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, 9 NOVEMBER 2022

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

By authority of the Legislative Assembly for the Australian Capital Territory

APPEARANCES

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Amended 20 May 2013

The committee met at 8.56 am.

Appearance:

Legal Aid ACT
Boersig, Dr John PSM, Chief Executive Officer

THE CHAIR: Welcome to the public hearing of the justice and community safety committee inquiry into annual and financial reports 2021-22. In the proceedings today we will examine the annual and financial reports of the Legal Aid Commission, Public Trustee and Guardian, Official Visitors Board and Corrections Official Visitor, Solicitor-General for the ACT, the Director of Public Prosecutions, Justice and Community Safety Directorate and the Electoral Commission.

The committee acknowledges the traditional custodians of the land we are meeting on, the Ngunnawal people. We 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 hearing.

Today's 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 will take that as a question taken on notice."

In this first session we will hear from Legal Aid ACT, and we welcome Dr John Boersig. Can I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement? Could you confirm for the record that you understand the privilege implications of the statement?

Dr Boersig: I do.

THE CHAIR: As we are not inviting opening statements, I will commence with questions. Dr Boersig, following the recent media reports that Legal Aid ACT was targeted by a cyber attack, could you please outline the extent of the hack of Legal Aid data and whether any sensitive client data was compromised?

Dr Boersig: I will not be able to do some of that because it is currently under forensic examination. Can I say this to you: we have lost data, a significant amount of data, and it is a matter of deep concern that this private information was stolen.

We prioritise, through our own filing system, people who are at risk or may be at risk of personal safety. These are circumstances where, for example, in a family law matter, a domestic violence matter or an immigration matter, there is information that identifies where the person resides. Our clear activity now is to do two things. One is to make sure that they have appropriate legal advice so that any additional legal protection can be given immediately. The other is to ensure that there is a safety plan, and we are liaising there both internally within our organisation and with DVCS so that assistance can be provided where necessary.

I can give an example. If the risk is such that they need to be moved now, we will facilitate that. If the risk is such that they feel comfortable being at home but there needs to be some security around it, we will facilitate that. Those are the kinds of practical things we will do where the risks warrant them, for their physical safety. We will not hesitate in any way to ensure that that is the case.

The other aspect is that we are speaking directly with AFP in relation to the safety of those people. Where they consent to this, there will be an alert for the police to know that if something happens—I do not think they use the word "prioritise", but it certainly highlights the issue for them.

Those are the three essential drives we have for people's safety. Can I say this about that? That will actually be a very small number of people. We are looking at less than 10 at the moment, and we have been in contact with the majority of those people. We are still trying to track down at least three people. As we go through our files, that list may go up or down, but we are going through every file to make sure that we do not miss anyone, particularly around domestic violence and family safety.

As you know, we act for hundreds and hundreds of people in this situation. Mostly, of course, the address is already known to the perpetrator; that is what it is all about. But we are looking for any orders where the order for privacy was protected. In at least two of the matters since that happened and since we assisted, those people have moved, so there is no way they can be contacted. Their safety is guaranteed. We will still follow up every lead we can within our own database.

The other part of that is the police investigation which I referred to earlier. We are a key party in that. I cannot really say any more than what is on our website and what has been proposed. I confirm that we have been in dialogue with the threat actors, and that continues, which is why I am being exceedingly circumspect in anything I say today. They will know, of course, that the police are involved. They will have assumed that by now, so I do not have any difficulty in saying that. From our point of view, it is crucial, because this is a serious criminal act.

In terms of our data, we immediately shut down our internet once we knew they had got in. Under the advice of ACT government, we engaged a forensic specialist service, who are still in there working with us. That is why, in relation to the first part of your question, Mr Cain, I cannot indicate the extent of the data. We are learning about the bulk of it, but there will be a report and it will clearly state how they got in and what they took, if we can ascertain that.

My layperson's understanding of what they are doing is something like this: they are chasing a shadow. With chasing that shadow, it is like finding a pin-needle of substance inside, to try and identify this. Through the internet, it is very difficult, once they exfiltrate, to then reconstruct that data so that we can actually see what has happened. With respect to what it looks like they have done, for example, if we have an electronic brief from the DPP, the cover sheet has gone from that, but not the rest of the document. That is the kind of thing.

There might be one file note in a file that we can identify that has gone, but not the

whole file. It means it is very difficult to work out the extent of what has gone. I am assuming that everyone's data is vulnerable, so we will take action on that basis until I know otherwise.

The other complicating factor is that it looks like about six per cent of our data stored on our drives was taken. That is the other hard factor because it means there is a lot of data that was not taken. It makes the forensic task even more complex.

That is where it is up to. We need, as an organisation, to be up-front about what has happened, and transparent, and ensure that, where people's lives are disrupted, we do everything we can to minimise that. You will have seen many things in the media about cyber attacks and how prolific they are. We are reviewing our safety protections, and what is in place. I will pause there.

THE CHAIR: Thank you; that was very comprehensive about the state of play. Obviously, you are in contact with these hackers, or is that solely through the police?

Dr Boersig: I am not personally in contact with them. We are going through appropriate channels to make sure there are links which are not within our organisation. I could not say any more than that.

THE CHAIR: You may be moving some people; you may be providing security for them. Is this coming out of your own resources?

Dr Boersig: At the moment, it will. I have looked at my delegation and it does not say that I cannot. We look at the CEFIs and we look at the delegations. I am open with the government about what I think needs to happen, and disclosing what I think needs to happen in particular cases. If it does, I will act to make sure people are safe. If that is what it takes then that is what we will do. I will be responsible to you here, to my audit committee and to government about any of those decisions. They will be open and transparent—private to the individuals but open and transparent, nonetheless.

THE CHAIR: When you say you lost data, do you mean that it is actually gone? It was not copied; it is actually gone from your own—

Dr Boersig: My mistake on that word; no, copied. It does not look like they were able to leave because we were able to block them again—any kind of decryption. We have data intact which we can see in our own files. Normally, of course, they will encrypt the data, but we were able to get in soon enough, after they got in, to stop that happening. Part of the job of the forensic specialists was to shut the gate, and that has been done.

We have now gone through an accelerated changed IT system. We were going to the cloud, anyway, in about three weeks. As part of the new IT process, we are now in the cloud. When I say that, it sounds like an understatement, but I do not want to understate how intensely difficult that has been over the last few days and what an amazing job the people behind us, ACSC and the ACT government, have done to support us to be able to do this so quickly.

THE CHAIR: Is this interfering with your normal work?

Dr Boersig: Yes. That is why I am late on a submission to you in another matter that I mentioned before. Having said that, in terms of the work of the commission, the helplines are up, the people are going to court, people are getting advised and we are doing all of our outreach as normal. In that sense, we are going about our daily business. We have done that, in fact, since Friday, through various workarounds over the weekend. People are going the extra mile here, and we should. Yes, services are normal, particularly our helpline services, so that people can contact us. We have information ready to explain to people what has happened, what their concerns might be—a whole set of questions that they may wish to ask.

DR PATERSON: Was Legal Aid targeted for any particular reason? Is it someone in the ACT community that is wanting the information, for any reason?

Dr Boersig: It looks like an international actor, and it looks consistent with everything from Medibank to Victorian Legal Aid. It is about money, in the end.

DR PATERSON: Has a discussion happened publicly about Legal Aid upgrading its IT systems? What has led to Legal Aid being targeted?

Dr Boersig: From what I understand, these people are opportunists. With the forensic examination that is being done around where they got in, that is the answer that you will need to get, and I will need to get. We have been focusing on closing the door, then moving to the cloud, which provides immediate protection.

There is an independent forensic group who will be telling us exactly how this happened and why it happened. The defences that we have in place are Microsoft Defender. It is a suite of protocols that are in what is called the top quadrant. That is a high level of safety. Our advice was that that would be sufficient. I will not go into all of the ins and outs of it. I can, but my understanding is that it gave us what we understood to be significant protection. That Microsoft product is used by both non-government and government, that Defender product.

DR PATERSON: I imagine that there are some people in our community that are concerned that their data has been stolen. What can those people do, particularly if they feel that there may be a threat?

Dr Boersig: If anyone feels threatened, they should immediately contact our helpline, and that is available on our website. There are information updates on the website, of course. We also have scripts of information. There will be questions and answers, so people can get that information. Yes, I would absolutely understand that. Anyone with Optus or Medibank will be asking the same questions today: what is happening with my data and what might happen to it? The airwaves are full of information about that. But if anyone is concerned about their information that we hold, they should contact us.

DR PATERSON: Will Legal Aid be able to give them a definite answer, yes or no?

Dr Boersig: The answer will be that it is possible, and you should be risk aware and take action. Because we cannot pull apart that brick of data that was copied—I think it

is something like nine gigabytes—because we cannot pull it out to examine what went, I will not actually know, in relation to what actual information went out. For example, the cover sheet went out; that does not matter. That is the kind of issue. We are trying to step back and say, "Who are the most vulnerable in our cohort?" There are some obvious people there, the ones I mentioned—domestic violence, family law matters, and then refugees. The issue there is not necessarily immediate; the issue there is medium term, in terms of what might go back to their home country, what use might be made of it and so forth. There are some very serious questions.

