



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**STANDING COMMITTEE ON JUSTICE  
AND COMMUNITY SAFETY**

(Reference: [Inquiry into Annual and Financial Reports 2021-2022](#))

**Members:**

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

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**WEDNESDAY, 2 NOVEMBER 2022**

**Secretary to the committee:  
Ms K de Kleuver (Ph: 620 70524)**

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

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

## APPEARANCES

<b>ACT Integrity Commission</b> .....	<b>55</b>
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## **Privilege statement**

The Assembly has authorised the recording, broadcasting and re-broadcasting of these proceedings.

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*Amended 20 May 2013*

**The committee met at 10.30 am.**

Appearances:

ACT Ombudsman

Anderson, Mr Iain, ACT Ombudsman, Inspector of the Integrity Commission,  
Principal Officer of the Judicial Council

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

**THE CHAIR:** Good morning and welcome to the public hearings of the annual and financial reports 2021-22 by the Standing Committee on Justice and Community Safety. The proceedings today will examine the annual and financial reports for the Ombudsman, Inspector of the Integrity Commission and Principal Officer of the Judicial Council.

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

The proceedings 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 the words: "I take that as a question taken on notice." It will help the committee and witnesses to confirm questions taken on notice.

In the first session we will hear from the Ombudsman, who is also appearing in his capacity as Inspector of the Integrity Commission and Principal Officer of the Judicial Council. I welcome Mr Iain Anderson and Mr David Fintan. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could you each confirm that you understand the privilege implications of the statement.

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

**THE CHAIR:** Thank you.

**Mr Fintan:** I also understand.

**THE CHAIR:** Thank you very much. Since we are not taking opening statements, I will begin the questions. Mr Anderson, you were appointed Ombudsman in August 2022, not very long ago, for a five-year term. In your role you will serve as the ACT Ombudsman, amongst other responsibilities. Being relatively new to this position, what challenges have you identified thus far in your Ombudsman role?

**Mr Anderson:** Thank you. Yes, it has been just over three months in the role. I commenced on 1 August. There are a range of challenges. We are a relatively small

office, both in our ACT office capacity as well as in our larger commonwealth capacity, yet we shadow the whole of the ACT public sector, as well as, in a commonwealth capacity, the whole of the commonwealth and then private sector entities as well in some capacity.

So there is a question as to how we best deploy that small amount of discretionary capacity that we have for particular investigations. Our primary function, of course, is dealing with complaints and making sure that we hear people's complaints and can deal with them and give them some satisfaction with respect to aspects of government administration and then that we engage influentially with government to assist it to systemically improve its administration.

We have only got a small amount of discretionary capacity. One of the challenges is choosing how we deploy that. We have budgeted to do one own-motion investigation with an ACT government directorate this financial year, and we are finalising our preparations for that at the moment. But we will need to make sure that we get that done and that it is a meaningful investigation—meaningful for the complainants who we engage with, as well as useful for the particular directorate that we investigate in that process.

As is indicated in our annual report, we experienced some challenges also through COVID. We are not unique in that, but we do have some systems that require people to actually be working from the office. In particular, our complaints handling telephone system requires people to be working in the office, and when we had shutdowns in various places, including in the ACT at some times, that meant that we were restricted in our ability to receive and process complaints.

We are looking at how we can improve our systems. That will take a bit of time, but we are looking at that, and we have to catch up with a bit of a backlog of complaints as a result of COVID. Like other entities, government and private, we also had quite a bit of staff turnover with COVID. I guess people going through that kind of experience made a range of choices about how they wanted to work and where they wanted to live. So we have a number of new staff that we have taken on, and there is the training, bringing people up to speed and making sure that we are doing good quality assurance on the work that new people do as well so that they are bedded into the office.

**THE CHAIR:** Have you identified any major priorities or objectives in your Ombudsman role that you would like to implement?

**Mr Anderson:** After three months, and after talking to a range of stakeholders inside and out, I am satisfied that a lot of things are working well, but I do think we can improve a number of our systems and a number of our processes. I am working through how we do that. It is partly about streamlining some of our internal approval and decision-making processes, for example, making sure that decisions can be fully made and owned by directors of teams, even though they are not in the senior executive service—empowering our directors to a greater extent.

And then there will be some system changes. I am looking to replace our telephone complaints handling system so that it is one that does not require people to physically

be in the office in order to use a fully functional system that has all of the functions you would expect in terms of being able to monitor call volume, being able to escalate difficult calls to supervisors, all those different functionalities. So a few changes like that.

**THE CHAIR:** Thank you.

**DR PATERSON:** I am interested to hear about the ACT Judicial Council and how that works. In terms of complaints that are made to the council, what is that process and are you able to speak about the types of complaints that are received?

**Mr Anderson:** Certainly. The process is, to some extent, laid down in the legislation in that it needs to be received in writing. But we do not insist upon a great deal of detail; we just need to get enough to be able to understand the nature of the complaint. All the complaints that have been considered to date—I believe that is correct—have been from self-represented litigants. The legal process can be quite confusing, quite challenging and quite intimidating, no matter how well the court seeks to engage with self-represented litigants. So, unsurprisingly, the complainants might say, “I feel that I did not get a fair hearing in court,” or “I feel that the judicial officer was biased against me.”

Having received a complaint of that nature, we make an assessment—“we” being me and my two staff who support the council. We also reach out to the judicial officer who the complaint is about and see if there is anything that they would like to say about the matter. But a lot of it is established by working through transcript, listening to recordings of court processes. If a person says, “When I appeared in court, the judge talked over me,” or “The judge did not give me a fair hearing,” we actually listen to the recordings to see what actually happened. We do not just read the transcript, because sometimes the transcript does not give you the full picture.

We make an initial assessment. It is quite a process of going through everything we can just to form a view, and then we go back to the council and we inform them and give them the ability to say what they want to have happen. They have the three options of a preliminary dismissal; early dismissal of the complaint if they feel that it is vexatious or not substantiated; or, alternatively, it can be referred to the head of the relevant jurisdiction or the council itself can do a different process to look at it in detail.

