



**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

FRIDAY, 11 NOVEMBER 2022

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

By authority of the Legislative Assembly for the Australian Capital Territory

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

APPEARANCES

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Privilege statement

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Amended 20 May 2013

The committee met at 9.30 am.

Appearance:

Legal Aid ACT

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

THE CHAIR: Good morning and welcome to the public hearings of the annual and financial reports 2021-22 for the Standing Committee on Justice and Community Safety. Today's proceedings will examine financial and annual reports for Legal Aid ACT, the Human Rights Commission and the Justice and Community Safety Directorate.

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

The proceedings are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses said, "I will take that as a question taken on notice."

In this first session we will hear again, as a call-back session, from Legal Aid ACT and we welcome Dr John Boersig, appearing after the first session on Wednesday 9 November. Dr Boersig, I remind you 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: Yes. Good morning; and, yes, I do.

THE CHAIR: As we are not taking opening statements, we will now proceed to questions. I will start off with a question about your accommodation and the status of that accommodation. I understand you were unable to finalise contract terms for the renewal by September of this year. Could you provide a progress update on your accommodation situation?

Dr Boersig: I can, and I would also like to have the opportunity to update you in relation to the cyber incident as well later on.

THE CHAIR: Yes. That will come up in the next question.

Dr Boersig: I would love to tell you right now that we have a signed contract, but we do not have a signed contract. There has been a series of issues around this. As I understand it, the contract is now with Challenger for them to sign that. All indications behind the scenes are that I will have that within the next two weeks. They are a large organisation.

THE CHAIR: Is Challenger the landlord in this case?

Dr Boersig: They are; Challenger are the landlord. Their head office is in Sydney. Colliers is their agents down here. The most recent issue was in relation to insurance. There has been a change in some insurance requirements, and we had to be more specific. You learn something every day, don't you? There is an insurance category called "all other risks". Once you have insured for something, there is another insurance you need to provide which is around all other risks—go figure! Anyway, we have established that we have that now. There were also changes around damage to plate glass and so forth. As I understand, that has been sufficiently satisfied from the owner's point of view. So that is the last—

THE CHAIR: What is your understanding at the moment, legally, in terms of being in the premises?

Dr Boersig: We are tenants at will and we are paying the rent. We have been paying the whole rent, in fact. Again, without going to excruciating detail, the offset and changes to our rent are being taken into account by Challenger for the November-December period.

THE CHAIR: What contributed to this pretty extraordinary delay?

Dr Boersig: The overall time that it has taken to negotiate the lease. As you will know, that was triggered last year when we looked at the greening clause. That is to do with boiler system and the changes that would be required should that boiler system fail—which is gas—and the need, from the government's point of view, to move to electricity. That was the trigger for lengthy discussions from around December last year well through into the current year.

Our lease will be made public and you will see that there is what is called a "break lease" clause in that. That clause now provides that, after five years, if the boiler system is no longer capable of being sustained by gas, Challenger will need to replace it, and then the issue would be, would they replace it with electricity? If they do not replace it with electricity then we are able to give notice earlier. That was the ultimate resolution of that. So that led to quite lengthy discussions and involvement of quite a number of people across the government to try and bring that to a head—and eventually it was.

Then there was a series of usual commercial lease issues around negotiating the terms. We are dealing with an organisation that has commercial leases all over Australia and standard leasing. We have commercial terms here in the ACT linked to government leasing that did not necessarily synchronise with that. So there had to be negotiation about the detail. The issue about the conversion from gas to electricity was a make-or-break issue, and we really could not discuss the other matters until that had been resolved, and that took quite some time.

THE CHAIR: I am assuming this is delaying the refurbishment that you have talked of at other times.

Dr Boersig: Yes. When you look at our financials you will see that we have money,

in cash, ready to go for that. The whole process delays that. The costings around what we can do around the fit-out will now have to be totally reviewed because, as everyone will be aware, costs around materials, labour and accessibility have skyrocketed across the building industry—just getting assistance like that.

We are talking to Colliers about that and about some of the work that needed to be done. For example, we want more accessible doors at our front. If you have been to the front of our office you will know that they are big heavy plate glass doors and are very difficult to open. We want them changed to electric sliding doors that are disability accessible. We have other areas where people with disability can get into the building, but that needs to change, and they have agreed that that is all part of the package to change. So there are some key things like that.

The other is making our accommodation more COVID comfortable for staff. Because of the nature of our work, we need to be in the office and over to court. That is not going to change, but our staff need to feel comfortable at work if they are going to be at work. That is about seating, ventilation, light and so forth. So there is a whole patchwork of stuff which we live and breathe.

But, yes, it has been delayed. It is very unfortunate that it has been delayed, but that is where we are—and, of course, that is where we face this Christmas what is happening in Queensland.

THE CHAIR: Thank you for that.

DR PATERSON: Dr Boersig, can you please update the committee on the cyber incident?

Dr Boersig: Thank you for the opportunity. It is important that we are open and transparent about what is happening, and I have got some things I want to talk to you about on that. As I flagged last time, we have identified a number of people—and these are mostly women—whose private and confidential information was not available to the other side.

At this stage, we have identified nine people in that category. Of those nine people, there were only two that we are unable to contact—and that is for the reasons I have discussed before. So we are working with all those other people, and some have safety plans already in place.

In one case, we are offering to put in a security system for that person, and that person is also working with DVCS. In relation to two people so far in that category, we have confirmed that police will have an alert available and their names will be identified. In one case they were well aware of that situation; so it is just reaffirming what the current situation is.

I think by the end of the day there will be three other people that come within that category. I will show you what we are doing around that risk issue in a moment, and I think you should see it. By COB today, we think we will have been through all the current family law files. There might be some still tomorrow to look at.

By the end of the weekend, we will have got through the first three months of our DV orders. We have a team of people working on the weekend to do that. That is a much more difficult task than the family law, in fact. Although, on the fact of it, the family law more well documented because they are current cases and we can look at the court orders and so forth, discerning this in relation to the duty work we do for the hundreds and hundreds of people we are assisting is more difficult. We have to go through all the duty notes.

There is a phrase that there are the known knowns, the known unknowns and the unknown unknowns. In many ways, the family law will be easier. It will be known knowns. We can identify that because of the ways those cases are documented.

In relation to domestic violence there will be unknowns in there, and we have to work out a way of tracking that down. The best we can do is go through our files and through each duty matter and identify if there is anyone at risk. That, for the last three months, should be done by Sunday. Obviously, we will want to go further back, and that is going to take us some more time while we are trying to allocate tasks while continuing to go to court and getting those protections.

The other area which really draws me into real concern is our refugee work. Whilst that is not something that today might be a problem, if, for example, on the weekend or early next week, there is a release, just as we are seeing in Medibank—that sort of targeted, awful release of personal information. There are people who come to our shores who come from backgrounds where their family will be at risk. That is a key piece of work for us in relation to that.

We have some lessons to learn around what is happening with Medibank. We are intricately involved with ACT government agencies across the board to ensure we put our people in Canberra in the best position we possibly can and provide them the best protections.

I want to give you this risk assessment, and I can send it electronically. This is the best we have done from a standing start. You will see that, when we identify someone who we think is at risk, we then work through that. You will probably be a bit more familiar with that, Mr Cain. Can I just give this to you now?

