



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**STANDING COMMITTEE ON JUSTICE  
AND COMMUNITY SAFETY**

(Reference: [Inquiry into annual and financial reports 2020-2021](#))

**Members:**

**MR P CAIN (Chair)**  
**DR M PATERSON (Deputy Chair)**  
**MR A BRADDOCK**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**TUESDAY, 22 FEBRUARY 2022**

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

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

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

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## **Privilege statement**

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*Amended 20 May 2013*

## **The committee met at 2.00 pm.**

Appearances:

ACT Electoral Commission

Cantwell, Mr Damian AM, CSC, Electoral Commissioner

Spence, Mr Rohan, Deputy Electoral Commissioner

Hickey, Mr Scott, Chief Finance Officer

**THE CHAIR:** Welcome to the second of three public hearings of the Standing Committee on Justice and Community Safety for the inquiry into annual reports 2020-2021. Today the committee will hear from Electoral Commission, Public Trustee and Guardian, Solicitor-General for the ACT, Human Rights Commission, Minister for Human Rights and Special Minister of State. On behalf of the committee, I would like to acknowledge that we meet today on the land of the Ngunnawal people, and we respect their continuing culture and the contribution they make to the life of this city and this region.

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

In this first session we will hear from the Electoral Commission. We welcome Mr Damian Cantwell, Mr Rohan Spence and Mr Scott Hickey. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could you each confirm for the record that you understand the privilege implications of the statement?

**Mr Cantwell:** I acknowledge and understand the privilege statement.

**THE CHAIR:** And just an acknowledgement from the other officials would be sufficient.

**Mr Hickey:** I understand.

**Mr Spence:** I also understand.

**THE CHAIR:** Thank you very much. As we are not inviting opening statements, we will now proceed to questions. I will lead us off with that. Regarding the integrity of electronic voting, I heard from an academic recently who had concerns about the electoral process and its digitisation. Firstly, how is a candidate able to scrutineer a close result in electronic voting?

**Mr Cantwell:** Firstly, I would say that the commission takes electoral integrity very seriously. It means everything to us, clearly; to deliver a secure, transparent and trusted result is our core mission. All that we do by way of design of our ICT systems and our processes, which enable delivery of such a secure and trusted result, has that

as its core functionality. In addition to the standard scrutiny processes—for example, paper ballots, if so cast in an election, appointed scrutineers and the process by which they are allowed, on behalf of their irrelative candidates, to view the paper ballot scanning process as it occurs here in the ACT—we also have an exhaustive process in relation to the electronic voting and counting system, which has been in place here for some time, to ensure that it is performing as it is designed to perform, in a secure fashion, that the results are trusted and that the outcome is quickly known to all the ACT stakeholders.

In particular, the vendor support that we have in relation to the design, upkeep and maintenance of EVACS and later systems is subject to that vendor's processes of integrity checks. Once the related code is received by us, it also undergoes an independent check to ensure its certification, that it is functioning as it is intended to and that there is no untoward code or malicious-type code that is resident in that coding system that would present other than a secure and trusted result.

**THE CHAIR:** Commissioner, if there is a close result in electronic voting, is that reviewed at all in any way?

**Mr Cantwell:** The scrutiny sheets are made public. In the 2020 election, there were a number of close results, or close margins, as such. The scrutiny sheets are published as part of that process; indeed, published more quickly than would be the case if it was all paper ballots. Anyone is invited to view those scrutiny sheets. They are available online as soon as they are published as the count progresses or is finalised. The system is open in that regard and those results are able to be scrutineered by anyone.

**THE CHAIR:** Previously the code was made available by your organisation. However, when the code was changed in 2020 it ceased to be publicly available. Will you be releasing the code for public viewing before the election in 2024; and, if not, why not?

**Mr Cantwell:** The code is and always has been publicly available. The question suggests that it is not publicly available, and that is not the case. What was different in the 2020 election was that there was a non-disclosure agreement put in place which required agreement to that non-disclosure terms prior to the code being provided to anyone who had asked for it. The purpose of that was to protect the integrity of the process and also to give the commission the opportunity to engage and study such claims as to any potential integrity issues associated with the coding prior to it becoming public, thereby inviting uninformed, unintended distrust of electoral integrity and processes.

**THE CHAIR:** What was the impact of that change? What was the change that obviously was noticed, particularly by the academic community?

**Mr Cantwell:** It was not so much that there was a change which brought about the non-disclosure agreement. The EVACS code itself is subject to continuous review, modernisation and testing. There was a coding change also required to take into account the late legislative changes which were brought in place by the Assembly, which needed some aspects of that code to be revisited and, indeed, changed. That in

itself caused us to then resit the process of certification into a bit of a revocation of the coding prior to its rollout and deployment on the election. That was unfortunate, but the Assembly has since acknowledged—or at least the minister responsible for electoral matters has—and noted our recommendation in our election report that such legislative changes are not in place at least 12 months prior to the next election.

**DR PATERSON:** I acknowledge that the Electoral Commission has been the focus of two inquiries since this committee started a year ago and we really appreciate your contribution to those inquiries and your input through the submissions. I do not have a huge number of questions for you because we have asked you a lot of questions over the last few months. In terms of your performance indicator objective around maintaining higher staff satisfaction, an outcome noted that there was a moderate overall level of satisfaction following the election. I am interested to know what has been done to improve staff satisfaction.

**Mr Cantwell:** As you have indicated, the survey itself indicated a moderate degree of satisfaction. I looked at that very carefully because the welfare, wellbeing and approach undertaken in relation to our staff are very important, of course, around the delivery of an election. I looked at that carefully and I have to say that it might be as a result of the very small relative sample size. Those who undertook the survey responded in the way they did, and I respect their views. We have taken an approach to that, whereby we consider it in the context of the broader views offered and in the context of the very real staff stressors that exist around the delivery of an election. It is a very tense time for some. It is a tense time; we have got a big mission to fulfil and we are all really motivated to provide the highest possible standard of services which we are committed to. In that regard, I wish to understand better the staff's viewpoints. So we have taken that on as one of our key activities with staff preparation.

In a broader context, I am looking to moderate the peaks and troughs of the workload that our staff have to work through, both our permanent staff, in a very small, dedicated team, and also the broader body of casuals who help us in delivering the election in the actual election period. We try to moderate the peaks and troughs of workload and tension points so as to help them work through the workload that we levy upon them and to ensure that they have access to support services or, in the first instance, that they reach out to me, the deputy or any of the team leaders; we are there to support them in any times of particular stress. It is incumbent upon me, as the commissioner but also as the CEO of the organisation, as such, to make sure that it is a happy, safe and productive environment. I take that very seriously. We do everything that we can to address any staff concerns as may have been expressed in that survey.

**DR PATERSON:** At what stage out from the next election do you start looking to employ people and bring new team members on board?

**Mr Cantwell:** The nature of the work is that I have employed a number of casuals periodically even since the election. I have employed a number to assist us with the heavy workload relating to or following on from the non-voter aspects. That is ongoing. I employ casuals, of course, to do various jobs throughout the period. Indeed, we are about to relocate to an interim accommodation arrangement and then from there to the final permanent office space.

I have looked to maintain the standard of training and awareness of the staff throughout the intervening election period. One thing I have tasked the deputy to do in this regard is to develop a training module or to further modernise our training delivery systems so that we have a resident pool or body of trained and current election staff whom we can draw upon at any one point in time to assist with not only our ACT Legislative Assembly elections but also those services that we provide for other jurisdictions, such as South Australia, for example, which is about to kick off soon. It is important that we have a trained body that we can draw upon as necessary. We will invest some time and money in that and update and further modernise our training systems from where they have been before.

**MR BRADDOCK:** I am interested in non-voter statistics for the 2020 election, noting that the inquiry into that election process has not yet finished. How many voters did you find had a valid and sufficient reason for not voting in the 2020 election?

**Mr Cantwell:** Out of the eligible voters for the 2020 election, it was as many as around 35,000. I will have to check those numbers in the election report or the annual report. There were apparent non-voters. Once that happens, after the election we go through the process of confirming the number of non-voters and then investigate the reasons they may not have voted.

I think, as I have recorded previously in other inquiry submissions, there is a three-step process, whereby we send out our notices inviting the apparent non-voter to explain why they did not vote, to offer the reason, and I consider it accordingly. In a COVID era, I was particularly alert to those issues associated with health and wellbeing risks, so I certainly gave, where I could, the benefit of the doubt in that regard.

We whittle away the numbers. Although that process is yet to be completed, we have now gone through the three default notices. It is now scheduled to appear before the ACT Magistrates over the last week or so of next month, March. It is in the magistrate's hand at this point. I think there are around 1,400 non-voters still in that number. Is that correct, Rohan?

**Mr Spence:** I will just confirm those numbers but, yes, that is the ballpark. Non-voters started at just under 33,000 following the election.

**Mr Cantwell:** Yes, 32,857 apparent non-voters. It is a good deal of work to go through that process—to check with each of those registered voters who apparently did not vote and then go through the processes I have outlined. I have mentioned a couple of times that there is a lot of work involved in that. I have had one or two staff members who have done nothing else but that since the 2020 election and they are still working on it. It is a great deal of work.

Our numbers, in terms of other non-voters, are not so unusual as a percentage compared to the eligible voting population across other jurisdictions. We benefit from very high eligible population enrolment rates here in the ACT and a very willing democratic society. We are well off in that regard. But it still takes a bit of work to get

through those numbers.

**MR BRADDOCK:** Thank you very much for your effort on that. I appreciate that it takes a lot of chasing for 33,000 people. Could you take on notice how many were found to have a valid and sufficient reason out of that 33,000?

**Mr Cantwell:** I will come back with the exact figure. I will take it on notice as it relates to the number of apparent non-voters who presented and were accepted as having a valid reason for non-voting.

**DR PATERSON:** Do you do any statistical or demographic analysis of those apparent non-voters to see whether there are any trends in particular parts of the community that are not engaging?

**Mr Cantwell:** I have not done that, and I have not done that for the 2020 election personally. I do not know whether the commission has done that historically. I will defer to Ro, who has been here longer than I have. I think there would be some benefit in doing so. Certainly the AEC, our joint role partner, works with us to look at the detail across age groups and so forth as it relates to enrolment. I might just flick to Ro to see whether he has anything to offer in that space.

**Mr Spence:** We can tell from the age groups and we publish data on those figures, but not in terms of addresses or location.