To date, the matters have all been dismissed or withdrawn at that early stage, once there is that initial examination. It is not to say that the complainants do not genuinely believe that they suffered poor treatment, but, actually, what we have seen is judicial officers in the ACT taking a lot of trouble to help support self-represented litigants and to give them every opportunity to say what their concerns are, to make their case, to cross-examine. It is very hard, if you are self-represented, to cross-examine someone else. We see judicial officers actually trying to assist the person who then subsequently complains. So we see a lot of effort being made by the judicial officers to give a fair hearing to everyone. Nonetheless, people still have some complaints.

**DR PATERSON:** Do you take complaints like more systemic complaints or is it entirely individual complaints?

**Mr Anderson:** Well, it is in the nature of the complaint as to what it actually reveals. If complaints were being upheld, that would be a different issue from if complaints were being dismissed. At the moment, the only potential systemic issue I can see is that question for all courts: are there other ways you can support self-represented litigants? My impression is that that is something that the ACT courts have given a great deal of thought to. I know that, generally, across Australia, courts have been talking about that question for some years.

**DR PATERSON:** Yes. I noted in your annual report that you say the ACT Judicial Council annual report is published on their website. When you go there to try and look at it, it has a locked password screen to look at the annual report. So I was wondering if perhaps—

**MR BRADDOCK:** I can confirm that too.

**Mr Anderson:** I apologise for that. We will do something about that.

**DR PATERSON:** Great. There has been a fair bit of commentary in the media and a couple of petitions that have been brought to the Assembly around a review of the performance of the judiciary and a review of appointment processes. This is largely coming from victims of crime who feel very disempowered by the system. Is there any scope for those types of complaints to go to the Judicial Council or to the Ombudsman, generally?

**Mr Anderson:** There is limited scope. If people believe that they have been treated unfairly then that is absolutely the sort of thing that would normally be a matter that they could raise with the Ombudsman. But we do have limitations in terms of our ability to scrutinise the actions of courts and judicial officers acting in the judicial capacity. The Judicial Council has come about to enable complaints about the conduct of individual judicial officers to be looked at, but it is going to be grounded in the conduct of individual cases and individual judicial officers.

If someone has a concern about appointment, that could manifest itself in terms of a concern about the performance of an individual judicial officer. It might be that this person has conducted themselves in a way that makes someone feel that they are biased or they are insufficiently competent or something like that. That could come up in an individual complaint. But the kinds of concerns that I understand you are pointing to are more generic about our justice system and whether there are alternative ways of dealing with different types of issues. That is more something that I think would be raised with the Attorney-General or with JACS.

When you look at the way in which judicial systems handle matters of sexual violence, for example, there is a lot of material saying that our traditional court systems do not handle particularly vulnerable witnesses very well and there need to be a range of different treatments to assist people to come forward to give evidence. The courts have generally been, in my perception, willing to make changes to limit cross-examination, to allow people to give evidence by video—a range of different things. But those are system-wide issues, so I think they are best raised with the attorney or JACS.

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

**THE CHAIR:** Section 61A of the Judicial Commissions Act requires that the Attorney-General get a report as soon as practical. Given Dr Paterson's reference to the log-in, has the Attorney-General received the annual report?

**Mr Anderson:** I believe so. I have written to the Attorney-General, but I will take that on notice.

**THE CHAIR:** Okay; thank you. I am not aware of it being tabled in the Assembly. Again, on the Attorney-General's connection with that Judicial Council role, I note that there were seven individual complaints in the last financial year and eight complaints in the previous financial year, all from members of the public. You have explored that with Dr Paterson's question. Has there ever been a complaint from the Attorney-General?

**Mr Anderson:** I do not believe so. There certainly was not in this financial year. I do not believe that there has been.

**THE CHAIR:** Or a complaint from anyone other than an individual member of the public?

**Mr Anderson:** My understanding is that all the complaints that have been received have been from members of the public, so not complaints by legal practitioners and not complaints received from the Attorney-General, but if I am wrong in that, if in a previous year there has been, then I will come back and correct the record on that.

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

**MR BRADDOCK:** Coming to your report on the FOI Act operations, on page 5 it talks about decisions not to publish the open access information, stating that in the past year the ACT government has made 278 decisions not to publish open access information, compared with 83 decisions in the previous year. Can you please explain to this simple MLA the next paragraph, as to why you view that as a positive indication of culture?

**Mr Anderson:** The point we are trying to make there is that it does not simply say that an increased number of decisions not to publish is automatically a bad thing. It does not automatically mean that the government is taking a position or the directorates are taking a position to resist publication. What we are trying to say there is that what we see is that the number of applications is going up. That is on page 4, which notes that 2,143 decisions to publish were made, which is an increase on the 1,688 decisions made in 2021.

There is, generally, an increased volume of applications and an increased volume of decisions to publish at the same time that there is an increased volume of decisions not to publish open access information. We just think that that means that directorates are taking this very seriously and that they are turning their minds to publishing information and more, whereas the lower number could just be suggestive that they



are not even thinking about publishing open access information. It is not a conclusion either way. We are just saying that we are cautioning against reading into it the conclusion that it must be a bad thing.

**MR BRADDOCK:** If it is not a conclusion either way, how are we going to get to the bottom of whether the right thing is happening here and we are being open with the open access information or not?

**Mr Anderson:** We are going to keep monitoring this. It is an ongoing process. We are interested in it, but what we are seeing generally is that directorates are taking the open access process pretty seriously. We will keep monitoring that, and if we do form a view that there is something problematic in any individual directorate's handling then we will raise that with that directorate. If we think there is a systemic problem, then we will raise that, either in the annual report or otherwise.

**MR BRADDOCK:** Thank you.

**THE CHAIR:** I have a question on performance indicators against service standards. I note that on page 17 you have your performance against service standard targets of matters being completed within certain periods of time. I notice there is not a record of those that are completed within 90 days. You have targets of seven days, 40 days, 90 days and 12 months, but there is no record of the delivery and finalisation within 90 days. Could you provide that figure, or is there a reason why that is not there?