THE CHAIR: Yes.

Dr Boersig: If you think we have missed something, please tell me—because this is a standing start. The other thing that I think you should probably have is what we are saying behind the scenes. If someone contacts us, there is a script. The one here is from yesterday. It is updated daily. I give much thanks to the comms team at JACS, who are integral to delivering this. So you can see what we are saying to people if they ring. To now, we have only had two people ring up. Those people just said, “Is it business as usual; can I still get some legal assistance?” That may change.

The other thing I want you to know is that we have now engaged IDCARE. This is a not-for-profit organisation that specialises in assisting people in circumstances around their identification. The other aspect of that is we are liaising closely on a recovery team basis. There is a team being set up by the ACT government to do this that

includes people with a range of expertise around service delivery and policy and program work, particularly around cyber security but also Access Canberra, because that may be an issue.

The key issue we are discussing today is the communication to the ACT public. This forum, of course, is crucial for that. So we should be open about that. There are two things that should be happening. Firstly, the public should know as much information as possible. There are a range of legal and safety issues that are behind that—and we are engaging with the government solicitors around those issues and testing them—such as privacy and injury, that we need to be aware of and to consider.

But, most importantly, we need to know how we can provide people with as much information as possible—for example, if they have to change their ID, “Here is how you do it,” and it needs to be quickly accessible.

DR PATERSON: Have the hackers been in contact with Legal Aid or whoever is managing the situation?

Dr Boersig: As you will see from our releases like that, yes, we are in dialogue with them. That has been done, hand in glove, with all the appropriate people. I think there will come a time when we will be able to completely disclose what this means, but I think it is important today—and maybe tomorrow and the next day, and early next week; we will see—that I do not divulge too much of that back and forth. But, yes, we are. You will see from what is happening in Medibank the kinds of people we are dealing with.

MR BRADDOCK: What is the plan in terms of the refugee and migrant cases? You have mentioned a bit about what you plan to do with DV and family law. What about those cases?

Dr Boersig: A version of that document—a risk analysis and a discussion with them. The most crucial thing that they need is forewarning. People have come to these shores for a whole range of reasons. I do not want to get alarmist about this, but they are refugees for a reason, and we have acknowledged them as having a reason. They still have families back in their countries. There is a range of reasons why individuals—and it is individuals we are talking about—reasons for where they are today might be more problematic. By enlarge, it should not be. There are changes in countries that we are seeing publicly. I do not want to say anything, but you see them on the television, as I do, where people are being treated differently to when they are in Australia for a whole range of reasons. We need to make sure that they have as much notice as possible. So we are going to be in absolute contact with them on a safety basis and see what we can do.

DR PATERSON: What is the number refugees that you think have been impacted or that you are in communication with?

Dr Boersig: I think we are assisting about 160 Afghan families at the moment, for example, but we will also have people who came here from Iran, for example. I do not have the numbers off the top of my head, but we are the main place people come for migration assistance. We work closely with Companion House and the Migrant

Resources Centre. There is a small program related to family violence as well, but we do a lot of work with the bulk of people because there is not anywhere else to get the support. I will be able to get the numbers at some stage, but I do not have them off the top of my head.

THE CHAIR: That would be good. Thank you.

MR BRADDOCK: In your annual report you talk about the recruitment of full-time culturally and linguistically diverse liaison and support officers, and consequently had a large uptake in those services. Is there still further unmet demand there? Are we still on the upward trajectory, or do you think you are about right now?

Dr Boersig: We have to acknowledge that we need to continually do better with the CALD community. There are two things in our data that are coming up. The number of people of CALD background who work in our organisation is up over 20 per cent and the number of people from a CALD community we are assisting is something like 12 per cent. We have to look at ways in which we can open our doors better to people who come from different cultures and make it more comfortable. We are investing in what might be called a more wraparound approach for people who are more vulnerable, whose language is not English in the first instance.

So, yes, we can do more, and I have raised this issue with government on a regular basis. A lot of what we do need to be in partnership. Companion House is a magnificent organisation of people who work very hard in this community. The Migrant Resources Centre and so forth are already on the ground. So partnerships with them is essential. We have a mental health officer, a disability officer, two family violence officers and four other people engaged with the Aboriginal and Torres Strait Islanders or people from the CALD community.

We tended to focus early on on Arabic speaking people of Muslim background, but people of Chinese and Indian background are pushing in in terms of the need for service. We are seeing that in our data and in the way we recruit.

MR BRADDOCK: Thank you.

THE CHAIR: Legal Aid were engaged in staff recruitment through 2021-22 to increase the provision of its legal services, I note that some of the staff were recruited towards “new initiatives”. Could you elaborate on the relationship between the newly recruited staff and these new initiatives?

Dr Boersig: The new initiatives range around outreach programs that we are trying to develop. We have a centralised service here in the ACT, but we need to be visible and available in a whole range of environments. The colleges program is a good example of that where we have embedded these lawyers at the colleges and they are currently there for a fortnight. Young people tend not to ever seek assistance. So being available and open to them in a place where they are comfortable is something we think we need to do.

We are starting to engage more—as the Women’s Legal Centre are—with the various family health centres and with the medical practitioners, so that they know those

services are available. Sending people out to make that contact is part of what we are doing.

Our education program is crucial. My staff back at work will know that I love the college program. I just think that is the place we should be. The data shows that there are young people with need. In the health-justice partnership, where we are in the hospital, we are able to see the mums in those programs who would not otherwise be able to get into a legal aid office. So it might not be a lot of people but it is crucial that anyone in that situation get the assistance, particularly when it is around family violence. Even in the colleges program, family violence is a main driver of the assistance we are providing.

THE CHAIR: Have you finalised the recruitment? Are these positions meant to be full-time, casual or on contract?

Dr Boersig: We occasionally use casual contracts. It is difficult because of the way we are funded to offer ongoing positions at times. About 85 per cent of our budget was an appropriation that you could plan on long-term. That has decreased now to about 30 per cent. Like a lot of community providers, we are on annual and biannual funding. For example, with the Statutory Interest Account from the Law Society, we get nil. Five or six years ago we were on \$1.5 million. It has moved from that kind of a figure to nil this year. It is not that they do not want to provide money but, for a whole range of reasons, they do not.

THE CHAIR: You might get a bonus this year. With interest rates rising, you might get a bonus.

Dr Boersig: Yes; it is interest rates and changes in conveyancing. They are doing their best to generate some money but then you have the government saying we used to have \$1.5 million, \$1.4 million and \$1.3 million. We have funding for \$750,000 to compensate, in part, for that money. That runs out in the next financial year. It is that kind of short-term issue that makes the question about who can be employed and for how long an increasingly big issue now.

DR PATERSON: Going back to the cyber hack, what is your communication plan with the community? Are you putting out media releases every day, and will you continue to do that?

Dr Boersig: We do and we will. This is being coordinated through the JACS communication unit. We are making sure that there are consistent messages going out everywhere. It is being updated constantly but, yes, it is going out at least once a day. We assist thousands of people each year, and all those people will be asking the same kinds of questions that Medibank is asking. What we are discussing now is: how do you get the bigger issue out? We cannot contact everyone individually, but how do you get that message out? Everyone is focused on how to deliver that message so that people's concerns assuaged.