**DR PATERSON:** Are there any particular trends in non-voting groups?

**Mr Spence:** As I think we mentioned in the recent inquiry hearing, there is a trend that sees relatively high numbers as 18-year-olds and then it takes a dip in terms of engagement that does not really come back to those very high numbers of engagement. This is all relative; they are still very high numbers, but the graph does show a dip that comes back with the mid-30s or something like that when it is right back up in those very high 90s.

**DR PATERSON:** And any gender differences?

**Mr Spence:** We would have to take that one on notice.

**THE CHAIR:** On page 9 of your outlook you refer to planning for cybersecurity enhancements. What are these enhancements, how urgent are they and does the need for these enhancements mean that there is a current risk for the integrity of e-voting?

**Mr Cantwell:** I would refer to the last part of the question first. Any electronic-based system, voting or otherwise, is of course subject to some cyber risks. In the context of enhancing our protections against such risks, the commission works very closely with other jurisdiction commissions, our partners. We work closely with the Australian Cyber Security Centre and ASD.

There are a number of interjurisdictional committees and working groups that I am a member of across all agencies at the federal and state level to leverage the expertise and advice that is available across the federal and state governments. In the ACT the

security experts work with us very closely, as well as the vendors, who clearly have a vested and commercial interest in ensuring that their products are as cyber secure as they can be.

We continue to evaluate the threat in the electoral environment that we operate in. We cannot assume that we are immune to such risks just because we are a relatively small jurisdiction. In fact, there was a recent statement by the director-general of ASIO that related to foreign interference in Australia's electoral process and jurisdictions. I think he made a comment along the lines that all jurisdictions have to look through these risks at the same level, as such. His statements are on the public record and I do not wish to misinterpret or misquote him in that regard. We take this very seriously.

As to what other risks, as I said, we receive occasional updates and briefs through the mechanisms I indicated. We have a very good, close working relationship with the Cyber Security Centre. Having access to them directly here in Canberra is, of course, to our advantage. We look at those electoral integrity risks all the time in a cyber sense.

In relation to the nature of the work that we are undertaking, much of the funding that we have received and allocated across our ICT modernisation programs is aimed at this exact outcome, to ensure that we are using the most cyber secure systems that can be generated. We also draw upon independent assessments and, indeed, as I indicated, the certification of the EVACS code prior to its rollout before each Assembly election.

We have gone through the assessment processes as offered and recommended to us by the ACT government—DDTS in this regard. We work pretty closely with them to make sure that we are at best practice; but we can never be completely at ease in this space. One of the tasks I have set Ro as the deputy, and indeed our ICT operations team, is to keep on top of this and to engage at all levels proactively to make sure we understand the risks and address those as we are best able within the resources that we are allocated.

**DR PATERSON:** With the upcoming federal election, this will be the first, I think, federal election that the AEC has conducted under pandemic conditions. Do you have a role that you play with the federal election or do you communicate the ACT's experience of COVID during our election with the AEC?

**Mr Cantwell:** We share experiences across all the jurisdictions routinely, both at my level and at the deputy level, through formal forums. A meeting of the Electoral Council of Australia and New Zealand is scheduled this week. We routinely share best practice, lessons and experiences across all those jurisdictions. The federal election, of course, is a federal election run by the AEC under their legislation, whereby we stand ready and able to support them. With the other jurisdictions, in the context of their elections, that is their election.

I call on one or two of my staff to work in that space. They also bring back a set of experiences and lessons that we can apply, where appropriate, to our own experiences. They, in turn, take lessons from ours to their elections. It is a good exchange of personnel and experiences. We wish them well on that endeavour, of course, as it relates to our responsibilities to them. They are running their election, they are funded

accordingly, and we will look at and learn from their experiences as they go forward.

On the subject which was raised by the chair about cybersecurity and electoral integrity, you can see in the media almost every day questioning or commentary around our assurance of our electoral integrity, and it is very important that we do so.

**DR PATERSON:** Do you expect to see, or do you normally see, similar numbers of non-voters in federal versus ACT elections?

**Mr Cantwell:** I would have to ask that you refer to the AEC for that as it relates to the conduct of their elections. It would not be right for me to speak for them to this committee in that regard. Indeed, there is a whole heap of information available from them on their website as well. They have a very proactive and engaging community engagement program.

From memory, when I looked at this last time, the relative percentages across the jurisdictions for non-voters are fairly similar. The Northern Territory, South Australia and, to some extent, Western Australia, where they are engaging the Indigenous communities, sometimes struggle to engage effectively with the Indigenous communities in the space. There is a whole raft of reasons why that is the case.

We are not so challenged in this community because we are a lot closer, we are connected and we engage routinely with ATSIEB, for example, with whom we worked closely recently on the elected body election. We will continue to work in this space. As Ro has already indicated and I have reported separately already, our enrolment rates are very high in the ACT. They are really high; they are the highest across other jurisdictions. We will continue to work hard to maintain the active engagement of our community in this process. We cannot take that for granted, so we will keep working hard in that space.

**MR BRADDOCK:** I would like an update on the school and community education programs. You say that they resumed in January 2021. Were they undertaken throughout the rest of the calendar year?

**Mr Cantwell:** They were impacted, obviously, by the COVID restrictions and the community health restrictions put in place. I have also recently had one of my staff who deliver such a program retire. The remaining staff members continue to work hard to engage remotely with community and school groups. We are planning to do a range of those, in fact, in the coming week or so. Where we are able to, within the restrictions that are imposed upon us, all for good reasons, we continue that program and reach out to the community and school groups. It has been a good effort—through our own team, those members of the schools that take up such offers and the community groups that engage with us—to understand our electoral process in the ACT and promote awareness, particularly in our youth and other groups that sometimes might not be in receipt of such information so readily. We continue, as best able, within the circumstances that we have had to work under.

**MR BRADDOCK:** I think I might have missed a word there. Did you say one of the staff members had left and you only had one staff working on this at the moment?

**Mr Cantwell:** At the moment, yes. That has occurred only recently. In the period that the annual report covers we have had a full team working on this, a full team of two, and they have done the best they can within the circumstances that they have had to work under.

**THE CHAIR:** On behalf of the committee, I would like to thank the Electoral Commission and the commissioner and support officers for their attendance today. If witnesses have taken any questions on notice, could you please provide answers to the committee's secretary within five working days?

**Mr Cantwell:** Thank you, Chair, and members of the committee. We look forward to providing those questions on notice. I have got two on my record here, but we will check that with the secretary as we go forward.

**THE CHAIR:** Thank you.

**Short suspension.**

Appearances:

Office of the Public Trustee and Guardian

Taylor, Mr Andrew, Public Trustee and Guardian

Hughes, Mr Callum, Deputy Public Trustee and Guardian (Finance Unit)

**THE CHAIR:** We welcome the Public Trustee and Guardian, Mr Andrew Taylor, and accompanying officials. These proceedings are being recorded and transcribed by Hansard and are being broadcast and web streamed live. When taking a question on notice, it would be useful if witnesses could use these words, “I will take that as a question taken on notice.” This will help the committee and witnesses to confirm questions taken on notice from the transcript. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could you, for the record, confirm that you understand the privilege implications of the statement?

**Mr Taylor:** I confirm I understand.

**THE CHAIR:** Thank you. And other officials, if you could just indicate similarly.

**Mr Hughes:** I confirm.

**THE CHAIR:** Thank you. As we are not inviting opening statements, we will now proceed to questions, and I will lead us off with that. Mr Taylor, a committee member raised in the EGEE session this morning that 40 per cent of Hands Across Canberra’s total expenses for 2021, approximately \$820,000, were on staff expenses and other line items—that is, not on grants. In contrast, the expenses recorded by GreaterGood to registered funds were 14 per cent and eight per cent over the same period. You may recall in estimates last year I asked you why GreaterGood was not considered to administer the Chief Minister’s Charitable Fund and you advised, if I recollect correctly, that you did not know and that you had, in fact, asked why but had not received an explanation from the government. Have you yet to receive an explanation since estimates?

**Mr Taylor:** No, I have not yet received an explanation.

**THE CHAIR:** Is this something that you, I guess, in considering your role, continue to press with the Chief Minister and the charitable fund Hands Across Canberra?

**Mr Taylor:** No, I did not consider that that was appropriate. The concern, I guess, that I had expressed on the part of the board of trustees of GreaterGood was that several years ago we had made a proposal to the then Chief Minister that we establish a chief minister’s centenary charitable account, a little bit like a lord mayor’s charitable fund in other cities. That did not go ahead, but it seemed that this initiative might have stemmed from that work that we had done.

**THE CHAIR:** So the figures I have quoted to you, certainly from GreaterGood, align with your understanding?

**Mr Taylor:** It is probably best if I explain that we are an endowment fund. We invest, we retain the capital, we invest the capital for growth and we take a fund manager fee which we are passing on, effectively—an external fund manager fee. We employ people in our office that do work for GreaterGood, but we do not charge the fund for that work.

**THE CHAIR:** Given your understanding of your role and how Hands Across Canberra is structured and operates, is there any reason, whether it is legislative or otherwise, why the Public Trustee could not be administering Hands Across Canberra?

**Mr Taylor:** The only impediment that I could imagine might have been that I was not party to the intended use of the funds. The way GreaterGood is structured and manages to operate without a high level of cost is that there is no churn in the capital. Had it been intended that the money that was provided was to be drawn down regularly, clearly that would have affected the ability of the trust to invest in a growth style of investment. You would need liquidity to be able to draw down funds to support that.

That is not to say that we have not, because the capital woodlands and wetlands trust was settled by the government in GreaterGood. It has been drawn down without impacting negatively on our ability to distribute the required four per cent every year. Had it been the wish that it would have been a largely capital retention and income distribution fund, I think we have got a track record in distributing to charity—I guess what I am trying to say is that what we often say with GreaterGood is that over time, in perpetuity, the amount that we distribute to charity will eventually exceed the amount that has been settled.

**THE CHAIR:** Thank you for that background. It is something that I think will remain of interest to this committee.

**DR PATERSON:** The enduring power of attorney appointed by the PTG in 2021 was much lower than planned, so 67 against a planned 130, against 118 for the previous year. It is pretty much half of both the planned and the previous year. Can you explain why that is and what the implications of that are?

**Mr Taylor:** Enduring powers of attorney, when they appoint the Public Trustee and Guardian, are very often made at the time a person makes a will. During the reported year, our ability to be able to make wills in the community was curtailed significantly because of that part of the year when the Public Trustee was in hard lockdown. We stopped making wills in person and made them for emergency purposes only, which significantly reduced the number of wills and powers of attorney we made. I think that would have been a significant reason for that drop.

I could also say, too, that there is some evident feeling in the community that the enduring power of attorney does require review as a deed, particularly around its ability to prevent elder abuse or financial abuse. There is a current program at the federal level in which a national register of enduring powers of attorney is being established. We are cooperating with that program, as are all other public trustees.

