LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

(Reference: Inquiry into annual and financial reports 2019-2020 and ACT budget 2020-2021)

Members:

MR J HANSON (Chair)
DR M PATERSON (Deputy Chair)
MS J CLAY

TRANSCRIPT OF EVIDENCE

CANBERRA

FRIDAY, 19 FEBRUARY 2021

Secretary to the committee:
Ms B McGill (Ph: 620 70524)

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.

APPEARANCES

ACT Electoral Commission 48
ACT Human Rights Commission 71
ACT Inspector of Correctional Services 80
Legal Aid ACT 56
Chief Minister, Treasury and Economic Development Directorate 1
Director of Public Prosecutions 56
Solicitor-General for the Australian Capital Territory 56
Justice and Community Safety Directorate 1, 38
Public Trustee and Guardian 87

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Amended 20 May 2013

The committee met at 9 am.

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
McNeill, Ms Jennifer, Deputy Director-General, Justice
Ng, Mr Daniel, Executive Group Manager, Legislation, Policy and Programs
Johnson, Ms Kathryn, Executive Branch Manager, Legislation, Policy and Programs
Hutchinson, Ms Zoe, Executive Branch Manager, Legislation, Policy and Programs
Higgs, Mr Trevor, Senior Convenor, Restorative Justice Unit, Legislation, Policy and Programs
Beattie, Ms Liz, Chief Human Resources Officer, People and Workplace Strategy
Chan, Ms Yu-Lan, Chief Executive Officer, ACT Gambling and Racing Commission
Garrisson, Mr Peter SC, Solicitor-General for the ACT
Nuttall, Ms Amanda, Acting Principal Registrar and CEO, ACT Courts and Tribunal

Chief Minister, Treasury and Economic Development Directorate
Rynehart, Mr Josh, Executive Branch Manager, Fair Trading and Regulatory Strategy, Access Canberra

THE CHAIR: Welcome, Attorney-General, members of the committee, visiting MLAs and officials. This is the first public hearing since the pandemic, so it is good to be back. These are combined hearings into annual reports and estimates, which is new. This is the first time we have had the estimates committee hearings folded in with standing committees. There is quite a bit happening that is new today, and it is certainly the intent of this committee to provide just one report into estimates and annual reports. There is quite a bit that we can cover; it is pretty broad. With your indulgence, Attorney-General, the questions will be across a broad range of subjects.

Today we are considering the Justice and Community Safety Directorate in relation to budget statements D, as well as the Electoral Commission. The proceedings are being recorded and transcribed by Hansard, and are being broadcast and webstreamed live. With questions on notice, so that there is no ambiguity, if you are going to take something on notice, make that very clear. At the end of the hearing we will try and check what has been taken on notice, but we may not actually get to that.

The first session is with the Attorney-General and officials. We will be looking at a range of aspects, including policy advice and justice, legal services, legislative drafting, public prosecutions, and courts and tribunals. Can I confirm that you are aware of the pink privilege statement that is before you, and what that means? You should be across that by now, Attorney-General?

Mr Rattenbury: Yes.

THE CHAIR: This is your first hearing as Attorney-General.

Mr Rattenbury: It is.

THE CHAIR: Welcome; that is very exciting. We are not going to let you make an opening statement; we will go straight to questions.

Mr Rattenbury: I spent all of that time preparing one, Mr Hanson.

THE CHAIR: I invite you to table it. One issue that I have been pursuing for a number of years is the new court system—the electronic system. There is an acronym for it which Mr Glenn will remind me of, I am sure.

Mr Rattenbury: ICMS.

THE CHAIR: The issue that arises is that there is no database that records things like how many people were let out on bail, for how long, and how many breaches of bail there were. We have not been able to look at systemic issues within the courts and justice system since I have been in this Assembly. If you are trying to see whether the bail system is working effectively, we have not been able to do that. We have been promised for five or six years that this data management system will resolve all of that. At every hearing I hear that it is just around the corner. Have we got it, or is it still just around the corner?

Mr Rattenbury: Let me get you some detailed time lines on that from the director-general.

Mr Glenn: The system that we are talking about is ICMS. That is the acronym.

THE CHAIR: That is it.

Mr Glenn: That is the courts data management system. It is operating now in both the civil and criminal jurisdiction in the court and, to an extent, in the tribunal. It is a replacement for a previous system that was called MACS—I do not know what that stands for—and it provides a much richer level of data around what can happen in the court. It also has the potential, as we do some change management with judicial officers, to be able to capture, in real time, data in the court and actions in the court that are otherwise done on pieces of paper and handed to registry staff.

Going to your specific question about being able to interrogate questions around bail, I might need to rely on our principal registrar to speak to that. As we have canvassed on previous occasions, that is a separate issue to the core system, which is actually about actions in the court itself and orders, compared to an analysis of what happens to people who—

THE CHAIR: The previous advice was that the problem was in getting systemic data—how many people were released on bail, how many people breached bail, for what offences and so on. We were told you would have to go back and interrogate every single court decision, then consolidate all of that, and it was beyond the scope or ability to do that. This system would be able to consolidate that data. You would press a button

and it would give you the answer that you want. Does it have that functionality?

Ms Nuttall: The ICMS, unfortunately, does not provide a system where you press a button and the data spits out. It is a very data-rich system, and we are working at the moment on providing a range of reporting requirements that can assist us with these sorts of systemic issues, including assisting the heads of jurisdiction to look at their case management systems and make sure that cases are going through the system in a timely and efficient manner.

THE CHAIR: Can I clarify something? If I were to say, "In the last period, how many people have been released on bail and how many people breached bail?" would you be able to interrogate that data and get that information to me?

Ms Nuttall: I am advised that at this point we are unable to. There has been some preliminary analysis of the offences committed while on bail. The report is very heavily dependent on ACT Policing providing a single identifier per offender. There has been work continuing with ACT Policing so that each person that is in our system is readily able to be identified. In times past, under old systems, Jo Smith may be in the system as Joanne Smith, JoBeth Smith or Jo Smith, and it has not been able to marry up those people. We have been working with ACT Policing to address unique identifier issues.

THE CHAIR: If we get the unique identifier, will the system then have that capability?

Ms Nuttall: I will have to take that on notice. I am not entirely sure.

DR PATERSON: With the ICMS system, what sort of data does it provide?

Ms Nuttall: The data that it provides goes from the very basic of how many matters we get in each particular type of jurisdiction, be that the Magistrates Court civil, ACAT civil, Supreme Court civil, criminal et cetera. It provides us with information at a high level about how quickly we are turning our cases over and how many times a matter might come into the system—for each time, the system touchpoints with that. It can give us more in-depth data about a whole range of things, basically at the tip of my fingers. There are a number of reports that we provide to the jurisdictions to assist them and to make sure that their cases are going through the system in a timely manner.

DR PATERSON: I have a question about restorative justice. The report details a drop in referrals and conferences as a result of COVID and bushfires. Does that mean there is a backlog of conferences at the moment?

Mr Rattenbury: Not that I am aware of. I will get the public servants to come forward and provide some more detailed information. Certainly, we did see some pressure on the restorative justice program emerging prior to the bushfires and the pandemic. The changes to the legislation in recent years brought new offences under the restorative justice regime. We added family violence, sexual assault and sexual offences. With the increasing complexity of those matters, as you can well imagine in the family violence and sexual assault matter space, there was some building pressure, but we put additional resources into the restorative justice program. I will ask Ms Johnson to give you a detailed update.

Ms Johnson: We have a waitlist at the moment. The waitlist has reduced over the last 12 months. We had an additional resource added during the last budget estimates—an additional convenor. That has assisted with the family violence and sexual offences phase 3 part of the rollout of restorative justice.

Over COVID we have had a reduction in our conferences et cetera. Because there has not necessarily always been face-to-face conferencing, as that has not been appropriate for a lot of our vulnerable people that are involved, more intensive work is needed on each conference over time. It has been an unusual year. In talking about the waitlist, certainly, it has reduced, with the additional resources that we received, but there continues to be a waitlist.

DR PATERSON: Are you able to detail how the conferencing is different for family violence and sexual offences compared to other offences?

Ms Johnson: At a very high level. I have an officer in the other room who would be able to give greater detail. It depends on the level of detail that you are looking for. We have two convenors on each of our family violence and sexual offences matters because we believe they require that intensity.

There is the assessment of eligibility; that is obviously a very sensitive matter in the family violence and sexual offence matters. We need to look at the suitability requirements for both offenders and victims.

What else would I say about the conferencing? There are the two convenors, a bit more sensitivity, and there is the suitability aspect. Obviously, it often takes a little bit more time. It is a more intensive process.

DR PATERSON: Are the staff who run the conferencing for the family violence and sexual assault conferences specially trained or differently trained?

Ms Johnson: We have the ability to bring in additional resources and particular experts in family violence that provide additional resources. This is the fellow that actually conducts them. I have not conducted one myself.

The team have obviously started conducting more of these matters and have become more expert over time. In addition to having become more expert, as the team have done this they have created some regimes to get us up to speed as the new phase 3 has come out, and they have brought in additional experts. I should hand over to my colleague, who can give you a lived experience.

DR PATERSON: I was inquiring along the lines of these new sexual assault and family violence conferences. How do they differ from the other offence conferences that you run, and are staff specially trained?

Mr Higgs: Yes, they do differ. It is a two-convenor model. Straightaway, that is different. It doubles our resources. We have two convenors, usually a male and a female, working on every referral. With the risk assessment at the front of the referral, and liaising with external agencies to get as much information as possible to assess risk, it takes longer than normal.

The other big difference is that, generally, with restorative justice, we would reach out to the offender first, and there are a host of reasons for that. However, we have a case review, and we examine the referral. At times we instead reach out to the victim, the person harmed, first, because it is safer to do so, and we want to assess their needs and wishes before we progress.

The matter itself takes longer because we also utilise specialist support people. Sometimes a person will come with a specialist support person, but at other times we have to go out to the community and source that person, and that takes time. We have to bring them up to speed, and we have to see whether they need counselling. We see how restorative justice fits into their counselling. It fits in very well, but there has to be time for that to work. It takes much longer—about three months, on average, for a sex offence or a family violence offence matter to go from when it is allocated to a convenor to when the matter is finished.

DR PATERSON: I was reading about your survey response rate post conference. The satisfaction rate was high but your response rate to the survey was low. How does that survey participation break down? If it is only offenders being satisfied that it was a good process and not victims, it is problematic. How is that all broken down?

Mr Higgs: Absolutely no problem there. The victims are incredibly satisfied. With sexual offences and family violence, we now have two specialist volunteers who will actually phone and contact the victims and offenders. We have recently started that process. Survey responses are very good when you look at them compared to the average rate of survey responses through academia. They are actually very high. The satisfaction rate of 95 to 98 per cent is exceptional. I have just finished a sex offence conference where the victim said that her life changed at the end of that conference. Certainly, we attempt to reach every single participant. Of course, the process is voluntary, so they simply do not have to respond. But that is not always a bad thing. They might feel so satisfied, finished and closed that they do not particularly want to answer questions four weeks later.

MS CLAY: I recently had a call from a member of the community who was a victim of an alleged sexual assault. Her experience was interesting. She was very open and able to talk about it, which was really helpful. She was actually in quite a calm state. She found that the police did not contact her enough. Between November last year and January this year, she had to chase her police liaison. She was not getting the information. She had really good service from the Rape Crisis Centre, but it was a two-month waitlist. The point that she made quite eloquently was that some people might not be able to wait for two months, after something like that. It sounded like there were a lot of good mechanisms there, but I was not confident that they were being resourced properly. Do you think that the other support for victims of sexual assault is there or do you think there is more work to be done?

Mr Higgs: There is always more work to be done. Waitlists are an inevitable part of the service, unfortunately. At the moment ours is 12. But there is a separate unit. SACAT, within the police, is a separate unit for those processes. We meet with them regularly and they are definitely a high-performing team.

Resource-wise, it was an interesting point that you mentioned. At times when people are ready—we see this in restorative justice all the time, and the person you were talking to might have been ready—and they make the decision, they want the process to happen straightaway. That makes perfect sense. But we have also found at times that, regarding the time from the offence to when people are ready to talk, sometimes it is actually good to have a gap there. In answer to your question, I can only speak to the restorative justice part of that.

MS CLAY: Mr Rattenbury, I am pleased to see that we are collecting data on the drug and alcohol sentencing list. I want to know what we have learned from that and whether that process is working.

Mr Rattenbury: Yes, certainly. The drug and alcohol sentencing list got underway early last year. I do not want to sound like a broken record today, but it did get interrupted by the arrival of the pandemic. It has not been as busy or as thorough as those involved would have liked it to be. To an extent, the delay affected the evaluation process because, to make the evaluation a valuable process, we needed to have enough people go through the system. We can offer you some preliminary data and insights. I will invite Ms Nuttall to make some comments on that.

Ms Nuttall: On the evaluation, we amended the contract for the evaluation process on 2 July, taking into account that we did not have enough participants in the program due to COVID. At the beginning of COVID, the services providing counselling et cetera to that program were not taking any face to face and were not taking any new referrals, so it slowed down the commencement of the drug and alcohol sentencing list in the program.

In the 2019-20 year, we had eight offenders placed on a drug and alcohol treatment order. Two of those were cancelled and 15 people were referred but were unsuitable for the program. In the 2020-21 year to date, we have had 16 people placed on a drug and alcohol treatment order. Two have completed, three have been cancelled, two were found unsuitable, and six are currently under assessment for the program.

In total, at the moment—I will find that number. I will have to take that on notice. I thought I had a number here for the current participants. There are about 15 or 16 current participants.

MS CLAY: What sorts of outcomes are you seeing for the people who have completed that?

Ms Nuttall: One of the participants went through the whole program and successfully completed. It is too early to say whether there will be any recidivism during that time. With the other person, there are four stages of the program. They did not complete the whole four stages but they did stay engaged in the program for the whole 12 months.

MS CLAY: What is your aim? What is your goal for knowing that this program is working really well?

Ms Nuttall: Ultimately, it will be that people go on and lead productive lives and do not reoffend. How we measure that is always a difficulty. Particularly, once they have

left the courts, we do not have any oversight of them, except if they come back into the system. At a minimum, we would like to see that, for people who have completed the program, even if they reoffend, their offending is not as serious as what brought them into the program in the first place.

Mr Rattenbury: The policy intent behind this program is to provide a therapeutic approach, to see fewer people go into custody and, rather, their focus being on seeking treatment options and other options. With the notion that Ms Nuttall was just talking about, the Americans refer to it as “desistance”—the idea that people who have had a history of criminal offending and/or drug abuse may not perhaps get back on the straight and narrow instantly, but we may see either lower levels of offending or greater periods of time between offending. That is an important measure of progress as well—that people are in a less severe category of offending and/or substance abuse. That can be considered to be a success as well. Those things are harder to measure, but I think they are part of a success story in this kind of area, where you have people who have long histories in this space.

Mr Glenn: The characteristics of a person who successfully completes the program are that they are actively addressing their substance abuse issues, that they are clean at the time, that they will continue to engage with that process to maintain avoidance of drugs and alcohol, and that they have also been engaged in training, counselling, study and/or employment. It is about trying to re-craft a path for that individual away from substance abuse and the criminal activity that goes with it. Any participant here will have a strong link between substance abuse and their criminal offending. It is about moving into a productive community space so that they are in employment or in training, in anticipation of employment.

As the attorney says, the test will be: is there reoffending or is there lapsing of avoidance of alcohol or drugs, and does it happen at a reduced rate? The evidence overseas shows that there is a very large cohort of people for whom this is a life-altering process, and they never re-engage with the criminal justice system. There are some who lapse. The design of the system is to try and maximise those who go on and never come back, and to have a mechanism to be able to address those who are human.

MS CLAY: Perhaps, in a few years, we will have evidence showing that.

Ms Nuttall: The aim of the evaluation is to try and measure some of that. Of course, the longer that you evaluate, the better measurements you will have. At this stage we anticipate having a final report of the evaluation in April 2022.

DR PATERSON: You mentioned that 15 people in the first year were deemed unsuitable.

Ms Nuttall: Yes.

DR PATERSON: Is there a gap there? They obviously presented as suitable but were then deemed by the sentencing to be unsuitable.

Ms Nuttall: The way that it operates is that an offender’s lawyer or the offender themselves might put forward that they would like to be assessed for a drug and alcohol

treatment order. The first stage is a very short eligibility assessment. That just measures whether somebody has drug and alcohol issues and whether they have mental health issues that may or may not interfere with them being able to complete the program. So it is a fairly short assessment.

It will then go before the sentencing judge in the drug and alcohol sentencing list and the judge will then order a more full assessment. That takes a much broader approach to somebody's suitability for the program. Just because they get referred to an assessment does not mean that they were ever suitable for the program. It may be their lawyer that puts them forward and a magistrate will refer them for that assessment. If the person is unsuitable, there may be other options available to them throughout the suite of sentencing options under the sentencing act. The drug and alcohol sentencing judge will go on to finalise their sentence. They do not go back out of the system to be sentenced in another way. The judge holds on to that matter and will sentence them to another appropriate order.

Mr Glenn: It is a critical point that this is not a soft option. This is actually very hard for the individuals who will go through the process, and very rigorous for them. With the selection process, a lot of people can put their hand up and say, "I'd like to do it," but the assessment needs to be about whether this person is in the right space and ready to participate. It will be personally challenging for them to go through.

THE CHAIR: The issue of judge-alone trials: there was legislation passed. It was controversial.

Mr Rattenbury: It was.

THE CHAIR: The legislation essentially was repealed. My understanding is that there were no cases that occurred during that period that were subject to that legislation. Were there any impacts of it or can you confirm that there were no cases? Were there any other impacts of that legislation in terms of delayed trials or changes to court procedures and so on?

Ms Nuttall: You suggested that there were no judge-alone ordered trials?

THE CHAIR: Yes.

Ms Nuttall: There were a number.

THE CHAIR: There were?

Ms Nuttall: I do not have those figures with me. There were about five or six where the parties made submissions. The judge made a preliminary assessment that it should be ordered. Some parties agreed to that; others did not. It went before the judge for submissions and the judge determined that it would be appropriate to proceed despite the lack of consent.

THE CHAIR: Right; so there were a number that proceeded?

Ms Nuttall: Yes.

THE CHAIR: Against the consent of the accused?

Ms Nuttall: That is correct; either the accused or the prosecution.

THE CHAIR: Either the accused or the prosecution?

Ms Nuttall: Yes.

THE CHAIR: Can you get me a specific number for those?

Ms Nuttall: Yes.

THE CHAIR: Are those matters concluded or are those matters ongoing?

Ms Nuttall: Off the top of my head, I think they are all concluded, but I would have to confirm that for you.

Mr Glenn: Mr Hanson, at least one of those matters is subject to an appeal in the court. We need to be cognisant of that.

THE CHAIR: Yes. I am not interested in the particular individual cases. There were certainly a number of what could be described as legal experts who viewed the judge-alone trials being ordered as unconstitutional. Now that there are matters that are subject to appeal, are you able to clarify whether the appeal is on a constitutional matter or whether it is another matter to do with the trial?

Mr Garrisson: Mr Hanson, there is one matter that is the subject of appeal at the moment where notices have been given to the attorneys-general under section 78B of the Judiciary Act. One of the issues raised in the appeal is the question of the constitutional validity of section 78B(a). It is only at its very beginning stages. A decision is yet to be made by the attorney as to intervention—and, indeed, the other attorneys-general as to whether they do so or not. The issue was considered—

THE CHAIR: Before you go on, what does intervention look like? What are the options?

Mr Rattenbury: I can actually update you on this, because I have signed a brief overnight. Mr Garrisson will not have seen that yet this morning. I have agreed that the ACT Solicitor-General should intervene on behalf of the ACT government, which means that the Solicitor-General will appear before the court and raise matters relevant to the constitutional question on behalf of the ACT government.

Mr Garrisson: I will be arguing for the validity of the provision. The issue was half-considered by the High Court last year in the matter of UD, which was removed to the High Court, by order of the court, to have the constitutional issue considered. That removal was revoked and the matter was remitted to the trial judge, who then determined that it should proceed by way of jury; so the issue went away. This will be the first opportunity, assuming that (a) the matter runs, and that (b) the issue runs, for the court to consider the question of constitutional validity.

THE CHAIR: This matter will be the test case?

Mr Rattenbury: Potentially.

THE CHAIR: Potentially. Subject to what the court, or perhaps a higher court, considers, that may impact on these other matters. You would anticipate that if it is to be found—and this is speculation—there would be a number, and you will get me that number, that would then be subject to the same appeal. Is that what you would anticipate?

Mr Garrisson: There would need to be steps taken by any person convicted—because obviously the time for appeal will have expired—to raise the issue, and that is a matter for the court to consider.

THE CHAIR: There has obviously been a lot of commentary around this.

Mr Garrisson: Yes.

THE CHAIR: A paper was released by an academic just last week.

Mr Garrisson: Yes.

THE CHAIR: With the legal advice—and I am not suggesting that you would necessarily table that legal advice—have you drawn on evidence from other jurisdictions? Certainly, it is a different model, this judge-alone order, than what has been played out in New South Wales or other jurisdictions. Why have you gone down this particular route?

Mr Garrisson: That is a policy decision which, obviously, I cannot comment on. I have a very clear view about its validity. That will be a matter that I will be putting to the Court of Appeal, assuming that the issue gets pursued.

THE CHAIR: I know that the legislation is no longer in force. It was repealed. It will be interesting to watch how that plays out. Are there any other changes to court processes which were enacted through the various tranches of COVID legislation that might be subject to appeal as well? Are you aware of any? This is the judge-alone issue; were there any other procedures that changed and that have led to any appeal or argument from either the prosecution or defence about their effect on fair process?

Mr Rattenbury: Not that I am aware of, Mr Hanson.

Mr Garrisson: Not that I am aware of, Mr Hanson.

Mr Rattenbury: At the other end of the spectrum, some of the changes that were brought through may well end up being permanent. In some areas people have seen that there is an opportunity to do things differently or more efficiently. But they are more procedural-type matters around audiovisual access, the granting of warrants and those sorts of matters. I think they are in a different category from the ones you are raising.

THE CHAIR: With that whole group of COVID changes, as we are hopefully coming out of the COVID era, is there a review being conducted within the courts to work out what automatically goes back and what is going to be subject to change? With those COVID changes, if you want them to be ongoing, if the courts want them to be ongoing, what is the process for doing that?

Mr Rattenbury: As you would be aware, we had legislation in the Assembly last week that extended a range of COVID-related measures, given the extension of the public health emergency that the health ministers decide. They have all gone through the Assembly. There is, across government, a review going on, not just in the court space but across a range of measures that were put in place, to review all of the measures. Most of those would need to come before the Assembly to be extended. They would require legislative reform, in many places, to make them permanent. I am sure, across a range of areas, that there will be administrative changes to practice, but there will be a range of ones that require a legislative response.