The reality, though, is that that information may well go beyond that—so on the dark net. If people are individually, immediately affected, we need to look at how we can help them right now. We should do that and we are doing that.

DR PATERSON: Thank you.

THE CHAIR: I have a quick one on the funding again. Have you had any indications of a change in arrangements with the new federal government regarding your funding?

Dr Boersig: By and large, the funding decisions that were made in the coalition budget in March were largely replicated in the Labor budget of October. We are working closely with the federal government around delivery of services, particularly around family law but also disability. There were some changes around what they were trying to achieve in disability.

We have an increasingly active review practice in the AAT which needs to be addressed. I was listening to Mr Shorten this morning about the focus of the NDIS. It will be interesting to see how that plays out. But, at the moment, we are increasingly having to go to review and, because of the time it has been taking, we are becoming increasingly proactive in getting that assistance. Otherwise, it can drag on for six to 12 months, where we are dealing with large firms in litigation. So we are being more proactive about that. I am happy talk to about our tactics, but not now. It would probably be very, very boring. But, yes, there are some changes happening in the federal government.

Legal Aid is like a heavy lifter in the legal system across Australia. It provides the government with a national approach to a whole range of issues, whether it is veterans affairs, disability, NDIS or family law that relate from Broome to Melbourne to Tasmania and so forth.

THE CHAIR: Thank you, Dr Boersig, for coming back for a second session and for your commitment to protect the vulnerable clients that you have or have had, because of this cyber breach. All the best with that.

Dr Boersig: Once again, thank you for the opportunity. Should anyone have any issues about what we are doing, as I said, we need to be open and transparent and I am more than happy to do any other briefing about what we are doing at any time that the committee wishes that.

DR PATERSON: Thank you very much.

THE CHAIR: Thank you, Dr Boersig.

Short suspension.

Appearances:

Human Rights Commission

Watchirs, Dr Helen, President and Human Rights Commissioner

Yates, Ms Heidi, Victims of Crime Commissioner

Toohey, Ms Karen, Discrimination, Health Services, Disability and Community Services Commissioner

Griffiths-Cook, Ms Jodie, Public Advocate, and Children and Young People Commissioner

THE CHAIR: In this next session we will hear from the Human Rights Commission. I welcome Dr Helen Watchirs, Ms Jodie Griffiths-Cook, Ms Heidi Yates, and Ms Karen Toohey. I also welcome Ms Castley MLA to our committee. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could you each confirm, for the record, that you understand the privilege implications of the statement?

Dr Watchirs: Yes, thank you.

Ms Yates: Yes.

Ms Toohey: Yes.

Ms Griffiths-Cook: Yes, thank you.

THE CHAIR: Thank you. As we are not inviting opening statements, we will now proceed to questions. My first question is to the Victims of Crime Commissioner, and is related to the victim support program. Could you outline, please, the general purpose of the program and the functions of the court support volunteers?

Ms Yates: I just missed the start of the question, about which program. Is it the court support program?

THE CHAIR: The court support program.

Ms Yates: The court support program is one of a range of services that we have available to the ACT community for persons affected by crime. I am required, under the Victims of Crime Regulation to run a volunteer program, and we are very proud that we have so many members of the community who come forward to undertake detailed training and who work with the staff and me to ensure that we can respond in a timely way to community requests for court support.

THE CHAIR: Okay. Thank you. How does a matter get referred? What is the threshold, I guess, for something to be referred to the court support program?

Ms Yates: Certainly. Anyone who is an eligible victim of crime, under the Victims of Crime Act, can approach us directly to request that support. The majority of our referrals from the community, in the past reporting period, were for individuals approaching us directly. We also receive a high volume of referrals from ACT

Policing, through the SupportLink pathway, and also through community organisations, including the Domestic Violence Crisis Service and housing and homelessness services.

THE CHAIR: To be a victim, does an offence have to be found to have been proven?

Ms Yates: Under the act, it provides a definition of a “victim of crime” as someone who suffers harm because of an offence. When the Victims of Crime Act was first introduced, the explanatory statement said that the legislation was intended to be beneficial legislation. A narrow interpretation of “offence” in that context, which limited eligibility for support to matters where a court has delivered a finding of guilt, would not, in our office’s view, be consistent with the beneficial purpose of the legislation.

I have sought advice on this recently. In practice, that kind of narrow definition would limit the provision of victim support services, including court support, to a very small proportion of Canberrans affected by crime, and such services would only be available to people at the tail end of the justice process. In my view, that is not the kind of approach envisioned, for example, by the new charter of rights for victims of crime, in part 3 of that act, which provides for victim-survivors to exercise rights throughout proceedings, including court proceedings against an accused.

So, in practice, Mr Cain, I would note that it is very common for victims of crime to seek support and advocacy from our office whilst engaged in the criminal justice system, including through trial processes, simply because navigating the justice system can be retraumatising so often and very complex for people in times of great personal distress.

THE CHAIR: Does the victim, in this broad sense, as you have just explained, have to reach out to for assistance, or do you reach out to everyone who is part of the court process—everyone who is a victim?

Ms Yates: Mr Cain, we would be delighted to have resources which enabled us to proactively reach out to all victims of crime in the community. You have seen me very actively in the media, for the 4½ years I have been in this role, talking about our services and inviting community to contact us. In practice, we rely heavily on our police colleagues. Often a person’s first touch point in the criminal justice process is with police and we encourage them to actively refer people to us. We know there are still members of the community who do not get that referral from police to us, and they may not discover us for some years.

I think it is fortunate that if people do find us, even later down the track, after court proceedings, we can often assist them with therapeutic and case coordination services. But it is absolutely our office’s goal to get the word out there in every way we can that people can directly approach us at any point in time seeking support.

THE CHAIR: Okay. Thank you. Finally, are you able to provide the committee a copy of the advice on the interpretation of “victim”, or is that something that is published as a practice note or something?

Ms Yates: That is legal advice that I sought, so it is privileged.

THE CHAIR: Okay, right.

Ms Yates: But I note that you have kindly written to me this week with some queries, and I will undertake to respond to that as soon as practicable.

THE CHAIR: Thank you. Just to clarify that, that was in personal capacity as shadow Attorney-General, not on behalf of the committee.

MR BRADDOCK: Broader than the court support program, do you also provide support to victims where an offender has not actually been charged yet?

Ms Yates: Indeed. Again, looking at a beneficial interpretation of the act, we ensure that our services are available to victims in that context. We recognise that there are particular crime types in the community, including family and sexual violence, where a very small proportion of such crimes are actually reported to police. That is often based on concerns that somebody's safety will be detrimentally impacted should they engage the criminal justice process.

So we offer wrap-around services and, I guess, a safe first point of call for people who may be considering whether or not to report a crime, or who may be coming forward after decades of living with the impacts of crime in situations where an offender may no longer be alive, or indeed, in circumstances, particularly in terms of online abuse, where the offender may not be able to be identified.

So we are fortunate under our legislation to be able to work with community members where they are at in those circumstances, and be guided about what kind of therapeutic or advocacy support they may require.

MR BRADDOCK: Thank you.