That is where we are going. We need to be open to critique, criticism and other people's point of view, so that we know that no stone is left unturned. If I make a mistake, I want someone to tell me. We need to be absolutely up-front about this, acknowledge what has happened and state that people will need protection.

MR BRADDOCK: Will Legal Aid be reviewing what data it keeps on clients, and for how long will they keep that data as a result of this breach?

Dr Boersig: That is a great question. We are obliged, because of the royal commission into sexual abuse, to keep all of our data. It is somewhat unusual. It is not consistent with territory policy, but we currently store all of the data. A lot of it, in the past, is in hard files off-site. As we move electronically, it is all kept in the cloud. It needs to be available if someone, in 10 years time, needs to know that we are keeping all of that data. We are reviewing that. That is one of the reasons we are moving electronically, because we see thousands of people a year, and that is a lot of paper.

The information we take is necessary, too, so we need that basic information to deliver and do the job, so we will keep doing that. We just need to redouble our efforts, make sure it is safe and assure the community that, when they come and see us, it will be safe.

THE CHAIR: Thank you, Dr Boersig. Unfortunately, we need to wind up. We do have the option of having a call-back on Friday; we can discuss that later. On behalf of the committee, I would like to thank you, Dr Boersig, for your attendance today. Thank you for your very comprehensive and heartfelt actions on this unfortunate cyber breach. If you have taken any questions on notice, could you please provide answers? I do not know that there were any.

Appearances:

Public Trustee and Guardian
Savage, Ms Tracy, Acting Public Trustee and Guardian
Hughes, Mr Callum, Senior Director, Finance Unit

THE CHAIR: In this next session we will hear from the Public Trustee and Guardian, and I welcome Ms Tracy Savage. Please be aware that today's proceedings are being recorded and transcribed by Hansard and will be published, and are also being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses used the words, "I will take that as a question taken on notice." Can I remind you 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?

Ms Savage: Yes, we have read it and understand it.

THE CHAIR: We are not having opening statements, so we will go straight to questions. Ms Savage, as we are all aware, the previous Public Trustee and Guardian Mr Taylor, retired a month or so ago. Are you the new Public Trustee and Guardian or are you in an acting—

Ms Savage: I am the Acting Public Trustee and Guardian at this point.

THE CHAIR: Could you describe the appointment process? Were you previously part of the Public Trustee and Guardian office?

Ms Savage: No, I was not. I was the CEO of the ACT Long Service Leave Authority. The position was advertised for a four-month period for acting arrangements while the permanent recruitment was undertaken. That job has now been permanently advertised.

THE CHAIR: It is advertised at the moment?

Ms Savage: That is right, yes.

THE CHAIR: What is the end date for your time in the role?

Ms Savage: The end of February; I think it is the 28th.

THE CHAIR: Do you mind saying whether you are going to apply for the permanent role? You do not have to.

Ms Savage: I am intending to apply; yes, you may ask that.

THE CHAIR: In the short period that you have been in the role, is there anything that has immediately got your attention that you need to look at, and maybe try and rectify, or bring in something new?

Ms Savage: It is literally the morning of day 8 that I have been at the PTG. I have to say that people have been incredibly welcoming. I have at least had an opportunity to sit down and talk to all of the senior managers for a little while. They have described to me their business units, what they do, some of the complexities and some of the really positive aspects of their work as well.

From my perspective, over the next few weeks it will be about getting a sense of where things are at, at the PTG. Of course, Andrew was there for many years. It is about understanding how his particular style worked and how I can introduce my own particular management style as well.

I certainly see my role in the next few months as being very much a steady hand at the wheel. I want the work to continue without interruption, and give whatever support I can provide to the staff of PTG and clients. I am very willing to do that. Of course, once the permanent recruitment is finalised, there will be a lot more certainty for the PTG moving forward.

DR PATERSON: In the previous session we heard from Legal Aid. They have just had a massive data breach. I am interested to know how secure your IT systems are and whether you are on high alert for any hacks.

Ms Savage: Yes, definitely on high alert. Given the environment that we are currently in, it is not just Legal Aid; there have been some very high profile hacks. As far as I am aware, at this point in time, the PTG's secure framework is robust. There has not been any indication of any unexpected activity. We are definitely on high alert, and that will definitely be one of those areas of renewed focus, not just in PTG but right across government and right across the private sector. It has been a really heavy focus until now, but the reality is that those cybercriminals are getting so smart, and so innovative in how they access information. It has to be top of mind for everyone.

DR PATERSON: The Legal Aid commissioner was saying that the IT system that they had in place was what they thought was a pretty robust system. Are you engaging with any specialists in this field to determine whether you are secure?

Ms Savage: It is something that we will need to turn our mind to. We have not, at this point. I might turn to Callum, if that is all right, in terms of any regular checks that he is aware of that the PTG undertakes.

Mr Hughes: All of our systems are managed by DDTS and maintained that way. Our financial data of clients is in a system that is very well coded. It is very hard to pull down the information from that. It is all stored on the ACT government network.

Ms Savage: In general terms, of course, everybody needs to turn their mind to what they can do to strengthen systems.

THE CHAIR: Is your IT part of the whole of ACT government ICT system or do you have a separate set-up?

Mr Hughes: It is a separate set-up. The way we look at it is that we are kind of a bank for a lot of people, with their financial data. It is more of a banking system that we use,

and it stores all of that information. It is managed by DDTS, but we have an external provider that does the maintenance.

MR BRADDOCK: I have a question about the examination of accounts. I noticed that in the last financial year you dropped to 362 against the planned 600, which I understand was due to the letters issue. When will the automatic letters restart and what do you expect that number to be for 2022-23?

Mr Hughes: We are expecting the letters to start by the end of this month. We did send out an interim letter in April this year. We have had a lot of lodgements come in. We are expecting that number to rise to around the 600 mark again.

THE CHAIR: This might be more for you to reflect on, rather than tell me what you have done about it. I refer to the ACT public service employee survey, in 2021. On page 12, regarding the Public Trustee and Guardian, about 34 per cent of Public Trustee and Guardian staff felt their "current workload is well above capacity, too much work". Around 12 per cent were "very dissatisfied or dissatisfied with work-life balance". Again, I note your newness to the role. Obviously, that does sound a bit concerning, about staff perception of their work, and work-life balance. Is there anything that causes you to reflect, having heard that, or are you actually working with staff to find out what is going on here?

Ms Savage: From my perspective, that is exactly what I want to get into—understanding staff perception, how well they are balancing the changes to our work environment and remembering that we are still going through a considerable amount of change. I would have expected to see a drop in satisfaction from any staff survey over the last few years. That is about people really questioning, "What is it that I want out of life?" I think it has been quite a watershed moment for staff. I would consider that that is actually one of my strengths. I am very strong on staff engagement and staff management, and making work a really rewarding place.

It is also about understanding that we have a lot of complexities with our clients; that can be very challenging at times. Certainly, over the next few months, my intention is to talk to staff, and get to know them. Irrespective of what happens with the permanent recruitment, it would be good to have something to provide to whoever comes into the PTG role that gives my view, my impression, my opinion and some suggestions on where we might be able to improve staff morale. I think that, generally, there was quite a good response with regard to feelings about working for the PTG. I am not sure whether there is anything specific that I have not caught up with, any specific staff actions at this point.

Mr Hughes: No.

Ms Savage: That is definitely an area that I will be getting into.

THE CHAIR: Thank you; that is good to hear.

DR PATERSON: In your response to last year's budget estimates report, there was a recommendation that related to how PTG satisfactorily protects vulnerable Canberrans who are under financial management. It says here, under "action":

> Managers are generally highly compliant. Disallowance or removal of a manager is extremely low …
>
> There is little evidence of financial abuse …

What is the extent of managers being removed? If it is extremely low, that means that there are some who are removed. "Little evidence of financial abuse": again that is not no evidence. It is a complicated one.

Ms Savage: If possible, with your indulgence, I will take that one on notice.

DR PATERSON: Thank you. It is on page 32 of the annual report.

MR BRADDOCK: A question about the complaints made to the Ombudsman about the PTG. I am trying to understand saying the Ombudsman did not refer any of those complaints to you. Is that a case where the Ombudsman found there was no case for the PTG to answer for or what happened?

Ms Savage: That is my understanding after seven days. That is actually something I have spoken to staff about and my understanding is that is the case, but again, I am happy to take that one on notice and just confirm for you.

MR BRADDOCK: I would appreciate that, thank you.

THE CHAIR: Regarding GreaterGood. What were the findings of the audit of GreaterGood against the Public Ancillary Fund Guidelines prepared by the ACT Auditor-General?

Mr Hughes: The Public Ancillary Fund Guidelines were updated in 2022 following from the last update in 2011. The audit outcome for that was satisfactory, we were meeting our expectations under that guideline.