THE CHAIR: Going back to the matter of the appeal, do you have any time frames on that, for when these matters will be heard?

Mr Garrisson: It is right at the very beginning. A timetable has been set for various procedural steps to be completed. With the attorney's intervention, there will need to be a slight tweaking of that timetable. We would expect that all of the preliminary matters would be completed by the middle of the year. It is obviously a matter for the court as to when it can allocate a time for it to be heard.

THE CHAIR: Which court is that in?

Mr Garrisson: The ACT Court of Appeal.

DR PATERSON: In reference to the, I think, Warrumbul Circle Sentencing Court—

Mr Rattenbury: Yes, Warrumbul.

DR PATERSON: How many young people are going through that court process, and what are the recidivism rates?

Mr Rattenbury: I will just ask Ms Nuttall to find that data for you. Again, I will give you the background while she is searching for that. The idea here is that it is a circle sentencing court, so it is designed to be a justice process that involves Indigenous community leaders—in a sense, a peer judgement. This is to give a more culturally appropriate environment for young people to appear before. That is the background on the court.

DR PATERSON: How long has it been going?

Mr Rattenbury: I will have to check that as well. A couple of years is my broad answer to you, to give you a sense of what it is.

Ms Nuttall: I am sorry, I am reasonably new to the position. I could not say when the court started. I do not have figures on how many young people have been through that

system. I do know that it is up and running. The Childrens Court magistrate, Magistrate Cook, is running that court.

Mr Rattenbury: We will provide those figures to you on notice.

DR PATERSON: Great.

Mr Glenn: And if there are recidivism figures we can provide that, but it is likely that, because the court has only been running for a relatively short time, it is actually difficult to assess that.

DR PATERSON: Fine. Don’t worry, a few of us are new to the position!

MS CLAY: I want to ask about funding for the community legal centres and Legal Aid.

Mr Rattenbury: Yes.

MS CLAY: I know they get their funding from a lot of different sources. There is funding from the National Legal Assistance Partnership. There is funding from the interest on statutory trust accounts held by the Law Society, and there is funding from ACT government. I also know that quite a lot of those sources have taken a bit of a dive, in 2020 in particular. Interest rates have gone down; that has affected that. I understand that the federal funding has taken a bit of a hit, as well. We also know anecdotally that, during that same time, the need for those services has gone up—particularly in domestic violence, family violence. Across the board the need for those community legal centres and Legal Aid has probably increased.

What is your take on that? Do you think we are funding those services properly at the moment? Is there something more that we should be doing? Are we covering the community need in the right way?

Mr Rattenbury: There is quite a bit in that question, Ms Clay.

MS CLAY: There is, sorry.

Mr Rattenbury: Let me start at the beginning. There is no doubt that community legal centres provide an excellent return on investment, if you like, for government. There has been research at times that has shown that for every dollar allocated there is a very significant return in terms of benefits—people getting the right support in the justice system, avoided court processes, early interventions and the like. So there is no doubt that, from a government point of view, the spending on community legal centres is money well spent.

You are right to identify the sources of funding—they do come from trust funds and various other places—and the low-interest environment has had an impact on the funds available. This is a policy matter that government is having to consider because we cannot just have that money not available to these new legal centres. There has, of course, been additional funding provided during the pandemic for a range of service providers, in recognition of some increased need and the like. So that is the broad answer. I do not know if Mr Ng wishes to answer with any additional information.

Mr Ng: What I might add to the attorney's answer is that, yes, the feedback from the community legal sector in the territory has been that there has been increased need for legal assistance in the community, particularly over the period where the community has been most affected by COVID-19.

The territory was fortunate, in some respects, that the commonwealth was able to provide some additional funding to the legal assistance sector more broadly on a couple of fronts during the 2021 financial year. That came in two streams. One was to support the additional frontline services of legal assistance providers. When I talk in that space it is about community legal centres but also Legal Aid and the Aboriginal Legal Service. So there was some additional funding to support more frontline services that were needed during that period, but there was some ICT funding as well to acknowledge the need for providers to change their service models to adapt to a virtual service delivery model.

As you will appreciate, like all of us at the start of the pandemic, the community legal assistance sector was required to go remote but still make efforts to reach all the people that needed the legal assistance services, particularly given the economic impacts of COVID-19 at the front end. So that funding has amounted to $1.39 million. There were decisions that came out of National Cabinet that the commonwealth would be providing states and territories some additional funding to support those two streams of operations. I hope that answers your questions.

MS CLAY: In part. I am interested in the ICT adaptations they made. Will any of them retain some of those tools or are they—

Mr Ng: Indeed, yes. Certainly, I believe that the process that the government went through in the last term of government to identify those areas of need was based on submissions from the various legal assistance providers. The directorate wrote to various providers out there and sought submissions about where the areas of need are, and also proposed funding opportunities that the project funding might be used for. My recollection is that certainly the Women's Legal Centre sought a certain type of capital upgrade funding to their system in order to better manage their IT operations. So we expect them to have some lasting benefits in the future, notwithstanding that there might some ancillary ongoing operational costs associated with that.

MS CLAY: And has there been any needs assessment conducted about what we are going to do for the next few years, given we are with this funding situation for a while?

Mr Ng: Yes. Under the National Legal Assistance Partnership, one of the obligations of all the states and territories that have signed up is to engage in a strategic planning exercise for the sector over the course of the National Legal Assistance Partnership. There is a certain point where the territory's obligation to produce that strategy enlivens. We expect to be conducting some type of assessment about the various needs in the community in the legal assistance space to inform that strategy.

MS CLAY: That would be great. We might see that in next year's annual report, perhaps?

Mr Ng: I might have to take the exact date on notice, but there is a prescribed date in the National Legal Assistance Partnership whereby the territory is required to produce a public-facing document to the commonwealth.

MS CLAY: Yes, that would be very helpful.

THE CHAIR: I refer to the impact of COVID upon our courts in terms of delays to matters. It is said that justice delayed is justice denied. I am just wondering what that has meant with COVID, and if there have been any delays. If there have been, what is the plan to catch up?

Mr Rattenbury: Overall, I think our courts did extremely well in adapting to the COVID environment. I know the Magistrates Court continued to operate entirely throughout the period.

Ms Nuttall: In a reduced capacity.

Mr Rattenbury: I might just get Ms Nuttall to clarify here. Why don't you just jump in?

Ms Nuttall: Sorry. The Magistrates Court did slow quite a number of its lists down. The Magistrates Court is the high-volume court. It was the Supreme Court that managed to continue reasonably well. With the Magistrates Court, the lists that continued were the high-volume criminal lists, being the mentions list. So when somebody originally was charged or summonsed before the court, some of the summonses slowed down because the police were not able to serve those summonses. But when people were arrested they were brought to court within the required legislative time frames after arrest.

THE CHAIR: Right.

Ms Nuttall: A number of the trial lists slowed down. In the Magistrates Court the family violence and protection orders list continued on a remote basis, so the registrars were able to hear those applications by way of phone and by video. So people who were in need of protection through that system were continuing to be serviced.

The Supreme Court continued. A couple of matters fell over; they were unable to proceed to trial. We were unable to accommodate jury trials for a number of weeks, and that is the period within which there were judge-alone trials ordered. The Supreme Court has managed to catch up on those matters that were delayed, but there is one matter where there are five co-accused. That trial has not been able to proceed. The parties are seeking a jury trial and we are looking at being able to accommodate them within the next trial period.

THE CHAIR: I will turn to the Supreme Court first. In playing catch-up with those matters that were delayed, has that pushed other matters further down the waiting list?

Ms Nuttall: We do not anticipate that it will. The Supreme Court, for the first part of the financial year, have managed to catch up on the delays.

THE CHAIR: By and large, there has been limited impact by COVID, by virtue of the fact that we have been able to catch up on those. Is that what you are saying?

Ms Nuttall: There has been a limited impact in the Supreme Court. There has been a bigger impact in the Magistrates Court. It was more difficult to continue matters in the Magistrates Court on the basis of the volume of people that come into that court and the need to maintain social distancing. Some of it could be done remotely and was done remotely. Some of it could not be. So there is a backlog in the Magistrates Court.

THE CHAIR: So, turning to that backlog, can you quantify it? How many cases and what sorts of delays? Normally that is listed against KPIs and so on, but it is obviously a bit dated in the annual report, given the time frame.

Ms Nuttall: Yes, it is. We have caught up slightly in the Magistrates Court civil jurisdiction. At the time of the annual reporting figures we had 1,400 matters pending. That has now been reduced to 1,200. So we are eating into that pending—

THE CHAIR: If it is 1,200 now, what would be a normal figure? If we were to look at a normal year, is that double the normal or is it 10 per cent over—can you quantify it?

Ms Nuttall: I will just grab my *RoGS* data.

THE CHAIR: While you are looking for that, is there an intention to bring on extra magistrates or temporary magistrates or have a bit of a surge capacity?

Mr Rattenbury: There has been money allocated in the budget. There was an additional $310,000 in the budget this year, which brought on an additional magistrate and administrative support. That has been provided for a full 12 months, so this budget filled another six months. There had already been some allocated previously, and there has been an additional allocation in the budget. So, yes, there are additional resources being provided to deal with that backlog.

Ms Nuttall: Magistrate Stewart, who was generally part-time, has been increased to full-time in response to that funding, and Special Magistrate Hunter continues to be—

THE CHAIR: If you cannot find that information you might want to put that on notice. That is fine.

Mr Rattenbury: We will take that on notice, Mr Hanson.

Ms Nuttall: Sorry, my apologies.

Mr Rattenbury: It is a good question to understand the scale of the backlog.

THE CHAIR: Yes, I am just trying to quantify it.

Ms Nuttall: I can confirm that there is still a significant backlog, but—

THE CHAIR: How long will it be before that backlog is reduced to what you would consider an acceptable level? Is this a 12-month process or is it going to take us years,

or is it a matter of weeks?

Mr Rattenbury: I appreciate your question. There is obviously always some degree of pending matters just by virtue of the fact that there are always new matters coming and the like.

THE CHAIR: Indeed. But with respect to trying to get it down, let's say there are normally 600 and we are at 1,200; how long before we are at 600?

Mr Rattenbury: Yes. Let us take that on notice.

THE CHAIR: Could you?

Mr Rattenbury: It needs a thorough answer.

THE CHAIR: The final aspect to this, then, is the issue of coronial matters.

Mr Rattenbury: Yes.

THE CHAIR: There have been calls from magistrates and others that there be a full-time coroner. I remember a speech that you made, Mr Rattenbury, in another guise. There seems to be a view that having a coronial list that is managed in a single court would be a preferable way to go.

Mr Rattenbury: Yes.

THE CHAIR: Are there reasons not to do that beyond resourcing or is this just a resourcing matter?

Mr Rattenbury: In my mind there are a number of matters in the coronial performance space. I certainly have the view that we should have a dedicated coronial court. I believe it will produce efficiencies. For grieving families, as well as all the people involved in the process, it should be more timely. It concerns me that the length of time for some coronial matters to come through adds to the grief for some families, particularly. I do not think that that is an outcome we want. I also think that in having a dedicated coroner's court you will necessarily develop a degree of specialisation, and I think that will also improve processes and the like.

So that is one part of it. The other part is that the government intends to undertake further coronial reform at a more legislative level to change the way the coronial system operates, to look at best practice in other jurisdictions and to take feedback from a range of community stakeholders who have made representations about areas they think can be improved. So for me there are two streams of coronial reform.

In terms of your question about resources, I have had a preliminary conversation with the Chief Magistrate about her views on that. We have booked a time to have a much more detailed conversation in the next few weeks, and that is a particular matter that I will be taking up with her. Theoretically, the Chief Magistrate could create a chief coroner—a dedicated one—tomorrow. She can do that within her administrative capability. I think it would be fair to say that her argument is that, in light of the backlog

matters we have been discussing, she would be reluctant, at this point in time, to do that because of the impact it would have on the rest of the list. Probably, to have a full-time dedicated coroner will require additional resources.

THE CHAIR: Okay, and that is being looked at. There would appear to be a majority view—not a consensus view—that there is logic to that.

Mr Rattenbury: Yes.

THE CHAIR: In terms of the amendments to coronial acts and so on, when do you anticipate that coming forward? Have you considered the way that the drug and alcohol court was set up, whereby the eventual magistrate was given the lead in looking at all the reforms required? I assume that if a new coroner comes in, having some ownership on what they are going to take charge of would have some merit. That has been a model that has worked with some success, as I understand.

Mr Rattenbury: Yes, I think it was useful in the set-up of the drug and alcohol court. In terms of the time line for coronial reform, I do not have a specific time line at the moment. There are a few elements to it. Firstly, there are a range of stakeholders and I am very keen to have their participation. There is the Coronial Reform Group—a group of mothers who have put a lot of time towards this—and I think they make some very good points.

THE CHAIR: Yes.

Mr Rattenbury: They are keen to see a more restorative coronial process, and I think that argument has a lot of merit. I would like the coronial reform process to be one that is grass-roots built in the sense that there are some important stakeholders and I want them to have a strong voice in that process. But, clearly, the input from courts, the Bar Association, the Law Society and the like, will also be significant in this space, and, I anticipate, the Victims of Crime Commissioner. I would be surprised if we had it ready any sooner than 18 months because I would like to put some time into the consultative process to make sure we do it right.

THE CHAIR: We will follow this up at hearings, but if you are taking any significant steps I am sure the committee would be interested out of session. Could you keep us updated?

Mr Rattenbury: Certainly.

DR PATERSON: This is a directorate question. How many people are currently working or providing a service to the directorate that are not directly employed by the ACT Policing service—that is, how many outsourced workers are there, and what roles are these workers filling?

Mr Glenn: Dr Paterson, we will just see if we can get an officer to the table. I am aware that there are some in the other room.

Mr Rattenbury: I think we will just have to wait for someone from the other room. Are there any other parts of the question that we might be able to start with while they

come down the corridor?

DR PATERSON: How is the directorate implementing the new union encouragement policy?

Mr Glenn: Perhaps I will start off on that part. We have been having an active discussion just recently with at least one of the unions that have staff in the directorate about how to implement that policy. There is information that is provided to people as part of their induction when they come onboard the organisation. The discussion we were having with this particular union was to talk about how we start to engage in that conversation more regularly with staff. One feature of that was seeing if we could find times for delegates to participate in regular branch committees or other staff meetings so that people could be reminded that there is an opportunity to join the union and have a conversation with a delegate about that. That is a long way of answering your question, but we have a front-end process; what we are now trying to do is improve the regular ongoing process that gives delegates and staff the opportunity to have that conversation about union membership.

DR PATERSON: Are there any limitations or barriers in making sure that does happen?

Mr Glenn: No, it is done. It is entirely a focus and logistics question to make that happen. Over the course of the last year, because there were fewer face-to-face gatherings of staff there were fewer opportunities, so we are trying to work out, as we move out of that, if there are opportunities for delegates to come forth and have delegates drop into Microsoft Teams meetings and those sorts of things.

Mr Rattenbury: We do still have, obviously, a number of people in JACS working from home, so those sorts of traditional opportunities for gatherings have not been as available in the last year or so.

DR PATERSON: On COVID and working from home, are JACS staff still being encouraged to work from home?

Mr Glenn: Yes. Roughly, across all of our staff, about 50 per cent cannot work from home. They deliver frontline services, either in the emergency services space or in courts or elsewhere. Of the remaining second half of the organisation, we are probably running now at about 45 per cent of people working from home—something like that—and that is encouraged. So my messaging is: for those who can work from home, please continue to do so. That is our way of contributing to keeping our colleagues who cannot work from home safe, and to keeping the community safe.

We have, though, been trying to get a bit more nuance into that message as the environment becomes safer and as time goes on, so that we ensure that we have people coming back into the workplace to reconnect with their colleagues, and to recognise that there are some individuals in our workplace for whom working from home was particularly challenging because of their personal and home circumstances and to make sure we are looking after those individuals.

We have a flow of people through the office at different times so that we do not have

everyone in at the same time, but we provide relief to those who find working from home difficult. We have put structures in place so that the teams can do that work to have self-support. A really good early example of that was some of the teams in Victim Support in the Human Rights Commission, who deal with very confronting material. One of their internal mechanisms to look after their wellbeing is to debrief each other, and they were finding that very difficult to do that remotely. So we provided opportunities for them in a safe way to reconvene in the office to do that and to look after their safety.

DR PATERSON: Further on that point, how are you going about checking with particular parts of the directorate to ensure that the workflow or the challenges with the work is addressed while you have half the staff at home and half at the office?

Mr Glenn: I suppose there are a couple of levels to that. The first is the particular workplace level. Managers in those spaces are keeping in touch with their staff either as they gather people together or do it remotely. They become very skilled at that, over time. At the higher level, I have within JACS a group who look across the safety issues associated with COVID-19. They are part of our Incident Management Team. They do proactive work with each of the business units to assist them to develop and implement their COVID safety plans. Part of that includes thinking about how we manage the other risks of COVID and the psychosocial risks that go along with people working from home.

DR PATERSON: With your frontline staff, have there been any specific issues in relation to COVID that have come to light over the last year?

Mr Glenn: There have been a range of adjustments that we have had to make. To take the courts, for example, a lot of people were moved out of that environment at the beginning. As they have come back in, we have had a lot of assistance from occupational hygienists and others as to how to properly work through court processes in a safe way. And that is both back-of-house and in the court itself—an example being that jury trials were often being conducted across two courtrooms so that we could space people adequately. We had a video link between the two, and that would work.

In some of our other frontline services there have been a range of adjustments that have had to be made. The number of people who get into a vehicle has been restricted depending on the set of circumstances, and there are cleaning regimes for ambulances—I will step into the emergency services space—between customers, effectively. There was always a cleaning regime between them, but that has been increased. That has an impact on the turnaround time for the ambulances out of the hospital and back onto the road. That has been accommodated but it is just an adjustment that we have had to make.

DR PATERSON: Sure.

Mr Rattenbury: We can go back to your original question. We might just re-cover it, Dr Paterson, so Ms Beattie can catch up.

DR PATERSON: The original question was: how many people are currently working or providing a service to the directorate that are not directly employed by the ACT public service?

Ms Beattie: I would have to take the exact number on notice, but our numbers are very low. Most of them are specialist ICT people who have been working on some of the projects, but it is a very, very low number.

MS CLAY: Thank you. I would like to ask a question about the Residential Tenancies Act.

Mr Rattenbury: Yes.

MS CLAY: We have amended that now and we have given people an avenue to seek review with the Human Rights Commission. I am just wondering if we have provided any resources to the Human Rights Commission to provide those services?

Mr Rattenbury: I am just trying to think.

Ms Hutchinson: Was your question about the new jurisdiction in relation to occupancy agreements?

MS CLAY: Yes, it was. People can now get their rights reviewed through a different agency. I am just wondering how that is going.

Ms Hutchinson: That legislation is due to enter into force on 3 March. So we are yet to go through the process of people being able to access that new jurisdiction. Obviously, we anticipate that coming into effect, as I said, on 3 March. In terms of specific funding, in relation to that new function, the Human Rights Commission was going to see how the jurisdiction went and make an assessment at that time about need and demand and feeding into further budget processes.

MS CLAY: What is the process to make sure people know what the new rights of review are, and to make sure that they do not miss a deadline to apply, given that it has all shifted?

Ms Hutchinson: Given that it has shifted into this new jurisdiction?

MS CLAY: Yes.

Ms Hutchinson: It is an optional process. People can choose to go through ACAT processes as they have ordinarily been able to do. This is a new, additional process that they can choose to go through in relation to occupancy disputes.

Mr Rattenbury: It is consistent with a number of decisions the government has taken in the last two or three years, where the Human Rights Commission has been given added scope. We are looking for mechanisms that are easy for people to access at low cost, and potentially less litigious. The Human Rights Commission has, I guess, a particular skill in this space, working with people to find an agreeable way through. So there have been additional resources provided to the Human Rights Commission in the last couple of years, where, for example, they now have some scope with the Retirement Villages Act. So, overall, I have had more resources. That goes to Ms Hutchinson's point that these are resources that can do a number of different things. So it is a

monitoring process. Of course, Minister Cheyne now has responsibility for the Human Rights Commission.

MS CLAY: Yes.

Mr Rattenbury: So you may be able to ask her more about how that is going when she appears with the Human Rights Commissioner.

MS CLAY: It does beg a question though. That is interesting. So ACAT was established to be a less litigious forum?

Mr Rattenbury: Yes.

MS CLAY: I have had conversations this week with some stakeholders who showed up to ACAT and found themselves appearing against QCs, which is interesting. It is certainly permissible, but it is slightly unusual. So is there a bit of a shift that we are trying to move into a less litigious zone again?

Mr Rattenbury: I think it is really about looking for different mechanisms for different circumstances; that is all. Yes, there is a clearer policy intention to find easy access to justice where possible. I think most people would say ACAT is—what is the right word?—less litigious than going into the Supreme Court or the Magistrates Court. So I guess you are just seeing tiered circumstances.

MS CLAY: So now we have three tiers. Yes; interesting.

Mr Rattenbury: Yes. I would say that matters through the HRC tend to be in the more informal range and are often very personal matters. There is the jurisdiction of the HRC in matters of discrimination where they can mediate, for example.

Ms Hutchinson: One of the advantages of adding this jurisdiction to the Human Rights Commission is that sometimes occupancy disputes might be bound up in questions of discrimination. There were some synergies there in relation to potentially being able to resolve these matters holistically and early by granting that jurisdiction to the Human Rights Commission.

You were also asking about the issue of how people know about this new jurisdiction. The directorate has been doing a lot of implementation work over the last period in relation to these new mechanisms that will be in place. We have released fact sheets that are going to be available on our website, and we are also running workshops to inform stakeholders about the new laws that are coming into force.

DR PATERSON: And will people be advised, in whichever forum, of all of their options?

Ms Hutchinson: Indeed. There is actually a specific fact sheet as well that details the various pathways people can take in terms of resolving their disputes.

Mr Glenn: And one of the things the commission is very good at is outreach, so they will take the message out with their stakeholders, assisted by the material that the team

is developing. They do a lot of work in the community to be able to give that message.

Mr Rattenbury: You might have seen this week that we relaunched *The Renting Book*, which is designed to make it easier. That does not have the ones that come in on 3 March—they will be updated into it as they come through—but there is a legal requirement for a tenant to receive *The Renting Book* at the start of their tenancy. I have spoken with Access Canberra this week to work with them as well in their various roles to make sure that that is happening. We will be reminding real estate agents of their duties so that we get a greater level of compliance in that space as well.

Ms Hutchinson: As part of that, we have also sent *The Renting Book* out quite broadly to a number of our stakeholders, including the Real Estate Institute of the ACT, so that they can reach out to their members so that they are aware of their obligations in relation to providing those informational materials to incoming tenants when they sign up to a residential tenancy agreement.