**Mr Anderson:** I am not sure why we have not published that figure. I will see if my colleague can answer that.

**Mr Fintan:** No. I will take that on notice.

**THE CHAIR:** Yes, and you will be able to provide that figure no doubt.

**Mr Fintan:** We will be able to provide that, yes.

**THE CHAIR:** Thank you. I note that in 2021 the previous Ombudsman achieved a finalisation rate of complaints of 98 per cent. This year it is about 81 per cent. Is there any particular reason that there is that significant difference?

**Mr Anderson:** The main reason for the finalisation process has been, as much as anything, COVID, in that we had less capacity to deal with complaints when we had lockdowns, and we had staff turnover. We made a few changes, as well, with COVID. We changed our telephone hours and we no longer received people walking in to present complaints directly. So it was a range of things, basically, but I am very keen that we improve and meet our service standards.

We have put on some additional staff, to surge our staff in the complaints handling so that we remove the backlog, get that all down. We are looking at some internal structural matters: are we doing everything we can to resolve complaints at first touch, where possible? It can be the case that when we first receive a complaint, if we do not engage with that fully then and there, we come back after a period of time and see that, actually, that complainant really needed to go back to the directorate that they were

complaining about in the first instance, because we do say that complainants should, first of all, engage with the agency that they are concerned about.

That agency has the ability to review whatever happened and potentially change its decision. We cannot change the decisions; we can make a recommendation, if we agree with the complainant and we think they should go back to the agency. If we have taken 12 weeks or something to get back to the complainant and say, “You need to go to the agency,” they are not going to be very happy. Also, that is 12 weeks. When we first receive the complaint, we should be saying at that point, “Have you been back to the agency?” trying to resolve that at first touch. So we are making some structural changes to bolster our initial triaging and resolve as many complaints as quickly as we can.

**THE CHAIR:** I notice that on page 16 there is a table summarising the number of complaints received over the last three financial years. I note that this year there are 110 fewer complaints than received in 2021, almost a 15 per cent decrease. Is there any explanation you can offer for that?

**Mr Anderson:** Possibly that is COVID as well. Perhaps surprisingly, there were a relatively small number of complaints about COVID itself. The general public seemed to be reasonably happy with how governments were doing things, how governments were responding to COVID, and I think understanding that it was a particularly challenging experience for government. As much as anything, regarding the other sorts of complaints that you would normally get, people seem to be less focused on making those kinds of complaints. I think it will pick up again.

**DR PATERSON:** I know we talked about this only a few weeks ago, during estimates, but I want to turn to the Reportable Conduct Scheme. I am interested in your annual report, where you say that 47 notifications were reported to ACT Policing and you note increased complexity in matters received during this reporting period. I am interested to know, broadly, the level of complexity. If we are increasingly experiencing more complex situations, have we got all the mechanisms in place to ensure that these things are reported, that people are aware of more complex situations and that there is compliance with the reporting period?

**Mr Anderson:** I will start off with that last part and then see if my colleague wants to expand on some of the other aspects of the question. It is very positive that we are seeing now an uptick in compliance with the time frames for making reports. That is really reassuring. We have been working up some online training materials, and we are hopeful that once we have got those fully functional we will be going out and engaging with entities and saying, “Are you doing the training? Are you finding that helpful to explain to you your own obligations and how to properly discharge them?” So that is a positive note in recent times. David, would you like to say anything more to that?

**Mr Fintan:** I think it is an issue that we will continue to monitor this year and address through our outreach activities, including the training and the practitioner forums we run with agencies. I would not say that we have any particular concerns that the complexity is causing problems that directorates are not equipped to deal with, but it is something that we want to focus on and continue to look at.

**DR PATERSON:** Have there been any changes in the number of complaints in terms of, for example, residential care organisations? There are 12 complaints; has that been fairly steady over the last few years or have there been any alarming changes in where the complaints are coming from?

**Mr Fintan:** Generally, in this financial year we are starting to see a reasonably slow but steady increase in the number of reports. I would have to take on notice whether there are particular areas where there are more increases rather than less, but generally speaking we are seeing a return to, I would say, pre-COVID levels of reporting. There was a decline not dissimilar to the decline in FOI during that period.

**DR PATERSON:** Thank you very much.

**MR BRADDOCK:** Coming to freedom of information processing times, I note that 26 per cent of applications were processed where the applicant had provided their agreement to an extension request. Is it an onerous request in order for an agency to obtain that agreement from the applicant?

**Mr Anderson:** I do not believe so.

**Mr Fintan:** I apologise. I was taking a note. Could you repeat the question?

**MR BRADDOCK:** With FOI processing times, 26 per cent of cases were processed in the time frame where the applicant had provided their agreement to an extension request. I am trying to get to the bottom of how onerous that process is. Is that just a simple email back and forth?

**Mr Fintan:** More or less, yes. It is just a simple request: “Are you comfortable with this?” and then we get a response and pass that on to the relevant respondent.

**MR BRADDOCK:** And is there a defined period of time? Is that an additional 15 working days, where the applicant provides their agreement?

**Mr Fintan:** Can I get back to you on that? Let me just double-check. I do not want to give you the wrong information.

**MR BRADDOCK:** That is fine. Thank you very much. So you are saying that 96 per cent of decisions are made within that initial period of the 20 days and 26 per cent within the additional periods, where that is available. How onerous is the process where they need to apply to the Ombudsman for a time extension, either from the agency or the applicant?

**Mr Anderson:** Again, I do not believe that it is particularly onerous.

**Mr Fintan:** No, I do not think so, and we get few.

**MR BRADDOCK:** I am interested in the amendments in the Freedom of Information Amendment Bill, which is looking to extend the time frame from 20 days to 30 days. It appears that 96 per cent of applications are being processed within the agreed time

frame, or within the 20 days. If the process is not that onerous, I am just trying to understand, from the Ombudsman's perspective: are you seeing a problem here where it is too onerous for agencies or other entities to actually process these applications in the time frames required under the legislation?