THE CHAIR: I cannot hear, sorry.

Mr Hughes: Sorry, the outcome was that we were meeting the guidelines and we were satisfactory on that.

DR PATERSON: I have asked this before. As an organisation that deals with so much money PTG has several management systems, processes, controls, training and procedures directed at preventing fraud. What are they? Last hearing we talked about the internal leadership, the senior leadership group but with what regularity are these checks or conversations had and what are the actual controls in place?

Ms Savage: So from my initial assessment there is an internal audit committee. It has been established over the last few years, I believe. There are representatives from staff on the audit committee. I attend as an observer in my role as PTG so there is that distinction between the Public Trustee and Guardian and the audit committee. There are senior leadership group meetings held fortnightly where there is a significant number of matters discussed. I have actually just prepared an agenda for a meeting

tomorrow. There are the declarations of any conflicts and there are discussions around complex Trust or Will matters. It looks very robust to me, I have to say, on my initial view at the top level.

There is also separation of duties. Callum's team is managing a lot of the financials that sit low and there is quite a good hierarchy in that particular team. So just on my initial view, it does look strong and that is, again, something I will be looking into in a lot more depth. But I feel quite comforted with what is there and if there are any improvements that I can implement over the next few months, I will certainly do so.

Mr Hughes: Just to add to that, there are further client folders. For all of their items there are regular audits done internally just to ensure everything is being done correctly for that client. This is usually done by a senior manager and that includes guardianship where there are no financial matters.

THE CHAIR: There was a recommendation to ensure journals are reviewed by someone who was independent of the preparer of the journal prior to it being processed in your accounting system. What is the journaling process, noting we have about a minute left?

Mr Hughes: Yes, the journaling process is around our financial statements for the office account which is accrued salaries, depreciation and items like those. A lot of the time previously, with the finance team being quite small, there was one person preparing those. So it was just having that oversight to ensure those figures were being prepared correctly.

THE CHAIR: On behalf of the Committee I would like to thank Ms Savage and Mr Hughes for your attendance today. I think there were questions taken on notice. Could you please provide answers to the committee secretary within five working days of receipt of the uncorrected proof transcript? Thank you for your attendance today.

Short suspension.

Official Visitor Scheme
Dzwonnik, Mr Stefan, Executive Officer
McNeill, Ms Jennifer, Deputy Director General Justice and Official Visitors Board Chair
Pickles, Mr Shannon, Official Visitor for Corrections, Official Visitor Scheme

THE CHAIR: In this next session we will hear from the Official Visitors Board and Corrections Official Visitors, so I welcome Mr Dzwonnik, Ms McNeill and Mr Pickles on Webex. We do not have anyone in personal attendance. Please be aware that the proceedings today are being recorded and transcribed by Hansard and will be published and proceedings are also being broadcast and webstreamed live. When taking a question on notice it would be useful if witnesses used the words, "I will take that as a question taken on notice." Can I remind witnesses of the protection 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?

Ms McNeill: I have read and acknowledge the privilege statement.

Mr Dzwonnik: I have read and acknowledge the privilege statement.

Mr Pickles: I have read and acknowledge the privilege statement.

THE CHAIR: We are not taking opening statements, so I will start with a question. Can the Official Visitor expand on the "major challenges" that have arisen since the women's move back to the women's community centre?

Mr Pickles: In essence some of the main challenges that have occurred were the challenges that caused the reason for the women to move in the first place to the SCC. Predominantly it is that we are a small jurisdiction in a small prison and within the women there is a very wide range of cohorts ranging from remandees through to sentenced prisoners for very serious crimes with high levels of violence through to prisoners with very low level crimes. Finding a way to have all of those different female detainees mix in a way that is safe for everyone has been a very big challenge. Finding a way to make sure all those different cohorts get the same access to activities or programs or support services at the same time has, again, been a challenge, just due to the practical physical built nature of what the WCC is where the women are now housed.

THE CHAIR: Can you talk about the extent of the violence within the WCC and perhaps why that seems to be occurring?

Mr Pickles: It would be difficult for me to quantify the extent. That would probably need to be a question to Corrections in terms of actual statistics but definitely in the early stages there was an effort to have all cohorts try and mix and get along. That did not work so well and there was violence basically in terms of stand-over of the more aggressive female detainees, shall we say, over those that were less aggressive. There were then some changes to have some of those cottages much more locked down and treated as much more secure cottages. They also prevented travel from one side to the

other between the chain link fence there to try and segregate and separate out those different detainees and those prisoners because they found no matter what they tried, there were just certain cohorts of the women that would just not get along.

DR PATERSON: Mr Pickles, I am wondering about the detainees who are in AMC who are receiving alcohol and drug rehabilitation services. Do you think there is anything that needs to be improved in that space? Can those detainees be better supported in their alcohol and drug treatment?

Mr Pickles: That is something I could not answer. Sorry, I am not aware of the levels. I have not personally received complaints or extensive complaints around the lack of drug and alcohol services. I am happy to take that question on notice and seek feedback from some of the other Official Visitors to see whether or not they have had specific complaints raised about the issue but it is not something that I am aware has previously been on our radar.

DR PATERSON: Can you outline in terms of complaints what are the main complaints you are receiving at the moment?

Mr Pickles: Is that broadly across the prison, just to clarify, or in the women's area?

DR PATERSON: Yes.

Mr Pickles: Yes, so across the prison the main areas of complaint are traditionally around Justice Health, around maintenance issues or around buy-up and finance issues.

DR PATERSON: Finally, in respect to Justice Health, is there a specific issue that is coming up you could outline for the committee?

Mr Pickles: There is never usually one specific issue, there are broad categories. Medication broadly is usually a challenge; whether or not they get the medication they want, whether or not they get the medication on time, or at the right time that they would prefer is one category. Timeliness of access to service is definitely one key category; how quickly they are able to see a doctor, how quickly they are able to see a dentist, how quickly they can see an optometrist. The last broad one is probably just around communication; how quickly they get communication back when an issue is raised, how quickly they get communication back from a doctor when they do see someone for a health visit.

MR BRADDOCK: On page 23 of the annual report you talk about the challenges of visitable places registers and I am just wondering is this an area where the law needs to be amended to allow these registers to be accurate, up-to-date and useable?

Ms McNeill: I do not think that the problems that we have around the currency of the visitable places register will be resolved by changes in the law. Some of the difficulties stem from the fact that the properties which are used as disability care homes are quite a dynamic space, there can be a lot of change, so it is just a challenge keeping those up-to-date. Similarly even in the mental health space there can be some fluidity as different wards and beds get used for different purposes. So it is really just a question of actively engaging with the directorate responsible for maintaining those

registers so that they can be kept as useable by the official visitors as possible.

THE CHAIR: In the annual report there is mention that some detainees are having trouble receiving recognition of Aboriginal and Torres Strait Islander status. Can you tell us a bit more about that and why?

Mr Pickles: There was an issue at a particular time where the internal business liaison team was requiring detainees to prove, in essence, they were Indigenous before receiving services. So there was discussion with the Official Visitors with senior management at Corrections and that practice was changed quickly. Basically to the point of saying it is not Corrections place or in their interests to be having to do formal investigations or require proof of Indigenous or Torres Strait Islander people to prove their heritage. They were taken at their word if that is what they stated.

DR PATERSON: In respect to Bimberi, I am interested how many complaints were received from Bimberi in the last annual reporting period?

Ms McNeill: Bimberi is one of the premises that is visited by the Children and Young People's Official Visitors rather than the Correctional Visitors and this is because there is a Correctives Visitor. So if you bear with me for one moment I will see if it is in the report and statistics are to hand.

Mr Pickles: It looks like it does not break it down.

Ms McNeill: No, I think that is right. We just have it by the discipline rather than by the location. I do not think we would be able to break it down by reference to location but I can take on notice that task and see whether the information is available broken down in that way.

DR PATERSON: Okay. Great. I may have actually even found it. I am looking at page 17 of the annual report. What is the homelessness jurisdiction?

Ms McNeill: The homelessness jurisdiction looks after things like women's refuges, those sorts of places where people who are experiencing real accommodation challenges, those sorts of services.

MR BRADDOCK: On page 33 you go through common systemic issues which feel very familiar to this committee. My question is what actions can the ACT government undertake to actually make sure these systemic issues are addressed, particularly the transition planning and also the needs of clients across different parts of government? That seems to be a consistent theme of a lot of hearings and reports. What would the Official Visitors like to actually see happen in that space?

Ms McNeill: I can endeavour to give you an answer to that even though this is a section which reflects the Sectional Visitors as opposed to the board but I think it is a focus on trying to join up and communicate. We do not want people, particularly vulnerable people of the kind typically that benefit from the Official Visitor services, we do not want them falling between the cracks, so it is mostly about staying joined up and communicating effectively. Shannon, is there anything that you would draw out particularly?