DR PATERSON: My question is for the Public Advocate around emergency detention under Mental Health Act. I think we spoke before about this, but I cannot find it in the annual report. Does your office overview any emergency detention orders?

Ms Griffiths-Cook: Yes. Thank you, Dr Paterson. We have oversight broadly, I guess, in respect of the mental health system, for most, if not all, involuntary actions that are taken in respect of persons who are involved in, or who come to the attention of, the mental health system. That involves a range of different compliance documents that are provided to my office, ranging from emergency detention actions, whether that be the first contact of an emergency detention usually for three days, or a subsequent one, which is then for 11 days. We are also then provided with information where it proceeds further than that for involuntary actions—for instance, in respect of psychiatric treatment orders and other applications that might be made for involuntary action in that regard.

DR PATERSON: And are you resourced adequately to deal with the levels of applications that you get?

Ms Griffiths-Cook: No. I know I have made this point many times over the past few years. We saw a significant increase in demand, primarily off the back of those compliance documents from 2018-19 to 2019-20. That has since been sustained for the last couple of reporting periods.

The resourcing that I have within my office, for the mental health and forensic mental health portfolio, has not been increased since the commencement of the new Mental Health Act in 2015, at which point, a single additional FTE was provided to the one FTE that was there previously. So I host a grand total of two FTEs to support my mental health and forensic mental health portfolio, despite the demand in that portfolio. Last year, we had 1,203 persons brought to the attention of my office, and 6,684 compliance documents for 1,193 consumers. Of those, we were able to review a significant proportion because I took it upon myself to engage an unfunded additional advocate. So, ultimately, as a result, we were able to review 83 per cent of documents received. However, regardless, that still means that 206 vulnerable persons did not get the oversight service that we are charged with the responsibility of providing.

If I had not brought on that additional advocate, that number would be far higher. In my view that is a significant proportion of people, regardless of number, for whom government has said, “Public Advocate, it is your responsibility to make sure that we are doing our job right when we are making involuntary decisions.” In my view, we need to look very closely, and I will continue to advocate, for my own office, for an increase in resourcing to enable us to more adequately review the circumstances of those people.

Quite often when we intervene—and there are a variety of reasons why we will—there may be circumstances where the proposed actions are not borne out by the evidence that is being presented in support of an application, for instance, for a psychiatric treatment order. And my office will, therefore, intervene to ensure that, if that order is upheld, there is appropriate evidence documented in the course of the ACAT hearing to do so.

DR PATERSON: And what oversight? For example, once the 11-day part is approved, is there any oversight for any contact with those people in that period?

Ms Griffiths-Cook: We do not have a role in approving those. Our role is obviously in looking at those and, I guess, seeking to ensure that there is appropriate documentation and that the reasons for the actions taken would appear reasonable and proportionate in the circumstances.

We do frequently attend AMHU, Dhulwa, Gawanggal, and other mental health inpatient units, to meet with consumers and to enquire after their wellbeing, and also to look at, in particular, the levels of restrictive practices that might be being used within those environments—for instance, physical restraint, seclusion, forceful giving of medication. So we have a responsibility to oversee those practices.

DR PATERSON: When you say that you question some of the applications that come to your office, how many would you intervene in?

Ms Griffiths-Cook: In the last reporting period we provided direct advocacy for 22 per cent of persons brought to our attention. That was 269 people. And we provided 1,450 occasions of advocacy for those 269 people—on average, 5.4 occasions of advocacy per person. However, having said that—and, again, this is reported in the annual report—we did a review of the 25 consumers with the most actions that had been taken, and for those 25 consumers, there were 684 acts of advocacy—so an average of 27 occasions of advocacy per person.

So when you look at it, that clearly demonstrates that, for some of our consumers, there is an extremely high level of complexity involved in their circumstances and, by extension, quite often a significantly higher level of vulnerability that requires both our oversight and often our intervention as well.

DR PATERSON: And do you feed your concerns—broad or systemic concerns—back to the Chief Psychiatrist?

Ms Griffiths-Cook: We work using a variety of different mechanisms. We are involved in a number of different high-level meetings with the executive to ensure that we can actually communicate what we are seeing and finding. A lot of our activity does take place within the ACAT itself, and enables us to put forward what we are seeing, hearing, interpreting and analysing out of the documentation and our engagement with consumers as well. We are able to use that either to intervene, and/or to make submissions to the ACAT to assist in their decision making.

MR BRADDOCK: I would just like to ask some questions about the intermediary program. It is really good to see 100 per cent are matched, but my concern is in terms of timing of the match and whether anyone might not be able to access an intermediary when they actually need it for an interview or some form, can you please talk me through that?

Ms Yates: Certainly, Mr Braddock. The intermediary program is the only intermediary program in the country that operates 24/7. The benefit of that is that we are able to match an intermediary in business hours and outside of business hours, particularly when police are calling on us to attend. Sometimes that is at the police station, but often it might be at a school, a hospital or a community location where they are planning to undertake an interview.

I must say, I think our intermediary team—both our in-house colleagues and our accredited intermediaries who operate on a panel—are incredibly responsive and very much devoted to their work. As a result, in the last reporting period we have been able to match every single police referral request. A large number of those have come through out of hours, and also, perhaps, with less than an hour's notice. When those referrals come through—often we get a call; we make sure that the phone is answered 24/7—we are able to understand the needs of the particular witness that police may be interviewing, and we do our very best to match an intermediary who will be able to attend very quickly, but also whose skillset matches the needs of the witness.

I think this is a really important addition to our justice response in the territory, and we have been pleased to see very positive feedback from police, particularly around their capacity to communicate with very young witnesses—particularly in sexual

violence and family violence matters—but also with elderly Australians up to the age of 94, who may need some adjustments in communication to give their best evidence to police.

MR BRADDOCK: Thank you. And it was a great case study about the five-year-old; I really appreciated that. I am trying to get back to the exact question. Whenever someone needed an intermediary was there one available?

Ms Yates: Indeed; we matched 100 per cent of referrals in the reporting period, 24/7.

MR BRADDOCK: Thank you.

MS CASTLEY: I have a question about health service complaints. On page 34 of the report it shows that there were 775 health complaints, which is an increase of 21 per cent from last year. The commission responded to 580 of these complaints, of which 302 required a response from the hospital. Out of that, there were 54 reviews or changes of policy. I am talking about pages 34 and 35, here. I am just wondering how quickly the hospital responded to the enquiries that you referred—how quickly they got back to you.

Ms Toohey: We ask for a response, generally, from all our respondents, within 21 days, unless the matter has been triaged as very urgent. So the response time for matters will depend on the nature and complexity of the matter. There are some matters where, I have to say, we pick up the phone when we get the matter because it is about somebody who is in the hospital, so we might get a response the same day by email or by phone call.

Some of the more complex matters will take longer, and certainly there are matters where those responses will go past the 21 days, particularly where we are looking for statements from individual practitioners, or for more complex responses to a systemic issue. I would have to say that, on the whole, hospitals are very responsive to our process. That includes, as I said, both the very urgent triage matters but also when we are asking for complex information looking at data, looking at wait times, and those sorts of things where it is a much more complex and thorough examination of the issues.