THE CHAIR: There was some reference to ACAT. We did not get a sense of whether there had been any delays in ACAT as a result of COVID. We do not have time to litigate that issue now, but on notice could you provide some data in terms of what the COVID component is and where we are looking at compared to where we would normally be.

Mr Rattenbury: Yes, certainly.

MR CAIN: I refer to the JACS annual report 2019-20, page 29:

> The ACT Government has invested more than $132 million to develop and implement evidence-based programs focused on rehabilitation and reintegration, addressing the root causes of recidivism.

Attorney, in budget statements D as well, under strategic objective 2, although the actual recidivism rate was lower than the target rate, it is still high considering the government has underway the initiative of reducing recidivism by 25 per cent by 2025. So now we are talking about $132 million on this initiative?

Mr Rattenbury: Yes.

MR CAIN: How much did the government spend on reducing recidivism by 25 per cent by 2025 in the 2019-20 financial year? I am sympathetic to your answer being on notice, but that is the question.

Mr Rattenbury: Sure. I will provide you the actual figures on notice, Mr Cain, as I think it will require a bit of work to extract that from the $132 million.

MR CAIN: Thank you.

Mr Rattenbury: What I can tell you, in broad terms, is that the $132 million includes a range of measures. The reintegration centre at the Alexander Maconochie Centre is considered part of that spending. It also would be going to matters such as the Yarrabi Bamirr program that we run in partnership with Winnunga Nimmityjah Aboriginal

Community Health Services and the bail support programs. There are a whole series of programs that are funded under that initiative because, as I am sure you will appreciate, reducing recidivism has no silver bullet for it. There are a whole series of programs. Some are in a trial phase. The stronger neighbourhoods program is one, for example, that has been evaluated and shown to have a very good return. So that $132 million has quite a broad scope of matters included within it.

MR CAIN: I understand. How much will the government spend on this initiative planning in 2021? You have touched on this. How much has each program, and you have outlined a few of them, sitting under this initiative received in the 2021 financial year?

Mr Rattenbury: We will definitely take that part on notice, but we can provide those figures to you in detail.

MR CAIN: My question obviously comes out of an interest in an expenditure of such a large amount of money.

Mr Rattenbury: Yes, certainly.

MR CAIN: And on a worthy program.

Mr Rattenbury: We will provide that detail to you on notice.

Mr Glenn: I have a quick follow-up on a question Ms Clay asked earlier. I am hoping to avoid a question on notice. Ms Clay, you were asking about the legal assistance strategy that we are required to produce under the National Legal Assistance Partnership Agreement. That is due to be completed by June 2022, so the work will be happening over the course of this year and into the beginning of the next. But that is expected to be a relatively long co-designed process with the CSC, so—

MS CLAY: Yes, sure.

Short suspension

THE CHAIR: We are moving broadly to the consumer affairs issues. I am not sure if scooters really fit within that. Scooters are proliferating everywhere. That is part of your policy area, but there is also a consumer aspect to it. Is someone looking at the issue of e-scooters and developing a framework around that? As you would be aware, there are a number of injuries arising; there is the use on pavements and so on. We have talked previously in this committee about electronic bikes, e-bikes, but e-scooters seems to have got ahead of legislation and regulation. Is a body of work being done to look at this from a legislative and regulatory point of view?

Mr Rattenbury: Yes, there has been work done. The responsibility for that now sits with Minister Steel under the Transport and City Services portfolio. But in my previous role as the Minister for Road Safety we put in place a set of rules around the operation of e-scooters. It dictates where they can and cannot be ridden. It dictates the speeds at which they can operate in certain areas. That is a legislative framework which applies to all e-scooters, because of course there are the share schemes and people can own

them privately. So there is an overall regime. Mr Steel will be able to speak to you about this in more detail. There is a regime that has been set up for the particular providers. There are two providers in the ACT. They were given permits by the ACT government and there is a set of operating rules that has been agreed to as part of their being eligible for operating in the ACT.

THE CHAIR: We will follow up with him. Another issue that may not fall within your portfolio but is very live at the moment is Facebook. Do you have an engagement with what is happening from an Attorney-General's or consumer affairs perspective or is that being managed from an ACT government point of view? There is blocking of government websites. I do not know if that has a legal implication or not. From a consumer affairs point of view, there are people who trade on Facebook. There are probably people in this room who have paid money to Facebook to promote their product who now may not be able to do so. Where does it fall in government to look at this from a legislative point of view, to see whether there is any sort of restriction on fair trading by their doing what they are doing? There is an ethical side, which is a separate side, but there is a legislative fair-trading point here maybe.

Mr Rattenbury: They are fair and interesting questions. We have all had to think very quickly about these in the last couple of days, particularly with the way that Facebook has chosen to respond to the federal government's legislative proposal. I do not have any specific issues that have been raised with me yet, either in the Attorney-General portfolio or in consumer affairs. But the questions you raise are ones that we will need to look at quite quickly.

THE CHAIR: I think about a local news organisation that may have a news product that it has sponsored on Facebook and paid money to establish a profile for, and it is then restricted. Is that a constraint of fair trade? They would have, you would think, a reasonable expectation of putting their product to market. So there are a range of issues to do with this from a fair trading and consumer affairs point of view.

Mr Rattenbury: On that point, simply in terms of the Australian Consumer Law and the kinds of issues you are raising, the states and territories work together and also work very closely with the Australian Competition and Consumer Competition. Given the federal nature of this, we would anticipate, and normal practice would be, that they would have the lead on a matter like this.

What I can say is that different jurisdictions take on different investigations. We have had matters here in the ACT where we have been the lead investigator, despite getting complaints from all over the country, because an organisation is based here, for example. If Access Canberra were to receive complaints in the coming days as a result of these matters, it may well be that they would pass them through to the ACCC, and the ACCC would become the lead agency. So there is that level of collaboration that happens on these sorts of matters.

DR PATERSON: My question is about scams. Your website says the ACT has lost the second highest amount to scams per capita since 2009, despite reporting fewer scams than any other states. How many Canberrans were affected by scams in the last year, and what is being done to alert the community and create awareness of scams that are operating in the ACT?

Mr Rattenbury: The official on this matter is in the other room, but I can start on these things whilst they come down with the data.

We do have a range of scams. Probably the most vulnerable group is our older community in the ACT. The reported data tends to show more people in that older age group. We recently ran a Valentine's Day related promotional activity. We do a series of activities through the course of the year to raise community awareness. The Valentine's Day one was themed around romance scams, which older people can be subject to but which impact right across the community. We have run specific workshops in retirement villages and the like across the ACT, where we have had Access Canberra officials go out and show examples of what has happened. Sometimes that is just the most useful thing. It is the people who are perhaps not as confident with online material who tend to be the main victims. Mr Rynehart will add further comments from the Access Canberra point of view.

Mr Rynehart: From our perspective, scams are an ongoing issue for the community. We like to remind consumers that they should make themselves an informed consumer so that they ask questions—if something looks too good to be true, it probably is—and do some research and obtain multiple quotes, particularly if the prices are large.

There are a range of types of scams that tend to come through. There was recently some media around the romance scams on Valentine's Day, talking to people about "Inform yourself and, if it seems too good to be true, if you have not met the person, do not give them money"—that sort of thing.

We work closely with the ACCC and tie up with the other jurisdictions to provide information around scams for consumers. If somebody feels they have been a victim of a scam or something that looks like a scam they can contact us directly through our website or they can call us and have a conversation with us around what that is. Then there is a process for us to look at that and provide them advice or investigate the matter.

Mr Rattenbury: You encourage people to report the scams, because they help the government understand their nature and potentially then be able to intervene more quickly.

DR PATERSON: Has there been a change over the COVID period: different types of scams or ways that these people are engaging with people in the community?

Mr Rynehart: Not that I am aware of. The reality with scams is that they tend to be done by different methods. If something works then that becomes a more prevalent type of activity. I am not aware of a shift in the types of scams or the approaches that have come since the COVID period.

MS CLAY: It is difficult with reporting, is it not, because people are embarrassed that it has happened?

Mr Rynehart: Certainly, yes.

MS CLAY: I am pleased to see that there are some examples being given. I think

anonymous examples of what a scam is are useful. Do you have any sense of what the under-reporting is likely to be?

Mr Rynehart: Not directly but there definitely has been under-reporting. It is an embarrassment for many people, as you said. If you purchase something and it does not show up, or you discover that you have thought you were in a relationship with someone for a fair bit of time and it turns out that that is a scam, that is a significantly embarrassing example for people. We do encourage people to come through. They can also provide us information anonymously. While in that case we are not necessarily able to help them individually, it at least alerts us to a situation that can present, and we can look at that for future communication and investigation. But I would say that it is probably reasonable to assume that there is under-reporting of scams.

MS CLAY: I would like to ask about payday lending. I am wondering what research the directorate has done on payday lending and what people are experiencing from that, and whether there has been any shift during COVID in terms of some of the economic things that are going on and whether is a spike in that.

Mr Rattenbury: At the macro level, on your specific COVID question I will seek advice from the officials. In broad terms, this is an area that government, and I as the Minister for Consumer Affairs, have been very concerned about for some time. The broad issue of vulnerable consumers finding themselves in financial transactions or financial arrangements that are expensive, unaffordable, beyond their means—all of the things that are unwise financial commitments—is a significant problem. The ACT has raised this in the Consumer Affairs Forum in the last couple of years. We have sought to work with other jurisdictions and the commonwealth to improve these areas.

There are a number of legislative reforms happening at the moment, and I am quite concerned about a number of them. I have written to all of my state and territory colleagues and the federal Treasurer around some of these matters, particularly proposals to reform in the area of what are called SACCs, small-amount credit contracts, as well as consumer leases. There are legislative proposals coming through at the moment.

In 2019 we asked the federal government to expedite the positive reforms that were set out in the National Consumer Credit Protection Amendment Bill. Unfortunately, a number of the recommendations that had previously been put forward are now not in that bill, and in fact the commonwealth has gone the other way. There is a notion that there should be what are called protected earning amount caps, so that consumers with consumer leases, and borrowers, essentially cannot get in too deep. There is some of that, but the commonwealth government is actually moving in the opposite direction to what the states and territories have asked for. Potentially, we could see consumers spending up to 40 per cent of their income on these high-cost financial products under the caps that are being proposed in federal legislation.

MS CLAY: That is a bit worrying. There are a lot of digital models and new business models that are sort of working in the same space, like Afterpay. Has that been looked at as well by the states?

Mr Rattenbury: That has not particularly come to the fore yet. But it potentially could

be wrapped up in the sorts of areas that we are looking at, yes.

DR PATERSON: You were saying the federal government is going a different way to the way we would like to see things go. How are we in the ACT going to respond to that to ensure that people are not getting in significant debt, over their heads?

Mr Rattenbury: The legislative matters are commonwealth matters, so I have sought support from my state and territory colleagues and I have written directly to the federal Treasurer. There are also a number of advocacy groups across the country—and we have been speaking with them—who are highly concerned in this space, so they are also advocating federally.

We are seeking amendment to that commonwealth legislation at this point in time. That is, I think, the best point of intervening at the moment. I am unclear on what the timetable is for that bill through the federal parliament at this point. It is, I guess, a live discussion in that sense. I anticipate that it will be raised at the next meeting of consumer affairs ministers. The ACT is the chair of that group at the moment, so I certainly intend to put it on the agenda.

MR CAIN: Minister, again I refer to the JACS annual report 2019-20, page 19. This is in relation to licensing and public transport. On page 19 the report notes that service standards for public passenger vehicles were updated to include COVID health measures. How has the government been enforcing this?

Mr Rattenbury: Mr Cain, I am afraid I am going to ask if you might hold that question.

MR CAIN: Too late—it is released.

Mr Rattenbury: Yes, exactly. But the team that does that regulation moved, as part of the administrative arrangements changes, into Transport Canberra and City Services. There is a specific road safety team which is responsible for these areas. Whilst I have worked with them for a number of years, they are now sitting with Minister Steel in that space, so I am afraid I am not able to give you an update because the relevant officials are not here. I apologise for that.

MR CAIN: All right. That will obviously be something on notice from me as well, with a few supplementary questions.

DR PATERSON: This question is about product safety recalls. How many went out last year and what has been done to improve communication or systems of communication with the community, making sure that people can get the information they need to know?

Mr Rattenbury: There are different levels of product safety recalls. Some are more advisory, and we move through to those that are mandatory.

The best example I can give you of the mandatory ones is the Takata airbags. That is a very serious matter where there is a potentially fatal airbag sitting in people's cars. We have taken a very comprehensive approach to that one. That has involved the sending of letters but then, because of the serious nature and the fact that people have not

responded—and because with vehicle registration we have quite detailed records of how many vehicles there are with them—Access Canberra has gone as far as making phone calls to individuals, sometimes on repeated occasions. So there is that sort of tiered level of response. Takata airbags continues to be an issue. We have still got a small number of the Alpha airbags, which are the particularly problematic ones, and we are looking at further regulatory responses on that in the coming period.

On the issue of how many actual recalls there have been in the last 12 months, I will seek Mr Rynehart's assistance.

Mr Rynehart: I may have to take the specific number of recalls on notice because there tends to be a national element of that. With regard to product recalls themselves, when we are made aware of those, generally by the ACCC, we will undertake, depending on the nature of it, either a communication message if it is in a specific industry or we may pick that up through our normal compliance routine. I will come back to you with the number of product recalls.

DR PATERSON: Have any recalls happened where you felt that there were things that we could have done to improve the engagement with those who need the information?

Mr Rynehart: With product recalls there is a broad range. There are all sorts of reasons why products get recalled. Normally the approach to the product recall comes through the retailer. You will often see supermarkets notify of a product recall of a specific thing. It goes through to the consumer through that. Our involvement tends to be at the point where it is something that we would be looking at through a normal compliance program anyway. Certainly on the Takata airbag issues we have put a significant amount of effort into ensuring that the affected people are aware of the recall and making sure that those vehicles remain safe.

MS CLAY: I am interested in the right-to-repair legislation. I know we have a Productivity Commission review coming up nationally. How is that going to work? What is the ACT's role in that and what are the outcomes we are likely to see from that?

Mr Rattenbury: We are in the very preliminary stages of the notion of a right to repair. It is actually an initiative the ACT government put forward in the Consumer Affairs Forum. We produced a paper and took it to that forum to convince our state and commonwealth colleagues to undertake this. The Consumer Affairs Forum supported the ACT government's initiative.

The right to repair takes a number of different forms. There is the European focus, which has been more on consumer goods, whereas in the US it has tended to be more on agricultural products, agricultural farm machinery. There are a couple of different channels and, interestingly, in Australia we are seeing both of those channels taken up by various interest groups.

I am pleased that CAF supported our push to get this started and there is now a Productivity Commission inquiry. I have met with the Productivity Commission as part of their preparation for that inquiry. They launched their terms of reference late last year and they also issued an issues paper in early December last year, and they have been taking public submissions. We anticipate a draft report from the Productivity

Commission in the middle of this year, then they will start public hearings after that. So there is a whole Productivity Commission process.

We asked for the Productivity Commission to look at this because we think that is the right forum to develop it. It is quite a complex idea and very new in Australia. So that is where it is up to. I am pleased that the work is underway.

MS CLAY: Yes, it is good.

Mr Rattenbury: It comes from different places. If you have exclusive arrangements where a farm machinery company—only they can fix your farm machine and you are in the middle of harvest season and they are not available, that is a critical issue for a farmer. At the other end, with consumer goods, we have phones and all sorts of other electronic devices that are coming up that cannot be repaired.

MS CLAY: I confess, the agricultural stuff sounds much more useful to me, frankly. You are looking at such big pieces of kit and dealing with such large companies and there is such a non-level playing field sometimes, so that is probably useful.

Mr Rattenbury: Indeed. At the other end, Australia has an extremely high level of e-waste, so if we can ensure that more of those products are repairable, would we actually, through right-to-repair legislation, inhibit built-in obsolescence? We have an opportunity to minimise the amount of e-waste and prolong the life of devices for consumers.

MS CLAY: Having started out at the back end of right to repair, do you see it moving back up the line to product design? Do you think manufacturers will respond by designing things that can be more easily repaired?

Mr Rattenbury: I do not think they will do it voluntarily. I think it will require a government legislated requirement, and that is where the right-to-repair notion comes from. The market has taken us in a particular direction of obsolescence, inability to repair and the like, and I think it requires government intervention to correct that.

THE CHAIR: We will hold it there. Thanks very much, Attorney-General and Minister for Consumer Affairs, for attending today with your officials. I remind you that there were a number of questions taken on notice through these proceedings. You have five days, I think, to get them back to the committee, if you could.

Hearing suspended from 10.39 to 11.01 am.

THE CHAIR: Minister, welcome back, in your guise as Minister for Gaming. I remind anyone who was not in the room before about the pink privilege card. Can I get agreement that we have all read it? That is great.

Minister, the Community Clubs Ministerial Advisory Council initiative has been announced in the budget and there is, I believe, $1.75 million allocated to that over the forward estimates. Who is going to be on this council and what is the process for appointing them?

Mr Rattenbury: That work is underway at the moment. I had a preliminary meeting with a range of stakeholders just a week or so ago. I invited them to come in and draft terms of reference and a draft membership list. I sought input from a range of stakeholders including various club groups, the Gambling and Racing Commission and a range of gaming harm NGOs and academics to help us shape this up. We are going to be inviting nominations for that group and I expect those nominations to go out fairly shortly. The membership will roughly be clubs, unions, some community members and people who come from support services that support those experiencing gambling harm.

THE CHAIR: Let us take clubs as an example. As you would be aware, there are many different clubs and there are two clubs associations. Will all clubs be represented, or will it only be those affiliated with the Labor Party and the CFMEU?

Mr Rattenbury: My intent is to invite both ClubsACT and the Canberra Community Clubs group to nominate a representative. I also intend to have three additional positions for clubs and I will invite all of the clubs to nominate. So there will be both the representative organisations and potentially a few different types of clubs. We seek to maximise the scope of the different clubs that are out there. The clubs are quite diverse and not all of them are in either of those groups, so we will see what comes forward. In terms of the numbers, if that sounds like a limit, we are trying to keep the overall group small enough to have sensible, engaging conversations and not have a room of 50 people. That is the intention.

THE CHAIR: Other than the financial gain that certain unions make out of clubs by owning pokie assets and being affiliated with the Labor Party, which owns pokie assets as well, what is the role of the unions in this?

Mr Rattenbury: The intent is that the United Workers Union—

THE CHAIR: So workers within clubs.

Mr Rattenbury: Yes, they represent the staff who work in the clubs. Given that they have a strong interest in the future sustainability of clubs, they would be invited to participate.

THE CHAIR: Sure. And $1.75 million seems like a reasonable chunk of money. What is the money for an advisory council going to be used for? Are the members going to be paid for this?

Mr Rattenbury: No, there will be no remuneration for members. The money is to provide some capacity within the public service to support this ministerial advisory council and is also potentially for research and other work to be undertaken as the group identifies the need for that.

MR PARTON: Further to Mr Hanson's specific question on the $1.75 million, are you, or is anyone, able to go into more specific detail of exactly how that money will be spent? On the face of it, it seems like a lot of money. In the first instance we are talking about $249,000 in 2021. What is that actually going to be spent on?

Mr Rattenbury: First of all, Mr Parton, I am sure you will be pleased that we are

actually spending money talking to clubs, that we are putting the resources towards doing it well. In terms of the expense impacts, the details are: funding of three full-time equivalent staff to enable us to do the work to support that ministerial advisory council to engage with the stakeholders in detail on the issues raised. As you know, the parliamentary agreement has quite a number of elements in it. I intend for this advisory group to meet monthly initially so that we can really get stuck into the details, so it will take some resources to support that.

MR PARTON: That $249,000 then increases for the oncoming three years, which I am assuming is based on the fact that we are talking about a smaller chunk for 2021 because of the start date and that is—

Mr Rattenbury: It is just a proportional matter.

MR PARTON: Okay. Have you arrived at a position of a preferred number of participants on this advisory council, or is that still to be decided?

Mr Rattenbury: Not formally. I had that preliminary meeting with the various stakeholders I invited last week, some of whom will probably end up on the advisory council. I put a proposal that said, I think, that the council had either 13 or 14 members. Various groups there asked for a bit of time to give me some feedback, so I am waiting for any feedback to come in from them and then I will finalise the details of that advisory group.

MR PARTON: When you are discussing this as the minister—and it is your baby; you are establishing it; you are running it—how do you summarise what the council is aiming to achieve? How do you summarise what you would like the outcomes to be, without pre-empting the outcomes?

Mr Rattenbury: The terms of reference broadly speak to the government's desire to build a sustainable future for clubs whilst implementing the reforms that have been identified. I have said very openly to the clubs that the government has a clear policy goal of some places it wants to get to but there are a number of different ways we could achieve that. We want to make sure that we have the stakeholders heavily engaged in designing the implementation, providing advice on the most effective ways to do it and being open to advice on different ways to do it. I have said to the prospective members of the group that, whilst the government have a range of items we put on the agenda, we are very open to receiving items they want to put on the agenda as well.

MR PARTON: If indeed this process is undertaken in the good faith that you are communicating to me, how would you expect to respond to recommendations that come from the advisory council, if they ended up being completely at odds with government policy?

Mr Rattenbury: I sought to be very up-front with the prospective members of the council and those that have an interest in it. I said that the government has set out a reform agenda that it intends to pursue and that is where we want to get to. I have been very up-front about that. I do not think there are any misgivings. But, as I say, within that there is a lot of scope as to how it gets done and what it looks like, and potentially other issues could be raised.

MR PARTON: Minister, with regard to that previous question of mine, have you in part structured the personnel on that? I know the personnel have not been appointed, but certainly you have indicated guidelines as to who you would like on it. Is the advisory council going to be structured in such a way that ultimately it will recommend what the current government policy is? I would hope that that is not the case, but I am just asking the question.

Mr Rattenbury: No, I do not think so. To answer where you are trying to go, it is not stacked. Roughly, on the numbers—I have not quite finalised this yet; I am waiting on some feedback—we will have five representatives of clubs, the Gambling and Racing Commission, me and Minister Cheyne as the chair and the deputy chair, and then, if my numbers are right, about four other positions for community folks. It is a pretty balanced group. I suspect that there will be some hotly contested discussions in that group because, if you draw broad assumptions, there will be some opposing views amongst the members of the group.

MR PARTON: There is no room for the shadow gaming minister, Mr Rattenbury?

Mr Rattenbury: Not at this point in time, Mr Parton, no.

MR PARTON: I need not apply; okay.

MS CLAY: Do you think this advisory council is likely to look at some of the other issues affecting clubs, like water and futureproofing for climate and some of the uses of clubs that have been refuges? Do you think it might cover those issues as well?

Mr Rattenbury: Absolutely, yes. At this point it has, I think, a very broad remit, which in itself has its risks. But I am trying to make sure that we have an environment in which there is a sense of open dialogue with the government, in which people feel they can put their issues forward.