Mr Pickles: I think as the member stated, it is probably not something you would be surprised by but it is always at a period or point where a vulnerable person has to cross directorates that is the tricky part. Obviously we have gone through different stages with the Hawke review and trying to be a one government agency, which would be lovely, but whether or not there was capacity to look at the concept of transition staff that had the purview to manage transition across directorates. I think what you usually find is you have a staff member who has a specific focus, which is they are the exit planning person for Corrections, if that makes sense, the exit person planning for mental health. Whether or not you looked at the concept of instead having someone who was the transition staff member from Corrections to mental health, for example, or the transition officer from Corrections to Housing, as opposed to seeing that as a discrete staff member in one directorate or another. It may change that view.

Ms McNeill: I would observe there are some programs which are intended to support people as they are leaving the service. I have some familiarity with some of these services as people are exiting the AMC, for example. There is a commitment to case manage and join them up with services but we can always get better at doing these things and as Shannon says, people are particularly vulnerable when they are moving at transition points. That is the nature of all systems. Transition points are risky.

THE CHAIR: What scope is there to provide the shadow minister a copy of the Official Visitor quarterly report at the time that it is sent to the minister?

Ms McNeill: It is not something which is contemplated in the Official Visitor Act, which contains the provisions around where the detailed reports go and where the summary reports go. So it is not something that is contemplated in the legislation. Obviously, there is a clear opportunity in forums such as this for there to be appropriate accountability to the shadow minister.

THE CHAIR: If the shadow minister requested a copy of the report, would they be able to receive it?

Ms McNeill: I think that would be a matter for the minister.

THE CHAIR: Your report mentions broken communal computers. I just want to confirm are these the same as the prison personal computers or are these a separate lot of computers?

Mr Pickles: It is something particularly dear to me and I have been going on around this. It is the prison PC system where a variety of detainees, depending on availability and their eligibility, can have a prison PC in their room. Those computers are broken quite often but are also quite a hot commodity. One of the big actions we worked with, I believe it was last year, was to make sure there was at least one of these prison PCs available in the communal space for all detainees to access. We went to the point of making sure the actual PC was bolted even to desks so it could not be taken or moved. The issue is the peripherals keep getting taken. So even though the core computer is bolted to the desk, the mice and the keyboards then go missing. Sometimes the cables go missing, sometimes the internal DVD is removed and the motors are swiped to use

for tattoo guns, all sorts of things. So it is an ongoing issue and unfortunately, replacements are very expensive and take a lot of time to organise. One of the more recent initiatives Corrections have taken, which I think is a good one, is to start specifically tagging and identifying computers so they can then be tracked if and when they go missing or go walkabouts.

THE CHAIR: Just to confirm, when you say you put a prison PC in the communal area, does that mean a prison cell does not have a PC or this is like an extra? Every cell has a PC? Could you confirm that?

Mr Pickles: No. The vast majority of cells do not have a PC. There is no current policy around how many can or cannot. They do it on a priority basis. So those detainees that are classed as enhanced or doing the right thing will get a high priority. Those detainees in cottages where they are more trusted are given high priority. Those detainees engaged in study are given a high priority. With the more recent Incentive and Earned Privileges policy that has just come out they are using it as quite a large carrot. That is those persons who have reached an enhanced status have a much higher likelihood of accessing things like computers, DVD players or Xboxes.

THE CHAIR: Thank you all for your attendance today. If witnesses have taken any questions on notice, could you provide answers to the secretary within five working days.

Hearing suspended from 9.54 am to 10.41 am.

Appearance:

Office of the Solicitor-General for the Australian Capital Territory
Garrisson Mr Peter AM SC, Solicitor-General for the Australian Capital Territory

THE CHAIR: Welcome back to the public hearing into annual and financial reports for 2021-22 by the Standing Committee on Justice and Community Safety. In this session we will be speaking with the Solicitor-General, the Director of Public Prosecutions and the Electoral Commissioner.

The proceedings are being recorded and transcribed, and they will be published. The proceedings 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." Can I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement? Could you confirm, Mr Garrisson, for the record that you understand the privilege implications of the statement?

Mr Garrisson: Yes, I do.

THE CHAIR: As we are not taking opening statements, we will proceed to questions. Mr Garrisson, as at 2021, the ACT Government Solicitor had some negative survey results in the ACT public service employee survey. On page 12 it highlights that around 41 per cent of ACT Government Solicitor staff felt their "current workload is well above capacity, too much work" and around 25 per cent were "very dissatisfied or dissatisfied with work-life balance". Could you say what you are doing to address these concerns?

Mr Garrisson: I do not have that survey report in front of me. We have conducted surveys, through a different provider, over a period of about a dozen years. That survey produced quite different results. Of course, the result of the survey depends very much on the questions that are asked and how the data is analysed.

Noting the observations that were made in that survey, and relating it to the results for other agencies, there is a disconnect. I have to be quite blunt and say that the disconnect is that those results do not actually appear to match the reality of how the office is functioning at the moment. Bearing in mind that we have had almost three years of the COVID emergency, which has caused immense stress and pressure on people, we believe that our office is at a very satisfactory place in terms of staff morale.

We are just in the process of completing recruitment processes, and we have external applicants who come to us because they have heard that it is a great place to work. A very large number of our existing staff have applied for positions within the office, either at their existing level or promotion. The consistent feedback that we get through those interview processes is that they really enjoy the environment in which they are working.

We are very focused on staff welfare. We have a consistent approach to the way we

have addressed the issues associated with COVID and the return to work. I cannot stress enough how very difficult that has been. One of the key learnings for us was that, when COVID hit, we obviously started the working from home arrangements. That kicked in relatively seamlessly. Like everyone, we were playing catch-up in relation to systems, processes and how you would manage it. We spent a lot of time and energy on devising systems for monitoring the work, managing the work and managing the workflow for the lawyers.

The key thing that emerged after about two years, or certainly 18 months, was that the continued working from home had a deleterious effect on many of the staff in terms of the social isolation, and the lack of spontaneous interactions with other lawyers in the office. We paid very close attention to the individual circumstances of each member of staff. For example, we had some lawyers who settled in and worked from home really nicely; they could have a nice set-up. For others, working in a small one-bedroom apartment, it drove them nuts, to put it bluntly. They got exemptions to work in the office. When the ACT had a complete shutdown, again, I am very proud of my staff because that got implemented without a blink.

THE CHAIR: I am concerned about time constraints and other questions that might be asked. Thank you for that overview. Given that you were, perhaps, surprised by the results of the ACT public service employee survey 2021, would you be engaging with the survey creators and publishers? It seems, clearly, that your office has a different satisfaction rate to what is reported here.

Mr Garrisson: I am trying to recall now; I know we provided feedback through the HR area to say, "Hang on, this doesn't seem to work."

THE CHAIR: Is there some feedback you could provide back to the committee, on reflection, when you perhaps have had time to look at that survey?

Mr Garrisson: I am actually going on leave on Friday for five weeks. It is certainly something we had regard to.

THE CHAIR: You are welcome to give us your view of your staff satisfaction.

Mr Garrisson: Yes.

DR PATERSON: Mr Garrisson, my question is in respect of the current High Court appeal regarding the COVID-19 emergency laws.

Mr Garrisson: Yes.

DR PATERSON: Can you outline for the committee what the constitutional issue is there?

Mr Garrisson: I am happy to, Dr Paterson. It has now distilled down to two constitutional issues, after the hearing in the Court of Appeal, where the attorney was successful in resisting the challenge to the laws. The first limb of the challenge is what lawyers term the Kable argument; that is, the law gave to the court a power that was impermissible because it was not consistent with the exercise of judicial power.

I will not proceed to recite my submissions, which incidentally are on the High Court website. We say that is simply an untenable argument because the discretion that was exercised by the court was simply a case management discretion, and it was surrounded with a range of protections for people to present submissions and for there to be a considered argument. Without wishing to recite my arguments, we are relatively confident about that.

The second argument is a more complex one, and it goes to the nature of the territory as an entity. The commonwealth Constitution has a provision in it, section 80, which requires a right to trial by jury in relation to trials on indictment for offences under commonwealth laws.

The argument is that the offences with which Mr Vunilagi was charged are offences under a commonwealth law. One might scratch one's head and say, "How does the ACT Crimes Act become a law of the commonwealth?" And therein lies the argument. It is complex. For example, one of the authorities goes back to 1915, the case of Bernasconi, which involved laws in Papua New Guinea, or the New Guinea Protectorate, as it was then; it was a territory of Australia at that point.

There are a series of other cases of far more recent vintage, which have opined that the territory exercises its own legislative power. It is not an agent of the commonwealth; it is quite separate and independent. That is the essence of the argument. The case will come on for hearing in either February or March, we believe. The commonwealth has intervened in support of the territory, as has, of course, the Northern Territory.

DR PATERSON: The article this week in the *Canberra Times* used a quote from you, saying there would be extensive consequences for the administration of justice in the ACT if the appeal was upheld.

Mr Garrisson: Yes.

DR PATERSON: For a layperson, it is very concerning, particularly for victim survivors of sexual assault. I note in the DPP's annual report that judge-alone trials were still being conducted for sexual offences in the last annual reporting period.