Another thing worth mentioning, too, is the safeguards that are offered by the system, which is the Australian Guardianship and Administration Council alternative, if you like. During your life and your capacity, you can make an enduring power of attorney, but if you do not and then you lose capacity, an order can be made appointing somebody to do what an attorney may have done if you had appointed one. The safeguards offered by that tribunal order system are significantly greater because there is a level of oversight around the guardianship and management order system that is not there with the enduring power of attorney process. There is no body there to oversee what happens with enduring powers of attorney, other than the tribunal's authority to remove an attorney on application. Is that helpful?

**DR PATERSON:** Yes. You met half your planned numbers in the last year of your goal. Does that mean there were 60-something people without a will or without an enduring power of attorney that needed it that you did not get to? Do you have a backlog now?

**Mr Taylor:** We did have a number of people to contact once we reopened. We are not the only will-maker in the ACT. We can make a will only where we are either the primary executor or a substitute executor in the will. That does not always suit people. I do not know what kind of market share, if you want to call it that, the Public Trustee would have, but we might be one of the larger will-makers in the ACT—single organisations making wills. It fluctuates. I do not believe there were any approaches to us to make wills that were considered to be important that were not answered. We were going to the ACT hospice, to hospitals, to nursing homes and to private homes; and, on some rare occasions, we were inviting people into the office to make their will. During the emergency period, we do not believe anybody was left wanting.

**DR PATERSON:** So how come your number is so reduced from what you actually planned? Why was your planned number so high?

**Mr Taylor:** There would be a lot of reasons for that. I guess one of the reasons that trigger people to make a will and a power of attorney would be overseas travel, and there had not been any overseas travel for quite some time. That is usually a stimulus. There are other stimuli as well, but that is a big one. It may be that that was a part-contributor, plus the fact that people were not comfortable leaving their homes to come out to an office to make a will. We certainly were not comfortable with people coming in because we were directed at some point not to work from the office. We can make a will using electronic media, or social media, but that is still very much in a trial stage, and we would do it if we had to do it. There are issues about identification and determining whether a person is under duress and so on and so forth.

**MR BRADDOCK:** How does the Public Trustee actually support people making those decisions, whether it be around wills or enduring powers of attorney—that sort of thing?

**Mr Taylor:** The current system that we have in place under the Guardianship and Management of Property Act is that any person appointed as a guardian or a manager by the tribunal can do so only in a substitute decision-making framework. However, the legislation was written in 1991, sufficiently prescient, I guess, to be able to

accommodate a need to make decisions on a supported basis. This happens now, I guess, initially at the tribunal stage, where an application might be made to the tribunal for the appointment of a substitute decision-maker. The tribunal, upon hearing, might decide that the person probably does not need a substitute decision-maker and may decide not to make an order, or they might make conditions on the order. So there is a practical way of supported decision-making happening at the front end.

When we are appointed as guardian or manager, we deal with a pretty broad spectrum of ability and disability. At one end of the spectrum of clients we deal with there are people who have absolutely no ability to make decisions or to influence the decision that needs to be made; and, at the other end, there are people who have jobs and families and cars and they live relatively normal lives, but for some reason or other they have difficulty making decisions around financial, property, personal care or healthcare matters and we may be appointed. The amount of support that we provide those people will vary, depending upon their need. In practice, we are now leaning more towards supported decision-making. There are working groups in ACT government at the moment currently working on a model for the implementation of supported decision-making to replace substitute decision-making.

**THE CHAIR:** My question relates to the Christmas shutdown period and staffing being available during that period. Regarding the workforce of the Public Trustee and Guardian, what does your resourcing footprint look like over the shutdown periods, and obviously holidays as well?

**Mr Taylor:** For the Public Trustee and Guardian, public holidays are generally of a short duration. Most of the activities that we undertake are not of an emergency nature. Where they are of an emergency nature, such as guardianship decisions, we routinely advise the hospitals and we work very closely with nursing homes, residential aged-care facilities, who generally know what to do.

There were a couple of instances during the last Christmas holiday shutdown where there were some complaints made about my office not being available. Part of the reason for that was that the residential aged-care facility had temporary staff on and they were not aware of the arrangements that needed to be made. Another element of that was that the nursing home had decided that they did not want to admit the resident to hospital, contrary to the wishes of the friends, and the friends were keen to speak to the Guardian to influence that decision. The person had not been admitted to hospital so, therefore, it was not really an emergency matter.

If we are on a holiday break of any kind and we are called, we always have staff available, but not to make financial and property decisions. If somebody were to die in a residential aged-care facility or in a hospital, once again, in the normal course of events, it will take the organisation quite some time to decide whether the person has a will or an executor. They would have no reason to call us on the death unless we were the executor in the will. In those circumstances, two or three or four days are not going to make any difference at all.

**THE CHAIR:** Obviously, the shutdown can be over a week. There was an incident, I guess, at the extreme level of the example that I was contacted about as a local member. Do you feel that there is any need to change any of the current arrangements to perhaps cater for these extreme and unforeseen occurrences during a lengthy shutdown?

**Mr Taylor:** I did respond to that on behalf of the Attorney-General. I think it is often a matter of managing expectations. There might be expectations on a government agency that they need to be there every minute of the day to pick up a phone and answer any call that might come in, but that is unreasonable. In the particular case we are talking about, the people who wanted urgently to contact the Public Trustee and Guardian were seeking our permission, as executor, to take some of the deceased's possessions. That is hardly an emergency matter. The person on the desk at the residential aged-care facility did not really know what to do.

If that person in the residential aged-care facility had been seriously ill and there was a need for us to consent to a medical procedure, we would have had several people available during that week to answer that. The only way I could answer that would be to say that I think it is a matter of managing expectations. We really do not need to have an emergency presence across the office during a holiday break. Mr Hughes's unit, the finance unit, actually pre-empts the needs of our financial management and trust clients well ahead of a holiday break and in all cases makes arrangements for their funding during that break. We never ever have a complaint around people running short of funds.

**DR PATERSON:** With respect to page 25 of the annual report, I have a question about medical guardianship and the very significant increase in numbers, from 48 to 132 this year, for decisions. Unless I am missing something, there is a figure of 64 per cent; is that correct? It seems to me to be a much bigger increase than 64 per cent. I am not entirely sure that the mental health treatment percentage change is correct, either. I am questioning the figures in your annual report. On top of that, can you explain why there was such a significant increase in medical decision-making, and what medical knowledge or input is put towards making those decisions?

**Mr Taylor:** I cannot answer that question now, but I could that one on notice.

**THE CHAIR:** I have a question about online hearing costs. On page 7 you mention that access to the ACAT has been digital for the last year through online hearings, which has resulted in higher costs and slowdowns. Are you able to quantify the increase in cost as a result of ACAT hearings transitioning to online?

**Mr Taylor:** No, I could not quantify an increase in costs. I attended a hearing this morning and, generally speaking, when you have everybody present in the one hearing room, in a locked down environment, it makes it very easy for people to interact with one another. This morning was the first time that I had attended an electronic hearing. It was not audiovisual; it was a purely audio hearing this morning. There were people coming and going, people turning up early for the next listed

hearing, and interruptions around people not being queued properly to speak in the way that we might be now.

There is an upside to that as well, in that it has given the tribunal, and people like us who work with the tribunal on a regular basis, an ability to be able to live in a world that does use audiovisual for hearings. We think that is where things are going in the future. In the reporting year, there was initial difficulty around tooling up to do the kind of thing that we are doing better now. With things like hospital hearings, where a person cannot be present at a hearing, effectively, the tribunal would go to the hospital, and take the hearing there. That is the kind of circumstance down the track where audiovisual will make a big difference. Without the necessity of taking a tribunal somewhere, the person can be present at the hearing remotely.

Any impediment that we might have had is largely going away now. This report that we are talking about had been dealing with the early COVID issues around attending hearings, presenting reports, and trying to get the array of people that are involved in a hearing together meaningfully to do what they are there to do. One of the inefficiencies might have been the number of times that hearings were adjourned, the reason being that sometimes they might take longer. There is an adjournment and we have to come back again. That is not quite the problem that it was in the reporting year.

**DR PATERSON:** I am a bit concerned because you are working with the most vulnerable people in our community and making very critical decisions in their lives. Do you strive for best practice in how these tribunal hearings are conducted? We are in this COVID world and we do have access to this technology, but you are working with a lot of people who may have disabilities, who may have mental health issues or who may be elderly. They are very vulnerable people. Do you strive to ensure that the environment is safe and facilitates their needs?

**Mr Taylor:** Sure. We are very fortunate in the ACT, in that, firstly, the tribunal, ACAT, and the Public Trustee and Guardian have a very close working relationship. We are regularly approached by the tribunal to assist them in providing a better hearing environment or process for people. In the last several months we have redesigned the application form, on their invitation.

In retrospect, having the functions of public trustee and public guardian merged make for significantly better outcomes for people where they have us as a manager and a guardian, in respect of a hearing. That has made things a lot simpler. Also, in comparison to other jurisdictions, I think we are the only state or territory at the moment that has a merged public trustee and public guardian function. If you translate that across to other states, where there is the issue of geographic distance from tribunals, all hearings that are outside the metropolitan area might have to be heard by electronic means. We do not have any of those problems.

In the hearing that was held this morning, there was a profoundly disabled young person on the phone, and it was necessary to create distance between that person and their family because of some concerns that were happening. We had arranged for that person to be able to attend that hearing and not be influenced by the family in doing so. So the answer is: yes, very much so.

**THE CHAIR:** On behalf of the committee, I would like to thank the Public Trustee and Guardian and the official for their attendance today. If witnesses have taken any questions on notice, could you please provide answers to the committee secretary within five working days.

**Short suspension.**

Appearance:

Office of the Solicitor-General for the ACT

Garrison, Mr Peter, Solicitor-General for the ACT

**THE CHAIR:** We will now hear from the Solicitor-General for the ACT. I welcome Mr Peter Garrison SC. Please be aware that the proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and web streamed live. When taking questions on notice, it would be useful if witnesses could use these words: “I will take that as a question on notice.” This will help the committee and witnesses to confirm questions taken on notice from the transcript.

I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Mr Garrison, could you confirm for the record that you understand the privilege implications of the statement?

**Mr Garrison:** Yes, I do, Chair.

**THE CHAIR:** As we are not inviting opening statements, we will now proceed to questions. Solicitor-General, yesterday I asked a question about the funding of litigation for a particular tax line. I was interested in the expense for barristers and expert witnesses and expenses for ACT Government Solicitor staff. I believe your answer was that there was not a way to put a dollar value on the expenses of ACT Government Solicitor staff during litigation. Please correct me if I have got that wrong. Could you confirm that, please?