MS CASTLEY: Great. For the 302 explanations and the other outcomes—so, where there is no further action, et cetera—did you find, on the whole, that the complainants were satisfied with the response from the hospital and were generally happy, or were there escalations and further enquiries put forward?

Ms Toohey: You would understand that when people are accessing health services, and they get to the point of making a complaint, obviously there is a concern about how the service is being provided. I think you will see in our customer satisfaction data that the satisfaction with our process is high.

MS CASTLEY: Yes.

Ms Toohey: That does not always equate to being satisfied with the outcome of a particular matter. We do have some people who, I guess, have residual concerns and,

as I have said a number of times, we are in a very small jurisdiction, so it is really important that people have confidence in the health services that we have because there is a lack of choice.

Again, I would have to say that the hospitals—I am just focusing on the hospitals—work very constructively with us in that space. We have certainly seen an increase from them in participation in our conciliation process, particularly post lockdown. It has been easier. There are some complainants who remain dissatisfied with the explanations that they are provided. I have a number of people in my team who have a clinical background and who are, I have to say, very considerate and expert at taking people through the issues that they have raised in their complaint.

I think we both know that when someone has had an adverse outcome, particularly from some sort of medical procedure, irrespective of what the explanation might be, they may remain dissatisfied with the service that they have received. So we do see some matters being escalated but, given the volume of matters we deal with, that is quite a small number.

MS CASTLEY: Okay. Have you noticed an increase in the seriousness of complaints? Twenty-one per cent seems quite a large increase to me. I am just interested in why you think that might be, and are things more serious now, or are they just the same types of concerns, but there are more of them?

Ms Toohey: I would not say we have seen an increase in the seriousness. There has always been a gradation of matters that we deal with—from, as I said, quick, urgent matters, which may be about someone in the ED seeking treatment, through to catastrophic outcomes from surgery. So it is a range of matters that we deal with.

Part of the increase definitely was as a result of people's anxiety over the lockdown periods about accessing health services. We definitely saw an increase around things like visits to facilities, accessing people who were in the facilities, and things like people who are vaccinated or unvaccinated being able to access health services, and wait times, which have obviously blown out over this period as well.

Certainly, the increase that we have seen over this period is consistent with other health complaint commissions across the country. What we are seeing, though, this year, is that that is plateauing, so I do not expect that that will continue to increase at the same rate. But what has happened—particularly during the pandemic or the lockdown periods—is that because we had an increase of awareness around our sorts of processes, that has definitely contributed to the increase in numbers.

MS CASTLEY: All right. Finally—I think you have probably answered this—due to the increase, you do not believe that there is a human rights concern or issue at the hospital; it really is just individual cases due to COVID?

Ms Toohey: I would not put it that directly. As I said, I think there has been an increase in awareness of our health complaint process, as well. As you know, the health system has been under considerable pressure, and that certainly has contributed, not just to access to COVID-related services but more broadly. As you are aware, there have been recruitment issues and there have been access issues. Those context

factors, I guess, certainly contribute to the nature of the complaints that we see. You will also be aware that there were a couple of very high-profile matters. That will also generate people's responsiveness in terms of wanting to get a remedy for something.

The hospitals, as I said—it is a health service—see an enormous number of people; they provide an excellent service. I think if we take into account the number of patients that they see and the number of services that they provide, the number of complaints that we get is relatively small. But, again, I would have to say that they are very responsive to our process.

MS CASTLEY: Great. Thank you.

THE CHAIR: I have a substantive question regarding discrimination complaints. I refer to page 38 of the commission's annual report for 2021-22, which sets out the grounds in discrimination complaints submitted to the discrimination commissioner. I can see that the complaints on grounds in disability and age are increasing. Do you have any explanation as to why that is, or is a new character of complaint regarding disability and age appearing?

Ms Toohey: Yes. Again, Mr Cain, we certainly saw consistent increases across other human rights organisations in those areas. You would be aware that, particularly during the more intense periods of lockdowns during the pandemic and the emergency periods, people with disabilities felt particularly vulnerable in a whole range of settings—particularly around things like mask wearing, not being able to access health providers directly, and around the issues to do with service providers in the NDIS; for example, in-home care workers. There was a whole range of issues on which people with disabilities were certainly feeling very disadvantaged during that period. That is part of the reason for the increase in numbers, I would suggest.

Age, I think, is a little bit different. I have done some more detailed analysis in that space, because age complaints historically, across most human rights commissions—even though everybody has an age—are historically quite low. Ours have gone up, and I think that is partly because we are very active in that space, and we have been very intent on ensuring that older people, particularly during the emergency periods, know that they have a remedy available to them.

We deal with complaints across aged care, health, retirement villages and elder abuse. A combination of those areas, I think, has driven up the awareness of older people of the Human Rights Commission as a remedy for them. Traditionally, the age complaints have been very much focused in employment. Ours are much more spread now across those other areas where older people access services.

THE CHAIR: And, as you mentioned, other areas have also increased. I notice that, rather spectacularly, accommodation status has gone from 8, 8, 6 in previous years, up to 25.

Ms Toohey: Yes.

THE CHAIR: Is there an underlying factor there? And how are you treating those?

Ms Toohey: You will be aware that there have been some concerns in the public housing space, in particular. Accommodation status covers the tenancy of people. Certainly we have seen an increase in the use of the Discrimination Act in that space, sometimes combined with disability. A tenant who has concerns about access to their property, or modifications, will bring a complaint to us because we are, again, well-known in the community for trying to resolve matters. We have a very good relationship with Housing ACT, and they are very responsive to our complaint process. I would suggest that that is part of the reason for the increase in numbers on that particular ground.

THE CHAIR: In what way do you engage with the department? When you get, I guess, a themed bunch of complaints, does that change how you deal with each individual complaint? Do you then write on behalf of all of them to the department, or do you just do it on a one-on-one basis?

Ms Toohey: Because discrimination matters can go to the tribunal, we need to ensure that we have an individual response in those matters. I would have to say that a large number of our complaints to do with accommodation status do resolve through the conciliation process. Because there is often an ongoing relationship there, if they are matters where both us and the respondent want to invest in making sure that that ongoing relationship is sound, where we identify systemic issues—and we certainly do—we pick those up out of the individual complaints and deal with them under my own-motion powers. So we certainly can and do do that. Again, I would have to say that, for a number of those matters, Housing ACT are very responsive about identifying where there are systemic trends and working with us to try and resolve those on a systemic basis.

DR PATERSON: I think my question, again, is for the Public Advocate. In respect of Bimberi we heard from the Office of the Inspector of Correctional Services. They were saying that they just do not have the capacity to oversee Bimberi as they would like to. What is your level of oversight, and how does it compare to what their function is? And what is missing in the oversight of Bimberi?

Ms Griffiths-Cook: We have a very active presence in Bimberi, and a strong oversight role that has been in place for many, many, years—since the Children and Young People Act’s commencement. I am probably unable to talk to what the inspector would be looking for in that space, but certainly in terms of the level of access and the responsibilities that we have, I feel that our oversight of Bimberi is very strong.