Mr Garrisson: Yes.

DR PATERSON: Have they ended now? Is there a call to end judge-alone trials while this verdict is unknown?

Mr Garrisson: The particular provision was repealed. One of the provisions that was introduced as a result of COVID was a provision that enabled the court to order that a matter that otherwise would have to be heard before a jury under our own laws could be heard by a judge alone. But that involved an application, it involved submissions, and they proceeded in that way. Frankly, there were not that many where this provision was used.

It depended entirely on the case. If you had a case where there was one defendant and

four or five witnesses, that would be fine. If you had a case like Vunilagi, where you had three defendants, eight barristers appearing and dozens of witnesses, you could not conduct it in a COVID-safe environment because your jury, for example, would have to be in a separate room, they would have to be physically separate and the logistics of it, for a trial of a couple of weeks, just could not work. That is why the provision was introduced. There are a handful of serious offences where you are required to have a jury trial under ACT laws, and parties can elect to have it before a judge alone if they want to, except for some of these more serious offences.

The issues that are reported in the *Canberra Times* relate to the constitutional consequences of deciding that ACT laws were commonwealth laws because that, as a consequence, might introduce other constitutional restrictions on what the territory can do, legislatively. For example, the fact that we are very much like a state means that you can appoint acting judges. The commonwealth cannot appoint an acting judge because of the nature of their judicial power. You cannot give certain powers to a tribunal, which the territory has done, and which other jurisdictions have done. There are consequences of that nature. That is the answer, if I can stop there.

MR BRADDOCK: I have questions about the role and duties of the Government Solicitor when it comes to a question of the separation of powers. Should the ACT executive overreach or potentially impinge on the powers of the judiciary or the legislature, what is the role of the ACT Government Solicitor in such a scenario?

Mr Garrisson: We give legal advice to government about what they propose. We will receive requests for advice about certain proposals, and we will give advice in relation to that, to inform decisions that are made by government.

MR BRADDOCK: Does that include advice about whether it is an infringement on separation of powers?

Mr Garrisson: The separation of powers does not actually strictly apply in the ACT. It is a commonwealth concept and it is blurred in the ACT. What is clear, of course, is that there is a separation between the courts, the legislature and the executive, but it is not, if you will, a strict separation of powers. It is also surrounded by a range of conventions about what one does and does not do—for example, the roles and functions of the Assembly, what it can do, and how that compares with certain powers that are given to the executive, and the interaction of the two. For example, although the executive is accountable to the Assembly for its actions, there are some things that the Assembly really has to leave alone because they are core powers of the executive, and only for the executive—particularly issues around a financial initiative and things like that.

THE CHAIR: Thank you so much, Mr Garrisson, for your time. I do not think there were any questions taken on notice.

Mr Garrisson: No.

THE CHAIR: We thank you for your time.

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

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

Mr Drumgold: Yes; good morning. My name is Shane Drumgold. I am the Director of Public Prosecutions and I have read and agree to be bound by the privilege statement.

THE CHAIR: Thank you. We will not be taking opening statements so we will just get into questions. Could you explain the role of meeting community expectations in the prosecution's sentencing argument, and perhaps how defence would address that? Also, what role does that play in the judiciary's consideration of sentencing?

Mr Drumgold: "Community expectations" assumes that there is one central view on what is an appropriate sentence or what is not an appropriate sentence. The difficulty is that a community view might be informed by a range of things, including what media that segment of the community listen to and how well-thought-out those views are. So we look at a range of things. If you are talking about sentencing appeals, we look at community expectations being a more complex question than asking a member of the community what their view is. Legitimate community expectations, will be informed by a range of things, including what happens around the country.

So if the question, hypothetically, is when we appeal a sentence or when we do not appeal a sentence, it is not as simple as asking a member of the community whether they agree with that sentence. It is looking at what other courts are doing; it is looking at what has been lost; and the severity of the offending behaviour, and if we feel that there is a chance that it will have fallen below legitimate community expectations, we ask that question of the Court of Appeal.

THE CHAIR: So, what guides you on legitimate community expectations? How do you, as prosecutors, form that view as part of your argument to the court as to sentencing?

Mr Drumgold: Preliminarily, it is what has happened historically in that case and what is happening in similar cases around Australia.

THE CHAIR: So you are saying community expectations is really the precedent set by other court decisions.

Mr Drumgold: Correct.

THE CHAIR: Okay. Obviously, the courts give consideration to precedence, but are not necessarily bound by superior court decisions in other jurisdictions. Is that something you think the ACT legislature should consider?

Mr Drumgold: Not bound, but informed. If I appeal a sentence decision based on not a specific error but an error known as "manifest inadequacy", we will put together a pretty comprehensive table of similar offences and similar circumstances, and what has been considered aggravating and mitigating, and not necessarily the ultimate number but the types of factors that make a particular type of offending worse or not as bad as other, similar offences.

In the language of the High Court, sentencing is a process of "instinctive synthesis", which means it is not a mathematic formula. If we think that the whole court would like an opportunity to look at a sentence and ask whether or not the instinctive synthesis arrived at in that matter is in keeping with the view of the court as a collective, that is when we will appeal and give a full bench a chance to have a look at the sentence.

THE CHAIR: Are community expectations, as you have so described, only part of an appeal argument or is it part of the original sentencing argument?

Mr Drumgold: It will not be a ground of appeal that the community would not approve, because the premise to that is that there is a collective view of the community to approve or disapprove of a sentence when it is actually a much more complicated question.

DR PATERSON: Mr Drumgold, my question is in respect of sexual offence matters. The number of trials and subsequent guilty verdicts is down to four in the last annual reporting period, which is less than the year before. It is very low. I note that the sexual offence matters, particularly appearing before the Magistrates Court, have increased, though. Is that a sign that things are flowing more from police? In their annual report they have proceeded to charge people at a much higher rate over the last annual reporting period. So are those matters now becoming before the Magistrates Court? Can you explain what is going on in that situation?

Mr Drumgold: The problem is that the sample size is so small. If you are referring to table B2, 61, they are trials and sentences in the Supreme Court. So they are the more serious. If you have a look, you will see that there were four guilty verdicts but there were eight trials. When one is dealing with a sample size that small, it is difficult to get a trend picture. For example, it could arise from the vulnerability of a complainant who was not able to give compelling evidence for a range of things. But there are challenges in prosecuting sexual offences. The complainants are particularly vulnerable. It is a very difficult process. It always has been a very difficult process for a sexual complainant to engage with the court.

So the number four: it is what it is. There were only two not guilty verdicts, and two were vacated for various reasons, so the sample size does not paint a problematic picture or an optimistic picture because, as I said, the sample size is just so small.

DR PATERSON: Again, I go to the fact that when you look at the numbers reporting to police there was at least a couple of hundred, and that is where we end up. I understand that there were lots of recommendations through the sexual assault prevention and response report. Are there other things that we could be doing to

support, or is it an evidence issue? What else could we be doing to get more of these reported sexual offences to criminal proceedings?

Mr Drumgold: Beyond a doubt, the ACT is ahead of the bell curve in other jurisdictions on our SARP reforms. You can never make the life of a sexual assault complainant easy—it is always going to be difficult—but the measures that the ACT has, give us a great deal of comfort that we can at least not make things worse. We have pre-recorded evidence. We have EICI police record the evidence, and that is played.

We can, in certain matters, call the complainant to play that evidence and be cross-examined before the trial. We have provisions in the Evidence (Miscellaneous Provisions) Act that enable us to record evidence in the first trial so that, if it is overturned on appeal, we do not have to drag them back. We have a very comprehensive list of victims' rights, through the victims' rights charter. We have the Victims of Crime Commissioner, who has a good team behind them. So, whilst it is not perfect, we are way ahead of the bell curve of other jurisdictions.

DR PATERSON: Okay, thank you.

MR BRADDOCK: WorkSafe ACT have the work health and safety prosecutions review recommendations, which includes the recommendation for them to establish an in-house prosecution team within WorkSafe ACT. Can you please provide your perspective on that recommendation and also the performance of your prosecution team on workplace health and safety law.

Mr Drumgold: The proposal was to siphon-off some smaller, less serious matters and have them conducted by Work Health and Safety Commissioner. The problem with that is that you have to produce a whole prosecution team to do a small number of matters, and we have a team. We have a number of benefits. First of all, we have a dedicated team that is headed by a supervising lawyer at the grade 4 level, who has a great deal of experience in prosecuting these types of offences, and engaging in work safety prosecutions, from industrial manslaughter through to minor offences.

The problem is that if you establish a small prosecution team and take the bottom end of that—the minor breaches—you are assuming that they are not linked to the more serious offences. The reality—if I can use this metaphor—is that it is like getting a small prosecution team to prosecute common assault, separate from assault occasioning actual bodily harm and intentionally inflicting grievous bodily harm. The same things apply; the difference is the consequence. So minor breaches can become serious offences if circumstances allow it, so it is an artificial guide.

