day commissioning period and we were only about four or five days into that period—

THE CHAIR: That was my recollection.

Mr Folpp:—when the actual system went down and it actually failed.

THE CHAIR: It was down on 4 February when we were there.

Mr Folpp: Yes.

THE CHAIR: I seem to recall that either you, Mr Folpp, or somebody said to us on the day that we were 31 days into the 28-day period and it had been down for 22 days or something like that—a figure like that.

Mr Folpp: Yes, from memory, it was around 22 days.

THE CHAIR: So it had been running for about four days and then it had been down and it has been continuously down from that time when the committee was there on 4 February, or around about then, until this week.

Mr Folpp: But you are not correct in saying that it was down—

THE CHAIR: Sorry, the security system had been down.

Mr Folpp: Parts of the system.

Mr Hargreaves: Madam Chair, we are getting into that delicate bit. Can I ask that we talk to Mr Folpp in that in-camera bit, please?

THE CHAIR: I just want to get the time line. I don't want to know about the technical details. I want the time line, where we are with the time line.

Mr Hargreaves: Mr Ryan can probably clarify it a little more quickly, perhaps.

THE CHAIR: Okay.

Mr Ryan: I sense that there is a propensity for all of us to look at 28 days, plus five, and see when we stopped and started. And, yes, it is relevant to the extent that these time frames are mentioned in the specification. However, these time frames are not immutable. Indeed, as Mr Folpp has mentioned, if we want to stop them and recommence them or extend them, we can. Equally, if we feel at any stage, at any point, that the system is working, we will go into our final test and occupy the prison. I just urge that we do not get too hung up on when it started, when it stopped and what is left out of the 28 days.

THE CHAIR: I will get hung up on it, Mr Ryan, to the extent that I want to get in my mind for how many days—it started on the 5th—the security part of the commissioning has been down, and that was from some time four or five days after 5 January until some time this week. Is that correct?

Mr Ryan: Yes, and this is what it is all about.

THE CHAIR: Okay, thank you. Ms Hunter?

MS HUNTER: Back to some contract questions. On page 13, under clause 32—

Mr Hargreaves: Sorry, Ms Hunter, which contract are you talking about?

HS HUNTER: This is the contract with Bovis. So it is page 13, clause 32, I believe. It says that Bovis would, if asked, provide the ACT government with a copy of the Chubb subcontract. I am just wondering if the ACT government has asked for the Chubb contract.

Ms Hardy: Are you reading now from 32(1), Ms Hunter, or 32(2)?

MS HUNTER: 32(2).

Ms Hardy: When requested before engaging—

THE CHAIR: Can you read that out?

Ms Hardy: Yes, I will read it out. It is 32(2), engaging subcontractors:

When requested, before engaging any subcontractors and at any other times, the contractor must provide to the principal unpriced copies of any subcontracts, the names and addresses of proposed subcontractors and the names and addresses of subcontractors. The principal may object to the appointment of any proposed subcontractor on reasonable grounds. If the principal objects to any proposed subcontractor, the contractor must, at its own cost, propose another subcontractor.

Mr Hargreaves: I think that we need to—

MS HUNTER: So you can object. There were five, I believe—

Mr Hargreaves: We need to make the point that these were uncosted contracts. There is no money involved in that—when we get a copy of it.

THE CHAIR: Yes.

Mr Hargreaves: Okay.

MS HUNTER: There were five names, I believe, that were provided first-off, and you could have objected, I guess, to any of those, if you were concerned. That is my understanding of that clause. I am just wondering what sort of process was gone through to ensure that they were up to the job. Was there any investigation done? Did you have any concerns about, particularly, I suppose, the final one that was put forward by Bovis?

Ms Hardy: This would go to the criteria that we would have evaluated the main contractor on, and that would include the kind of subcontractors that they were putting forward. The evaluation reports and plans go to examination of the experience of the head contractor as well as the experience and credentials of all of the subcontractors they were putting forward.

Ms Hargreaves: Ms Hunter, in respect of this particular contractor, let me please say that there is considerable experience in this particular subcontractor in the individual elements of the system, not only in Australia but also in the United States. They have

a very good track record of delivery on the elements of this service.

MS HUNTER: But obviously there were issues around the integration of the system?

Mr Hargreaves: So you would not automatically say, “Oh, I wonder if they’re up to it.” You would automatically say that they would be up to it.

THE CHAIR: Can I just get my head around this: the conditions of the contract were that at any time the principal—Corrective Services, Procurement Solutions, whichever part—could say to the principal contractor, in this case Bovis, “Show us the information about any of your subcontractors”?

Ms Hardy: Yes, we—

THE CHAIR: And if the territory looked at that and had an objection, they could say, “No, you will not employ this subcontractor and here is a list of possible subcontractors.”

Ms Hardy: On reasonable grounds.

THE CHAIR: Yes.

Ms Hardy: Not just on any grounds.

THE CHAIR: No, not on a matter of a whim, but you could look at it and say, “I have reservations about this.” The territory have the capacity to say, “I have reservations about this subcontractor; go away and choose somebody else from this list.” This list of five contractors, was that the territory’s list of people that could be used as security contractors or was that the head contractor’s list?

Mr Hargreaves: It is the territory’s list, isn’t it?

Ms Hardy: I will actually have to check that. Quite frankly, I know that each tenderer would have put forward their list of subcontractors and they would have been evaluated in the tender evaluation plan against the criteria as to whether or not we considered them sufficiently capable to undertake the work against the specifications.

Mr Hargreaves: I have to make this point, though, absolutely clear for the record because we have actually some concern on the part of the subcontractors that their reputations may be dented a bit. There is absolutely no reason at all that I can think of—and I have been involved in the security game on and off for 40 years—and there is no way that if the name of Chubb as a subcontractor was put up that I would suspect that they could not deliver; full stop. I have, and continue to have, every confidence that they are an above-par and above-average contractor in this particular game.

THE CHAIR: Thank you for that, minister. What we are saying, though, is that at the outset the territory could go to the head contractor and say, “Show us your subbies,” and on reasonable grounds we could say, “Don’t go with this subbie”?

Mr Hargreaves: Yes.

THE CHAIR: You are going to check for me, Ms Hardy, whether that list of other possible contractors is our list or Bovis's list?

Mr Hargreaves: Yes.

THE CHAIR: After that, does the territory, as the eventual owner of the building, have the capacity to say at any time, on reasonable grounds: "I've got a problem. I'm not confident that a particular contractor can meet their contractual arrangements. I would like to sever this subcontractual arrangement and find somebody else that I have more confidence in"?

Mr Hargreaves: We will have to get back to you on that, Madam Chair, just to give you the actual contract wording which allows us or prevents us from doing what you suggest. I understand exactly what you are saying, but please allow us time to get the wording and to see what our abilities are to have that conversation with the contractor. I understand exactly what you want.

THE CHAIR: I would welcome that. I think that is an important issue. Ms Hunter?

MS HUNTER: According to the risk management plan, having a look at that, it seemed to indicate that Chubb was identified as a number one risk due to their inexperience with installing security systems, or this whole integrated security system.

Mr Hargreaves: It is integrated.

MS HUNTER: Was the ACT government informed of this number one risk and when were you informed of it, if that is the case?

Mr Hargreaves: It is in the contract negotiations.

MS HUNTER: Okay. And what action did you take?

Ms Hardy: Basically, risk management plans begin at the beginning of the procurement plan. The security system was always a high risk because it is software, and in comparison to, say, construction where you have got time delays due to weather or those sorts of things, this one was always flagged as a high risk. There is extensive documentation, which I think you have been given, of the tracking of the risk, including the tracking of the security system risk all the way through, and dealt with on not only a monthly basis but on a fortnightly basis in site minutes et cetera.