DR PATERSON: Given the media attention in relation to COVID and the shutdown of machines and gambling, firstly across the country and then just in the ACT when New South Wales went back online—the significant concern in the media from people moving to online forms of gambling—and the annual report stating that it had been a priority by state and federal governments to implement the national consumer protection framework to protect people from the risk of harm from online gambling, I am wondering what happened during that COVID time to protect consumers, what work was done and what is the continued investment at an ACT level in protecting people from online gambling harm.

Mr Ng: I will take this question. Thanks for the question, Dr Paterson. In the ACT, the territory has only one online gaming organisation, which is Tabcorp. The territory has met its commitments under the first stage of the national consumer protection framework. They were implemented in amendments to the COVID practice regulation under the high-level gaming act. There is a further piece of work in terms of the quantum of potential harm from online gaming. To some extent that depends on the location of the organisation where they are based in terms of the regulatory action that can be taken.

I am not sure whether my colleagues in Access Canberra want to add to that in relation to any regulatory activity that they might have undertaken with respect to the first stage of COVID practice changes for the ACT's licensee. There is an extent to which the regulatory activity needs to correlate with the location. For example, if Sportsbet were operating out of the Northern Territory, it would be a matter for the Northern Territory's regulatory framework to deal with any instances and noncompliance with the consumer protection framework.

MS CLAY: Given that we know that a proportion of the ACT population do gamble online and they may gamble on machines as well, the harm that they are experiencing could be a result of all of those forms of gambling. In terms of policy directions, what would we be doing to look at addressing online gambling harm at an ACT level?

Mr Ng: There is a further stage of reform. I think that prior to the first stage coming in, obviously, all states and territories and the commonwealth signed up to this broader national consumer protection framework, which had a number of stages. I do not have any of the content of the second stage; that is still to come. There is a reform agenda to follow the first tranche of amendments that were made. While there are nationally consistent principles across the states and territories, because of everyone's different regulatory approach to gaming regulation across Queensland, Victoria, the ACT and the like, the principles need to be implemented in a bespoke way for each jurisdiction. To answer your question in a broad way, there is a further reform agenda to come under the already agreed national consumer protection framework. I think that some of the most significant steps need to be taken by commonwealth.

MS CLAY: I would like to ask about funding for the racing clubs. It says in the annual report that the ACT government funds the racing clubs to a total of $7.63 million. I just wanted to know what the breakdown of that funding was and what the reason for it was.

Mr Rattenbury: I am afraid I cannot answer that question for you. The racing portfolio sits within Mr Steel.

MS CLAY: Sure. We are getting a lot of that today, aren't we?

Mr Rattenbury: I feel like I keep flicking a lot of stuff to Minister Steel, but that side of the portfolio sits with him.

THE CHAIR: Given that the minister avoided that one, have you got another one, Ms Clay?

MS CLAY: I don't, no.

THE CHAIR: You do not? Okay. Mr Parton, have you got a substantive question?

MR PARTON: Yes, I do. The budget states that funding will be provided for the development of policy and legislation to support the introduction of $5 bet limits—

Mr Rattenbury: Yes.

MR PARTON: and $100 load-up limits on the EGMs. Can you give us some idea of who you will be engaging to carry out that policy and legislation work?

Mr Rattenbury: That will be predominantly the staff we spoke about earlier that are funded—actually, not the same staff as the ministerial advisory council; it will be the staff of JACS, potentially with some external expertise where required.

MR PARTON: Right. Of course, external expertise in that space is quite thin on the ground, isn't it?

Mr Rattenbury: It is mostly in the industry.

MR PARTON: Yes. Is it a problem for you, Minister, that you are forced to seek expert advice from the experts who happen to be the players as well?

Mr Rattenbury: There is no doubt that this is a complex policy area and there are significant vested interests in it.

MR PARTON: How do you go about sourcing that expert advice from industry? How do you do that?

Mr Rattenbury: It would be fair to say that it is early in the term, Mr Parton, and we do not have all of those answers yet; but I would be happy to follow up this line of questioning in the future.

MR PARTON: All right. Again, the budget states that this funding will be for the development of policy to support the introduction of $5 bet limits and $100 load-up limits. There is going to be some serious work done on how to move forward in that direction. Are you open to that investigation uncovering things that do not support your final outcome? I think that you know what I am saying. Are you open to that investigation revealing an outcome which does not line up with the policy?

Mr Rattenbury: The policy is based on the experience of other jurisdictions. We know that every other jurisdiction in Australia, except the ACT and New South Wales, has $5 bet limits. We do not believe that there are any practical implementational barriers to getting to the place we want to. There is a debate to be had on how we get there and the time frames. They are the sorts of discussions that I think need to take place.

MR PARTON: All right.

Mr Rattenbury: It is clearly possible to do it and that is where we intend to get to.

MR PARTON: Excellent. Thank you.

THE CHAIR: Mr Rattenbury, in terms of your body of work and looking at gaming, do you think that there is any conflict of interest in the Labor Party, which is one of the parties of government, owning and operating hundreds of poker machines, and how are you going to address that conflict of interest?

Mr Rattenbury: Well, the handy part, Mr Hanson, is that it is not a conflict of interest

that I have. I am quite pleased to be appointed as the gaming minister and to have the opportunity to work in this space. This matter, of course, has been prosecuted in the Assembly many times. I expect my Labor Party colleagues to take decisions around gaming harm based on the evidence that is presented to us, on best practice, and on making sure that we put in place practical measures. I expect them to do that, and if they feel they have a conflict of interest, to declare that in the cabinet process.

THE CHAIR: Do you not see that there is a conflict of interest that is obvious and apparent to everybody? It does not really need someone who is a member of the Labor Party, we would think, to declare the fact that they are a member of an organisation that owns, operates and reaps millions of dollars from pokie assets. How can you manage that conflict of interest? The deputy chair of this committee is a member of the Labor Party. You are going to have members representing the Labor Club Group on that committee. How are you going to manage that?

Mr Rattenbury: As you rightly highlight, it is not a secret. Where a conflict of interest becomes a real problem is when no-one knows about it and people are operating without these matters being publicly known. This has been a matter of public debate for some time. A series of reforms has already taken place that Labor Party members in this place have supported, and this will be a matter of political debate over the next couple of years.

THE CHAIR: As the new gaming minister, do you think it is ethical that a major political party, the party of government for the last 20 years, owns and operates gambling assets and, indirectly or directly, its political members, its MLAs, are the beneficiaries of that? Do you think that is ethical?

Mr Rattenbury: My political party has made its views very clear. We do not own those machines and we do not accept money from the operators of them.

THE CHAIR: How do you correlate that with the $50,000 donation that the Greens received from the CFMEU in 2013?

Mr Rattenbury: That came from the construction arm of that entity, Mr Hanson.

THE CHAIR: Right.

DR PATERSON: I would like to ask a question about the workers at clubs who are employed at venues across the territory. My concern is that potentially they are exposed to machines and, I guess, harmful activities more than other people in the general population. Is there specific training that happens or do GCOs work with employees of clubs to reduce their level of harm?

Mr Rattenbury: Certainly. We will have the Gambling and Racing Commission come forward. They can talk to you about the details of that.

Ms Chan: I acknowledge the privilege statement. Your question was about what training is available for club staff?

DR PATERSON: Yes.

Ms Chan: Each gambling venue is required to have a gambling contact officer. That is somebody who recognises the signs of gambling harm and will speak with patrons. Equally, it means that they are very much across the warning signs. There is annual training that they are required to attend that is offered by the commission. Also, for a new staff member, there is responsible service of gambling training, which is also mandatory. We have been offering the training for gambling contact officers since 2018. In that time we have had over 100 GCOs attend each year. From July to December last year, in the six-month period, we had 107 GCOs trained. In the previous financial year we had 119 people trained. We ask some questions pre doing the training and post doing the training to see whether the training is having an impact. We ask them, "Are you confident that you would be better placed to understand the signs of gambling harm and what to do about it, having done the training?" Over that period 94 per cent of people have said that they feel more confident having done the training.

DR PATERSON: Just further to that, how about protecting those staff who may be exposed to machines more often than other people? I am sure there is work that venues and managers in venues do, but I am interested to know about the training that you offer the GCOs in recognising that and what to do if they see another staff member who is experiencing harm.

Ms Chan: The GCO is able to offer, I guess, their service and their support to anybody. Clubs are quite good about having the gambling harm awareness materials and support services contact details visible. We are also planning a series of training about what gambling harm looks like for board members of clubs to help them understand so we can get that cultural awareness going throughout the management levels, as well.

MR PARTON: Ms Chan, it would be fascinating to see what feedback comes from the clubs on that training. A number of people who have undertaken those courses have spoken to me about the training and they were rather quizzical as to how we had arrived at some of those indicators of gambling harm. They expressed to me that they thought some of them were very much overkill, as they placed it. I am just keen to see if there is any feedback of that nature that comes from the sector on the training.

Ms Chan: Not to my knowledge. The training talks about what the signs are; it talks about how to recognise them and how to report them. It also indicates that they are on a sliding scale. It gives the participants a better understanding of how to make a judgement about a particular person and how much support they might need, when to intervene and when to have a conversation with somebody. It is not that each sign is treated equally; there is a sliding scale, and that is talked about in the course.

MR PARTON: Right. Thank you.

THE CHAIR: All right. I think that is you done for the day, Mr Rattenbury.

Mr Rattenbury: If the committee is happy, I am done.

THE CHAIR: I think that we are done with you, so thank you very much for attending today with your officials.

Mr Rattenbury: Thank you.

THE CHAIR: We look forward to receiving the questions taken on notice. Are there more hearings for the Attorney-General?

Mr Rattenbury: I do not think so.

THE CHAIR: No, I do not think so.

Appearances:

Cheyne, Ms Tara, Assistant Minister for Economic Development, Minister for the Arts, Minister for Business and Better Regulation, Minister for Human Rights and Minister for Multicultural Affairs

Justice and Community Safety Directorate
Glenn, Mr Richard, Director-General
McNeill, Ms Jennifer, Deputy Director-General, Justice
Beattie, Ms Liz, Chief Human Resources Officer, People and Workplace Strategy
Ng, Mr Daniel, Executive Group Manager, Legislation, Policy and Programs
Johnson, Ms Kathryn, Executive Branch Manager, Legislation, Policy and Programs
Hutchinson, Ms Zoe, Executive Branch Manager, Legislation, Policy and Programs

THE CHAIR: Minister, welcome.

Ms Cheyne: Thank you.

THE CHAIR: We are continuing with the estimates and annual reports combined hearings and you are appearing as the Minister for Human Rights. I remind members of the privilege statement and to make sure that any new officials and you, Minister, are aware of it. We are not doing opening statements in the interests of time. I think that we have got about half an hour.

Minister, the Human Rights Commission, on average, receives 600-odd complaints, so in 2016-17, 507; 2017-18, 633; and 683. That jump has gone to 829. Can you explain why there has been such a significant increase in the number of complaints for 2019-20 and give some description of what those complaints are? Are they in a specific area or is it spread across the board?

Ms Cheyne: I might invite some officials to go to the detail of that, but obviously there are a few things going on. There has been greater promotion, I think, of complaints processes that are available to people. I think we all know that 2019-20 was a difficult year for a range of reasons, but I am happy for officials to go into the substance, if you like.

THE CHAIR: Sure.

Ms NcNeill: Without looking as though I am seeking to avoid the question, it could be that if you want to know the detail of the sorts of complaints, that is a question which might be best responded to by the commission. I think that they will be appearing later this afternoon.

THE CHAIR: We will be asking those questions, or I will be, later. I am just wondering whether you have looked at this and whether you have got a view. If there has been a surge in the number of complaints, has that prompted a response?

Ms McNeill: I endorse the minister's comments. An uptick in the number of complaints does not necessarily mean that there are more things going wrong. It can indicate that

there is better familiarity with complaint pathways and so on. I know that there has been an uptick in work that has resulted from COVID in the Victims of Crime Commissioner space, but I cannot comment specifically on the more general complaints area. That is probably something that is best addressed by the commission later today.

THE CHAIR: All right. We will do that.

DR PATERSON: Minister, I have a question about organ donation. Is that under your jurisdiction?

Ms Cheyne: Yes.

DR PATERSON: Okay.

Ms Cheyne: Depending on what, but I suspect so.

DR PATERSON: I would like to know what we are doing to educate the public and trying to increase the number of organ donors in the ACT.

Ms Cheyne: That would be for the Minister for Health. Organ donation for me would relate to the births, deaths and marriages act.

DR PATERSON: I have had a constituent come to me and say that you used to be able to see something about organ donation on your licence. We do not seem to do that anymore.

Ms Cheyne: I am not sure that it has ever been in the ACT or, if it has, it has not been for some time; but it has certainly been in other jurisdictions. I think that goes to increasing rates of organ donation. If I may touch on some work that I am responsible for in this space as Minister for Human Rights. What families report, particularly if they have had a loved one who has died and has then gone on to be an organ or tissue donor, is that it is about having the entire process supported. Certainly in the hospital system there is plenty of support there, but sometimes you leave the hospital and that is about it. You might get a certificate, a death certificate. There is the gift of life walk and there is a memorial garden up at the National Arboretum. I think that, for some families, having appropriate recognition of organ donation might make the entire experience—it is never better for families but, I suppose—improved for families.

Something that I introduced last year as a private member and am now responsible for as the Minister for Human Rights with the JACS Directorate, and also with Access Canberra as the Registrar of Births, Deaths and Marriages, is working to allow families, including retrospectively, to have the fact that their loved one was an organ donor or an organ and tissue donor reflected on their death certificate. This is an Australian first. Indeed, I do not think that it has been done in many jurisdictions around the world. Because the death certificate is such a formal and official document, having it recognised there is a very important recognition of the families; it is a lasting recognition.

In addition to that—and this is more of an administrative process rather than a legislative one—the Chief Minister will soon be in a position where, at a family's

request, and this is all of the family's request—the family is at the centre of this—they might receive a letter from him or her, whoever it may be in the future, to acknowledge this very significant gift. That is something, I think, that is very important. I am not sure that it will have a direct effect on organ donation rates but, given the primary role that families play throughout the process, I think that that much better supports families and also better recognises that gift, that gift of life, that their family members have provided.

MS CLAY: On our organ donation rates, what sorts of strategies do we have to increase those?

Ms Cheyne: That is for the Minister for Health.

DR PATERSON: I guess that this is in the context of the Births, Deaths and Marriages registrar?

Ms Cheyne: Yes.

DR PATERSON: Yes. This one is sort of related—early pregnancy loss. That is something that many women experience in the ACT.

Ms Cheyne: Yes.

DR PATERSON: Other states have gone down the path of commemorative certificates. I am just wondering where we are at on that.

Ms Cheyne: Thank you for asking and for bringing attention to this. The ACT does not yet have an option for parents who may have been through early pregnancy loss to be issued with a commemorative certificate. But the good news is that we are in the process of changing this. There has been quite a bit of work done in the past few months with advocates, including Bonnie Carter, who has been recognised through several forums and awards for her work in this space, to ensure that this will be available for parents. Again, it will be available retrospectively as well, which I think is an incredibly important recognition. Not to relate them, but I think that there are some similarities here with what we were just discussing in terms of recognition and being able to have something concrete for families to look at and to hold and to reflect. We are in the process of looking at whether we can provide a variety of different certificate types. By that I mean different artwork that might best support a family's choice in how they best want to reflect on the memory.

MS CLAY: I am interested in complaints against Housing ACT. Is that a question I can ask you? Is that for the Human Rights Commission?

Ms Cheyne: Potentially. It depends exactly what the complaints are.

MS CLAY: How applicants can make complaints to the Human Rights Commission. I am interested in seeing whether those numbers are going up and, if so, why. That is probably for the commission.

Ms Cheyne: That is for the commission.

THE CHAIR: Keep that one ready for the commission.

Ms Cheyne: I think that you have a good hour with the commission this afternoon, don't you?

MS CLAY: I have a lot of questions, so that is awesome.

THE CHAIR: Right. Mr Cain.

MR CAIN: Thank you, Mr Hanson. Minister, again the fluttering of paper is about to occur. I refer to budget statements D, on page 16. There is a reference on page 16 of budget statements D that the percentage of clients referred to the Public Advocate for whom a review of the documentation was undertaken is currently 24 per cent below target. The explanation provided in the notes says that implementation issues with a new database have potentially resulted in a skewed result. Such a thing could explain many things in life, I suspect. My question: what are the implementation issues referenced?

Mr Glenn: Mr Cain, I think that is a question better answered by the commission at that level of detail.

MR CAIN: Okay. Maybe the same answer will follow this question. Have any data or records been lost as a result of database implementation issues?

Mr Glenn: That is certainly a question for the commission. My understanding is no, but the commissioner will be better placed.

MR CAIN: Perhaps she is taking these on notice now. One third one—

Ms Cheyne: I do not think that she is necessarily taking it on notice. If you come back this afternoon, Mr Cain, you can ask her directly.

MR CAIN: Not technically. I am not being technical in my usage of that phrase. How much did the implementation of the new database cost?

Ms Cheyne: I am sure the commissioner will look forward to providing that information to you at a later stage.

MR CAIN: Thank you, Minister. Thank you, Mr Hanson.

THE CHAIR: Great. See if you can flick this one to the commissioner then. I have been advised that former MLA Gordon Ramsay is being commissioned, employed—I am not quite sure whether he is on a contract or what the issue is—to do a review of aspects of the Human Rights Act.

Ms Cheyne: The Discrimination Act.

THE CHAIR: The Discrimination Act.

Ms Cheyne: Yes.

THE CHAIR: Is that under your—

Ms Cheyne: The Discrimination Act is what I do have portfolio responsibility for.

THE CHAIR: Is that body of work being commissioned by you and, if so, what is it? Are you able to elaborate on this?

Ms Cheyne: The parliamentary and governing agreement does state that there is going to be a review of the Discrimination Act. There is work underway in the directorate at the moment on that in the lead-up to providing a discussion paper. The Discrimination Act—particularly issues regarding the exceptions: I think that there are over 50—has been around since 1991, I think, so it is about time that we had a closer look at it. My understanding is that former Minister Ramsay has been contracted within the Chief Minister's office for a range of duties and one of those is doing some preliminary stakeholder engagement on some of the issues regarding what we might be focusing on with the Discrimination Act.

THE CHAIR: Regarding that body of work, is a discussion paper going to be released or is this something that is going to be informing a tranche of legislative amendments? What is the outcome of this review?

Ms Cheyne: The outcome from former Minister Ramsay's work or the outcome of this review?

THE CHAIR: Mr Ramsay's and this review. If there is a body of work happening, are we just going to see that in the form of draft legislation or is there going to be a discussion paper? What is the actual first step?

Ms Cheyne: I will refer to officials shortly, but my understanding is that there will be a publicly released discussion paper. Those preliminary conversations that former Minister Ramsay is having will feed into that and help frame some of that conversation before we go out publicly. We will see what the review throws up. After the review there might be legislative change, but that would be a matter for government.

THE CHAIR: Right. This discussion paper that you are talking about—have you got a time frame for when that will be released?

Ms McNeill: Chair, obviously subject to ministerial approval, we would expect to be releasing a discussion paper in the next month or two. That is in terms of the formal review of the Discrimination Act that is foreshadowed in the parliamentary and governing agreement. We anticipate that the separate work that former Minister Ramsay is undertaking will be useful preparatory work in terms of engaging with stakeholders and getting them thinking about the sorts of issues that will be reflected in our discussion paper.

THE CHAIR: All right. I will just get some clarification. There is a review but then Mr Ramsay is doing something that is a bit separate from that review that feeds into the review. What specifically is Mr Ramsay's body of work?

Ms Cheyne: As to whether to call him former Minister Ramsay or Mr Ramsay, perhaps we will go with Mr Ramsay, just for brevity. Mr Ramsay is doing some of that preparatory work that Ms McNeill just spoke about. He is starting to talk to our stakeholders. As you might appreciate, particularly with where some of these exceptions might lie with Mr Ramsay's previous work, both as Attorney-General but also his career before that, it means that he has—I would not say access—good reach to a wide range of stakeholders that we would be looking to engage with. Having those preliminary conversations is very useful. Mr Ramsay is also undertaking some work regarding human rights compatibility statements, but that is under the Attorney's portfolio. Questions would need to be directed to him about that.

THE CHAIR: Thanks.

MS CLAY: We are a bit concerned about discrimination and the NDIS. Those two things are interactive. I am interested to know if you think that we have got the right legislation and protections and systems in place in our human rights framework to make sure that people who have a discrimination complaint against the NDIS have some avenues to follow.

Ms Cheyne: I think that we do have a pretty decent Human Rights Act here in the ACT and that is certainly contained within that. I suspect that the Human Rights Commission may have some more to say about that in terms of what they are seeing in terms of the nature of complaints and their views about the act and its interaction with what is coming through from the NDIS.

MS CLAY: There is no need for reform, from your point of view, at this stage?

Ms Cheyne: I am happy to take advice from the Human Rights Commission, but I do not think that it has been something directly raised with me.

MR CAIN: On a procedural issue here, as we have seen this morning, if the minister is not placed to answer a question, then the minister will call one of their officers to the table to answer such questions. In this case, we have the minister not answering questions and deferring to the Human Rights Commissioner, who is actually in the room.

THE CHAIR: The Human Rights Commissioner is appearing separately this afternoon. So if you have questions that are under the remit of the Human Rights Commission, then that is when she will be available. She is not a departmental official that would be called by the minister.

MR CAIN: Thank you for that clarification.

THE CHAIR: I have got a follow-up on Mr Ramsay. Is he on a contract or has he been employed in the Chief Minister's office?

Ms Cheyne: That is not a matter for me.

THE CHAIR: Who is that a matter for? I thought that you had commissioned that body of work.

Ms Cheyne: The body of work falls within the portfolio of Minister Rattenbury and me, but the contract is not something I have executed.

THE CHAIR: Who did execute the contract?

Ms Cheyne: I am not sure.

THE CHAIR: Could you take that on notice?

Ms Cheyne: I can.

THE CHAIR: If you could provide some information on who executed the contract and was it put to tender and any information you have around that without breaching privacy: who employed him, for what duration, was there a tender process for a contract and so on? I think there are processes that are required.

Ms Cheyne: I will in principle take that on notice but it might not be something that is necessarily within my ability.

THE CHAIR: If that is the case, if you could notify the committee of who it is—

Ms Cheyne: Given that there might be another minister who might be able to respond, sure. I can do that.

DR PATERSON: I know that you were not minister for human rights during COVID, but I am wondering what sort of issues came out of COVID that were really important or challenging or unforeseen in terms of human rights in the ACT?