We have a dedicated team. They are very good at their job, and I think to set up a smaller, independent prosecution group to deal with minor offences would, first of all, be prohibitively expensive because you would effectively reproduce a team just to do a smaller amount that is already being absorbed in a larger team; but, more importantly, you would not have the accumulated expertise, because they would only be dealing with really minor fringe matters. For example, the prosecutors would not be aware of the consequences of what would happen if something went wrong, because they would not have the experience of prosecuting small breaches that have

gone wrong.

MR BRADDOCK: Thank you.

THE CHAIR: I understand that the DPP uses an average cost per matter of $3,000. And you were quoted as saying that the number of appeals lodged by the prosecution was steady from 2020-21 to 2021-22. But, as you are probably aware, the cost per matter was significantly higher than that KPI target. So how do you actually work out that target figure in the first place?

Mr Drumgold: It is a fairly rudimentary process: the total number of matters that we have divided by our expenses results in an average cost per matter. The problem with averages is that they are not representative of any subgroup within there. For example, a number of things have changed. As this jurisdiction becomes bigger and more complicated, one can expect an office such as mine to have more matters in the High Court. A High Court matter is much more expensive, obviously, than a Magistrates Court matter, so that will drag the average up.

There has been just a general increase in the complexity of matters that we are running. That drags the average up to be more expensive. We have had more murders; we have had more matters in the High Court; we have had more homicides; and we are engaging with more complex legislation. It is effective legislation, but more complex to apply. All of those things—the more expensive matters at the top end—will drag the average up.

THE CHAIR: Okay, thank you. So will you be planning to revise your $3,000 target?

Mr Drumgold: Yes, we are constantly revising. We are constantly reviewing. The problem is that an individual event might not be indicative of a shift in trend. We observe these things over a number of years to see how it is changing and then we adjust our targets accordingly.

THE CHAIR: And you will be requesting a restructured budget as a result of that?

Mr Drumgold: We are always looking at that. Over the last few years we have managed to use technology to generate productivity gains that have given me the opportunity of turning that money and restructuring. Data entry is significantly down because we have been able to use technology to automatically import data from the courts and automatically import data from the AFP PROMIS system, and the reverse.

Those former data-entry positions have been churned into lower-level lawyer positions, who now run our lists. That has freed up our grade 1/2s to do more serious matters. We have benefitted from the use of technology to acquire productivity gains, but they will ultimately be exhausted, I think.

DR PATERSON: In the annual report, one of the family violence cases referred to, I think, is R v Yeaman. You have a note in the annual report highlighting your significant concern over the legislative interpretation in this matter. Can you speak to the committee about what your concerns are and what the issues are with that?

Mr Drumgold: It has been addressed; it has been addressed through law reform. The problem was that section 28 has what has previously been interpreted as a single test, and that is that you suffer a mental impairment that has the effect of one of these things—you do not know the nature and quality of your conduct, or you did not know your conduct was wrong.

There is a burden on the defence to say, "I have committed the physical act, but my mental impairment has the effect that I do not know…" So, they needed to rebut a presumption as to the mental impairment not as to the effect. In that case, the former Chief Justice said, "The presumption was probably intended to cover both the mental impairment and the effect, but it is unclear, so I am going to interpret it in a way most favourable to the defendant." We immediately sought law reform in that area and that law reform came through relatively rapidly. So it is now expressed that the presumption applies to both the mental impairment and the effect of the mental impairment.

Sorry, that is very complicated. I was trying to break it into parts, but that is the effect. We sought law reform following that case and that law reform has been completed.

DR PATERSON: Great; thank you.

MR BRADDOCK: I have a question about the witness assistance surplus, and I am just interested in terms of the overlap or connection points between the police victim liaison officers—I think that is what they are called—and the Victims of Crime Commissioner and the Human Rights Commission. How does this all work together?

Mr Drumgold: Consultatively. We have a very good dialogue with the three arms. In general, what will happen is that when pre-charging, the AFP victim liaison officers we will deal with the victims, because the matter has not actually entered into our office. Let's say it results in a charge. It will come into our office. Sometimes the AFP victim liaison officer will have established a really good rapport with the victim. We will not jump in and interrupt that; we will just allow them to manage it.

But if issues come up, or there is no particular reason why we would not take it over through the trial process, in those circumstances, my WAS area—my Witness Assistance Service—will take it over. Then, post charge, generally speaking the Victims of Crime Commission will take care of it. Sometimes there are particularly sensitive matters, where we know that it is going to be a whole-of-life matter. The victims will approach Victim Support ACT early, and then they will manage. But essentially, there are options for various stages of trial, and we just have a very close consultative model to make sure that we are not breaking the chain of contact and that the witnesses and the victims are otherwise serviced.

MR BRADDOCK: Is it very clearly identified who the lead agency is that is providing that service at any point in time?

Mr Drumgold: No, and—

MR BRADDOCK: Or agreed, I should say, between the three agencies.

Mr Drumgold: No, it is not. I would not support such a model because such a model would bind what might otherwise be a really productive, organic engagement. Likewise, if there is a victim or a witness involved in a trial, they might establish a really good rapport with one of my witness assistance officer, and we do not want to have a strict rule that we need to break that rapport simply because the matter moves to another stage in the criminal justice process. What drives us is not the stage of the proceeding but how we best service the needs of the witness or victim. That is the overarching consideration.

MR BRADDOCK: Thank you.

DR PATERSON: Do the summonses for witnesses come from your office? Who does the summons come from?

Mr Drumgold: In the Supreme Court it does. In the Supreme Court we will issue subpoenas for witnesses to attend. In the Magistrates Court they are generally generated by the AFP on advice from the DPP. My junior prosecutors, or my summary prosecutors, will advise the police what witnesses we require and they will then generate and serve the summonses for them to attend court.

DR PATERSON: Is there any thought process on the impact of those summonses on victims who may be witnesses, in that it could be quite confronting?

Mr Drumgold: It can be quiet confronting. Yes, consideration is given because at that stage they have generally engaged with one of the services. They have generally engaged with the Victim Liaison Officer through the AFP, who will assist that. These are not one-offs; these are processes that have been happening for years. So we have accumulated lessons from various things that have happened, and we are particularly conscious that you do not coldly serve a summons on a complainant. They know that it is coming, and we have engaged, or the VLO have engaged, with them to say, "This is the process. At some point you will receive a summons. It is just a document asking you to come to court." So it will not just turn up out of the cold, or generally will not just turn up out of the blue.

THE CHAIR: I understand the DPP has set time lines for meeting court orders by the Supreme Court to file and serve documents. Your KPI target for meeting these is 80 per cent.

Mr Drumgold: Yes.

THE CHAIR: At the end of the reporting period of June 2021, you met court orders at 94 per cent at a time and then in 2022 it increased to 95 and a quarter—and congratulations on that. So will you be adjusting that KPI or talking to the court about that to reflect what you seem to be able to actually accomplish?

Mr Drumgold: It is under review. There is quite a clear reason why that occurred. First of all, we had one KPI dealing with the timing of the service of the brief and the service of documents. It wrapped up those two functions in one KPI. We pulled apart those two into two KPIs. So one KPI is how many times we have served the brief on defence within two weeks of receiving it, and the other one is how many times we

have filed and served indictments and case statements within the court order.

When we separated them, we found that one was very high and one was very low, and then we started to conduct some diagnosis on why. I think the one that was particularly low was the serving of indictments. We found out that the court orders did not match what was happening in the court. Now that we have separated them and we are having a look at the numbers, it has been under review for about 12 months now. Ultimately, we know that it needs a change. What that change should be is the question that we are still trying to answer. The short answer to that is: within the next year or two we will request that those targets be changed to a higher target.

THE CHAIR: Thank you. It is unusual to hear from an ACT agency—so well done.

DR PATERSON: I asked the Solicitor-General about the current High Court appeal regarding the judge-alone trials. In the annual report it says that, due to the ongoing pandemic, sexual offence trials continue to be conducted by judge-alone. Were all eight of the trials that were conducted in the last annual reporting period judge-alone?

Mr Drumgold: No. I do not have the precise number. I need to be cautious, conflating the issue with Vunilagi with judge-alone trials. The issue in Vunilagi was a provision of the Supreme Court Act that prevented people from having access to juries. So even if you wanted to have a jury trial, you could not have a jury trial. Sex matters are generally excluded from an election for judge-alone. That piece of legislation has also been addressed. It is no longer in place. It was a second-COVID amendment. Now you cannot elect for judge-alone in a sex matter or in a murder.

We are always looking at the model of having a schedule of offences where you cannot elect for judge-alone, that you have to have a jury, and some that you can. I can foreshadow a need in certain matters for a judge-alone of an excluded offence, but this will be an ongoing conversation about how we deal with that.

The last financial year will capture some circumstances where there has been an election for judge-alone. I do not know of any. My feeling is possibly all eight were jury, but I could take that on notice.

THE CHAIR: Thank you so much for your time. We will have a short break until 11.30 am and then commence with the Electoral Commissioner.

Short suspension.