**Mr Garrison:** The services that are provided by our office fall roughly into two components. One is those that are funded out of appropriation; therefore, for agencies that are not charged for their legal services, it amounts basically to the provision of our ordinary services to the agencies for no charge. I have taken your question on notice, both aspects of it, and will be providing you with an answer shortly, I hope, to outline that.

We would not ordinarily attribute a dollar value to the work that we provide for appropriated services to the particular agencies. However, as you might recall from an earlier life, it is represented as resources free of charge to those agencies that engage us out of work that is the subject of appropriation. I hope that clarifies the matter.

**THE CHAIR:** When you say that one of your solicitors might be allocated to a directorate at no charge, does that mean it is the directorate’s responsibility to find a budget amount to pay for that staff?

**Mr Garrison:** No. Perhaps I can outline the funding arrangements that we have. Ordinarily, our office does not charge an agency for the legal services that are provided by our office. The circumstances in which an agency does pay for legal services are where it falls within a government business enterprise, which is obliged to operate commercially and therefore we charge on a cost recovery basis for the services provided, or it is a special project that requires dedicated resources, in which

case we come to an arrangement with the directorate or agency as to how that is to be reimbursed. Separately, for example, the ACT Insurance Authority and the SLA are agencies that operate commercially; therefore, we provide our services on a fee-for-service basis, but the cost is assessed on a cost recovery basis.

**THE CHAIR:** How do you ascertain the cost that has to be repaid? Do your staff have a time sheet—

**Mr Garrison:** Yes.

**THE CHAIR:** where you are billing per hour, or six minutes in some private firms?

**Mr Garrison:** There is an hourly rate to each lawyer, depending on their level of experience and seniority. Those rates are reviewed periodically by the Attorney-General. They form the basis not just for billing, where that is appropriate, but, for example, as I indicated earlier, for ascertaining the resources free of charge that are provided to agencies, which is part of the reporting obligations that those agencies have.

**DR PATERSON:** Following on from yesterday, I found the child welfare litigation at 6.42 per cent; it is on page 272, so I did not dream it!

**Mr Garrison:** You did not, Dr Paterson. Indeed, I located the same thing myself. That represents the cost of counsel that has been engaged in relation to that work. Separately, I am doing the split, so to speak, in relation to the percentage of our resources that go into the child welfare work. I cannot tell you the figure; as I recall, and as I discussed yesterday, the table I was looking at, of course, was the table about the percentage of our practice that is attributable to it, which falls within citizen rights and welfare protection, which amounted to 13 per cent of our work. It will be some proportion of that.

**DR PATERSON:** With respect to interpreting chart 16, it does not mean that there were necessarily more, say, personal injury claims; it could be that a very lengthy, protracted case could have taken up a lot of funds. Is that correct?

**Mr Garrison:** Exactly correct. As you can imagine, in the course of any particular year, the ebb and flow of the work will be significant. One of the things that generally remains constant is that the work really never declines; it ever increases. In the last financial year, we exceeded something like 3,000 advices, for example. If you put on top of that all of the court appearances and the agreements, the range of other things that were undertaken, we try to, as deftly as we can, manage our resources by moving people within our practice areas to respond to increased demand.

That has two advantages. It enables us to try to meet the demand when it comes in. It is also consistent with the approach that I have taken to expand the experience of our lawyers internally so that they get to deal with different areas of law and do not just deal with the same thing year in, year out, which used to be the practice many years ago.

**DR PATERSON:** I would imagine that dealing with a personal injury claim is very

different from how a child welfare case would be dealt with.

**Mr Garrison:** They are different at a number of levels. One of the more important aspects of the child protection litigation that we undertake is that it can be very emotionally draining for the lawyers that are involved, let alone, obviously, for the parties involved. There is a clear impact on those who have to practise in the area. Some deal with it better than others.

One of the other aspects of it is that we do try to ensure that we keep track of how people are coping. We move people in and out of that practice area. Generally speaking, it is for about two to three years. And it is time for them to move on and do something else, in any event.

Another aspect of it is that, because that area of practice is now subsumed within a larger practice group, people can move within the same practice group to do other work. For example, that practice group deals with our human rights litigation, discrimination and associated claims. People within the same practice group can move in and out of different types of work.

**MR BRADDOCK:** There was a question in the last round of hearings about the constitutional challenge to court-ordered judge-only trials. Could we have an update on where that might be at now?

**Mr Garrison:** Yes. The matter was heard by the Court of Appeal and the appeal was dismissed. The constitutional challenges—they had three grounds—were also fairly clearly dismissed. The appellant in the constitutional issue, Mr Vunilagi, has now lodged an application for special leave to appeal to the High Court on two constitutional questions, not all three. The parties have filed their submissions in relation to that and we are waiting for the High Court to determine how it will move forward. It can move forward by the High Court dealing with it on its papers or else fixing a date for there to be an oral hearing in relation to the application for special leave to appeal. It has to pass through that gate before the court will give it a full hearing, and it may be on one or either of the issues that have been raised by the appellant.

**THE CHAIR:** Are directorates able to seek external legal advice to assist with their functions?

**Mr Garrison:** Yes, with my permission.

**THE CHAIR:** They do require your permission. How—

**Mr Garrison:** Under the Legal Services Directions, Mr Cain.

**THE CHAIR:** How frequently does that occur and are there particular directorates where that is more prevalent than others?

**Mr Garrison:** The work that is outsourced to the private firms tends to be in the commercial sphere in relation to procurement, major projects, construction. Prominent examples would be the light rail project, the Supreme Court, the refurbishment of

Canberra Hospital. Those are all projects in which my office maintains an involvement but those large projects require the application of dedicated resources over an extended period of time. It is often a balance as to my office maintaining its capacity to provide the government with its day-to-day advice and work, which otherwise would be moved on to these large projects, because it is not simply a matter of saying, “We will pay you for that work and therefore you can do it”, because you actually need the people to be able to do the work and, of course, as you will appreciate, the lead time for the recruitment, particularly in relation to commercial law, is quite significant.

It applies across the board because it is linked not to the particular directorates but to the nature of the work that is being done. There are a lot of capital works. A lot of the work for the SLA in relation to conveyancing is outsourced. I made that decision many years ago. Residential conveyancing is, in effect, pretty low risk. It is process driven, and I had better things to do with my lawyers than to have them do residential conveyancing.

The split of legal services, I think, about \$9 million, \$10 million in the last financial year was outsourced. When you are on a large project, it does not take many of them to soak up that sort of money. It is the responsibility of the agencies to meet that cost. However, the process of appointment is managed through our office, in conjunction with the agency. It has worked very effectively.

We renewed our legal services panel three years ago or thereabouts, and it has been well received by the private profession. We have a very good relationship with the private sector, and the firms have welcomed the way in which we engage with them in relation to not just the fact that they are doing government work but the way the process is managed and they deal with us.

**THE CHAIR:** In making your decision to grant the approval, is there a threshold dollar amount that is a factor?

**Mr Garrison:** No. Generally speaking, it is the nature and character of the work. For example, there are some areas of work in relation to energy, which is a very highly specialised area of law, and when it comes up as an issue, as it does from time to time, it is only sensible to seek those who are expert in that area to undertake the work. Again, we maintain visibility as to what is being done.

It is the nature of the work, not the dollar value involved, and it means that the territory has the benefit of my office doing—I will not say the lion’s share—the overwhelming proportion of the government’s legal work but with the benefit of being able to get the expertise from the private sector when necessary to do so or, alternatively, better value for money from the private sector. For example, conveyancing work mainly is good value for money from the private sector.

**THE CHAIR:** Do you have a role in ensuring an external legal provider meets the terms of its contracts in terms of the adequacy of its service?

**Mr Garrison:** We do not review every piece of work that is being done, because there would be no point in that, but we do get reports from the agencies. We do get

them to tell us how the work is going. We get those. We review that every so often. Particularly with the larger projects, we actually have an ongoing dialogue with the law firms; so we are very conscious of how things are progressing. It has gone really well. We see, for example, from time to time a bill come in. The client will send us a copy, or the agent. The firm will copy us in and we will go, “That seems a little bit high. How did we get to that point?”

The front end is where we have got service deeds with all the law firms as part of the panel process. The ability to engage them for a particular project is simply the provision of a draft service order to a select number of firms, depending on the nature of the work, and in effect they put in a proposal to do the work. Then a panel comprised of one of my lawyers and a couple of the people from the agency will review that and put a recommendation as to which firm it should be.

**THE CHAIR:** We thank you for all that. We have come to the end of our session. On behalf of the committee, I would like to thank the Solicitor-General for his attendance today. I do not believe you took any questions on notice today.

**Mr Garrison:** No.

**THE CHAIR:** Thank you again for joining us. The committee will have a short break until 3.30 and we will be then hearing from the Human Rights Commission. Thank you, everyone.

**Mr Garrison:** I look forward to our next exchange.

**Hearing suspended from 3.20 to 3.30 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:** I would like to welcome all back to the public hearing of the Standing Committee on Justice and Community Safety in its inquiry into annual reports 2020-21. We have as witnesses the Human Rights Commission, and in this session we will be speaking with the four commissioners: Helen Watchirs, Karen Toohey, Jodie Griffiths-Cook and Heidi Yates.

Before we start, there are a few housekeeping matters that I wish to draw to your attention. Please be aware that the proceedings today are being recorded and transcribed by Hansard and will be published. Proceedings are also being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses could use these words: "I will take that as a question taken on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript.

I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could you indicate for the record that you understand the privilege implications of the statement.

**Dr Watchirs:** Yes, I do.

**Ms Toohey:** I understand.

**THE CHAIR:** I will take that as acknowledgement from everyone. As we are not inviting opening statements, we will now proceed to questions.

**MR BRADDOCK:** You can see the importance that the Assembly places on human rights by the fact we seem to want to give you more work—for example, the right to a healthy environment, which was a motion the other week. I have a question about the capacity of the commission to handle additional rights, as we seem to keep adding them to your remit. How are you positioned in terms of resources to handle that?

**Dr Watchirs:** In terms of impacts on the human rights, legal and policy team, there are currently two lawyers. That has not changed in 18 years. We have taken on a third lawyer and we will seek recompense for that under the coded funds held by Treasury. So there are three lawyers working on federal policy issues that affect the commission.

I think if environmental rights were added, as work and education have been, then more resources would be welcomed to cover that additional work. Even more importantly, if that were to be a complaints mechanism, that would definitely require

more resources, particularly in Commissioner Toohey's team.

