



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**SELECT COMMITTEE ON ESTIMATES 2022-2023**

(Reference: [Inquiry into Appropriation Bill 2022-2023 and Appropriation  
\(Office of the Legislative Assembly\) Bill 2022-2023](#))

**Members:**

**MR J MILLIGAN (Chair)  
MR A BRADDOCK (Deputy Chair)  
DR M PATERSON**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**WEDNESDAY, 24 AUGUST 2022**

**Secretary to the committee:  
Dr David Monk (Ph 620 50129)**

**By authority of the Legislative Assembly for the Australian Capital Territory**

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

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## **Privilege statement**

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*Amended 20 May 2013*

**The committee met at 9 am.**

Appearance:

Office of the Solicitor-General for the ACT

Garrison, Mr Peter AM SC, Solicitor-General for the Australian Capital Territory

**THE CHAIR:** Good morning and welcome to this public hearing of the Select Committee on Estimates 2022-2023. In the proceedings today we will examine the expenditure proposals and revenue estimates for the Solicitor-General for the ACT; the Director of Public Prosecutions; Legal Aid; the ACT Ombudsman; the Inspector of the Integrity Commission; the Integrity Commission; the Public Trustee and Guardian; Canberra Health Services; the ACT Health Directorate, the Justice and Community Safety Directorate; and the Environment, Planning and Sustainable Development Directorate.

The committee would like to acknowledge the traditional custodians of the land that we are meeting on, the Ngunnawal people. The committee wishes to acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be attending today's event.

Please be aware that the proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and webstreamed live.

When taking a question on notice, it would be useful if witnesses could use the words, "I will take that as a question taken on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript.

In the first session this morning, we will be hearing from the Solicitor-General for the ACT. I welcome Mr Peter Garrison. I remind witnesses of the protections and obligations afforded by parliamentary privilege, and draw their attention to the privilege statement. Could I confirm for the record that you understand the privilege implications of this statement?

**Mr Garrison:** I do.

**THE CHAIR:** As we are not welcoming opening statements and this is a short, 30-minute session, we will go straight to questions. I will pass my substantive across to Mr Cain.

**MR CAIN:** Good morning, Solicitor-General. I make reference to budget statements D, at page 17, where there is a variance of 21 per cent from your target in expenditure. The note says this was due to "engagement of additional staff to undertake work for client agencies on a recovery of cost for service basis". Could you explain how that is calculated and what that means?

**Mr Garrison:** The office of the government solicitor is funded approximately 50 per

cent from recurrent payments. The balance of the cost of operating the office is through funding that is obtained through charging for legal services. The charging for those legal services is calculated, generally speaking, on a cost recovery basis. It comprises work, for example, through the ACT Insurance Authority, which is obliged to operate on a commercial basis; therefore our services are provided on a fee-for-service basis.

Other agencies that are in a similar position are agencies such as the SLA. We charge for legal services in relation to major projects which are beyond our established resourcing base. We also recover the cost of lawyers that we out-post to a range of agencies. At last count approximately 12 of our lawyers were sitting in a range of agencies, and the cost of that is met by the agency. As you will appreciate, of course, the demand for legal services can vary from year to year. That is principally the attribution of the difference between the target and the outcome.

In addition to that, there is the use of external counsel. There is a significant value of legal services outsourced to the private sector to provide a balance for the legal services that are provided to the territory. If you look at the total cost to the territory, our total cost there was about \$21 million for the office of the government solicitor. There is approximately \$11 million of legal work outsourced to the private sector, and we also engage counsel for that, to a value of about \$2 million.

**MR CAIN:** I will come back to that a bit later, if I have a chance. With this extra expenditure, for which client agencies was work conducted which required unbudgeted expenditure?

**Mr Garrison:** Pretty much all of them.

**MR CAIN:** Were there any other agencies that drew extra resources?

**Mr Garrison:** Yes, pretty much all of them. It depends on the nature of the project; it depends on the nature of the work that is being done. There are several areas of work for which we are not budget funded, and which was not adequately funded in the budget. When that work comes in, we have a discussion with the agency and say, "We're going to need two lawyers for a month to work on this." We reach an agreement with the agency about the cost and the basis for that to operate. The model has evolved over the course of about the past 18 years. It started out small and got bigger.

**MR CAIN:** Were there additional staff required and what was the cost of those?

**Mr Garrison:** The cost of the staff is reflected in the budget papers, only in the sense that the funding for the staff—

**MR CAIN:** Did you need to take on extra lawyers?

**Mr Garrison:** Yes. It has led to a situation where approximately 35 per cent of our staff—it is a bit higher at the moment; probably closer to 40 per cent—are on contract. We are in the middle of undertaking a recruitment process, and we expect that that percentage will drop back to perhaps 30 per cent. Of course, I cannot recruit or retain all of my staff on a permanent basis if I do not have CRP for them. Some years ago, I made a conscious decision to determine that some of our revenue stream could be,

more or less, regarded as permanent, because of the agencies for whom we were doing the work. So I did recruit permanently to that level, which is why we do not have 50 per cent of our staff on contract; we have 30 to 40 per cent.

**MR BRADDOCK:** In the recent matter of the WHS Commissioner placing a prohibition notice on the Assembly, I noticed that the Office of the Legislative Assembly sourced legal advice from the Australian Government Solicitor and the WHS Commissioner sourced legal advice from a private law firm. How are you, as the Solicitor-General, involved when we have these two sides of a dispute outsourcing their legal advice?

**Mr Garrison:** There are some matters, not many, where I regard myself as having a conflict of interest or a potential conflict of interest, and that was the case in relation to this. I am aware that the commissioner was seeking external advice. I am also aware that the Speaker was seeking external advice, because at some point I may be requested to provide advice to the Attorney-General and the executive government, and it would not be possible for me to do that if I was also providing advice to the Speaker and to the Work Health and Safety Commissioner.

My office and I do provide advice to the Clerk of the Assembly from time to time. That is in relation to what I would describe as non-contentious issues. For example, you may be aware of very significant advice that I provided in relation to section 65 of the self-government act. I understand that it has been distributed to members.

It is very important, in my view, to ensure that the independence of the relevant offices is maintained. The Work Health and Safety Commissioner is an independent statutory officer. Whilst we often provide advice to the commissioner in relation to operational matters, there are occasions when, for example, she is looking at the activities of ACT government agencies that we pull back from that and she seeks external advice.

**MR BRADDOCK:** I am trying to understand how this conflict arises. I understand that you say you may be called upon to provide advice to the government, but would that not, in essence, be creating three separate legal positions—one of this Legislative Assembly, one of the WHS Commissioner and one of the government?

**Mr Garrison:** Possibly. Whilst I can have some pretty clear views on a range of issues, necessarily, that is advice that is provided to the government, and I am accountable to the Attorney-General in relation to that. The Speaker of the Assembly and the Assembly itself, for example, are not bound by the legal services directions, so they can pursue their own advice as they see fit. And that is appropriate and proper, having regard to the independence of the Legislative Assembly and the Speaker.

**DR PATERSON:** My question is regarding the Drugs of Dependence (Personal Use) Amendment Bill that is coming through the Assembly.

**Mr Garrison:** Yes. That is bringing back memories. I appeared before the committee two or three years ago in relation to that.

**DR PATERSON:** I am interested to get your perspective on what consequences or issues arise if the Assembly sets quantity limits for these substances that are above

commonwealth limits for trafficking.

**Mr Garrison:** I have not been asked to look at the amendments that have been proposed in recent times. Consistent with the advice that I provided to the committee when the bill was still in its formative stages, the issue will be whether there is, relevantly, an inconsistency between that law and the commonwealth laws. The commonwealth law—this is testing my memory—permits state and territory laws to operate. As to any view that the commonwealth may take in relation to those laws and, indeed, discretions that may be exercised by the Australian Federal Police in making decisions around prosecution, it is consistent with the position that pertained earlier.

I cannot take it much further than that, because I have not been asked to look at the most recent iterations of it. But the issue of a difference between the operation of the limits in ACT laws and the limits in commonwealth laws was well-ventilated.

**MR CAIN:** Solicitor-General, with the bill in its current state, if the commonwealth Director of Public Prosecutions decided to instigate a prosecution for the possession of a quantity of ice, for example, and the bill was passed in its current state, what would be the expected trajectory of that prosecution?

**Mr Garrison:** I cannot really speculate about that, Mr Cain.

**MR CAIN:** It is a legal question.

**Mr Garrison:** It is a legal question. Actually, I am not obliged to answer legal questions or to give advice, as you will be aware, under the standing orders. The very simple issue is that that is a matter of discretion for the DPP, and how that would map out depends on the circumstances. I cannot answer for what the commonwealth DPP might or might not do.

**MR CAIN:** I am interested in decisions in which you act on behalf of EPSDD in the ACAT regarding DA approvals and disputes. How much has the ACT government solicitor spent on defending EPSDD decisions in the past five years? You can take that on notice, perhaps.

**Mr Garrison:** The resources of the government solicitor in relation to that work are part of our core business and it is appropriated. Therefore, we do not send a bill in relation to that work. Mr Cain, you might recall—from an answer to a question on notice on the last occasion, in relation to the valuation of cases, as I recall, how that operates—we certainly engage counsel in relation to those disputes. Is your question about planning disputes or all matters in the ACAT for EPSDD and the planning authority?

**MR CAIN:** Yes, I am interested in EPSDD decisions. What are the main types of decisions under dispute?

**Mr Garrison:** Almost always, they are planning decisions.

**MR CAIN:** When you say “planning”, do you mean a dispute challenging the approval of a DA?

**Mr Garrisson:** Yes. A neighbour does not like the fact that a planning approval has been given for a two-storey house when they think there should not be a two-storey house; when they have given approval for four units when they think there should be three units; when they think that the setback is not enough; or that they are overlooked. The range of matters is quite significant. As I said, the only principal expense that is incurred by the territory is in relation to counsel's fees. I am happy to take that on notice. Do you want the figure for the past five years?

**MR CAIN:** Yes.

**Mr Garrisson:** We will endeavour to comply with your request within the usual time frames.

**MR BRADDOCK:** Coming back to my last question, I would like further clarification. You said that you would provide advice. Does that mean you have not already provided advice to the government on this matter?

**Mr Garrisson:** Correct.

**MR BRADDOCK:** You have been providing no advice whatsoever to the government? I find that highly unusual, given that we are in the middle of quite a large separation of powers, that no advice would be provided.

**Mr Garrisson:** My advice has not been sought in relation to the matter. I am aware that the Speaker foreshadowed that she may commence legal proceedings in relation to the matter. Whether or not that occurs, given that the issue of the notices appears to have been resolved, remains to be seen. If proceedings were to eventuate, then that would be a matter for the Attorney-General and the government as to whether or not there was an intervention in the matter or whether the issues would be sufficiently ventilated by the legal representation that was in place in relation to it.

When there are issues in relation to constitutional matters, I receive voluminous notices under the Judiciary Act whenever there is a constitutional case in challenge around the country, and the territory very rarely intervenes unless it has a particular interest. More often than not, unless it is specifically around the exercise of the territories power, we tend not to, because generally a number of other jurisdictions are interested and we are unlikely to be able to add significantly to what will often be substantial arguments. One of our more recent interventions was in relation to the Palmer litigation, where just about every jurisdiction intervened, because we all had something to say about Mr Palmer and his challenge, but it is not a frequent occurrence.

**MR CAIN:** Solicitor-General, did you provide advice to the Work Health and Safety Commissioner prior to the issue of the prohibition notice?

**Mr Garrisson:** No.

**MR CAIN:** You have not provided advice to the Speaker, the Work Health and Safety Commissioner or the minister responsible for the Work Health and Safety Commissioner prior to or subsequent to the prohibition notice?

**Mr Garrison:** Correct.

**DR PATERSON:** You were saying you have 12 lawyers sitting in other agencies and you move them around where needed. Are there any patterns in need that you are seeing—areas that are coming up more and more—that would require more ongoing legal advice and investment?

**Mr Garrison:** There are two parts to the question. The first is that the out-posting of our lawyers to agencies is generally the result of a request by the agency. The actual nature of the out-posting takes a different form, depending on the needs of the agencies. For example, in Access Canberra, we have a very senior lawyer and a couple of other lawyers there who, in essence, provide the entirety of their in-house legal needs.

Most of the requests arise because some agencies have a need for immediate operational advice, by the very nature of what they do, and Access Canberra is an example. We also have lawyers out-posted in line directorates where they provide internal advice and help to manage the requests for advice coming into our office. For example, we have a lawyer with ACT Revenue. We have them in Education, we have them in Health, and in a range of other agencies.

Those arrangements tend to be fixed. Most of our lawyers are out-posted for a period of around 12 months; we then rotate through, in order to give our lawyers broader experience and bring the other lawyers back into the office and move them into different parts of our practice. The other thing we do is to rotate our lawyers between the different parts of our practice, within the office, to give them a depth and breadth of experience in a range of different matters.

In terms of the areas of pressure that we have at the moment, I refer to claims. We do all of the personal injury litigation—all of the litigation for territory agencies. Much of that is through the arrangements with the ACT Insurance Authority, but the claims are in relation to public health services, in relation to trees falling on cars—hopefully, not on people—and damage to property. There is a whole miscellany of them. There are slips and trips—people tripping on footpaths. That is a continuing pressure for us.

The other area where we have seen a significant upsurge is in human rights litigation, and that is placing us under some level of pressure.

**DR PATERSON:** Can I ask about the human rights litigation? Recently, there was a petition to the Assembly, and we ran an inquiry around “no rights without remedy”. This was to remedy human rights complaints at the ACAT level. Do you have any perspective for us on this? If we had a process like that in place where people could access a remedy early in the process, would that then reduce the workload on your office in addressing these matters in the Supreme Court, for example?

**Mr Garrison:** That is most unlikely. In fact, it would probably significantly increase our workload. The agencies would need advice in relation to the complaints process. For example, with discrimination complaints, protection against discrimination is provided for not only under the Human Rights Act but also under the discrimination laws. We appear on behalf of territory agencies reasonably regularly in relation to discrimination complaints in the tribunal.

The issue with human rights litigation at the moment is that there is a significant volume of matters that have been commenced and are being commenced in the Supreme Court. There are particular drivers in relation to that, but it is absorbing a significant amount of resources. In some instances these are proceedings where compensation is being sought, and there is an argument about whether or not that is available under the Human Rights Act; that is yet to be determined conclusively. Also, people are seeking declarations that their rights have been breached. They are significant issues, and we continue to endeavour to manage the resourcing impact on us of that.

**DR PATERSON:** Understandably, a Supreme Court action would be very time consuming and would require a lot of preparation by your office. If disputes were able to go through ACAT, your office would still potentially be engaged to give advice to the government. Wouldn't that potentially be a much less rigorous process, the advice could be given and the situation could be rectified much quicker?

**Mr Garrison:** It depends on the nature of what is being pursued. I do not believe that one would necessarily see a decline in the number of matters. It would expand the set of matters. In fact, by and large, there are a range of other remedies and other courses of action that are already available to people who would be utilising that capacity, in terms of the review of decisions administratively for the tribunal, discrimination complaints, and those associated matters.

It is not that there is no remedy for the right; it is just that the remedies lie in other places, more often than not.

**THE CHAIR:** On behalf of the committee, thank you, Mr Garrison, for coming along today in your capacity as the Solicitor-General. If any questions have been taken on notice, please provide answers to the committee secretary within five working days. Thank you for coming along.

**Mr Garrison:** Thank you, Chair; it was a pleasure.

**Short suspension.**

Appearance:

Office of the Director of Public Prosecutions  
Drumgold, Mr Shane SC, Director of Public Prosecutions

**THE CHAIR:** In this session we will hear from the Director of Public Prosecutions. I welcome Mr Shane Drumgold SC. Can I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement? Can I confirm for the record that you understand the privilege implications of that statement?

**Mr Drumgold:** I have read the privilege statement and I agree to be bound by it.

**THE CHAIR:** As we are not welcoming opening statements and we have only 30 minutes, we will go straight to questions. I will pass my substantive over to Mr Cain.

**MR CAIN:** Good morning, Director. I make reference to page 19 of budget statements D, where you mention that there was a significant increase in the percentage of cases “where indictment case statement and questionnaire are filed within the time frames specified at directions in the Supreme Court”. The note indicates that this was due to the implementation of new internal processes, which brought compliance up from the 80 per cent target to 96 per cent. Given that that had occurred, why did you keep the 80 per cent target for 2022-23, rather than the higher target?

**Mr Drumgold:** Whenever there is a substantive change, we allow them to bed in. We do not react and change our targets based on one event or a series of events. To understand that, we would need to go back a little way. First of all, we had two KPIs that were wrapped into one. The service of the brief on the DPP and the service of committal documents were all wrapped up, and that was one aggregated statistic.

In the last period we separated those out into two. We separated them out; I cannot remember the number, but one of them dealt with the brief service on defence, and the other one was the filing of documents. That revealed a very low number—very poor performance in filing in accordance with the court orders. That enabled us to conduct some analysis of that. We found the basis for that was that there was another piece of law reform that enabled the defence to waive committal. Effectively, matters were committed for trial from the Magistrates Court to the Supreme Court when we did not even have a brief because the committal process was waived. The Supreme Court were making the standard orders for filing and serving within two weeks and, of course, we could not meet that, so we had very low numbers.

We then started working with the Supreme Court to change the orders—the nature of the orders for matters where committals had been waived. Now that that is in place, we are meeting it; in fact, 95.25 per cent is our compliance figure for the past financial year. Now that that is embedded, we have diagnosed it and we have fixed the problem, we will look at increasing the target from 80 per cent to somewhere around 95 per cent.

**MR CAIN:** You would expect to do that for 2023-24?

**Mr Drumgold:** Correct.

**MR BRADDOCK:** I am interested in the decision-making process that leads to a decision to prosecute for minor transgressions or fines. How does the DPP actually do that process? Does it individually evaluate every single case to do that?

**Mr Drumgold:** Yes, it does. If there is a fine, whether it is a traffic infringement notice or an electoral failing to vote, it automatically triggers a fine. If that fine is disputed, a summons is issued and it comes to us. Generally speaking, it will be in the mention phase, so a lot of people will plead guilty. With traffic infringement notices, some people will dispute, but when the summons is issued they pay the traffic infringement notice, which they can do until the hearing.

If a plea of not guilty is entered and they dispute it, we then look at the evidence holistically and ask whether or not there is a reasonable prospect of a conviction in the matter. We will then make a decision about whether or not to prosecute. There is a series of stages.

**MR BRADDOCK:** If it involves a vulnerable adult—disabled, living in poverty or with some limited capacity—is consideration given to their vulnerability and when that should stop?

**Mr Drumgold:** We do not deal with that. Let us say, hypothetically, that you get a traffic infringement notice. You can then write to the authorities and say, “I’m asking you to withdraw this,” for a range of reasons, or you can say, “I’m accepting responsibility but I want a payment plan.” You have all of those options with the relevant authorities. None of those will come into my office. It is only when you write and say, “I’m disputing liability for this; I’m saying I did not do it,” that a summons will be issued and it will come into my office.

The bulk of them then pay the traffic infringement notice after the summons is issued. Only a small percentage enter a plea of not guilty, in which case the matter will come to us to work out whether or not it can be proved.

Let us say that someone turns up to a hearing. Most of this involves a misunderstanding of the law: “I didn’t see the street sign.” And they do not understand elements of strict liability. They say, “Okay, now I accept that I am liable for this, and here are my subjective circumstances.” We have an ability to say to the court, “We don’t oppose no conviction being ordered and the matter being dismissed.”

The answer to your question is rather convoluted, but there is a range of places where capacity to pay can be considered, most of which are before they come into our office, but some of which are in our office. In fact, many do plead guilty and say, “I know it was not a defence to this, but I was rushing my mum to the hospital because she was really sick.” The court will ask us what our position is with the matter being dismissed under a particular provision of the Crimes (Sentencing) Act, and we say, “No, we have no submissions,” and the matter is dismissed. It is found proved but dismissed.

**MR BRADDOCK:** I am wondering how many vulnerable adults are potentially pleading guilty to make the matter go away, and paying the fine, when they might have

a legitimate case to be able to say they had diminished capacity, and they should not have even been fined in the first place, in that entire process.

**Mr Drumgold:** They do have that ability. They have an ability to dispute liability. It then goes to court and they plead not guilty. The court is not all about expensive lawyers; most of these matters are self-represented. Most of these matters are defended criminally, but they are really administrative functions. In the Magistrates Court, for low-level fine offences, it resembles more of a discussion than a trial. Often it is a matter of saying, “This is my story. I say I didn’t look up at the street sign,” or “I say I was driving mum to hospital.” The magistrate will say, “Okay, if that’s your defence, I’m satisfied it is proved, but I would like to hear you on your hardship.” In many cases no conviction is recorded and the matter is dismissed under section 10 of the Crimes (Sentencing) Act.

**THE CHAIR:** What happens when the person does not have the ability to do that?

**Mr Drumgold:** They are heavily assisted by both the court and the prosecutor. With a young prosecutor appearing in a disputed case, in a traffic list, a parking list or a vote list, their role as model litigant is to assist the defence in articulating what they want to say before the court. Often that will be, “Okay, I understand; this is your position.” They will say to the magistrate, “I’ve had a conversation with the defendant; this is what my understanding of their case is.”

**DR PATERSON:** Director, recently there have been lots of calls from families who have been impacted by road trauma in the ACT, and lots of calls for a review of sentencing, particularly around culpable driving and dangerous driving charges. Does the DPP have any view around whether there is a need for a review of sentencing in the ACT?

**Mr Drumgold:** I cannot really answer the question because I do not know the issues. Before I would make a call on whether my view is that we need a review of sentencing, I would need to hear what the issues are that support such a call.

I am aware that there has been a lot of media around some terrible events, and any loss of life is a terrible event. The question is really a broader question. The question is whether or not a sentencing regime can be implemented that is different to the current sentencing regime that will have the effect of reducing the incidences of those.

It is very easy to say that we want big numbers, but if big numbers do not decrease the incidences of these events occurring, the big numbers give outraged people a sense of vindication. My approach to this is: what will reduce offending, what sort of criminogenic factors lead to this offending and can sentences be tailored to those criminogenic factors such that there is less offending? That is the approach.

I have a view, from 20-plus years in the office, of some of the criminogenic factors, but I would need to see a discussion paper before I could make a determination in my mind of whether or not it justified a review of sentencing.

**DR PATERSON:** There has been lots of talk around recidivism rates. The police are doing a review; the Assembly has an inquiry. There is a lot going on in this space. There

is lots of talk in the media not only about recidivism rates but also around public expectations of sentences. How does that influence your thinking? How do you manage public expectation, and what you are saying around reducing recidivism, and getting people out of the criminal justice system?

**Mr Drumgold:** That is a very complicated question. I will answer it by reference to our business plan. Our business plan sets the goals for my office, and there are three goals outlined in the business plan. One is to make the community safer; one is to make the community feel safer; and the third one is to do so in a cost-effective way. With those first two, an objective of our office is to make the community safer and the second is to make the community feel safer.

If you dangerous-drive and cause a death or you culpable-drive and cause a death, if at the moment you get a four-year sentence and the proposal is to increase that to a seven-year sentence, and that does not metabolise into a reduction in offending, it simply turns people into institutionalised criminals. Perhaps our position will be that a public call is not justified.

I do not think that there is a unified call. I know about the community narrative. What I am trying sensitively to say is that three letters to the editor of the *Canberra Times* do not necessarily reflect the sentiment of the community. My job is to achieve our objectives, taking into consideration the entire community, including not only those that might write a letter to the editor, but also those who understand criminogenic factors.

**DR PATERSON:** Victoria has a sentencing review board or a board that is in place all the time to review sentences. Is there any need for some kind of mechanism like that here in the ACT?

**Mr Drumgold:** Information is always useful, and tailoring criminogenic factors to sentencing options is important. That could be a body that could achieve that. But the economies of scale in Victoria are much larger than the economies of scale in the ACT. There is a lot of cost and a lot of administration.

Another alternative to a sentencing review council might be simply to run one-off reviews of sentencing structures and work out how sentencing options are tailored to criminogenic factors. It is an option, but it would be an expensive option for a small jurisdiction the size of the ACT.

**DR PATERSON:** When you said that you would need to see a discussion paper to determine whether you felt there was a need for a review, where would that discussion paper come from? Who would have input to that?

**Mr Drumgold:** A range of people. Justice and Community Safety have a law reform area; they have an agenda and they produce research and discussion papers. This is the way all law reform happens in the ACT. Generally, we see a discussion paper; we can then turn our mind to the history and make sure that there are no missing thought processes there. We then come up with our input, which is duly considered by everybody in working out whether that law reform is advanced; and, if so, in what way.

**MR CAIN:** Some of these are very unfortunate events, perpetrated by people who are

on bail. What are the options when the DPP have opposed a bail application and that is rejected? What options do you have for challenging that bail and how frequently do you do that?

**Mr Drumgold:** Section 44 of the Bail Act is an option for particular offences—not necessarily for driving offences, but it can be for driving offences, if it is in a domestic violence setting. We can effectively stay the decision to grant bail, pending us taking a review to the Supreme Court. We have those options. We have not had to exercise that option.

**MR CAIN:** Do you mean you have chosen not to?

**Mr Drumgold:** We have a structure around it. There are occasions when matters come to me where it needs my approval, and where I would say, “Yes, if this person is granted bail, we will exercise our powers under section 44,” and it goes to court and the person is not granted bail. There are certainly matters where we would have exercised it, if the person had been granted bail; it just happens to be that the court and the prosecutor see the matter in the same way and see that the risk of granting bail outweighs the decision to grant bail.

**MR CAIN:** How frequently do you exercise that appeal right regarding bail?

**Mr Drumgold:** We have not exercised it because we have not had to. In the matters that we have identified that we would, they have been remanded in custody.

**MR CAIN:** When would that power be exercised? Otherwise it seems pointless to have it.

**Mr Drumgold:** No, it is very useful, because everybody makes errors. If there was a particularly serious matter that went to court and we were worried that there was a real and substantial risk that someone would be hurt or killed if this person is granted bail, we will have made the decision that if this person is granted bail, we will exercise our power under section 44 to keep them in custody, and to appeal the decision to the Supreme Court. As I say, those matters are exceptional, and we have not had an occasion when we have gone to court, having made that decision, where the court has subsequently granted bail.

**MR CAIN:** Do you have a practice note or direction on the exercise of this?

**Mr Drumgold:** Yes, I have a director’s instruction on our website that outlines, in some detail, what our considerations are, and the processes. It is under the publications tab.

**MR CAIN:** Just to confirm this, you have never challenged a bail approval?

**Mr Drumgold:** Not during my directorship. There was one that was challenged prior to my directorship that subsequently did not result in an appeal on the bail decision. That was at the very beginning. When I was appointed director, I completely overhauled all of the director’s instructions and all of the staff policy, including my director’s instruction under section 44. It says that I have to make the decision or, if I happen to be absent, the chief crown prosecutor or deputy director has to make that decision.

**MR CAIN:** I am interested in the retention rate of lawyers. Is this of concern to you?

**Mr Drumgold:** In our business plan staff turnover for legal staff is anticipated to be 15 to 20 per cent, and for support staff it is anticipated to be five to 10 per cent. In the last reporting period to 30 June 2021, legal staff turnover was 15 per cent, with no turnover of support staff. In the reporting period that has just ended, legal staff has increased marginally to 17.45 per cent and support staff to three per cent.

This reflects post-COVID mobility, with most legal staff outgrowing the office. When you have a pyramid, in an organisation such as the DPP, people's experience grows fairly quickly, and it grows faster than the number of senior positions that we have to occupy that experience. People, naturally, go to other organisations.

Some turnover is important. Some turnover is healthy. We think that a healthy turnover is around 15 to 20 per cent, and we are behind that. It suggests that what I see day to day is a fairly happy, healthy workforce.

**MR CAIN:** With that turnover rate, how comparable is it to DPPs in other states and territories?

**Mr Drumgold:** That is a bit like asking, "Is this orange more orange?" and "Is this apple more red?" If we are comparing Crown chambers in New South Wales, there is a large transference between barristers coming from the bar into Crown chambers and members of Crown chambers going to the private bar. Likewise, you have the grade 1 to 5 solicitors who subsequently go to the bar. I would conclude by saying that our staff turnover is at a healthy level.

**MR CAIN:** Related to that, there have been some concerns expressed about attracting skilled workers to the territory. I am happy to include lawyers in that category—professional skilled workers. Do you think that the attraction of lawyers to the ACT could be related to increasingly unaffordable house prices and high rentals?

**Mr Drumgold:** That is anecdotal. One of the pitches that I used to make to senior barristers that we were trying to recruit to the DPP was the cost of living, housing and that sort of stuff. It is no longer a pitch that I can make. But I can say that we have an exceptional quality of staff. We have an extremely exceptional quality of staff. Where the rubber hits the road, it seems that we are able to attract and retain very good staff.

**MR BRADDOCK:** With respect to how you are describing the trend for your younger lawyers to grow up and out of the organisation, are you getting the turnover at the top of the pyramid or are you having people stay in place and potentially block other people's progress?

**Mr Drumgold:** No. We are getting turnover at most levels, at most junctures. We have a prosecutor associate level. Some people then get admitted and move on to a different legal career, rather than moving to a prosecutor. We then have those at the grade 1 or 2 level who might have run between 20 and 100 hearings. They will go to private defence rather than move through to the grade 3s.

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We are very pleased that we have mobility between our Crown chambers and the bar. In the last financial year one of our barristers from Crown chambers went to the private bar, and a member of the private bar has been successfully recruited into Crown chambers. That means we are getting that broad range of experience from both sides of the bar table. The short answer is that it is at all levels.