Mr Hargreaves: What we need to understand about this, though, in the context of the risk—

MS HUNTER: So that was what you put in place—a very regular checking or monitoring system was one of your responses to understanding this complex area. That was where your highest risk was going to come from; therefore that was your response?

Ms Hardy: That was one of the responses.

MS HUNTER: Monitor closely and keep up to date with what was happening. There are two components here: there is the physical hardware that gets put in the building as the construction is happening, and then, as you have just identified, Ms Hardy, there is the software, which is the highest risk component.

Mr Hargreaves: Yes, that is right.

MS HUNTER: Particularly in a very complex integrated system. When was it understood that that programming would start?

Mr Hargreaves: Looking in terms of the context of the question on risk—when did we realise that there might have been a risk that the subcontractor could not deliver?

MS HUNTER: I think I am asking two questions in a way. I am sorry; that was a little confusing.

Mr Hargreaves: Yes.

MS HUNTER: One would be around the risk, minister. The other one was just a straightforward “When was it the government’s understanding that they would start that software work?”

Mr Hargreaves: From the beginning, once Bovis had accepted Chubb as being the subcontractor and Bovis had got the job, we would naturally expect all subcontractors to start work on that process.

MS HUNTER: So there was not an identified day?

Mr Hargreaves: No.

MS HUNTER: It was not contingent on having your hardware in place first before you could start?

Mr Hargreaves: No. Indeed, with respect to the committee, Ms Hunter, our arrangement is—simply put, we asked Bovis Lend Lease to deliver us a facility; it is their responsibility as to when these various contractors kick in, whether we are talking about the fencing; kitchen materials or the security system. It is not something where we would monitor that level—

MS HUNTER: It certainly is their responsibility, but on the other side you then contracted a company to ensure that they were going to live up to that responsibility.

Mr Hargreaves: Yes.

THE CHAIR: Otherwise you would not bother to have them.

Mr Hargreaves: What was happening along the way was that the subcontractor and the contractor were saying, “Yes, we have delivered against the specifications.” That

was their view. Our auditor, to use a shortened version, was saying, “We don’t believe you have.”

MS HUNTER: Okay.

Mr Hargreaves: This conversation kept going on and on. Then I became the minister and said: “Look, I just want this conversation to stop. What I want is for you to get on and do the software development that gets this thing up and running, and worry about all that other stuff later.” I do not care whether it is in the specifications or not for the purposes of this argument. The fact is that the system was not working. Somebody had to get to work and get it working. They did that. What was happening was that there was a contention between SKM and the contractor and subcontractor about whether the specifications had been delivered. That conversation was months, and continually, until I took over as minister and said that I had had enough. It was continual.

MS HUNTER: I understand that specifications are very detailed things.

Mr Hargreaves: Yes.

MS HUNTER: But at the end of the day you have to have—there was a larger understanding that you had a security system that was going to open certain doors, close certain doors, turn on—

Mr Hargreaves: All manner of things.

MS HUNTER: Those specifications were quite clear.

Mr Hargreaves: Yes, but what happened—

MS HUNTER: I am wondering why there was this backward and forward around whether you had delivered something. Either a door opens or it does not.

Mr Hargreaves: Yes. The complication—we can go into more detail of the technical thing—goes like this. The individual bits were fine; they had been tried and tested elsewhere. The core of it was the issue.

THE CHAIR: The integration between all the individual bits.

Mr Hargreaves: Yes.

MS HUNTER: I do not want to get into too much more detail.

Mr Hargreaves: That is the detail we need to go into.

MS HUNTER: We will do that in the in camera session.

Mr Hargreaves: That was the area of the contested conversation, so that is the bit you get in the technical detail.

MS HUNTER: Okay. Thank you.

THE CHAIR: Going back to the contractual arrangements with Bovis and their subcontractors, I am starting to hear a different story. On delving into the documents, as we have had a limited opportunity to do in the last week, I am hearing a different story from what I heard and what we heard last week. When we last had hearings, it was pretty much that Bovis and their principal subcontractors like the security subcontractor came as a job lot and you accepted Bovis with their subcontractors.

Mr Hargreaves: With all of them.

THE CHAIR: The actual contract, irrespective of which person we signed up as the head contractor—Bovis and Chubb was a job lot and the other companies would have had a security company as a job lot. That is not the message I am hearing from this today.

Mr Hargreaves: Yes.

THE CHAIR: We are actually—

Mr Hargreaves: No; that is true.

THE CHAIR: We are actually having—there is clear indication in the contracts that the territory could have, if it wanted to—

Mr Hargreaves: Said, “We’re not happy with that contractor; go and think about it again.”

THE CHAIR: Said, “We’re not happy.” So the territory did have the right to veto key subcontractors.

Mr Hargreaves: Yes.

Ms Hardy: I think we did say that last time, Mrs Dunne—that we went through a lengthy process of examining the capacity of the contractor, including its named subcontractors, to deliver against the criteria set out in the documents. If we had had any doubt that Chubb did not meet the criteria in the tender documents, BLL would not have been at the negotiating table.

THE CHAIR: I want to correct that. You could have said, “We like Bovis Lend Lease but we don’t like this subcontractor”—whether it be the security contractor—

Mr Hargreaves: Yes, but—

Ms Hardy: But when we assessed it against the contract, the tender criteria, they did meet the criteria.

THE CHAIR: Yes, but I am looking here at what you had the capacity to do—

Ms Hardy: If they had not met the criteria.

THE CHAIR: —not what you found out. If you had looked at it and said: “I think the head contractor meets the criteria; we’re happy with that. Not so sure about this fellow over here. I want to keep him but I want to substitute that subcontractor with somebody else off the list”—

Mr Hargreaves: With X.

THE CHAIR: You could have done that?

Mr Hargreaves: We could have, but again I come back to this—

THE CHAIR: But you did not.

Mr Hargreaves: No. You are quite right; we could have.

THE CHAIR: I am just exploring the possibilities.

Mr Hargreaves: The reason why we did not is that, firstly, Bovis Lend Lease have got incredibly good credentials for doing projects of this size; and, secondly, so do Chubb in delivering security systems, both electronic and static, across the country and internationally. And there was absolutely no indication to us at the contract stage, contrary to the warning stage, that they could not deliver on the specifications.

THE CHAIR: Okay.

Mr Hargreaves: Remember, too, that it is not just us looking at it; it is the fact that the head contractor, Bovis, has expressed confidence in that subcontractor as well.

THE CHAIR: I understand that.

Mr Hargreaves: You see?

THE CHAIR: It is about that working relationship.

Mr Hargreaves: Yes.

THE CHAIR: Can I just restate things. Ms Hardy, you were going to come back to us with what it is possible for the territory to do once the contract is in flow if you lose confidence in the subcontractor?

Ms Hardy: Yes.

THE CHAIR: And probably the head contractor as well for that matter.

Mr Hargreaves: That is pretty obvious, isn’t it?

THE CHAIR: Yes. The other thing is this. We have heard at various stages—Mr Ryan referred to it—that various of these contractors were brought on board because they had experience in prisons. You said that SKM had experience in

prisons—

Mr Hargreaves: Yes.

THE CHAIR: Bovis.

Mr Hargreaves: Yes.

THE CHAIR: And Chubb?

Mr Hargreaves: Yes.

THE CHAIR: I did read somewhere that there was concern—

Mr Hargreaves: Well, it is Bovis's choice for their subcontractor.

THE CHAIR: That there was concern about Chubb because they had not very much experience, or words to that effect.

Mr Hargreaves: No—not within the componentry, but within the total core.

THE CHAIR: That Chubb did not have many prisons so greater vigilance will be needed to exercise in design, review et cetera.

Mr Hargreaves: Yes.