ACT Electoral Commission
Cantwell, Mr Damian, AM CSC, Electoral Commissioner
Spence, Mr Rohan, Deputy Electoral Commissioner
Hickey, Mr Scott, Chief Finance Officer

THE CHAIR: I would like to acknowledge and welcome the ACT Electoral Commissioner, Mr Cantwell, the Deputy Electoral Commissioner, Mr Spence, and Mr Scott Hickey, the Chief Financial Officer. I remind each of you of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Would you each for the record confirm that you understand the privilege implications of the statement?

Mr Cantwell: I understand and acknowledge the implications of the privilege statement.

Mr Spence: As do I.

Mr Hickey: As do I.

THE CHAIR: Thank you very much. My first question regards overseas voting. Will overseas e-voting be available for the 2024 ACT election?

Mr Cantwell: The decision to deliver overseas voting for eligible ACT electors is yet to be taken. At this point, the involvement we have had with drafting legislation is to the point, I understand, where it is part of a bill yet to be tabled or debated in the Assembly. The outcome from that we are seeking with regard to that specific piece of legislation will allow me to, as the commissioner, as the act permits, the discretion to deliver that overseas voting by that means or otherwise.

We are very conscious, of course, of the risks associated with delivering voting overseas by the means that we successfully delivered it in 2020. The landscape around electoral integrity and assurance of data is changing quickly, as I am sure we would all note and agree. We are continuing our efforts to assure ourselves as the commission of the integrity of that process should we decide to deliver it by those means.

The other factors, of course, at play there are the continuing degradation or the delay in overseas mail services—outside our control, of course—and the risk of ballot papers being able to be delivered and then returned in time to be admitted to count. So there is a risk there.

THE CHAIR: So you are unsure whether overseas e-voting will be available. When will you be making that decision?

Mr Cantwell: As part of our preparations, I expect to have that decision made, along with like decisions around how we are going to deliver the election 12 months ahead of the scheduled date, by October next year.

THE CHAIR: Thank you. A recent report by Dr Thomas Haines has raised concerns

regarding the e-voting ICT infrastructure. It cites that the infrastructure has two single points of failure in its design. Considering how seriously cybersecurity needs to be taken, as we are all aware, will you be reviewing those concerns before 2024?

Mr Cantwell: Yes, absolutely, and we welcome Dr Haines's constructive engagement for the 2020 election in the context of OSEV. We have invited him to continue such engagement and, indeed, to be part of an advisory panel that we are standing up to assist the commission in such deliberations. Perhaps it will be taking into account Dr Haines's advice and others who we have invited as we progress forward in our preparations.

THE CHAIR: You consulted the Australian Cyber Security Centre throughout the development and implementation of your system. Are you able to provide to this committee relevant documentation relating to the audit, advice and sign-off?

Mr Cantwell: I would need to look at the actual advice provided and to ensure that such advice provided by ASD and, in particular, the Australian Cyber Security Centre, is not otherwise confidential or protected in nature.

THE CHAIR: Perhaps you could take that on notice and give us what you think you are able to provide—and, if not, why not?

Mr Cantwell: I will take that on notice, yes.

THE CHAIR: Thank you.

MR BRADDOCK: The redistribution of electoral boundaries was due to commence last month. Can you please provide an update on that?

Mr Cantwell: Yes. We have recommenced the redistribution process with the formal establishment of the Redistribution Committee by the commission, as required by the act. The Redistribution Committee, chaired by me, with a four-person membership, met on 27 October for our initial meeting. The key outcome from that was an overview of the legislation, a time line, the means by which we will engage with community, as required by legislation, and also a key decision about when the initial public consultation process will commence, either before or after Christmas. We have just concluded the minutes for that meeting, and, as per the media statement that was released this morning, committee has decided that that consultation process will occur immediately after the Christmas/New Year period when we expect that most ACT community members will have returned from end-of-year travel or holidays and, therefore, give most of the community, or as best able, the best opportunity to be aware of and then take part in that consultation process.

MR BRADDOCK: Thank you. My apologies; I did not see that statement this morning.

Mr Cantwell: It was released just very recently.

MR PETTERSSON: You have just announced the redistribution. Do you know at this point in time what electorates are potentially over quota and what electorates are

currently under quota?

Mr Cantwell: The committee is informed by information available and provided to us by both the Australian Bureau of Statistics and also the AEC, as a joint role partner. I would not wish to engage or offer commentary around the outcomes of the redistribution to this point—not to withhold information but, rather, to ensure that the process is carried out thoroughly and fully but also to ensure that the community is properly advised and given the opportunity to see what the potential redistribution might look like by means of the online mapping tool, which we will provide again, and allow that process to occur within the legislated time frames.

Having said that, I think we can all see where there is additional growth in suburbs around the ACT, a situation which we have seen before. One observation provided to us in the committee meeting to this point was that the rate of population growth in the ACT, like most places elsewhere in Australia, is less than the same period that occurred in the prior redistribution process. So the rate of population growth is significantly lower, predominantly due to impacts of COVID and reduced population flows around Australia, at least as far as the ACT is concerned. Therefore, that rate of growth is different. But where there has been new construction in place now for a while is probably where we will see some consideration taken about how those boundaries might change. Of course, the end state that we need to achieve, as per the legislation, as best we can, at the point of the election in October 24, is that each electorate has no more than plus or minus five per cent of the quota for that electorate.

The mapping tool is very instructive and informative for the community in this space, and I really applaud my deputy and others who have put it together—as, I said, it was before my time. It is a really easy-to-use tool. I commend it to the community members. It is literally colouring in the electorate areas until it all goes green and see what we come up with. There are only so many permutations available in that context.

MR PETTERSSON: I share your enthusiasm for that mapping tool. It might be a bit early in the process, but what is the time line we are looking at for when that online mapping tool would be available to the community?

Mr Spence: The mapping tool will be made available and go online at the point of the commencement of the first stage of public consultation, which is likely to be early 2023.

MR PETTERSSON: There were recent legislative changes prohibiting gifts from property developers. How is compliance been monitored?

Mr Cantwell: Initial provisioning was made for Elections ACT to monitor compliance by means of funding for a vendor who we contracted to do the analysis and compliance checks and make a report to us, and we publish that online. To this point, there have been no breaches of any compliance to that legislation.

Interestingly, that provisioning or funding was only for that initial two-year period. That is coming to a close. As part of the budget bid process going forward it will include as part of that bid the requirement for that to be provided long term as the legislation, we presume, will be ongoing, and that will be rolled into our resource bid

for 2023-24 going forward.

MR PETTERSSON: You said that there were no breaches. I just want to clarify what that means. Does that mean no political parties or candidates accepted a donation and then, maybe, returned it; or is it a case that no-one has accepted a donation full stop?

Mr Cantwell: The means by which the compliance review was conducted—based upon an analysis and approach agreed between ourselves, the commission and the vendor—as the most appropriate, effective and risk-managed process determined that there were no breaches in the compliance review as conducted.

It is important that that is as thorough as we can make it. But like any compliance program, the legislation itself is quite complex and quite demanding. As you know, it has only recently been introduced, so we are breaking new ground as we have developed this mechanism. Having said that, I am confident that the process that has been in place within the available resources meets that requirement—that is, to provide to the ACT community, and to all stakeholders, an assurance that there has been no breaches, and that has been reported to us by the vendor and is available on our website.

Mr Spence: Can I just add to that: another element of our compliance and enforcement of the prohibited donor legislation is an educational side of that. An element has been to review, as part of our compliance investigations, the actions and processes that each political party has in place to limit the possibility they will be receiving gifts from prohibited donors.

THE CHAIR: In 2020, the Auditor-General released a report on data security that made several recommendations for ACT government entities. The Auditor-General said:

> ACT Government agencies … are not well placed to respond to a data breach or loss of business critical systems.

Did you follow each of the recommendations this report made?

Mr Cantwell: In relation to where the report applies to the commission, the aspect of security of electoral roll data managed through our joint role partner, the AEC, and, in an electoral sense, our electoral materiel—ballot papers, in particular, and the like—and the means by which we conduct elections—the security of all that is very key and fundamental to our processes by design and by execution in our service delivery. In fact, roll data is one subject which I discussed with my fellow commissioners at a very recent meeting of all commissioners in Sydney in the context of the broader cyber breaches, or attacks, upon corporations we have heard about around Australia most recently.

I cannot speak for AEC, but I understand AEC clearly takes the protection of that roll data very seriously, and as a joint role partner we have equal responsibility in this respect under the joint role arrangement. So, there are a range of integrity measures that we routinely take, and AEC takes as well within their own resources and means, to ensure integrity of that data. Clearly, I think it is a theme or a context which is

uppermost in most people's minds and awareness at the moment. Notwithstanding that, it is always very important that we protect that data as best we can.

I will just ask my deputy. Mr Spence: are there any other comments around that matter, or advice?