**THE CHAIR:** On behalf of the committee, I want to thank you, Mr Drumgold, for your attendance today. If you have taken any questions on notice, could you please provide answers to the committee secretary within five working days? Thank you.

**Mr Drumgold:** Thank you, everybody.

**Short suspension.**

Appearances:

Legal Aid ACT

Boersig, Dr John PSM, Chief Executive Officer

Monger, Mr Brett, Chief Financial Officer

**THE CHAIR:** Good morning. We will start this next session. We will be hearing from Legal Aid ACT. Welcome, Dr John Boersig PSM and Mr Brett Monger. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Can I confirm with you both that you understand the privilege implications of that statement?

**Dr Boersig:** I do.

**Mr Monger:** I do.

**THE CHAIR:** Then we will go straight into questioning. We have 30 minutes. I will pass the substantive question to Mr Cain.

**MR CAIN:** Good morning. I note, Dr Boersig, that on page 52 of budget statements E one of the priorities is to “finalise long-term accommodation”. Could you please explain the status of your current accommodation and your short- to medium-term plans for accommodating your office.

**Dr Boersig:** We completed a procurement process last August in relation to ongoing accommodation. That followed the usual procurement process and identified a preferred supplier. My delegation requires that I obtain the attorney’s approval in relation to any expenditure above \$200,000. We were looking at 10-year leases, so we were looking at \$800,000 to \$1 million expenditure over that period of time.

In short, the attorney agreed with the recommendation but there was a condition that was implemented in relation to a clause in the lease that he preferred, and that is that the building owners convert the building from gas to electricity. We have been negotiating that during this period. As of today, we believe we have an agreement around a clause that will meet both the attorney’s policy objectives and the issues raised by the owners of the building in relation to converting gas to electricity. The lease is yet to be signed.

**MR CAIN:** When do you expect the lease to commence for that?

**Dr Boersig:** Our lease finishes at the end of September. The draft lease contract, in its penultimate state, is currently with the lawyers for the building owners. As you would expect throughout this period of time, we feel that there is an agreement around when the lease would start and around that clause. So, subject to any other issues unexpected, we would hope to see that within the next few weeks.

**MR CAIN:** This requirement for the lease to have a gas conversion to electricity, in what way was that communicated to you?

**Dr Boersig:** That is by writing. It is a formal process that, when you seek the attorney's permission for expenditure, you go up with a brief, an explanation about the procurement and the result of the procurement and seek delegation. Ultimately, he writes back to me—or back to anyone, I suppose, in that context—and sets out what he requires as a condition of that approval.

**MR CAIN:** What rationale did the attorney provide for this requirement?

**Dr Boersig:** Really, it is a matter that is ultimately best explained by the attorney, but, as I understand it, the policy in relation to conversion links to an agreement between the Labor and Greens coalition. The implementation of that policy occurred late last year, so it actually occurred after our procurement process.

**MR CAIN:** Is this correspondence able to be shared with the committee?

**Dr Boersig:** I will have to take that on notice. It is pretty straightforward. The attorney is pretty clear about his views on this issue; but if I can take that on notice, I will.

**MR CAIN:** Just finally, and briefly, did the attorney indicate that this was a whole-of-government requirement, so any fresh lease for any agency would thus have this gas conversion requirement?

**Dr Boersig:** My understanding is that it is a whole-of-government requirement at this stage, yes. People on the other side of the table might be able to answer that better than me.

**MR CAIN:** Thank you.

**MR BRADDOCK:** One of the things you have got as a priority is increasing support to Aboriginals and Torres Strait Islanders, and culturally and linguistically diverse communities. Can you please spell that out in a bit more detail, particularly what engagement you have or plan to undertake to provide that support?

**Dr Boersig:** This is both an overall policy objective that links with the government's aims but also a practical objective in terms of the demand around, for example, criminal law, family violence, family law and emerging civil issues.

We established outreach at Winnunga Nimmityjah. We have an MOU with them around that. Internally, we have Aboriginal field officers to work with our clients who are Aboriginal. There are a whole range of reasons why Aboriginal people come to us. Sometimes it is because they have a conflict of interest in relation to a particular matter at the Aboriginal Legal Service, for example. There might be a victim who is Aboriginal, so often we would appear there. Sometimes there are capacity issues, so we would pick up that work. Sometimes people choose to come to our services, for a range of reasons.

On the other hand, because of the services being offered, say, in relation to care and protection and in relation to domestic violence, family law, we have historically picked up the bulk of that work.

**MR BRADDOCK:** What about culturally and linguistically diverse communities?

I did not hear you mention that in your answer.

**Dr Boersig:** In relation to that, some years ago we established a client liaison unit. That included, originally, two people who were of a Muslim background and Arabic-speaking. There are now still two people in that position. One is Arabic-speaking; one speaks Farsi, I think. We also utilise, from time to time, on an ad hoc basis, where there are particular issues in relation to Hindi or Chinese or someone who speaks a different Indian dialect, other people who can assist with that, but primarily they drive that.

The idea when we start is twofold. Firstly, clearly, we want to have an open door to people from that community. To do that, we need to go out and find them, go to where they are and make them comfortable. The other side of that is a change in the way we behave when people walk in our door. So the two roles are: training ourselves to provide better services and utilising those liaison officers where we can; and also having them go out, as part of our role, to be part of the community so that it breaks down the barriers. On our front door is the word “Welcome” in 10 different languages.

**MR BRADDOCK:** When they go around to the communities, how are they doing that and what feedback are they hearing?

**Dr Boersig:** I think we get generally positive feedback about what we are trying to do. It would be the case that we would not please everyone, I am sure. We try to work with particular organisations like the Migrant Resource Centre to provide an interaction, a platform which is more comfortable for people who do not speak a European language.

**DR PATERSON:** My question is along a similar line. I am interested in your college lawyer program and how that is run. It appears to be successful, but I am interested to understand more.

**Dr Boersig:** Can I say that this is my favourite program. This is a program funded by the Education Department. It was an initiative here in the ACT. It is working very well. A bit like the conversation in relation to Mr Braddock’s question, we have lawyers that are going out on a fortnightly basis to all the colleges. What that means is that it is a place where young people can come. I do not have them here, but the statistics are very promising. My recollection is that in the first two terms of this year we saw 130 mostly young people, but sometimes mums as well.

**MR BRADDOCK:** Can you please take the statistics on notice, because I would be interested in seeing those down the track.

**Dr Boersig:** I can, yes. We have just done a report on that. I am pretty sure that it was around 130, but I will double-check that. Being in a place that young people find comfortable, where they can disclose and get advice, confidentially, has been crucial to the success of that program. I have been doing this for around 40 years now, and I generally have failed in getting to young people before they make decisions. This program is doing that, which is why I am so excited about what we can achieve here. It is just the right place to be.

**DR PATERSON:** Can you give us a bit of an overview of the types of issues that young

people are bringing to the lawyers?

**Dr Boersig:** Lots of family violence matters.

**DR PATERSON:** Okay.

**Dr Boersig:** Some care and protection matters, bullying and sexual harassment. Some driving and traffic stuff and minor criminal stuff comes up, but the biggest one would be around family violence.

**DR PATERSON:** We heard from the health minister yesterday and also the Minister for Domestic and Family Violence, and there are some pretty interesting programs working with young people in those spaces. I am wondering: are they aware of your program?

**Dr Boersig:** Yes. What you point to is crucial to the delivery of services now. Years ago it was just a lawyer who would deliver the service one to one. Now we look at it more holistically. A lot of what we get marked on is about referral and making sure that the young person can have the support, if they want it. Obviously, the schools have counsellors that are aware of this as well, or with the health justice partnership they have social workers in the hospitals. But we make sure that those are connected in the very way they should be. The offending, or the offending against them, is the context that you are alluding to, which is a much more complex environment for young people, and others as well who are vulnerable.

**DR PATERSON:** How do you enter the school? Does an email go out to all students to say that you are there and they are able to leave class to come and see the lawyers, or do particular kids get referred to you by the school? How does it work?

**Dr Boersig:** All of the above. It depends on the school and the dynamics of the school. Winning the hearts and minds of staff is the first thing that needs to happen, and that is a trickle down from the principal, the deputy. The main connections are with the counsellors and social workers moving through those schools. So it is word of mouth. It is about availability. We are working on an SMS link at the moment and how that might work so that it is more convenient. Probably we should try to work something out on TikTok. I am just not too sure how to do that. But, quite seriously, we are looking at: where are the young people looking, what do they look at and how can we get a message out? I am not sure about TikTok, but that has come up in conversation.

So it is a combination of all of those, and it is different in each school, depending on the individuals. At the moment we are drafting a letter that will come out from me to the principals, just to revamp the availability because of staff moves and so forth. A lot of people—you may be surprised at this—get wary about having lawyers in the environment, so we need to say, “We are not here to criticise you teachers,” or “We are not here in the hospital to watch what the doctor does. We are here to provide a certain kind of service to people who are vulnerable.” Winning that is a crucial part of our job, really.

**DR PATERSON:** My final question is about working with vulnerable young people, in particular. There is a lot of research and experience that says engagement is very

difficult. So if you have someone present to you who does have quite a challenging legal situation, how do you keep them engaged to continue to give them legal advice?

**Dr Boersig:** Being available is crucial—knowing that they can come back. The first appointment is not the only appointment before any action is taken. In any good legal relationship it is about trust. You need to be able to trust the person. You would like to think that people make better decisions when they get the right information and have the right support. That is the aim.

But many of these young people come from a much more complex environment. The choices for them are quite limited. Your earlier question was about ensuring that there is the emotional and practical support provided by not just the right legal advice but the right social advice to support them if they need to change housing. Some of the things we have done are to help them move out of certain situations.

**DR PATERSON:** Do you feel that you have adequate funding to deliver this program?

**Dr Boersig:** At the moment we have got one person. We have just been looking at this and we would like to talk to the government about another person being there as well, so that we could do that once a week. Trust and availability are at the heart of this.

**DR PATERSON:** Thank you.

**MR BRADDOCK:** Has there been any evaluation showing the benefits from that service, in terms of decisions not made by young people and the benefits that flow from that?

**Dr Boersig:** The short answer is no, in terms of formal evaluation. The longer answer is that we have been providing quarterly data and case studies to government to explain what we are doing. At this stage, there is no funding to do an evaluation; but that is certainly something that we do in other programs.

**MR BRADDOCK:** That would be a fascinating study.

**Dr Boersig:** Yes.

**MR CAIN:** I make reference to budget statements D, pages 73 and 74, where there was a variation of negative 25 per cent in cash assets from last year to this, falling by \$2.675 million. You do give an explanation. I would just like you to go into a bit of detail—revenue received in advance, additional leasehold improvements, additional staff recruitment, additional legal expenses. There is quite a significant variation. I would appreciate an explanation.

**Mr Monger:** Mr Cain, you are talking about the variation between 2021-22 and 2022-23?

**MR CAIN:** Yes; at the top of page 73.

**Mr Monger:** We had in the order of \$1.5 million in 2021-22 that is known as revenue received in advance. That is money that we have in our bank at the moment but we have

not delivered the services that go with that money. So it is sitting in our bank, but it is a liability that we owe by doing the services. The services are expected to be done within 12 months, so that is during 2022-23. There was a million and a half dollars in that.

**MR CAIN:** Where would that million and a half go, in particular, in terms of expenditure?

**Mr Monger:** There are particular projects—for example, NDIS—that we received quite a lot of money for earlier this year. We received quite a lot in March this year and could not spend it before the end of the financial year. All of this money, revenue received in advance, is for specific projects: NDIS, family law, property mediation, cross-examination, all of these specific schemes that that money has been attributed to.

**MR CAIN:** Is the additional leasehold improvement of \$0.9 million related to the delay in you acquiring your accommodation?

**Mr Monger:** Yes.

**MR CAIN:** I guess we are waiting, aren't we? Are you planning for any further expenditure on fit-outs where you are at the moment?

**Mr Monger:** Yes, Mr Cain, we certainly are. We thought that we would be spending this money in 2021-22, so we put it aside for that purpose. In the current building the office equipment is all about 12½ years old, so the structure and the set-up of the office environment is old school. One of the things that we are looking at is to make more room for staff, in light of COVID, but also to fit more staff into the actual office space. We have engaged spatial planners and we have been dealing with them to work out the best way of doing it while still being COVID-safe. Certainly, we are looking to spend somewhere around a million dollars on office fit-out during 2022-23.

**MR CAIN:** That is not including the \$0.9 million?

**Mr Monger:** That is that money.

**MR CAIN:** It is that money, but you reckon it will be about a million dollars?

**Mr Monger:** Yes.

**MR CAIN:** And additional staff and legal expenses—are you able to give a bit more detail on that?

**Mr Monger:** We are looking to employ more staff. One of the issues with that is fitting staff into the existing accommodation space. While I do not necessarily want to say everything is related to the accommodation, the current fit-out and the footprint we are in can fit more people; but we need to do the fit-out and we need to sign off the lease before we can effectively have more desks within the working environment. We have moved to a much better wi-fi system so that people do not have to be cabled into the network et cetera, but a lot of it will depend on how many more desks we can fit into the office space that we have got.

**MR CAIN:** What was the excess expenditure on employees from the original budget amount?

**Mr Monger:** It is difficult to quantify that, Mr Cain, because we received quite a lot of money after the budget was formulated, for additional services. We increased our staffing numbers. I think there was a forecast of 105 FTE. We ended up with about 110, I think. So we did increase staffing, but we received quite a bit more salary revenue for certain projects that arose after the budget was formulated. So we did underspend in salaries, but the way it looks on paper is that we didn't because we received additional money.

**MR CAIN:** The dollar value of those 4½ full-time equivalents would be what, roughly?

**Mr Monger:** Half a million dollars.

**MR CAIN:** Thank you.

**MR BRADDOCK:** I am wondering how your case load for family violence is tracking in comparison with previous years and whether you can inform me of the trends there.

**Dr Boersig:** I will get the actual numbers on notice, but the trends in relation to the needs around family violence have been maintained. You would have seen that, probably three years ago, they started to peak, arising out of the Rosie Batty experience and the awareness around family violence. We all saw an increase then of something like 40 per cent on previous years. It remains high. I will get back to you on the actual figure. It remains a complex issue, where the demand for services is also a demand for equality of service, so we are putting more effort into that than we probably did 10 years ago, say, in terms of making sure that there are supports. The actual numbers remain, sadly, very high.

**MR BRADDOCK:** Is there unmet demand that you are unable to address?

**Dr Boersig:** The more outreach we do at places like the hospital, the closer we work with DVCS and the Rape Crisis Centre, the more accessible our services are to people who need that support. I cannot say what the level of need is, but, a bit like elder abuse, it is too often hidden. COVID did not help that; it trapped people. I mentioned earlier the service psychologist. Some of the people we are seeing there are mums, because it is a safe place.

With the health justice partnership we have had instances where, for example, people have come in for a medical appointment and subsequently we have seen them, with the assistance of medical practitioners, because there is complexity around CALD issues and complexity around the home environment. The individuals are really important here, which is why it is about the numbers of people. We need to be aware of the numerical demand for this. It is also about the importance of meeting the holistic needs, and we need to do that better and better. I think it is a complex answer to the question around the numbers. It stays high, but it could still be hidden. I think COVID hid it more than it should have been, so we will wait and see.

**Mr Monger:** Mr Braddock, to answer your question, I do have some of the numbers here. We have a tag on our IT system that says, “Has family violence been indicated? Yes or no.” Where family violence has been indicated, we provide advice, duty lawyer services and grants of aid. Over the three years through to 2019-20, the number of total services was 6,014. In 2020-21 the number was 7,278, and for the year 2021-22 it was 7,541. So there are increases, in the order of 1,500 increases in services over three years.

The other stat that we provide in our annual reports is family violence services as a percentage of total services. Three years ago, 34 per cent of our total services were family violence related. Two years ago, it was 40 per cent and last year it was 39 per cent. So we are still around that 40 per cent of our total services being related to family violence.

**MR BRADDOCK:** Thank you. Dr Boersig, you said we need to do better.

**Dr Boersig:** We do.

**MR BRADDOCK:** What do we need to do?

**Dr Boersig:** We need to make sure we are available everywhere that people need that service. During COVID, for example, we wrote to every general practitioner in the ACT, making sure that they knew they could contact us, making sure that they had the information there on their desk. We created a little form so that they could ring us and, if the client consented, make an appointment. I suppose it is almost a political statement I am making, in the sense that we need to make sure that anyone who is vulnerable can get that assistance. That is what I am saying, really.

There are a whole range of changes in legislation which we have supported, for example, which I think will help around this. There are issues around coercion. The commonwealth is pushing on that as well. There are a whole range of policy levers, apart from legal services.

We did a review of our family law practice. We run the largest family law practice in the ACT, not by money but by volume. Just under 100 per cent of our practice is family violence related because we preference those matters in the way we go about our business. We are talking about case loads. Just this week, for example, there will be something like between 300 and 345 current cases. All of those, virtually, will be family violence related in some way or another.

**DR PATERSON:** We have discussed this before in other hearings, but could I have a bit of a progress update on separating data around sexual assault cases from domestic violence? Is it still progressing, to be able to do that?

**Dr Boersig:** After I spoke with you, I then went to JACS and raised this with JACS.

**DR PATERSON:** Great.

**Dr Boersig:** This is a question of how we would get that data and what part government would play in supporting us to get that data.

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**DR PATERSON:** Great. I might follow up with JACS.

**THE CHAIR:** We now draw this session to a close. On behalf of the committee, I thank Legal Aid for their attendance today. If any questions were taken on notice, please provide answers to the committee secretary within the next five working days. The committee will now suspend for a short break. Thank you, gentlemen.

**Dr Boersig:** Thank you.

**Hearing suspended from 10.30 to 10.45 am.**

Appearances:

Integrity Commission and ACT Ombudsman

Anderson, Mr Iain, ACT Ombudsman and Inspector of the ACT Integrity Commission

McKay, Ms Penny, Deputy Ombudsman

Fintan, Mr David, Senior Assistant Ombudsman, Program Delivery Branch

**THE CHAIR:** Good morning and welcome. We will now hear from the ACT Ombudsman, including in his role as Inspector of the ACT Integrity Commission. We will combine these two sessions. We welcome Mr Iain Anderson, Ms Penny McKay and Mr David Fintan.

Please be aware that the proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses could use the words: "I will take that as a question taken on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript.

I also remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Can I get each of you to confirm that you understand the privilege implications of that statement?

**Mr Fintan:** Yes, I understand.

**Mr Anderson:** I understand the statement.

**Ms McKay:** As do I.

**THE CHAIR:** Excellent. Thank you very much. We will go straight to questions. I will pass my substantive question to Mr Cain.

**MR CAIN:** Thank you, Chair. Ombudsman, welcome to your new role.

**Mr Anderson:** Thank you.

**MR CAIN:** Your quarter 2 update mentions that you are currently reviewing the implementation of recommendations made in your previous reports published between July 2019 and 30 June 2021. The update mentioned that you might choose to publish those reviews. Could you confirm whether you will be publishing those reviews and, if not, why not?

**Mr Anderson:** Yes, we are going through a process of looking at progress by various elements of the ACT government against recommendations that we have made. We are going through a procedural fairness process with those agencies as well, so we have given them the opportunity to comment on our proposed findings. We expect that report to be completed later this year, and then we will publish that report.

**MR CAIN:** And you will be publishing the government's response to you as well?

**Mr Anderson:** The intention is to publish their response as part of that process so that it is clear for the public and the community to see what that response has been.

**MR CAIN:** It is my understanding that that review includes recommendations from three investigations in particular: the transparency of commercial land evaluations, the administration of parole by Corrective Services, and ACT Policing's administrative framework for engagement with the Aboriginal and Torres Strait Islander community. Were there other reports apart from those?

**Mr Anderson:** We are looking at those three reports, specifically the responses to those recommendations.

**MR CAIN:** Were there reports done that you decided you do not need to review?

**Mr Anderson:** I believe that those were the three reports that we did in the relevant period, 2019-21.

**MR CAIN:** So that is all of them, basically—

**Mr Anderson:** I am just going to check with my colleagues.

**Ms McKay:** Those are all the reports that are relevant to the ACT that will be included in that overarching report, yes.

**MR CAIN:** Right; okay. Ms McKay, are you currently acting Ombudsman?

**Ms McKay:** No, I am currently the Deputy Commonwealth and ACT Ombudsman. I was acting ombudsman before Mr Anderson was appointed.

**MR CAIN:** What prompted this review—unless you feel you have already answered that?

**Mr Anderson:** I will address that, Mr Cain. It is a practice that we are adopting more broadly of following up on agencies' action on our recommendations: did they agree and, if so, have they implemented, and is it visible what they have done? We do this in the commonwealth sphere and we are doing it in the ACT sphere as well. We think that it is part of a healthy oversight regime that, once we have done something, we should, in fact, go back after a period of time and say, "Well, what has that actually led to?"

**MR CAIN:** So this is a new approach? If so, why is this a new approach?

**Mr Anderson:** It is a relatively new approach; I think we are on our second iteration of it. It is something that we decided to do a couple of years ago—that, as part of keeping agencies accountable, we should be going back and saying, "Well, have they done what they said they would do and what has actually come from that?" I will just check if Ms McKay, who has longer experience in the office, wants to comment on that.

**Ms McKay:** In previous years we did an informal follow-up on the implementation of recommendations, but we published a report two years ago which was our first public report on following up on recommendations made in our own-motion investigations.

The report coming later this year will be the second in that series.

**MR CAIN:** So is it prompted by, perhaps, inaction by government departments in following up on your recommendations?

**Mr Anderson:** It is not so much inaction; it is more about being a transparent way of actually holding agencies to account. As Ms McKay said, we did it informally before, but this way it is public that we are going back and we are saying, “What did the agency do and what does the agency say about what we are going to then say about what they did on our recommendations?”

**MR CAIN:** Is it your understanding that this is a practice of other Ombudsman’s offices in the states or in the Northern Territory?

**Mr Anderson:** I am not sure if they all do it; it is certainly done by a number of them.

**Ms McKay:** I could not confirm whether they all do it, but certainly some do, yes.

**MR CAIN:** Thank you.

**MR BRADDOCK:** I notice that in the budget there is about a million dollars a year of enhanced support to the ACT Ombudsman. I just want to clarify: what are the extra services or what impact will those extra moneys provide?

**Mr Anderson:** It is about \$1,069,500 and something. A large part of that, \$700,000-odd, is on-costs. In the last financial year we had a budget proposal that had both direct costs and then on-costs. On-costs are the costs of supporting our staff, IT and property; things like that. We did not get those costs paid in the previous financial year but they have now been paid by the ACT government this year, so that is a very large component of that and it does reflect the actual cost of us providing services in the ACT.

There is also some additional staffing. There is an extra 1.54 full-time equivalent of staff for a couple of different functions, partly reflecting the expansion of some activities, such as the Integrity Commissioner; hence the need for us to enhance our oversight activities. We are going to see a greater focus on own-motion investigations, so we are doing at least one own-motion investigation with respect to an ACT government directorate within this financial year. There will also be some complaint assurance training and processes. We will be rolling those out to a greater extent.

We are updating our ACT Ombudsman website, and there will be some user acceptance work with that because we have not updated that for a while. We are looking at doing some additional web-based training for reportable conduct. That is a useful tool for entities who have obligations under the Reportable Conduct Scheme. So there are a couple of different streams of activity that we will be carrying on. Otherwise, although it looks like a large increase, really it is just capturing the total cost of what we do in the ACT.

**MR BRADDOCK:** As a way to rephrase it: it is reflecting the true costs of those services provided—

**Mr Anderson:** That is right.

**MR BRADDOCK:** which we have got at a discount rate before.

**Mr Anderson:** Yes.

**MR BRADDOCK:** Thank you.

**DR PATERSON:** I am not sure if you are able to answer this, but I will ask the question anyway and see. Have you received complaints in respect to the Master Builders fidelity fund?

**Mr Anderson:** I will refer to my colleagues.

**Mr Fintan:** Not that I am aware of, but I can take on notice to confirm that.

**DR PATERSON:** Thank you. In terms of providing feedback to agencies, is that feedback made public? If you did receive a complaint about an ACT government agency or process, is that feedback made public or available to the public?

**Mr Anderson:** It will partly depend, as to the way in which we have engaged with the matter. In a lot of matters, we will engage with a level of informality. It might be something that can be very quickly resolved, so we might be engaging with the complainant, engaging with an agency. Sometimes it will be referring it to another oversight body that might be better placed to look at it. If we do a formal investigation where we are actually writing to an agency and saying, "We are doing this investigation; here are the terms of the investigation," all that sort of thing, then we are much more likely to end up actually publicising, reporting on, the investigation that we have done and the way in which that has proceeded and what the agency has said.

There are different types of investigation, of course, particularly as we get into the inspector role of the Integrity Commission, where we might not be able to publish what we are actually looking at.

**Ms McKay:** It is certainly decided on a case-by-case basis. If we were to do a more in-depth investigation about a particular complaint, the Ombudsman would then make a decision as to whether that would be publicised or not. Generally, we would consider whether it would have any benefit for the broader public service in making that decision. But it is not a standard, "Yes, we will publish."

**DR PATERSON:** Okay. Thank you.

**MR CAIN:** I know that it is early days for you, but I am sure you have been well briefed. So what investigations are you planning in the next 12 months or so?

**Mr Anderson:** I am not able to specifically commit to a particular investigation, other than to say that we have budgeted to do at least one own-motion investigation into an ACT directorate, for example, within this financial year. With respect to the question of which one, it will partly depend upon what we see through complaints or through other sources that tell us that here is something that seems to be either a persistent

problem, or it is emerging as being a very heated problem in a couple of complaints and is worthy of looking at. But we have certainly set aside resourcing and have committed to doing at least one own-motion investigation.

**MR CAIN:** Again for the record, for the community's sake could you explain what triggers an investigation by the ACT Ombudsman?

**Mr Anderson:** It could be a range of different things. It could be a particular complaint that, in itself, seems to be something that is worthy of a detailed investigation, or it could be a series of complaints that points to a pattern. Rather than waiting for a very large number of complaints, it might be that there is a sufficient trend there to say it would be worth looking at this—either the agency conduct is problematic for a range of people or it is of a particular impact.

It could be something that we are just observing ourselves. We do see what is in the media. We have a range of different ways of getting formal and informal intelligence about different things going on within the ACT. All of those things come together and we, ourselves, sit down, and we say, "What do we think is the best way of allocating our resources?" We have an intelligence function within the office that collates these things and makes proposals to us. So we sift, I guess, everything that we know of in saying, "Let's commit to doing this thing."

**MR CAIN:** Is there anything in the ACT legislation, or otherwise, that actually compels you to undertake an investigation?

**Mr Anderson:** We cannot be directed to carry out a particular investigation, as a general rule, under the ACT Ombudsman Act. We have the ability to decide whether to do an investigation and also how we will do that investigation. That is part of the independence of our role.

**MR BRADDOCK:** Would that own-motion inquiry into a directorate be a directorate in its entirety or maybe a particular function, or have you not yet decided about that?

**Mr Anderson:** We have not yet decided. It could be a function; it could be a specific agency, or it could be a larger investigation.

**MR BRADDOCK:** I am just interested, in terms of your engagement with Aboriginal and Torres Strait Islander, and culturally and linguistically diverse communities, how you ensure that they are aware of your particular agency and are able to access its services if they need to. Are you taking particular engagement steps for that?

**Mr Anderson:** I think that is a really good question. We have different channels for different groups. In particular, we have, for example, a dedicated Aboriginal and Torres Strait Islander complaints or inquiries line, where people can have telephone interpreter service assistance, if necessary. That goes in to an Aboriginal and Torres Strait Islander person who actually, I guess, runs that function and oversees that function.

So for Indigenous people there is an Indigenous-specific, telephone-based pathway, but people do have to find that. So we are looking at our website, because it is worth actually going out to users and saying, "Can you, in fact, find us? Are we sufficiently accessible?"

Are we sufficiently clear as to what we can do for you?” That is part of why we are planning, for example, to update our website this financial year.

I think there is always more that we can do. The overall number of complaints and approaches that we get from Aboriginal and Torres Strait Islander people is broadly commensurate with the number of Aboriginal and Torres Strait Islander people in the population. That is a very crude measure as to whether people are finding us sufficiently accessible and whether they are finding us in the first place, because it may well be that particularly vulnerable people should have a higher level of complaints than simply their proportionality in the population.

**MR BRADDOCK:** Yes.

**Mr Anderson:** I will see if my colleagues want to say anything more.

**Ms McKay:** I do not have anything to add.

**MR BRADDOCK:** You mentioned the numbers in terms of Aboriginal and Torres Strait Islanders. What about cultural and linguistically diverse populations in terms of the ratio of complaints? Does that reflect the population make-up?

**Ms McKay:** I do not think we have those numbers to hand.

**Mr Anderson:** We would need to take that on notice, Mr Braddock.

**MR BRADDOCK:** That is fine. Thank you. Coming back to your point where you were saying that it should not necessarily be pro rata to population, but that perhaps vulnerable people might be more frequently inclined to complain, would that almost be “pro rata-ed” to interactions with the government, in terms of the more you interact with the government the more likely you might have a complaint? Would that be a fair summary of what we would expect as a ratio?

**Mr Anderson:** Our largest source of complaints across the board—and, you know, our commonwealth function as well—is about Services Australia: so, people who access benefits programs. We find that Aboriginal and Torres Strait Islander people certainly have concerns about benefits programs generally but also about Indigenous-directed benefits programs. So to some extent, the more you engage with government, the more you might have complaints, but then there are other people who engage with ACT or commonwealth government and do not have complaints.