THE CHAIR: Which is July 2007.

Mr Hargreaves: I am advised, though, that the issue—that we looked at the risk being one that we need to be aware of—had not to do with the exposure to the elements of the thing. There are thousands of successful installations of those particular pieces.

THE CHAIR: Right.

Mr Hargreaves: The Lenel system is quite a robust system. What is unique about this one is that we are putting it all together. The ability of someone to put it all together in an integrated package was the bit we identified early on as something we ought to be keeping an eye on.

THE CHAIR: So getting back to my question, which was a long time coming—can you identify for the committee the previous experience that these major contractors have had with prisons?

Mr Hargreaves: We will have to go back and have a look at that paperwork and see what we can do.

THE CHAIR: Yes. I am happy for that to be on notice.

Mr Hargreaves: Yes. We will do our best to respond to that.

MS HUNTER: And—Madam Chair?

THE CHAIR: Yes.

MS HUNTER: For Sinclair Knight Merz as well. One thing I am interested in is—obviously they were contracted by the ACT government, as I said earlier, because of their expertise.

Mr Hargreaves: Yes.

MS HUNTER: So I would be quite interested to see that.

Mr Hargreaves: Can I just let the officers know, please, Ms Hunter?

MS HUNTER: Sure, yes.

Mr Hargreaves: We need the information with respect to SKM as well.

THE CHAIR: Yes.

MS HUNTER: Minister, I had a question.

Mr Hargreaves: Yes.

MS HUNTER: Obviously, 20 or 30 years ago maybe, there were a lot more of these sorts of capital works projects done within government. So you had your engineers and you had that sort of expertise within government.

Mr Hargreaves: That is right.

MS HUNTER: Obviously, with privatisation, times change. So what do we do within the ACT government now? Do we have the expertise within government to be monitoring and overseeing these contracts?

Mr Hargreaves: I think that is a good question.

MS HUNTER: Certainly, we have contracted to someone, but—

Mr Hargreaves: Yes, it is a good question and it is one of the things we looked at when considering and discounting whether to go with a public-private partnership to do this sort of thing, or put it out to the private sector. We accepted the fact that the ownership and management of a correctional facility was something that the community ought to take responsibility for. So against that background, and remembering we have never had a prison built in the ACT; we took an awfully long time as a Labor government to get the detail down. We were talking about a prison like no other in the country, with no razor wire and no—

MS HUNTER: Did that mean recruitment of people with certain skills into the ACT public service?

Mr Hargreaves: Yes, it did. In fact, our prison project team was headed up for a while by Mr John Paget from the South Australian correctional services system. He was the CEO of that, I think, Mr Ryan?

Mr Ryan: Yes.

THE CHAIR: And Mr Paget left and that was considered a bit of a problem.

Mr Hargreaves: Well, it may have been by some. But, Ms Hunter, yes, we did bring in specific expertise. Some of it will stay with us and some of it will just be for the purpose of the contract. Also, recognising that we do not have within the bureaucracy the sorts of skills that SKM have to bring to the project—

MS HUNTER: I certainly understand that; that is why you contract, but obviously—

Mr Hargreaves: But in other jurisdictions, though—

MS HUNTER:—to have some skills to oversight that contract.

Mr Hargreaves: Yes, but what I was going to say to you was that in other jurisdictions they will build two or three prisons a year. When I went up to Brisbane, they had what was then known as SEQ1 and SEQ2. They were building two 600-bed prisons side by side for male and female. They had that expertise within their bureaucracy to oversight not only the provision of programs et cetera but also the capital works project. Our bureaucracy in the ACT has only got 17,000 people or so in it. We have to buy in that expertise to help us. What complicates it—

MS HUNTER: But we have recruited some skills within our own public service?

Mr Hargreaves: Yes. But what of course complicates it for us is that nowhere in Australia, in some aspects of this prison, is there expertise. There is not. With issues like no razor wire, what do you do? We have to then bring a collection of expertise together under the project management to get that done. It is a very big challenge, this one.

THE CHAIR: I do note, Ms Hunter, that the monitoring and management reports for 17 September 2007 indicate that “a significant increase in project risk has resulted from the premature departure from the project of the Corrective Services project director, and this will put pressure on the balance of the project team to mitigate the effect of risk arising from the potentially diminished project leadership and a significant loss of continuity and corporate knowledge”. I suppose we have moved a long way on from August-September 2007. We are 18 months down the road so I presume a fair amount of corporate knowledge has been built up since then, but it was considered a risk at the time.

Mr Hargreaves: And the reason for that is very simple: that particular individual was one of the pre-eminent people in corrective services in Australia, and trying to find somebody with that level of expertise and that particular approach is very difficult. He was—and I am happy to put this on the public record—an exceptional individual in

this particular process, both in the construction of prisons and in their management. Therefore, when he did decide to move on, we naturally lost a certain amount of corporate memory and a certain amount of leadership, because that is an individual thing, and then we had to move forward. But I think it would have been inappropriate for us not to identify that. I think it is to Corrective Services' credit that they have actually put that risk on the table.

Mr Ryan: In fairness, though, I myself have headed consortiums to build prisons.

THE CHAIR: Have you, Mr Ryan?

Mr Ryan: I headed the consortium that built the Fulham prison; I headed the consortium that has done retrofitting into a prison in Queensland; I have headed consortiums to make bids for three or four others. So I am well versed in the requirements of building prisons, and to say that we do not have the necessary expertise I don't think is quite right.

THE CHAIR: I am quoting from what the risk assessment said.

Mr Hargreaves: But what the risk assessment is saying, Madam Chair, is that Mr Ryan had lost, at that particular time, a significant part of his process.

THE CHAIR: I notice we have got five minutes left for this and there is still a range of things. I would like to move on to something else. I noticed in your letter, minister, on 18 February to the committee that you say that ACT Corrective Services hold no documents that relate to the extension of adult correctional services for ACT sentenced prisoners in New South Wales associated with the delays in commencement. What has been said, and in what form has that communication been, with New South Wales in relation to the delays in repatriating prisoners?

Mr Hargreaves: I will ask Mr Ryan to answer that one because he is the one doing it.

Mr Ryan: Yes, I think we provided a response to say that I spoke to the commissioner in New South Wales on 30 January. We discussed two things. He was asking me when we were going to take our prisoners back and I was asking him when he was going to recontinue the business of taking prisoners from us, which was the expectation.

THE CHAIR: What did you tell each other?

Mr Ryan: We both told each other we had great problems. Clearly, what he had to offer to me would not have advanced the conditions for any prisoners sent to him from the ACT at all. I think we agreed that we would continue to monitor it, and we have, on occasions, continually gone back to New South Wales to check whether or not there was anything available for us. I do not expect that in the near future their situation is likely to improve. We, as you know, have a fallback plan now which for us is working well enough. Clearly, we do not want that to continue any longer than it needs to.

Mr Hargreaves: I think it is important to note, too, one of the really big drivers, quite

apart from the conditions of the BRC, for us to get on with the prison, and I know that it was one of the big things behind Mr Humphries's push when he was the minister back in 1998 and 1999, is the horror that we know of Goulburn. One of the issues for us is that when people are sentenced or put on remand from the ACT and they are sent away, there is a burden on families travelling to see them. Going to Junee is a dreadful trip. Of course, if there is no room at Goulburn then any other facility is going to be horrendous for the family. So we just have this spectre hanging over our head, and I would rather us continue what we are going down there. I think asking New South Wales to take our people would be the measure of last resort. I always thought that, but we have had to resort to that. So whilst it is disappointing, I suppose, that some of the prisoners can't go there, at the moment we are coping and some of our people are coming back, which is even better for us, because that means family contact is much more readily available.