**DR PATERSON:** I was just wondering in terms of table 1 and table 2, inquiries received and then complaints received and the four-year comparisons, what is the difference between those two tables? Does an inquiry turn into a complaint?

**Ms Toohey:** An inquiry is someone contacting the commission for information, either about something within our jurisdiction or outside it. So we record that as a means of understanding what are the sorts of issues that people are bringing to the commission's attention and what sort of assistance they are seeking.

A complaint is a formal complaint under our legislative provisions. Sometimes an inquiry turns into a complaint and sometimes it does not. It will depend. Sometimes the information that we provide to the person might be sufficient for them to go and advocate for themselves or to go away and resolve the issue independently. We see that as part of our role to build capability in the community for people to do that themselves. But there are obviously an increasing number of people who are bringing formal complaints to us under the range of jurisdictions that we have.

**DR PATERSON:** And when the numbers are—what is it?—out of—

**Ms Toohey:** The jurisdiction?

**DR PATERSON:** Yes, out of the jurisdiction. Is that because people are misunderstanding what the commission does or how they can be supported?

**Ms Toohey:** I do not know that it is that they misunderstand what the commission does. Sometimes it is the hope that the commission can help them when we can't. For example, over the COVID period we have had a range of inquiries about some of the vaccine mandates. Some of those sit with the federal government and in the federal jurisdiction, so they are not within the jurisdiction of our commission.

As you are aware, we also have a large number of commonwealth employees that work in the ACT, and sometimes there is some confusion about our jurisdiction versus the federal Human Rights Commission's jurisdiction. We record those again. We have not put the detail in here, but, beneath that, in our own recording systems, we have some detail about what those questions are about so that we can work out whether there is more information we should be providing publicly to help people find the right pathway or whether there are issues that we need to have a look at for future jurisdictional issues.

**THE CHAIR:** I have a question related to table 40 on page 118. There is a reference to the strategic indicator of the number of community engagement activities undertaken by the Public Advocate of the ACT in the area of public advocacy. My first question is: why is there a "not applicable" for results from 2017-18 to 2020-21, and what were the eight activities in 2016-17?

**Ms Griffiths-Cook:** Sorry; can I please confirm the page that you are referencing? I do not have a page 118 for our annual report. We only go up to 112, from my hard copy of it in front of me.

**Ms Toohey:** Table 40 is on page 87.

**THE CHAIR:** I beg your pardon, the page number is my error.

**Ms Toohey:** That is all good.

**Ms Griffiths-Cook:** Sorry, could you please repeat the question? I was busily trying to find the table.

**THE CHAIR:** Sure. It is the bottom line, Public Advocate of the ACT and your public advocacy. There are four “not applicable” entries for four years and eight activities in 2016-17. Why N/A in four years, and what were the eight activities?

**Ms Griffiths-Cook:** Sorry, I am having trouble locating the table that you are referencing. Table 40 in the annual report in front of me is the number of referrals involving education settings over the last two periods.

**THE CHAIR:** No, table 40, the strategic indicator for awareness and compliance with human rights and interests. One of your colleagues might be able to assist.

**Ms Yates:** I have not yet been able to locate that table and I reflect Jodie’s comments regarding table 40.

**THE CHAIR:** I am just getting my own advice. Sorry, it is in the JACS annual report. I beg your pardon. Is that something that you are in a position to answer or should we move on?

**Ms Griffiths-Cook:** I am happy to take that.

**THE CHAIR:** How about we come back to that?

**Ms Griffiths-Cook:** I will do a quick search for the JACS annual report now and see if I can locate that.

**THE CHAIR:** I do beg your pardon.

**MR BRADDOCK:** What is the key challenge that the Human Rights Commissioner is currently working on or will be working on over the next 12 months?

**Dr Watchirs:** I think each commissioner will probably want to answer that individually. As a whole, I said at the outset of the annual report that the priorities that we have set so far have been: raising the minimum age of criminal responsibility; the external review of care and protection in the Community Services Directorate; economic, social and cultural rights such as health and housing, and now environment; a human rights complaint mechanism, which we had a forum on on 10 December; and the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system.

COVID has been a major issue over the reporting period and since. We engaged

strongly on the Public Health Amendment Bill by doing a submission on that, in the period when it was before the Legislative Assembly committee, to have human rights compliant legislation.

We had a number of concerns. One was in an op ed recently in the *Canberra Times*. There are improvements with the COVID public health legislation because of much better oversight by the Legislative Assembly than there was under current legislation: things like having disallowable instruments in management and vaccination directions; scrutiny by the Legislative Assembly committee—and this is because, under the new bill, it would be a legislative scheme, not just public health directions without a legislative basis, which is currently the case, even though directions are notified in the legislation register; having human rights justifications for directions; having independent merit reviews for segregation and isolation, but not vaccination, unfortunately; and having exemptions for segregation and isolation, such as urgent medical needs or family violence.

But the biggest issue is having better real-time oversight of COVID exercise of power. You really need oversight agencies to look at that. Safeguards would include notifying oversight agencies such as the Public Advocate in the Human Rights Commission; having on-site visits to places of detention, which is currently an issue at Bimberi; having minimum entitlements and support in segregation and isolation, such as open-air exercise and contact with families; rights and review for vaccination directions; and, lastly, individual segregation and isolation orders, ensuring that the notification that we have called for means that people are not held incommunicado with that and they have more rights than people in a terrorism situation. I will hand over to the other commissioners.

**Ms Yates:** Mr Braddock, noting your question about the year ahead, I would highlight our continuing work to ensure that criminal justice agencies are upholding victims rights in the context of the new Charter of Victims Rights which commenced on 1 January last year. I would also note the priority we need to give to ensuring the maintenance of our high-quality frontline services for people in the aftermath of crime.

In the reporting period we have had unprecedented demands, including, for example, a 64 per cent increase in the number of people we assisted over the two years previous; similarly, a 78 per cent increase in people who were receiving case coordination in the past two years. We are glad to be a trusted service for so many Canberrans, but we are conscious of the need to be able to maintain that trust and to deliver for victims of crime, noting those significant pressures.

I would also flag the report provided to ACT government in December last year in relation to how we might improve our prevention mechanisms and response to sexual violence. The committee have been clear in that report about significant change that is required, and we will be working to advocate for that.

**THE CHAIR:** Any other contribution there?

**Ms Griffiths-Cook:** I would echo the words of the president, in that the minimum age of criminal responsibility remains an ongoing area of advocacy and is certainly something I will continue to be focusing on in this year ahead.

I would also echo my colleague Ms Yates's comments about the increase in numbers of people coming to the Human Rights Commission. That has already been referenced by my colleague Ms Toohey. We are seeing that demand increase, I think, across all areas. Certainly, for my area of responsibility, as I have spoken of a number of times, the demand associated with mental health consumers and forensic mental health consumers continues to increase.

Notably—and we made a point of this in last year's annual report—the number of new consumers that are coming in through the involuntary mental health system is an area of particular concern for me. It is one that we are looking at in the current year and will continue to look at, both to keep an eye on those growing numbers of new consumers but, more importantly, to seek to understand why we are seeing such an increase in new consumers and whether that perhaps relates to the voluntary system not adequately providing for the needs of some of these people that are coming to our attention. So that is a key area for my team's work.

In the mental health space, as a particular cohort within that, we are also very interested in looking at the number of young people who are finding themselves being brought into the involuntary system. Certainly, those who are coming into inpatient facilities, in particular, are a key concern, but also those who perhaps do not make it to those inpatient facilities and are turned away after a brief presentation in the emergency department but who then return quite quickly to the emergency department.

The concern there is that if they are not being adequately stabilised or not being appropriately linked with community supports, that then becomes a revolving door and their needs just are not met. Many of these young people have significant trauma histories that require ongoing attention to ensure that, as far as possible, those issues do not prevail into adult life and they can get the support that they need. So those are probably some of the particular focus points for my team in the year ahead.

**MR BRADDOCK:** Thank you.

**THE CHAIR:** Did we hear from every commissioner?

**Ms Toohey:** Just quickly, I might jump in there, being a bit of an opportunist. There is a current review of the Discrimination Act being undertaken by my colleagues in JACS. That is a very important process for us in terms of making sure that our legislation keeps up with other states and territories. There are some areas, certainly, where we lag at the moment.

The other area, obviously, is frontline work. As you can see from the annual report, our numbers in complaints and inquiries continue to go up, which is great, in that ACT community members are accessing our services, but we do continue to have to resource that.

One of the key areas, I think, for us over the next year will be the jurisdiction that we got back in May 2020 around elder abuse, and the abuse, neglect and exploitation of people with a disability. That continues to be, I think, an emerging area of work, in that people are realising that there is another remedy available in those sorts of

situations, so that is certainly an area of focus for us over the next year. Thank you.

**Dr Watchirs:** Sorry, could I just add one further item on the Charter of Victims Rights?

**THE CHAIR:** Sure.

**Dr Watchirs:** We have had a number of questions about concerns by agencies. I think there have been 42 in Heidi Yates's jurisdiction. Those complaints are now handled by Ms Toohey. Thank you.

**THE CHAIR:** Okay; thank you.

**DR PATERSON:** My question is to Ms Griffiths-Cook. It is following on from the last budget estimates and what you have just said about the involuntary orders and your office's ability to review them in time, given such an increase. How many staff do you have in your office that are dedicated to these reviews and what more capacity do you need?

**Ms Griffiths-Cook:** I have two FTEs responsible for my mental health portfolio. That is vastly insufficient. Certainly, in terms of the ability to provide direct advocacy for that cohort as well as provide documentation review, we are significantly limited in having only those two staff.

You may have noted in the annual report that, of the 11,750 compliance documents received by my work unit, 7,034, or 60 per cent, relate to the mental health and forensic mental health area. Neither of the other areas has capacity for me to reallocate resources to enable that mental health area to be boosted, so it is an area where I am lacking capacity.

I will certainly be seeking to reconcile that and, hopefully, get some additional resources to assist in both the documentation review, which alerts us to issues that are identified or that might be occurring within the system, but, more importantly, to be able to act off the back of those in ways that seek to attend to whatever the situation is that might be impacting the health and wellbeing of consumers.

**DR PATERSON:** Do your staff who review those compliance documents have to have mental health training or expertise?

**Ms Griffiths-Cook:** Look, it is certainly of assistance, and the staff that I do have are well placed in providing that. But if we got someone in who did not have that as a background, we could certainly assist them in developing that. We would obviously look for some base-level expertise and skills that would enable those skills to be acquired, I guess, as quickly as possible. Obviously, we do not want to spend more time training than is necessary and would rather get someone on the ground and running as quickly as possible.