In one sense, something that is of interest to me in this role that I am new to, is thinking, “Should there be more complaints?” and “What does the level of complaints tell us?” That is something I am talking to my colleagues and staff about, in terms of what we actually know about and what we can read into the number of people who are actually reaching us, and should there be other ways we should be checking whether there are more people who could be complaining to us, if they knew how to do that?

**DR PATERSON:** Just a question about the Reportable Conduct Scheme—is that it?

**Mr Anderson:** Yes.

**DR PATERSON:** How often do you review that and ensure that agencies are reporting adequately? Do you review your practice there regularly?

**Mr Anderson:** We have been looking at the Reportable Conduct Scheme, and one of the things that we have noted is that the number of entities that are complying with their obligation to report to us within 30 days—to notify of allegations of reportable conduct—is lower than we would like it to be. That is a question for us in terms of how we engage with those agencies. We try to do outreach to agencies. And I mentioned before the web-based training and the area of reportable conduct that we are looking at developing. We are making that as widely available as we can to assist entities who have obligations under that scheme.

**Ms McKay:** I do not have anything further to add.

**DR PATERSON:** Is there a review or has there been a review of the legislation in respect to this, in terms of, for example, the 30 days in which to notify the Ombudsman? That seems like quite a long period of time if you identify a really urgent issue. Do you think that there is a need for a review of the legislation in this, or in the practice within the ACT government?

**Ms McKay:** I think it is a function that is still maturing.

**DR PATERSON:** Yes.

**Ms McKay:** At the moment we are really focusing on outreach to agencies and designated entities to make sure that they understand their obligations. We have really been focused on that, and just educating all of them on their responsibilities, making sure that they are aware. As Mr Anderson said, we are focusing—and I guess COVID has given us this gift—on making a web-based program where people can access it more readily. At this moment I do not think that we are considering changes to the program, but maybe as it rolls out further we will get more experience with it and then inform whether it needs changing. But at this point I think we are just focusing on making sure that the system we have works.

**Mr Anderson:** If I could add to that, we are planning, this financial year, to do an audit of designated entities' and religious organisations' policies and procedures. So that will be another source of information as to the adequacy of the way in which designated and religious organisations with obligations under the legislation are actually responding to those. If we think that there is an issue there, then that will be another thing for us to consider.

**DR PATERSON:** Yes, okay.

**Mr Anderson:** And we are required to do that audit under the legislation.

**DR PATERSON:** Can you provide any data around—say, in the last year—the number of notifications, and whether they came in within 24 hours of the notification, to give some sense of the average timeframe it takes someone to make a complaint to the ombudsman?

**Mr Anderson:** I am not sure we have that level of granular detail.

**Ms McKay:** We do not have that level of detail, but what we can say is that in the last financial year, 2021-22, 68 per cent of notifications were made within the timeframe of the legislation as required. And that is compared to 77 per cent in the previous period. But in terms of granular detail as to when, during that designated period, they were notified, I am not sure.

**Mr Fintan:** No, I am not sure, but we could take on notice to check just how fine the data is with respect to when it comes in.

**DR PATERSON:** Yes, I would be interested. The 68 per cent of notifications made within that timeframe does not sound like a very adequate level when it is mandatory reporting. I understand you are doing your review, but do you think there is a need for more urgent engagement with the ACT government on this?

**Mr Anderson:** I think that decrease to 68 per cent, compared with the previous year, is definitely concerning.

**DR PATERSON:** Yes.

**Mr Anderson:** The audit will tell us a bit about how the policy and procedure is, but, as Ms McKay said, it is still a relatively new scheme. And there are questions, I guess, about whether it is just the impact of COVID, for example. We have noticed that COVID has made our life more difficult as well in terms of our own timeliness in carrying out some functions. It may well be that for reportable entities and religious organisations they have also been struggling with the range of different, hopefully, temporary challenges that will be alleviated.

**DR PATERSON:** Is there any record of trends in agencies that do report? For example, if you could see that there were reports coming out of an agency that you would not normally expect to see, that might be of interest. Or, if there was increasing reporting from particular agencies that is a good thing, but it would highlight to the government that there are problems there.

**Mr Anderson:** I think that we are seeing the reports coming from the expected types of entities in terms of schools and things like that.

**DR PATERSON:** Yes.

**Mr Anderson:** We could take that on notice, just to see if there is more detail we could provide.

**DR PATERSON:** Yes, I would be interested in any further clarification of that.

**Ms McKay:** I do not have the figures by designated entity, but I am sure that we do keep that, by category of designated entity.

**DR PATERSON:** Yes, great.

**MR CAIN:** I have drilled down to your role as Inspector of the ACT Integrity Commission, and I make reference to budget statement B, page 25. You have received an allocation of \$217,000. Could you explain what the intended purpose of that is. Is that the amount that you sought?—and, hence, the question as to its adequacy.

**Mr Anderson:** It is the amount that we sought. I believe that the answer to that lies in the fact that as the Integrity Commission itself has been expanding we have needed to expand our own activities. A large part of that is about a staffing component. I will turn to my colleagues to see if we can give more detail.

**Mr Fintan:** That is correct. It is an increase of 0.9 FTE on the previous staffing of 0.7 FTE, or full-time equivalent.

**MR CAIN:** Is that amount being spent on staffing alone, or what other expenses are there?

**Mr Anderson:** Some of that will be the on-costs element that I mentioned before that was not reflected in last year's budget that we were allocated by the ACT government. Some of it is just, again, the total cost of delivery of those services that was not captured previously.

**MR BRADDOCK:** I have a supplementary question on that one. There is going to be a review of the Integrity Commission Act, shortly. Should consideration be made of the Inspector of the Integrity Commission's functions and resources as part of that review?

**Mr Anderson:** I think it would be highly sensible certainly to look at the functions in the first instance, because if you are looking at the commission it makes sense to look at the way in which the oversight arrangements have been structured and the way in which those are working. That might lead naturally to a consideration of resources. I think the most important part, in looking at the commission is, yes, to look at the oversight arrangements as well.

**MR BRADDOCK:** Thank you.

**MR CAIN:** I have a question regarding the Healing Foundation. Ms McKay, earlier this year your predecessor signed a joint statement to mark National Sorry Day, which committed to “working together with the Healing Foundation and stakeholders to champion timely, easy access to records through informal access schemes wherever possible, with formal access applications required only as a last resort”. Are you able to just expand on that commitment and that initiative, and whether that requires funding?

**Ms McKay:** Yes. We signed that agreement because when you are seeking information like that, informally is always quicker, more efficient and people get the information that they are after. I think that is what that statement is getting at: let's do it informally rather than going through the formal process, if at all possible, which is what all the information commissioners around Australia supported.

**MR CAIN:** Again, is any resource required to be allocated for this?

**Ms McKay:** Certainly not for our office.

**MR CAIN:** So it is just a commitment in principle?

**Mr Anderson:** Informal processes often can be more efficient, as well.

**MR CAIN:** So you are thinking it is a saving for agencies, as well?

**Mr Anderson:** It is a saving for agencies, and it is also a saving for those who are seeking access to records. Often the quicker it can be done, with that informality, the quicker the outcome can be attained for everyone.

**MR CAIN:** This might be well beyond your knowledge here, but are you aware of any cost saving calculations that have been done, if this initiative is really taken up?

**Mr Anderson:** I do not think we have actually done any cost saving calculations, Mr Cain, but I think that, as Ms McKay indicated, it is consonant with the general message from all information commissioners nationally saying that, as much as possible, agencies should quickly and informally engage with those seeking access to records.

**MR BRADDOCK:** I just wanted to come back to the question of the “did they do what they said they would” report—which I highly applaud, by the way. That is capturing the recommendations from reports. I am trying to see if the learning loop is completed for individual complaints where there might have been a recommendation or a finding at the end that could have clarified or addressed the problem more easily. How are those recommendations or requests being captured and reported against as to whether they have actually been successfully resolved for the future?

**Mr Anderson:** That is a very good question. Our focus is more on the systemic in terms of recommendations and what is changing in agency practices and procedures, for example, across the cohort of people in the same conditions or in the same circumstances as a complainant. In terms of the extent to which we actually look at the individual original complainant, I will defer to my colleague.

**Ms McKay:** Definitely, when we make recommendations or suggestions about individual complaints under section 12(4) of our act, we catch them internally and then we follow up in informal liaison with the relevant departments to see if they are implementing those. But they are not captured in this own-motion investigation way that we capture via the biennial report.

**MR BRADDOCK:** So how do we, as a committee, and how does the Justice and Community Safety Committee, have oversight of that process to make sure that suggestions for improvement, let’s say, are actually being incorporated into the business of those directorates?

**Ms McKay:** Good question, Mr Braddock. In terms of individual complaints, we keep a range of data, which we publish. To a degree, it needs to be deidentified so that we keep the privacy of the individuals who have made complaints. We follow up internally

and then report back, but in terms of the publication of that, no, we do not.

**MR BRADDOCK:** My concern is that what is actually the individual might be a systemic problem. Hence, how do we make sure they are actually being addressed so that you do not have to deal with more complaints of the same nature?

**Ms McKay:** Sure and if it was a systemic issue, I think as Mr Anderson said before, that is something we would consider in terms of commencing an own-motion investigation. So, that systemic nature of a complaint is something that we would look at. We watch complaints coming in in terms of trends, and it is a real red flag for us if we see a hot spot in complaints—a particular number of complaints coming in about one issue. That is certainly something that we monitor in choosing where we aim our resources in terms of own-motion investigations. Then, if we do an own-motion investigation and write a report, it is a decision for the Ombudsman as to whether that is made public or not.

**MR BRADDOCK:** Thank you.

**MR CAIN:** With respect to both your ombudsman and your Inspector of Integrity Commissioner role, noting you have only been here for a few days, what are your priorities going forward?

**Mr Anderson:** I guess there are a couple of priorities. One is just to make sure that we are actually dealing with complaints in a timely manner, and appropriately thoroughly, as well. There is a tension between timeliness and thoroughness, but we have service standards for complaint handling, and we aim to resolve complaints as quickly as possible. It is important for public confidence in the office that we are meeting the service standards that we have set for ourselves.

The systemic element is also important, though. Are we able to influence the way in which directorates, for example, change and improve their practices so that there is a longer-lasting, enduring benefit for the ACT community? That is a harder one to measure and track, but it is important that we pay a lot of attention to whether we are doing that. That is why we have introduced this practice of coming back biennially and asking, for example, “Have they done what they said they would do?”

The third part is that we have some specific challenges. One of those is that the Optional Protocol for the Convention Against Torture is due to be fully implemented by January 2023. We do have a role as part of the national preventative mechanism within the ACT that we share with two other ACT bodies. It is a really important thing to make sure that we are fully able to discharge that role, as well, in the timeframe.

**MR CAIN:** Thank you.

**Ms McKay:** Chair, if I might?

**THE CHAIR:** Yes.

**Ms McKay:** In relation to your question about reportable conduct and the designated entities that report, what I can say is that during 2021-22 we received 136 notifications

under the—

**DR PATERSON:** Was that 136?

**Ms McKay:** There were 136 notifications under the Reportable Conduct Scheme and of those 136, 43 reports were from government and non-government schools and 34 reports were from kinship and foster care providers. So those were the top two, and the rest were from the other sorts of designated entities.

**THE CHAIR:** Okay. Given that there are no more substantive questions, on behalf of the committee I would like to thank the Inspector of the Integrity Commission and ACT Ombudsman—two hats—and officials, for their attendance today. Obviously, if there were any questions taken on notice could you please provide answers to the committee secretary within five working days.

**Hearing suspended from 11.19 to 11.48 am.**

Appearances:

ACT Integrity Commission

Adams, Hon. Michael, QC, Commissioner

Lind, Ms Judy, Chief Executive Officer

Hickey, Mr Scott, Chief Finance Officer

Hoitink, Mr John, former Chief Executive Officer

**THE CHAIR:** Welcome. In this session we will hear from the ACT Integrity Commission. I welcome the Hon. Michael Adams, Ms Judy Lind, Mr Scott Hickey and Mr John Hoitink. I remind witnesses of the protections and obligations afforded by parliamentary privilege, and draw your attention to that privilege statement in front of you. For convenience, can each of you confirm that you understand the privilege implications of that statement.

**Mr Adams:** Yes, I do.

**Mr Hickey:** Yes.

**Ms Lind:** Yes.

**THE CHAIR:** Thank you, very much. As we are not starting with opening statements, we might go straight into questioning.

**Mr Hickey:** Can I just explain this: Mr Hoitink is here. His appointment as CEO actually finished last Friday but, of course, because he has been doing this work for three years, I thought if we had questions he could give appropriate information. Ms Lind started on Monday, so she is here because she is the CEO but there is not much use asking her about past situations.

**THE CHAIR:** Okay, excellent. In that case I might just ask you to mention your name and capacity in which you are speaking so that we know clearly where that evidence is coming from.

**MS LEE:** I noticed that the commission received a modest funding increase in this year's budget and the forward estimates. Could you explain to the committee what that increase will be used for, and whether it is sufficient to meet your workload?

**Mr Adams:** It is a little complex. The situation is that we are significantly under resourced. However, we had a significant underspend in the previous financial year, mainly caused by two elements. The first was that, although we got funding for our separation from Shared Services, which is necessary both for our functional independence and our independence when we get telecommunication interception powers, that amount was, more or less, \$500,000—

**Mr Hickey:** Our Shared Services funding is a combination of both recurrent funding and capital funding, so I think we had approximately \$700,000 in the recurrent area.

**Mr Adams:** We did not spend that because we do not have TI powers yet, but we are proceeding with the process that is necessary to separate ourselves from Shared Services. The other matter was that we lost staff and were unable to fill those positions in the financial year because of problems with recruitment. Recruitment, of course, is a significant problem across the public service. Our additional problem is that we are unable to recruit, as employees, persons who have been working in the ACT public service in the previous five years. I have proposed changes to that in our annual report, but that means we cut off a significant tranche of potential recruits. So we have not been able to manage those.

Although we knew we needed more resources to obtain further staff, having not spent that money, we did not think it appropriate that we should seek more in the current budget. The present position is that we are attempting to second three additional investigators who are police officers with the AFP. We are contracting one additional lawyer and we are briefing two counsel. This staff is necessary because of the size of our current investigative burden.

To put this in scale, if I may—and tell me if I am moving outside of the interest of your question—I will take the CIT. When it first came about, I think I told the committee—I think I told you—that I thought that, with adequate resources, we could knock that over in four to six weeks. That was absurdly optimistic. It was based upon an assumption, which is all that I really had, of some information from complainants, but that we only needed to look at the final contract. What we see is that we now need to look at six contracts; two variations; \$8 million, more or less, of expenditure; and each contract having—I want to be careful—issues. Our preliminary “netting”—it is a fishing exercise for documents—has given us well in excess of a million documents. Now, a vast majority of those will be simply repetitious attachments passed through 20 or 30 emails and so on. Those require forensic analysis and we do have tools to do that; nevertheless, even once you have reduced your haystacks, to look for the needles requires work.

At present, I have available two investigators, and I have one and a half solicitors. So that gives you a scale. And that is for CIT. We have already had six private examinations; all have proved preliminary. All those witnesses will need to be recalled, together with probably another 15 witnesses. So that gives you some sense of the scale, and that is just CIT.

I am mentioning these because it is already in the public domain that we are investigating. The other matter is the Campbell school. That is not so big, but it is very substantial. You have what amounts to four separate evaluations of bids which were “questioned” by the Auditor-General—let me put it in that way. So there were a whole lot of those surrounding witnesses. It is perfectly obvious that you have to speak to the members of the evaluation team, but, as the Auditor-General also pointed out, there were a number of interactions with people who thought they had a right to play a role—they might or might not; it is a matter we are investigating—but it was not obvious to the Auditor-General that they had that right to have that role. So those communications all need examination. That, again, requires four people on each evaluation team. You are, again, looking at 15, potentially 20, witnesses—some major, some relatively minor. We currently have eight other investigations, two of which are moving along, though necessarily somewhat desultorily.

The problem, of course, with resources, is that eventually you get it done, but you do not want to get it done in two years. Certainly, procurement is a very live issue in the territory. Both of these investigations will yield useful—indeed, I think, key—information about procurement methods, which will give substance to general policy considerations. I know that a present review is being undertaken; the Auditor-General is undertaking one; and I think treasury is also looking at procurement rules, but it certainly needs a real examination. And we are looking at what you might call “hard material”. So, one does not look at it in terms of principle; one has actual examples of the way things work in particular contexts, even with well-intentioned people, ignoring the possibility that not everybody is so well intentioned.

So, from a general policy point of view, it is vital that we do these investigations as quickly as we can. With the secondees and other temporary arrangements that I am making, I think that will give us a reasonable timetable of how long it will be before an investigation is completed. I am afraid the trouble is that you lift up a rock and you find things that need to be looked at.

The other practical question is that once we have received the material and the evidence here, we will finish up, I suspect, with something in the region of six to eight volumes of material. Those are large folders of material in terms of volume. I have to write a report. There may well be adverse findings. We then have to give people an opportunity to respond to the matters in that report. Then you have to make a decision about what you do with their responses. So, even once your investigation is complete—that is, once you have gathered the material—there are many weeks of work to write a report.

I am saying this, not, as it were, in *terrorrem*; but when the commission started, the scope of work was unknown. There was—and I am not suggesting it was illegitimate—scepticism that there was a great deal to be done, and I said in my appearance on the first occasion that I would not be making ambit claims for resources. I said that I would wait until I have real work to demonstrate why we need the additional resources.

So we have enough at present for the additional resources that I thought we could manage at present. But I do not exclude the possibility of going back to government. There is, I understand, a process in which the treasury can provide additional grants if they are needed for legitimate reasons. We might have to go back. But the next budget needs to increase my FTE on a more permanent basis. What I am envisaging is a larger permanent staff, but also funds that I can use for short-term arrangements which give some flexibility.

I do not want staff sitting around when I have no work for them, of course. At present, we are not looking at a lack of work for a while yet! When the commission was first proposed—I was on the selection committee of the first commissioner—it was thought that three days a week was all the commissioner needed. I could work seven days a week; you just have to draw a line. And there is more than just, I am sure, the CIT and the school. I beg your pardon; I did not intend to give a speech.

**THE CHAIR:** We might go to another supplementary.

**MS LEE:** I have a supplementary question. You have explained the staffing situation,

so thank you very much for that, but I want to pick up on a comment that you made quite early in your answer when you spoke about telephone intercept powers. Can you give an update to the committee on where that is up to, why you currently do not have them, and what needs to happen?

**Mr Adams:** I have put a proposal to government. It has been with government now for some time. It was contained in our first annual report, and it has been repeated probably every committee meeting I have attended. It had been proposed that it, together with other amendments, would go to the JACS committee to prepare a report. We had a discussion maybe six weeks ago—perhaps a little bit longer; two months ago—and the JACS committee decided that it should be, as I understand it, folded into a statutory review which must take place next year.

I quite understand, from the committee's point of view, the practicality of that response. The difficulty is that I have investigations now that I need telecommunication interception powers to conduct properly. It is not that I cannot conduct them; I can conduct investigations using—what shall we call them?—"conventional" tools. We are using conventional tools, but I need these tools as soon as I can get them. It was the Chief Minister who proposed it should go to JACS, I think. JACS has now responded to the Chief Minister, and I have now written to the Chief Minister asking for a meeting with him to discuss moving forward, and I am waiting for that meeting.

**MS LEE:** Can you explain for the committee how not having these telephone intercept powers is hampering or impeding your current investigations?

**Mr Adams:** This is a public hearing. I have to be careful as to how I would—

**MS LEE:** Of course, within what you can tell us publicly.

**Mr Adams:** All I can say is that this is a way of obtaining communications between persons of interest which you cannot otherwise obtain, where you have good reason for thinking that they may be in communication and may be communicating about relevant matters. You are completely excluded from vision of those communications without TI; there is just no other way to do it. I think both CEOs have had very extensive experience with TI, as I did. Is there anything you want to add to what I have said?

**Ms Lind:** I think you have covered that.

**Mr Adams:** So it is a source of evidence which I cannot get my hands on. The AFP does this every day. We know because we have good informal links. They have told us, "We have material that might be of interest to you," but they cannot tell us anymore and I cannot access it because by the TI Act they are not allowed to refer or give us any information they gather. So I cannot even get what they do until I am an agency under the commonwealth telecommunications intercept legislation.

**MR BRADDOCK:** I am just interested why the Australian Federal Police might have telephone intercepts that might be of use to you. Are they also investigating in this area?

**Mr Adams:** They have a large range of investigations covering a wide range of fields, some of which engage, one way or another, people who would be of interest to me—

and possibly innocently, by the way; we should not assume.

**Mr Adams:** I cannot say any more, mainly because they have not told because they cannot tell me.

**MR BRADDOCK:** Understood. Just moving onto the statutory review of the Integrity Commission Act: apart from the telephone intercept, what other powers would you be looking to be considered as part of that review process?

**Mr Adams:** I am not seeking further powers; I am seeking some tidying up of parts of the act. Almost all of these were set out in our previous annual report. They will be set out in our annual report which is shortly going to be published and which I provided to the JACS in the context of that general reference.

Essentially, they relate to making it easier for us to exercise functions which we already have but where the statutory provisions are somewhat unwieldy. They do not prevent me from doing my job; they just make it more difficult unnecessarily and they need to be attended to.

**DR PATERSON:** Commissioner, my question is with respect to your role in fostering public confidence in the Legislative Assembly and public sector and some of the language that you use—for example, in the media release that came out around the Campbell school procurement. When you were seeking input, you were saying how this issue may be endemic and broad-spread and that type of thing. But you have just said here that that actually has not been a particularly extensive investigation and that it is smaller than you expected, and I think your comment just before was that you are sure that there is more corruption. I am interested to understand whether putting those types of statements out instils confidence in the public, and whether perhaps more technical terminology around complaints coming in is more appropriate.

**Mr Adams:** First of all, of course, we do have a range of complaints that provide intelligence about positions. Starting in the procurement field, let us just take the ones that I have publicly referred to. For example, the Auditor-General, in relation to Campbell school, pointed to distinct weaknesses which I would call—it was necessarily him—a corruption risk. Combine a corruption risk with a lot of money and you get a reasonable basis for surmising—and it is only surmising, of course—that the kind of problem that happened in Campbell school has happened in more than that procurement. So you work from what you know to what you do not know, and we know in the procurement sphere that the overall management and the fundamental principles are not as tight as to ongoing risk.

Obviously, you cannot have someone looking over the shoulder of every procurement in the ACT; so there are always going to be some risks. What you have to do is examine your system and then say, “Is it going to work for Campbell?” and decide at what level you come in to mitigate risk or control risk. But that there are risks is clear. Once that is said, it must follow, I think, that one has to be aware of it and certainly not complacent about corruption, where we have examples of serious potentiality.

So you are right: there is a line to be drawn between scaremongering and undermining the public confidence in institutions, on the one hand, and, on the other hand, warning

that we need to be careful, we need to be investigative and we need to be watchful to deal with the risks that are out there and not be complacent about them.

I think the setting up of the Integrity Commission with, as I understand it, widespread public support, was the very acknowledgement that it was necessary to have an institution because of risks, not because anyone was thought to be actually corrupt, but because of serious risks of it. And, as I think I showed, without being unfair, in both the Lyrebird and Raven reports, how both the Auditor-General and the Public Accounts Committee do legitimate work but do not have the focus and resources that an integrity commission brings. That is one of the reasons I dealt in both reports, in a detailed way, with the findings of both the Auditor-General and the committee and how they came about and how my examination led to different findings, which showed that they are very important public mechanisms but they are not adequate for the kinds of reasons that led to the setting up of the Integrity Commission. Have I answered your question?

**DR PATERSON:** Thank you; yes.

**MS LEE:** Commissioner, you mentioned in your earlier answer—and only going as far as you can, of course—that there were a number of witnesses that you had preliminary hearings with and that you would need to call them back. At the last hearings you also mentioned—and I will not quote you directly; I do not have the exact words—something about some investigations that might benefit from public hearings. As far as you can say in the public arena we have here, will there be public hearings in the current investigations that you have?

**Mr Adams:** It is looking increasingly likely.

**MS LEE:** Thank you.

**THE CHAIR:** Given the time is 12.15, on behalf of the committee, we would like to thank the ACT Integrity Commission and their officials for attending today. If any questions have been taken on notice, would you please provide answers to the committee secretary within five working days.

**Mr Adams:** Mr Chair, I extend an invitation to all MLAs and members of this committee: if there are issues that you would like to come and talk to me about in relation to the work of the Integrity Commission, I will be as candid with you as I possibly can be. I want you to know my door is open, because I think it is an important communication that we do need to have.

**THE CHAIR:** Thank you.

**Hearing suspended from 12.15 to 12.17 pm.**

Appearances:

Office of the Public Trustee and Guardian

Taylor, Mr Andrew John, Public Trustee and Guardian

Hughes, Mr Callum, Deputy Public Trustee and Guardian, and Senior Director,  
Finance Unit

**THE CHAIR:** In this session we will be hearing from the Public Trustee and Guardian. We welcome Mr Andrew Taylor and Mr Callum Hughes. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement in front of you. Could you both confirm that you understand the implications of this statement?

**Mr Taylor:** I understand the implications of the privilege statement.

**Mr Hughes:** I also understand.

**THE CHAIR:** Excellent. This is a 45-minute session—relatively short. I would like to pass my substantive over to Mr Cain.

**MR CAIN:** Thank you, Chair. Good afternoon, gentlemen. I refer to the investment board charter. I know it is a document on our website. There is a commitment at 7.1 of the charter for at least an annual review of this document. I note that the latest version is back to 31 May 2017 and it is listed for review on 31 May 2018. Could you confirm whether the charter, as it now stands, is the current version?

**Mr Taylor:** My understanding is that it has been reviewed within the last two years. I am not sure which version you are referring to. You said that you have the—

**MR CAIN:** The version is on your website, under the publications link.

**Mr Taylor:** Yes. That is probably a version control problem with our website. We certainly have upgraded that charter within the last two years. I will take that as something to correct.

**MR CAIN:** Okay; so how soon do you think that could be updated?

**Mr Taylor:** I can get that done this afternoon.

**MR CAIN:** Well, I look forward to the new look. So that would have been reviewed two years ago, did you say?

**Mr Taylor:** Within the last two years.

**MR CAIN:** So it might be a 2020 or 2021 version?

**Mr Taylor:** Yes.

**MR CAIN:** Related to that charter, there is a statement that a disclosure of interests by

board members must be declared if a board member has a material interest in an issue being considered or about to be considered by the board. Have any such disclosures been made and are these public?

**Mr Taylor:** No.

**MR CAIN:** So no disclosures?

**Mr Taylor:** Not in the last three years. That is included as an item on every agenda for every meeting. It is sent out with the papers and is recorded on the minutes for each meeting as well.

**MR CAIN:** What is the threshold for something to be a material interest?

**Mr Taylor:** That is a case-by-case basis, and it would depend entirely upon the nature of the role of the person who is on the board. All members of the board come from dramatically different backgrounds. A material interest may be perhaps in a very unusual situation that a person was on the board of a financial institution that we were looking at investing with. That has not happened.

**MR CAIN:** Okay; thank you. Just one more supplementary.

**THE CHAIR:** One more and then we will move on.

**MR CAIN:** It also states that parking is an expense reimbursed to board members. Is there a record of any such reimbursements for parking?

**Mr Taylor:** We service three boards. As with all other boards, the members offer their time on an honouree basis. So we provide them with a gratis ACT government parking permit, which permits them to park in a government parking zone, a class B zone, at no cost in business hours, as part of their appointment.

**MR CAIN:** Does that get an estimate as to its value placed upon it? Is there an estimate as to the value?

**Mr Hughes:** It is about \$50 a year.

**MR BRADDOCK:** I noticed that, in your annual reports hearing in October last year, there was mention of a CRM being installed to provide some better business information.

**Mr Taylor:** Yes.

**MR BRADDOCK:** Can you please provide an update on that project?

**Mr Taylor:** Yes. As of last week, we had implemented five modules of the CRM. We propose that we will have two more to complete. Essentially, the CRM seeks to provide a single source of data and information about every client of the public trustee, both current and we are including proposed. So if somebody rings and says that they want to make a will interview, we will include them as a proposed client and then, when they

come in and make their interview, we fill the data. So there is a central point about everything that we know about that client. Whether they are a client across three, or four, or five business units, it is in one place—one point of contact, one address—compared to the multiple points we used to have.

Then, with each module—for example, the first one we did was a will drafting software—no matter which solicitor is interviewing the client to make their will, they are both addressing exactly the same questions and going through the same workflow process. For example, a question that will always be asked of somebody is whether or not they had an alternate executor in their will or whether they want to make provision for philanthropy in their will. They will always be asked the same questions, rather than relying on a haphazard word document kind of approach.

So we now have a will drafting software module; we have a power of attorney drafting software module; we have a module to control our responsibilities in guardianship; we have one for product manager examinations; and another one just completed for unclaimed money. There are two to go. We include deceased estate administration and one for our financial management services unit. They are probably the most complex.

**MR BRADDOCK:** When are those likely to be implemented?

**Mr Taylor:** We have sufficient funding to complete one of those modules. We are putting in a budget bid for completion of the other module.

**MR BRADDOCK:** Sorry, which one is which?

**Mr Taylor:** We have not decided. With probably the next one to be done, we have already started doing the background work. It is the financial services management module. We will see how we go for funding out of that, and we are putting in a budget bid. We have not asked for any government funds at this stage to do what we have done but we definitely want to complete it.