**Mr Anderson:** The comment I would make there, Mr Braddock, is that some of the FOI applications are very complex. Often in FOI it is a process of negotiation with the applicant to say, "Are you actually after this or are you after this?" Sometimes when people are seeking access to government documents, they do not necessarily know what documents the directorate has. So there can be that process of trying to quickly narrow it down, to say, "You are asking for a range of things, some of which may not exist or may be not held by government, but if we have to go through the whole process of searching for all those things then that will take a long time."

My understanding is that, initially, that time frame is partly spent in that negotiation exercise of saying to the applicant, "Are you really after this, because we can give this to you, or do you want us to treat your request as is?" That can take a varied amount of time, depending on how suspicious the applicant is of this kind of process as well. So there is that complexity, but, ultimately, we do not see that the processes themselves of requesting extensions of time are particularly onerous. You really need to ask the directorates themselves what is the rationale for these amendments in terms of their experiences.

**MR BRADDOCK:** Yes, but, from your perspective, the time frames and the processing times in the act are working well?

**Mr Anderson:** I do think they are challenging, and I do think they will continue to be challenging, even with the extension, because sometimes you are talking about large volumes of documentation. But they are time frames that have been laid down by the Legislative Assembly, so agencies need to comply with them, need to make their best efforts. In the interests of transparency, I should say that we also struggle with FOI Act time frames ourselves.

**MR BRADDOCK:** Thank you.

**THE CHAIR:** On service delivery, I make reference to page 18 of the annual report. You say that the office "implemented several changes to improve our service delivery". What were those changes?

**Mr Anderson:** We took on around 10 additional staff as a surge team to deal with complaints, in terms of prioritising the efforts on inbound complaints. We had previously had a process of training new staff to be complaint handlers and we were training them in how to deal with all aspects of complaints. But what we realised was that they need to be able to deal with the complaints when they first come in, and that does not require as much training. So we tailored our training, which actually made it easier to deliver and we could deliver it more quickly to those new staff so that we could support them with training that was appropriate for what their functions were.

That was part of focusing the new surge staff on inbound contacts, as opposed to older and potentially more complex complaints, which would be dealt with by the more

experienced staff. We have an intake team and then we have a complex complaints team as well. There is a process of working out: is this something that can be resolved at first touch or as quickly as possible, or not? Those are the sorts of changes to how we do service delivery.

**THE CHAIR:** Did you get any metric of the improvement that that change resulted in?

**Mr Anderson:** The main metric is: what is our backlog of complaints and how long are we taking to deal with complaints? We have a range of different reports that we get internally that tell us whether we are processing more quickly or less quickly and what that means for the number of complaints we have on hand. We certainly measure, quite extensively, our internal performance.

**THE CHAIR:** Are any of those results, the metrics of those, in the annual report or is that something you are able to provide?

**Mr Anderson:** I am not sure if there is anything in the annual report, but I will take that on notice to see what we can provide.

**THE CHAIR:** Thank you.

**Mr Anderson:** Also, Mr Cain, it is internally focused reporting, so if we do provide it we might need to provide some explanation around what it actually means. In a sense, not all complaints are alike. Some simply do require a lot more handling than others, but with that caveat I will see what we can provide.

**THE CHAIR:** Thank you. Advertising your successes is not a bad idea either. Have you raised any change requests with government that have been met with either acceptance or dismissal or non-response?

**Mr Anderson:** We have made recommendations to directorates and, generally, they are met with acceptance.

**THE CHAIR:** I am thinking of your own administration and service delivery, as opposed to the actual outcome of a complaint.

**Mr Anderson:** No. We did ask for our budget to be fully funded. The ACT government has now fully funded our budget for the office of the ACT Ombudsman.

**THE CHAIR:** Okay.

**DR PATERSON:** My question is in respect to part of the annual report: the overseeing of covert and intrusive powers. There is some detail in this report. These things were not published in the previous annual report, but also it sounds like you have gone on a bit of a journey with ACT Policing in terms of inspections and making recommendations and their response to those recommendations. I was wondering if you could speak to that.

**Mr Anderson:** Certainly. It is absolutely fair to say that it has been a bit of a journey

with ACT Policing. We did a report in 2021 that was quite critical of how they were exercising some powers and their record keeping and things like that. Since we gave that report we have a very positive engagement as a result of that. The AFP itself, the body that provides ACT Policing, has made a number of internal changes. It has set up a new centralised command to manage the exercise of covert and intrusive powers.

Our perception, looking both at ACT Policing but also at the AFP more broadly, is that that has led to a significant improvement in how the AFP is engaging with the exercise of these powers. It has better record keeping, clearer compliance with various legislative requirements and a much more mature approach to compliance as well. I think that, from a policing perspective, these are very useful powers for investigations. But what is really pleasing is seeing an appreciation that, actually, law enforcement agencies have been given these powers by parliament conditionally and those conditions need to be complied with as part of that process.

**DR PATERSON:** How often do you inspect their powers?

**Mr Anderson:** Regularly. We have different timetables, whether we are looking at telecommunications interception or whether we are looking at stored data communications or whether we are looking at metadata. We will typically look at ACT Policing at least once a year for each of those different purposes.

**DR PATERSON:** Are the reports that you write public?

**Mr Anderson:** All the reports go to ACT Policing. Some of them go to the ACT Minister for Police and Emergency Services and some of them go to the commonwealth Attorney-General because some reports are under commonwealth legislation. Those reports go to the commonwealth Attorney-General and either get tabled in the commonwealth parliament or summaries of them get tabled in the commonwealth parliament.

**DR PATERSON:** Just out of interest, why is the child sex offenders register part of that remit? Is that because people on that register have significant surveillance of their everyday activities?