**DR PATERSON:** In terms of those involuntary order reviews that come to you, are they skewed to a younger age cohort or is it across the board? Are there any kinds of trends? You are obviously saying that there is a massive increase. Is there any reason

that you can see for that increase?

**Ms Griffiths-Cook:** Not just in a blanket look, at the moment. Part of what we are trying to interrogate through our work this year is to understand some of the issues or themes that might exist behind that. We get compliance documentation for children, young people and adults, regardless of age. Rarely do we see those documents come through for children under 10 to 12. But we certainly do see them from 12 years upwards and all the way through to—I could not tell you what the oldest consumer’s age is—older persons who are brought in involuntarily.

We attend a number of the inpatient facilities to check in with consumers who are residing there at any particular point in time, including the Dhulwa mental health facility. In addition to our review and compliance documents and whatever work we might do behind a phone line, we also seek to attend to many of those matters in person and through our representation at the ACAT.

**DR PATERSON:** Great; thank you.

**THE CHAIR:** I am going to move to a totally different question from my original flawed beginning. I have some questions relating to the Human Rights Commission submission to the inquiry into Public Health Amendment Bill 2021 (No 2) by the Standing Committee on Health and Community Wellbeing. Your submission identifies some areas for improvement and some recommended safeguards. One area identified for improvement was with respect to the Chief Health Officer directions issued to a particular individual or individuals. Can you explain this, please, and talk us through your proposed safeguards?

**Dr Watchirs:** Sure. People are aware that public health orders and directions are really subject to the population—that is, an epidemiological public health measure. What people are probably not aware of is that there is the power to make orders against individuals, and in our submission we gave the example of a young woman who was directed to be at Calvary Hospital. We are concerned that people in this situation have fewer rights than people under anti-terrorism legislation, in that they are not aware of their review rights. Their lawyers or advocates are not informed and the family are not aware. So that person could be held virtually incommunicado.

There are review rights, as I said earlier, but there are not review rights for vaccination directions, so that would be an improvement that we would want. I think it is a bit of an oversight that the individual CHO orders are not like the group community CHO orders that are subject to review. Really, we need this improved oversight because the number of powers given to the CHO—and, under the new scheme, other directions by the minister or the executive—is unprecedented. We have not seen a public health emergency like this for over a century and it is really important that the actual exercise of those powers is consistent with human rights.

Having legislation alone is not enough; it is how they are carried out in practice that is important. And, unless we know about it, such as through a notification provision to the Public Advocate, as she has described with involuntary mental health orders that we know about, this person, subjected to those orders, has a very limited capacity to seek help and for us to know about it. We do not even know how many of these

individual public health orders there are. We have just got that one case that has been brought to our attention from Calvary.

**THE CHAIR:** Okay; thank you. You also identified an area of improvement with respect to the monitoring and oversight of closed environments. Can you again talk us through your proposed safeguards for improvements?

**Dr Watchirs:** There is currently no regulation of what kinds of conditions of detention there are. Things that people have in the AMC and Bimberi would be access to open air and exercise. In fact, we intervened in a Supreme Court matter about the management unit of the AMC, where access to open air and exercise was confirmed by the Supreme Court. The other issue is contact with family, and that is an important one that has been recognised in terrorism legislation and this notification provision, as I said earlier. Being subjected to isolation or segregation, it is really important that this oversight is available, as well as the actual conditions of detention.

In January this year Australia ratified the optional protocol against torture. That came into force just last month, so it is really important that the Human Rights Commission, the Ombudsman and the Inspector of Correctional Services are all national preventative mechanisms. That is how you check whether these minimum entitlements are actually working in practice. As I said, we know about that one case at Calvary. There were people sent to quarantine facilities at O'Connor when community housing issues came up at Condamine Court and Ainslie Village. Commissioner Toohey, did you want to add anything extra to that?

**Ms Toohey:** Yes. I might just flag that one of the other issues that came up for us was that regular oversight agencies, such as the Official Visitors and, indeed, the Public Advocate, were precluded from going into some of those facilities during that time. That obviously raises a concern for us because not only were visits stopped in Bimberi, in the AMC and in our mental health facilities but to then preclude the oversight agencies from going in means that those people really are very, very vulnerable in those circumstances—particularly when the initial lockdown was called for a short period and then, as we all know, it went on for quite some time. I do not think there was any expectation at the time that the lockdown was instituted that the oversight agencies would effectively be precluded from going into those facilities to make sure that vulnerable Canberrans were being well cared for, well looked after, and that their rights were being adhered to.

We certainly saw in the aged-care sector the effect of not having external oversight bodies being able to go in and review, support and report on what was occurring. While it was not mandated anywhere that we could not go in, that was the practice. So we are quite concerned that there be an express right, for those agencies and organisations that have those responsibilities, that they should be continued in these periods and that that should be expressed so that the organisations we are overseeing are in no doubt about what our rights are in terms of being able to visit those facilities.

**THE CHAIR:** Thank you. Finally, on vaccination directions, you expressed concern about the no review rights and also that there is no human rights scrutiny by an Assembly committee. Can you talk us through your concerns there?

**Dr Watchirs:** Our concerns are that vaccination directions do not have the same oversight and safeguards that the legislative exercise of other powers does. And they have a big impact, vaccination directions, in that people in aged care, health care, education and disability care, at the moment, are subjected to a vaccination direction. It is really important that you have review rights for that. People can have medical exemptions; we have called for conscientious objections as well, such as on the basis of religion.

The lack of scrutiny by the Legislative Assembly is really important—although it must be said that these vaccination directions are, I think, disallowable instruments, so there is that scrutiny by the Legislative Assembly; but having an actual committee responsible for that is really important. There is a requirement to consult the Human Rights Commissioner in six cases of public health directions and vaccination directions, so that is a welcome addition, but we would like increased scrutiny of vaccination directions.

**THE CHAIR:** Thank you. Obviously, when the Assembly is not sitting for a period, there is no way to really deal with the disallowable instrument through the Assembly process.

**MR BRADDOCK:** I would be interested in the commission's view as to how we can increase young people's rights to be engaged in the democratic process here in the ACT.

**Ms Griffiths-Cook:** I am happy to respond to that. Under my Children and Young People Commissioner role in particular, we are actively exploring opportunities for children and young people to be able to contribute their views and perspectives on any number of matters. I think being able to express that in the democratic system is another opportunity, in that sense.

Given what we hear from young people in particular about their interest and understanding in the political landscape and the range of decisions that are often made by governments, I think you would find that there would be a significant number who would certainly be interested in the opportunity to contribute more formally through the lowering of the voting age, which I know is something that is proposed, or through other means, if that was not something that government made a decision to proceed with. I think there are other options through which we can seek to obtain that information, even if only through consultations and other mechanisms such as those that we utilise within my office.

**MR BRADDOCK:** Thank you.

**DR PATERSON:** My question is to the Victims of Crime Commissioner, regarding the family violence safety action pilot. One of the aims of the pilot is improving perpetrator visibility and accountability in government and non-government responses. What is that and what will that look like?

**Ms Yates:** Thank you, Dr Paterson. As you are no doubt aware, the pilot was established during the reporting period as an extension of the Family Violence Intervention Program's existing case-tracking process. That case-tracking process

normally brings agencies together to map cases that are before the family violence list in the criminal court each week.

Particularly during the COVID period, we were aware that there was a significant drop in the volume of family violence reports made to police but an increase in the number of survivors seeking help from community services about escalated violence. The purpose of the pilot was to bring a coordinated approach to matters that might arise either inside or outside of the criminal justice system, to ensure that we were bringing agencies together to collectively identify, assess and respond to high-risk family violence matters.

Our program partners for the pilot have included the Domestic Violence Crisis Service, who provide case managers to that pilot; the police; Legal Aid, care and protection; and Housing; so a broad range of partners, including Corrective Services.

The key aim of the pilot is to be led by what victim-survivors are telling services about what they need to be safe. So often, in doing so, we lose sight of the person who is perpetrating violence against an individual or their family. A key focus of the pilot has been to work out at what point in our systems that happens—particularly drawing on the purview of Corrective Services, ACT Policing, and services like EveryMan and DVCS' Room4Change program—and to say, “How can we keep eyes on men using violence?” and provide opportunities to offer them interventions that might aid them to stop using that violence; but also to ensure that, where possible, we are looking at the patterns of perpetration, with the ultimate goal of improving safety for victim-survivors and their children.

**DR PATERSON:** Thank you. How long does that pilot go for?

**Ms Yates:** The pilot has been operating for just over a year, and in that time it has seen well over 130 individuals, with over 200 children. Whilst the pilot was initially funded by the federal government, we have seen the ACT agencies come together and provide incredibly positive feedback, including in the process evaluation that was completed a couple of months ago, about the need for this coordinated response to high-risk family violence matters, without the assumption that those matters will necessarily appear before our criminal justice system.

**DR PATERSON:** Thank you.

**THE CHAIR:** I have a new line of questioning, regarding complaints received since March 2020, which obviously was when COVID appeared and descended upon us. Firstly, how many were there and what types of complaints were they?

**Ms Toohey:** We do not have a separate category specifically for COVID-related complaints. I can take that question on notice and try and massage the data.

**THE CHAIR:** Sorry; it is more from that period, from that time.

**Ms Toohey:** The complaint numbers certainly have increased, and the annual report shows that for the 2020-21 period we had an increase in complaints for the second half of 2020-21. We have again seen quite a significant increase in complaint numbers.

A number of those are related to COVID matters: queries about the vaccine mandates and people affected by those. We have certainly had complaints about COVID and aged care, and the visiting arrangements. We have had many complaints, as you would be aware, about concerns from people who are unable to wear masks for reasons of disability being unable to access a range of health services—in particular, GPs and various services refusing access to people if they were not wearing masks.

You will also be aware that a number of businesses imposed their own vaccine mandates. We know that, for example, hotels, cafes, restaurants, dress shops—a whole range of organisations—brought in their own vaccine mandates, even though the ACT government had not brought those mandates in. There were a range of concerns that certainly were being dealt with by us in that space.

You will also be aware that, particularly during lockdowns, there were delays in health services, surgeries, outpatient appointments. We had a range of matters in that space as well. It is a fairly broad remit of matters that we have had.

Another area that came up and that we also addressed in our submission was exemption applications. For example, during the school holidays, late last year, during lockdown there were any number of cross-border matters that we dealt with where the parents or the children might be in New South Wales or Victoria and they were unable to get exemptions to travel between those areas, even though they may not have seen each other for quite extended periods of time.