**MR BRADDOCK:** Thank you.

**DR PATERSON:** There was a case in Queensland recently of the public trustee where there was an issue around a woman who went to the public trustee to get her will done. Then, two years later, she was diagnosed with dementia and the public trustee, sort of, contested whether she was in the right mind to be making the will in the first place and the family were delayed for a couple of years in receiving the funds, even though the will was not contested. I am just wondering how that works in the ACT. Are there mental assessments done on people, as it appears in Queensland, when people are making wills? How do you deal with this issue here?

**Mr Taylor:** We read that case and we had tried to draw an analogy with our practices here. I guess, on the one hand, I can understand the view that was taken by the public trustee there in that none of the beneficiaries had any concern with what had been done. However, it is not the wishes of the beneficiary that decide what happens in an estate.

In our particular case, where there had been a hint that a person had a level of disability or was lacking assessment in testamentary capacity, we would always ask for a medical

opinion. We have legally qualified people preparing our wills, only lawyers preparing our wills, and they are quite familiar with what we call the capacity toolkit. They were involved in the making of that toolkit and the recent review. Where they are unsure about a person's level of understanding or capacity, or perhaps felt that they might have been under duress or something like that, they will always ask for a medical opinion.

That is important not just at the threshold point of making the will; we also have to be thinking ahead at the time when perhaps a will might be challenged by somebody who was disaffected by the will. It is not a good thing in a process like that to get to the point where somebody can undo an apparently perfectly lawful process by having it made invalid by a court, and it is certainly not something the public trustee would want to have done, given the number of wills that we make and the estates we administer.

Hopefully that answers the question. We kicked this around amongst our senior leadership group, and we do not believe that we have ever had a will challenged and invalidated on a basis like that.

**DR PATERSON:** Yes, thank you.

**MR CAIN:** So just on the investment strategy, Public Trustee, in your 2019-20 and 2020-21 annual reports, it is mentioned that PWC is the external assets markets consultant. It is also mentioned that that strategy is reviewed on a five-yearly basis and that this was last reviewed in 2017. I reference, for example, the 2020-21 annual report at page 18. Has a review been undertaken, given that the last one was 2017?

**Mr Taylor:** In the last two months we settled a scope of works and letter seeking that PWC review the strategy. All of the 2017 recommendations have been implemented to the satisfaction of the board. Sorry; that is not correct. All of the recommendations that the board accepted and advised us should be implemented were implemented.

Given that the role of PWC is an asset markets consultant, they have no other role but to advise. The board advises me directly and, again, only has an advisory role and can make a recommendation. In some cases, I guess, we might not implement a recommendation. But PWC are presently engaged to conduct the next review.

**MR CAIN:** How long has PWC been in this role?

**Mr Taylor:** How long will they take?

**MR CAIN:** No; how long has it been in the role?

**Mr Taylor:** PWC have been an asset markets consultant—and Robert Johnson prior to PWC—for probably quite some period of time now; at least 10 years. The reason we use PWC is that the market for asset markets consult of that kind is very limited. PWC provides similar services to other public trustees and have a contract with other public trustees, which we are allowed to tap in on.

Most importantly, the advice that they get is based on their knowledge of the activities of public trustees in an investment funds management role. In the past review we asked them to make comment on our internal administration of our cash common fund, and

they made a number of recommendations around that but provided us with the assurance we needed that what we were doing in-house rather than through a broker was at-best industry standard or better. So, yes, we have used them. Prior to PWC, we had Robert Johnson, who probably had the right acumen to give us the advice we needed at the time we developed our own internal investment strategy. But we had outgrown his ability, we felt, and the board is quite satisfied that PWC are doing everything we ask them to do.

**MR CAIN:** Is your contract with yourself and PWC publicly available?

**Mr Taylor:** We do not have an ongoing contract with PWC; we have a contract each time we use them. So if next year we decide that we do not want to use PWC, we will go somewhere else.

**MR CAIN:** So is the current contractual arrangement available?

**Mr Taylor:** Yes; we get a scope of works and we enter into an agreement with them based on their ability to address the scope of works.

**MR CAIN:** Are you able to provide a copy of that?

**Mr Taylor:** Yes. The last one?

**MR CAIN:** Yes, please. Actually, the last three or four and also the process you go through to procure that contract. Is that actually open to the market?

**Mr Taylor:** We do not need to go through a procurement process. The Government Procurement Act regulations set in place three thresholds for procurement. The first two relate to value and then a number of quotes. The third one relates to a full procurement process, and that is in excess of, I think, \$250,000. PWC's contract each time we use it would be—what was the last time?

**Mr Hughes:** The last one was around the \$30,000 mark.

**Mr Taylor:** \$30,000, which is below the two-quote threshold. In any event, though, we are aware that PWC are under contract to other state governments to do what they do. I am also thinking that the ACT government Treasury recommended PWC to us, and they had a presentative on our board. But I would have to check that. So we use the same fund manager that the ACT government does under ACT government contract.

**MR BRADDOCK:** I am interested in the examination of accounts filed by managers funded by ACAT. I notice that ACAT stopped sending out reminders to managers back in 2021. Because the CRM is not in place in that particular module, does that mean that there are no reminders being sent out to managers at the moment?

**Mr Taylor:** Can I answer that by giving a little bit of history as well?

**MR BRADDOCK:** Please do.

**Mr Taylor:** The onboarding of newly appointed private managers was always a

function of ACAT. The only function that the Public Trustee and Guardian has is to receive accounts maintained by private managers, examine them and then report to the tribunal.

In 2020-21 ACAT said to us that they were going to relinquish the role of onboarding new private managers. We had been critical of some of the letters that had been going out to new managers, because they may have had incorrect data on them relating to the anniversary period or the fees to be charged or whatever. But, in that process, we always provided a fact sheet and we helped ACAT develop the stat dec that the private manager needs to complete.

So at the time ACAT relinquished the role, we had no capacity in terms of a system to send annual letters out to some 800 people every year, all with different anniversary dates, to remind them that they had returns due, and to ensure that they had been put in. Our role was to receive them, report on them and report to ACAT on whether they had lodged them or not.

I am happy to say that the second-most recent module we completed in the CRM is one that specifically addresses the issue of private managers. About four to six weeks ago we migrated all the data relating to existing managers into that database, the CRM, as well as all the due dates and we included a prefilled notice—in other words, a standard letter template that prefills the data in relation to each client. So it will add the name, it will add the anniversary date, and it will prompt the sending of that letter at the appropriate time. That is now in place, and the first of those letters will be going out, I would think, in the next several weeks.

From that early background of talking to ACAT in 2021 to today, we have done the full circle. That explains, in our statement of performance, that the number of examinations we did during the past 12 months was down on the year before for the very reason that people did not know or had not been reminded. So I guess, like if you have a driver's licence, you kind of forget when it is due and you rely on the government to tell you but, if you do not, it is not their fault because they did not tell you. We are kind of in that situation, where they are told they have a responsibility to lodge on their anniversary date at the point that they are appointed. There is no question about anybody having a duty or a responsibility to send them a reminder notice, and we are now going to do that.

**MR BRADDOCK:** Do we have an accurate picture of how many private managers there are in the ACT?

**Mr Taylor:** Unfortunately the ACAT database and our database do not talk to one another, and we only ever know about the orders that are made when we receive them. So I guess what I am saying is we probably have a rough idea, but that is affected by the churning revocations, deaths and new appointments at a given time. We think that we probably have about 800 or so and we manage, ourselves, in the order of about 530. If you add the two together, that would be roughly how many appointments we have by ACAT for managers, either us, or private, at a given time.

**MR BRADDOCK:** What I am worried about are those who have not filed any accounts. Are we able, as a territory government, to get a clear picture of that from either yourself

or ACAT?

**Mr Taylor:** We certainly will have now. We know of 800-odd people in our database. We sent a letter out to those people when we were developing the module to tell them what we were doing. We told them that we had taken on the responsibility and that we would be developing a system and sending them out a letter. We got a lot of responses back from people saying, “Hey, didn’t you know the protected person had died?” That was very, very useful in us cleansing the data that we had. Ordinarily, we would not have known that those people had died. They may be living in the ACT; they may not be living in the ACT anymore. So it is affected by the churn and things that are outside of our knowledge.

**MR BRADDOCK:** With the new system, would there be some alert or management system that says an account has not been filed for this particular person?

**Mr Taylor:** Yes.

**MR BRADDOCK:** What action would be taken then?

**Mr Taylor:** We tell the tribunal. If the person does not comply with what they are required to do, we tell the tribunal. We will send them a reminder. There was a fellow who wrote to us during the week. He is an Indigenous person, who has a profoundly disabled Indigenous son, and he had apparently not been aware of what he had to do as a manager when he was appointed two years ago. He has come to us now and said, “Hey, I am really worried. What do I do? I am obviously not complying.” So we contacted Legal Aid to provide this guy with the information that he needed, and we will guide him through the process.

But the aim of that whole legislation is not to belt people around the head unnecessarily. Anecdotal evidence will tell us that elder financial abuse is not happening with persons who are appointed as private managers; it is significantly happening with people who are appointed as attorneys, under powers of attorney, or not at all. We are pretty well aware, not only in the ACT but in other states as well, that persons who are under management orders are generally compliant, and we very rarely find issues where we need to seek disallowance of items claimed by private managers.

I guess the reason for that is that, if you have an adult disabled child, you know that you have that child for life and you are doing what you are doing not just as a role or an appointment but also out of a familial obligation or love, or whatever else you might call it. Generally, those people are not the kind of people who have a mindset that they are going to defraud their disabled child or parent. But I am generalising there.

**DR PATERSON:** Just to clarify: so, as of 2022, all managers are now internal to the PTG?

**Mr Taylor:** All managers—

**DR PATERSON:** Are internal to you, so there will be no more of these private—

**Mr Taylor:** No.

**DR PATERSON:** But they are managed by you.

**Mr Taylor:** Another difference between us and Queensland—and it goes to the misunderstanding that people took out of the ABC's *Four Corners* program—is that, if we go right back to the legislation, the ACAT, in the ACT, can only appoint the Public Trustee and Guardian as a guardian or manager where there is not a willing, suitable person to undertake that role. So they must prefer an individual. If you had a disabled child or a disabled parent and you were involved in the application, they must prefer you if you are willing and if you are capable. If they cannot, then they appoint us as what they might call a last resort. So we are a safety net. In Queensland they do not do that.

Just getting back to your question, the number of times in which they appoint an individual, being 800 at the moment, as opposed to the Public Trustee and Guardian, which is 500—and we are talking only managers there, not guardians—clearly, they are appointing more individuals and keeping them as individuals than they are the Public Trustee and Guardian. Then there is this additional responsibility that, when we are appointed, we are supposed to be doing things that improve a person's capability to manage on their own. In other words, they will not need an order or to find a manager that is alternate to us. I think, in the past year, we have successfully had two orders revoked, because it might have been that the person's disability was episodic or that they had been under medication for something or the other or they had external supports.

We are bringing in a new paradigm called supported decision-making. The cabinet has agreed to a bill, or to make a bill, to bring in the requirement for the tribunal and the manager and guardian to implement the principles of supported decision-making. In other words, looking at a person for whom an application is being made, the tribunal is obliged to say, "Is this person capable of managing themselves without supports?" instead of presuming they are disabled and treating them as a disabled person. So the bill that is being made is going to set that in concrete in the short term until we come up with an ACT model for supported decision-making, which is also part of an ACT government working group.

**DR PATERSON:** A priority in the budget papers was to raise community awareness of the PTG's role and the importance of estate planning. I am just wondering how you are doing that more broadly in the community and what you do see your role there as.

**Mr Taylor:** I would start with the obvious problem we have had with COVID during the past couple of years. We had traditionally held two fairly major community activities during the year. One was in Seniors Week, where we would have two and sometimes three public forums, north side, south side, Gungahlin, Tuggeranong, inner south, inner north. We would get 150 to 200 people of the right demographic along to those—and I am talking older people who do not have wills. We would talk to them about management, guardianship, powers of attorney, estate administration, wills and philanthropy. Those would go on typically for a morning or an evening. We would also do that during what we call Wills Week, later in the year, in October—so one in March and one in October. We have not done those during COVID because having functions with people in person has not been possible, and we are now going out and talking to

smaller groups of people.

Our Deputy Public Trustee for Guardianship reported, I think, 15 forums where she went and addressed groups of businesswomen, parents of disabled children, or schools where they had disabled children approaching adulthood, with questions around what to do and how to do it. For a small office of 60-odd people, we have three representatives on two Law Society committees, and we are strongly involved in the development of new laws and the amendment of laws. We have a regular dialogue with the presidential member of ACAT, in which we talk about problems associated with making orders. This is probably getting off the succession law thing a bit, but we are talking about problems associated with making orders—not so much just making them but administering them. Sometimes there is a mismatch between what the tribunal might think we can do and what we can do.

In the ACT, we contributed to a program for which we received commonwealth government funding, along with all other Australian public trustees, some years ago to look at the prevalence of will-making in Australia. We were interested in that because we needed to work out where to direct our attention. That study found that, across the board, I think around 60 per cent to 65 per cent of capable Australians have a will. It did not ask the question as to whether the will was valid or up to date, but they had a will.

In the ACT, we know that figure is higher. We know that because of the number of people that we have—we have something like 15,000 wills in our own will bank—and we know how many people keep coming back to review their wills and how often they do it and what the triggers are for those wills. We think we are probably a better-informed community around that. We probably make more wills as an agency than any other body. So I think our figures are pretty reliable.

**DR PATERSON:** You mentioned elder abuse, and it is well known that this is an increasing issue in the community, and powers of attorney being the primary way people abuse older people. What are your processes? How do you as an agency identify if this is going on, and then where do you report it?

**Mr Taylor:** The difference for us compared to a non-government attorney, such as us, is that the power of attorney process is largely unregulated, and it is meant to be. It is meant to be an arrangement between you and a trusted person; it is personal, it says they will do certain things, and it is not a public process. However, it has been found over many years to have been a source of abuse, and a good source of abuse, because, when a person waves a registered power of attorney in a bank manager's face, the bank manager is entitled to think, "It has government registration; it must be okay," but nobody tests the capacity or the will or whatever of the person who has been appointed. There is no test of a person's capacity to make the power of attorney. I am not talking about us; I am talking about the private one.

And there is another step. If we presume that a person cannot make a power of attorney unless they have got capacity, there is a test done then, and then the power of attorney, if it is an enduring power of attorney, comes into effect upon certain things happening. One of those things happening is perhaps the person losing capacity. So another test of capacity has to be undertaken then.

It is a commonly known fact that abuse of powers of attorney happens at two trigger points. First, the family decides that mum has not got capacity anymore to deal with her affairs or they might want to accelerate the provisions of her will, and so they hasten to get mum to sign a power of attorney and will hasten for her to be found incapable so that they then manage the money. That is probably being a little bit harsh.

We are quite different in that, even though the Powers of Attorney Act does not impose any accountability on the attorney, we as an organisation have as many as six different levels of review and accountability—this being one of them—and we have lawyers preparing powers of attorney. We always determine the capacity of a person when we prepare a power of attorney. We also ask them whether they have a will or they need a will or they need their will updated. If we are appointed as the attorney in that power of attorney, we will ensure that the person has proof of loss of capacity at the time that we take on the role, whether it be as a guardian or as a manager.

Apart from that, we also have done some comparisons between the power of attorney process and the order of the tribunal process. One is the alternate to the other. During your capacity, your life, you can make a power of attorney. If you lose capacity but did not have one, then you can get the tribunal to appoint a person to represent you. In comparing the two processes, for me, personally, I would say the tribunal process offers far more protection than a power of attorney would. One simple example would be that, if you were found incapable and somebody was appointed as your manager by the tribunal, immediately a caveat would be put on the title of your property, warning people that they have to deal with it. That does not happen with the power of attorney. There are little things like that. Yet we all know that a power of attorney might be preferable because it is a person we choose.

**MR CAIN:** Public Trustee, as you are aware, during annual reports earlier this year, back on 22 February, I raised an instance over the Christmas break where an individual had passed and there was no way for a friend of hers to contact your office, because it was a shutdown period. Obviously there were concerns about what to do with the property and the body. So I am wondering how your office has dealt with that sort of scenario since then.

**Mr Taylor:** The particular instance that gave rise to that was not one where we would have been involved anyway. However, aside from that, what we did was accept that we should have a public policy on after-hours access, which we prepared and published to our website. Interestingly, this morning we had an incident around the department of health having a view that we should automatically step in and make decisions for people in an emergency situation. When you listen to their rationale, it is all based on a policy that ACT Health has rather than fact.

The fact is that we do not have any authority to step in and make decisions for anybody, unless we are appointed by the tribunal. On a weekend or a public holiday, if something happened where a decision is needed, a doctor can make that, as they can in an emergency situation, or, if they feel they do not want to, they contact the tribunal and the tribunal decides whether an order should be made or not made. If the order is made appointing us, they will contact us after hours, as they routinely have, tell us they have made an order, give us a copy of the order so we know what power we have, and then we will receive the paperwork to follow that up on a Monday.

**MR CAIN:** But was it not the case in the scenario that I mentioned that the Public Trustee was the executor of that particular estate?

**Mr Taylor:** In the one?

**MR CAIN:** In the example I mentioned.

**Mr Taylor:** No. I am sorry that I am sounding a little bit uncertain but, in that particular case—without going into names or identity—the particular ladies who had made the complaint had provided the deceased with some gifts while she was in the residential aged-care facility. When their friend died, they then went to the residential aged-care facility and said, “We would like to have some of the deceased’s effects”—namely, the gifts that they had given them, as they wanted them back. The person said that it was a weekend, or something like that, and they could not contact the Public Trustee.

The reality is that we did not have any authority in relation to that person’s property at the time. We were not appointed in that capacity. But we were executor and, at the time of a person’s death, any assets that a person might have had during their life vest in the executor. A person may die on a weekend or on a public holiday, and we might not know for a couple of days that the person had died.

**THE CHAIR:** If you have anything else to add, you can summarise in the next 60 seconds if you are happy to do that; otherwise, we will close the hearing.

**Mr Taylor:** I did provide a briefing, I believe, to Mr Cain on that particular case. We do believe that we did not need to be contacted—

**MR CAIN:** But, if you do have a formal role and there is a holiday break, is there anything in place to allow someone to see you doing that role?

**Mr Taylor:** It depends entirely on the role.

**MR CAIN:** If you are an executor of an estate?

**Mr Taylor:** If it was an executor, it is different entirely to a manager, where there is no immediacy about a person’s property on their death. It may take 12 months to administer an estate. So, from where I sit, there is no immediacy around it, we cannot do anything in relation to that person’s estate. The only money that we can take out of that person’s estate, prior to getting probate, is money from the bank to bury them. We cannot deal with them. If we were a manager or a guardian, that is a different thing all together. But, when they die, that appointment ceases.

**THE CHAIR:** Given that the time is past 1 o’clock, I will draw this session to a close. I thank the Public Trustee and Guardian for your attendance today. If witnesses have taken any questions on notice, could you please provide answers back to the committee’s secretary within five working days? Can I also suggest that, if Mr Cain has any more questions, he can perhaps put them through as a question on notice within five working days from this hearing.

**Hearing suspended from 1.03 to 1.45 pm.**

Appearances:

Davidson, Ms Emma, Assistant Minister for Families and Community Services, Minister for Disability, Minister for Justice Health, Minister for Mental Health and Minister for Veterans and Seniors

ACT Health Directorate

Cross, Ms Rebecca, Director-General

Moore, Dr Elizabeth, Coordinator-General, Office for Mental Health and Wellbeing

Garrett, Ms Cheryl, Executive Branch Manager, Mental Health Policy

Arya, Dr Dinesh, Chief Psychiatrist

Lopa, Ms Liz, Executive Group Manager, Strategic Infrastructure

Canberra Health Services

Peffer, Mr Dave, Chief Executive Officer

McKenzie, Ms Katie, Executive Director, Mental Health, Justice Health, and Alcohol and Drug Services

**THE CHAIR:** We will now hear from the Assistant Minister for Families and Community Services, Minister for Disability, Minister for Justice Health, Minister for Mental Health and Minister for Veterans and Seniors, Ms Emma Davidson, and officials. Welcome.

Before we start, we have to go through some housekeeping matters that I wish to draw your attention to. Please be aware that the proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and web streamed live. When taking a question on notice, it would be useful if you could use the words, “I will take that as a question taken on notice” or words to that affect. This will help the committee and witnesses to confirm questions taken on notice from the transcript.

I remind witnesses of the protections and obligations afforded by parliamentary privilege and I draw your attention to the privilege statement. When you first speak, please state that you understand the privilege implications of that pink statement that is in front of you.

As we are not having opening statements, we are going to go straight into questioning. I might pass my first substantive over to Mr Cocks.

**MR COCKS:** Thank you. I want to kick off by understanding a bit about the ACT’s engagement with the federal government. In March of this year, the government signed a bilateral agreement with the Morrison government which made significant additional investments from the commonwealth to improve mental health and suicide prevention in the ACT. I would like to better understand how that agreement is progressing and how the funding has been integrated into and reflected in the budget papers. Do the activities negotiated by the former federal government form part of the mental health package that was announced in the budget?

**Ms Davidson:** I have read the privilege statement. Thank you for that question. Some

of the things that were included in that bilateral agreement are part of what is being funded in the budget for mental health, but it is not the entirety of it. There is a whole lot of other work that is being done as well, but this is part of it. This bilateral agreement is a really good demonstration of the importance of having the Office for Mental Health and Wellbeing in the ACT and for it to be able to take that kind of whole-of-government approach to looking at people's mental health and wellbeing and what programs specifically work well in the ACT.

What we ended up being able to get funded through that bilateral are programs that work particularly well in the ACT that might not have been done the same way in other states and territories. So it is not like we just took a copy of what happened in other states and territories and tried to apply it here. What we have done here is based on years of research and consultation with the sector in the ACT.

It includes \$6.25 million for an expansion of the Way Back Support Service. That is part of a whole range of suicide prevention and support services that we are doing here in the ACT, including the newly announced Thirrili program for Aboriginal and Torres Strait Islander people for support in that area. There is also the Youth Aware of Mental Health program that is continuing through our schools, and there is the Connecting with People suicide prevention training as well. Those were not part of the bilateral, but the expansion of the Way Back Support Service is a really important addition to our whole range of programs.

There is also \$1.9 million in there for early intervention services for eating disorders. That is a significant increase in funding. That is out for procurement at the moment to find the right service provider who can really add to our territory-wide model of care for eating disorder services. There is also \$8.1 million for a new service for youth at risk who need a trauma service. That service will be co-designed with the community.

**MR COCKS:** And these are all part of the bilateral agreement?

**Ms Davidson:** These are all part of that bilateral, yes.

**MR COCKS:** Fantastic. On that community engagement side of things, I am curious as to where the implementation plan is up to and the degree to which the government has been engaging with the sector or community on that plan and on its implementation. As I have been speaking to a few stakeholders recently, they have told me that they feel a bit locked out of that process and that they have not been engaged in the bilateral or the national agreement process.

**Ms Davidson:** I will pass to Dr Elizabeth Moore, who can talk in more detail about the engagement with the community sector on that youth at risk trauma service, which will be a new service that is starting—and that one requires quite a lot of consultation. That work has come from years of research and consultation with the sector in the ACT, both with services delivered by CHS, with NGOs who are delivering services and with advocacy organisations. I believe there were more than 70 organisations who were consulted at various times in the lead-up to working out what we needed to fund. But I will pass to Dr Moore—

**MR COCKS:** To be clear, I am specifically interested in the implementation plan under

this agreement, which I think was due about a month ago, and whether there has been any engagement around that specific piece of work.

**Ms Davidson:** I will pass to Dr Moore, who can talk in more detail about the implementation.

**MR COCKS:** Thank you.

**Dr Moore:** I acknowledge and have read the privilege statement. For your specific question, Mr Cocks, which is around the implementation, I would like to actually pass to my colleague Cheryl Garrett, who has been dealing with the bilateral in a very contextual manner to the ACT, if that is satisfactory to the minister.

**Ms Davidson:** Yes.

**Ms Garrett:** I acknowledge that I have read and understood the privilege statement. We have commenced negotiations with the commonwealth on the development of the implementation plan. It is slightly behind schedule. That is because we were waiting for a template from the commonwealth. There were also some further delays following the federal election, but that now is well underway.

It is consistent with implementation plans that will be developed across all states and territories. But we would like to take the time to ensure that it reflects the ACT's particular circumstances. We are working in partnership with the commonwealth and our primary health network, the Capital Health Network, acknowledging that they have a contribution to make in this space as well.

The implementation plan will be fairly high level, as there are a number of very detailed projects underway under that bilateral agreement. We will be engaging closely with stakeholders, community sector partners, our NGOs and so on through the development of the specific projects under that bilateral agreement. So there will be opportunities for co-design and for contributions from the community during that detailed process. But, as the implementation plan is fairly high level, an agreement between the commonwealth, us, and our primary health network partner, it is at that kind of, higher level stage.

**MR COCKS:** Fantastic. Is the implementation plan intended to be based on a needs analysis, which is indicated in that agreement?

**Ms Garrett:** The needs analysis will underpin the development of the project planning for each of the specific initiatives, as they will be detailed in terms of the ACT's local circumstances. The implementation plan is intended to be more of a higher-level representation of each project—who is responsible for implementing them, high-level risks and general time frames. It is a framework for us to report to the commonwealth and for the commonwealth to also report on its initiatives about general progress.

**THE CHAIR:** Mr Braddock, on a substantive.

**MR BRADDOCK:** I notice that this budget, along with some recent ones, has made significant investments in acute mental health services. I am just wondering: what more

can the government do to invest in preventative mental health services and early intervention?

**Ms Davidson:** That is a really good question. It is about trying to get the balance right in making sure that we are providing those acute care services that people need, as well as providing the prevention and early intervention services that, hopefully, reduce the number of people who end up needing acute care over the long run.

There are a number of things that we are doing in this budget that really build on that prevention and early intervention work. You have heard me talk about some of them before, in relation to MindMap, the youth navigation portal, and the Eating Disorders Clinical Hub and some of the early intervention and parent support programs that go with that.

There are also some things in this budget that will help with people being able to get access to services in the community at an earlier stage, like the expansion of Child and Adolescent Mental Health Services in Gungahlin. We know that there are a lot of young people there who are going to need access to services, and being able to get access closer to home is really important.

As well, we are doing things like providing postnatal dialectical behaviour therapy for mothers and babies, and an expansion of adult dialectical behaviour therapy through the HAART program. There is a whole lot more work that we would like to be able to continue doing in that prevention and early intervention space, so I think you can expect to see more of that from us in future.

That includes things like improving facilities for services that already exist, like CAMHS in Woden; making sure that we have a really good understanding of the need for mental health services in our Aboriginal and Torres Strait Islander community, doing some needs analysis work there; and looking at what we need to do around models of care for mental health supported accommodation and the interactions that that has with some of my other work—for example, as the Minister for Disability, looking at what happens with SDA and SIL accommodation for people with mental health conditions long term.

It includes the NDIS, as well as things like MyHome in Canberra, and making sure that people who might need respite accommodation have places that they can go. All of these things are interconnected. If we can invest in and look at the right places for those early intervention programs then that will make a big difference to the number of people who end up in crisis later on.

**MR BRADDOCK:** What is the business case for those preventative or early intervention services that you mentioned might be coming down the track? I assume a stitch in time would save nine, to use the saying.

**Ms Davidson:** Yes. Again, this is the importance of having an Office for Mental Health and Wellbeing, and for them to be able to work across government and to look at some of those social determinants of people's mental health and wellbeing. It is things like housing and homelessness, and people's ability to maintain employment. And they need to look at what is happening with people who might have experienced trauma, such as

through domestic and family violence. All of those things are interconnected with people's mental health.

Being able to continue the work of the Office for Mental Health and Wellbeing gives us that really good, solid evidence base for what services we then need to invest in in future budgets. That expansion of the Gungahlin CAMH service is a really good example of that: being able to take the work that they have done over a long period of time to understand youth mental health needs and looking at where we can best deliver those services.

**MR COCKS:** In your response, Minister, you were talking about the needs analysis you have undertaken in this work. I am curious as to whether the analysis that you have undertaken has utilised the National Mental Health Service Planning Framework at all and, if so, what that showed about the level of workforce the ACT would need and where we sit now?

**Ms Davidson:** There are two elements in that: the needs analysis process and future workforce needs. I might pass to Dr Elizabeth Moore to talk a little more about the process that they go through in putting together that evidence.

**Dr Moore:** Thank you. There were two parts to that question. The first was around mental health promotion, prevention and early intervention. We are very keen to use a strengths-based approach. That is what MindMap has used. It is the use of digital platforms in order to help people help themselves. It is really important, as part of our work, to perhaps think of it in three ways. The first is mentally healthy communities. Then there is support for people going through a mental health issue. The third one is around structural system capacity. The office has been in the ACT since the end of 2018, and our first work plan put forward roughly those three areas. Just recently we have looked at a slight update to that systems approach.

We also did a children and young persons review, noting that most mental illnesses start early in life, from age 12 onwards, so trying to get in early. MindMap takes advantage of some of the programs that the commonwealth has put together in terms of digital programming but it also has a back end to it. It has clinical and non-clinical navigators so that young people, their carers and service providers can connect up to services. It is really trying to get that coordination element in there.

We also, in our children and young persons review, identified that there was a need for mental health skills development in year 9s. An evidence-based program from Europe called Youth Aware of Mental Health has now been instituted for over 6,000 students across the ACT, and we have funding for that to continue for the next year.