THE CHAIR: You said before that some of our people are coming back. I do not know that we are going to get through this today, but you are actually saying that sentenced prisoners still serving out their sentence are coming back into the ACT—

Mr Hargreaves: They're here.

THE CHAIR:—corrections system?

Mr Ryan: What is happening is that there are some coming back but those coming back are coming back to go to court for appeals. The other sentenced prisoners that we have are those that have been sentenced but for whom there is no place in New South Wales.

THE CHAIR: How many of those are there at the moment?

Mr Ryan: Twenty something.

THE CHAIR: Minister, the thing that concerns me about this part of the scenario is that we run the risk of people who perhaps should be remanded not being remanded because we are under pressure in the remand centre and perhaps people who may in other circumstances receive a custodial sentence not receiving a custodial sentence simply because the clear message out there is that the BRC is under increasing pressure. And now we have 20-something sentenced prisoners already who are being held in remand conditions, which may not be appropriate for sentenced prisoners. Have you looked at these issues, and what contingencies are there for addressing these issues so that we do not have unintended warping of the corrections sentencing system because of it—and the justice system generally?

Mr Hargreaves: I cannot answer for the judiciary about why they do this, that or something else. We respond to whatever they choose to do. But I take it as a possibility that the availability of accommodation within the ACT is a factor for them—and the standard of that accommodation. There is a reluctance—I would hope there is a reluctance—to send anybody to BRC and certainly I would hope that there is a big reluctance to send anybody to Goulburn. Against that background, though, we had hoped that the AMC would have been available to us considerably earlier than this. Everybody was; everybody was hoping for that.

THE CHAIR: Yes, we all hoped that. But my question was “what was the contingency?”

Mr Hargreaves: Because it was not, we consider the issue of—firstly, we changed the periodic detention centre and created the Symonston temporary one. That was a contingency which took pressure off at the time. Then it was expanded back out again. There are times in the year when numbers are up and there are times in the year when they are not. We then had the heatwave and the overcrowding at BRC. And the further delay gave us the need to open Quamby, which we did. My understanding is that there are 21, or thereabouts, people in Quamby at the moment. The capacity, with some slight adjustment to the place, is 30. So we have got some capacity there. We are under capacity at BRC, as far as I am aware—29, I am told, today.

THE CHAIR: There is one spot left.

MS HUNTER: So there is only one spot left.

Mr Hargreaves: Yes, but not necessarily.

MS HUNTER: That is a critical issue too. How close are we to that capacity? Who will go over to New South Wales, saying, “Sorry, the inn’s full; you can’t send any more”?

Mr Hargreaves: It fluctuates. It seriously fluctuates. It can fluctuate as many as between 13, 15, 17 a day.

MS HUNTER: So there is no concern at this time that we will not be able to accommodate remandees or sentenced prisoners?

Mr Hargreaves: At this point we are confident.

Mr Ryan: I have been concerned for a decade. It is an ongoing problem. Yes, just as we find something new—whether it is the temporary remand centre or expanding Belconnen Remand Centre—we tend to fill it up. Now we are in Quamby and we are putting more in there. We need to stop doing this just as soon as we can, and everyone knows that. In the meantime, though, the ability for us to send people to New South Wales has not been completely closed off.

MS HUNTER: Right.

Mr Ryan: Obviously, we would not like to see one of our people go up to the far north coast or to Broken Hill. We need to balance out what is on offer there and what is on offer here. At the moment there is not anything on offer in New South Wales, but that is not to say that there will not be.

MS HUNTER: Okay.

Mr Hargreaves: But also we know that the accommodation—the committee has been to BRC, I take it?

MS HUNTER: Not yet.

THE CHAIR: Soon.

Mr Hargreaves: When you get there, you will notice the size of the accommodation there. It is really crushed. The accommodation cells themselves in Quamby are larger than that; they are capable of taking a bed as opposed to one of those roll-outs. We will not have to have them—even to expand the numbers in Quamby, we will not be in a position where we have significant overcrowding. Some of the rooms there are quite large enough to take two or three people. One of the other issues that I need the committee to appreciate—

MS HUNTER: Could I just clarify something? Is the demountable still at Quamby?

Mr Ryan: Yes.

Mr Hargreaves: Yes.

MS HUNTER: That is in use?

Mr Hargreaves: Yes. The other thing that we need to do is look at the varieties that can occur. If the number of remand or sentenced female prisoners goes really high, we have issues of segregation. If they do not, we have surplus capacity but we cannot use it. You cannot put male prisoners in just because there are a couple of spare beds in the women's facility. Further, if we have people who are at risk of self-harm, one of the ways in which we address that is to buddy them up. We actually have a dual cell. We have a couple of those sitting up in Quamby at the moment.

Like I say, it fluctuates. I can recall that when I went out to BRC with Mr Hanson—the day before that, we were sitting at two or three over capacity. We went there at—I have forgotten what time—about 3 o'clock in the afternoon or something like that. That day, through activities through the court, we had 13 people move out of BRC and we were five under capacity.

MS HUNTER: So it is also quite unpredictable?

Mr Hargreaves: Yes. And of course I do need to make the point, and I appreciate the opportunity, that we only respond to the judicial system.

MS HUNTER: It is not that I am expecting some massive crime wave or whatever, but it obviously can be—

Mr Hargreaves: If the police are particularly successful with a particular blitz—and they do this from time to time, like with that gang of thugs that were doing stuff down at Tuggeranong—

MS HUNTER: Yes, a sweep.

Mr Hargreaves: If those people front to the court you could have five people turn up

in one go.

MS HUNTER: Yes.

Mr Hargreaves: So it is very difficult to judge.

MS HUNTER: Okay.

THE CHAIR: We were scheduled to finish this five minutes ago. Minister, I want to thank you and your officials, and I thank you for the offer of documents and briefings and things like this.

Mr Hargreaves: Sure.

THE CHAIR: I just need to put on the record again, in case there is any doubt, that we might have to bring you back. There are issues that we have not got to within the terms of reference.

Mr Hargreaves: Before you adjourn, Madam Chair, for the benefit of the committee secretary, can I please advise that, if you were thinking about a recall, on Thursday of next week I have to address the Institute of Criminology in Melbourne and on Friday I have to be in a disability ministerial council meeting.

THE CHAIR: We will do diaries.

Meeting adjourned from 3.05 to 4.12 pm.

WATCHIRS, DR HELEN, ACT Human Rights and Discrimination Commissioner

THE CHAIR: Welcome to the hearing of the justice and community safety committee in its inquiry into the delay in the commencement of operations at the Alexander Maconochie Centre. I welcome Dr Watchirs from the Human Rights Commission. Dr Watchirs, are you familiar with the contents of the privilege card?

Dr Watchirs: Yes, thank you, Madam Chair.

THE CHAIR: You understand that. I think you have been here often enough to know how our hearings work. Welcome to the inquiry in relation to the operations at the Alexander Maconochie Centre. One of the terms of reference relates specifically to the human rights impacts of the delays. You have an opening statement. Would you like to speak to that opening statement?

Dr Watchirs: Yes, Madam Chair, and thank you for inviting me to attend. I decided to inspect ACT correctional facilities because I had heard from a number of sources that conditions had deteriorated since we submitted our audit of correctional facilities on 31 July 2008. As you know, that was tabled on 21 August. I actually met with Minister Hargreaves on 14 November to discuss what I had found.

THE CHAIR: Could I just clarify that. The first audit was 31 July 2008?

Dr Watchirs: That is the comprehensive audit.

THE CHAIR: 2008 or 2007? There are two dates.

Dr Watchirs: Sorry, 2007.

THE CHAIR: I thought that was the case but I just needed to check.