Those arrangements were interfering with things like parenting orders, where there were people being told that if their children came into the ACT they had to stay for the 14 days, when in fact the orders only provided for them to have the children for the weekend. They could either not comply with the order or they could not see their children for extended periods of time. We had a very good working relationship with ACT Health, working through some of those matters.

We also had a range of older people who were very concerned about getting vaccines, unfortunately. As you know, the vaccine appointments themselves were free, but to go to your GP to get advice about the vaccine was a paid appointment. We had any number of people who were self-isolating because they were too concerned to go out, but they were also too concerned to go and get a vaccine. Again, we worked very closely with our colleagues at ACT Health and got some in-reach phone calls and visits happening.

I think we can say that the COVID matters affected a very broad range of ACT community members and, again, fortunately, we were able to work very constructively both with community organisations and with ACT Health around those cross-border issues, people in quarantine, people in Ragusa who were voluntarily going into quarantine and some of the issues that arose there. Our next annual report, which seems to be looming imminently, will be putting in a range of case studies to illuminate some of those issues.

**MR BRADDOCK:** I would be interested to learn from the young people commissioner how you engage with children and young people. I think you have a level of expertise that the Legislative Assembly and some other parts of the

government would love to hear about.

**Ms Griffiths-Cook:** There are a range of mechanisms, and I think to work through them all would take longer than the time we have remaining. Needless to say, we use everything ranging from reaching out through social media to direct engagements, either around the table, usually involving food, or more recently, because of COVID, online. We have managed to continue a number of online engagements.

Some of our engagements are planned; some of them are ad hoc and responding to opportunities. Some are at the invitation of children and young people themselves who are part of a group or a cohort who are seeking engagement and who have a particular concern or issue that they want amplified.

Yes, there are a range of mechanisms and tools in our toolbox that we use to manage that engagement safely, as well as in a way that obviously garners the greatest level of information that we can. We say frequently that children and young people are the experts in their own lives, and we certainly seek to gather that expertise as much as we can through whatever means are available to us.

If the Assembly were interested in a session on what that can look like, I would be more than pleased for my team to put that together and for us to present that to interested members.

**MR BRADDOCK:** Thank you.

**DR PATERSON:** It came up before, when Ms Toohey was speaking about aged-care facilities and the oversight during COVID. In lots of areas the responsibilities are under ACT jurisdiction and the directorates, whereas aged care is different. Can you describe the challenges of working with aged care during COVID and the oversight that was or was not there?

**Ms Toohey:** As you know, aged care is predominantly a commonwealth responsibility and the Aged Care Complaints Commissioner has primary responsibility and responsibility in that space. I have a specific jurisdiction for complaints about services for older people. Our view is that we are able to take those complaints. We did have a range of matters brought to our attention right from March 2020, the beginning of the pandemic, around things like access to visits, people concerned about their parents, particularly some older people with conditions like dementia, who benefit so much from regular visits and regular support from family, and regular engagement, and all that being interrupted.

While we have a complaint mechanism and, indeed, at different points through the lockdown we have been out to various facilities to talk to the owners and the operators where we have had complaints about those arrangements, the thing that we do not have in the ACT, which we are fortunate to have, for example, in the disabilities space and in mental health, is the Official Visitor program. It became apparent during the pandemic that having community members from the ACT with some expertise being able to go into those facilities would have been of significant benefit. I think we were all concerned that during these sorts of periods we lose sight of some of our most vulnerable community members.

While the complaints are a mechanism for us to engage with those providers—and many of them were very positive in that engagement—that break between an assumption that matters have to go to the federal commission, which means that we do not have eyes on them, and something happening because of increasing concern over the pandemic is certainly an area that we will be doing more work on. We are working with some of our colleagues at the Council on the Ageing, COTA, and other organisations, looking at what are the other mechanisms available within the ACT, particularly since I have had the abuse, neglect and exploitation jurisdiction for older people.

While I am not suggesting that there are systemic institutional issues in that space, it has certainly come up as an issue around things like access to visits, adequate food, adequate nutrition—even adequate health care, because of issues around GP access to aged-care facilities over this period. So I think it has really become very stark. Even though the ACT is a small jurisdiction, it is a proportion of our population where we really do want to make sure that we have local eyes on our community members.

**DR PATERSON:** And why do we not have an official visitor program?

**THE CHAIR:** We might get this answered on notice. We have come to the end of our session. Please finish the question and maybe get the answer on notice from the commissioner?

**Ms Toohey:** Happy to take that question on notice.

**THE CHAIR:** Sorry, did you get the question before I interrupted?

**Ms Toohey:** I think I did.

**THE CHAIR:** On behalf of the committee, I would like to thank all four of you for your attendance today. If witnesses have taken any questions on notice, could you please provide answers to the committee secretary within five working days. We will have a moment to shuffle officials and we will be welcoming the Minister for Human Rights. Thank you, everyone.

**Ms Toohey:** Mr Cain, can I just clarify whether you would like that first question as an on notice one, the JACS report?

**THE CHAIR:** We will do that.

**Ms Toohey:** Thanks.

**Short suspension.**

Appearances:

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

Justice and Community Safety Directorate

Ng, Mr Daniel, Acting Executive Group Manager, Legislation, Policy and Programs Division

McKinnon, Ms Gabrielle, Senior Manager, Civil Law, Legislation, Policy and Programs Division

**THE CHAIR:** We have a very short session. I will go through the preamble. This session we will be hearing from the Minister for Human Rights. We welcome Minister Cheyne and her accompanying officials. Before we start, there are a few housekeeping matters that I wish to draw to your attention. Please be aware that the proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and webstreamed live.

When taking questions on notice, it would be useful if witnesses used these words: “I will take that as a question taken on notice.” This will help the committee and witnesses to confirm questions taken on notice from the transcript. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could officials affirm, one way or another, your understanding of the privilege implications of the statement.

**Ms Cheyne:** Yes.

**THE CHAIR:** We have been made aware, Minister, that you will be lodging an opening statement, and that will be taken as a submission. We will proceed to questions, and I will lead us off on that. Minister, on page 20 you talk about the right to scrutiny and the scrutiny of 31 government bills for compatibility with human rights. Does this list of bills include any COVID bills?

**Ms Cheyne:** I again affirm that I have read and understood the privilege statement. This is in the Attorney-General’s space, specifically, but we do have officials here who will be able to speak to it. If that is your preference, rather than direct it to the Attorney-General, we can attempt to assist you now.

**THE CHAIR:** Thank you.

**Mr Ng:** That list of bills would have included the COVID bill.

**THE CHAIR:** Considering that bills pertaining to COVID were passed while we were in the pandemic state, were there different checks and balances included as part of the scrutiny or compatibility of COVID-related bills?

**Mr Ng:** Yes. As part of our compatibility process, we would make an assessment about whether there were adequate safeguards, checks and balances, as you describe,

in legislation to consider that they are compatible with human rights. That is a process we go through with all government bills: bills that we lead internally within the JACS directorate but also bills that are progressed by other directorates. We work with them to identify where the engagement of human rights occurs, to ascertain where any potential limitations might be affected, and we hope to work with agencies on including the necessary safeguards to render it human rights compatible.

**DR PATERSON:** I was wondering, Minister, if you would be able to give us an update on the co-design process for the Aboriginal and Torres Strait Islander Children's commissioner.

**Ms Cheyne:** Yes, certainly. As you are aware, this is a major priority for us as a government, jointly between Minister Stephen-Smith and me. I believe that the Human Rights Commissioner mentioned earlier that it is a priority in their space as well—pleasingly. I think the last time we spoke during the estimates process, Jumbunna, who we had recruited, procured, to undertake the co-design and the consultation regarding that, had started in earnest. Then of course we were hit by COVID, which has necessarily disrupted that co-design process a little, but they had been able to engage right across the community in a very thorough and robust way. They have just recently delivered their report on that process to government, which we will be looking to make public very soon, and that will lead the way in terms of the legislative process.

Concurrent with that, we have also been progressing an advocate position that will start while the commissioner process gets underway. Necessarily, the commissioner process requires legislative reform and resourcing. That will take time, but we are moving at a good pace now. In the meantime, the community have made very clear to us that they also wanted an interim advocate position to be established. There is \$311,000 in the budget most recently passed for that position, and applications closed for that position this past Friday.

I might see if officials have anything further to add to that. Perhaps Gabrielle is on the line. I will just see if Ms McKinnon has something further to add, if that is all right?

**Ms McKinnon:** Would you remind repeating the question?

**Ms Cheyne:** I will provide a brief overview of what I just said. It was a bit of an update on the co-design process, Ms McKinnon. I have reported to Dr Paterson that the recruitment application period for the interim advocate position has closed but that the report on the co-design process led by Jumbunna has been delivered to us. Could you add anything further on the next steps or what the community can expect to see over the coming months?

**Ms McKinnon:** We have a draft report from Jumbunna, and we are going through that. I know that Jumbunna are also seeking feedback on the report from the Our Booris, Our Way committee and from the Elected Body. We are waiting to hear back, and we will also be talking to our colleagues in the Community Services Directorate about that. Once that report is finalised, the government will look at that and consider responses. In the meantime, there will be ongoing work; that report can feed into the policy development around establishing that role. It is really exciting to have the

report here. I am happy to answer any more specific questions.

**MR BRADDOCK:** I have a question about the policy on death certificates—in particular, those who have died via suicide. It has come to my attention that the details that are incorporated into those certificates contain the detailed, graphic means of suicide from the coroner’s reports, which can be, as you can imagine, quite traumatising for the family. Is it possible to look at that policy and get that changed?

**Ms Cheyne:** Thank you, Mr Braddock. I am happy to take that and see whether there is any further detail that can be added. Essentially, what is included in a death certificate is what is included in the death register. What has been noted in a coroner’s report as the cause of death is then what is recorded on the death register. That is the back-of-house system, I suppose.

What people physically or tangibly get is the death certificate, which is essentially an extract of the death register. Generally, a death certificate will include all of the information that is included on the death register. However, at Access Canberra the registrar-general, Mr David Pryce, can use his discretion to agree, if it is raised by a family, to provide a different extract. We cannot change the information that is included on the death register, but we can provide an extract of the death certificate that looks largely identical to a death certificate as you would come to know it, but it simply says “Extract of a death certificate” and it may omit something.

This is not something that is proactively offered, but we are looking to update the information on the Access Canberra website for people who might be pursuing this option. You will appreciate that there are some circumstances where the cause of death is required to be provided, perhaps for insurance purposes. But I very much take your point that what you are describing can be very distressing for the family, by potentially sharing what might be quite private or very detailed information about the cause of death with organisations or other figures.