Ms Cheyne: That is a very broad ranging question, Dr Paterson, but I certainly appreciate it. I can ask officials to assist here. You may be aware that there were some legislative changes, temporary or otherwise. I believe that one of the changes in particular was about temporary measures expanding what the commission might be able to receive complaints about, particularly regarding vulnerable people. Mr Glenn will be able to talk more to that.

Mr Glenn: Certainly there was some work done to expand the jurisdiction of the commission to be able to entertain complaints about issues that arise for particular vulnerable groups in the community. That is a kind of structural change. I think, more broadly across the human rights work, we saw—the commissioner w ill no doubt add to this later—changes in the natures of complaints, and there were some issues emerging. We have seen that also in employment contexts and others as people confronted issues that arose through COVID.

More centrally, the emergency measures that were put in place around COVID have had the potential to impact on human rights. So the commission was very closely involved in working with government and the Chief Health Officer to ensure that those measures that were being put in place were framed within the context of the ACT's human rights arrangements and so that they were appropriate from a human rights perspective and the least detrimental measure or least restrictive measure that could be put in place.

With the support of the commission, the Government Solicitor's office and others, the Chief Health Officer was in a position to be able to, as she is required to, inform her decision-making around measures that were taken in the COVID space with reference to human rights.

DR PATERSON: Given that other states, Victoria and New South Wales in particular, have had multiple lockdowns and managed them in different ways, in respect to human rights and what has happened in those other jurisdictions, are we taking note of and learning from that in the case that we may have to go through that?

Mr Glenn: Victoria is a human rights jurisdiction with their own act; New South Wales is not, so different frameworks. I think that goes to the continuum of measures that could be taken, but I think what the commission has successfully done is work to embed the human rights consideration in whatever measure needs to be taken. That is dependent on context. So if you got into a Victorian situation with transmission and so forth, then it is a contextually different place.

I think that the success of where the commission has gone is to be able to ensure that considerations are taken into account. No doubt there are public health considerations, there are all around you logistical considerations, and in the ACT, as with every public official making decisions, there are considerations of human rights that would go into it.

Ms Cheyne: One practical change that is occurring that was announced today is regarding the Check In CBR app being mandatory. While that is more under the space of my business portfolio, one of the things that paper-based forms was raising was the right to privacy and the fact that when someone was putting their details on a paper-based form, anyone can come along and have a look or take a snap. I am sure that we did not receive any complaints regarding that, but that was certainly something that exercised my mind each time there was only a paper-based form. So moving to a mandatory app where that data is going straight to ACT Health, who do have their own privacy guidelines, helps in that space as well.

Mr Glenn: Minister, if I might add, we did some close work early on in the process with the office of the Australian Information Commissioner, which also performs the role of Privacy Commissioner in the ACT, to be able to work through some of those issues about record keeping—starting with pieces of paper and how long that is kept for and what guidance is given to businesses who have that obligation, through to talking to them about the design of the Check In CBR app, which sets a gold standard in terms of privacy protection for those sorts of apps.

DR PATERSON: In terms of event places and restaurants, some venues do not accept cash and there is a little bit of an issue with older people who still function with cash only. I am wondering if that is discriminatory or what conversations happen around that.

Ms Cheyne: That is something I probably need to seek some advice on. I think that throughout the pandemic—and we have seen this in other jurisdictions as well and it is something Dr Coleman has explained quite well—you have to balance these considerations with the health impacts. For some businesses it probably comes down to

how they are engaging and how they wish to engage. In many ways that might be up to them. Some customers might just choose to take their business elsewhere if that is the case.

Going back to the app, one of the important considerations in making it mandatory is that not everybody has a smartphone and so that is why, as of today, businesses will have access to a business profile through the app where they will be able to support people to check them in on their behalf once they get there. From a government perspective, in terms of the right to go about your business and participate in daily life, that is something that has been quite important.

MS CLAY: While we are talking about the impact of COVID restrictions, did you get any community feedback on how the restrictions affected people differently? Everybody was in a different situation and people living alone found it harder and some people living in difficult family situations found it harder. It is not an even impact when we make these measures. Did you get community feedback, as well as stakeholder expert feedback on that?

Mr Glenn: Across some of the domains in which JACS is responsible, yes, certainly we had feedback from community sector organisations with whom we work. We had feedback from our own staff as to the different impacts; and one can see the public reporting about the disproportionate impact on employment for women and so forth. In terms of anything coming through in a human rights specific context, I am not aware. That is probably something the commissioner could help you with.

MS CLAY: Yes, I am wondering if all of that work will be rolled into the lessons learned next time, if there is one.

Mr Glenn: Yes, certainly. To put it in the community sector context, for example, all directorates have reflected on what was needed to properly support the community sector as they made their transitions. So we learned some things about what organisations needed to hear from government, what they needed support with. We learned some things about the profile of volunteers in some of those organisations, which we probably knew—many were in vulnerable categories. So the capacity of some of these organisations to continue to provide services was limited because their volunteers were pulling back for their own safety.

That has been an iterative process over the course of COVID that all directorates have been reflecting on. If we go into another stricter set of restrictions, we need to be able to make sure that all of those organisations are still able to operate.

MS CLAY: It is great to support the organisations, but I am more interested in what feedback we have had from individual human beings, which is not the same as the community sector. I mean whether we are capturing that experience right now so we know what to do with it in the future.

Ms Cheyne: For people who are living alone or did not feel comfortable leaving the home for whatever reason, and particularly with my other portfolio hat on with Access Canberra moving so much of their work and services online for people—I appreciate that you are going more to vulnerabilities—in terms of equity of access, that was

something really important that they did very quickly. There are some lessons learned out of that, absolutely; but also just the fact that people can engage with a lot of important services for how they go about their daily lives from wherever they are, so long as they or someone near them has a computer is a strong thing and something that we are certainly reflecting on, just like all directorates are, as we hopefully move out of this awful period.

THE CHAIR: On that note, we will conclude this hearing. Thank you very much for coming here with your officials, Minister. I remind you that you have got five days to respond to any questions taken on notice. I am not sure if you did or whether you successfully flicked them off to the Human Rights Commissioner; I cannot quite recall. Thanks for attending.

Appearances:

ACT Electoral Commission
Cantwell, Mr Damian AM, CSC, ACT Electoral Commissioner
Spence, Mr Rohan, Deputy Electoral Commissioner

THE CHAIR: Welcome. As you would be aware, these are the hearings into annual reports and estimates, so we are asking a broader scope of questions. These proceedings are being recorded and broadcast. Can I confirm that you are familiar with the pink privilege card before you?

Mr Cantwell: Yes.

THE CHAIR: Firstly, congratulations on your gong in the Australia Day honours for your entirely separate role as Commander, 9th Brigade.

Mr Cantwell: Thank you. I have just handed over 9th Brigade. So two and a half years went past in five minutes, but it was a great privilege. Thank you for your sentiment, and I received a number of notes accordingly. It has been a great privilege to have served in that capacity and also be given the time and opportunity to do so in an election year.

THE CHAIR: I am sure that your very capable deputy was able to fill in when you were away.

Turning to the election and electronic voting, some people have raised concerns around that. A written vote is very visible and very countable, whereas an electronic vote disappears and concerns have been raised with me about that. Have you had external reviews completed of the electronic voting and the system to make sure that every single vote was counted and was accurate?

Mr Cantwell: Electronic voting has been a feature of voting in the ACT for some time now. As evidenced by the 2020 election, it remains a very popular means of voting with the electorate, notwithstanding for the 2020 COVID-safe election, legislation was passed by the Assembly permitting all electors to be deemed as eligible to vote early, and we had a concerted effort, particularly under our COVID-safe endeavour, to roll out additional opportunities for voters to use the electronic voting, or EVACS, system. The feedback we got during the election and subsequent to that was that it was very positively received. About 70 per cent of votes overall were taken electronically, which was a significant increase from even where we were under previous EVACS versions.

The security and integrity of the electoral process and the underlying electoral systems is paramount, of course, in everything the commission considers in its planning, the conduct and delivery of the election. We take that responsibility very, very seriously. To that end, the code underlying the electronic voting accounting system goes through a series of tests and certifying procedures, both internal to the commission through our vendors who work with us to develop the system and provide it to us and in turn to the independent certifying process to ensure that the code functions as it is intended in accordance with the law to deliver the result as intended by the votes cast. That is a very

solemn undertaking that we work through, and we do work both internally and externally to validate and ensure that the outcome is as intended as cast by the electors.

It is a process of continuous improvement. There was a report offered in the public space late last year that drew some attention to some alleged issues with the code, although, by that author's admission, they were of no consequence to the outcome. Such constructive, positive engagements are always welcome in the spirit of seeking to continually ensure that the commission's core mission of the highest quality delivery of electoral services is exactly that.

We continue to work with the authors of that report—or anyone else who wishes to engage us in the space—to ensure that improvements to the way the code is managed or works is always carefully considered and, where appropriate, put in place. In turn, those modifications or additions or alterations are also subject to the same process of initial testing, validation and certification.

We have also, in this case, undertaken the services of my predecessor, the former electoral commissioner, who is an expert in the EVACS itself and the Hare-Clarke counting system, to ensure that those additions or alterations to the counting system are doing exactly as they are meant to in accordance with the law.

THE CHAIR: Can you table the report you referred to and your response to it?

Mr Cantwell: The engagement with the author of that report, Associate Professor Vanessa Teague and her colleague—I cannot remember her colleague's name—is still subject to some discussions that we are seeking to engage with her through the ANU. I am awaiting the outcome of that request from the ANU, which has engaged in this space to help facilitate such a meeting and engagement.

THE CHAIR: Can you provide us with a copy of her initial report that you said is in the public domain?

Mr Cantwell: Yes.

THE CHAIR: She or her team, you said, have raised anomalies with the code but said that they did not then affect the result. Do you agree with her that there are anomalies with the code?

Mr Cantwell: I have undertaken to work with Associate Professor Teague to continue to examine the nature of her assertions. I do not categorise, as she has in her report, those issues as coding errors. But where we have already seen where her proposals or comments by which the code could be improved in small technical areas, such as the rounding and decimalisation of results, could and should be taken up, we have already undertaken to do so. That remains a process of, as I said before, the earlier process of verification and testing by the vendor, our own internal testing and then an independent certification process. In the spirit of continuous improvement and making sure that we are doing everything we can to make sure that it is secure, we will continue to work with Dr Teague and her colleagues.

THE CHAIR: If there are rounding errors, or whatever the issue may be, does that

mean that even though no vote was changed it might mean that Candidate X actually got more or less votes than are recorded but did not affect whether they were elected? What does that mean?

Mr Cantwell: I would like to be able to respond to you more wholesomely in this regard. I will be able to do so once we have had proper engagement with Dr Teague and her colleagues. The commission is in agreement with her assertion in that report in the public domain that those issues she has raised had no consequence to the outcome. They have not changed the outcome of the votes, and we will continue to understand how the coding processes can be improved with her suggestions.

THE CHAIR: I want to clarify—you agree that there is no effect on the result as in who was elected?

Mr Cantwell: Yes.

THE CHAIR: But there may be some effect on the vote that was recorded—that is, someone did not get 6,432 but might have got 6,433 votes?

Mr Cantwell: The actual number of votes recorded against that candidate?

THE CHAIR: Yes.

Mr Cantwell: I will ask the deputy commissioner to talk to that specific issue.

Mr Spence: A lot of the issues that have been raised go to six decimal places. Prior to the election in July the Electoral Act was changed to implement rather than rounding to the nearest whole number to rounding to six decimal places when we are talking about vote values. So the discrepancies are in the realms of those six decimal places.

THE CHAIR: Thanks for that information. We have a committee looking into the election more substantively and the committee has agreed to your requested extension.

Mr Cantwell: Thank you, that is helpful.

THE CHAIR: We might invite Dr Teague to appear so we get that directly.

MS CLAY: When you say you are rounding to within six decimal places, do you mean that the anomalies are probably less than an entire vote? They are in the order of 1/1000th or 1/10,000th, is that what you are saying?

Mr Spence: Without being able to generalise for every occurrence, that is very much where we are talking about.

Mr Cantwell: Thank you for your agreement to our request to allow our submission to be delayed until the end of April. That will facilitate our continuation and development of the report from the commission into the election, which will form the basis of our submission and also look at that matter amongst others as well. It will be helpful for us to continue to work through that report before we finalise our commentary on it.

THE CHAIR: Yes, and prompted by you, you are extending the time lines for submission for everyone else as well.

DR PATERSON: So with the process with engaging the ANU researcher, did everyone have a chance to work on this code?

Mr Cantwell: I cannot speak for Dr Teague here, of course, but her inquiry was initiated under the initial request for a deed of confidentiality which would then, for the 2020 election arrangements, subject to her signing of that deed, permit provision of the 2020 code for her analysis. She declined to sign the deed for her own reasons and therefore the code was not provided to her. Her report is available in the public domain and I am not speaking for her in this regard and I do not want to misspeak for her, but the assertions she has raised are on the basis of her analysis without the code, as would have been provided under the deed of confidentiality.

Nonetheless, as I have said, where we have seen that further analysis or action is required on our part to improve the technical matters that she has raised within her report, we have and are continuing to do so and we look forward to continuing constructive engagement with her. It is a question of, "Let's talk. Let's work through what you're thinking and making sure that our interpretations are correct"—these are somewhat technical interpretations of the process—and then we will decide as a commission how to respond. We look forward to a positive and constructive engagement.

DR PATERSON: Do you encourage people to sign the deed of confidentiality and test the code?

Mr Cantwell: The code for the Legislative Assembly elections has been made publicly available on each occasion and remains publicly available; but for 2020 it required a signing of the deed of confidentiality. That was a new requirement before having access to the code in the 2020 context. That was undertaken, or made a requirement by the commission, given the contested information and political environment particularly in the context of broad international affairs, where disinformation and misinformation aspects have given rise to some concerns that we need to ensure that any assertion or allegation of an error in the code should be discussed with the commission and the defined 60-day period contained within the deed—I do not know which clause—after which time the person making any assertions about the code is free to reveal those assertions but not the code.

The purpose of that is simply to give us time to engage and determine the nature of the concerns of whoever would wish to bring those to our attention rather than have them engage through the public media space and cause any unnecessary angst or concerns about the integrity of the process and the system. We wish to protect the nature and the reputation and integrity of the system.

DR PATERSON: Did anyone sign that deed?

Mr Cantwell: We provided the deed to a couple of people who requested it. No-one sought to subsequently sign the deed and therefore obtain the code.

DR PATERSON: Was there an issue with the deed that was specific to those people that they did not sign it?

Mr Cantwell: I cannot speak for those people, but the deed remains available and therefore, subject to the terms of the deed, the code remains available. I could not comment on their reasons as to why they did not wish to pursue it, but it is a publicly available document under the deed of confidentiality.

MS CLAY: I am interested in what your educational outreach is with schools and with 16- and 17-year-olds?

Mr Cantwell: That is a great question. That is a focus we continue to maintain, not just in this jurisdiction but across all jurisdictions, to continue to capture the attention, the enrolment and the engagement in democracy of our youth. The ACT Electoral Commission has a small team dedicated to that very purpose—the community engagement and education team are educational professionals by background. They have a program of actively engaging the schools and community groups, to educate them about democratic processes in the ACT and democracy more generally.

They have a couple of programs already in place—I think that there is one next month in March and another couple coming up after that. We continue to actively engage the community wherever they request it and wherever the opportunity presents itself to further educate our children and our youth and more widely the community. It has been a really successful endeavour; they have some very positive feedback, and it is such an important thing to continue to bring to the attention of that group.

Across the nation the AEC would report varying challenges in the engagement of the youth across Australia in the democratic processes. That is no different to here. We generally find that they are very keen to take part—they enrol, they take part and then other things get in their way and they tend to not be so engaged. So our challenge is to continue to see where we can instil in them the importance of democracy, engagement in our nation, having a voice, being heard and taking part in the democratic processes not just because you are required to in the law, but because it is something that we should be doing.

We will continue to work with the collection of commissions to see how we can work together to foster that initiative. So it is a positive engagement. We should continue to keep doing more because it is always going to be a challenge.

MS CLAY: Are you tracking what percentage of 16- and 17-year-olds you are reaching with your program?

Mr Cantwell: We can have a look at that and provide some information. It would also be worth reaching back to AEC, with whom we have a partnership agreement, and draw from their figures what they are seeing nationally. They produce a report routinely about enrolment and the participation rate nationally. I think that this is on record already and it will be further documented in our election report, but we enjoy the best rate of engagement in democracy. We have the highest number of people who enrol and the greatest uptake of the voting opportunity presented to people. I think we can say that

that is largely due to the nature of our demographics in the ACT. It is a relatively small area, it is a connected community, it is a well-informed, educated community that we can reach quite quickly.

We have some extraordinarily high rates of uptakes, and we will provide those figures separately as you wish. It is a problem that we need to focus on nationally but also by jurisdiction. It is not such a big problem here in the ACT but we need to keep focused on it.

MS CLAY: When you do provide those figures, if you have a breakdown of your average in multicultural and linguistically diverse communities that would be very helpful to us.

Mr Cantwell: Absolutely. That is a very important point. We also reached out in this 2020 election to provide where we could to those homeless or underprivileged members of our society. We took particular efforts to provide that opportunity to vote to those less privileged members of our society because we should do so. We can provide some feedback on that.

MS CLAY: It sounds like you are well placed to answer my final supp: we are looking ahead and wondering if at some point the voting age may change, which would mean that you would then have voters of 16 and 17 you need to reach. Do you already have the resources for that? Have you estimated what the impact would be if that happened?

Mr Cantwell: I cannot say we have done a definitive analysis on what additional resources would be required should that be legislated. The commission has provided comment—and we will do so as part of the inquiry into the election should it arise—around that potential initiative. It has come before the Assembly and other times before. We can provide comment as required along those lines. Right now, in terms of resources to address the task and mission that we have, particularly the 2020 election and the COVID challenges, we were resourced appropriately for that which we were required to fulfill.

DR PATERSON: Obviously it has been a busy year with the election but in the years where there is no election what is your key focus?

Mr Cantwell: As you might recall, there are three new pieces of legislation which we need to focus on that will come into effect from 1 July this year. They talk to the issue of prohibited donors, continuous reporting and truth in political advertising. Those three areas are the subject of some deeper analysis by the commission in conjunction with other jurisdictions who have experience in those particular areas, to further define what our resource requirement will be to properly enact and, where necessary, enforce such legislation. Each of those provide some challenges, in particular the truth in political advertising and prohibited donors. That will be a challenge. It is one of our key areas of focus in the weeks ahead because that will also inform submissions for the budget for 2021-22 for the commission.

Concurrent to that, we are in the middle of having to move from our election period office space again. We are moving to an interim office location in Customs House in

March. By its nature that is disruptive, but we will get through it and then we will move into a permanent office solution that is to be confirmed, but hopefully in one of the levels in Nara Centre. ACT Property Group and Treasury are working through that proposal and we will be engaged with them to see how the government can acquire a long-term lease.

That will require some adjustment to our resources, going forward, because historically we have been in the small office space in the North Building across the square here. That is now inadequate for our staffing purposes, particularly under the new legislation. We need to look to the 2021-22 budget for additional resources to accommodate a lease that will be provided to us through ACT Property Group. That is the challenge in the short-term.

Going forward, we will continue to build upon the successes that we have already had for the 2020 election. It was an extraordinary challenge but, I think, a really positive result in terms of the way the commission went about its business. It was a collaborative effort in light of potential cyber and other security threats which permeate through our society now, particularly with our ICT-enabled systems. We worked collaboratively with Australian Cyber Security Centre teams and our ICT vendors to develop some processes and drills to address potential cyber risks. We will continue to build upon those.

We need to, as you would expect, revisit each of our ICT systems to ensure that, as we progress year by year towards the next election, they are as good as they possibly can be within a reasonable budget space—that is a body of work that the team are already starting to work on—and seeing what we need to do to improve those systems and our processes.

We will look to continue to provide advice to the Assembly and committees about legislation continuing on or otherwise from that which enabled the 2020 election and the pandemic, in particular, early voting, as I alluded to earlier. That is clearly a very popular choice for electors in a COVID era or otherwise. Across all jurisdictions there is a clear trend towards a preference for early voting. Clearly it is up to the Assembly to consider whether that legislation should continue. It was time limited for the 2020 election, so those things are all part of considerations. We will talk to those issues with our report for the inquiry.

My erstwhile deputy has just alerted me to the reality that we have to also run the Aboriginal and Torres Strait Islander Elected Body election soon, so we are preparing for that. We have just advertised for a position to assist us in that important undertaking which we need to do soon through to July. That is no small undertaking, so that is another election we need to run in the very short term.

Between now and 2024 we need, by law, to do another redistribution analysis and process, whereby we ensure that the demography, the expanding geographic boundaries in the ACT suburbs and how we fill those suburbs, is taken into account in ensuring that it is a level playing field for 2024.

THE CHAIR: Thank you for attending. You took on notice some questions so please

provide the answers to those. We will see you back here—we have not finalised the dates yet for the hearing—and we look forward to your report.

Hearing suspended from 12.27 to 1.30 pm.

Appearances:

Drumgold, Mr Shane SC, Director of Public Prosecutions
Boersig, Dr John, Chief Executive Officer, Legal Aid ACT
Garrisson, Mr Peter SC, Solicitor-General for the Australian Capital Territory

THE CHAIR: Welcome. This is a continuation of the first public hearing into the annual and financial reports and estimates. As you would be aware, we are combining the two, which is a bit new. I remind you that these proceedings are being recorded and broadcast. Questions on notice, if you take any, are required within five days. Can I confirm that you are aware of the privilege statement.

Mr Drumgold: Yes, I agree to be bound by the privilege statement.

THE CHAIR: Funding has been an issue from time to time, and for a while the office was under resourced. Some supplementary money was given in a previous budget, but I am interested to hear how you are at the moment, in terms of the budget and allowing you to do your job as a DPP.

Mr Drumgold: In 2018 we received a budget injection over four years. I think it was around $6.992 million, stepped up from year to year. The last of those increases is in the next financial year, or maybe the year after. Those step-ups roll over into base; they are not temporary payments and step up out of that additional money progressively. We have managed to build Crown Chambers, which we have managed to staff with senior prosecutors at the SES level that are capable of doing serious crime and Court of Appeal work and, if need be, of appearing in the High Court. The last of our recruitment into those positions we have just completed and they are about to occupy. So at this stage we feel we are able to deal with the demands we are currently having to deal with to the quality they are required to be dealt with.

THE CHAIR: I recall from previous hearings three senior prosecutors was the number that was bandied about. Is that what you have ended up with?

Mr Drumgold: Yes, three at the SES 1.2 level. They are Crown prosecutors, but we also have a head of Crown Chambers who is the deputy director at the SES 2.2 level. They have just been joined by another two prosecutors at the grade 5 level. So we have a range, from grade 5 through to SES 2.2, to whom we can distribute all of the serious indictable work.