Dr Watchirs: Thank you for that. My first inspection was in relation to my trip on 31 October 2008 and I met with the minister subsequent to that to discuss those findings. On 15 January this year, I did not go personally, but one of my staff did with the acting commissioner, and I, along with another member of staff, went on 25 February, this week, to inspect the former Quamby site.

In the first two letters, I stated to the minister that conditions for some detainees may potentially constitute inhumane treatment in violation of section 19 of the Human Rights Act. The existing inadequate facilities—that is what we found in the audit—were exacerbated by excessive overcrowding and it had worsened over the summer before the opening of the AMC. However, I must state that the recent opening of Quamby has been a big improvement.

There is one outstanding issue in that Corrective Services still co-locates people and groups of people according to security classifications and who gets on well with each other, rather than segregating individuals according to their legal status. Subsection 19(2) of the Human Rights Act provides that “an accused person must be segregated from convicted people, except in exceptional circumstances”. I do accept that the small numbers of detainees and the need to only allow low-security detainees

at the new Symonston correctional facility—that is, the old Quamby—due to its site may make this difficult to implement. Inappropriate mixing of remandees and sentenced prisoners at other correctional facilities was raised in the 2007 audit.

However, it is arguable that this current situation has become exceptional due to New South Wales not accepting ACT detainees because of the delayed opening of the AMC. It really comes back to the terms of this inquiry as to whether the ACT government has done all that is reasonably possible to address this issue.

I will go through a few subheadings on what we found in the inspection. Firstly, in terms of numbers, in the October and January visits, there were 112 on both visits. The first time we were told there were 25 sentenced prisoners at that time. When we visited BRC in October, there were five men in E dorm and on 15 January there were eight men, meaning that one had to be on a camp bed. On 31 October, we were told that there had been up to nine men accommodated in activities rooms on fold out beds and when we visited again on 15 January there were only five men there then.

The problem with this is that the people accommodated in the activities room had access to one toilet and access to two showers in D yard. They had to be escorted to this other yard, so that meant that the availability of showers was restricted. There were problems with plumbing, resulting in a leak in a confined space in at least one cell we visited at BRC, which was very damp and foul smelling. Detainees reported that this had been a problem for some time, and it is clear that the age and state of the buildings have only exacerbated matters when this facility has been operating at overcapacity.

There were ventilation problems throughout BRC. Some cells had fans, but not all. Some detainees knew they could request a fan; others said they had asked but not received one. Many commented that fans only had a limited use because they only recirculated hot and putrid air. With respect to the detainees in E yard at BRC—E yard, the cells, are shown on the cover of the audit report—they are the old police cells and have no natural light, and since the audit have perspex coverings on the bars on the cell doors, which of course restricts ventilation even further.

The Symonston Temporary Remand Centre—that is the old, old Quamby; I do not know if you have visited the sites but there is—

THE CHAIR: We are doing that in the next little while.

Dr Watchirs: the new Quamby, being the furthest away, then the periodic detention centre in the middle and then Symonston closest to town. So in October we visited. Probably the main problem there was that there were some cells that had three men that were designed to accommodate two people in bunks. The third detainee would have a mattress on the floor, that being virtually the whole floor space, so that their head would be next to the toilet. Anyone coming out would have to step on the mattress to get to the toilet. The space in the cells is limited to begin with, but a third person makes it very cramped. They were extremely confined, there was poor ventilation and reportedly it was hot overnight. We did have a complaint from one non-smoker in one of these three-out cells that he was being put in there with two other smokers. He did not blame his cell mates, but said it was really hard in such

close quarters and with only a 10-centimetre gap for air through the doorway.

This week we visited the new Symonston correctional facility, previously known as Quamby. We found 21 males there in the new facility. We were advised that it could hold up to a maximum of 40 detainees, but that would require further adjustments and renovations. Benefits of this facility compared to the others were much more natural light, ventilation, open and natural surroundings and more modern building design, particularly in the demountable unit. There was air conditioning throughout, new bedding and mattresses, and new equipment such as TVs, washers, dryers, DVD players and sporting equipment.

Problems, apart from the mixing, were fairly minor. Air conditioning is not working in a small part of one wing. There was a problem with its timing, I think. And some windows did not have curtains with velcro to stop that heat. Newspapers were not being delivered, but someone came as we were leaving to do that. Detainees were spending minimal time outside due to fences and a gate being constructed. I think the fences have been finished but the gate was the outstanding work. If this remained the case then that would cause a problem with people not being allowed out of their units. Phones were not working, but things were in hand to get that happening, and the Hindmarsh Education Centre was not being used, mainly because of this fence and gate problem. There was a plan to have training providers to deliver courses there, such as horticulture and agriculture. One detainee was unhappy about his health treatment and the Health Services Commissioner mailed him a complaints form the next day to bring that issue to us.

I am pleased to say that no court and police cells were being used during this period of overcrowding. Not only do they not have bedding and showers, but detainees are not allowed to smoke there so it would be incredibly unpopular and would add to the stress of their incarceration.

With respect to the impact on overcrowding, we found four main issues. The first one was that drug and alcohol programs were only being run on an individual client basis, as group sessions were no longer available when the activities room was being used for people being detained. It meant that other detainees, apart from the ones in the activities room, could not get to the library and computers because people were sleeping there. There did not appear to be a problem with health services. They were fully available with only minor delays in seeking appointments, apart from dentists, where there are significant delays, and this will probably only be remedied when the AMC is operational. There is a definite lack of access to exercise yards and minimal time allowed out of dormitories and cells.

In October, many complained that they had not had any contact with the activities officer, but this did improve in January 2009. As phones are located in yards, this means less access to phones and for a more limited time, and this may explain why there was a decrease in the number of complaints to the Ombudsman's office. In January, one detainee reported that he had only had between 30 and 40 minutes out of his cell in E yard, which is this substandard area. We also received five phone calls from other people about this issue. This same detainee reported fainting and requiring medical attention for dehydration.

When E yard was inspected in January, two men were there for investigative segregation following the so-called riot and one complained that his privileges had been removed in the form of no access to soap, underwear, bed linen, TVs and photos. We have not investigated whether those complaints are true, and I know that the department takes issue with that and we will probably follow it up and advise him to make a complaint to the Ombudsman's office.

Temperatures were very high in January. E yard at BRC was particularly hot and the cells were especially stuffy. We did request an air quality check due to these temperatures and restricted air flow, but the minister advised us yesterday that this was refused.

In our 2007 audit, we made an urgent recommendation that there should be monthly monitoring of time out of cells—we recommend at least nine hours a day—and that reports be made to the Attorney-General, the commission and the chief executive of the department if this target was not met. I did note in the audit that the 2007 Productivity Commission report noted that in the ACT detainees spent 9½ hours out of their cells, despite there being significant lockdowns, particularly at the end of 2006. In my view, this figure is a maximum, not an average. The normal out-of-cells time in daylight saving is from 7.30 to 11.30 am and then 1 to 6.30 pm. I draw your attention to rule 21(1) of the UN minimum rules for the treatment of prisoners, which requires that detainees have at least one hour out of cell per day. That allegation about the detainee in E yard goes against that standard, so there could be a breach in that case.

Another concern we had was in relation to women. In the October inspection, there were two women in D yard at BRC—as you know, that is the mental health facility—and four women at the periodic detention centre, having been moved there from STRC and BRC. We spoke to three of the four women at the periodic detention centre, known as PDC1. This area did pose some security concern and those women were usually handcuffed when they went outside, but not always. The only phone there could be accessed elsewhere, which meant they needed an escort. Difficulties were reported in making contact with families and legal representatives. One woman reported that she had not been able to speak to her family since her incarceration a week earlier and was very distressed about not being able to talk to her young children.

Just as we left on this day, the four women were moved to a retrofitted PDC2. This is known as the training annex. We actually looked at it but it did not have any people in it. It is newer and has access to a portable phone and there is capacity for 16 beds there.