Importantly, when this extract is provided, it is done free of charge. Again, we are looking to make it a bit clearer on the Access Canberra website how this can occur and also increase the training of our customer service operators. If it would assist the committee, I would be very happy to send through a copy of what a death certificate looks like and what an extract of a death certificate looks like so that you can see how they are presented.

**MR BRADDOCK:** Thank you; I would appreciate it if you could look into the matter. For your information, some federal agencies—for example, the passports office—might not necessarily accept an extract, so we will need to look through some of those issues.

**Ms Cheyne:** Yes. Mr Braddock, it comes down to what is required to be on the death register. The Coroners Act is outside my jurisdiction; it is in the Attorney-General’s jurisdiction. I would suspect that the Coroners Act requires what the coroner says is the cause of death to be included on the death register. That is probably the issue that we have here. I can get some further advice and perhaps continue my discussions with the Attorney-General.

**THE CHAIR:** Minister, in response to Mr Braddock, will you take those as questions on notice and respond accordingly?

**Ms Cheyne:** I will discuss it with the Attorney-General, regarding the Coroners Act element of this, because that is a bit outside my jurisdiction. I will take it on notice, yes.

**THE CHAIR:** Yes, and the extracts; I think birth certificate extracts were mentioned as well.

**Ms Cheyne:** Would you like those, Chair?

**THE CHAIR:** Yes, I think that was part of Mr Braddock's line of questioning.

**Ms Cheyne:** Very happy to provide those to you.

**THE CHAIR:** Mr Braddock, is that correct?

**MR BRADDOCK:** Yes.

**Ms Cheyne:** I will email them to you imminently.

**THE CHAIR:** We will draw this to a close. I want to thank Minister Cheyne and her officials for their attendance today. If witnesses have taken any questions on notice, please provide answers to the committee secretary within five working days. Thank you.

**Short suspension.**

Appearances:

Steel, Mr Chris, Minister for Transport and City Services, Minister for Skills, Special Minister of State

Justice and Community Safety Directorate

Hakelis, Ms Robyn, Acting Executive Branch Manager, Civil Law, Regulatory Law Branch, Legislation, Policy and Programs Division

Ng, Mr Daniel, Acting Executive Group Manager, Legislation Policy and Progress

**THE CHAIR:** We will now hear from the Special Minister of State. We welcome Minister Steel and accompanying officials. Before we start, there are a few housekeeping matters that I wish to draw to your attention. Please be aware that the proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and webstreamed live.

When taking a question on notice, it would be useful if witnesses used these words: “I will take that as a question taken on notice.” This will help the committee and witnesses to confirm questions taken on notice from the transcript. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could those in attendance affirm in some manner your understanding of the privilege implications of the statement.

**Mr Steel:** I have read and understood the privilege statement.

**THE CHAIR:** As we are not inviting opening statements, we will now proceed to questions. The committee acknowledges Mr Mark Parton, the shadow minister for gaming, here. I will pass my substantive opportunity to him.

**MR PARTON:** Minister, as the minister with responsibility for racing, I think it is pertinent to broach this with you. Your party governs in a power-sharing agreement with the Greens, who have a pretty strong presence in cabinet with three government ministers. Late last year the Greens leader, Shane Rattenbury, clearly flagged in the public space that he wants to ban horseracing completely. Has the question of the banning of the sport of thoroughbred racing, or harness racing for that matter, been discussed at a cabinet or government level?

**Mr Steel:** I am not going to discuss what happens in cabinet. That is obviously confidential. But of course there have been discussions within the government about that. We are continuing the process of negotiating the next memorandum of understanding with the racing clubs at the present time, and we are looking forward to those negotiations coming to a conclusion later in the year.

**MR PARTON:** That sounds positive. But are you in a position to guarantee, as minister, that the banning of horseracing will not be one of the bargaining chips in upcoming power-sharing discussions?

**Mr Steel:** We have already formed a coalition government for this term, and the terms of that are outlined in the parliamentary and governing agreement for the Tenth Assembly.

**MR PARTON:** Can I ask, Minister: have you had any briefings about the possible process of the banning of thoroughbred racing or is it just agreed that you will follow the blueprint established by this government when you banned greyhound racing?

**Mr Steel:** No. This is wild speculation about something that we are certainly not committed to doing. This is just absolute rubbish coming out of your mouth. I think it is fair to say that we are committed to talking with the racing industry about what they are going to deliver to the community in terms of racing and other supports around animal welfare as part of the memorandum of understanding, going forward. Those conversations have been very fruitful thus far.

**MR PARTON:** Does the declaration that horses are sentient beings lead to any possible policy change in that thoroughbred space? If not, why not? Indeed, why is thoroughbred racing being considered differently to greyhound racing?

**Mr Steel:** Thanks for the question. That question has a bit more integrity to it, and I am happy to answer it. Since the passing of the animal welfare amendment legislation, in my capacity as Minister for Transport and City Services, I asked the Animal Welfare Advisory Council to look at the range of codes of practice that apply under that legislation and to see whether they needed to be updated in light of the changes that had been made to the Animal Welfare Act.

They are currently going through that process. There are a range of different codes of practice around the management of livestock but also, of course, the racing industry. They are in the process of updating those codes of practice and then they will come to me for consideration. Yes, we want to make sure that we have the best practice animal welfare laws, and that means that the codes of practice will need to be updated.

The racing industry takes animal welfare very seriously. The racing club has recently undertaken a review of animal welfare practices and has released a report. There are some recommendations for the industry itself and some recommendations to government, and the government will consider those.

**DR PATERSON:** Minister, regarding the ACT's FOI policy and the amount of time and resources spent on the average FOI request, is the current FOI policy satisfactory and appropriate?

**Mr Steel:** There have been some significant changes to FOI laws in recent years, and they are still being bedded down in terms of the number of resources allocated to undertake those requests. Of course, the government is monitoring the administrative burden that is associated with those requests. We are always interested in how we can streamline the process of providing information to those who request it and make sure that it also reduces the burden on government resources as much as possible.

Some agencies, of course, have more requests than others. I will hand over to Justice and Community Safety officials to provide some further detail about this shortly. But certainly some agencies have more of these requests than others. One is the Community Services Directorate. Many of their requests, of course, are about quite sensitive, personal information. Often these requests take quite a long time to collate the information, the documents required. We are always looking at new ways that we can provide that information, to get the information that people need, and setting up our processes as much as we can to make sure that we can reduce the amount of burden in the future when those requests for information come through.

There is sensitive information in there. Often requests may take longer to process because of the nature of that sensitive information needing to be assessed, so that information that should not be released is not released and so that information that should be released is. That process can be quite burdensome. We need to continually look at this.

There was, of course, the budget initiative to fund further resources over the next two years for this in directorates. We will continue to look at ways that we can streamline the process and make sure that government information is provided. But JACS officials can provide some further information about that process.

**Ms Hakelis:** Thank you for your question. We are actively engaged in reviewing the FOI Act currently. It is part of a whole-of-government priority and process. We are assisting the minister to administer the act and are also pursuing key legislative reform in 2022, this year, to ensure that the act is operating as efficiently and effectively as possible.

It is certainly part of a whole-of-government agenda. As has been noted previously, in past budgets, whole of government is being progressed to ensure that that resourcing is adequately applied for across the ACT government. We are working closely with directorates and even undertaking an embedding process, where we are joining another directorate just to understand how it is all working and to make sure that the FOI Act is operating as intended. Anything that we are learning in that process, in close consultation with directorates, we will inform the minister of.

**MR BRADDOCK:** I have a question about the Territory Records Act in terms of the release of cabinet papers. In most other jurisdictions this happens automatically. But here in the ACT you actually have to apply to get those papers released. I am just wondering: what is the justification for that? As an open jurisdiction, should we be more freely making those papers, by default, available to the public?

**Mr Steel:** In terms of the reporting period which we are discussing, I am not sure that there has been any work undertaken on that. Or are you just making a statement of opinion?

**MR BRADDOCK:** I am asking: is there a reason why those papers are made available only on request and are not by default made available to the public?

**Mr Steel:** I am not sure whether JACS officials want to comment on the original intention of the act when it was passed. I certainly was not around then.

**Mr Ng:** I will have to take that on notice. That is a piece of legislation which is administered by the Chief Minister, Treasury and Economic Development Directorate. Unfortunately, they have no officials here from the Territory Records Office to assist in that respect. I am very happy to take that on notice. I will liaise with colleagues in CMTEDD to provide you with an answer.

**MR BRADDOCK:** Apologies if I asked it in the wrong session.

**THE CHAIR:** Regarding electoral policy, the Electoral Legislation Amendment Act 2020 was passed in July 2020. It mentions that most amendments commenced on 9 July 2020. Which amendments have yet to commence, and is there a particular reason for that?

**Mr Steel:** I might hand over to JACS officials to comment on that one, if they have any further advice. Otherwise, we can come back.

**Ms Hakelis:** Thank you for that detailed question. If you do not mind, we might take that on notice and provide that information to you subsequently.

**MR BRADDOCK:** I have a question in terms of the time frame for the government to produce amendments to the Electoral Act in response to the JACS committee inquiry into that act and the last election. Do you have an indicative time frame for when they might be coming to the Assembly?

**Mr Steel:** No, I do not. I am hoping that we will be able to bring them forward sooner rather than later, noting the previous question about the prior set of reforms last term being actually passed in 2020, the election year, which was clearly not ideal in terms of implementation for the Electoral Commission. I would personally like to see this done sooner in the term, rather than later, in order to enable the appropriate administration of any amendments by the Electoral Commission and/or the government, depending on what the amendments are.

That current piece of policy work is in train. Obviously, it will respond to the range of recommendations made by the Assembly inquiry and the government's response to that inquiry, as well as matters that were not considered by the inquiry that may need to be dealt with. Some of those matters have been raised by the Electoral Commission as matters not dealt with by the inquiry.

We will speak further with the Electoral Commission about what may need to be addressed and bring those forward. I am hopeful that that will be before the end of the year. But we will see how far we get with the policy development first, before we make any commitments.

**THE CHAIR:** On behalf of the committee, I would like to thank Minister Steel and accompanying officials for their attendance today. If witnesses have taken any questions on notice, could you please provide answers to the committee secretary within five working days. We have now reached the conclusion of the hearing. If members wish to lodge questions on notice, please provide them to the committee secretary within five working days of the hearing.

The committee will reconvene at 9.30 tomorrow for the third day of hearings. Today's hearing is now adjourned. Thank you all.

**The committee adjourned at 4.45 pm.**