We also identified in that process that the eight to 12-year-olds wanted something. When we went out to them—and it was a really good community process—they said they wanted some more skills to help themselves and to help their friends. We have done a literature review of what is available in that eight to 12-year-old group and then we will go forward with the Education Directorate and non-government schools to look at what we can institute in that place.

**MR COCKS:** It sounds like it has not used the National Mental Health Service

Planning Framework.

**Dr Moore:** The National Mental Health Service Planning Framework looks at—

**MR COCKS:** The epidemiological tool is the thing I am talking about.

**Dr Moore:** Yes. It is a modelling tool. It is provider-blind as well. That is one of the things with the National Mental Health Service's Planning Framework: it has some limitations in smaller jurisdictions. We do use it as part of planning, and there is a national mental health workforce plan that we have been a part of. That is almost ready to be released. We also have an ACT mental health workforce framework that is under consideration by cabinet. Following that, the more detailed planning will occur.

**DR PATERSON:** Minister, as part of the parliamentary and governing agreement, one of the agreed items was to work with landowners and community organisations to deliver the MyHome proposal in Curtin. I am wondering if you can provide the committee with an update on that?

**Ms Davidson:** Yes. Thank you. There have been a number of conversations between my office and the MyHome board, as well as between the MyHome board and various parts of the ACT government. That includes the Office for Disability as well as ACT Health.

They have been doing a lot of work on better understanding the model of care that would be required, because it is not just about providing a roof over someone's head; it is about providing those wraparound support services as well. It is about looking at how that might interact with the care people are receiving from their family and friends at the same time, and also about making sure that they are thinking about how we make this viable, to be able to continue this service long term, because it is not just about building a building; it is also about how you make sure that there is support.

They have made some really good progress. There have been some really complex problems for them to work through. One of the big difficulties is that a lot of the funding support for people with enduring mental health conditions has been redirected to go through the NDIS and the NDIS is not particularly well equipped at the moment to support people with long-term psychosocial conditions.

There is some work that needs to be done within the NDIS review around how we are going to be able to support people with these kinds of conditions long term and how this interacts with housing services. Right now that means that the MyHome board have had to think through some really complex issues in dealing with both state and federal levels of bureaucracy. That has been quite a lot. They have been very persistent and very communicative with the Office for Disability and ACT Health in working through all of that.

**DR PATERSON:** I think I have asked this question before in hearings and there might be a very similar answer to the one that you gave last time. I am just wondering if there is any evidence that things have progressed. The model of care has been discussed from the beginning, so is there a time frame for when a decision on the model of care will be decided? What are the next steps?

**Ms Davidson:** Yes. In order to progress to the next stage there are a number of steps to go through, with business cases and seeking funding and being able to provide enough information to demonstrate what is going to work well and how we are going to get to that point. We are working through all of that with MyHome board and I am very confident that we are going to be able to produce something that will result in a decision being made. It just was not able to be done in time for this budget.

**DR PATERSON:** So is there any indicative time frame for when a business case might be ready. Will it be for next budget?

**Ms Davidson:** That is something that we are working through in partnership with the MyHome board, so it is not something that I can give a unilateral date on. I need to work through that with the MyHome board because it is their project.

**DR PATERSON:** Is the MyHome board separate to the Home facility in Queanbeyan? Is this a separate board or is that the board of Home in Queanbeyan?

**Ms Davidson:** It is a separate board.

**DR PATERSON:** Okay. Who is on the MyHome board?

**Ms Davidson:** They have got a website. I believe you can have look on the website and it will tell you who their current board members are. It involves quite a lot of different skill sets. It is also worth considering that piece of work in conjunction with the work I was talking about earlier around a model of care for mental health support and accommodation more broadly and understanding where the service gaps are and what the levels of demand are that we need to meet.

**DR PATERSON:** So just to clarify: you are waiting for the board to then report to you on the model of care and what is needed in the budget, then it will go through a budget?

**Ms Davidson:** We are in ongoing conversations with them about the process that we are working through together. That also is happening in conjunction with that piece of work I was talking about for mental health supported accommodation and what that means more broadly. The MyHome service addresses one particular area of mental health supported accommodation, but we know that there are other areas of need as well—things like respite care, people who are going through the NDIS process—all sorts of other areas.

**DR PATERSON:** Thank you.

**MR COCKS:** I want to go to the community-based residential eating disorder treatment centre. Minister, during question time on 3 August 2022 you said, in relation to the residential eating disorder treatment centre, that you are on track to deliver that piece of work within the original time line and that you are not expecting any major delays. But the budget papers reveal that the physical completion date has been delayed from June 2023 to December 2023. Furthermore, the then Minister for Mental Health, on 2 June 2020, advised that construction would start in 2021-22. In your answer during that same question time you confirmed that construction had not yet started. When the

budget shows a six-month delay and construction has not started when the previous minister said it would, how can you assert that you are on track and that there are no delays?

**Ms Davidson:** Thank you. The original time line for that piece of work is set out in the agreement with the commonwealth. We will be meeting our obligations to the commonwealth there. I am not seeing that there is a change, really. It might be worthwhile coming to the Molonglo Valley Community Forum on Thursday night because I will be showing people some pictures of what the concept design looks like and having a conversation with the community about what this will look like if we can go ahead with building that facility on the block in Coombs that we have in mind for it. There are processes being worked through, and that is all going to be completed within that original time line that we agreed to with the commonwealth.

**MR COCKS:** Given the statements of the previous minister which did have a specific time line, why have we not started construction yet? Why are we still at the stage of showing pictures of what things might look like?

**Ms Davidson:** You are asking why things might have changed since a previous minister talked about a time line in 2020, before the current COVID situation and all of the impacts that has had on the construction industry?

**MR COCKS:** I am asking why, given the commitment to a time line, has there been a shift? Why are we being told that it is still on track, on the same time line we were looking at previously? And why has construction not yet started?

**Ms Davidson:** Construction will start once we have completed the detailed design stage and have gone through the procurement process for the land and found someone to build the facility. All of those things were going to happen, regardless of who is currently here.

**MR COCKS:** In that case, it is a bit unclear to me what stage we are at. It sounds like detailed design work has not been started. It sounds like the land has not been procured, and it sounds like we are significantly delayed from where things were when this project was put forward.

**Ms Davidson:** We are sticking with the original time line that was agreed to with the commonwealth when they provided funding for this piece of work, and we are continuing with all of the steps that we need to go through to follow proper procurement procedures to build this facility.

**MR COCKS:** And what stage are we at now?

**Ms Davidson:** We have completed the concept design and we are going through processes to acquire the land. We will then have to go out and find someone to build the facility. There is also a detailed design process to go through, which involves some more engagement with the community, including people with lived experience, which is very important when you are building a service that we have not seen anything like in the ACT, and in fact in Australia, to provide services to people within the public health system.

**MR COCKS:** Just for my understanding, you have said that the time line that I am looking at in public statements is not correct. Can you tell me: what is the original time line for this project and why does that differ from those public statements from your government?

**Ms Davidson:** I might pass to Cheryl to talk in more detail about the steps in the time line. It is worth knowing, though, that we made a commitment to the commonwealth on the time line by which the eating disorder residential centre would be open and able to provide services to people and we are still working to that commitment. I will pass to Cheryl, who can talk more about the steps and the time line.

**Ms Garrett:** Thanks, Minister. On the time frames with the commonwealth, we built in some flexibility as there were a number of moving parts. All states and territories were provided with funding from the commonwealth for a residential treatment centre. The ACT is the most progressed state or territory in terms of its design work, having identified a site and having progressed the development of a model of care, having engaged with people with lived experience, and having strong governance arrangements set up around it. The time frames are as the minister said. We have a concept design that is well progressed and is progressing to detailed design work. Commonwealth funding only came through for this project from last financial year, so we were using that to do the initial design work, and it is now progressing through those stages.

**MR COCKS:** It is great that you told the commonwealth government a particular date. I am still curious about why that differed from what the government has told the community.

**Ms Cross:** I am happy to take that on notice. I suspect we had to wait until the funding from the commonwealth turned up before we could then put matching funding in our budget. That would have meant that we had the original intention, and if the commonwealth funding arrived later it would have impacted on when we could commence. But I will take that on notice and get back to you.

**MR COCKS:** Thank you.

**MRS KIKKERT:** Currently, WA and the ACT are the only jurisdictions that allow prisoners to smoke on prison grounds, despite the fact that our prison is supposed to be a smoke-free zone. We know this is to be a fact because of the inspector of corrections report that was tabled back in 2019. A 12-month temporary position for the AMC smoke-free project has recently been advised. Given that the job description is only for a 12-month temporary position, is it the intention of the government to have the AMC smoke-free, finally, within 12 months?

**Ms Davidson:** I might pass to Katie to talk in more detail about the process of becoming smoke-free in the AMC and the steps that we need to go through to do that.

**Ms McKenzie:** I have read and understand the privilege statement. The question, at the core, is about the intent to deliver a smoke-free AMC within 12 months.

**MRS KIKKERT:** That is correct.

**Ms McKenzie:** I can say that our partners at JACS are fully intending to do that. They hold a detailed project plan and have a project control group to lead that. In terms of resourcing to support it from a justice health perspective, we have dedicated resourcing, which will be a nurse, as part of that project, but we will also look at whether there is ongoing need to support smoking cessation on entry to AMC.

**Mr Peffer:** I might add to that, if I could. The intent behind the plan and the execution of that responsibility actually sits outside the justice health portfolio. We are obviously there to support, in terms of transitioning people, but the intent behind that plan is held by the Minister for Corrections.

**MRS KIKKERT:** Thank you. The recent smoking cessation program ended quite dismally, with only one detainee reporting that they had reduced their daily tobacco consumption. Is the government truly confident that it will have a smoke-free prison within 12 months?

**Ms Davidson:** I think that is probably a conversation better had with the Minister for Corrections because there is quite a lot of work that they will be doing to support that happening. But, certainly, when there are people in the AMC who want access to programs that can help them reduce their tobacco use, Canberra Health Services do make that support available to people.

**MRS KIKKERT:** Are you also providing support for corrections officers, staff, to stop smoking?

**Ms Davidson:** I will ask if Katie McKenzie might be able to help with that one.

**Ms McKenzie:** No, we will not be providing staff support. Our support will be focused on detainees.

**MRS KIKKERT:** Okay. From my understanding, ACT Corrective Services staff could obtain \$100, reimbursed to them each year, for smoking cessation programs. That is not delivered by you guys? It is delivered by Corrective Services?

**Ms Davidson:** Sorry, was that a question about quit smoking programs for corrections officers?

**MRS KIKKERT:** That is correct.

**Ms Davidson:** That would be a question better directed to the Minister for Corrections, I think.

**MRS KIKKERT:** Okay, so you are only targeting detainees, not corrections officers; right?

**Ms Davidson:** What I am saying is that I am the Minister for Justice Health. The Minister for Corrections can talk to you in more detail about services provided to corrections officers.

**MRS KIKKERT:** But just to clarify: the smoking cessation program that you deliver currently is only for detainees and not for corrections officers.

**Mr Peffer:** That is correct.

**Ms Davidson:** Yes, that is correct. If you are talking about support for staff, that would be better directed to the Minister for Corrections.

**MRS KIKKERT:** Okay. Great; thank you.

**Mr Peffer:** Sorry, Chair, could I just acknowledge that I have read and understood the privilege statement ?

**THE CHAIR:** Yes. Katie, have you acknowledged the pink privilege statement as well? I am not sure if you did earlier or not.

**Ms McKenzie:** I think I did, but I am happy to say I have read and understand the privilege statement.

**THE CHAIR:** Thank you very much.

**Ms Davidson:** Chair, could I acknowledge that I have read and understand the statement? Thank you.

**THE CHAIR:** Anyone else want a go? You may as well say it and get it over and done with!

The next substantive question is from me. It is in relation to custodial mental health staffing at the AMC, so hopefully it falls under this area. Budget statements C shows an increase of 174 Canberra Health Services employees from 2020-21 to 2022-23. Despite this, in April 2021 the Auditor-General identified that 30 per cent of custodial mental health staff positions were unfilled and 50 per cent of psychologist positions were unfilled. It was also revealed in a question taken on notice that for the last four years the custodial mental health team has never been fully staffed. Given the projected increase in Canberra Health Services employee levels, will we finally see a fully staffed custodial mental health team?

**Ms Davidson:** Thank you for that question. There is actually a justice health strategy piece of work currently underway which will also help us in better understanding where there might be gaps in resourcing and how we can best make use of what we have. But I might pass to Mr Peffer to talk in more detail about the workforce.

**Mr Peffer:** Thanks, Minister. I might start off and hand over to Katie or Kalena online to continue. At this point in time we continue to carry shortfalls in the workforce in those settings, across the mental health and justice health portfolios. We are carrying shortfalls in administrative, allied health, nursing and medical positions. We have engaged a range of VMOs to narrow that shortfall, particularly in medical, but there are ongoing efforts to recruit to our nursing and allied health positions. I might hand to Ms McKenzie to talk about the overarching strategy that we have got there.

**Ms McKenzie:** Thank you. Our budgeted FTE for the justice health portfolio is 55.8, and that does include nursing, medicine and allied health. Our current FTE is 49.67. There is a shortfall that currently exists in the medical staff, not the allied health. But recruiting to that setting is a continual piece of work.

**THE CHAIR:** Okay. Thank you.

**MR BRADDOCK:** My question is about the AMC. The size of the detainee population there has obviously increased since it was first built. Is the Hume Medical Centre still fit for purpose and appropriate for the number of detainees that need to access that medical service?

**Ms Davidson:** Thank you for the question. There has been an increase in the number of people that we are providing health services to out there. Over time, best practice for how we can deliver services improves, as we learn more as a society about how we can best provide care to people who are in detention. It would not be unusual at this point in time to be thinking about what the future of the delivery of health services out at the AMC is and whether there are things we can do better.

The size and layout of the Hume Health Centre are important, but the location of it in relation to where people who might need health care are located is also important. It makes a difference in how many corrections officers need to be there just to walk people to and from health services and the waiting areas and how many people you can have in there at a time and the mixing of different groups of people there.

All of these things have an impact on service delivery. If we can get not just the size and the layout but also the location of where we deliver health services right, it will make it a fair bit easier to make sure that we can deliver the best possible health services. This is something that we should be thinking about as we are looking at a justice health strategy over the rest of this year.

**MR BRADDOCK:** So you are saying that the location, size and the layout impact the delivery of justice health services. What are those impacts? Can you provide more detail on those?

**Ms Davidson:** Yes. I might pass to Katie McKenzie who can talk about the practicalities of delivering health services in that environment.

**Ms McKenzie:** Sure. So specifically about the size and layout is that Hume Health Centre within the AMC is a centrally located physical position, so some of the healthcare delivery has to happen in the accommodation units, so that takes both custodial staff as well as justice health staff to the accommodation unit as opposed to care within the Hume centre. So that is just a transactional consideration and does actually impact on the amount of staff that are needed. I think there is, as the minister said, an ongoing commitment to have a look at contemporary good, strong ways of delivering care in that setting and we are currently working on that through both the strategy and clinical service planning.

**MR BRADDOCK:** Is there a privacy concern about delivery of justice health services

in the accommodation areas?

**Ms McKenzie:** Some of the care that is delivered in the accommodation units is medication delivery/observations. Is there a privacy concern? I think it is something that the justice health team are considerate of.

**DR PATERSON:** This may be a very quick one—I am not sure—in respect to the Child and Adolescent Mental Health Service. I have written to you before about the Callum Street offices just not being conducive to good mental health. The response I got back was saying that suitable accommodation was currently being investigated. I am just wondering where that is at? Have they moved?

**Ms Davidson:** Yes. Very good point and yes, that building has been in use for government offices for various directorates for a really long time. I remember going out there relatively early in my career, like more than 20 years ago, to work with ACT government clients out there. It is definitely a building that is reaching its end of life. But, recognising that, we are putting in place plans to move that mental health service to a more suitable location. We are going through the process for that at the moment. And I expect that we will be able to provide some updates later on this year about what that location will look like. We are keeping in mind that things like access to public transport and making sure that the location that we go to is something that is very accessible for people.

**DR PATERSON:** I guess, perhaps it would be good to get some more detail on what the process is, because I think the first time I wrote to you about it was nearly two years ago—so if there are some solid timeframes on when or where a move may be.

**Ms Davidson:** Yes, there are some processes that are still being worked through that mean that we are not able to make an announcement just yet, but I believe that we are not too far off being able to talk to people about where and when this change will happen.

**DR PATERSON:** In the meantime, how are staff at that service? I have heard reports of lots of problems with the building that make their ability to function as service providers challenging. Is the government working with members of that service to ensure that it is a safe environment but also one that is conducive to good mental health outcomes for children and adolescents?

**Ms Davidson:** Yes, absolutely. Making sure that people have a safe workplace is very important. We take that very seriously. I might pass to Katie who can talk some more about what is being done to keep that place a safe work environment before the move.

**Ms McKenzie:** In the last three months we have rectified a number of issues that have been raised as immediate concerns for a safe work environment. So, we have actually achieved good progress in that, but the ultimate goal, as the minister said, is to move to a more therapeutic environment that is fit for purpose for the young people and their families who visit there. So I too, am hopeful we will have some detail on that soon.

**DR PATERSON:** Thank you.

**MR COCKS:** Back to the residential eating disorder treatment centre: \$8.15 million

has been rolled over from financial years 2021-22 and 2022-23 into 2023-24. Why has this substantial amount of money been rolled over into next financial year?

**Ms Davidson:** Thank you for the question. As we were talking about earlier, we are working through the process, at the moment, to do the detailed design brief, acquire the land, and then, engage someone to build the facility. And that takes some time to do, so this is about when payments will vary as parts of the project are likely to fall due. As you can imagine, for a facility of this size a substantial amount of the cost is going to be in actually building the facility.

**MR COCKS:** Yes, so what planned work was not completed in 2021-22 and not due to be completed in 2022-23 but now have to take place in 2023-24?

**Ms Davidson:** So referring back to the previous answers about the timeline and when we received money from the commonwealth and could therefore start work on doing the design work for this project, that all has a flow-on impact to later stages of the project. Is there something that you are looking for more detail on there?

**MR COCKS:** It would be very useful if we could get the specific dates from that timeline.

**Ms Davidson:** For when we are expecting things to happen or?

**MR COCKS:** Yes, the original dates of the original timeline for the project.

**Ms Cross:** I can read you the dates from the agreement with the commonwealth, if that would be helpful.

**MR COCKS:** Yes.

**Ms Cross:** So, under the agreement that was signed with the commonwealth, the first milestone was to provide a plan acceptable to the commonwealth and that was in 2021-22, which was when the funding appeared in the budget. Then there was a milestone for 2022-23 when we get a further \$6.5 million from the commonwealth. So there will be progress associated with that. And then, the final milestone was 2023-24 of \$2 million, which would be completion in 2023-24.

**MR COCKS:** So I assume this is a federal financial relations agreement, so are they all published on the FFR website and available?

**Ms Cross:** I believe they are all published. I will just check, as far as I am aware, it is published, yes.

**MR COCKS:** Yes. And I assume that we are hitting all of the milestones on time so far.

**Ms Cross:** So yes, we are on track with the commonwealth agreement, as the minister said earlier. So completion in December 2023, for example, would fit within their 2023-24—

**MR COCKS:** Okay, so on notice, can you just provide those specific dates, you seem to be unsure about whether it is published, along with the previous point about the difference between those dates and the public statements.

**Ms Cross:** So I have read those dates onto the record. In terms of the other dates, the original announcement with the commonwealth was 2019 but the funding from the commonwealth did not appear for the ACT until 2021-22. So there was a delay between an announcement that we would have the clinic and then, the commonwealth, through their own processes, did not provide the funding to the ACT for one or two years after that—

**DR PATERSON:** Supplementary.

**THE CHAIR:** Yes, if you have got another supp, I will come back to you.

**MR COCKS:** No, that is all right.

**THE CHAIR:** But I will go to Dr Paterson.

**DR PATERSON:** I am just wondering in respect to eating disorder treatment and services, so the clinical hub was established earlier this year, just wondering how that is going.

**Ms Davidson:** Yes, so I might pass to Katie to talk in more detail about that but yes, that was established in January of this year and is doing some great work in keeping various service providers connected and building our skills in the ACT.

**Ms McKenzie:** Thank you. Probably, the clearest indicator I can give of the success of the clinical hub is in January of this year, the longest days on the waitlist were 675. As of July, the longest days on our waitlist are 64. There has been a significant improvement in access to treatment and coordination of treatment.

**DR PATERSON:** Great, very good to hear.

**MR COCKS:** Just quickly, just since we touched on the commonwealth contribution, I am curious about that roll over I was talking about, of that \$8.15 million, how much is made up of the commonwealth's \$13.5 million contribution?

**Ms Cross:** I will just check if there is anyone in Bowes Street who can answer that, otherwise we will take that on notice.

**THE CHAIR:** Online, via WebEx.

**Ms Lopa:** Sorry, just in Bowes Street, we have trouble hearing the question.

**THE CHAIR:** Can you repeat the question, Mr Cocks.

**MR COCKS:** I can. How much of the \$8.15 million that was rolled over from financial years 2021-22 and 2022-23 into 2023-24 is taken from the commonwealth government's \$13.5 million dollar contribution?

**Ms Lopa:** Thank you. I have read the privilege statement and acknowledge it. Thank you, Mr Cocks. I still had a little bit of trouble hearing you, but the funding for the eating disorder residential treatment facility is all provided by the commonwealth, so the commonwealth \$13.5 million is being used for all the project at this point in time.

**MR COCKS:** Thank you.

**Ms Lopa:** Does that answer your question, sorry?

**MR COCKS:** Thank you. I am happy to put anything else on notice.

**MRS KIKKERT:** Minister, do you provide bleach powder to detainees at AMC?

**Ms Davidson:** That is a really good question, I might ask Katie if that is something—it does not sound like something that we would normally provide as part of the health service but if you are thinking about for cleaning purposes, it could be a question directed to the Minister for Corrections.

**MRS KIKKERT:** I can refer you to the budget reference detainee hygiene policy: “detainees can access the following through Justice Health Services,” which includes access to bleach sachets to protect against the transmission of blood-borne viruses.

**Ms Davidson:** Okay.

**THE CHAIR:** Just in the budget statements C book.

**Ms Davidson:** And so, your question is, are we actually providing what we have listed in the budget statement that we have said we are providing?

**MRS KIKKERT:** And you are not aware that you are actually providing it, thank you for clarifying that, Minister.

**Ms Davidson:** No, I have not actually said that. What I have done is clarify the question, would you like me to pass that to Katie McKenzie to answer?

**MRS KIKKERT:** And also, if you will answer, Katie, please: how many of these sachets have you distributed throughout AMC? And how often do you top them up?

**Ms McKenzie:** Thank you, Minister; thank you, Ms Kikkert. I will have to take that as a question taken on notice.

**MRS KIKKERT:** Okay. You may need to take these on notice; you may not. If a detainee is requesting these bleach sachets, do you ask them questions about why they need this bleach powder?

**Ms Davidson:** I might ask Katie if she would like to respond to what would be the process for someone to access bleach powder?

**Ms McKenzie:** I will have to take that as a question taken on notice as well.

**MRS KIKKERT:** Okay. Thank you.

**THE CHAIR:** Any other supplementaries?

**MRS KIKKERT:** I think I might need to put them on notice. They do not know. Thanks.

**THE CHAIR:** In the government's response to recommendation 13 of the JACS report into the 2021-22 Appropriation Bill, they agreed in principle to provide diagnostic assessment of fetal alcohol spectrum disorder among detainees in the AMC and to identify appropriate interventions to support detainees living with FASD while in custody. So, the question is: what is the status of implementing the screening for FASD in AMC?

**Ms Davidson:** Thank you for the question. This is something that is an ongoing piece of work as part of the disability justice strategy. I might pass to Katie McKenzie who can talk some more about screening and assessment for FASD.

**Ms McKenzie:** The screening process is under the remit of justice and custodial services. That question might be best directed to the minister.

**THE CHAIR:** Okay. A supplementary, then, is will FASD screening also be available at Bimberi?

**Ms Davidson:** Thank you for that question. If you would like to ask me for some more detail about Bimberi when we are doing the Community Services Directorate hearings tomorrow, I will be able to pass to the right person.

**THE CHAIR:** I think I will be here!

**Ms Davidson:** In terms of screening for people at AMC, the Minister for Corrections can talk about the induction processes, screening and assessment.

**THE CHAIR:** Okay. Thank you very much.

**MR BRADDOCK:** I just wanted to check if the justice health approach towards drug use and addiction is a health-centred approach, in terms of we treat it as something that can be addressed through health preventions and measures rather than a punitive approach.

**Ms Davidson:** That is a really good question. There is some work being done on the justice health strategy that would also take into account alcohol and drug use and treatment options for people who want to do that. I can pass to Katie McKenzie to talk more about the services that we are offering there and the approach.

**Ms McKenzie:** Thank you. We do take a harm-minimisation approach for drug and alcohol education and support in the AMC, and we have a dedicated position to help in that space of education, treatment and support.

**MR BRADDOCK:** Okay. What I am concerned about is the overlap between Corrections and justice health, where there might be measures taken by Corrections staff that actually impact the health outcomes that you are striving to achieve through a harm-minimisation approach. Have you experienced that?

**Ms McKenzie:** Thank you for the question. No, I have not experienced it, but I do think clarity in that overlap is very important, and that is one of the outcomes we are hoping to achieve in our justice health strategy.

**MR BRADDOCK:** I have an example where a prisoner tested positive to a substance. Instead of us taking a health-centred approach to that individual, they can actually be punished in various forms by corrections officers in terms of maybe not being able to access opioid replacement therapy or maybe losing some of their privileges. I am wondering about how this actually works, where we have two arms of government that are not necessarily syncing with each other.

**Ms Davidson:** If you are asking about the corrections officer's approach to things, you are probably best directing that to the Minister for Corrections.

**MR BRADDOCK:** I suppose the question is about the impact on detainee health from both of these elements.

**Ms Davidson:** Yes.

**MR BRADDOCK:** I take your feedback on board.

**DR PATERSON:** Thank you. This may not be the appropriate hearing, but I will test it out anyway. Funding through the COVID community inclusion funding—there was, for example, a program set up called Dinner With Friends, which was around building meaningful connection with neurodiverse young people during COVID. It seems like it was a fantastic program, highly successful. When they come back to seek further funding, they do not really sit within any defined area. I was wondering: out of COVID, and as the minister for mental health, recognising the importance of community connection and connectedness as a major contributor to good mental health, is there room to expand grants in that area on a more sustainable basis?

**Ms Davidson:** Thank you for that question. What you are talking about there is the relationship between clinical health needs and wellbeing and making sure that we look after wellbeing. That is the prevention space that we need to do a lot more work in, particularly as we are coming out of COVID, knowing that there has been a lot of people who have experienced economic impacts, social isolation and things like that, as well as health impacts. I am changing hats for a minute as the minister responsible for community recovery from COVID and the social recovery framework that is being funded in the ACT budget out of the Community Services Directorate. That is a really good conversation for us to have tomorrow, I think, in the CSD hearing, about how that social recovery framework will work and what kinds of things we need to look at in terms of having a community-led but government-supported recovery from COVID.

**DR PATERSON:** In that sense, it is a good thing that you are minister for mental health and minister for COVID recovery, because those things are very linked. Do you think

there are more connections between community wellbeing activities and mental health, directorate and health services—the clinical-social mix that we could be pursuing in the ACT?

**Ms Davidson:** Absolutely. We have a real focus on prevention and wellbeing. So having the wellbeing indicators in government decision-making is a really important step forward, but also making sure that we still have the Office for Mental Health and Wellbeing able to work across all of the directorates to support the work being done by other directorates, in making sure that we are thinking about people's mental wellbeing in all areas of government policy and programs. That is absolutely something we are committed to continuing.

**DR PATERSON:** Great. Thank you.

**MR COCKS:** You mentioned the wellbeing indicators that the ACT government mentions. On page 64 of the budget outlook it is cited that only eight per cent of Canberrans were experiencing high levels of psychological distress in 2021. I am curious how that marries with the work undertaken by the ABS, which showed extremely high rates of mental distress and mental illness, particularly through 2020 but presumably that flowed into the same period.

**Ms Davidson:** Before I pass to Dr Elizabeth Moore, who can talk in more detail about what levels of distress people might be experiencing and what we are doing about it, this is something that we expected to need to deal with when we went through that lockdown in 2021, and that is why the ACT government committed additional funding to programs that would support people's social connection and help them with managing what are actually normal responses to really stressful situations during extraordinary circumstances. I will pass to Dr Elizabeth Moore, who can talk more about levels of distress in the community.

**Dr Moore:** Thank you, Minister, and thank you for the question. We have been tracking, obviously, people's psychological distress over the period of COVID. One particular survey that we have used is the University of Canberra, Living Well in the ACT. There are other surveys around. It has been really interesting to see that the levels of psychological distress, as you would expect, have changed over time. So, when the survey was taken relates to when the psychological distress was worse. We also have other markers of psychological distress, such as appearances at emergency departments. And we have obviously been talking to community, both Aboriginal and Torres Strait Islander and then culturally and linguistically diverse community, and of course LGBTIQ community, which have more vulnerabilities in terms of mental illness.

It is something that we really want to keep tracking. We know from the research what actually helps in terms of psychological distress, and we know that social connection is really important. So we work very closely with CSD, with Education, and with all of the directorates, in terms of actually looking at how we can improve that social connectedness.