I was told by officers that women had not been bussed between the STRC and BRC. That was the main finding of the audit—that this should be stopped. We were told they would have it stopped on the weekend of 7 to 9 December 2007. Yesterday, the minister provided us with records stating that. This practice on weekends, where up to 50 people were in the periodic detention centre, meant that the overflow went into the Symonston Temporary Remand Centre and that meant the women were all taken to BRC and then brought back. When they were bussed, they would be strip searched, there would be problems with visits and it was harder to get medical services. So we found that to be a form of sex discrimination. But we were satisfied that this practice

has stopped.

The last concern we had was in relation to people with mental illness. At least one of the detainees at the BRC, when we went there in October, had been held there for some months because he actually had been found unfit to plead by the courts by reason of mental incapacity. While I understand the difficulty in accommodating individuals with mental illness charged with criminal offences, I am very concerned at the environment in which this detainee, who has already been found unfit to plead, is being held.

There were also two women in D yard at BRC on that date, and we had a letter from the mother of one of these women, raising concerns about the impact of this environment on someone who had not only a mental illness but also disabilities. She said that court proceedings thus far indicate she will be found not guilty because of mental illness but she spent most of the year in D yard, spending 22 hours a day in her cell, mainly watching television. As noted in our audit of 2007, D yard is not a therapeutic environment and does not provide adequate mental health care for some detainees. I made the urgent recommendation in 2007 that the forensic mental health facility to which the government had made a commitment should be established as a matter of urgency, as soon as possible, and if there was a delay then an interim facility should be considered. At that time we thought Quamby was a possibility, but I note in the government's response to the audit that that was rejected. Thank you.

THE CHAIR: Thank you for that extensive run-down, Dr Watchirs. Could I just go back to a couple of notes that I made along the way and then I will open it up to other members. You related to E yard and you said—

MS PORTER: Whereabouts are you in the document?

THE CHAIR: Sorry, on the second page of your document. I think you used some other words there in relation to E yard, which are the original part of the police cells at Belconnen—

Dr Watchirs: Yes.

THE CHAIR: and that there were problems with ventilation and things like that. You said that since the audit report perspex had been put up there. Could you run the committee through that, please?

Dr Watchirs: Yes. You can look at the picture there. It is not obvious that there was perspex. The perspex meant that there was much less air flow. But at the same time it should be acknowledged—

THE CHAIR: So why did we put the perspex up?

Dr Watchirs: The department have told us that it could be a hanging point and that was the reason for it.

THE CHAIR: I see. Okay.

Dr Watchirs: It sounds like a legitimate reason but it does mean that the air flow is much worse.

MS HUNTER: They can't drill holes in that perspex?

THE CHAIR: Then you create another hanging point.

Dr Watchirs: I am not sure.

THE CHAIR: Yes, I see. But there had not been any move by corrections to replace the doors and then have something more adequate to allow for ventilation? One of the impressions I get is that in that area, in particular—and it is a long time since I have been to the BRC, so I do not recall—there is no cross-ventilation?

Dr Watchirs: No, absolutely not. That is what we want to do, quality air flow—

THE CHAIR: That leads on to my next question: what reasons did the minister give for refusing an air quality test?

Dr Watchirs: Has the minister given you a copy of all the correspondence?

THE CHAIR: No.

Dr Watchirs: Do you wish us to table our three letters and his response?

THE CHAIR: That would be quite helpful to us; yes, please.

Dr Watchirs: It is on the second page of the letter:

ACT Corrective Services does not believe an air quality check is necessary. Corrections health has not indicated that the air quality in correctional centres is having an adverse effect on prisoners. However, ACT Corrective Services has taken steps towards increasing options to allow greater air flow in cells.

THE CHAIR: So we are into a sort of “he says, she says” situation where you have asked for something because you see a problem and Corrective Services have said, “We don't think it is a problem so we are not going to do anything” or they are going to do something else about it. What recourse do you have in those circumstances?

Dr Watchirs: None that I can see—basically publicity—

MS HUNTER: Dr Watchirs, have Corrective Services followed up to let you know what those measures are that they are looking at?

Dr Watchirs: No. I only received the letter yesterday.

MS PORTER: I am a bit confused. At the bottom of page 3 there is a paragraph that you read through about numbers of hours of people being in lockdown, inside and outside, so on and so forth, and I got completely lost in all of those figures.

Dr Watchirs: Sorry.

MS PORTER: No, it is not your fault; it is just quite complicated.

Dr Watchirs: This is about time out of cells?

MS PORTER: Yes.

Dr Watchirs: Do you want me to go through it?

MS PORTER: Right at the end it says that the UN standard requires at least one hour out of cells per day and then—

Dr Watchirs: And we have recommended much higher; we have recommended nine hours. The government have reported to the Productivity Commission that they actually have 9½ hours out of cells but we have made a finding—well, there has been an allegation—that some detainees have only 30 to 40 minutes: the ones who are in E yard, the ones on investigative segregation following—

MS PORTER: Right. This is an allegation at the moment.

Dr Watchirs: Yes.

THE CHAIR: And you are following that up?

Dr Watchirs: I think we will probably refer it to the Ombudsman but I cannot say—

MS PORTER: So it is not proven at the moment; is that what you are saying?

Dr Watchirs: Yes, I agree with that.

MS PORTER: I was just trying to get to the bottom of it because when I read through it I was not clear about it.

MR HANSON: I have a question to do with the expectations that have been left. I went on a visit with the minister in December and the significant issue of concern was: when are we going to the new facility at the AMC? There was a lot of confusion and angst amongst the prisoners because they had seen the facility opened in September and they did not really know what was going on, when it was going to be opened.

I guess we understand the fact that the longer they stay in there that is bad news. I guess that is self-evident. But the impression that I was left with was that the expectations that had been raised—“Hey, you guys are going to be moving in in September; the thing’s open”—led them to the belief that they were on their way, because they had heard a lot about how good the facility is. Then that was dashed and there was a lot of frustration around that. We have seen a number of events that have flared up in the media and there have probably been a number of other less significant issues as well.

That was my impression. I do not know if you got to speak to any of the prisoners or not or whether you were left with that impression—that expectations had been raised through that opening and the statement that the thing was opened. Then they were kept where they were. Has that exacerbated the problem and potentially led to some of these flare-ups that have occurred?

Dr Watchirs: Historically, there are periods of unease in correctional facilities and we certainly saw them when we did the audit. The worst period there was when there were lockdowns and people were not allowed out of their cells. When we did the inspections, the last three, we spoke to probably half of the detainees there over the couple of hours we were there. We did not do private interviews, as we had done for the audit, just because of sheer urgency and the amount of time we had. But certainly frustration was the number one experience and people hanging on and not knowing how long they could hang on, waiting for something.

MR HANSON: Yes, and that was the frustration with the delay in moving to the AMC. That was my experience from the questions that were posed when I visited—that they thought they were going, and that was not the case. If you think that something is happening and it does not, I guess it is worse than if you get told no. If you knew it was going to be mid this year, for example, and you got in early, you would be happy. So you consider that was a cause of the level of heightened frustration in the—

Dr Watchirs: Yes, but probably the heat on top of that would have led to when things could easily get out of hand. We had warned in October that we were expecting summer to be worse.

MS PORTER: So, just to clarify that: I think Mr Hanson just said that the expectation was that everyone would be moving in in September. That would not have been the case because—

Dr Watchirs: I think they were hanging out for Christmas. I think they had—

MS PORTER: That would not have been the case because it had not been commissioned in September, so that could not have been the expectation.

Dr Watchirs: That is right.