**Mr Anderson:** That is an excellent question. I am not sure if it is because of surveillance or if it is just that putting someone on the child sex offender register is a significant step and it is important that that step is not taken lightly. Similarly, the Legislative Assembly and parliament have laid down conditions for how those things should operate. I believe that we actually oversee it because, in the same way that the Legislative Assembly has said, we want to be sure that this is has been managed in the right way, rather than because it involves those related powers. I will just see if my colleague can expand on that.

**Mr Fintan:** No, I am sorry; there is nothing further I can add on that one.

**Mr Anderson:** As I said, I believe that it is simply because of the significance of being placed on the register. It is important that the register operates well, but it is also important that it does not get taken too lightly in terms of putting people on it when they should not be on it. If that is not the case, if it is the case that it is because of

surveillance and other things applying to child sex offenders, then I will correct the record on that. But, as I said, I am reasonably confident that it is simply because of the significance of the register that there are conditions on how that should operate and a requirement for oversight.

**DR PATERSON:** Do you look at how other jurisdictions manage their registers or do you just look at what the law says and how they are complying with the law?

**Mr Anderson:** We are very much guided by: what has the law actually laid down? And then we are thinking about what good administration looks like with respect to those requirements.

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

**MR BRADDOCK:** In your annual report, on page 26, table 5 has allegation types for matters finalised and the percentage they make up. Is it possible to get information as to whether the allegation was sustained?

**Mr Anderson:** David, is that something you can answer?

**Mr Fintan:** I will take that on notice, Mr Braddock, because I am not sure if that is data we collect currently.

**MR BRADDOCK:** Yes. What I am concerned about is: are there particular types of allegations which may be more likely to be not sustained or have insufficient evidence? And is there a concern in that?

**Mr Fintan:** Understood.

**THE CHAIR:** Going back to your delivery targets, I note that page 17 of the annual report says:

In 2021-22, 38 per cent of complaints finalised about ACT agencies were closed in 7 days with 54 per cent of complaints finalised in 40 days ...

As you can see, that is well short of the actual target for the service standard. You have mentioned COVID, and obviously COVID was something that affected everybody in this kind of administrative environment. Do you think there was something in particular, other than COVID, that contributed to that shortfall?

**Mr Anderson:** I think COVID was central to it. I have mentioned that our ability to receive complaints and process complaints was limited to whether people could physically attend the office or not, because of the particular system we have there. I have mentioned the turnover of staff that we had at the same time as COVID. But, yes, I agree that that performance is well below the standards that we have actually set for ourselves and so I have been having internal discussions, since I took over as Ombudsman, about what we are doing to fix that and to make sure that we do comply with those service standards.

**THE CHAIR:** Is your resourcing footprint big enough to get closer to those targets?

**Mr Anderson:** I think so. I think it is about how we use our resources. I mentioned looking at streamlining some of our processes and empowering staff to a greater extent. At the same time, we do need to make sure that we are dealing with each complaint appropriately. I have spent some time listening to how we are receiving complaints over the phone. We get a mixture of about 50 per cent by email or webforms and about 50 per cent through the phones. I have been listening to how we engage with people.

A number of the complaints that we receive turn out to be out of jurisdiction, for example—people need to go to either a different regulator or the commonwealth government or the New South Wales government, depending on where they are living. But we still engage with all of those people and make sure that they go away having been heard and receiving help. I do not want to give my people instructions that we should get through things so quickly that we are not actually providing help to people. So we are looking at the granular detail of how we are engaging, as well as some systemic questions.

**DR PATERSON:** I am wondering if you can talk a bit about complaints received about the Integrity Commission and a broad scope of what types of complaints they are.

**Mr Anderson:** Half of the complaints that we have received—and these are a very small number of complaints—have gone to decisions by the Integrity Commission not to proceed with an allegation of corruption. When someone has actually girded themselves up to make that allegation, they can be very concerned.

When we have looked at those, a lot of it comes down to how the Integrity Commission have communicated with the complainants: have they sufficiently explained why they do not think that the matter is serious enough or that it appears to be corruption and therefore worthy of proceeding with? That is not unusual. A lot of recommendations and suggestions to agencies, broadly, are about how they communicate. The public service tends to have its own way of talking and thinking, and it is not necessarily the best way of communicating with people outside the public service. The Integrity Commission are a relatively new agency, and we have given them some feedback about how they explain, how they set out their reasons and how they communicate that.

**DR PATERSON:** If someone's complaint, for example, is not considered corruption, if they come to you, might you consider it a complaint that was relevant for your office instead or for another pathway?

**Mr Anderson:** We could.

**DR PATERSON:** Yes. Thank you.

**THE CHAIR:** I will just duck back to page 18. It says about service delivery:

... the Office implemented several changes to improve our service delivery, including contracting a surge team to boost our capacity to handle complaints



and prioritising the efforts of new/surge staff on inbound contacts ...

My understanding of your earlier answer is that you have touched on the second part of one improvement in service delivery. Is the surge team a separate outcome of an improvement or is that all meant to be one, so to speak?

**Mr Anderson:** No, they are separate events. One was expanding our workforce that was dealing with complaints.

**THE CHAIR:** Yes. So what was the service imprint of that extra surge team? Your current footprint is in your annual report anyway.

**Mr Anderson:** We took on an additional 10 complaint-handling staff.

**THE CHAIR:** I think you said that earlier, too; thank you. What levels are those 10 full-time equivalents?

**Mr Anderson:** Typically, they are APS3 or APS4. They are relatively junior.

**THE CHAIR:** Okay.

**Mr Anderson:** We had staff who were dealing with incoming complaints and then also dealing with investigations. We have said to those staff, “No; actually, just focus on receiving the complaints and the first handling of complaints and other people will deal with investigations.” So that is the second point about how we have focused staff.

**THE CHAIR:** And just a minor detail: you said “APS”, which is a commonwealth designation. Did you mean ASO, which is the ACT designation, or do you use the commonwealth designation?