If you talk to the business community, they had particular challenges during COVID. And so we had a community led, or a business led, recovery focus in that. Business likes to talk with other businesspeople. So it was not—

**MR COCKS:** Okay. Sorry, the question was to do with the discrepancy between—an eight per cent level of mental distress and the very high levels that you see in the ABS data. So the ABS report came out showing that roughly two in five people are suffering from a mental illness—that is a diagnosable level mental health issue that we are facing. That is far beyond the numbers that we are seeing here. And we know historically that generally we are sitting at the one in five level. I am just struggling to marry that with eight per cent.

**Dr Moore:** One in five people will suffer with a mental health condition. That is different from levels of psychological distress, which we know varied very much over time. So, in fact, if you look at some of our output indicators, we see there that in fact about 50 per cent of people say that they have good or high levels of psychological wellbeing.

This is, I think, evidence of resilience within the community. So we are not talking about mental illness. We are talking about psychological distress. And there will be discrepancies over time. There will be discrepancies in various parts of the community—those that have more vulnerabilities. And I think the nuance needs to be there.

**MR COCKS:** So it sounds like this may come down to a point in time issue.

**Dr Moore:** Possibly, yes.

**MR COCKS:** Okay. Thank you.

**Dr Moore:** Or it is a sampling issue.

**MR COCKS:** Thank you. I want to turn to the Dhulwa Unit and the independent inquiry, minister. Have you, have the government, received a copy of the preliminary report, including a draft? If not, when do you expect to see it? And will you be releasing that information?

**Ms Davidson:** Yes, thank you.

So that inquiry is independently chaired. Now that the inquiry is up and running and taking submissions, and doing its work, I will be hearing from them again when the interim report comes out. I can pass to Mr Peffer, who can talk about the timeline for when the interim and then the final report are due.

**Mr Peffer:** Thank you, minister.

Just in terms of the timelines, it is being independently chaired. The support for that inquiry is being provided out of the Chief Minister's directorate, so not one of the health directorates.

The inquiry is running for 18 weeks. It was accepting submissions up until 7 August. I understand quite a significant amount of material has been provided. Certainly from Canberra Health Services, we have provided a range of reports and data to help guide

that. So I imagine that Ms Deegan and her team will require some time to work their way through the details of that inquiry before a draft report will be forthcoming. However, we would expect that to be in a few weeks.

**MR COCKS:** Okay, so that interim report you refer to, is that the same as the preliminary report in the original statements around the inquiry?

**Mr Peffer:** That is correct.

**Ms Davidson:** Yes.

**MR COCKS:** Yes, okay. So you have not received anything yet?

**Ms Davidson:** It is not due yet—

**MR COCKS:** But there is—but it sounds like there is an intention to make that public once it is received?

**Ms Davidson:** That is not something that I think I have discussed before. Certainly the final report will be. Yes. I am not sure what is in the terms of reference about what reports are—

**MR COCKS:** Okay. So that timeline will be quite critical in that case. So you took that on notice, and you can provide those timelines?

**Mr Peffer:** Yes. We can take that on notice.

**MR COCKS:** Yes. Thank you.

**MRS KIKKERT:** Why can't security guards intervene and stop violent and aggressive behaviour between a patient and staff?

**Ms Davidson:** I will pass to Katie McKenzie, who can talk in more detail about the procedures that we go through when something like that happens within Dhulwa. I assume you are talking about Dhulwa, specifically?

**MRS KIKKERT:** Yes.

**Ms McKenzie:** Thank you for the question. In the mental health environment, the best practice is that the security comes from staff engagement. It is called relational security. In an instance where there is a need for more than that, security guards are a critical part of that process. They are part of the team. They take direction from the clinical staff, but they do intervene as needed.

**MRS KIKKERT:** For example, if a security guard enters the room where the staff and the patient are having a physical fight with one another, and the staff member is unable to voice her concern, is it the case that the security guard cannot intervene until he receives verbal communication that he is allowed to do so?

**Ms McKenzie:** In all response situations, with a consumer or a patient, the direction

has to come from the clinical team.

**MRS KIKKERT:** You are saying that the security guard cannot intervene until they receive permission from the staff?

**Ms McKenzie:** Yes.

**MRS KIKKERT:** What trauma would a security guard go through, seeing a fight take place before them, but they cannot stop the fight?

**Ms McKenzie:** In those situations it is about roles and responsibilities of the team. They do train together as a team. In terms of trauma from those situations, there is also team debriefing and team support following those.

**MRS KIKKERT:** Team briefing is very different from being traumatised because you cannot physically stop a fight that is happening before you. Can you see that there is something wrong there?

**Ms Davidson:** You might find that the processes you are talking about are things that will also be looked at in this independent inquiry. There is ongoing work looking at, whenever there is an incident, what could be done differently to make sure that we do not have a repeat of that kind of situation. Certainly, people's safety in the workplace is incredibly important. We are always looking at what we can do differently to make our workplaces safe.

**DR PATERSON:** What is the average inpatient stay in Dhulwa?

**Ms Davidson:** I might pass to Katie, who can talk about that, if we have the numbers.

**Ms McKenzie:** I do not; I am sorry. I will have to take that as a question taken on notice.

**MRS KIKKERT:** At the last hearing we spoke a little bit about detainees wanting to receive dental services at AMC. From memory, there were over 60 detainees on the waiting list. Do you have a current number for how many detainees are waiting for dental assistance?

**Ms Davidson:** I might pass to Katie, if we have that number at hand.

**Ms McKenzie:** Not at hand; I am sorry. I will have to take it as a question on notice.

**MRS KIKKERT:** Are there currently still dentists working at AMC for three days a week or has it increased?

**Ms McKenzie:** Yes, there are still dental services at AMC. Over the COVID period we were able to increase our dental coverage. It has now gone back to normal pre-COVID levels.

**MRS KIKKERT:** If the numbers have increased from 60-something detainees waiting to receive dental services, are you looking at increasing the amount of hours that dentists are working at AMC?

**Ms Davidson:** That might be better addressed through the Justice Health Strategy that is being worked on. It needs to take into account not just how many hours a dentist is out there, but also some of those things that I was talking about earlier—the size, the layout and the location of the Hume Health Centre, in order to deliver services, and making sure that we have the right facilities and resources there.

**MR COCKS:** Going to the staffing arrangements at Dhulwa, I am very interested in what the staffing profile is, in particular around nursing. I am curious as to how many mental health nurses we have working in that unit. Specifically, how many of those are credentialed through the College of Mental Health Nurses?

**Ms Davidson:** Katie can talk about numbers of nurses and at what levels.

**Ms McKenzie:** Thank you for the question. I have quite a comprehensive list for nursing at Dhulwa. If we are focusing on the nurses that provide direct clinical care as opposed to those who support direct clinical care, we have 10.94 FTE of RN2s, 29.47 FTE of RN1, and four FTE of endorsed enrolled nurses. There is a small vacancy in each of those subgroups.

In terms of credentialing, I do not have that information at hand. I can say, though, that credentialing of mental health nursing is a voluntary process. We do keep track of postgraduate qualifications, and we know that over 50 percent of the nursing staff at Dhulwa have a formally recognised postgraduate qualification.

**MR COCKS:** I am interested specifically in credentialing because it goes to the question of whether the nurses in this unit are equipped to deal with the very high intensity situations that they end up in. It is not just a question of whether it is voluntary for a nurse to get those qualifications; it is whether we are putting the right people into the facility with the right skills to be able to deal with very high intensity and pressure, because that has a flow-on effect. If you could take that on notice and provide the information, that would be fantastic.

**Ms Davidson:** You might find that some of those questions that you are talking about there in terms of workforce are addressed through the independent inquiry. The terms of reference and the dates for when those reports are due out should be on the independent inquiry's website.

**MR COCKS:** I am very keen to get those numbers of credentialed nurses, though.

**MR BRADDOCK:** I am interested in how we are keeping AMC detainees safe from COVID.

**Ms Davidson:** This is very important. It is a space where there is a high risk of transmission of respiratory illnesses because you have a lot of people in one area. With the vaccination rate at the AMC, up to 8 August, we had a vaccination rate there of 69 per cent for first dose and 66 per cent for second dose.

When you take into account that you have people coming into the AMC regularly and leaving regularly as well, the high proportion of people who are in there on remand for

less than a month, and how long it takes to get from your first dose to your second dose, those are incredibly impressive numbers. They speak a lot about the high standards of the justice health nurses and Winnunga, in making sure that everyone who comes in there is offered the opportunity to be vaccinated, and the high numbers of people who, when they are offered that opportunity, take it up through regular clinics to get everyone vaccinated.

They are also providing PPE and training support to people out there who are corrections officers, and making sure that people understand how to stay COVID-safe. I might pass to Katie McKenzie, who can talk in more detail about what they are doing.

**Ms McKenzie:** The mainstay, as you said, is vaccination. The second is specific accommodation on entry, with a designated testing regime on day 5. People are not released into their accommodation until they have been demonstrated to be COVID-free.

**MRS KIKKERT:** Did you say vaccinations, so detainees or remandees have to be vaccinated before they enter AMC, just to clarify?

**Ms Davidson:** People are offered vaccination when they come in, as part of their process of coming into the AMC. Not everyone will choose to take that up, but lots of people have been saying yes when they are offered the opportunity. That speaks to the level of understanding that people in Canberra have about how important vaccination is in reducing transmission and protecting not just yourself but the people around you.

**DR PATERSON:** In the budget submissions from different community stakeholders, the Mental Health Carers Voice, a peak body representing unpaid carers of people experiencing mental ill health in the ACT, expressed in their submission that they were at absolute capacity in supporting carers. What is the ACT government doing in recognition of the fact that there are a lot of carers out there supporting people with mental ill health, and how can we better support them?

**Ms Davidson:** Absolutely. As the minister responsible for carers, we will be able to have a good conversation about that tomorrow, in the CSD hearing. We have funding of \$825,000 over four years for the carers strategy in the ACT, and that will make a significant difference. Also, the work that we are doing around things like mental health supported accommodation, and a better understanding of what needs are there, will provide some useful information as to what we might need to do in the future.

**MR COCKS:** I would like to turn to restrictive practices in mental health settings. I would like to better understand how restrictive practices—seclusion and restraint—are used and managed in ACT mental health settings, starting with the longest continuous time for which a person can be secluded.

**Ms Davidson:** Is there a particular facility that you most want to know about? Different facilities will have different models of care.

**MR COCKS:** I do not have a specific facility in mind. Are you saying that there are different standards for seclusion and restraint?

**Ms Davidson:** No, I am saying that the practices in different facilities will reflect the

clinical needs of people in those facilities. I might pass to Katie McKenzie, who can talk in more detail about restrictive practice in mental health facilities.

**Ms McKenzie:** Our current rate of restrictive practice is actually a real celebration for Canberra Health Services. It is 1.3 per 1,000 bed days. That is significantly below the strategic indicator of less than seven per 1,000 bed days. There is a slight difference in our facilities. AMHU is our acute inpatient facility, and it has a seclusion rate of 0.59 per 1,000 bed days, which is a real achievement for the clinical team. In terms of how long somebody can stay in a secluded environment, that is a clinical decision. Their goal is to remove the consumer from seclusion as soon as it is clinically safe to do so.

**MR COCKS:** How soon after seclusion can a person be put back into seclusion?

**Ms McKenzie:** I would have to take that on notice. I do not want to provide any incorrect procedural information. It is outlined in the Mental Health Act. It would be best if I respond on notice.

**MR COCKS:** I will provide a few more parts to that, in that case. I am also interested in how soon after seclusion the Public Advocate must be notified. That is separate to the other things. Do you need to put that on notice as well?

**Ms McKenzie:** I do.

**MR COCKS:** I will send through the whole series for you.

**Ms McKenzie:** I have a couple of answers. Approval needs to be re-requested every four hours for a consumer in seclusion, and the Public Advocate should be notified immediately.

**MR COCKS:** On how many occasions has notification been beyond this time frame? You say it should be immediately.

**Ms McKenzie:** I will have to take that on notice.

**MRS KIKKERT:** How many drug tests have returned positive results from prohibited drugs?

**Ms Davidson:** Was that a question about within AMC?

**MRS KIKKERT:** That is correct.

**Ms Davidson:** I might pass to Katie.

**Ms McKenzie:** I will have to take that as a question on notice.

**MRS KIKKERT:** Okay. Since you mentioned AMC, does Dhulwa do prohibited drug tests?

**Ms McKenzie:** No, that is not part of our routine screening—drug testing.

**MRS KIKKERT:** If you could take the previous question on notice, that would be great.

**Ms McKenzie:** Yes.

**MR COCKS:** I noticed on the webpage the Chief Psychiatrist's standard operating procedures and guidelines. Under "guidelines" it states, "Guidelines will be available here soon." The webpage was last updated on 27 April 2022, which was around the same time as the issues involving the Dhulwa mental health unit were featuring in the media. Why are there no guidelines published here and when will they be published?

**Ms Davidson:** I do not know whether Dr Dinesh Arya is online. If so, he would be in the best position to answer a question about the guidelines.

**Dr Arya:** I have read the privilege statement and acknowledge it. I am sorry; I was not able to hear the question. Could you please repeat the question?

**MR COCKS:** On the webpage for the Chief Psychiatrist, under standard operating procedures and guidelines, it states, "Guidelines will be available here soon." The page was last updated on 27 April 2022, around the same time as the issues involving Dhulwa mental health unit were featuring in the media. Why are there no guidelines published here and when will they be available?

**Dr Arya:** The question is: when will the guidelines become available, as they are not on the website at the moment?

**MR COCKS:** Yes.

**Dr Arya:** The guidelines are in development. There are two guidelines that are currently going through the committee process. These are guidelines for seclusion and restraint. We hope that these guidelines will be finalised within the next four weeks. The next guideline that we are working on is on ECT. It will probably take another two or three months before that is finalised.

We have a Mental Health Act oversight committee in place. That has representation from a number of organisations within the ACT. This committee identifies which guidelines are needed and which guidelines should be developed on a priority basis. Over the next few months we will carry on developing more guidelines.

**MR COCKS:** Are those new guidelines or replacement ones?

**Dr Arya:** These are entirely new guidelines. In the past we have had very clear procedures for seclusion, restraint and so on. However, these guidelines make explicit what principles need to be followed consistently across the ACT.

**MR COCKS:** I think you said we are looking at four weeks until they are published?

**Dr Arya:** The Mental Health Act oversight committee is meeting next week or the week after. Once the oversight committee has reviewed these guidelines, the committee will then make a recommendation to me, as Chief Psychiatrist, to approve those guidelines.

I am anticipating that it might be another four to six weeks, at best.

**MR BRADDOCK:** Coming back to an earlier question about preventive services, can you explain to me this Safe Haven, how that works and why that is actually effective?

**Ms Davidson:** The Safe Haven service that we have in Belconnen commenced in November 2021. That is something that is quite new for the ACT but it has been very successful in other parts of Australia. I will pass to Dr Moore, who can talk more about how it works and how it helps people. It is the kind of service that can make a real difference in supporting people to stay in the community and find ways to manage distress without ending up having to go to hospital and needing acute care.

**Dr Moore:** Originally, Safe Haven was a cafe in the UK. It is peer-led, and it is in recognition that people get distressed and do not need the high level of acute care if they can de-escalate. It is well recognised in mental health services that peer-led programs are particularly effective in terms of a strengths-based approach. Finding somebody who has been through the same issues, being able to control their affect, is really important.

There is a good evidence base from the UK. There are other safe haven cafes within Australia. There is one in Perth and there is one in Melbourne. There are different models for different areas. There is one in Queensland. We went for a community safe haven to begin with. We have recently had a performance report on the Safe Haven, so I will pass to Cheryl, who has those details of the performance report.

**Ms Garrett:** The performance report is quite positive. Eighty per cent of guests who attended reported a distress reduction of greater than 10 per cent on the subjective units of distress scale, and reported an average 24 per cent drop between their arrival and their departure at Safe Haven. 245 guest visits were recorded in the six months between January and July. We have found that there have been a number of repeat guests—71 unique people, but they have returned.

The other feature that has come through this performance report is that family members, carers and support people have also attended with the individual, and that has been a really positive experience for them as well. We have further breakdowns in terms of age, cultural and linguistic, and Aboriginal and Torres Strait Islander, if the committee is interested.

**Ms Davidson:** And gender? Are you able to provide them? That would be great.

**Ms Garrett:** Yes. Out of the 71 individuals, there were 37 females, 26 males and eight who identified as neither.

**Ms Davidson:** And age range?

**Ms Garrett:** Ranging from 16 to over 65. There are quite a few breakdowns. The largest group is 27 per cent, which is the 19 to 24 age group. The next greatest group was 25 per cent of guests aged between 25 and 34, and it slowly reduces, up to over 65 being three per cent.

**MR BRADDOCK:** Just to save Mr Milligan a job, have you read and acknowledge the privilege statement?

**Ms Garrett:** Yes, I have.

**MR BRADDOCK:** Following up on that, as part of the performance evaluation, have you assessed how many hospital visits might have been saved by having the Safe Haven available?

**Ms Davidson:** One of the benefits of having a service like the Safe Haven is that it is not just in terms of how many visits you save to the emergency department; it is also about the number of people who might otherwise have needed to go on waiting lists for other services.

It is very helpful in terms of being able to identify what other services people might need to connect with. Having a peer mental health workforce in Canberra, having more options there for where people who work in the peer mental health workforce can find work, is good in terms of growing that workforce and developing those skills. We have a number of places in the ACT that do prevention and early intervention work, and work on keeping people in a recovery stage as well, and that make use of the peer workforce.

**MR BRADDOCK:** I agree with all of that good stuff. Is there an evidence base showing that this stuff is working—whether it might be reduced access to higher cost services, hospitalisations or whatever it might be?

**Ms Davidson:** Before I pass to Cheryl to talk in more detail about whether we have covered that in the performance report so far, if we can establish a second safe haven closer to Canberra Hospital, I would expect that there might be some differences between the outcomes that you see for people who are going to one near a hospital, versus one in the community. That is why, when the Safe Haven service was being designed, we were looking at both of those kinds of locations. Cheryl can talk some more about what else is in that performance report.

**Ms Garrett:** The performance report is focused on the individuals that have attended and the supports that they are being provided with during their visit to Safe Haven. We are participating, as part of a national evaluation process that the Australian National University is leading, in looking at safe havens and safe spaces across Australia. We are one of several sites around Australia being evaluated through that process. That will look at a broad range of issues, including what you have raised.

**MR BRADDOCK:** You are talking about this peer workforce, which I am also interested in. What is the potential for utilising the peer workforce for the future?

**Ms Davidson:** This is an interesting and exciting area of work for people to be able to work in health care and recognise the value of lived experience with mental health. There are a number of places in the ACT where people with lived experience of mental health conditions might want to work as part of our peer workforce. I will pass to Dr Moore, who can talk more about the future of that workforce.

**Dr Moore:** It is a great question. Peer workforce is something that came up a lot in our

consultations around the mental health workforce strategy. Certainly, it has come up a lot at the national level. It is something that I have been excited about. In other parts of Australia, peer workforce is also a culture changer. It provides employment for people that may need other, different sorts of employment, which again is good for mental health and wellbeing. Once the national mental health workforce strategy is released, and once our own is released, we hope to talk to you more about that.

**MR COCKS:** I am very glad to see that we are looking into the opportunities through the peer workforce, because the benefits in leveraging people with lived experience are, as you know, quite considerable. There are, however, some risks that go along with that. In particular, there are issues around re-traumatising people. It is critical that we make sure those peer workers are appropriately trained and supported. What sort of training, credentialing and supports have you considered for that particular workforce?

**Ms Davidson:** I will pass back to Dr Moore, who can talk some more about those kinds of supports. Before I do so, one of the things that I noticed in the recent visit to the Queensland eating disorders residential centre was their use of recovery navigators—people with lived experience who help people who are currently receiving care, and support their journey towards recovery. The people who were receiving care there talked quite a lot to us about how much they value having those workers there and how important that is for them. Dr Moore can talk a bit more about support for the peer workforce.

**Dr Moore:** There are certificate IVs in peer workforce and in recovery workers. As you say, it is not just about getting a certificate; it is about supporting the peer workforce so that there is no re-traumatisation, or that it is minimised, and that people can work to their best advantage.

I have been in discussion with Tim Heffernan, from the Mental Health Commission in New South Wales. Of course, our own Ben Matthews, here in the ACT, helped to set up some of those processes. We will be looking at that as part of our ongoing discussions around workforce.

**DR PATERSON:** My question is in relation to students on campus. We have very big campuses at UC, ANU and a couple of other unis, as well as CIT. Is the ACT government proactive in engaging students on campus or is it something whereby we offer services and anyone can access them?

**Ms Davidson:** I know that the universities do take quite seriously their responsibilities to student mental health and wellbeing. In terms of understanding the needs of tertiary students in the ACT and what services are available to them, I will pass to Dr Moore, who can talk a bit more about what the needs and services might be.

**Dr Moore:** As the minister said, the universities and CIT take student wellbeing very seriously. We keep in contact with the universities and their staff and student wellbeing services to see whether there are any gaps, or whether they need further assistance, and to ensure that they are aware of the other services that are available off-campus. Affordability and access remain issues on which we continue to work with them.

With the social cohesion, we have various different parts of the university. We have

university students from overseas coming back in, we have university students from interstate and from country, all of whom need slightly different support systems. Basically, the office does not duplicate. It helps to support and works with the universities and CIT.

**MR COCKS:** One of the big changes happening for a lot of the stakeholders that I talk to is commissioning of services. I know that mental health services are not the first cab off the rank, but I am curious to know, as there is a lot of anxiety out there, where we are up to in that process and how you are engaging with providers.

**Ms Davidson:** I might pass to Cheryl, who can talk more about the commissioning process and time line. Can I confirm that you would like an update on commissioning for mental health?

**MR COCKS:** Mental health services.

**Ms Garrett:** The mental health commissioning project has a two-year time frame that we are working through. Our priority for this calendar year was to ensure that we had the contracts extended for our current providers. Our next focus is on planning and mapping out our engagement with the sector.

We have a governance arrangement that includes parties from the Capital Health Network, Canberra Health Services, our stakeholders and key NGOs. They will be consulted on and engaged in terms of how best we can strategise our engagement with the community sector. We will plan out how that will happen over the next six months or so. We will also take learnings from some of the other commissioning bodies of work that have already progressed and build that into our time frame.

**MR COCKS:** I would encourage you to look at the federal PHN advisory panel work in this space, which dug out some of the issues with doing that federally, which is worthwhile looking at.

**THE CHAIR:** On behalf of the committee, I thank the minister and officials for appearing today. If witnesses have taken any questions on notice, could you please provide answers to the committee secretary within five working days. The committee will now adjourn for a break and reconvene at 3.45 pm.

**Hearing suspended from 3.29 to 3.45 pm.**

Appearances:

Rattenbury, Mr Shane, Attorney-General, Minister for Consumer Affairs, Minister for Gaming and Minister for Water, Energy and Emissions Reduction

Justice and Community Safety Directorate

Glenn, Mr Richard, Director-General

Doran, Ms Karen, Deputy Director-General, Community Safety

Ng, Mr Daniel, Acting Executive Group Manager, Legislation, Policy and Programs

Nuttall, Ms Amanda, Principal Registrar and Chief Executive Officer, ACT Courts and Tribunal

Johnson, Ms Kathryn, Executive Branch Manager, Justice Reform

Drumgold, Mr Shane SC, Director of Public Prosecutions

**THE CHAIR:** In this final session for these committee estimates we will hear from the Attorney-General and officials.

Please be aware that the proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and webstreamed live. When taking a question on notice it will be useful if the witnesses could use the words: “I will take that as a question taken on notice.” This will help the committees and witnesses to confirm questions taken on notice from the transcript.

I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. When you say your name and the capacity in which you appear, you can also acknowledge that you understand the privilege implications of that statement before you speak. We will not be inviting opening statements. We will go straight to questions, and I would like to pass my substantive question to Mr Cain.

**MR CAIN:** Thank you, Chair. Attorney, as you are aware, there is an exposure draft for a Residential Tenancies Legislation Amendment Bill 2022, so I have a few questions about that. Consultation closes in a few days. Have you done any detailed analysis on the effect on the market of the proposed rental reforms, particularly the energy efficiency standards?

**Mr Rattenbury:** Thank you, Mr Cain. Yes, we have. That bill you are referring to covers a number of areas of reform. It addresses four specific areas. The bill that is out in exposure draft does not specifically introduce the issue of minimum energy performance standards for rental properties.

What it does do is create the power for the minister to make that regulation down the line. That is the exposure draft. There is also a process of consultation that has been going on around minimum energy performance incentives with the view to introducing that later this year—just to be clear about the different steps in the process.

In terms of your specific question: yes, the government has done a detailed analysis, and that is contained in the regulatory impact statement. I am happy to go into the details, but perhaps I can stop there and invite the next question.

**MR CAIN:** Are you able to provide that consultation? Is it the intention for you to provide those consultation documents, the submissions and any response, at the conclusion of the consultation?

**Mr Rattenbury:** On the exposure draft?

**MR CAIN:** Yes.

**Mr Rattenbury:** Yes, we normally provide a listening report. Because it is exposure draft legislation, it is a bit of a different process, so I have not actually formed a final view on that. It is also a question of having the permission of those who submit. I will just check with the officials whether we indicated the intent to publish.

**Mr Glenn:** We will have to take that question on notice.

**Mr Rattenbury:** I will just check whether we will be indicating the intent to publish.

**MR CAIN:** Thank you. Have you, in your own research, looked at what has happened in other markets and other jurisdictions, particularly Victoria?

**Mr Rattenbury:** Yes, certainly we have obviously looked around at other jurisdictions. As I touched on earlier, we undertook a detailed regulatory impact statement. We commissioned ACIL Allen to do it for the ACT government. It is more on the range of possible impacts on tenants and rental providers, and it made some quite useful findings. It identified that tenants were generally better off, benefiting from reduced energy costs and by improved health and wellbeing. This is the case even where full costs are passed through with increased rents. The introduction of minimum standards is unlikely to have sizeable impacts on the rental returns for rental providers. The impact on annual rental returns is likely to be small for most investors. The analysis also showed that the proposed standard will not drive large numbers of rental providers to withdraw their property from the rental market. It showed that, overall, the community would be better off as a result of the introduction of this standard.

**MR CAIN:** What is your anticipated time frame? Obviously, consultation is coming to a close.

**Mr Rattenbury:** As I said, the consultation is a slightly different one. The consultation on the draft bill is a separate process. The government has done a range of consultation on the minimum energy standard over the past year, and we are using all of that input to finalise the standard at the moment. I anticipate announcing that standard in the next month or two and commencement from later this year.

**MR CAIN:** I refer to that consultation in April-May last year, and I note that there were 553 rental providers who gave feedback: 59 per cent would increase the rent and just over 20 per cent would probably take their property out of the market. Have you looked at the impact of these changes upon the rental market in the territory?

**Mr Rattenbury:** I just indicated to you, Mr Cain, the analysis that the ACT government has looked at from ACIL Allen.

**MR CAIN:** Does that concern you—that we could have one-fifth of rental properties disappear from the market?

**Mr Rattenbury:** “Disappear” is an interesting choice of word. Those houses will not vanish. Those houses will still exist in Canberra. Somebody will still live in them. Either new investors will come into the market, who are willing to lease under the conditions the government is proposing, or new owner-occupiers will take up those properties, who will no longer be competing in the rental market. It is not that we are going to have fewer houses in Canberra. Even if those people sell, there will be some different owners.

**MR PARTON:** Minister, you have suggested in response to Mr Cain’s question on a detailed analysis on the effect on the market from these proposed rental reforms that that it is wrapped up in this ACIL Allen report. The ACIL Allen report specifically says, “The full extent of the impacts on the rental market is beyond the scope of this report.” That is what it says.

Mr Cain also referred to the Victorian experience, which does not mirror the outcomes that you have just spoken of. You have indicated that these houses obviously will still be there—they will not be demolished—and somehow it is magically not going to have an effect on the rental market. But in Victoria, Minister, we are seeing a situation where paramedics and ambos are living in caravans. Certainly, the Real Estate Institute of Victoria, who we have been engaging with pretty solidly on this, have indicated that the market for rentals has taken a significant hit with the onset of the standards required.

I am reframing Mr Cain’s question on the effect that these changes have had in the Victorian market, which surely must give you great concern.

**Mr Rattenbury:** Mr Parton, I have indicated to you the results of the modelling that the ACT government had done. The modelling, as I said, indicates that the proposed standard will not drive large numbers of rental providers to withdraw their property from the rental market.

You are right, other people have some different views on that. The Real Estate Institute of the ACT has made their predictions. The government has looked at this very carefully, and what our analysis shows is that the overall benefit to the community is a positive one. We are wanting to tackle the problem that tenants in the ACT are living in houses that are too cold in winter, too hot in summer, have high energy bills and the thermal comfort is not good enough. That is the problem we are trying to confront. We know that six per cent of deaths in Australia are caused by houses that are too cold. That is twice the rate of Sweden. We have got a problem we have to address, Mr Parton.

**MR PARTON:** Minister, no-one is arguing with that—

**Mr Rattenbury:** You are.

**MR PARTON:** I am not arguing—

**Mr Rattenbury:** You are.

**MR PARTON:** I am not arguing with that absolute outcome. What I am saying is: even you are saying that consultation on this came up with a figure that 21 per cent of landlords indicated they would remove their properties from the rental market, which lines up with the recent survey that the Real Estate Institute have done here with emails, so we are talking about 20 per cent. Are you falling into line with the view of your colleague Mr Davis, who presented a view in the chamber calling upon landlords who were not happy with these changes to sell their properties en masse? Are you in line with Mr Davis on this?