THE CHAIR: We heard earlier from the Attorney-General that there had been a delay in matters before the Magistrates Court in particular and that the list has blown out from whatever it was to about 1,400 matters. Will that have an implication on you, going forward, in that there will be a surge in issues? And has COVID has affected you?

Mr Drumgold: To answer your second question first, COVID of course affected us. We had to implement our business continuity plan. I split my workforce into three and they worked on two-day rotating forces of court rotations. Of course there was a backlog because the Magistrates Court effectively shut down. We are making our way through that. Recovering from COVID is a difficult situation for every organisation.

Again, our structure and our resources, in my opinion, allow us to cope with the clearance of those backlogs.

MS CLAY: I was interested to read about the prosecutor associates, which are more junior staff members. I am interested to know why they were introduced and whether that was budget related, and also how those staff are performing compared to more senior staff. Does it have any impact on their rates of conviction, or is there some sort of qualitative feedback on their role and whether they are performing that role well?

Mr Drumgold: It is kind of related to budget but also to the progress of the office and how we can better utilise electronic resources. An example of that is that we used to be very labour intensive: if a prosecutor would go to court they would write the result down and would come back to the office and a paralegal would manually enter that data.

MS CLAY: Really?

Mr Drumgold: That has happened from time immemorial. We have thrown a bit of money at creating a situation where the ICMS system in the courts uploads that data to a cloud, and the money we have invested has been to write script that takes that and puts that into data fields and automatically incorporates it into our cases system. So we are on our way to eliminating data entry. We have just rolled out our electronic bench sheets so that we do not have to handwrite bench sheets; we can enter them electronically. That means all of these file movements, as in storage and data entry, are starting to reduce.

I had a large number of administrative staff and we started recruiting in a different way. For example, we predominantly recruit law students, and they are recruited into the prosecutor associate positions. So those resources that were previously used for data entry are now used in list work. I have two prosecutor associates in two teams. I have a prosecutor associate list team and they go and do what is largely administrative work. They do the first mentions in the ANA two lists and B lists. And then I have the prosecutor associates in Crown Chambers and they do the instructing work.

They are admitted lawyers but just junior admitted lawyers, and the work we give them is maybe two-thirds administrative—"This matter is adjourned to this date"—and about a third legal, doing minor on-the-spot sentences, drink-driving and minor theft and those sorts of things. Prosecutor associates, junior lawyers, don't do serious matters and do not do hearings, for example.

MS CLAY: So it is really about efficiency, and they are getting court experience.

Mr Drumgold: It is a productivity measure.

MS CLAY: But they are also getting experience and they will then be better trained.

Mr Drumgold: It enables us to grow our own; that is right. We recruit at the prosecutor associate level, either still as law students or fresh graduates, and then they grow through the office. There is a pool from which we recruit our grade 1 and 2s and our grade 1 and 2s are a pool from which we recruit our grade 3s and so on.

MS CLAY: Is this likely to help with long-term retention? Do you think this might be a way forward?

Mr Drumgold: We are finding that, yes. We are finding that having a career structure assists our retention. Maybe five or so years ago turnover was a real problem. Now the problem can be a lack of turnover. So people move through and become experienced, but I do not have the grade 1/2 for them to matriculate to or the grade 3 for the grade 1/2s to matriculate to. It is a question of balance. You still have people leaving, but they do not leave because they are unhappy; they leave because they have experience that has outgrown the positions that I have.

We are seeing that often they will move on to somewhere else and get experience there and then they will come back. There are more senior prosecutor positions that are available. It is not an accidental recruitment retention structure; it was designed to do what it is doing for us.

DR PATERSON: I am not sure if I have read it correctly, but it says at the beginning of the report that eight judge-alone trials proceeded, but further on in the Supreme Court section it says there were 13.

Mr Drumgold: I think the reference to the eight was not within the financial year; it was from the start of COVID to 30 June.

DR PATERSON: Okay, so just that section.

Mr Drumgold: Yes, yes. In the director's foreword that is qualified. The eight trials proceeded post commencement of COVID up to 30 June, whereas the figures at the back of the annual report are from 1 July to 30 June.

DR PATERSON: I note in your report that seven returned verdicts of not guilty, which was quite different to trials historically, which report 60 to 70 per cent of guilty verdicts. Is there a reason for that, do you think?

Mr Drumgold: That commentary is not designed to cast doubt on the process. The role of me writing that is to report on data variances. We keep statistics on not guilty as a percentage of total trials and the analysis is that that has changed. It used to be somewhere around about late 30s—37, 38 per cent. So if you average it out over 10 years, it is around 37 per cent. If you average it out over the last five years it drops to around 30 or 32 per cent. I said that the range of not guilty as a percentage of total trials ranges between 30 and 40 per cent. That covers the spread between whether you are averaging over 10 years or five years.

Last year's figures were slightly higher. I think they were somewhere around nine per cent higher than the previous year, around about five per cent higher than the five-year average and maybe slightly ahead of the 10-year average. What I was commenting on there is: "Here is a pocket that explains the variance in the data." Why that is, I do not know. It rises and falls on the individual cases. We also provide in the annual report an analysis of the various cases, and the decision was to allow people to draw their own conclusions.

THE CHAIR: Those judge-alone trials, were they court-imposed or are they just all the judge-alone trials?

Mr Drumgold: No. I do not want to take up too much time, but there is a complicating factor. Section 68BA was inserted, and that effectively meant that if you wanted a jury trial you could not get one. There were amendments to section 68B so that there were previously excluded trials from your ability to elect judge alone. That still remains today; I have not done the data. In fact, I think there is only one affected trial now—there were two. One was referred to as UD and that has now been settled. And there is currently one that is on appeal that was captured by section 68BA. To my knowledge, that is the only section 68BA trial that I have in my own office where someone has actually been forced on judge alone.

THE CHAIR: Did you argue against any trials being judge alone that were court imposed?

Mr Drumgold: Our job is not to argue for or against; our job is to assist the court in reaching a conclusion and pointing out factors that go for or against the interests of justice. We do not really have a role to say, "This is the way it should progress." Our role is really informative—to make sure that all of the information is before the court for them to make the determination on whether it is in the interests of justice to proceed judge alone.

MS CLAY: We have a new indicator in the budget: the 2021 targets for the percentage of cases where indictments, case statements and questionnaires are filed within the time frame specified.

Mr Drumgold: Yes, 1.4.

MS CLAY: Yes. We have a target of 80 per cent, but our year-to-date result is 47 per cent. Is there a reason for that? Would it have been the delays?

Mr Drumgold: Yes. Previously with our 1.4 KPIs, we had two KPIs. We had the average cost per matter, which is still the case, and there was a second KPI which was really loosely phrased. It was the percentage of matters in which we accord with the practice direction in both courts. There are two issues. In the Magistrates Court, there is the percentage of matters where we served the brief on the defence within a certain period of us receiving it. The second one is the percentage of time that we meet the time frames for the filing of indictments. When we split those into two in the new KPI, we found that the percentage of times that we are serving briefs to defence is somewhere in the 90s. It is really high.

The short answer to your question is that there has been an evolution where we have had legislation introduced that means that defence can waive the committal process. For example, we might turn up at a mention; defence will say, "We'd like to commit it and we are waiving the committal process," and we do not even have a brief at that stage. Then we turn up a week later to the Supreme Court. They have given standard directions where you file your documents within two weeks. It is really hard to prepare and file documents within two weeks when we do not even have a brief at this stage. So the reason for that large variance is purely the number of matters we have where

committals have been waived and it is simply that we do not have the material to produce the documents.

We are currently in discussions with the Supreme Court about changing the standard orders to have a different raft of standard orders for matters where committals are waived and to retain the current two-week—it might be three-week—time frame for matters where there has been a formal committal process.

MS CLAY: It sounds as though that might be a sensible approach.

Mr Drumgold: Yes. We were not aware of the issue until we split out the two parts of 1.4(b) into 1.4(b) and (c). Then we did expose this and we did the backward analysis to work out where the problem was.

THE CHAIR: How are you finding the new court building?

Mr Drumgold: Fantastic. It is great. I have been appearing in the old one for 16 or 17 years; I am still feeling it.

THE CHAIR: I heard an address by a High Court judge who said that back in the old, dark days, the dingy old buildings with no windows would lead to a high rate of prosecutions and that as buildings became lighter and more roomy, it was harder to secure a prosecution. I wonder if you are experiencing that it is harder for you to do your job?

Mr Drumgold: No; it is much easier to do the job here. It is nice to have the light, nice to have the sunlight on your face, but—

THE CHAIR: I note that we have Legal Aid and the Solicitor-General to hear as well, but are there any pressing questions?

DR PATERSON: Yes, just one more, on the court of appeal. In the report it says that there has been a doubling of the number of appeals and a significant increase in the number of Crown appeals. Is that something that you foresee continuing? And do you require more resources to address the doubling of appeals?

Mr Drumgold: Answering the second question first, I do not believe that we do. Answering the first question, I think that that is a function of our new structure. Our new structure has decentralised the appeal process. I now have a dedicated appeals team. If someone thinks that there is an issue, or they spot an issue, they then do the research. We have a magnifying glass on matters, and a formal structure, with an independent decision at the end of it as to whether or not we appeal. For the first time, we have a kind of formal dedicated structure answering the question of what we do appeal and what we do not appeal. I think the increased numbers are purely the result of having a dedicated area to consider the issues of appeals.

THE CHAIR: Thank you very much for your appearance. Legal Aid is the next cab off the rank. Good afternoon.

Dr Boersig: Mr White is coming and giving us a hand for a couple days a week. That

has been great. He is giving us full strength back to what we are doing.

THE CHAIR: I will kick off with a similar line of questioning in terms of funding and resourcing. Last time you appeared, or maybe the time before, you had had some money cut. It seemed that that was inadvertently cut, because it was then replaced.

Dr Boersig: Yes.

THE CHAIR: Have you still got that money?

Dr Boersig: Yes, we do. That has been essential. That was based around our family violence work. One thing that COVID has underlined is the unfortunate prevalence of family violence again. If you were at the court on a Monday, you would be astounded at the number of people coming through and needing that kind of support. We have been very appreciative of the additional funding we got this year just to keep up with some of the demand in the family violence area and the elder abuse space.

THE CHAIR: Can you quantify that increasing demand?

Dr Boersig: We are consistent generally with what you see around Australia. We have seen some very alarming figures in other countries, up to a 30 per cent increase. It partly depends on what has been counted, but to us it is looking as at least 10 per cent in round figures, in terms of people reporting.

THE CHAIR: It might be anecdotal, but do you believe that it is COVID related or do other factors apply?

Dr Boersig: The reporting of domestic violence is a fraught discussion. It is about access and the ability to do that. COVID highlighted the difficult situations that some people face. We thought there might be a dip because of that and that it would stay more hidden. In fact, the data shows us that whilst that might have initially been the case in the first few weeks, there has been a continual increase in the reporting of it.

THE CHAIR: Aside from domestic and family violence, have you noticed any other areas of particular note?

Dr Boersig: Crimes around violence; I would be interested to see the police figures relating to that. There are fewer break and enters, because people are at home. We are seeing less of that—although it does happen; it happened to me. There are more assaults on persons; and as we are emerging from COVID, we are seeing a few more public nuisance type offences. Again, I would want to see the AFP data around that; it might just be pent up. Initially, because of COVID, they were not serving as many warrants; they were not doing as much activity in terms of looking for people as they normally do. That changed the data flow. So this year it is a bit more complicated. But, off the top of my head, I would say that is where it is coming from.

THE CHAIR: Aside from Mr White, how is your staffing going? Have you got enough people to do the job?

Dr Boersig: That issue is a reflection of the poverty line really. It is a question of how

many people you want to assist. We assist people for grants of legal aid at around $411 a week, after you take children and mortgage or rent away. The poverty line is about $386. The justice gap is very real in terms of the number of people who can receive legal aid and the number of people who can effectively pay for private representation. We have a whole range of strategies to try and address that, but ultimately one of the major issues is providing representation for people in court, and that is a function of the resourcing that is available. As I say, that is one of the risks we face. I would not want to see that level reduced any further.

With duty work, family advocacy advice services and therapeutic court, duty lawyers are doing a great job in managing people, empowering people. But ultimately we need resources to defend people in court, and that is a matter that, with any government, requires our agitation and our submission to government about those issues. We could always do more with more money, but we do the best we can with whatever money we are provided. I fully appreciate the number of considerations that government has when it is spending money.

DR PATERSON: I found your breakdown of age groups unconventional—pre-baby boomers, baby boomers, gen Y, gen X, et cetera—but I noticed that you seemed to have a very low retention rate past four years of service. And most of your staff, 85 of your 100 staff, have only been in the service for—

Dr Boersig: About five years ago our staff profile was very much baby boomer orientated. As those staff left, we changed our profile. We recruited more people at more junior level and made more opportunities for people to come into the profession.

There is, amongst all providers, I think it might be fair to say, a bigger churn of staff. Younger people tend to seek opportunities. We have, for example, secondments to the Northern Territory. In any one year we generally have two staff up in the Northern Territory doing work at the Aboriginal legal services or Legal Aid there. We encourage that kind of activity. In relation to people in the first parts of their career, I encourage them to explore opportunities and do different things, whether that is by way of going for leave or whether it is trying something else in some other field such as moving to the CLCs and back.

So, yes, we are seeing more movement. But we are also seeing a vibrant, healthy work environment, because with that kind of structure you blend experience and idealism, which is a wonderful combination for any organisation and a very healthy change in our organisation.

DR PATERSON: In terms of the experience needed to handle really difficult family violence cases, for example, if you have high staff turnover and a young staffing profile, do you see that there is adequate training for the handling of those cases?

Dr Boersig: In the last EBA we generated a new structure which is a hub structure. For every two junior employees, there is a senior supervisor. That supervisor is intended to help manage not only their casework but also their health and their workplace relations. That was a change for lots of lawyers. Lots of lawyers love to just sit back in their office and do their work. Now senior people are charged also with managing staff and providing quality assurance and supporting.

That was driven by young people who came to our organisation. They sought support in what they want to do. They want to know how they are going. We needed to have the structure to do it. The EBA went through and that is what we got, a hub system. I think it is working pretty effectively.

The staff we bring in are very bright and capable. I do not know how I would get a job now, given some of the CVs that these young people have. And they learn very quickly. But you are right; you have to do it in the sense that you have to have support. Doing your first hearing, getting on your feet for the first time, is very daunting. We have senior people who coach them. That is partly why I brought Mr White in when Jane Campbell was elevated to the bench. I needed someone very quickly to provide some quality assurance in our organisation, and he is doing that now. We all are now.

DR PATERSON: I have a question on staff. In terms of your applicant profile, 10 per cent are Aboriginal or Torres Strait Islander. Of your staffing, only two identify as Aboriginal or Torres Strait Islander. I am just wondering how you go about increasing the number of Aboriginal staff and also ensuring cultural safety for your clients?

Dr Boersig: We advertise widely, and we take longer to recruit, to give more opportunities to people. We liaise with the bar, at ANU and at UC around recruitment. It is partly a function of availability as well.

MS CLAY: I have a question on funding. I know you have other sources of funding besides the ACT government. You have the interest from trust accounts and you have the National Legal Assistance Partnership. I know that for various reasons those funding sources dropped over the last year. I am concerned about Legal Aid and the CLC's ability to utilise those funds, particularly with what you have just said about the increase in need, the very measurable increase in DV and other issues. Is that affecting you, and what is your long-term plan to deal with that drop in funding from the other sources?

Dr Boersig: National Legal Aid and the national CLC are playing a very active role with the federal government, in particular pointing out the need around family law and family law issues. As you have indicated, we are funded half by the commonwealth and half by the territory. We also get funding from a statutory interest account and there are some contributions recently made by clients. At a national level, that is addressed to the commonwealth and that generally results in short-term funding like family advocacy services or short-term need.

In the territory, we go through the usual budgeting processes and put up and make our business cases around territory-specific needs. Those relate specifically to domestic violence, care and protection work, mental health work and guardianship work. Of course, the most visible but by no means the largest thing we do is in the criminal field of litigation. Our criminal practice is about a third of our practice. The rest of the practice is family law, domestic violence and those others—care and protection proceedings, employment law, discrimination, NDIS work and so forth. I could go on.

We spoke about this at the last board meeting, which was on Wednesday night. We are currently preparing some material for the government about what the need is here in

the ACT and urging them to look at what that is. Part of my concern is around the poverty line and the justice gap. In that context, we have special relationships, say, with the Women's Legal Centre around the FDR program; we provide reduced services to women who are not otherwise eligible for legal aid to access our FDR program. With domestic violence, we do a similar thing. We have an open door policy in relation to applicants. Often, the clients come to us. Ninety per cent would be women who have assets but do not have the cash; we help them initiate interim orders in particular.

I think there will be a range of strategies coming up in the next budget cycles in which we can highlight that. There are numerous reports. The most recent Productivity Commission report talked about $200 million being needed nationwide in legal aid just for civil law matters. The Law Council of Australia put forward a figure of $385 million to be injected into the National Legal Aid scheme if it was to meet the need. I am meeting regularly with the Law Society and with the Bar Association around the scale of fees and costs, to see if we can talk to them about what is a fair scale of fees to try and meet their needs as well.

MS CLAY: Are you looking at reducing the scales? Is that what you mean?

Dr Boersig: We have to look at our scale of fees in relation to what we are paying for primary practitioners, and we are doing that. All these issues have been flagged for some years.

THE CHAIR: Have you done a comparison with New South Wales or Victoria? What is our scale of fees like compared to other jurisdictions?

Dr Boersig: I know what is charged in relation to all the states around Australia; that is the context in which we are talking with the bar and the Law Society.

THE CHAIR: Are we high here?

Dr Boersig: It varies. It depends on the jurisdiction and on the particular fee arrangement. Our hourly rate is different from, say, the New South Wales hourly rate. We pay more of an hourly rate and they pay less. But the fee on brief for a trial is a bit higher in New South Wales than it is in the ACT. You can multiply that variety all around Australia, particularly in places like Western Australia and the Northern Territory, where they have different drivers to their costs. It is different around Australia.

DR PATERSON: I have a question about senior clients and how you engage them. Do you need to engage with older people in a different way? For example, they may not be online as much. Is over the phone sufficient or do they want or need more face to face?

Dr Boersig: We operate the Older Persons Legal Service, as you know, and we are very lucky to have Liz Samra oversighting that. We had additional funds for the COVID year to put on one more person for that service. They went out to every medical practitioner in the ACT and said, "We are here. Can you let your clients know?" That is directed at elder abuse. And we have done a whole range of things. Without being too specific, we have met in doctors' surgeries with people. We have met in people's homes.

You are absolutely right: when you are dealing with older people, you have to be more responsive to their needs. We have gloved up and kitted up and done it even during COVID. But for many of the services, the telephone has really helped. They sometimes take longer, and we expect that on those types of services we might take a little longer. We then redirect them to Liz's unit, or elsewhere if it is family violence or domestic violence. It is often a holistic operation with elders.

MS CLAY: The Tenancy Advice Service has now been rolled into Legal Aid?

Dr Boersig: Yes.

MS CLAY: Before, it was a standalone service?

Dr Boersig: It was.

MS CLAY: I am wondering how many clients it serviced before and how many it is servicing now, and what you are doing to make sure that everybody knows where to go and how they can access that.

Dr Boersig: It has its own website. The figures about service in relation to the Tenants' Union I would have to take on notice because I do not know what they are off the top of my head.

MS CLAY: I would love it if you would, please.

Dr Boersig: Yes. It would depend on what was in their annual reports. In the first quarter of last year, when we got the service, we took 1,200 calls on the TAS telephone line. In the last quarter of last year, we took nearly 1,000 in relation to tenancy advices.

In terms of how we advertise, we have done something like 15 CLE activities—community legal education services—and a whole range of fact sheets and so forth have gone out to services. We are now a member of a number of groups in which we participate. Some of the work that the TU did was around advocacy. We do law reform and we provided extensive law reform advice to government, over the COVID period in particular. Quite a few changes were made because we were plugged into the cabinet structure.

MS CLAY: Do you see that as a successful transition? Do you think you are providing as much and as good service as was previously being provided? It is a difficult question.

Dr Boersig: The services are different services. I have to be very careful and hesitant. I do not want to be seen as criticising any services. In its tender, the government asked for a different approach to it.

We triage through our helpline. We triage in seven or eight minutes, generally, with telephone calls that come in. We have to do that because across the commission we are increasingly taking thousands of calls on our helpline services. It has moved in the last five years from something like 9,000 calls to last year taking 21,000 calls. This year, we are heading to over 24,000 calls.

So we have a triaging service in relation to the helpline. Most people want information immediately and want to be pointed to information which we have on our website and which is provided. With any matter that needs in-depth legal advice we run a clinic every Tuesday, which spills sometimes into a Wednesday, and we are seeing, on average, 10 to 12 people at each of those clinics. On top of that, we provide representation for matters that go through to the ACAT.

I feel that the service we are providing is an excellent service to tenants. It is a different approach to what was done at the Tenants' Union. I would not want to be critical of the people involved; we responded to what government asked us to provide.

MS CLAY: Thank you for that information.

THE CHAIR: Thanks very much for attending. Welcome back, Mr Garrisson.

Mr Garrisson: Good afternoon, Chair.

THE CHAIR: I note that Ms Lee has made an appearance. She is very keen to talk to you, so I will defer my question. I am curious to hear what she says.

MS LEE: Thank you, Chair, for the indulgence. It is good to see you again, Solicitor-General. There has been a bit of talk already today about the judge-only trials. I want to pick up on that. Back even before April, when these proposed changes were being floated, was advice sought from you about the proposed legislation?

Mr Garrisson: I provided advice about a range of proposed reforms that were being introduced as a response to COVID-19. The jury trial proposal was among those matters on which my views were sought.

MS LEE: When was that advice sought from you?

Mr Garrisson: As the legislation was being implemented.

MS LEE: In terms of the advice that you provided, was that followed to the T?

Mr Garrisson: It is not for me to say what exactly my advice was—or indeed, whether it was followed.

MS LEE: I am asking not what the advice was but whether it was followed.

Mr Garrisson: The decision to introduce section 68BA was obviously a policy decision by government. The legislation as introduced, to cut to the chase, is, respectfully, in my view, constitutionally valid, but that is a matter that will be tested in the court of appeal in due course. I do not know that I can really say very much more than that.

MS LEE: I understand the limitations of what you can say in this regard and that is why I am trying to frame my questions as carefully as possible. Obviously you are aware of some of the concerns that have been raised within the legal fraternity about these laws.

Mr Garrisson: Yes.

MS LEE: Was advice sought from you or your office when the process of repeal was happening?

Mr Garrisson: You mean the repeal—

MS LEE: Of that particular section.

Mr Garrisson: The repeal of 68BA?

MS LEE: Yes.

Mr Garrisson: I cannot recall, but I think the decision about repeal was a policy decision by government. I do not think there were any particular legal implications or advice required in relation to that. I honestly cannot recall.