**Mr Anderson:** We use the commonwealth designation.

**THE CHAIR:** I see; yes.

**Mr Anderson:** Because, as a commonwealth agency, we employ people under the Commonwealth Public Service Act.

**THE CHAIR:** Yes. What was the budget for those extra 10 staff?

**Mr Anderson:** I would have to take that on notice.

**THE CHAIR:** Thank you.

**DR PATERSON:** On complaints against ACT Policing, I was wondering if you could outline what, broadly, those complaints look like?

**Mr Anderson:** They have certainly gone down, which is welcome. We received 88 complaints about ACT Policing, which was 15 per cent less than in the 2021 year. Inappropriate action, customer service, allegations of misconduct, matters of policy and procedure—those were, broadly, the sorts of complaints that were raised. Is there

more detail you can provide on that, David?

**Mr Fintan:** No, not with me at the moment.

**DR PATERSON:** Are there any new trends in compliance or ways that ACT Policing are operating that are changing the nature of complaints?

**Mr Anderson:** Not that we have detected.

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

**THE CHAIR:** Just back to the surge team, what are the details of those contracts? Are they permanent staff or were they contracted to just come in for a time?

**Mr Anderson:** They are typically contractors coming in for a period of time.

**THE CHAIR:** Are you able to provide those contracts and the terms of them? I would like to get a bit of a breakdown of that surge team—how long they were engaged for and whether it was one uniform contract provider. I would like a simple summary chart of that team, I guess, and its contract arrangements.

**Mr Anderson:** I will take that question on notice.

**THE CHAIR:** Okay. Thank you. I think we feel that we are all satisfied with the questions you have answered and taken on notice. On behalf of the committee, I would like to thank Mr Anderson and Mr Fintan. There have been questions taken on notice. In closing, I note that one of your objects, on page 7, is:

One measure of a fair and equal society is that people can raise concerns about the actions of government agencies with an independent body such as the Ombudsman that can investigate those concerns.

Thank you for your commitment to that. On behalf of the committee, we wholeheartedly agree that it is a special feature of our system of democracy. Thank you for implementing that.

**Mr Anderson:** Thank you.

**Mr Fintan:** Thank you. Mr Cain, I might just come back to one question we took on notice.

**THE CHAIR:** Okay. Sure.

**Mr Fintan:** My staff have sent me some additional information about the Judicial Council annual report. I understand it is due to be tabled on the 22nd of this month and will be published and available publicly after that.

**DR PATERSON:** The 22nd of this month.

**Mr Fintan:** That is correct.

**DR PATERSON:** Okay. Great. Thank you so much.

**THE CHAIR:** Thank you. The hearing is suspended until 11.30 am.

**Hearing suspended from 11.19 to 11.30 am.**

## Appearances

### Act Integrity Commission

Adams, the Hon Mr Michael KC, Integrity Commissioner

Lind, Ms Judy, Chief Executive Officer

Hickey, Mr Scott, Chief Financial Officer

**THE CHAIR:** In this second session we will hear from the Integrity Commission. I welcome the Hon Michael Adams KC, Ms Judy Lind and Mr Scott Hickey. The proceedings are being recorded and transcribed by Hansard and will be published. They are also being broadcast and webstreamed live. When taking a question on notice, please use the words: "I will take that as a question taken on notice." 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 Adams:** Yes, I do.

**Mr Hickey:** Yes.

**Ms Lind:** Yes.

**THE CHAIR:** Thank you. We are not inviting opening statements, but I do thank the commissioner for providing a written opening statement. We will be providing that either on our website, as part of this inquiry, or via the *Hansard*. We will obviously let you know where that document ends up being placed. I will lead off with the first question. Commissioner, you referred in budget estimates earlier this year to the CIT investigation involving over one million documents. Within the bounds of what you can say, how is this investigation progressing?

**Mr Adams:** The investigation covers six contracts over a three-year period, in the context of organisational change. The procurements for each of those contracts are questionable. We have, however, identified a particular issue related to one of the contracts which is different in kind to the investigation necessary for the other contracts, although the issues relating to those procurements also relate to the contract to which I refer. That issue is in a smaller compass, the determination of which will determine one particular aspect of the investigation. Hence, I am hopeful that I will be able to make an interim report in respect of that matter. There is still very substantial other work to be done, but this sometimes happens in an investigation, and a wide-ranging investigation. As you focus on the issues some particular issues come out that can be, in one or more respects, decisive, and of course you seek to focus on those at an earlier stage, before you move to more general matters. I cannot say anything more than that.

**THE CHAIR:** Obviously, there are a massive number of documents there, and issues that are coming to the surface that perhaps are unique. Are there any powers that you wish you had currently to assist a faster and easier progress of your investigation?

**Mr Adams:** There would have been scope for the use of certain of the

telecommunication interception powers. It is less likely now that they would be useful, considering how far we have proceeded, but they would have been quite helpful earlier in the piece. They would have been helpful in two ways: either cutting off lines of inquiry—“It is not worth wasting resources in that direction”—or opening up lines of inquiry or confirming suspicions otherwise raised on the material. Many investigations present those opportunities. The range of powers under the TI act is wide and I am not thinking that we would exercise them all, but some of them would have been useful, I think.

**THE CHAIR:** On a scale of one to 10, when you are sifting through this early volume of material, how important would have been those telecommunication interception powers, 10 being absolutely important?

**Mr Adams:** One does not know. How can I put it? When one opens a box, one does not know what is in it. One expects communications, naturally, but how informative they are one cannot tell. Potentially decisive and equally potentially how useful—well, I would not say equally; I would think the probabilities would favour useful information—then just becomes completely speculative. But some useful information is likely to have been obtained, I think. I can say no more than that.

**THE CHAIR:** Thank you. When do you expect the interim report to be issued and have you got an estimation of the final report being issued?

**Mr Adams:** I am afraid I cannot give you useful information about that. All I can say is that, if the material we have now is as I expect it will be, which is a level of likelihood, not certainty—of course, further investigation can always change that calculus—it would be significantly in advance of a final report, because the work involved, though significant, is much less substantial than the entire investigation requires. I cannot be, I am afraid, more informative than that.