My staff are generally in Bimberi, if not weekly, then a minimum of fortnightly. We generally do try to get out there, even if it is just for a walk around and a conversation with the young people themselves to ascertain what is going on with them and any concerns that need to be resolved. In addition to that, we have responsibilities to review all of the different registers that are held within Bimberi. The annual report lays out the outcomes for the review of those registers. We track that on an annual basis but also on an ongoing basis so that we have the opportunity, if we are seeing particular spikes in activity in particular months, to question that; or if we are looking at a particular register and there appear to be idiosyncrasies or some other form of information that begs a question, then we will ask that question. Typically we get a

response to that on the spot, and if not, then shortly thereafter.

There are occasions when we will formalise a question or an inquiry post attendance at Bimberi, and generally the director out there is very quick to respond. Similarly, when we have concerns raised by young people, they are open to, usually, a conversation either right there and then with that young person—and we would support them through that if needed—and/or by following up by the young person to reconcile whatever the matter is that might have been raised. Without being able to talk to what the inspector might be looking for in that space, I think our oversight in terms of the ability to review and analyse actions that have been taken is relatively strong.

Probably an area that we will be needing to build with time—and that will require some additional resourcing when that comes—is the role that we share with the ombudsman, the inspector and the HRC in terms of the OPCAT and the national preventative mechanism. That is more about coming in at the front and trying to mitigate against the risk of actions that might constitute torture or otherwise poor treatment, versus the post-fact oversight that we have in terms of things that may have already occurred.

DR PATERSON: Thank you. In figure 9 in the annual report, the reasons for the use of force, the second highest use of force is “other”. What are those reasons and why can they not be classified into any of the other reasons?

Ms Griffiths-Cook: There are a range of different things that come up under the “other” category. I guess they are usually quite idiosyncratic. It might be a particular young person who has acted in a certain way and who may or may not fit those other categories. I would have to take it on notice if you wanted a breakdown of those. It was a significant number in this last year, with the 21 figure, but it is usually because they are like a one-off of this or a two-off of that. While we had a heightened state there, we typically do have a range of common ones that are stated or listed on the forms versus those that we extrapolate from our analysis of those.

DR PATERSON: I note that you say that it is good to see there has been a reduction in the use of force at Bimberi, but you do note that this trend may be related to an increase in segregations and lockdowns. Is it a better outcome that Bimberi might be using segregations and lockdowns as opposed to force?

Ms Griffiths-Cook: Last year was another idiosyncratic year with the COVID lockdowns. Of the 85 segregations, 83 of those were health related, which was primarily COVID related, during that period of time. It was usually about needing to lock down individuals in their units because they had symptoms, and/or had a positive diagnosis of COVID. I think that was an extraordinary event and, hopefully, it will not be repeated.

The use of lockdowns remains something that we have an ongoing lens and keep an eye on. There is a difference regarding operational lockdowns. With the numbers for those this year, there were 21 lockdowns, which was an increase. Again sometimes that relates to low staffing, and we have tried to raise that proactively. We know they now have a rolling process of engaging staff as opposed to having set points of the

year for recruiting and inducting new staff. Typically, those operational lockdowns that were evidenced in the last year were for covering staff lunch breaks and things like that. With the way that their lines work, in terms of servicing, all it takes is for one staff person to be sick and it may require something like that, because there is a fairly fixed number of staff required on each line of service response there, to enable things to run smoothly.

For the first time last year, and in accordance with the commission's 2019 review of Bimberi, we were able to review a register for code lockdowns, which was not previously available, so it was very pleasing to see that. However, because that was the first year, I have no way of back-referencing whether the 90 code lockdowns that were called is a reasonable, appropriate or standard figure. Certainly, as we move forward, now that that information is available, we will be maintaining an eye on whether they are appropriate uses of lockdown for the purposes for which they are described at the time.

MR BRADDOCK: I have a question about understanding young people's experience of racism, I would love to hear an update on that. Particularly, what will be the next steps, once you present your report, to drive meaningful change in this area?

Ms Griffiths-Cook: Thank you for that question. It has obviously been a matter that we have been very strongly engaged with. I have been pleased to be able to pick up on the fact that there were concerns being raised with us, not only in respect of children and young people, but also by children and young people who were indicating an experience of racism, which led to that consultation.

We have now held face-to-face sessions for over 140 children and young people, which is probably an increase from the time that I briefed you earlier in the year. We had over 1,800 young people at the careers expo indicate yes or no in terms of whether they thought we could stop racism. Eighty-three per cent felt that we could, which I think is a really positive indication of both their interest in doing so and their views that there are things that can be done to move things into a different space.

Importantly, we received many ideas, both from the careers expo, where we had 180 messages, and from the survey, where we had over 300 young people respond to that survey. We received a lot of information in terms of their ideas on what might need to happen regarding changing the level of racism that they are seeing and experiencing here in the ACT.

Some of the key ones, for them—and we will be seeking to honour that through both our report and our engagement post the finalisation of that report—were in particular that racism needed to be seen distinctly from bullying and not conflated with bullying. They are likely to require different responses; certainly, from the perspective of children and young people, they do require different responses.

Another was a need for education and training in some of the sectors about racism and perhaps unconscious bias, in sectors that we might not think of. That is perhaps in public areas—bus drivers and/or light rail drivers. It may not be an area to which we would usually necessarily push that kind of training out; certainly, children and young people are speaking of their experiences on public transport, in shopping centres and

in other places that are not the typical places about which issues might be raised. Typically, we hear about schools and sporting venues—that sort of stuff. We perhaps have not heard as often about some of those more general public places.

There is an interest in looking at how we use the existing anti-racism messaging but in a way that perhaps makes it more relevant for children and young people. There is a great national campaign in that space, the “Racism. It Stops With Me.” campaign. With children and young people, we perhaps need to look at how we get that messaging to them in a way that does not necessarily make them responsible for stopping the racism but helps them to understand their rights and how to assert those rights within the environments in which they might experience racism.

There is a clear link to wellbeing. Again we can explore what it will take to help children and young people feel that others are taking them seriously when they are raising concerns about racism, and that they see action off the back of the concerns when they are raised.

Our next steps are to finalise our analysis. We are coding, as you can imagine, lots and lots of responses. We ran a survey that had a lot of open-ended questions, quite deliberately, as we did not want to lead children and young people in terms of what they wanted to tell us about their experiences or what they have seen. We are working through the coding process for that, with a view to finalising a report. More importantly, we are looking at how we can then continue to engage with children and young people about the solutions—feeding back to them what we have heard so that they understand that we have clearly understood their messages, and that we have taken seriously what they have put forward, and work with that to engage our government colleagues, ideally, to support changes that will serve to benefit children and young people into the future.

THE CHAIR: I have a question regarding the ACT public service employees survey. Dr Watchirs, you may get a chance to speak during the hearing. I refer to the results in the 2021 employees survey and note that the Human Rights Commission has scores showing that employees’ current workload is well above capacity and that the current level of work-related stress of 40 per cent is significantly higher than the ACT public service average of 30 per cent. I invite your comment on those figures and any actions you feel that you need to take.

Dr Watchirs: We are aware of those results, and we did take some proactive steps to employ staff in unfunded positions because of the huge workload in the complaints area. There has been a 70 per cent increase over the last four years. Victims, similarly, and the Public Advocate, all areas that face the public, have all been stretched, and COVID has made that more complex, with deeper engagement, and the resources have not kept pace with that.