Mr Spence: Only that an element within the Electoral Act is the provision of roll data to prescribed authorities, which is legislated through regulation. The Electoral Commission itself is very careful with its data protections over the data, but it does hold concerns with those elements of our requirements to provide that very important data source to some of those prescribed authorities. Once we do that, it is incumbent on those authorities to have appropriate protections over the data also.

THE CHAIR: The report found that, at the time, 89 per cent of critical ICT systems did not have a security risk management plan in place. Does Elections ACT have such a plan?

Mr Cantwell: Yes, we do, and we meet—

THE CHAIR: Thank you. Finally, will you be seeking advice for auditing services from the ACSC or an independent cybersecurity service leading up to the 2024 election?

Mr Cantwell: Could you clarify the question for me?

THE CHAIR: Will you be seeking advice or any auditing services from ACSC, or an independent cybersecurity service, leading up to the next ACT election?

Mr Cantwell: The commission will receive support from federal agencies and independent vendors we have engaged for that very purpose.

THE CHAIR: Are you able to say who that independent agency is?

Mr Cantwell: Aspects of the federal agency under the control of the Australian Signals Directorate.

MR BRADDOCK: Under the Electoral Act, political parties are required to have 100 members. Is the Electoral Commission going to undertake a compliance audit of political parties prior to the 2024 election?

Mr Cantwell: Yes.

MR BRADDOCK: Is there a time frame for that activity?

Mr Cantwell: Yes. I will have to check with Mr Spence on a schedule. It is fundamental to the compliance checks before we embark upon the political process or the process for elections. Mr Spence—the timeline?

Mr Spence: In 2023.

MR BRADDOCK: Is there a requirement for how to demonstrate membership of a party?

Mr Cantwell: Yes, there is a requirement. The party secretaries with whom we engage are made aware of that requirement. We will conduct that as we have for previous elections, and we will audit that and make sure that is valid as best we can and make decisions accordingly.

THE CHAIR: Could you confirm: is it the ACT that has the lowest, or one of the lowest, minimum number of members for establishment of a party in all the jurisdictions around Australia?

Mr Cantwell: I do not think that is accurate. If you wish, I can do some research on that across the other jurisdictions and advise you.

THE CHAIR: That would be very helpful, thank you.

MR PETTERSSON: The Australian Electoral Commission definitely took an interventionist approach on social media in the most recent federal election. Is the ACT Electoral Commission considering stepping up its online presence in the lead-up to the 2024 ACT election?

Mr Cantwell: Online presence in terms of social media or other platforms?

MR PETTERSSON: Social media—particularly in combatting misinformation.

Mr Cantwell: It is a theme that we are focused on—being able to proactively counter false narratives, misinformation and disinformation. We are assisted in that regard by leveraging the support of other federal agencies under the Electoral Integrity Assurance Taskforce co-chaired by the deputy commissioner of the Australian Electoral Commission. In that forum we can leverage resources and information from a range of other entities that can bring together capabilities and research beyond our capacities.

Yes, our approach to engagement in the community and media information space is a key part of how we engage and inform eligible voters in the electorate. It is very important that voters are informed and able to make their own decisions about how they want to proceed with their voting preferences not only by way of how to vote but also through the timing—the important dates and close of rolls and those sorts of things.

We actively use social media, and we are endeavouring to improve our capacity in a staff sense, an FTE sense, by way of upcoming budget bids to be able to enact that very requirement. It is where most people communicate, particularly our youth. We understand that, and we want to make sure they are well informed using those sorts of means as well as more traditional means—the pamphlets and other hard-copy documentation which people sometimes prefer.

THE CHAIR: In the budget estimates discussions earlier this year, you mentioned that an electoral integrity assurance panel would be established. You mentioned you

will seek independent advisers and assistants to manage risks or integrity of the systems. Could you describe what this assurance panel will look like, who is going to be on it and when it is due to be finalised?

Mr Cantwell: Yes, certainly. If I could just correct the terminology. We have called it the Electoral Integrity Advisory Panel, and that is important because—

THE CHAIR: Advisory?

Mr Cantwell: Yes. The membership is subject to confirmation of letters or invitations to take part of such a panel that we have sent to a number of academics. The panel is really fairly loose in its structure, suited to the purpose by which we are forming the panel for particular deliberations. My priority in this case is to examine and to provide advice around the integrity of the overseas e-voting system, our earlier discussion or point or question.

We have written to a number of academics overseas and locally and had a positive response so far. We have engaged with a few of those online to explain what we are looking for by way of that. Effectively, it is an independent means by which we can gather additional advice to help the Commission deliberate and decide on aspects of electoral integrity. It is fundamental to assurance of continued public faith in our processes and the electoral outcomes, something which I think is under threat, perhaps more globally than in Australia, but we need to be alert to those threats to democratic processes.

THE CHAIR: Will it be part of the Electoral Integrity Assurance Task Force?

Mr Cantwell: There are two separate entities. The advisory panel is one internal to the Electoral Commission of the ACT. The Electoral Integrity Assurance Task Force is an initiative initially proposed by the Australian Electoral Commission which brings in formally the supporting capacities of a range of federal agencies, as well as the respective electoral management body in each jurisdiction, and which focuses on areas that that particular jurisdiction would wish to deliberate upon. So there are two separate areas, but they run parallel to each other, and the advice and input from one will certainly inform and assist deliberations of the other.

THE CHAIR: You also suggest that you will do the best you can, "within resources available". Do you have the resources you need to ensure that integrity can be effectively managed?

Mr Cantwell: I am preparing for the 2023-24 budget process, which will include bids for additional resources and FTE to improve the capacity of Elections ACT in the delivery of trusted, transparent, secure and accessible elections. So, subject to that budgetary process, which has only just been initiated, noting that the Treasurer has written to Madam Speaker requesting of me and other statutory authorities input and advice around indicative costs for such budget proposals going forward in 2023-24. That is a current process and I cannot comment on its outcomes as yet because it is literally just underway, and we will see how that budget process plays out.

THE CHAIR: Will the ACT have a voter verifiable paper record as part of the

EVACS poll site e-voting system?

Mr Cantwell: It is not planned to conduct that to be as part of elections 24.

THE CHAIR: Was that decision not to do so part of a review? Obviously, there are some calling for it. Did you go through a process of considering this and what was that process?

Mr Cantwell: Well, the Commissioner under the act has the authority and responsibility to deliver the election under the act. Such an activity is not intended to be included in the service delivery plan for elections 24.

THE CHAIR: What assurance can you give ACT residents that there will be not software errors that cause misrecording again for the 2024 election?

Mr Cantwell: So I just want to clarify, and it is probably a question: in what regard were errors recorded?

THE CHAIR: That software that caused misrecording. So there were some errors, my understanding, in 2020 records. It did not make, apparently, a substantive difference to any outcome, but there were some recorded errors in recording.

Mr Cantwell: The report I think you are referring to is one by Associate Professor Teague relating to the way that EVACS, the Electronic Voting Accounting System, measured transfer values within the count for the elections in 2020.

It is important to note, as you have identified, Professor Teague's own assertion that it made no consequence to the election's outcome. We were grateful and thankful for the input and advice demonstrated by Professor Teague and her colleagues in this regard. We looked at that and applied the appropriate amendments to the way that EVACS conducted that aspect, or the software conducted or executed itself in that regard.

As regards what assurance I can give to the community and stakeholders, as well as the Commission, in terms of executing some responsibilities, we have a range of electronic integrity insurance measures in addition to those which have historically been conducted—that is, an independent certification that the EVACS code is performing as is designed and no malicious code operates otherwise in the recording and conduct of votes as cast electronically. We have a range of other measures in place which includes one of which we spoke to earlier on, the Electoral Integrity Advisory Panel, which will also look at EVACS in due course, as well as providing the code publicly so that in time all stakeholders who are interested to look at that source code for EVACS and to do their own analysis of that code as we can provide it and make their own conclusions about the integrity of the code or otherwise.

THE CHAIR: When will that be provided?

Mr Cantwell: So as part of electoral preparations, the intent, effectively, is to be elections ready, as I have described it to my team, by October 2023. Just when the code is available, of course, is subject to a number of factors, one of which is to

ensure that there is no legislative changes which impact the coding behind EVACS between now and then, noting there is some legislative amendment bill, we understand, to be tabled and debated in the assembly yet at your discretion, as well as engagement with our vendor who will, as part of our normal and continuous modernisation program will continue to upgrade and to ensure the integrity of the code, functionality and its security and reliability. So once that process is complete, we will have a better understanding of when we can put the code publicly available as we have in the past.

Is there anything else you want to add to that on assurance?

Mr Spence: I just think it is just to reinforce in response to the question that report was not highlighting errors in the recording of votes.

THE CHAIR: There being no other questions, thank you again for coming and appearing before this committee. This hearing for today is now adjourned.

On behalf of the committee, I thank the Commissioner's office and officials for their attendance.

If there were any questions taken on notice, could they be provided to the committee secretary within five working days of receipt of the uncorrected proof transcript.

If members are due to lodge questions on notice, please get those to the committee within five working days of the hearing.

Thank you, everyone.

The committee adjourned at 11.58 am.