**THE CHAIR:** Thank you.

**DR PATERSON:** In respect of the reports received by the commission, I note that one of the footnotes says that six were disclosed under the PID Act and there are the mandatory corruption notifications. I am interested to know where the other reports are coming from. Are you able to give a broad overview of who is making reports?

**Mr Adams:** Mostly they come from disaffected employees, actually. “Disaffected” might be unfair. From employees with some actual knowledge of some events which they regard as questionable would be a fairer way of putting it. We do get them from members of the public, but usually members of the public have sources of information which are not usable.

**Ms Lind:** We got 127 of the 159 from those not mandatory reporters, and they ranged from your general citizen who has a neighbourhood complaint through to interpersonal conflicts in the workplace, through to matters that are clearly completely outside our jurisdiction. When we get outside jurisdiction matters we do attempt to point the complainant in the right direction if we can identify an alternative complaint authority that can deal with their matter.

**DR PATERSON:** I think part of your remit is community education around corruption and what is corruption. Do you think we need more community education around this?

**Mr Adams:** The answer is yes. So far, we have been concentrating, as you would have seen from the report, on what I might call institutional education—that is, within the public service. Community education, yes, would be a good thing. The way in which this is usually done elsewhere is where there are particular opportunities—a public conference, for example, dealing with governance, which you would expect the general public to attend. Otherwise, of course, the publication of our reports is a part of public education, but we do not have a program for public education. We are focusing at the moment on institutional.

**Ms Lind:** I think there are two buckets of education there. We need to do more work around educating potential complainants as to what is within our remit and what is not. We are doing some work on improving our information on our website and also, if you are using our email and webforms, to try and point you in the right direction if the nature of your complaint looks like it is completely outside our jurisdiction to start with. Every time we get something that is not within jurisdiction it still costs us time and effort to assess that and write back to the complainant, so the more we can get people into the right channel for their complaint the better. That is one tranche of work.

The other tranche of work is about understanding the nature of corrupt conduct and how you recognise it and, if you are in a situation, as an employee or within this environment, what you would do about it. To the extent that the public reports have corruption prevention findings within them, that is a really important channel for other people in other organisations to say, “Could we be in a similar situation? Have we got all of our controls in place? Is there anything we can learn from this report to embed those corruption prevention findings?”

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

**MR BRADDOCK:** The Inspector of the Integrity Commission’s report makes reference to three recommendations being made to improve the processes of the Integrity Commission. Can you please take me through what those were and how you are progressing on the implementation of those recommendations?

**Ms Lind:** The first one, off the top of my head—and I will have to take the other two on notice; I am sorry—relates to our communication mechanisms back to complainants. There have been correspondence and discussions between the commission and the inspector on that, and that was off the back of a complaint that they received from a complainant who was dissatisfied with the way we had handled their matter. That then triggered conversations about whether our letters back to complainants were sufficient to help the complainant understand why we had made the decision that we made. In that decision we had dismissed it as being not appropriate for us to investigate.

That is an area where we are on a continual improvement pathway, if you like, with all our outbound correspondence, making sure it is in plain English, standing in the

shoes of the complainant, not referencing technical sections of the act without an explanation as to what they are, and making clear why it is that we are not taking their matter on board, because obviously all complainants see their matter as incredibly important. What we are finding is that a lot of them are not triggering the threshold for “serious and systemic”. Rather than saying, “This is not serious and systemic,”—because in the mind of the person it clearly is a serious matter—we are saying, if it is important, “Another organisation might be able to better handle your complaint.” If it is a matter that we can refer to other agencies, we make sure that individuals know about that.

**MR BRADDOCK:** So you are informing them of the other agencies that may be able to take up their particular concern?

**Ms Lind:** Correct.

**Mr Adams:** Can I say that there was a difference of opinion about the extent to which information should be disclosed between me and the inspector. We had an exchange of correspondence about that, because my perspective is naturally not the same as the inspector’s, but I think we have come to an agreement. Each complaint is a different one, so one can only establish general rules.

For example, where we have made inquiries following a complaint and those inquiries show that certain aspects of the complaint are simply unreliable or highly questionable, we would not disclose the fact that we have made those inquiries, so as not to disclose our investigative methods. Also, you never know what are the connections that the complainant has who would know where such an inquiry might be made. So one has to be extremely careful about the extent of the information you provide.

I just give that as one example. We have clarified these areas of difficulty with the inspector. I think we have arrived at a fairly good *modus vivendi*, but that will be clarified as we provide examples of what we are doing and then we get feedback. It is a productive dialogue.

**MR BRADDOCK:** Very good. Can you please take it on notice for the other two recommendations, Ms Lind. I would be interested in those.

**Ms Lind:** Yes, I will take those questions on notice.

**THE CHAIR:** I have a question in relation to an entry on page 17 of your annual report. It refers to maladministration, which I note, on that page, 17, makes up 11.8 per cent of the corruption reports you received in 2021-22. My question is: would you consider the changing of weightings in the middle of a tender assessment to be maladministration, in your reporting—that is, after submissions have closed or after a recommendation has been made to the delegate, like in the Campbell Primary School procurement?

**Mr Adams:** I am not sure that I ought to be in the position of giving an opinion about a matter which is in the Auditor-General’s report. I think that information comes from the Auditor-General. However, I would—

**THE CHAIR:** It is in your annual report.

**Mr Adams:** I do not think it is in those terms.

**THE CHAIR:** I mean the data: the 11.8 per cent.

**Mr Adams:** Right.

**Ms Lind:** Yes. Just to clarify: the information in that table is a self-assessment at the point in time that the allegation is received by staff who are doing the initial assessment of that matter. Those are categories that we have developed within the commission to help categorise the nature of complaints. It is done on face value, on the basis of the information and evidence that we have at that point in time, in terms of: what is that information telling us and how can we best categorise it? It does not mean that at the end of the process those categorisations necessarily hold true.