We have been engaging staff that are unfunded; that is how we have been coping with that, and putting in budget bids. I have to say that the victims service side has been much more successful. Since 2016, staff have gone from 20 to 60. For the rest of the Human Rights Commission, there has not been anywhere near that amount of growth. We have put in another budget bid to try and change that.

THE CHAIR: A budget bid? Currently, there are 97 full-time equivalents. Please correct me if I have got that wrong.

Dr Watchirs: No, that is correct.

THE CHAIR: What are you hoping for, if I can put it that way, in particular to ensure that staff are engaging with maximum productivity and minimal work-related stress?

Dr Watchirs: We are engaging in a budget review process, particularly to look at back-of-house issues and corporate support, and whether that is sufficient, so that we have the evidence to present to Treasury that we are underfunded. People might say, “All human rights commissions are underfunded,” but we actually have a huge range of services that we provide to thousands of people every year. We did not stop those during COVID; those services actually increased in demand. Of course, the stress on staff, particularly experiencing a severe vulnerability, people with mental health issues, people with disability during COVID being denied health services and issues with mask wearing, have had a toll. Of course, that has had an impact on staff. There have been some initiatives with wellbeing, like online yoga. To be honest, the thing that will make the most difference is the number of staff that can share that workload.

THE CHAIR: From 97 to what? What is your optimum?

Ms Griffiths-Cook: I think it would be very difficult to put a figure on that, Mr Cain. As you have seen, we have had this incremental growth in demand for our services. It is about being able to predict where that might land in the future. As Ms Yates said in particular, the more we put ourselves out there, the faster or the more our demand grows. We do not want to have to limit the extent to which we are promoting the services of the commission to the general public because the services that we provide are integrally important to effective and good outcomes for those Canberrans who are often quite vulnerable for a variety of reasons.

THE CHAIR: If your budget requests were fulfilled, what would that lead to? How many extra staff would that produce?

Dr Watchirs: We have a number of unfunded staff, so that would continue. That is how we are currently coping with it. My biggest concern is that we keep being given extra functions without any resources. The new human rights complaints function is fantastic, but there are no resources attached. We will provide an evidence base of what demand will be in that.

The new OPCAT obligation, which starts on 20 January, is unfunded. The work we do with the AMC has always been unfunded. The institution was created and no funds were provided to any parts of the HRC to do the work regarding the 400 to 500 detainees that are there, compared to the old Belconnen remand centre, where there were only about 90 people.

DR PATERSON: In respect of discrimination complaints, I note that there is quite a substantial increase in pregnancy-related discrimination complaints. I did see the case study in the annual report. Is this a trend that is of concern to you or do you think this is just a COVID type of unique circumstance that we are in?

Dr Watchirs: It is an area in which we have seen some growth, as you say. The numbers are still relatively small. One of the things that we saw over COVID was an adjustment from many employers regarding flexible work arrangements. With pregnant women, as you know, that is an area where they have led the way for many years, unfortunately—pregnant women, mothers and carers.

One of the things that we saw was people being more willing to bring complaints to us because of the economic uncertainty. We did quite a bit of work in that space, with employers, unions and other advocate groups, to make sure that people were aware of their rights and were comfortable bringing matters forward.

As you know, economic uncertainty is a big thing, but so is bringing a complaint. I think that, in a number of these areas, we have done some good work with community groups to build their confidence in the process. That was certainly one of the areas we saw where there were more women willing to come forward with a matter.

THE CHAIR: That brings the session to a close. On behalf of the committee, I would like to thank the Human Rights Commission witnesses for their attendance today. If witnesses have taken any questions on notice, could you please provide answers to the committee secretary within five working days? Thank you very much.

Appearances:

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

Justice and Community Services Directorate

Glenn, Mr Richard, Director General

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

THE CHAIR: In this second session we will hear from the Minister for Human Rights. I welcome Minister Cheyne and officials from the Justice and Community Safety Directorate. Please be aware that the proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and webstreamed live.

During this session we will observe Remembrance Day, standing for a minute's silence at 11 o'clock, so please bear with me. I will interrupt whatever is going on at approximately 10.58 and say a few words and then invite people to participate for a minute's silence.

When taking a question on notice, it would be useful if witnesses used these words: "I will take that as a question taken on notice." I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could you each confirm for the record that you understand the privilege implications of the statement.

Mr Glenn: Yes, Chair.

Ms Cheyne: Yes. Thank you, Chair.

THE CHAIR: As we are not inviting opening statements, we will proceed to questions. I will lead off. Minister, in relation to the discrimination law reform project, there has been plenty of feedback about the exposure draft, in the current form, of the Discrimination Amendment Bill and the effect it will have on Canberrans' schools, workplaces and faith communities. Could you outline the effective timetable for when the bill will be finalised and presented to the Assembly?

Ms Cheyne: Thank you, Chair. I can confirm that I have read and understood the privilege statement. You are right, Chair, that an exposure draft was released earlier this year for public consultation, following a discussion paper that was released at the end of last year. All of the feedback that has been received on the exposure draft is being taken into account and used to further refine the proposed reforms to ensure that they strike the right balance between competing rights. At this stage I anticipate introducing the bill in the spring sittings.

THE CHAIR: I note the discrimination law reform listening report outlines that 25 submissions were received in response to initial consultation—and correct me if

I have got this wrong—none of which were from churches or religious bodies. So has this consultation round proven to be more engaging, particularly with groups that are most likely to be affected?

Ms Cheyne: Yes, Mr Cain. We received a very large amount of feedback on the exposure draft.

THE CHAIR: Is there common feedback coming through the consultations and submissions?

Ms Cheyne: I think it is difficult to answer that, Mr Cain, because there was a large amount of feedback from a particular cohort which may have skewed how all of the feedback is represented. But all of that feedback is being taken into account. We will produce a listening report from the exposure draft and that will be presented soon.

THE CHAIR: By “soon” do you mean before the end of this year? You said that earlier.

Ms Cheyne: I have already answered that, Mr Cain. I said that, with the discrimination bill, the intention is to introduce it in the spring sittings.

DR PATERSON: I was wondering if you can update us on where the Aboriginal and Torres Strait Islander children’s commissioner is up to and how that is progressing.

Ms Cheyne: Yes, certainly, Dr Paterson. Thank you for the question. Regarding the Aboriginal and Torres Strait Islander children and young people commissioner, you might be aware that we introduced the bill recently. There is no committee inquiry into that bill, so we are looking forward to debating the bill soon.

You might be aware that in the most recent budget we also committed to and provisioned fully funding that commissioner position, as well as an office—not only an office physically but an office of staff. \$3.6 million over four years will go to establishing that so that there is that dedicated team from the get-go for improving services and outcomes. The recruitment for the commissioner cannot commence until the bill has passed because it will be a statutory position. We then need to go to the Remuneration Tribunal to remunerate the position. Once that has occurred, we will be going out to recruit for that position.

Very pleasingly, Dr Paterson, we were able to announce this morning an interim role that we had also funded in the previous budget, which is an advocate position. That is incredibly important because, again, this is something that the community and the Our Booris, Our Way Oversight Steering Committee had called for. So while there is still that time that is needed for us to have the bill passed for the commissioner position, and their office, and to do the recruitment for that, we recognise that the need is there now. Certainly, the community has made that case very strongly.