**Mr Rattenbury:** I think you have paraphrased Mr Davis's comments.

**MR PARTON:** I do not think I have at all: "If these reforms are so scaring landlords, I say you should not be a landlord. You should sell your property. You should look at other investments." They are his words in the chamber.

**Mr Rattenbury:** That is something you have just said. You paraphrased his quote, but I understand where you are coming from.

**THE CHAIR:** What is the question?

**MR PARTON:** Is that position, presented by the Greens member in this chamber, your position as Greens minister?

**Mr Rattenbury:** No. I am not actively encouraging people to sell their property. I have never issued those words. I am not going to speak for Mr Davis. I think his words speak for themselves.

**MR PARTON:** So you are not going to reflect on them in any other way? I know people in the industry here who think we are headed for an absolute disaster in the rental field.

**Mr Rattenbury:** There is a spectrum of views. There are also people who think this is an incredibly important reform that is long overdue and will benefit tenants in a material way.

**THE CHAIR:** For now, I think Mr Rattenbury has answered that question.

**MR PARTON:** Thank you, Chair.

**MR BRADDOCK:** I just want to know if there is a minimum standard of comfort that the ACT government has, in terms of people being able to live in a home healthily?

**Mr Rattenbury:** If I understand your question correctly, Mr Braddock, what we have identified is that moving to R5.0 insulation as a standard will provide the best comfort outcome, as well as the best economic outcome in trying to balance the different considerations.

**MR BRADDOCK:** As well as the health outcome?

**Mr Rattenbury:** Yes, indeed. We did examine three possible approaches: the first was

to use the R5.0 insulation; the second was a minimum energy efficient heating standard; and the third was a performance-based standard, such as a minimum star rating. What the analysis showed was that the minimum ceiling insulation standard delivered the best outcome, both economically and in terms of effectiveness in making the house comfortable, well insulated and more efficient to run.

**MR BRADDOCK:** A key lesson from the community corrections inquiry was that the physical location of hearings was a problem for the Sentence Administration Board, since it was not allowed to occur in the courts' precinct. Are you able to give an update on where the Sentence Administration Board are currently conducting hearings and where they may do so in the future?

**Mr Rattenbury:** Thank you, Mr Braddock. This has been a cause of concern for the government—the uncertainty of locations for the Sentence Administration Board. It is something we have put a lot of effort into. I am very pleased to be able to inform the committee that we do now have that matter resolved. An MOU has been prepared, in partnership with ACT Courts and Tribunal, and the Sentence Administration Board will now return to having its hearings in a room at ACT courts which has access to safe custodial areas so that people who might be in custody already can be brought securely to the hearing room; or, if they are during their parole hearing returned to custody, they can be immediately taken into the secure area as part of the court building. This is a good outcome. I am grateful for the work between the courts and the Justice and Community Safety Directorate to resolve that matter.

**MR BRADDOCK:** Thank you.

**MRS KIKKERT:** When will this transition happen?

**Ms Nuttall:** I can take that question. I have read the privilege statement and understand the privilege statement. The Sentence Administration Board are due to commence sitting at the courts in the first week of September.

**MRS KIKKERT:** Do you know how many serial offenders are at large currently?

**Ms Nuttall:** I do not have that. The courts do not keep that data on offenders who are on corrections orders.

**Mr Rattenbury:** Mrs Kikkert, the Sentence Administration Board will have that data. I cannot recall, off the top of my head, if they are appearing. They normally appear before the committee. If they are not, I will take that question on notice and provide that separately.

**MRS KIKKERT:** Okay, great. Thank you.

**DR PATERSON:** Attorney, my question is with respect to sentencing and a sentencing review in the ACT. As you are well aware, there have been some horrific deaths on our roads, and there is a growing call from victims in the community, but I also think more broadly, around sentences. The community feel that sentences are not adequate for the offences. I was wondering if you could speak to whether or not you feel that it is

appropriate to conduct a review of sentencing, particularly around dangerous and culpable driving in the ACT.

**Mr Rattenbury:** Thank you, Dr Paterson. Obviously there have been some very difficult incidents in recent times. For the families involved, it is an immeasurable source of grief, and I understand why those families are deeply upset.

In terms of the broad area, there are a number of pieces of work that the ACT government is undertaking. In terms of motor vehicle offences and their penalties, that is predominantly the responsibility of Mr Steel, and he has a piece of work already underway that is looking at those matters.

I have had discussions with him about that. There is some input from the Justice and Community Safety Directorate. I cannot remember the exact time frame but I know that that work is well underway. Certainly, recent discussions have brought new matters into that. For example, the police union recently came and saw me, and they raised some specific matters that they think should be part of that review, and I have raised those directly with Minister Steel as a consequence of those meetings. So that is a particular area in relation to motor vehicle offences—I think that was your primary question?

**DR PATERSON:** For offences under the Crimes Act 1900 in relation to dangerous driving and culpable driving, particularly causing death, there are calls, strong community calls, for a review of sentencing around those particular crimes.

**Mr Rattenbury:** Yes, I have asked the Justice and Community Safety Directorate to look at the outcomes in other jurisdictions and examine whether there is any significant difference between the ACT and other jurisdictions in terms of those outcomes.

**DR PATERSON:** Do you think, though, that it would be better to look internally at what is happening in terms of what sentences are being given in the ACT for different crimes?

For example, Victoria did a study in 2015, I think, very similar to what the community is asking for: a review into sentencing around the most extreme driving offences. If you read the report, there is a lot of good data and information in there—mind you, it is a much bigger jurisdiction—in terms of recommendations coming from that around sentencing for these types of crimes.

**Mr Rattenbury:** I am unclear of what objective you seek in such a review, Dr Paterson. The ACT has maximum penalties that are commensurate with other jurisdictions. It is then up to the independent judiciary to examine all the facts in the matter and to make that very complex and at times challenging weigh-up of the various factors when finalising a sentencing decision.

**DR PATERSON:** When you look back over sentencing decisions over the past few years, they are nowhere near the maximum sentence, and, in fact, very far from that, and a lot of people are out in relatively short time frames on parole and good behaviour orders. There is a feeling in the community that the balance of that is not right. That is coming from the community. In your position as Attorney-General, at what point do you say, “Okay, let’s actually explore this. What is going on in the ACT in respect of

these crimes and sentencing?”

**Mr Rattenbury:** As I indicated to you earlier, I have asked the Justice and Community Safety Directorate to review whether the ACT’s outcomes are significantly different to any other jurisdiction. I think that will provide us with indications of whether there is a systemic issue in the ACT. We need to be wary of considering individual matters when trying to ensure that we have a fair and balanced system.

**DR PATERSON:** When is it expected that that review will be completed?

**Mr Rattenbury:** I do not have an exact date on that at this time.

**DR PATERSON:** Thank you.

**MR BRADDOCK:** Are you saying that our penalties are commensurate with other jurisdictions? Is it where we sit in terms of custodial sentences with other jurisdictions, or how are we standing in terms of utilising those penalties?

**Mr Rattenbury:** I think it is worth looking at that comparison with other jurisdictions. In terms of those that are found guilty, and whether they receive a custodial order or not, the ACT sees people sent to custody and get a custodial order at a greater rate than New South Wales, Victoria and Queensland. That is ABS-sourced data.

I think we have seen some media commentary which suggests that the ACT is a particularly lenient jurisdiction—that might be how it is described. I think the tenor of Dr Paterson’s question is that she feels the ACT is lenient. The data does not indicate that.

The data indicates that the ACT is more likely to send people to custodial sentences than New South Wales, Victoria or Queensland, or Western Australia. We do see higher rates in South Australia, Tasmania and Northern Territory, so the ACT is perhaps mid to slightly above on the table.

**MR BRADDOCK:** Is there data available for the length of a sentence?

**Mr Rattenbury:** Yes, there is. The data from the Australian Bureau of Statistics indicates that there is a medium sentence length of custody in the correctional institutions—so once somebody is sentenced, how long they go for. This applies across all offences, not just driving offences.

**DR PATERSON:** That is problematic, though. Is there a breakdown for the driving offences, particularly dangerous driving causing death?

**Mr Rattenbury:** I do not have that data.

**DR PATERSON:** That, I think, is what—

**Mr Rattenbury:** That is not the question Mr Braddock asked. I do not think that is the question Mr Braddock asked. He asked me a question, and the answer is that the ACT is commensurate with Victoria, South Australia, Tasmania and Northern Territory; you

then see New South Wales, Queensland and Western Australia with higher numbers. With respect to the ACT, in the broad—and I will come back to your question in a moment—across all sentencing, some of the commentary has been that the ACT is a lenient jurisdiction; the data does not support that assertion. I am happy to go to your question now, Dr Paterson.

**DR PATERSON:** I think that the real call is around dangerous driving, and there has been recognition that there are serious issues with cars being stolen in the ACT and police's ability to respond to that. There are issues around bail in this respect and recidivism. I believe there are calls in the community around sentencing issues for these particular crimes.

There is a problem with cars and driving in the ACT. I am asking you: how proactive is the government being and, particularly in your role as attorney, in those two particular crimes, with respect to victims who are stating strongly that justice has not been served?

**Mr Rattenbury:** You have brought up a number of similar but different matters there. In terms of recidivism, the ACT government is being very proactive in seeking to tackle recidivism in the ACT. Under the justice reinvestment agenda of the government, particularly under our goal of reducing recidivism by 25 per cent by 2025, we have made reasonable progress. Recidivism in the last available data year was nine per cent lower than the baseline year of 2018-19. We have more work to do, but I think it is positive that a range of the programs that have been put in place are proving to be effective.

We have seen a recent spike in motor vehicle theft. The Chief Police Officer was on radio last Friday morning saying it is something that he had never seen in his entire policing career. When I met with him in the past few days, he indicated he was not sure of the specific reason for that. He has also indicated publicly that ACT Policing, as part of the ACT government's effort, have now established a task force to tackle that. The early signs are that police are having significant success with that task force. I thank them for their work on that.

The government, through its various agencies, be it the justice agencies or the police agencies, is being very proactive in this space.

**MR CAIN:** Attorney, this morning we heard from the DPP that there is power to challenge a bail decision. I mention this in this context because some of these terrible offences are committed by people who are on bail. In fact, very recently, in the news this week, there was a reminder of that. It is very difficult for the DPP to challenge a bail decision where originally they have opposed. The power, under section 48 of the Bail Act, has never been used, in his memory. Have you given consideration, or would you give consideration, to reviewing the Bail Act to make it a little more open for a bail approval to be challenged by the DPP?

**Mr Rattenbury:** The specific context in which this has been raised, Mr Cain, is section 44. The question is around the length of time for the various agencies, be it the police or the DPP, to seek to challenge that. The Chief Police Officer raised this in his interview on Friday. That was the first time that the matter had been brought to my attention.

I have spoken to the Chief Police Officer about this in the past day or two. The issue is that two hours is possibly not enough, in terms of authorisation hierarchies within the organisations. I have now asked the directorate to examine whether we can review that time frame. There might be a slightly different approach so that, for example, a verbal indication has to be given within a certain time frame, with a little more time for the written authority to follow through afterwards.

There is a careful balance here. Bail, of course, is not a system of punishment. Bail is about seeking to ensure community safety and balance the presumption of innocence versus ensuring that people turn up when they are supposed to, do not interfere with witnesses, do not threaten witnesses—all of these sorts of things—or continue to reoffend.

Specifically, on that issue with section 44, I am willing to look at that. It has only been raised in the past few days, so the policy work is far from developed. But we have commenced work on that.

**MR CAIN:** Following Dr Paterson's theme, sadly, the community is being harmed by some of these people who are out on bail. I certainly encourage a review of that section. Thank you; it was section 44 of the Bail Act.

The attorney has touched on my next substantive question; that is, the government's RR25by25 plan to reach a 31.7 per cent recidivism rate by 2025. I quote from the plan:

The ACT Government will invest more than \$132 million over four years to develop and implement new programs and measures to reduce the rate of reoffending.

What is the specific figure that you have allocated in 2022-23 to reduce recidivism?

**Mr Rattenbury:** I suspect we will have to take the specific number on notice, Mr Cain. Obviously, the budget is detailed, but it has not been pulled together in the way you have asked. But we can do it. I am happy to take that on notice and come back to you.

**MR CAIN:** Thank you. I asked because I could not identify a specific figure for that. How much to date of this \$132 million has been invested?

**Mr Rattenbury:** I will ask Ms Johnson to join the conversation.

**Ms Johnson:** I have read the privilege statement. I can indicate that about \$57½ million had been spent to 30 June 2022.

**MR CAIN:** You also mention:

A new purpose-built Reintegration Centre at the AMC will deliver up to 80 beds and increase the range of rehabilitation programs available to detainees.

Why is there no funding for this particular measure in the budget?

**Mr Rattenbury:** That measure was funded in a previous budget. It was fully funded in

the order of \$35 million, so it is allocated. That work is now the responsibility of Minister Gentleman, as the Minister for Corrections—the actual delivery of the project. I am not able to provide you with a detailed update, but I can tell you in the broad that in last year's budget there was some deferral of that expenditure because, as you will recall, the AMC was significantly damaged both by the hailstorm and by a violent incident out there. The government took a decision to prioritise the repair of that significant damage because it was affecting currently housed detainees.

That is why that work has not progressed. I continue to support the development of that reintegration centre. I think it is an important step to ensure the pro-social behaviour of detainees, when they re-enter the community—as they all do, ultimately; there are very few people who do not come back into the community reasonably quickly.

**MR CAIN:** You may have already touched on this: the 2021-22 budget highlighted a cut of nearly \$40 million in capital funding for reintegration pathways for 2021-22—

**Mr Rattenbury:** Can you start that one again?

**MR CAIN:** In the 2021-22 budget there was a cut of \$40 million in capital funding for reintegration pathways, which may be what you were referring to, and no further funding. What has happened to the reintegration centre or any funding on reintegration as part of reducing recidivism?

**Ms Doran:** I acknowledge the privilege statement. We are just trying to reconcile the exact numbers that you are referring to. In terms of the reintegration centre, which was funded as part of Building Communities Not Prisons, and is counted as part of the reducing recidivism program, it is correct to say that that money is still committed to by government, but the timing for the construction of the actual building itself has been deferred, as the attorney said, in reflection of other infrastructure priorities at the AMC which were put ahead of that.

In terms of programming work, which is another important element of reintegration and rehabilitation processes at the AMC, that was also a dependency and a priority that was considered in the overall decision to defer the building part of the program. There has been a lot of work progressed over that period in terms of focusing on getting the programs in place, in utilising an existing facility at the AMC, which is the transitional release centre, which serves a similar purpose—it is a 20-bed facility—and building that momentum so that we can then look at building an expanded facility when we have all of the other dependencies in place, and we will have the capacity to utilise it effectively.

**MR CAIN:** Deferred; do you have a sense of timeliness for delivery?

**Ms Doran:** That is under consideration at the moment. We have a process in place looking at a long-term infrastructure strategy across the community safety portfolio. It is a question of the relative priorities of different needs at the AMC. While the integration is an absolute priority, it is a question of where that fits in the spectrum of other priorities and on the medium- and long-term infrastructure plan for the whole facility.

**MR CAIN:** Is it under consideration?

**Ms Doran:** It is planned to come back into consideration by the government in the next budget cycle.

**MR BRADDOCK:** Going back to Mr Cain's substantive question, what are the trends in recidivism following the introduction of the reducing recidivism strategy?

**Mr Rattenbury:** As I indicated earlier, our recidivism rate has declined by nine per cent, in the most recent figures, from the 2018-19 baseline. That is a good start, but we have more ambition in wanting to reduce it by 25 per cent. For me, this is indicative of the work that the government is doing in seeking not to build bigger prisons but to invest in a range of preventive programs that are therapeutic in their nature. These are actually helping people to break the cycle of being involved in the criminal justice system.

I think it is well understood in the ACT that there is a small group of people who offend relatively frequently. If we can target that group of people effectively and break the cycle, we can make the whole community safer, which is clearly the objective.

**MR PARTON:** I want to touch again briefly on the minimum energy performance of rental properties. You mentioned in the hearing that, of course, we are talking about a draft bill, which we are sure is going to change somewhat before it actually comes back to the chamber to be debated. I want to get an understanding of what the time frame for implementation of these changes will be when we see the legislation in its final form. Are you able to tell us that, Minister?

**Mr Rattenbury:** I think so, Mr Parton. Again, forgive me if I am repeating the same thing. In terms of the bill, the bill will not reflect the timing of the introduction of the standards. The bill simply creates the power to make the standards.

**MR PARTON:** Irrespective of that, obviously, if the bill is passed, the minister has the power to do what he or she wants to in this space, so it is pretty important that we get a handle on the direction that the government wants to head in. I am trying to get some understanding of what time frame landlords would have to implement those changes.

**Mr Rattenbury:** Certainly. I was going to come to that next. Just to be clear, that is a slightly separate process. The final decision on that has not been made, but the basis on which the government did its analysis—and the regulatory impact statement shows this—shows that a ceiling insulation minimum standard with a four-year phase-in would provide about \$18 million in benefits for the ACT and have a return, on every dollar spent, of \$1.30 to the community. That was the model that the RIS identified as being the most effective one.

To answer your question, whilst the final decision has not been taken, a four-year time frame for the installation of insulation across rental properties is a pretty good indication of where we will land.

**MR PARTON:** Minister, even at four years—and I know that the Real Estate Institute here has given this feedback—have you taken into account the current demand for materials, skilled tradies and installers, in that it would not appear possible, certainly

from where I sit, that even in four years the number of properties that we are talking about could be upgraded or remediated in that fashion? Is that your view?

**Mr Rattenbury:** No. The government has undertaken extensive consultation with insulation suppliers and installers. There has also been discussion with the Clean Energy Council, in terms of having an appropriate standard in place to ensure safety, both for installers and for people living in the property afterwards.

Certainly, the feedback we have is that the industry feels that there is the capability to ramp up in that way. The feedback we have had is that the capacity is not there at the moment, but we have a chicken and egg situation: until the standards are put in place, the industry does not have a reason to ramp up, but once those standards are in place, they will ramp up, and they believe they have the capacity. They also believe that the supply is available. We have a clear indication from those who are the experts—the ones who actually install the stuff—that they can do this job.

**MR PARTON:** How will the minimum standards be enforced? I know that the scenario in Victoria is that property managers have been affected massively, with the industry recording a 30 to 40 per cent drop in workers, because they are the ones who have had to apply the stringent checks and balances via the minimum standards checklist, and it has caused a fair bit of grief. How are we going to do it in the ACT?

**Mr Rattenbury:** One of the reasons that we went for the ceiling insulation was that it is considered simpler to understand. It is far less complicated than having an energy rating, for example, where you need to get very specialised people in. I am skating fairly close to the standing orders here, Mr Parton, where you are asking me to announce policy—

**MR PARTON:** I understand that that is the case.

**Mr Rattenbury:** The work is just being finalised. I can assure you that the government is finalising it at the moment. Certainly, when it is finalised, part of the package will be an extensive communication program to inform both property owners and, of course, the property managers group, who are particularly referenced—and they are a key group in this discussion—of what the standards are, what the time frame is, and what the responsibilities are for landlords; and, for tenants, what they can do if they feel that the standards are not being met. There will be a series of things like that, including a clear plan to communicate that.

**MR PARTON:** Minister, we vehemently disagree on the outcome here, but thank you for your generosity in your responses.

**Mr Rattenbury:** The outcome is to provide renters with decent properties—

**MR PARTON:** It is to narrow the rental market, pushing up rents and making people homeless. That is the outcome, Minister.

**THE CHAIR:** The minister can respond to that if he chooses to.

**Mr Rattenbury:** No. That is Mr Parton's opinion. I think he is wrong about that, but I

think we have had that discussion, so we should move along.

**MR CAIN:** Attorney, a victim of domestic violence told me a very distressing story about a proceeding in court. She was in an isolated area, watching on camera the perpetrator in the witness box. During part of the proceedings—this was an accused who had pleaded guilty—the perpetrator had, in view of the camera, signalled with insulting and threatening hand gestures, looking at the camera. I will not go into the details of names. A friend of the survivor who was in the court saw the same behaviour.

When it came to sentencing, they thought this would be important for the DPP to consider in their argument as to the sentence that would be appropriate. Unfortunately—and I am passing this on as it was told to me—the quality of the video recording meant that the DPP formed the view that it was not clear enough to use.

I do not know whether there have been other, similar instances reported about the quality of the video recording and its availability for evidence. Certainly, that would seem like an incident that would touch on an appropriate sentence for such an offender, and it was evidence that was unable to be used.

**Mr Rattenbury:** Mr Cain, I am not aware of the specific incident you have raised, and I appreciate you are being careful in providing the details. Firstly, if you are happy to provide me with those details in confidence outside this hearing, I am happy to look into the matter—not so much as part of the estimates process but simply as normal government business. Obviously, that would be very distressing for those involved. I understand the point you are making. I might see whether Ms Nuttall is able to add any further information in terms of your specific question.

**Ms Nuttall:** The specific question, Mr Cain, was: have there been any other complaints, apart from that particular incident?

**MR CAIN:** And is the quality of the courts' video recording adequate?

**Ms Nuttall:** I am aware of the complaint that you raise. I had received that through our feedback. I am advised—and I am not a technical person—that the quality of the recording is reasonably high. Whether something can be captured and the extent to which it is captured would depend on where the camera is, and who the camera is being focused on at the time. The cameras within the courtroom will focus on particular areas of the court.

My understanding is that, in that particular case, the camera was not in fact focused on that person, which is why the quality of the recording was not sufficient for the DPP to be able to obtain evidence about the behaviour of the accused at the time.

Certainly, the court would take very seriously any threatening behaviour towards a victim of crime throughout a court proceeding. I am certainly very concerned that that has occurred. Ordinarily, there are sheriffs in the Supreme Court courtrooms, and they are aware of the need to keep an eye out for such behaviour, on top of the recording of any—

**MR CAIN:** Surely, a camera focused on a witness would be an important procedure to

follow—

**Ms Nuttall:** Certainly.

**MR CAIN:** because there is obviously non-verbal behaviour, as in this case, that can have great relevance.

**Ms Nuttall:** As I said, it will depend on where the camera is focused at the time and who is speaking at the time. I assume it is much the same as would occur in the chamber here; the person who is speaking is the one that will be picked up by the camera. In this particular incident, that was not the case, so the quality of the camera recording was not good enough in that particular circumstance. But we do have good, high-quality cameras. They were installed throughout the PPP construction process. I do not have the details of the installation side of that.

**MR CAIN:** But given the scenario I have painted, do you think there is cause for some enhancement of the facilities so that, for example, a witness is always on camera, in case there is some behaviour that is relevant?

**Ms Nuttall:** I do not—

**MR CAIN:** No doubt it goes to resourcing, which—

**Ms Nuttall:** Yes.

**MR CAIN:** obviously goes to budgetary issues.

**Mr Rattenbury:** I am happy to take that as perhaps a recommendation, Mr Cain. We will look at the details of that. Obviously, Ms Nuttall knows of the incident. It has not been brought to my attention previously. I am happy to have a look at the matter.

**MR CAIN:** Thank you.

**MR BRADDOCK:** I want to ask about the drug and alcohol sentencing list. There was an evaluation released recently that was quite positive and well received, and there were some calls for expansion of the program. Why aren't there additional funds to expand that list in this budget?

**Mr Rattenbury:** That program has been in a pilot phase. The set-up was that the government established it as a pilot phase. There were 35 spots allocated to it, and the resources to go with that. It not just court time; there are also support services from Health and various others to provide that drug and alcohol rehabilitation. In what is a nice problem to have, that program has been deemed to be very successful, and the judiciary has sought to use it quite a lot. We reached a point where all 35 spots were taken, and there was a necessity to close the list, if you like, for a little while.

This is frustrating for me, on one level. It is also a sign of success. I am pleased that we have not had the other problem, which was that it was not being used at all, if the court did not believe it was a worthwhile program and the judges did not have confidence in it. In some ways, it is a very positive indication.

The reason it is not in this budget is that we did not receive the evaluation report in time to draw the conclusions to make a budget bid. Now that we have received the evaluation report, my intent is to put it to my cabinet colleagues that we should increase the funding and provide more available spaces. The evidence shows very clearly that it is having an impact on reducing recidivism and helping people to put their lives back on track. As the evaluation showed, there is also an economic case, in that the cost of running the program is offset by the savings of prison time.

The evaluation says that it believes it is a very conservative estimate of the economic savings, because it only looked at the prison time. It did not consider issues such as reduced ambulance call-out, reduced ED visits and various other things which you could also put a dollar figure on. I think the case is very strong for an expansion of the program.

**DR PATERSON:** In these discussions, following the evaluation, will there be discussions around expanding the criteria and shortening, say, the length of sentence? To be eligible, the sentence needs to be something like one to four years. It was noted in the evaluation that women are missing out because they often have shorter sentences. Also, with respect to the gap regarding mental health, people with complex mental health needs perhaps are not deemed to be suitable for the program. Will we start to expand on and look at those types of criteria changes?

**Mr Rattenbury:** You have picked up, Dr Paterson, that the evaluation did make about 20 recommendations and 15 other comments. There were quite a few. That is exactly the point of the pilot phase. Certainly, I have had a very preliminary conversation with the Chief Justice, as the responsible head of jurisdiction. Between the government and the courts, we will now formally respond to that evaluation. Clearly, there are some useful recommendations there.

I certainly anticipate a follow-through on those recommendations because the evaluation looked at it very carefully. I think that everybody is of a mind that it is off to a great start, but undoubtedly we can improve it.

**DR PATERSON:** It is interesting that the court system has expanded to include a drug and alcohol court, and other jurisdictions have lots of different courts for specialised crime. Is the ACT government open to exploring different court systems for different types of crimes?

**Mr Rattenbury:** It is fair to reflect that both the government and the courts are quite open to these considerations. The notion of therapeutic justice flows through to a number of areas. The Drug and Alcohol Court is one example. We, of course, have the Galambany Circle Sentencing Court, and the Warrumbul Circle Sentencing Court, which is for young people. Ms Nuttall will help me, because there are a number of these courts.

**Ms Nuttall:** There is also a children and young people care and protection intensive list, which works with families who are in the care and protection system, in a therapeutic manner as well.

**Mr Rattenbury:** There are already a number, but there is certainly scope to either consider the possible expansion of the remit of those or changes to eligibility criteria, as you have touched on. That work is ongoing and sits very much in the justice reinvestment agenda of putting the money into that therapeutic work. It will help people to deal with the underlying reasons for why they are involved in crime, and therefore make the community safer overall, which is the primary objective.

**DR PATERSON:** Attorney, I want to talk about funding for the women's legal service to help prevent family violence. On page 20 of the women's budget statement, it notes there is funding for a solicitor to support women experiencing employment and discrimination issues. Could you talk more about this funding, how the Women's Legal Centre will be involved, and time frames?

**Mr Rattenbury:** Yes, certainly. I will ask Mr Ng to provide the details on that one.

**Mr Ng:** I have read and acknowledge the privilege statement. One of the pieces of funding that government has already put towards the Women's Legal Centre is money towards this discrimination solicitor. Part of the funding dynamic for the ACT is that there is a significant stream of funding that comes through the commonwealth, in addition to the ACT. So there is already funding available for the Women's Legal Centre to deliver that solicitor. The attorney, following a collaborative engagement with the entire community legal assistance sector, decided to allocate part of the commonwealth funding towards the Women's Legal Centre.

**DR PATERSON:** That is existing funding for that position?

**Mr Ng:** Certainly, there is existing funding. Without speaking to the direction of that budget statement, funding certainly exists for a discrimination lawyer within the Women's Legal Centre. That funding that has already been allocated has been from the commonwealth.

**MR CAIN:** I make reference to budget statements D, page 5. I note that the estimated outcome of Supreme Court civil cases finalised within 12 months from lodgement was 62 per cent, whereas the target was 80 per cent. The estimated outcome of Supreme Court criminal cases finalised within 12 months from lodgement was 66 per cent, with a target of 85 per cent. There is a note that states COVID had an impact—in particular, the inability to conduct jury trials. I draw attention to the fact that the other three courts were able to meet their targets. Could you expand a little bit on why the Supreme Court could not, and the relevance of the COVID impact?

**Ms Nuttall:** Certainly, Mr Cain. The former Chief Justice took the view that the targets would be aspirational. Across the years various targets have not ever been met. But if you compare our finalisation rates across the country in those higher jurisdictions, we are relatively about the same in terms of the percentage of cases that the Supreme Court finalises. In saying that, the former Chief Justice and the current Chief Justice are working closely with the profession to ensure that there are appropriate case management strategies in place to have matters progress as efficiently as possible.

COVID has had varying effects across both the profession and the court, in relation to being able to progress matters. Sometimes it is because parties are COVID affected. In

civil cases it has often been that, where parties are needing to get expert medical evidence during periods of lockdown and border closures, those appointments have not been able to be made with the required specialists or experts to progress the matter. So there has been some slowing down, particularly in the personal injuries jurisdiction—civil cases.

**MR CAIN:** For the Magistrates Court, the Childrens Court and the Coroner's Court, are those targets also aspirational?

**Ms Nuttall:** No, they reflect more closely. Those targets are set by the head of jurisdiction and the former Chief Justice. I have not specifically had a conversation about the targets with the current Chief Justice, but she is also very aspirational about being able to bring the court up to those levels and working with the profession to do so.

**MR CAIN:** I refer you to that table again. It does not really stand out that one target is aspirational and the others have a greater sense of certainty.