MS LEE: Between when the law was enacted and the repeal, was there any further request for advice or advice provided to government in respect of that particular section?

Mr Garrisson: In between I was in the Supreme Court and the High Court in relation to section 68BA, so yes, obviously there was advice provided in the context of those proceedings.

MS LEE: Thank you, Chair.

THE CHAIR: What is the balance of stuff that you do internally and stuff that you are contracting out at the moment?

Mr Garrisson: It has its origins in history. Part of it is a resourcing issue. It is an expertise issue. But it is also about striking a balance in how the legal services for the government can be most efficiently provided. In round terms, currently our office receives $11 million in budget funding. We also recover about $10 million in cost recovery from various agencies that we charge for services. That breaks down into some government enterprises that are obliged to operate commercially; we provide those services on a fee-for-service basis.

Also, there are matters which require dedicated resources and which are going to take a significant amount of time; that is done on an ad hoc basis. We also have lawyers outposted with a range of agencies. Again, there is a cost recovery element to that. We currently have about 10 lawyers sitting out with agencies, assisting them with their legal work and basically triaging the instructions that come into our office. All up, that comes to about another $10 million that we get through those processes.

There is then approximately $10 to $11 million, in the last year, that is paid by a range of agencies in relation to legal services provided by the private sector. Just last year, we refreshed our legal services panel, as is indicated in the annual report. And there is a process by which the agencies make a request to have a matter outsourced. It is approved by me and then the agency will generally manage that. There are some

projects where we are also acting in the same matter to work with the private firm on a particular transaction. Then we brief members of the bar. That is about $3 million a year as well.

The total cost for the territory's legal services is around $35 million. As it is currently configured, in my view it provides a really neat balance for government to access a range of services. As an example, all of the domestic conveyancing work goes to the private sector. That is ACT Housing. It is the SLA with their land development work. There is no point in me having the relatively scarce resources in my office doing what really is low-risk work, in particular when the private sector is well set up to undertake that sort of work and they do it on a very competitive basis. If that answers your question, that is the broad mix of it.

In terms of my office, we have about 115 full-time equivalents, 70 per cent female. We have a wide range of experience. In the last three or four years we have been increasingly engaging university students as paralegals; we have found that has created a very nice path through into junior legal practice. In fact, four of our paralegals were admitted recently and are now government solicitor 1s in our office.

The model is flexible. It is flexible because the territory's demand for legal services has exceeded that for which it is budgeted. Over time, we have evolved a business model which provides us with that level of flexibility. It does have the consequence that a number of our staff are on temporary contracts, and they tend to be on temporary contracts for a while.

We do undertake permanent recruitment on a regular basis. We recruit permanently against resources that come from revenue—only because I formed the judgement that we can rely on getting some parts of our revenue flow in the long term. If you were looking at a percentage, perhaps 20 to 25 per cent of our staff are on temporary contracts. Part of that is that we have students who come in and work part time. That suits their arrangements. We take people on outside our formal recruitment processes; that can only be on a temporary basis. It works rather well because they get to see us and we get to see them; it also prepares them well for being able to participate in the permanent recruitment processes that occur periodically.

MS LEE: Can I follow up on that. Solicitor-General, you gave us an insight into some of the work that the private lawyers do, but have you seen a trend over the last couple of years in the complexity of some of the matters that are coming through, where you have been required to go out and get some particular expertise?

Mr Garrisson: The one topic we always go for external advice on is tax; there is no way we are going to deal with advice on tax issues. That also ties in with some of the more complex projects. If you look at the public-private partnerships—the light rail, the Supreme Court—an inherent part of the structure of those arrangements involves advice on the taxation implications and the like. On both of those transactions, private law firms were engaged to document processes and contracts. We have, depending on the project, more significant or less significant involvement, but we certainly advised government in relation to elements of all of those projects—when, for example, a matter comes up that is within our particular expertise.

Generally, the work that we have been getting in in the last couple of years has been more complex across the board. That has presented a challenge. At the same time, in that two-year period, we have undergone a fairly significant restructure within the office. The executive structure has changed. There used to be, as I recall, two deputy chief solicitors; there is now one deputy at a slightly higher level and an executive group manager, legal services. They operate not vertically but horizontally across the whole office and manage the practice across that way.

We have also changed from the old section system, where you would have the three sections of property and commercial, litigation and government law. We have now divided that into 10 practice groups, and each of my senior GS4 lawyers is a leader of each of those practice groups. All of this came to pass or was started before COVID-19. The advent of COVID-19 accelerated the change process rather spectacularly. It has worked really well, because it has meant that we are managing our resources more closely.

The senior people also have direct responsibility for a small group, so we have been able to address issues of work health and safety and wellbeing, which was a particular concern. It has meant that, whilst I will not necessarily say we did not skip a beat, we came very close to not skipping a beat when having to all of a sudden move almost all the office to working from home. We had the advantage that at that point most of our lawyers were operating on laptops as a result of the government's IT policy. The old desktops are largely gone. There was a bit of scrabbling and a bit of catch-up, but it worked really well and it was very well received by the staff. They are to be commended for the tremendous work that they did during that period.

We have seen from the annual report that the work we did during the height of the period—and which we are still doing—was always urgent. It is very complex and it covered the whole range of things. For example, there was the effect of the health restrictions on government businesses, on a range of activities that are undertaken within the government. It was about how they could do that, how you deal with your contractors. It was not just about the health restrictions; it was about the conduct of whole of business. We were doing all of that on top of all the other work that was in there. As I said, my people are to be commended; it really was a very challenging time.

THE CHAIR: Thank you very much for coming today. I do not think you took anything on notice.

Mr Garrisson: No, I do not think I did.

MS LEE: Can I ask something on notice? It involves a figure. You talked about 70 per cent of solicitors coming in being female, which probably reflects the high number of female law graduates at the moment, but when it comes to briefing, does your office have an equal opportunity briefing policy?

Mr Garrisson: We certainly do. We are part of the Law Council briefing policy. In the last year, it was 33 per cent by volume of briefs and 37 per cent by value.

MS LEE: That is what I wanted to know. Thank you. You do not need to take it on notice.

Mr Garrisson: No, I do not.

THE CHAIR: In previous hearings, we have noted the number of female lawyers in the DPP. I think VLA is similar. Looking around this room, Mr Garrisson, I think that the age of the middle-aged white man seems to be—

Mr Garrisson: It is really quite diminished, Mr Hanson.

THE CHAIR: Based on the evidence, it would appear to be.

Mr Garrisson: For the record, I can point out that whilst I am a white, middle-aged male, my deputy chief solicitor, my executive group manager, legal, and my general manager—the executive roles in my office—are all female. Of the GS4s who are the most senior lawyers, I think it is probably 60 per cent of them. I have the data somewhere. It is a very heavily female dominated office, which is great. We have a culture which, I think, encourages participation and, in particular, issues around not just maternity and paternity leave but also childcaring obligations and has the flexibility to enable parents to address issues that need to be addressed as time goes on. The fact that we now have working from home as a fixed element of what people do makes that much easier.

THE CHAIR: Thank you.

Hearing suspended from 2.28 to 2.54 pm.

Appearances:

ACT Human Rights Commission
Watchirs, Dr Helen, President and Human Rights Commissioner
Toohey, Ms Karen, Discrimination, Health Services, Disability and Community Services Commissioner
Griffiths-Cook, Ms Jodie, Public Advocate and Children and Young People Commissioner
Yates, Ms Heidi, Victims of Crime Commissioner

THE CHAIR: Welcome. This is the first day back from COVID, so it is good that we are back to normal proceedings. It is a bit unusual in that we are doing annual reports and the budget, and it is being done by a standing committee rather than a select committee of estimates. It seems to be working okay.

These proceedings are being recorded and webstreamed. We will clarify matters at the end of the hearing, to make sure that you know what you have taken on notice. Can I confirm that you have all had a quick look at the privilege statement, and that you are aware of what it means?

We asked some questions earlier of Minister Cheyne. She flicked them to the Human Rights Commission, so we will see whether you answer them or flick them on. The first one is: annually, there has been a steady increase in the number of complaints. Going back a few years, it was 500-odd; then it became 600-odd. This year it has gone up to over 800. I am wondering why, and what is the nature of those additional complaints? Is it spread across the board or is it focused on a particular area?

Ms Toohey: As you can probably see from the annual report, yes, the numbers have gone up over the last four years, primarily in the health area and in the discrimination area. We would say that is good, in terms of people understanding the process, knowing it is available to them and having confidence in the process.

We also now have a couple of new jurisdictions that have come on board in the last year. We have vulnerable people complaints, which is about elder abuse and abuse of people with disabilities, which came in in May last year. From January, we take victims of crime charter of rights complaints. From March, we will have occupancy complaints, and we will also have sexuality and gender identity conversion practices complaints.

The increase has been steady over those years. As I said, we would say it is about increased awareness and understanding of what the commission does—the breadth of the matters that we get. There has been an increase, certainly, in our approach around focusing on the resolution of complaints. We think that has built community confidence over that time.

THE CHAIR: If you are getting that increase in complaints, do you have the resources that enable you to deal with those complaints sufficiently?

Ms Toohey: We got some additional resources, 0.6, for victims of crime complaints earlier this year. We have not had any other increase in resources over that period of

time. Obviously, that has been the subject of discussion, with new policy coming on. We would hope, with agreement from government, that we might re-look at that in the coming budget period.

MRS KIKKERT: Is there a survey that helps to understand whether the people who are complaining are satisfied with the results of their complaint?

Ms Toohey: Yes. We do a customer satisfaction survey. It is reported in the annual report. Obviously, that relies on people responding to us. Generally, we get very good satisfaction rates in that. Often, as you would know, it is people who are happy with the process who respond to that, so it is a small proportion. Certainly, the feedback that we get informally from the advocate groups and organisations that refer people to us is that people are generally happy with the process.

Obviously, given that we are a complaint body, we have people who are often concerned or distressed when they come to us. There are some matters where, unfortunately, due to the limitations on our process, we cannot always get the result they are looking for. Certainly, the intent of the process—and I think it is reflected in the case summaries that we include in the annual report—is that we do resolve a lot of the matters that come to us.

Dr Watchirs: At page 89 of the annual report, 83 per cent of surveyed respondents found our processes fair, accessible and understandable. The target is 75 per cent.

MRS KIKKERT: Okay; that is a great number.

DR PATERSON: I have a question about the conciliation rates. I saw that it was 68 per cent, but I cannot find that in the report again. That seemed low. I am wondering what the barriers are with conciliation and whether this is in line with other jurisdictions.

Ms Toohey: It is pretty much in line with other jurisdictions. Bear in mind that we are not directly comparable because no other single organisation has the combination of complaint mechanisms that we have. In most other states and territories health sits separately to disability and discrimination. We have different pathways coming out of those matters. There are some barriers. For example, in health complaints we cannot always get to a resolution of those, depending on the nature of the matter. They may also line up with a medical negligence claim, for example.

It is comparable, certainly, with my colleagues in discrimination jurisdictions across the country. Again, sometimes it will depend on a complainant's willingness to come to the table, depending on what sort of outcome they are seeking, and depending on the nature of the grievance. Certainly, it is comparable with other jurisdictions.

MS CLAY: The annual report notes that, of all the discrimination complaints, disability accounts for the highest number. We are a bit concerned about how you are handling NDIS-related complaints. How are you, as an ACT body, dealing with NDIS-related complaints?

Ms Toohey: We cannot deal with complaints against the NDIS; obviously, it is a commonwealth agency. We deal with complaints in the disability services space. We

used to deal with those primarily under the disability services jurisdiction. We still deal with some of those to do with disability service providers, either under the discrimination jurisdiction or now under the vulnerable people jurisdiction—around abuse, neglect or exploitation of people with a disability.

Also, in this space, the NDIS Quality and Safeguards Commission have commenced in the ACT. They have primary responsibility for dealing with complaints to do with NDIS-related disability service providers in the ACT. There are some people that will go to that organisation, and there are some people that will come to us, because we tend to be more focused on the ground on resolving those matters and resolving what could be a dispute between a provider and a person with a disability or their carer.

MS CLAY: If it is a provider under NDIS and they come directly to you, you can deal with the provider?

Ms Toohey: We can.

MS CLAY: The client gets to choose their forum; is that how it works?

Ms Toohey: Yes.

MRS KIKKERT: My question is on external merits review. That is probably not very surprising. Ms Griffiths-Cook, the annual report reiterates the commission’s call for urgent legislative reforms to the Children and Young People Act, including the establishment of an external review mechanism. In 2017 I called, in a motion, for the government to implement external review in child protection services. The government’s response was to create a committee from JACS to look into that matter. Four years later we still do not have a satisfactory result. What is your opinion on the delay in this process of making sure that we do have an external review process within child protection?

Ms Griffiths-Cook: I am pleased to say that we have been working closely with government in the process, and there is a commitment to introducing external merits review. Last year, albeit in the midst of COVID, we were able to use the opportunity that that availed to draw upon expertise from both the Queensland and Victorian jurisdictions to provide input and advice to the ACT about what would be required to be considered and thought through, and what would be needed to create a really robust system of external merits review.

We had around that table representatives of QCAT, the director-general of the department of child safety in Queensland, as well as commissioners in roles like my own and a Legal Aid representative from Victoria. Post that, there was a second round table that was locally called together that enabled a further working through of what we needed and what principles were required for external review.

My understanding of the position currently is that government is about to go out to tender for a piece of work that will assist in the design of that external merits review system, to enable that to be implemented.

MRS KIKKERT: That is good news, that it is finally coming—

Ms Griffiths-Cook: It is moving along, yes.

MRS KIKKERT: to implementation. It is very important for child protection to have that external merits review.

Ms Griffiths-Cook: Absolutely, and we are working very closely with government to make sure that those processes are continuing, and to ensure that we have input into the shaping of what that ultimately looks like.

MRS KIKKERT: Do you think that four years is too long for the government to act on this? Could they have possibly taken a shorter time to make sure that this external merits review is actually implemented?

Ms Griffiths-Cook: As with everything, things can take as long or as short a time as governments are minded to move them along. Whether it is too long or not long enough, that is always a good question. But when it comes down to it, we would have obviously liked to have seen this in place quite some time ago. We are the only jurisdiction, as I understand it, that does not have an external merits review system in place. That speaks to a significant gap in the system in terms of the ability of people —often children— who, through no fault of their own, are brought into that system and who lack the opportunity to utilise that mechanism, to seek a review of decisions that are often made on their behalf without any input.

Equally, for families who are caught up in those systems, there should be an opportunity to make sure that an independent set of eyes looks at those decisions and makes sure that they are made with the integrity with which they are supposed to be made. It is an important mechanism that is needed to adequately uphold people's rights in those processes.

MRS KIKKERT: Can I direct this question to you, Human Rights Commissioner? I refer to an open letter that was written to the government. It says that decision-making has been questioned in successive reviews and inquiries over many years and gives rise to serious issues of incompatibility with the government's obligations under the Human Rights Act 2004. How does it make you feel, as Human Rights Commissioner, not to have the ACT government child protection services compatible with the Human Rights Act?

Dr Watchirs: It is not a good situation and it has a direct impact on families and children. With COVID, I would have thought it was even more important to get it right. I see a need for urgent reform because the legislation is incompatible. It only became obvious over time. The Children and Young People Act is a 2008 act. It came in after the Human Rights Act 2004. But as other jurisdictions had external review, it became obvious that we needed it as well.

MR CAIN: My question is to the Human Rights Commissioner. This morning the Minister for Human Rights found herself in the position of not being able to answer a question that I thought was in her purview. My question is this: in budget statements D, on page 16, the percentage of clients referred to the Public Advocate for whom a review of the documentation was undertaken is 24 per cent below target. The explanation in

the notes is that implementation issues with a new database have potentially resulted in a skewed result. What are the implementation issues referenced?

Ms Griffiths-Cook: May I take that question, as Public Advocate?

MR CAIN: Certainly.

Ms Griffiths-Cook: Principally, that comes down to more of a design issue that was identified through implementation, as opposed to an implementation issue itself. With our previous database we were able to quantify the number of documents, such as letters, correspondence and reports—things that were not compliance documents or register reviews—and the way that they were captured. In the design process we inadvertently left out a way of identifying those particular types of documents for the purposes of counting them in a document review. That has now been rectified as of January this year.

In response to identifying that issue, however, I did a manual count of the records that potentially held those documents within them. Of the 108 records that I worked through, 90 were identified to have documents that would otherwise have been captured under document review. Incorporating those into our existing data would reduce our variance to 17 per cent from the current 24 per cent that is reported.

We are also looking at the nature of that as an indicator of our performance, given that, for quantification purposes, whether my staff read 20 documents for one person, one document for one person or 100 documents for one person, each of those counts as one. Therefore the indicator does not give an accurate description of the breadth of documentation that sometimes exists for some people and the need to work through those to identify underlying issues that might be either specific to the individual circumstances and therefore require intervention or that may signify a broader systemic issue which could potentially benefit from our input to improve the system.

I think there are some things there that we need to reconcile. Ultimately, I believe that the actual issue of that particular indicator and the database complications of that have now been adequately attended to.

MR CAIN: Thank you. Perhaps there could be an explanation so that I do not have to ask such a question next time.

Ms Griffiths-Cook: Yes.

MR CAIN: I do have two follow-ups. Have any data or records been lost as a result of the data implementation issues?

Ms Griffiths-Cook: No. All data and records were captured, under an item within the database that was not included in the data capture for KPI purposes.

MR CAIN: Thank you; that is a comfort.

Dr Watchirs: Can I clarify that the whole of the commission moved to the Resolve database and no records were lost in that process.

MR CAIN: Thirdly, and lastly, how much did the implementation of the new database cost?

Dr Watchirs: The new database was $557,000, and $35,000 of that has been rolled over to the next financial year.

THE CHAIR: Ms Yates, the victims of crime charter passed through the Assembly last year. I acknowledge the work that you did to get it there, and that of your predecessor, Mr Hinchey. It did not come into effect until 1 January this year, so there is probably not a great deal to report on where it is at, but can you give me a bit of an update in terms of what changes you have made, and what it will actually mean for your office now that you have had a bit of a look at it in more detail?

Ms Yates: We warmly welcomed commencement of the charter on 1 January. Of course, as you also know, victims often feel that their voices are not heard in the justice system, despite the fact that without their evidence we do not have a criminal justice process. The charter sets out very clear rights of victims of crime relating to their privacy, their access to information and a right to be consulted. It is in fact the most comprehensive set of victim rights that has been legislated in the country.

In the lead-up to 1 January we were working intensively on our own processes to ensure that in the future we will be able to track victim concerns in relation to specific rights. Perhaps the bulk of our time has been spent with our fellow justice stakeholders on ensuring that they are also ready to deliver on the charter. We have had contact with every frontline police officer through training of ACT police. They have been working hard to ensure that some of the rights—for example, victims being given two contact points whenever they report a crime to follow up with—have been provided. Similarly, I know that the courts, corrections and the DPP have been working carefully through their obligations to ensure they are ready to deliver.

THE CHAIR: It might be early days but, as you have gone through that process, have you identified any issues, anomalies or improvements that need to be made or is it too early to say that?

Ms Yates: It is early. There are a number of things that we advocated for in the process of the charter coming in which are not evident in the legislation. For example, there is the inclusion of clauses such as that an agency must deliver on a right "if practicable". In my view, there should be less wiggle room for agencies as to delivery of those rights. Further, we would identify that, whilst we are the first jurisdiction in Australia where victims can bring a formal complaint about a breach of those rights to the Human Rights Commission, they do not have recourse to the tribunal, as in other civil complaints, should that matter not be resolved. They are two areas where we would like to see further development.

Each of the agencies is working as required under the act to produce, within 12 months, specific guidelines on how they will deliver those rights, and we will be very interested to see those, to make sure that they will make practical differences.

THE CHAIR: With the two issues that you want to further litigate, what is your

process? Are you going to keep advocating for those?

Ms Yates: We certainly will. The act is to be reviewed after a period of operation. We will be making use of that opportunity. Also, in the circumstances where an agency may rely on that provision, we will be seeking to test whether in fact the failure to meet those rights was a question of practicability or whether there may have been reasonable steps that could be taken—for example, to have called the victim and informed them in a timely way.

THE CHAIR: That is a good question: who decides whether it is practical or not?

Ms Yates: Yes.

MS CLAY: I have recently been contacted by two separate constituents with two very separate alleged crimes, and neither of them was contacted by police within the time line. What was described to me does not sound as if it met the standards. Do you think those standards are being met, generally speaking?

Ms Yates: I think generally they are not, Ms Clay. That is why I particularly welcome the clarity in the charter about the specific time frames within which police must regularly contact victim survivors. A large bulk of our complaints are about the fact that people have given a statement and have never heard anything again, and, upon follow up, there is information that could have been made available. Our police colleagues have been very honest about that. The Chief Police Officer has indicated that there is room for improvement.

The previous governing principles provided guidance around time frames for provision of information. The charter provides rights to information, including updates every six weeks. We hope that that will allow us to better hold our colleagues at police to account around those regular updates. We remain available to work with any member of the community who does not feel that those requirements are being met, but we hope that it will actually drive systemic change in relation to responsiveness to victim survivor needs.

MS CLAY: I will certainly be sending the next your way.

Ms Yates: Please do.

MS CLAY: I have a substantive question for Dr Watchirs. I was wondering how many complaints against Housing ACT were made by applicants in the Human Rights Commission in the last 12 months.

Dr Watchirs: I will have to refer that to my colleague Karen Toohey.

Ms Toohey: I would have to take the specific number on notice because we do not usually report by agency in the annual report, but I am very happy to take that on notice.

MS CLAY: I would love you to. And when you do take that on notice, I would also like to know how many settled and how long those matters took to resolve with respect to Housing ACT.

Ms Toohey: Sure. Over a particular period?

MS CLAY: Over the last 12 months would be fine.

MR CAIN: My question is to the Victims of Crime Commissioner. An additional key strategy priority of the directive is implementing a charter of rights for victims of crime. That is my presumption. Can you provide how much has been spent on implementing the charter of rights?

Ms Yates: I can speak to the proportion that I and my agency has received. Perhaps that question in relation to cost to government would be best put to JACS, which has and been responsible for the drafting and development of the charter. For example, our office has received some FTE on a recurrent basis commencing in August last year. For me that is an ASO6 officer for three days a week to work on charter implementation. My colleague Karen Toohey has also received 0.6 for a conciliator in the context of victims charter complaints. We have received a small amount of funds—I think it is around $45,000—to prepare a package of publications and to undertake community outreach to raise awareness of the charter. We are in the process of plans to expend those funds in that way.

MR CAIN: Your last comment touches on my next query. Whether you are in a position to answer, you will let me know, obviously. Can you outline the type of information and opportunities for victims to be heard that the implementation of the charter will provide?