MR HANSON: The point I am making, though, is that, from the prisoners' point of view, who do not have access to a great deal of information necessarily, they heard that the prison had been opened and they were going, "Well, it's opened. What's going on? Why aren't we moving?" That seemed to be a major point of frustration. Do you share that sentiment?

Dr Watchirs: Yes, I do. But, on the other hand, when we first went there in October there was no violence or any of those kinds of activities and we were quite surprised. The detainees said, "Look, we know it's not the guards' fault; it is because it's not ready to be opened." They were putting up with bad conditions, thinking that it would only be temporary. At that stage they were only frustrated. This did not manifest in fights or anything like that. I think it was because it was not hot and because they

thought they would be going in by Christmas or soon after.

MS HUNTER: Dr Watchirs, I just wanted to ask a general question. Obviously there are times when you as the Human Rights Commissioner write to Minister Hargreaves around issues to do with correctional facilities and so on. Do you normally get a reasonably prompt response to the issues you raise? I am just noticing this correspondence, and I do take on board that your letter was 4 December, early December, heading into Christmas and so—

Dr Watchirs: I should point out that that letter, for some reason, went astray and was not received. We had to resend it with the 15 January letter. I am not sure where the fault was but—

MS HUNTER: It was not received at the other end; it was sent but not received?

Dr Watchirs: It went missing in between—and not just the minister's letter but all the copies to the other officers as well. I am not sure what the problem was, but we did resend it. I have not written to the corrections minister before. My reporting is usually in annual reports and audits. In the early days, Chief Minister Stanhope, as Attorney-General, would request advices, but so far Minister Corbell has not—on issues like terrorism and a number of matters.

THE CHAIR: When you made your audit, you did that of your own—

Dr Watchirs: It is an own-motion power.

THE CHAIR: When you made this audit of your own volition, you presumably communicated that to the attorney and corrections minister at that time.

Dr Watchirs: Yes, on 31 July, and he tabled it.

THE CHAIR: Sorry; that is right. You communicated with him. What you are saying is that he has not approached you for advice on—

Dr Watchirs: Exactly.

THE CHAIR: Sorry, I misunderstood.

MS HUNTER: As human rights commissioner, there are issues you would write to ministers about. Is there generally a prompt response? Is that the usual practice—that you would get a reasonably prompt response and a response that does answer the sorts of questions or issues you have raised?

Dr Watchirs: We did have holding responses from his office, and that was it. As other members have said, it was the Christmas period. I did continue to press the Quamby option, because we knew that Bimberi was on time and the children were to be moved there by Christmas. We were very keen for that to happen quickly.

MS HUNTER: Bimberi was on time and on budget and they did get in before Christmas, which was a good outcome there.

Dr Watchirs: And a different security provider.

MS HUNTER: With the Quamby issue, you did raise it. How long did it take for that to be responded to? When did you come out and raise it directly with the minister, publicly or however you first did it—to when a decision was finally made?

Dr Watchirs: I raised it in my meeting of 14 November and in both letters in regards to October and January visits.

MS HUNTER: You have mentioned that.

Dr Watchirs: And in any media that I did over that period.

MS HUNTER: I should have asked the minister, but did you know the date the minister made that decision? Are you aware of that?

Dr Watchirs: It was made on the Monday and people moved in on the Friday.

MS HUNTER: So it was quite fast. When you were raising it first with the minister, what was the response there as to why they were not attracted to this idea or they did not think it was necessary?

Dr Watchirs: I think they judged that the AMC would be opening in a very short time and that the money did not warrant the expenditure of funds. Also, I know that back in November he was concerned that Bimberi may not be open on time—that they did not have a definite date.

THE CHAIR: We might go to the issue—

MS HUNTER: It is interesting timing there.

THE CHAIR: I do not want to cut you off.

MS HUNTER: In some ways it may not be most appropriate here; it is just interesting in the timing. By 5 November we were starting to get a pretty good idea that there were starting to be some blow-outs in time. But that is not necessarily a question for you, Dr Watchirs.

MS PORTER: There is also the point about the caution about committing something when you are trying to move young people from one facility to another.

Dr Watchirs: A lot of media asked me, “Why don’t you put the adults in Bimberi?” I strongly protested. I said that they had been especially built for children and young people and they had first priority. I said, “If there’s a left-over facility at Quamby then you can consider that.”

MS HUNTER: I am not saying to move people at that time, Ms Porter; it was about making a decision—you had to make a decision and weigh up at the time that you take the action on these occasions.

THE CHAIR: Yes. What we have seen from your report, as well, Dr Watchirs, is that when the action was decided the department acted very quickly, but there are still parts of Quamby that are not available for use because the fencing is not appropriate.

Dr Watchirs: Exactly. It is only half-used. The main new facility, the demountable, is the concentration of people. The older part, like the segregation room, is not used at all.

THE CHAIR: I want to go to two issues. One is in relation to prisoners and segregation—people in segregation at the BRC. The other is the general issue of sentenced prisoners remaining at the BRC. Firstly, do you know how many people are in segregation? I have heard different figures. You have referred to two people here after the disturbance, but I had heard a much larger figure—10 or a dozen.

Dr Watchirs: I do not have any information on that, but Ms Rebecca Minty went to the inspection in January when there were two people there.

Ms Minty: Yes. There were at least two, to our knowledge. There may have been a couple more, but we saw two.

Dr Watchirs: In E yard.

Ms Minty: Yes.

Dr Watchirs: There were only two people.

THE CHAIR: What is the capacity in E yard? Sorry, that is a technical question; you might take that on notice.

Dr Watchirs: It is in the audit. I think it is five or six.

THE CHAIR: Okay.

MS HUNTER: While that is being looked for, could I go back a second. There is one other one I wanted to ask about Quamby—your statements and your discussions with the minister. Was there any formal correspondence when you went to the minister and said, “I really think you should look at Quamby as an option to take overflow” and so on? Was that documented? Were those conversations documented in any way or not?

Dr Watchirs: I wrote to him on 4 December.

MS HUNTER: That is the one you are talking about. That is fine. Thank you.

THE CHAIR: I am not so much concerned about the precise numbers, but in relation to prisoners in segregation, presumably segregation means what it sounds like—they are separated from other prisoners. Does that have an impact on the capacity of the BRC? Is it that the more people you have in segregation the fewer people you can have in the BRC?

Dr Watchirs: I think that is probably something that corrections would be better placed to answer. The investigative segregation is because the AFP does that investigation as a preliminary—rather than corrections itself. It depends on the nature of what the disturbance has been.

THE CHAIR: They are in segregation because they are the subject of an investigation because there was an incident which has to be investigated?

Dr Watchirs: Yes, but we recommend that E yard not be used, because it is the worst facility.

THE CHAIR: Okay.

Dr Watchirs: Another reason, I am told, for using segregation is for good order.

Ms Minty: Under the Corrections Management Act.

THE CHAIR: I want to touch on another area with you. Have you formed an opinion about the desirability of having what appears to be an increasing number of people who have been sentenced—their matter has been heard, they have been found guilty and they have been sentenced. Do you know how many people fit that category?

Dr Watchirs: I know that when we visited in October there were 25 people who were sentenced out of 112. I am not sure that that figure has changed that much.

THE CHAIR: There is a lot of discussion in relation to the undesirability in human rights terms of having sentenced and remanded prisoners together. Do you have any understanding of the reasons for having such a large number of sentenced prisoners going back quite so far at BRC?

Dr Watchirs: The only reason, in my understanding, is that New South Wales will not take them. Even during the audit, there were periods when a handful of people were having to wait until there was space in the New South Wales system.

THE CHAIR: There was a media report a while ago—I think in the last six or eight weeks—of a sentenced prisoner who had been at the BRC for a number of years.

Dr Watchirs: I know that individual. He has been there for over four years and he does not wish to be in the New South Wales corrections system.