**Mr Rattenbury:** As Ms Nuttall has indicated, those targets are set by different heads of jurisdiction. She has clearly indicated that the two different heads of jurisdiction have a different approach. Whilst they sit in one table, those independent offices have taken different approaches. That is the explanation she has offered.

**MR CAIN:** I understand the explanation, but it does seem unusual that you have in the same jurisdiction, in the same precinct, different approaches to setting targets.

**Mr Rattenbury:** No, not at all—

**Ms Nuttall:** It is the bane of my existence, Mr Cain, that I work to three heads of jurisdiction!

**Mr Rattenbury:** The courts are of course independent of the government, but within them the Chief Magistrate and the Chief Justice have their own jurisdictions.

**MR CAIN:** But this is a budget statement from the government and it is not clear within that statement that there are different approaches to targets in the different jurisdictions of our court system.

**Mr Rattenbury:** I will take that as a comment.

**MR CAIN:** That is a comment for improvement, I hope.

**MR BRADDOCK:** I want to ask about the campaign to raise the age of criminal responsibility, particularly in terms of having support services in a position to enable that to occur. What is in this budget to enable those support services to ensure the achievement of raising the age of criminal responsibility?

**Mr Rattenbury:** I will ask Ms Johnson to provide that detail in a moment. Just by way of background, Mr Braddock, you are right to identify the fact that those support services are a critical part of the reform. Just changing the legislation is not enough.

That work is being led by Ministers Davidson and Stephen-Smith, through the Community Services Directorate. Justice and Community Safety is working closely with them because it needs to be a whole-of-government project.

There has certainly been extensive policy work underway to identify those support services. I know there has been extensive consultation with community organisations, government agencies and ACT Policing to work through that. In terms of the specific question, I will ask Ms Johnson to—

**Ms Johnson:** I do not think I have anything more to add. Attorney, I think your answer answers that.

**Mr Rattenbury:** Thank you.

**Ms Johnson:** It is a matter for Minister Stephen-Smith. There is nothing in this budget bid this time that is specifically targeting that.

**Mr Rattenbury:** Thanks for clarifying that. What I can point to, Mr Braddock, is the work that is being done at the moment within the existing resources. It is those agencies working to put forward a budget bid in coming budget rounds. They are at the point where that policy work is reaching the point of being ready to bid for resources as part of the reform process.

**MR BRADDOCK:** Thank you.

**DR PATERSON:** My question is a general, overarching one around victim impact statements in courts but also victims engaging with the Sentence Administration Board regarding the review of whether people go out on parole. What is being done to ensure that victims, when they are going through a court proceeding, are not disempowered and further victimised through that process?

**Mr Rattenbury:** That is a really important one, Dr Paterson. Some victims have indicated their reluctance at times because they feel that it could be a really traumatising process to be involved in the court system.

You might recall that we passed a bill through the Assembly recently which sought to limit the ability to cross-examine victims on their victim impact statement for exactly the reasons you have identified. Many victims see that victim impact statement as the important point for their voice to be heard in the process. Many victims have indicated—and it is not everybody; some don't want to be involved at all or perhaps not for this process—that they see that as a really important point and find it very empowering to have that opportunity.

We put in place the victims of crime charter, between the last term of the Assembly and this one, and that has created a lot of avenues for victims to be supported and have involvement through the criminal justice process, particularly the right to access information, the right to be kept updated on their matter. I think those have been quite important steps. In terms of the other elements of your question. I do not think there is anything I have left out—

**DR PATERSON:** When people come up for review of their sentence, for parole—

**Mr Rattenbury:** Sorry; yes.

**DR PATERSON:** and how the Sentence Administration Board engages with victims.

**Mr Rattenbury:** I am just checking whether the Sentence Administration Board is appearing.

**DR PATERSON:** Okay.

**Mr Rattenbury:** I do not have that information; I am sorry. Perhaps the secretariat can help us with that. Certainly, the Sentence Administration Board is covered by the victims of crime charter, so all of the expectations and obligations under that charter apply to the SAB as well. At a more informal level, having spoken with the chair of the SAB, I know they are very alive to those considerations. Having said that, some victims at times perhaps disagree with the decision the SAB takes, so there is that friction that can exist for some victims in that process.

**THE CHAIR:** I am finding out whether they may be appearing as a witnesses. Once I confirm, I will let you know.

**Mr Rattenbury:** Thank you.

**DR PATERSON:** Following court proceedings, do you think that we have adequate supports in place to support victims? A lot of victims may not feel that justice has been served. Is there more we could be doing to support those people after court?

**Mr Rattenbury:** We have certainly made a number of improvements in recent years. I have talked about the charter already. We of course have the Victims of Crime Commissioner, and the government has been providing additional resources to the commissioner. The commissioner has made the case to the government that there has been increased demand. I think it has reflected well on the Victims of Crime Commissioner that they have been very proactive in seeking to support victims. That has created demand pressure. I do not want to say that that is positive or negative, but I think it is positive that more victims are coming forward and seeking that support. I welcome that work by the commissioner.

Going to your point about after there has been a court case, victims can register on the Victims Register, if they wish. They will then be kept updated if there is a parole hearing coming and those sorts of matters. Again, that is about those people feeling empowered but also having good knowledge, which a lot of people rate as being quite important. I am sure that we will continue to seek to improve in these areas.

**DR PATERSON:** Thank you.

**MR CAIN:** Attorney, I draw your attention to page 30 of budget statements D, headed “Changes to Appropriation”. I note the item that says:

More support for families and inclusion—Implementing the Commonwealth

Redress Scheme for Institutional Child and Sexual Abuse

First question: what progress has been made towards the implementation of the commonwealth redress scheme for such abuse?

**Mr Rattenbury:** I am not quite sure what you want to check there, Mr Cain. I can indicate that the ACT government has worked very closely with the commonwealth on this scheme. We participate in the ongoing ministerial forum. We have all of our systems in place. I will ask Mr Glenn to provide more detail.

**Mr Glenn:** Thank you, Attorney. I have read and acknowledge the privilege statement. Mr Cain, the redress scheme that is operated by the commonwealth, in collaboration with the states and territories, is operating in the territory now. We receive indications from the scheme operator, being the commonwealth, of people who have applied to seek redress. There are a range of actions that are taken in relation to that, including the provision of information to the scheme operator. We know there are applications for particular monetary redress and there has been at least one direct personal response—that is the correct title—delivered to a victim-survivor in the ACT.

**MR CAIN:** Thank you. Referring to that table, why was there a revised funding profile, the estimated outcome for this money not spent, at \$8.38 million?

**Mr Glenn:** That money is provisioned to provide financial redress in other measures to support victim-survivors who go through the redress scheme process. The rate at which those people have gone through has been less than originally estimated. The total number that we anticipate will go through the scheme has not changed, however, so the money has been shifted, over time, to be able to meet the demand as the scheme is rolled out across the country.

**MR CAIN:** When you say to provide other measures, what do you have in mind there?

**Mr Glenn:** The direct personal response is one. It is the one-to-one engagement with the victim-survivor, plus the actual financial compensation that is payable under the scheme. Predominantly this is for financial compensation, this amount.

**MR CAIN:** Okay.

**THE CHAIR:** The Sentence Administration Board are not appearing as witnesses at this stage. However, it is a decision of the committee. If we do want to bring them on for questioning, we can do so during our Friday call-back session. There are available spots there. That could be something we could consider.

**Mr Rattenbury:** On reflection, in previous years they have come separately.

**THE CHAIR:** Okay; they have.

**Mr Rattenbury:** For the committee's benefit, if you want to make a comment on this in your report, I am happy to bring them as part of the JACS Attorney-General's portfolio, because there has perhaps been a misunderstanding about where they fit in.

**THE CHAIR:** Yes.

**Mr Rattenbury:** Apologies if there has been any misunderstanding at our end. But they normally come separately.

**THE CHAIR:** So in the past they have appeared separately, but you would be happy for them to appear as witnesses during this hearing?

**Mr Rattenbury:** Yes. As Attorney-General I have responsibility for the Sentence Administration Board, so it would be appropriate they came as part of this portfolio. I am happy to take that on board. We will make that a requirement for future years, if that is the committee's preference?

**THE CHAIR:** Excellent. Thank you.

**MR CAIN:** As you are aware, Attorney, in October last year the ACT became the first Australian jurisdiction to specifically criminalise stealthing, as a result of the bill's introduction by Canberra Liberals leader Elizabeth Lee. I will probably be asking this question each year: are there any identifiable impacts of that legislation, to date?

**Mr Rattenbury:** The Director of Public Prosecutions is online and is probably the best person to answer the question of whether there have been any matters prosecuted. I do not know if the director is able to assist us with that.

**Mr Drumgold:** I am here. I do not know whether other people are having the same trouble, but I am having enormous trouble hearing. I am getting sort of broken up sound. Could you repeat the question?

**THE CHAIR:** Mr Drumgold, I will get Mr Cain to repeat the question and hopefully you can hear him—

**Mr Drumgold:** I think the problem is that the microphones are not in front of people. They are not coming through the transmission. I think what I am hearing is Mr Cain's voice coming through one of the front microphones and it is sounding very patchy.

**THE CHAIR:** I will ask the Attorney-General to forward the question to you.

**MR CAIN:** Can you hear me now, Director? You cannot hear me?

**Mr Drumgold:** No, it is breaking up.

**Mr Rattenbury:** Peter, I will endeavour to paraphrase. Director, Mr Cain is asking about the new stealthing provisions that came in under legislation last year. He wants to know what impact they have had. I feel the best answer might be if you could indicate whether you are aware of any cases being prosecuted under that provision thus far?

**Mr Drumgold:** No, I am not aware at this stage, but that does not mean there have not been any. It is encompassed in another provision, so it would be wrapped in a different charge. But I could do an examination and take that on notice.

**MR CAIN:** Thank you.

**Mr Rattenbury:** Thank you. If I might offer a suggestion, it might also be a question for ACT Policing, who may be able to provide you with some feedback on that when they appear. They came this morning, didn't they?

**MR CAIN:** Thank you.

**MR BRADDOCK:** I am seeking an update about coronial reform—where we might be with that?

**Mr Rattenbury:** Thanks, Mr Braddock. We have made some progress. What I am able to let you know is that our first full-time, dedicated coroner was appointed this year. Mr Ken Archer took up his commission in March of 2022. In my recent conversations with him, he has been very focused on both progressing through as many coronial matters as possible but also undertaking reforms within the office, particularly to speed up the process and also to ensure that families have improved access to and understanding of the court process. So that is on the court side of it.

On the policy side of it, the ACT government is working with the Victims of Crime Commissioner to bring in an independent facilitator to lead a process with families who have been through the coronial system, for them to work with first responders, the Director of Public Prosecutions and various others to have a facilitated and restorative policy process to make recommendations to government on other areas of reform as well.

So they are the two levels. There is the procedural stuff that is immediately in the remit of the coroner and then there is the more policy orientated work that the government will possibly progress via legislative change. That was a longish answer, but hopefully that made sense of the two streams of work.

**MR BRADDOCK:** That made sense. I would be interested to know if the policy work also addresses death certificates for those who have died by suicide. At the moment there is a requirement to include detail that can be quite traumatising for family members.

**Mr Rattenbury:** As a matter of principle, yes, it can be. The reason we are bringing in an independent facilitator is that we have received strong representation from community members. They wanted a restorative way of developing policy, so we are trialling a different way. Rather than having the government leading the consultation process, we are trying to do it as a co-process, if you like, where it is led by this independent facilitator. My brief, in that process, is that there are no questions off the table, so if this is something that comes back as feedback from the community then it is certainly something we will look at. What I am not clear about, and I am not sure if someone can help me, is whether that requires legislative change or whether it is something that the court could do now. I don't know the answer to that.

**Mr Glenn:** Attorney, Mr Braddock, I think the question of what is included on a death certificate is a piece of work that we are doing in support of Minister Cheyne, with her responsibilities for victims, but also the business regulations—so, the Access Canberra

piece. That is a body of work that we have on now—what are the legislative requirements for the inclusion of that data on a death certificate, and what are the operational issues that we can deal with?

The Registrar-General is considering whether they can present death certificates that require full details of death or whether partial information can be presented. That could be useful for those issues that you are alluding to. There are then questions about what other agencies and organisations that use those death certificates will accept. So there is a piece of work for us to do as to what they actually need as recipients of that information from the Registrar-General. I hope that answers the question.

**MR BRADDOCK:** So, it is not quite for this session, but there is work underway?

**Mr Glenn:** There is work underway; yes.

**MR BRADDOCK:** Is there a time frame that you might be able to provide me?

**Mr Glenn:** I do not know, but it is under active consideration. We are speaking about it. I am sure we do have colleagues from Access Canberra on the line. We are certainly in active consideration with Ms Cheyne and our colleagues at Access Canberra.

**DR PATERSON:** I have an ongoing discussion happening with the CEO or director of Legal Aid—

**Mr Rattenbury:** Yes.

**DR PATERSON:** —around the reporting of the collection of data around those who seek legal services who have been sexually assaulted. When they report in their annual report around calls to Legal Aid, it is classified as “domestic and family violence and sexual assault”. It does not differentiate. While I totally understand that you can have both things happening at once, there are also a number of people who would be accessing legal services who have just been sexually assaulted and it is not a family violence issue.

I do think that that is an important distinction, particularly in terms of prevention and the government’s response work on that. This morning, I did ask Legal Aid about this, and how that is progressing, and he said that he was talking with JACS around this, and how we can do this and make this happen. I was just wondering if I can get some further insight into what is happening and how this will happen? Thank you.

**Mr Ng:** I am happy to take this.

**Mr Rattenbury:** Yes; thanks, Daniel.

**Mr Ng:** Thanks, Dr Paterson. Yes, we are having some discussions with Legal Aid about that. At a principled level, I would say that the majority of the reporting infrastructure and requirements that we seek from the legal system sector are driven from the national legal assistance partnership, to which the ACT is a signatory. So we have been having an ongoing conversation with Legal Aid about that.

What I would say is that there are probably two considerations. One is about the good public policy value in having the disaggregated data, which is probably accepted by many. The other is the IT and reporting infrastructure that currently is in place, and the extent to which it is susceptible or easily amenable to reporting in a different way. JACS has gone through a recent process with the legal assistance sector, where we have been talking to them about what the future looks like in the context of developing a legal assistance strategy. In that context, and also in regular discussions, one of the key challenges is the reporting burden that goes with supporting government to make good policy decisions about where they invest in the legal assistance sector and where the areas of legal need are.

I guess that is one consideration that we have in mind about the susceptibility of the infrastructure and the reporting requirements that flow from the end of that, to a different style of reporting. The other is also the level of pressing upon the right to privacy of individual clients that different reporting might entail, accepting that people present to a legal assistance service provider for certain quite specific legal needs, but sometimes have quite complex and multifaceted ones that present in various spaces, but they do not want legal support for all of them.

So that would probably have to be another thing that was unpicked—the extent to which clients who are not seeking legal assistance for a particular matter are happy to divulge that they have another bit of legal need out there that they are either seeking support elsewhere on, or do not need support at all.

**DR PATERSON:** Yes. It—the complexity—concerns me when it is important that we know, one, that victim-survivors understand that there are legal services available; and, two, what the demand is. Also, probably, specialised services, too. These are complex issues, but sexual assault is quite a distinct issue as well, so I think it is important that, yes, we do pursue this.

**Mr Ng:** Yes. On the issue of different services provided by different providers, Dr Paterson, I think it is a really important one. Our directorate runs the ACT legal assistance forum, which brings all the legal assistance service providers together to engage in collaborative service planning exercises. One of the benefits of that forum is also bringing them together in the context of smoothing the pathways for warm referrals to other agencies, where other agencies might be better equipped or able to provide more targeted services to particular clients presenting. I note that sometimes the clients that present to legal assistance providers are in crisis situations, and they might not have the full suite of information about the most relevant services out there for them.

**DR PATERSON:** Yesterday, we spoke to the minister for domestic and family violence, around the budgeted work that was happening around a multidisciplinary approach to sexual violence. Will Legal Aid or the lawyers—the legal side of things—be part of that multidisciplinary, I guess, centre, where the vision is that a victim could go, where they would have the raft of different supports and agencies to help them navigate?

**Mr Ng:** Yes; one of the initiatives that is already in place—I think it is being co-led by Minister Berry and the Attorney—is the health justice partnership, to that end. That is supporting and providing that right-at-the-door service at health facilities. Some of our legal services providers—the Women’s Legal Centre and Legal Aid—do present at

health facilities to provide that kind of joined-up service, noting that, particularly people who have just had children, they might present with some really complex legal needs but will not be as mobile to access them as other people in the community. So that is certainly something that is on the mind of the directorate at the moment. It is an initiative that is already in place within that space.

**DR PATERSON:** But Legal Aid is not explicitly involved in this multidisciplinary centre, hub, or whatever, that is being funded as a recommendation from the sexual—

**Mr Ng:** I would have to take that specific question on notice about whether they are particularly involved in that initiative, Dr Paterson. I am happy to do so.

**MR CAIN:** I make reference to budget statements D, page 23, item (a), at the top. Could you explain why the estimated outcome of the cost per finalised criminal case in both the supreme and magistrates courts are lower than the targets? Again, the variation of 12 per cent and 20 per cent is not insignificant.

**Ms Nuttall:** Thank you, Mr Cain. In terms of the ACT Magistrates Court, for every election cycle we have quite a bit of a blip in relation to the number of criminal filings that we get. Our base costs really do not change terribly whether we have 100 cases or 300 cases. So when we get that blip the cost per finalisation comes down. For example, we had about 1,200 fail-to-vote matters in the Magistrates Court in the last financial year. I think it was about 1,200. I will just check that before I mislead you.

**Mr Rattenbury:** I note, the actual reference is 2,175.

**Ms Nuttall:** Thank you. Of course, the more cases you have the base cost gets spread over more cases. In relation to the Supreme Court, I will just refresh my memory. In the Supreme Court there was a correction of data that was undertaken. There were a range of matters. When a matter is committed to the Supreme Court and then an indictment is filed, often there will be charges that do not proceed. So the main charge will proceed, but the ancillary charges do not proceed.

There are a range of those matters still sitting on the system and not finalised, even though they were not being proceeded with by the DPP. So we worked together with the Director of Public Prosecutions office to clean up those matters that were essentially sitting on our books, that were not being progressed and that were not to be progressed. They were cleaned up. So, again, that saw a bit of a blip in our data, with a whole range of matters technically finalised in the system and therefore spreading the cost of that across the base cost.

**MR CAIN:** Were those finalised through a full process or were they dismissed?

**Ms Nuttall:** Well, there were a range of different responses. There were matters that had been before the court that were to be withdrawn on the entering of pleas or verdicts on the higher charge. Often there will be a backup charge—a lesser offence in relation to the same facts. Those matters had not been properly closed off. It was an administrative process of the director filing the appropriate paperwork for those matters to be withdrawn.

**MR CAIN:** Thank you. And a supplementary, but almost an identical question. With regard to item (v), why was the estimated outcome on the cost per finalised civil case in each of those courts higher than the target? The variation being 17 per cent, 11 per cent, respectfully.

**Ms Nuttall:** In terms of the Supreme Court, that shows a result of the shift—the nature of the shifting cost, depending on where we put our resources.

With the commencement of the new Chief Justice, she has undertaken a significant review of all civil matters that are on foot. And there have been quite a few, as we mentioned earlier, that have been delayed through COVID. So there has been close case management of that, which means that they have seen a higher incident of attendances before the court to get those matters case managed more closely by the Chief Justice.

In relation to the Magistrates Court, we have seen a significant drop in lodgements in the civil jurisdiction. We are not entirely sure why that is. Whether it is COVID-related or whether it is a combination of COVID-related and just a general downturn in the lodgements in that civil jurisdiction, so less matters. The base cost is still the same but dealing with less matters.

**MR BRADDOCK:** You will probably have to take this on notice, but could I please have the cost to the ACT government of processing those 2,175 failure-to-vote offences?

**Ms Nuttall:** I am not entirely sure what you would seek to have counted in that, in terms of the cost of—

**MR BRADDOCK:** Well, if there is a cost for each case, I would be interested what the total cost was for all of them.

**Ms Nuttall:** Well if there are 2,185 cases, and the cost of finalisation is \$1,931 per case—

**MR BRADDOCK:** So it is legitimate just to multiply one by the other?

**Ms Nuttall:** Yes.

**MR BRADDOCK:** Thank you.

**Mr Rattenbury:** I think that is the answer that you were after, Mr Braddock.

**MR BRADDOCK:** I have got my number.

**Mr Rattenbury:** Mr Braddock is going to get his calculator out and he is happy, I believe.

**MR BRADDOCK:** Just in terms of addressing the over-representation of Aboriginal and Torres Strait Islanders in the justice system, can you please explain how the investment of monies here is actually going to lead to the outcomes of reducing that representation?

**Mr Rattenbury:** Yes, certainly. There is obviously a number of initiatives in the budget that go to that. I might refer to—I think someone who is right behind me—Ms Doran, with the details of that table.

**Ms Doran:** Thank you, Attorney, and Mr Braddock. Yes, there is commitment of funding in the budget which is supporting the continuation of a number of initiatives which have already been showing some positive results in this space, as well as potential for some new initiatives to try to increase the impact of effect that we are having there. I can talk through each of the initiatives in a moment, if that would assist you?

But I think, more generally, what we are trying to achieve with this commitment, over a four-year period, and so a continuous and certain commitment to this important challenge, is to change the way in which we work in partnership with community as well. And to recognise the fact that it is the community themselves who potentially have the best answers or the best information on how we can address these issues with their people, and the people who are coming into contact with the justice system.

So it is a program which builds on what we have in place at the moment, has potential for new initiatives, establishes some dedicated resourcing within the directorate that allows us to really build a strong relationship with community and to hear their voice and their views in this space—and my computer has just died, which I knew it was going to do—and really look at the way in which we can leverage the best effect.

Through each of the initiatives we are looking not only to support individuals in their particular stage of coming into contact with the justice system—so there are initiatives that target people when they first come into contact with policing, in their processes with courts, and legal support, and stages when they are in AMC, and when they are transitioning back out into the community—but we are also looking through those processes to identify either gaps or systemic issues within the system so that we can also be fixing the systemic problems and making the system better for the future. So supporting individuals but also focusing on the system itself.

**MR BRADDOCK:** I do not need you to go through the individual initiatives, but I would be interested more in the performance monitoring and evaluation of the effort as a whole.

**Mr Rattenbury:** Perhaps while I am here, I can offer Mr Braddock. In terms of this suite of programs, what I think is an important feature of this expenditure is that there are a number of programs here that have been piloted and trialled in recent times that we are actually continuing because they have proven to be successful. So a number of them have been under evaluation.

I think one of the community frustrations is that, too often, we see pilot programs piloted and then they do not continue. For me, a really important feature of this package is that for the ones that have worked, we are continuing to fund, and they have got this proven track record now. So that is just an overarching comment I make. Ms Doran might want to add further comment.

**Ms Doran:** I might actually defer, if I could, to Ms Johnson, who can talk in more detail to the evaluation processes that we have in place.

**Ms Johnson:** The evaluation framework is under the Reducing Recidivism 25by25 plan. It is a really innovative collaboration with the ANU in relation to how we can evaluate both overarchingly the plan and all the individual initiatives under it, if they are not being evaluated somewhere else. An example of that is the Ngunnambai Bail Support Program, which I think the Attorney was referring to when he said that there are some programs that started as pilots. We have been looking to evaluate those to bring them forward.

This work that the Deputy Director-General has been talking about has been funded in this budget. The Ngunnambai Bail Support has that interim funding. We have got an interim evaluation and we are looking forward to getting a further evaluation. So additional funding was announced on 24 July as part of the \$11.5 million over four years. The funding of \$574,000 in 2022-23 was provided for the continuation of the Ngunnambai Bail Support Program, based on an evaluation which found that 92 per cent of the bail support plans that are entered into have actually resulted in people getting their bail through the Aboriginal Legal Service.

**DR PATERSON:** There is—page 24, the—hang on, I have lost the page. Basically, there was a transcript from ACT Policing of one full-time position for Convenor for the Restorative Justice Unit. I am just wondering what that is, and if the position was less appropriate in ACT Policing? Or is it just a literal money shift?

**Ms Johnson:** I would indicate that that position has been in the Restorative Justice Unit for many years. This is a clarification of that. It originally was in ACT Policing. My understanding is that it was thought the work would be done there, but it is actually done with my colleague here from the Restorative Justice Unit. So that work has been in that team, and they have just been sending the money across every year. And now we are clarifying the financial arrangements to meet the reality of what is going on.

**MR CAIN:** The ACAT collects data on what is called vexatious applicants covered by their legislation. How many applications would fall into that category?

**Ms Nuttall:** Mr Cain, I would have to take that on notice. But the ACAT does not have any power to declare a litigant as vexatious. So I suspect the answer is nil. Any declaration of a person as a vexatious litigant is undertaken in the Supreme Court. So I would need to take on notice whether there have been any applications in that jurisdiction to declare an ACAT litigant vexatious.

**MR BRADDOCK:** I am just interested in the crime statistics for the ACT. What are the trends? How do we compare with other jurisdictions? Are you able to provide any figures on that?

**Mr Rattenbury:** I am trying to think how to answer that, Mr Braddock. Obviously, the ABS keeps a lot of crime statistics. They are the predominant source for measuring the comparisons between the jurisdictions. And the annual ROG's reports, of course, reports on government services. Those are the primary places where those sorts of figures are reported.

I think what we can say generally about the ACT is that we are considered to be a very safe jurisdiction. Australia has one of the lowest crime rates in the world, and the ACT has some of the lowest numbers in Australia.

So, for example, the estimated outcome for known and reported criminal offences against the person, our results exceeded a target of less than 800 per 100,000 in population this year. That is an improvement on last year. Similarly in the property space, the numbers were an improvement on last year. So they are sort of localised figures, but overall the ACT generally sits quite well.

One area, which came up earlier in the discussion from Dr Paterson, is we have seen that the ACT has a particular issue with stolen motor vehicles. That is part of the reason ACT Policing has set up a dedicated task force to address that matter.

**THE CHAIR:** Mr Cain, do you have a substantive?

**MR CAIN:** Actually, it is really a follow up. And perhaps I should have phrased my question slightly differently about vexatious applicants. I am sure you are aware that section 32 of the ACAT act provides for dealing with vexatious applications, and the section applies if the tribunal considers an application or part of application is frivolous or vexatious. So I am interested in how frequently the tribunal has come to that conclusion.

**Ms Nuttall:** Thank you, Mr Cain. I am just waiting to see if whether my registrar is going to provide me with some information on that. Her answer to your previous question was that we did not have any data on that. But perhaps I could come back to you—

**MR CAIN:** But that was premised on—

**Ms Nuttall:** Sorry, I am being told that—

**MR CAIN:** —the view that the ACAT could not deal with vexatious applicants but they—

**Ms Nuttall:** Sorry, I misunderstood your question. I thought you were seeking to have—talking about somebody who was declared a vexatious litigant.

I am advised that the tribunal does not have any data on whether there has been any application with that provision.

**MR CAIN:** Okay. Thank you

**MR BRADDOCK:** Just off in the PAGA there is a line item about work on the right to appeal and compensation for wrongful convictions. Can I just please have an update on that one?

**Mr Rattenbury:** Yes, you can, Mr Braddock. That work is progressing. The government issued a discussion paper earlier this year. The original item in the

parliamentary and governing agreement spoke about bringing in a right to appeal. This seeks to, as has been done in a couple of other jurisdictions in Australia now, particularly South Australia, codify a process and take it away from being a matter of executive discretion, to creating a more transparent and orderly process that is run by the courts. I think this is an important reform and one that I am keen to pursue.

So the government had been progressing that. Linked to that is the issue of what compensation would apply where somebody is found to have been wrongfully convicted. So the consultation paper added that question and went out earlier this year—I think in about April.

The government has now received a range of feedback on that. We are in the process of finalising a cabinet submission to prepare legislation to come before the Assembly.

I do not have an exact timeframe on when the legislation—it will either be late this year or early next, that I would expect the legislation to come forward to propose that change.

**MR BRADDOCK:** Thank you.

**THE CHAIR:** Any other substantive, from any member that is here?

**MR CAIN:** Yes. I would just like to follow up on my ACAT question—

**THE CHAIR:** Mr Cain.

**MR CAIN:** Interestingly the answer to how the ACAT has viewed an application as vexatious or otherwise, that there was no data. I mean the tribunal, as you are aware, has powers to make orders with respect to such an application. So I am surprised that there is no way that the tribunal has a record, or keeps data on where that power is exercised, under section 32(2).

**Mr Rattenbury:** I think the answer to your question, Mr Cain, would be of course, the tribunal could go through all the files and manually extract that information. But there are many data sets we could keep, and not all data sets are extracted or reported on. There is a resource cost on every report online, and this has not been a matter that has been raised before. So it has not been identified as an area where the tribunal has sought to put effort into reporting.

**MR CAIN:** It would seem a very interesting and important thing to keep a record of.

**Mr Rattenbury:** That is clearly your view, yes. As you say, it has not been raised before. So it has not been an area of resource allocation at this point in time.

**MR CAIN:** Thank you, Chair.

**THE CHAIR:** No worries. Thank you, Mr Cain.

We will draw this hearing to a close.

The committee would like to now adjourn. The committee would also like to thank Mr

## PROOF

Rattenbury, and statutory officers, and officials, who have appeared here throughout today.

Now if witnesses have taken any questions on notice, could you please get those answers to the committee support office, or committee secretary, within five working days of receipt of the uncorrected proof.

And if members wish to lodge any questions on notice, please do so to the committee support office, or committee secretary, within five working days of the hearing.

**The committee adjourned at 5.28 pm.**