Ms Yates: We could spend a lot of time on that, Mr Cain. Some of the clearest obligations that the charter places in black and white are that victims have a right to respect and recognition at every point in the process. It also clarifies clearly, as I mentioned in response to Ms Clay's question, the frequency with which they are required to be updated. It indicates that, from the get-go, they are required to be connected with options for support and for general information about the criminal justice process.

For example, many victims get some way through the process before they realise that they are not a party to proceedings—that they are a witness to criminal proceedings. Some of those misunderstandings can lead to confusion regarding obligations and what will happen next. Further, that provides a very clear outline in relation to their rights to consultation about things such as bail applications, changes in plea or plea bargaining. These are the points at which the DPP has often demonstrated good practice in consultation, but it has not necessarily been a right that victims can advocate for if it has not occurred in a particular state. So these are some of the things the charter sets out clearly. Also for the first time it indicates in relation to each right which agency is responsible—another significant improvement on the old governing principles. Does that answer your question?

MR CAIN: I have just one minor final question if I may. How many victims have accessed, or are expected to access, the complaints pathway?

Ms Yates: Victims under the charter have three options for raising complaints or

concerns. They may contact the justice agency directly. They may raise a victim's rights concern with my office. I have broad information gathering powers to assist me to try and resolve that concern rapidly. We have received a number to date. At points it has been difficult at this early stage to identify whether the complaints relate to conduct that has occurred since 1 January. Often a number of things may have happened prior to 1 January and after 1 January, so we are working through those. My understanding—may I speak on your behalf, Ms Toohey?—is that my colleague, in terms of formal complaints, has received and is working through a number of enquiries.

THE CHAIR: We might have to leave it there because we have office holders to talk to, but thanks very much for coming in and we will see you at the next hearings. We have three lots this year, so I look forward to that. Thank you very much.

I remind members that they have five days to put questions on notice if they have any further questions for anybody. It seems that you may have one, Mr Cain, where you might be looking for how much has been spent on victims of crimes. You can put that in.

Appearances:

ACT Inspector of Correctional Services
McAllister, Mr Neil, Inspector of Correctional Services
Minty, Ms Rebecca, Deputy Inspector of Correctional Services

THE CHAIR: We now have the Inspector of Correctional Services. Good afternoon and welcome.

Mr McAllister: Good afternoon.

THE CHAIR: We have about 15 or 20 minutes, so it will be reasonably brief, I am afraid. The first question that I have is about the ongoing issue of remandees and sentenced prisoners being lumped together. That obviously is a cause for concern. Have you been monitoring that to assess how that is progressing, and are there any particular issues arising that you have noted?

Mr McAllister: Not specifically, Mr Hanson. We produced a report in 2018 on the care of remandees at the Alexander Maconochie Centre, where we pointed out the obvious—that they are not separated as required by the Corrections Management Act. The act has not been amended, so they are still not separated.

The reality is—and it is something I do appreciate—that the remand numbers in the ACT and nationally exploded over a period of about 10 years, and there is quite a bit of data about that in our original report. The idea at the AMC, originally, was to have about 120 beds for remandees. Well, those numbers just exploded. So the practicality of separating remandees from convicted persons just disappeared, effectively. We did ask but we were never given an exact date for when that occurred. So we do not know whether it occurred after one month, three months or six months; it just morphed into this mixture.

We have not specifically looked at that again, except that the issue of remandees comes up from time to time. We have had a couple of critical incidents where either a remandee has assaulted a convicted person or a convicted person has assaulted a remandee. Make what you want of that. We have not revisited that because of the reality of the numbers that they still have. They are down quite a bit from last year, but the jail effectively is no bigger than it was four, five or six years ago. So the practicality of separating remandees from convicted people is not really there.

THE CHAIR: So basically what you are saying is that the government is in breach of its own laws?

Mr McAllister: It breaches the Corrections Management Act, which still says that remandees must be separated. I will stand corrected, but it is the only corrections act in the country that actually says that. The other acts talk about "where practicable" or "where appropriate" or "where possible", but the Corrections Management Act is quite directive about it.

MS KIKKERT: Just a follow-up question on remandees, Chair, if you do not mind. In

your review, Mr McAllister, you said that your purpose was to review how remandees are being managed in the current circumstances at the AMC and whether there is a need to do things differently to cater for the special needs of remandees as unconvicted persons. From my understanding there should be policies within AMC that are quite different for remandees, as compared to convicted detainees—such as that remandees should be given more visitation rights than a convicted detainee. Are you satisfied that the policies in AMC are quite different with respect to how a remandee is treated, as compared to a convicted detainee?

Mr McAllister: One of the things that concerned us in that review was that they did not actually have a policy on remandees, which they were required to do.

MS KIKKERT: They were required to do it by law?

Mr McAllister: Under the Corrections Management Act; that is right.

THE CHAIR: Have they since developed a policy?

Mr McAllister: They have. That was a recommendation that we made in the healthy prison review, I think.

Ms Minty: In the remand review.

Mr McAllister: In the remand review. So they have actually implemented that and there is now a policy. In terms of the practical effects of that, there is really no difference. Remandees do not get extra privileges at the Alexander Maconochie Centre. By that I mean that in other places—by "other places" I mean other prisons in other jurisdictions—they have quite liberal visiting rights, for example. They might have visiting rights for five or six days a week, and they have access to legal resources and so on. So they have privileges as unconvicted people that convicted people do not necessarily have.

That is not the case at the AMC. There is really no distinction at the AMC at all between the treatment of a person on remand and a convicted person. Apparently, they used to wear different coloured t-shirts, but I do not know what that was about. They do not anymore.

MS KIKKERT: So what is the point, then, of developing a policy that identifies detainees who are convicted, as compared to remandees?

Mr McAllister: That is a good question. The issue was that the Corrections Management Act said that they had to have one, but they did not.

MS KIKKERT: They had to have it, but AMC has since—after your review—established one. But from your point of view there is no difference; it is almost as if they have not established a policy.

Ms Minty: The policy articulates some important principles that apply to remandees by virtue of their being unconvicted—the importance of access to a lawyer, for example. So I think the policy is a really important step, and in fact a requirement under the act,

because it is articulating some distinct rights that apply to remandees. As Neil has mentioned, we have not gone in and done further evaluation of how the different requirements articulated in the policy are implemented. So we are not really in a position to say that remandees are always getting access to a lawyer, additional family visits and things that are afforded to remandees in the policy. In particular, the access to the legal system is important for remandees.

MS KIKKERT: You are due for your review. It is coming up soon, right? Is it 2021 you are due to do a review on AMC?

Mr McAllister: We are due to do another healthy prison review within two years of the last review. So we aim to start that this year. Can I just say in relation to our timings, COVID-19 has impacted us a bit. We have commenced the review of Bimberi Youth Justice Centre. For example, we were not able to get our health expert in because he lived in a hotspot in New South Wales, so that has dragged on a bit longer than we would have thought. I do not want to blame COVID-19 for everything, but it did have some practical impacts on us.

We are due to commence another healthy prison review, which is a whole-of-centre review, from the front door to the back door, at least commencing this calendar year. Whether we do a lot of it this year or whether it falls into next year, I do not know, because we want to finalise the Bimberi review.

THE CHAIR: We have raised a couple of issues where the government is in contravention of its own act. Are there any other acts that they are not complying with?

Mr McAllister: Not that come to mind, Mr Hanson.

MRS KIKKERT: Can I just follow up on that? What about with the female prisoners in the same prison with male prisoners? Is that compliant with human rights issues or with anything?

Mr McAllister: I will not talk to human rights so much, but the ACT, of course, has only one correctional centre. For reasons going back to the early 2000s, it was decided that there would be a women's unit within the perimeter of the male prison. I think at that time it was on the basis that there was a very small number of women in custody and that it just was not economically viable to build a prison.

Prisons are very expensive beasts. For example, in a medium to max high-security prison a cell costs about $800,000, depending on how you calculate it. Building a prison, with all that infrastructure of the health and whatever, for 10 or 15 people, was not considered to be a viable option. So the decision was made to build a purpose-built area within the male prison, which was called the Women's Community Centre, WCC. It is cottage-style accommodation—quite spacious, with lots of greenery, lawns. It is totally self-contained and out of the view of the male prisoners at the jail.

Around late 2017, for reasons of increased numbers, particularly of women, at the jail, a decision was made that they did not fit in that women's centre anymore, so they were moved to a high-security male block which was called the Special Care Centre. The names of the blocks at the AMC do not mean anything anymore. The remand cottage

can have sentenced people in the facility, so the names are a bit confusing, but in effect they were moved to a high-security wing, which has really no green space around it at all. It was designed for high-security male prisoners, so it is not particularly female friendly. And that is where they still are.

We have commented before, in a number of reports, that we do not think that is satisfactory. As soon as they can be moved back to where they should be, the better. That area was specifically designed for women. The issue we have talked about in some of our reports, and which others in civil society have talked about, is that women have to parade past some of the male units when they are going to, for example, programs, the health centre and visits. They are subject to catcalls and worse, so it is not a good situation and we would certainly prefer that that was resolved sooner rather than later. I do not think we are alone in that observation.

DR PATERSON: I have a question in relation to critical incidents. I was wondering how many have been reviewed by your office in the last 12 months, whether there is a common root cause of these incidents, and what can be done to improve that.

Mr McAllister: We do have the numbers. We have two critical incidents that are current. One is the riot at the Alexander unit north on 10 November last year. Then four days later there was a serious fire in another unit. They are still under review at the moment.

In terms of completed critical incidents, they have all been relatively minor assaults, detainee-on-detainee assaults. Some have been a bit more serious than others; some have been not so serious. The threshold is that the victim must be admitted to a hospital for it to be a critical incident.

There are lots of minor assaults at AMC where people are not admitted to hospital; they might have a bloody nose, a black eye or something, but they do not get formally admitted to the Canberra Hospital. We do not have jurisdiction over those. There could be five in a week or there could be a fight with five detainees, but if they are not admitted, it is not us.

Going to the ones we have reviewed, in our first year of operation, which was 2017-18—that was only a couple of months—there was one. These were all minor assaults, in that category. In 2018-19 there were four. In 2019-20 there were two. To date, there have been two minor assaults.

I should say that under the Inspector of Correctional Services Act there is discretion to not review a critical incident. We have exercised that on a couple of occasions. The reason I have done that is that we are reasonably confident of being able to assess the material that we get—which includes CCTV footage; officer reports; and medical reports, on occasions—so we have taken the view that if there is nothing further we think we can learn that we do not already know or if the information we have does not raise alarm bells for us, we put it to one side and say that we are not going to review it any further. I do not think it is in the public interest to just run down a rabbit hole because it is there. I have passed on a couple of those, but we document that for ourselves internally; we still create a file about it,

With the ones we do full reviews on, we produce a report, which is provided to the Speaker. They are tabled and they are on the public record. Occasionally we have had to redact because of some security issues. We put those in a confidential annex that just goes to the Minister for Corrections and the Director-General of JACS. I believe there are some issues we do not want the wider detainee population to know about—a door that does not work properly or that a camera is broken or whatever. We have done that on a couple of occasions. We have also done that with the healthy prison review. We have had a redacted security annex.

I want to make clear that those redactions have nothing to do with saving anybody from embarrassment. They are about security issues or privacy issues. We have to be very careful not to inadvertently identify detainees, so we fuzz up their identities a bit in terms of not talking about a 34-year-old Aboriginal man from Boorowa or somewhere.

As I said, we are working on two matters at the moment. We will conclude those fairly soon and they will go through the normal process of tabling.

DR PATERSON: Is there a connection between one critical incident and another—for example, an assault that then results in another assault?

Mr McAllister: Not in my opinion. They tend to be unrelated. They tend to be spur of the moment things rather than long plans. I cannot say that is the case. We never get to the bottom of some of them, because these people would never talk to us even if we asked them to. There is a whole culture that goes on within the prison. We do not know—nobody knows—exactly what it is and who is out of favour with this person. We had one where a cellmate was assaulted by another cellmate for no apparent reason. They were friends, but something happened. Who knows what? It is not like TV; you never actually solve the crime sometimes.

MS CLAY: We have several custodial and community correctional programs listed on page 93 of the JACS annual report. I am just wondering if we are tracking the results of those and measuring them for recidivism, rehabilitation, other impacts, what the impacts are—whether we are capturing that data?

Mr McAllister: You would have to ask JACS that question, I am afraid, Ms Clay. We do not track outcomes of programs and such. That is the sort of information that we would request from JACS when we are doing a healthy prison review. When we look at the programs they are delivering or supposed to be delivering, we might ask for that sort of information from them, but we do not track it.

MS CLAY: Do you ever suggest to them what data they should be capturing? If you ask a question and they are not getting data, do you ever let JACS know what they should be capturing?

Mr McAllister: We do in the context of questions we ask where they cannot provide the information, but we do not routinely liaise with JACS about their outputs.

MRS KIKKERT: In your healthy prison review report, on page 29 you refer to the operational data that AMC has.

Mr McAllister: Yes.

MRS KIKKERT: You say that while conducting the review you came across lots of hiccups. You said:

> The conduct of the review was frustrated by the inability of ACTCS—

Corrective Services—

> to provide operational data in formats requested by the review team.

How often did you come across frustration that had a deep impact on your review?

Mr McAllister: This is not a new issue that we found. If you read elsewhere in that report, you will see that comments have been made about this by previous reviewers going back to 2011. It is not a new issue.

MS KIKKERT: For AMC alone?

Mr McAllister: For ACT Corrective Services.

MS KIKKERT: Okay.

Mr McAllister: Part of the problem is that the database they use to capture a whole range of information was probably antiquated when they bought it. It is just an old database system. It is not easy to interrogate. A lot of the information is stored on basically PDFs, almost like an electronic cardboard folder. The limitations on their ability to produce quality data in a timely way are frustrating them, and will continue until they move to the new database that they are in the process of installing. That is something you might want to ask Mr Peach about. I do not know exactly where that is. They keep a lot of data on Excel spreadsheets, for example, which are not easy to interrogate. It is a 1985 database system. As I have said, it has frustrated other reviewers going back for years.

MS KIKKERT: I can imagine other reviewers have had recommendations to create an upgrade. Why do you think AMC took forever and is still taking quite a long time to upgrade?

Mr McAllister: I am sorry; you would have to ask them.

MS KIKKERT: I will do that. How useful will it be for your office if AMC implements the CORIS data system, which is what you were referring to before?

Mr McAllister: Yes. Hopefully, it will be. I have worked with much newer data systems than the AMC is currently working off in other jurisdictions. I am familiar with the sort of information you can extract from them. In Victoria we had direct access to the Victorian database; we could run our own reports off that database. We could do SQL searches, create our own reports on any number of 22-year-olds who escaped in the period—whatever parameters you want to put around the questions. I would like us to be in that position, too. I do not like continually asking them for information that we

could extract if we had some avenue to do it ourselves. There is a delay. We have to ask them; they have to go away and ask somebody else; they have to ask somebody else. We can wait weeks at times to get answers to relatively simple questions.

MS KIKKERT: You mentioned that you think the CORIS might not be ready in time for the next review.

Mr McAllister: I honestly do not know. I just do not know. It is not a system that I am involved in designing or implementing. Perhaps you can ask Mr Peach that question.

MS KIKKERT: Let us hope it will be ready for you

Mr McAllister: That would be nice.

MS KIKKERT: So you can make the review a bit nicer and do it more quickly.

THE CHAIR: Thank you very much for attending today. I am not sure if there are any questions to take on notice?

Mr McAllister: I do not believe so, Mr Hanson.

Appearances:

Public Trustee and Guardian
Taylor, Mr Andrew, Public Trustee and Guardian
Hughes, Mr Callum, Acting Senior Director Finance Unit

THE CHAIR: I want to kick off with a question about your operating loss. I believe you have an operating loss. Can you explain what it is and why you are running at a loss?

Mr Taylor: You can start with the figures.

THE CHAIR: As I was explaining earlier, none of the CSO people went to those, so I thought we would end up with an opportunity for you to dazzle us with your understanding of the numbers.

Mr Hughes: Over the 2020 year we had an operating loss of $623,000. A lot of this comes down to increases in wages over the time, some things a bit more complex than others, especially around financial management clients. We had to employ more people to be able to deal with these complex matters, which is why we have put in a budget bid this year to increase our CSO funding.

THE CHAIR: If you have a loss and you do not get a budget increase, where does that get made up from? Is that coming from your investments?

Mr Taylor: To some extent, the reserve from the previous year. To add to that, to answer your question, Mr Hanson, it is important to understand the financial framework within which we operate. We are largely a self-funding agency. The public trustee component merged with the public guardian function in 2016. The public trustee part of the merger essentially relies on fees and charges for services, in addition to a $518,000 injection of funding under community service obligation funding. The other functions for guardianship and for the official visitors scheme are fully appropriated.

A significant part of our income has been derived from fees and charges on our investment funds management activities. As you know, the market for investment funds management has pretty well dried up, to the point now where—what was the latest cash return we were receiving?

Mr Hughes: From all our investments now, we are receiving 0.4 per cent. Previously, over the financial year before that, it was around the 1.8 per cent mark.

Mr Taylor: We do not keep any of the accumulated funds in reserve. Whatever we have in our cash management account we pay out to clients. Unlike other public trustees, who might be carrying significant reserves, we have been told by the Auditor-General that it is good practice to fully deplete the funds that we are holding. In other financial management activities, we have seen a downturn in return for moneys that we have been investing through the public trustee's fund manager, Vanguard.

DR PATERSON: I have a couple of questions about wills. You report that you offer a

free service to Aboriginal and Torres Strait Islander people to help them with their wills.

Mr Taylor: Sorry?

DR PATERSON: You offer a free service, a no-cost service, to help people with their wills?

Mr Taylor: We do, yes.

DR PATERSON: In the last year, you had no service provided on wills to Aboriginal and Torres Strait Islander people. I was wondering if there is there any issue there.

Mr Taylor: No. We do quite a bit of publicity, particularly through other areas of our business—the official visitors scheme and so forth—to make people aware. Obviously, it goes to the percentage of the population that are Indigenous, if you like. The decision to make will services and enduring powers of attorney available at no cost was directly related to ensuring that people did not either die or lose capacity without an up-to-date and valid will or enduring power of attorney. The cost to the person in the community is significant if they do not. So it is purely on a demand basis. We do engage with Aboriginal and Torres Strait Islander people quite significantly in other areas. We have had two estates where we have been involved with Aboriginal and Torres Strait Islander people. If I can put it this way, very often we are positively discriminating in favour of helping people through those estates in a way that we might not ordinarily do with non-Indigenous people.

DR PATERSON: I have one more quick question on wills. I saw your community engagement. You have done Seniors Week engagement. Is there a need to do more community engagement in aged care and with seniors in the community around wills?

Mr Taylor: There is always a need to do more. We are a very small agency of around 64 people. We implemented a "Request a presentation" facility on our website so that we could better manage requests we were getting to go out into the community and provide people with information about what we do. Clearly, it is better that, if we are going to go out and talk to people, we talk to bigger groups and involve three or four of our staff. We can now filter out organisations that might want us to come and talk to half-a-dozen people, which is not cost-effective. We are also making better use of other forms of media, social media, to get out the message about what we do—and subliminal messages on the bottom of emails and those kinds of things. That is a better spend of the available money and resources we have. But we could always do more.

MS CLAY: I have a question about fraud. That is what you want to hear from an estimates review. My understanding of fraud patterns is that fraud usually rises during times of economic uncertainty, or general uncertainty, and that certainly sounds like 2020 to me. Also, I have been in Canberra for a long time; I know there were some issues in the PTG with the staff a few years ago. I know that the PTG, as well as having staff who may have access to funds, is also auditing all the external financial managers. I am wondering if you have responded to the situation—if you have had a look at your fraud patterns, changed your procedures, are expecting a wave of fraud, or if there are any different practices that you have put in place to manage that.

Mr Taylor: We have. The incident that you talked about goes back to 2014. From the outset, we had KPMG and the Federal Police involved. Once the Federal Police part of the process had been completed, we kept KPMG on and reviewed the whole organisation. They produced a report which was tabled in the Assembly. Twelve or 18 months later, we called them back in again, and they produced a follow-up report to ensure that we had implemented what they had said. Central to that particular type of fraud, we have changed a significant number of processes, including separation of duties and the manner in which people can order products or services from service providers.

We established a property unit, which is a dedicated unit, that channels all the dealings with properties. We manage in the order of 130 or 140 real estate properties. Prior to that fraud, that was being handled by any number of 25 different people, with the potential for those people dealing with and developing relationships with suppliers and so forth. That does not happen now. All the property transactions are dealt with through the property unit. There is now a compulsory requirement that all staff at the public trustee attend fraud awareness training. We have an internal audit committee, which is quite active in conducting mini-audits in the office. And late last year we completed, with ACTIA, a complete review of our risk-fraud-corruption framework. We now have a new risk framework, which is used as the agenda for the internal audit committee to conduct audits.

So a lot of work has been done. It is a moving feast, because as soon as you discover one kind of fraud, another one is developed. The bigger concern at the moment is cyber fraud. We are working with two or three of our major financial service providers, the banks, on how that happens—what it looks like and how we can better equip ourselves to avoid it.

Since that major fraud, we have put one member of the staff off. We had developed a new policy in how to deal with client assets when people were visiting client premises following a death or whatever it might have been. This person had breached the policy on a number of occasions and was warned about it. In the end, we just parted company with her. That was a good, easy way to deal with what was suspected. In the end, the police said to us, “You can either have her investigated or you can part company with her.” We told them what we had accumulated around this lady, and they said, “You are probably better off to part company with her.” And we did.

MS CLAY: That deals with your internal staff fraud. You have that greater role in auditing and examining the managers. That happens once each year?

Mr Taylor: Yes, but I should mention that it is not an audit; it is an examination. That is quite a different role from what they do in other states. We have developed a template declaration, which the manager completes. They lodge it with us. We examine that against patterns of expenditure, maintaining separate bank accounts, those kinds of things. We report any inconsistency we find to ACAT. When we report to ACAT, we are actually instigating a hearing. We have probably reported no more than half-a-dozen matters to ACAT during the year. But it was not necessarily the case that any of those went forward. What can happen if the tribunal finds that the person has breached their obligations as a manager is that they can remove them and appoint another manager or, as a last resort, appoint us.

MS CLAY: Are you confident that you have the right processes for the situation?

Mr Taylor: I think so. We have just commissioned what we call a customer relationship management system. We acquired a module for that system specifically for dealing with private managers. We are going to implement that within the next four to six weeks. We have met with ACAT during this week to offer to take over from them the full process of dealing with managers, from inception through to their lodging accounts. We are very happy with the way that is going. We probably will cut the response time that we have and even cut some of the resources we are putting into it as well.

THE CHAIR: That concludes today’s hearing. Thank you very much for attending today and thanks to members.

The committee adjourned at 3.58 pm.