THE CHAIR: Is that the only reason that he is at BRC?

Dr Watchirs: According to him, he has a fear of a prisoner in the New South Wales system who wants to kill him. That is the reason he gave me.

MS PORTER: So for his own personal safety?

Dr Watchirs: Yes, and I think to be near relatives as well.

THE CHAIR: So are the circumstances of that extended stay at the prisoner's own

request or are there appeals or something pending? It seems unusual that a corrections system would be maintaining someone in a particular place because that is what they would prefer. I did not think that you were able to exercise that much choice when you were in the corrections system?

Dr Watchirs: I think he is in the situation that he has not been sentenced. He has changed his pleas from guilty to not guilty a number of times and there is an issue of whether he is fit to plead, but not as serious as the other person I mentioned—maybe not fitness to plead but fitness to instruct.

THE CHAIR: So that is the sort of variance. It means that there are complex issues between the criminal justice system and the corrections system that need to play out. Do you have a formal role in that?

Dr Watchirs: I am afraid that we are not resourced to do it. The human rights funding extends to Ms Minty and half of one officer. The rest of my staff do discrimination complaints. So the corrections work has taken up a lot of our resources. We do keep in contact with legal aid lawyers about issues like this, particularly when they request us to intervene in cases. From March last year, there has been an obligation on them to notify us about human rights cases. So we do get notified of a lot of cases. For example, there was the case of several men who had been unlawfully detained, because of a problem with the Sentence Administration Board. We did intervene in that case in the Supreme Court, just to give another legal view of whether compensation was available under the act. Although damages are not generally available, the wording of that provision in the act in our view meant that you could provide some form of compensation.

MS PORTER: Can I ask a question?

THE CHAIR: Yes, sure.

MS PORTER: At the bottom of page 6 of your letter of 4 December, it talks about the training sessions that you have been providing. I am wondering whether you could comment about those and whether you felt that they were well received and whether or not you believe you are going to be contracted to provide ongoing training of that nature.

Dr Watchirs: We have provided 13 sessions, which is a lot. It is not just new recruits; it is existing staff. I think some of the earlier sessions were very strained, particularly after the audit, and they appear to have had some impact. Ms Minty and Ms Barnard have been undertaking that training; it is not me personally.

Ms Minty: I just wanted to say that I have been involved in some of the recent training sessions and it has been quite positive. Some of the new recruits coming through are expressing the desire to work in a human rights culture in the new prison; so that has been pleasing. I cannot really comment on the previous ones because I have only done a couple of recent ones.

MS HUNTER: It is in that same letter and it is, in fact, connected to that paragraph that Ms Porter was just raising. You were pleased to have the opportunity to comment

on various policies proposed by the AMC and you were hoping that you would be able to continue to have a collaborative working relationship and, no doubt, provide input on other procedures and policies to ensure that it went through that length of human rights. How has that been going?

Dr Watchirs: I recall that there are about 100 policies and procedures. That would be correct?

Ms Minty: Yes. I think they were reviewing—

Dr Watchirs: There are a huge number of policies and procedures and we do not have capacity to review them all but we have done some.

Ms Minty: We have not been provided with the final copies as yet. But we have been talking to officers in corrections about getting those across to us for comment.

Dr Watchirs: There has been a human rights working group—John Paget used to convene them in the early days; the Ombudsman’s office also attends—where some of those policies would be discussed. But they were early drafts.

MS HUNTER: I also noticed that in that letter you do talk about strip searches. I guess that is to do with the women who were being bussed between facilities. You had asked for information on a subsequent register of when this was happening, how often and so on.

Going back to juvenile corrections, I know that the Children and Young People Act was changed to put in a whole section on strip searches and a how, when, where monitoring system which the Official Visitor and others—I think the Public Advocate may be one, if I am not incorrect there—could ask for. Obviously in this case you requested that documentation. Is there a system that has ongoing monitoring that can go in and do a spot check to ensure that this new procedure which is in place, which is not automatic strip searching but is on suspicion or where it is prudent, is working? Who does monitor it?

I also note that in the paragraph on page 5 and a bit further down you do note that there was a bit of resistance to this shift from some of the correctional staff. I am wondering how that is monitored. Is it monitored independently?

Dr Watchirs: Not that I am aware of. But people can make complaints to the Ombudsman’s office about strip searches. Can I just clarify that? There is no right to make a complaint to us under the Human Rights Act but we do get phone calls. This year alone we have had 13 from detainees but I am not aware of any about strip searches.

Ms Minty: To my knowledge, we have not received any about strip searches.

Dr Watchirs: More about overcrowding and time out of cells.

MS HUNTER: On the face of it, this would seem to indicate that this procedure may well be operating and going okay. I am wondering whether that is something that the

human rights commission would look at or would propose that someone independent would have some sort of oversight or monitoring—the Official Visitor.

Dr Watchirs: We are in contact with Craig Sams. That is the name of the Official Visitor. We did recommend in the audit that there be comprehensive monitoring by an independent body and at that stage we thought that the Western Australian Inspector of Corrections was a good model and there may be some kind of contract happen with the ACT. Since then, he has retired and the consultant to the Australian Human Rights Commission has done quite an extensive report on Australia's proposed accession to the Optional Protocol on the Convention Against Torture, which requires a national monitoring system and then a network of local places to feed into that. We have suggested that the ACT Human Rights Commission, if we had access to a coordinating body like that, would have the expertise to do more corrections work.

There has been criticism of the audit that we were not corrections audit experts and the same with the Quamby audit. We are human rights experts and we are not experts on conditions of detention. But we can report on what we see and I think we are prepared to up our capacity in that if we were resourced to do that kind of work.

MS HUNTER: Where does that criticism come from?

Dr Watchirs: The department, definitely.

Ms Minty: Can I add to Ms Hunter's question about the strip searching. There is, under the Corrections Management Act, a requirement for corrections to keep a register of the strip searches that can be inspected by inspection bodies.

Dr Watchirs: The Official Visitor.

Ms Minty: I am not sure exactly.

MS HUNTER: Who are "inspecting bodies"?

Dr Watchirs: I have a right of inspection.

MS HUNTER: Perhaps you could take that on notice.

THE CHAIR: Yes, you could take that on notice.

MS HUNTER: You could take that on notice. I would be interested to know, if there is a register, just who is—

Dr Watchirs: The inspection power is under section 14(1)(h) and the list of inspectors is in section 56. It refers to a judge/member of the Legislative Assembly—so all of you can go there, if you like—the commissioner and the Ombudsman.

THE CHAIR: The Official Visitor is not on the list?

Dr Watchirs: Not as an independent inspector. I think that is a separate power.

THE CHAIR: Yes, it is a separate power. Can I wind up with two quick questions which I think could probably have yes/no answers or hopefully very short answers. Are you aware of any prosecutions under the new arrangements of the Human Rights Act on foot since the beginning of the year?

Dr Watchirs: In relation to civil proceedings, no, I am not aware of any.

THE CHAIR: This is tangential. You had spoken about policy and procedures at the AMC and your involvement in that. Were you similarly involved in the writing of policy and procedures for Bimberi?

Dr Watchirs: Yes.

MS HUNTER: On seclusion, has part of that policy and procedure work, which you have with your limited capacity been able to undertake, included those policies and procedures on seclusion?

Dr Watchirs: I would have to take that on notice. There are such a large number that I cannot recall.

THE CHAIR: Thank you, Dr Watchirs and your staff, for being here and participating in this inquiry. We have said to other people that it may be that we would have to call you back. I think that is not the case here. However, as we review the transcript, it might be that there are questions that arise that we may deal with in correspondence. Thank you very much for your attendance today.

Dr Watchirs: Thank you.

The committee adjourned at 5 pm.