**Mr Adams:** However, to answer your question in a little more detail, such a change would always call for questions.

**THE CHAIR:** I am not sure if you can answer this question. Did you actually get a corruption report on the change of the weightings in the middle of the tender assessment for this particular project?

**Mr Adams:** I am afraid I cannot answer that question.

**THE CHAIR:** Thank you. Commissioner, you have—

**Mr Adams:** I am sorry; can I just refer back to maladministration?

**THE CHAIR:** Yes.

**Mr Adams:** Maladministration is a term defined for the purposes of a public interest disclosure. It is not used in our act. In terms of corruption complaints, we look at maladministration only if it contains elements of a definition of corruption. Some maladministration might involve a criminal offence; it might involve such a significant shortfall in competence and standards as to require disciplinary or other action. So it is a useful general term. One just has to be careful. We do not look at maladministration itself. It is a general description for problems in administration which might contain corruption elements.

**THE CHAIR:** So what determines whether a corruption report is deemed to be included in that maladministration category?

**Mr Adams:** Simply a significant shortfall in appropriate administration. That would be the trigger for an assessor putting it to a panel for us to consider the whole of the facts, to see whether we would investigate. Often, if it goes no further, if it is only maladministration and not corruption, we would send it to the Head of Service or back to the department or to the Professional Standards Unit. It is still relevant for us in terms of our statistics, but we need to go further than mere maladministration for a



corruption investigation.

**DR PATERSON:** I imagine that it is helpful to have that broad umbrella so that, if things come to you, you can then make the assessment.

**Mr Adams:** Precisely.

**THE CHAIR:** Thank you. Commissioner, you have previously expressed frustration about being under-resourced and having constraints that make it challenging to recruit and conduct investigations. Here is my question. It has several sub-points to it. Do you think this is actually the desired state that the government want you in, because it enables them to refer all matters to you, knowing that you have limited capacity to handle them, and to create situations where you could not possibly comment, as the matter is before the Integrity Commission, which ironically results in them avoiding accountability while pretending to believe in a high standard of accountability?

**Mr Adams:** No. I have not drawn any conclusion about what underlines these facts.

**THE CHAIR:** Thank you. I have a fresh substantive, perhaps less controversial. I note that, in the government's recently announced procurement reform program, one of their short-term actions through to 31 December this year includes: "Investing in our people through the delivery of role-appropriate training for our procurement workforce." Have you observed in your work that, as the government is clearly suggesting here, the ACTPS is not properly trained to deliver probity and integrity in procurement?

**Mr Adams:** I cannot make a general statement, of course. What I can say, though, is that, in the two matters of procurement that we have looked at, in one of them I think that training is a real issue—that is, just the expertise that you need to have to run a complex procurement. Simple procurements for office supplies and things like that are easy, but this is for complex ones.

The other matter I do not think involves training. I think I can say this—and this is clearly enough stated in the Auditor-General's report, so I am not trespassing on my own ground. It shows a lack of clear lines of authority and involvement, which complicates an evaluation team examination of a particular procurement.

It seemed to be accepted, at least in that one, that a lot of people felt they had a duty or responsibility or an interest in providing information of one kind or another to the evaluation team. That is, I think, a fair description of what the Auditor-General discovered. That is undoubtedly a complicating feature which needs to be looked at. There may be legitimate reasons, I might say, for these inputs. But a structure for those inputs so that there is real accountability and transparency of the process is essential.

**THE CHAIR:** So how significant do you think a lack of clear lines of authority is in some of the decisions that are brought before you for investigation?

**Mr Adams:** Difficult. I do not think one can generalise.

**THE CHAIR:** Can you give a generalised example of where you saw this in fact materialise and where it was a substantive element?

**Mr Adams:** I do not think I can at this stage. This is one of the issues which we will certainly be getting evidence about and discussing in our report.

**THE CHAIR:** Just on the training, as an issue, do you have any more detail about that? In particular, what remedies do you think would address those concerns?

**Mr Adams:** I can make this general observation, if it is helpful, in this area. This has, I understand, long been a matter of, in some ways, controversy, which is: the actual role of Procurement ACT. Procurement ACT can always be consulted, and in some cases must be consulted in relation to procurements. But it does not have any control over the procurement. In some ways, one can see why that should be so, because often the agency is seeking specialist assistance, which Procurement ACT, with its general skills, has no particular interest in or capacity to assist with.

However, the utilisation of people who are skilled in these areas—the senior officers of ACT Procurement of course fall into that capacity, appropriately—I do think is worthy of reconsideration. For example, if ACT Procurement makes a recommendation about a particular procurement, one way of ensuring accountability is that the management of the procurement either follows those recommendations or, if it does not, explains clearly why it did not. That at least would force attention to be given to them, instead of a feeling which is, I suspect, unfair in some places because one cannot generalise; there are many perfectly proper procurements that go on unquestionably. But I think what it requires is that particular attention be given to recommendations by people who are experts in this area. It seems to me that is worthwhile.

Otherwise, what people are tempted to do is to say, “We know our business and they do not,” which to some degree will often be true. But when you are looking at methodologies, when you are looking at approaches—how, for example, do you actually do a risk evaluation; and if you do a risk evaluation and you have a particular outcome, what should be its consequence for the procurement?—they are quite technical matters. Those are quite specialist matters, and you would expect ACT Procurement to have useful information as to how you would approach those questions. Then I think you would say to the procuring agency, “Well, if you depart from those recommendations, which you are free to do if you feel you should, explain why.”

**THE CHAIR:** Okay. Thank you. On behalf of the committee, I would like to thank the commissioner, Mr Adams; Ms Lind; and Mr Scott Hickey for their attendance today. I believe there were questions taken on notice. Could you please provide answers to the committee secretary within five working days. The committee’s hearing is now adjourned. On behalf of the committee, I would like to thank the ministers, statutory officers and officials who appeared throughout the day. If members wish to lodge questions on notice, please get them to the committee secretary within five working days of this hearing. Thank you, everyone.

**The committee adjourned at 12 pm.**