We have been able to announce today that Barb Causon PSM, who was the former chair of the previous Our Booris, Our Way steering committee and the implementation oversight committee, has accepted the advocate role. That contract, I believe, is signed. I think Barb is well known to many of us. She has significant

experience as a senior public servant but especially as a key advocate for child protection reform. That interim advocate position will be very important in setting us up, going forward. Then, hopefully soon, that bill will be passed and we will be able to begin the process of establishing that office.

DR PATERSON: The advocate role obviously does not have the same powers as the commissioner role. Once the legislation is passed, how long will it take for the role to transition into a commissioner role?

Ms Cheyne: It is difficult to say at this stage because it depends on when we hear from the Remuneration Tribunal, and the outcomes of the recruitment process. That is exactly why we worked hard to establish the advocate position. That is funded until June 2023. Our intention would be that that position would be filled by then and that Barb would assist in ensuring that there is that smooth transition so that the commissioner is able to begin straight off the bat and the establishment period will be shortened so that they can get right to work.

MR BRADDOCK: I am interested in how the ACT government monitors and manages ACT Policing, in terms of being a human rights jurisdiction. How do we set the expectations of human rights for the ACT police and then see whether that expectation is met or not?

THE CHAIR: We will pause now, if that is acceptable to everyone. I will just give a bit of a preamble before we stand in silence at 11. Today is Remembrance Day, a day of national commemoration. On this day at 11am Australians pause, in their vast majority I am sure, in silence for a minute to remember the bravery and sacrifice of the men and women who have lost their lives while serving Australia and its allies in wars, conflicts and peacekeeping operations.

It is now time to reflect and to silently remember all those who have served and died in war. I invite you all to stand for the ode, which will be followed by a minute's silence. I will say the ode and invite you to respond with "Lest we forget":

They shall grow not old, as we that are left grow old:
Age shall not weary them, nor the years condemn.
At the going down of the sun and in the morning
We will remember them.

Lest we forget.

Short suspension.

THE CHAIR: Thank you for your attention. Please be seated. Minister, do you need that question repeated or are you right to go?

Ms Cheyne: No, I do not need it repeated. It is probably a question that is best directed to the Minister for Police and Emergency Services, Mr Braddock. However, I might invite Mr Glenn to provide some further input here. I think it is important to note that we are a human rights jurisdiction and part 5 of the Human Rights Act does require all authorities to be considering human rights. I will ask Mr Glenn to jump in.

Mr Glenn: Thank you, Minister. I acknowledge the privilege statement. Mr Braddock, I think we look at this on a couple of levels. Firstly, if we think about the framework of laws in which ACT Policing operate and the laws of the ACT as a human rights jurisdiction, those frameworks are crafted to maintain the human rights of our citizens. Many of the police powers that are exercisable are within the context of what is human rights compatible, so we set the rules and we set them in a human rights compatible way.

The arrangement between the commonwealth and the ACT for the provision of policing services involves an articulation of the values of the ACT, which include that we are human rights jurisdiction. There is a mechanism for letters of expectation now to be exchanged between the Minister for Police and Emergency Services and the Commissioner of the AFP as to how we structure that relationship.

Within the Human Rights Act itself there are obligations placed on public officials which can relate to the actions of individual police officers. At a really practical level, I know that the Chief Police Officer and the Human Rights Commission engage in a very active dialogue about issues, including the way we set up our legal frameworks, how police powers are exercised and how we go through the dialogue of being able to maintain both the safety of the community and the human rights of the people in the ACT.

MR BRADDOCK: Thank you.

THE CHAIR: My question relates to something that came up during the Human Rights Commission session. We saw a stark increase in discrimination complaints related to accommodation status, Minister. Unsurprisingly, most of that comes from the public housing cohort. I note that a court action commenced recently regarding the territory government breaching human rights legislation as part of the housing eviction program. Could you clarify: what is your role as human rights minister in this process, in seeing a significant category of complaints that is really about treatment by a particular part of the government? What is your role as human rights minister in this process?

Ms Cheyne: Mr Cain, this is a tricky line of questioning because this is subject to legal proceedings. I am just not sure where you are going with this.

THE CHAIR: What is your role in discrimination complaints of a significant category involving another government department? What is your role?

Ms Cheyne: Mr Cain, I will refer you to the Human Rights Act and, again, part 5A, which we have just been discussing. There are requirements of officials to exercise their duties in a way that is consistent with human rights. You are also aware that we have a standalone right option in the ACT, for anyone who feels that their human rights have been breached, to take action in the Supreme Court.

THE CHAIR: What is your role, Minister, in dealing with a fresh category of complaints regarding the operation of another government department? Do you have a particular role in that kind of circumstance?

Ms Cheyne: Mr Cain, I have answered you.

DR PATERSON: Minister, the JACS annual report, on page 34, outlines the early pregnancy loss certificates that were lodged last year. What has been the response from the community to those certificates?

Ms Cheyne: Thank you, Dr Paterson. These certificates, you might be aware, are offered in every jurisdiction. It is with deep regret that I say that the ACT was the last jurisdiction to offer these. Certainly, it was an immediate priority for me, upon becoming Minister for Human Rights. I acknowledge the incredible advocacy from across the community, including Bonnie Carter, who has recently been honoured by the Governor-General for her advocacy, and her partner, Steve, who has also been an incredible advocate in this space. They have certainly left an indelible impression on me.

JACS worked with Access Canberra immediately on providing these certificates for people who have experienced early pregnancy loss. This is a certificate of acknowledgement, so it does not have a legal basis, whereas there are certificates that are issued where the loss is after 20 weeks. This is for early pregnancy loss. These are incredibly important because they aim to support parents and their families through grief following that loss. They are not time sensitive nor time limited, so it does not matter whether the parents have experienced a recent or a historical loss. For example, if someone has experienced a loss some time ago, that option is now available to them. Equally, they do not have to take up that option, by any means. It is absolutely their decision. It is a certificate that is issued at no cost.

We also worked closely with artists in the community, both within the ACT and more broadly. Till Heike is someone who has designed some certificates in other jurisdictions. We now have four different design options that people can choose from as a way of personalising that acknowledgement.

To 30 June there had been 214 of those certificates issued. To yesterday, I believe, 240 certificates had been issued to support parents and their families. The numbers in and of themselves perhaps do not mean much, but I think this reflects that this is something that the community does value and has been applying to Access Canberra for. Can I take a moment to acknowledge the births, deaths and marriages team at Access Canberra. I visited them. They are amazing, and the support that they provide to families, and particularly those who are experiencing loss, is incredible.

DR PATERSON: How do families go about accessing this certificate? Can they do that online or do they have to go into Access Canberra?

Ms Cheyne: They can do that online or they can call. It is a simple form online. There are different inputs on the form that are free text, choosing what people might want to put as information. For example, sometimes a child may not be named or perhaps the location might be more generalised. All of that, again, is completely up to the family.

MR BRADDOCK: I am looking for an update on the right to a healthy environment,

the potential flow-on implications of that, and the positive impacts for the ACT government from that right.

Ms Cheyne: That work is underway. You might recall that your colleague Ms Clay moved a motion in the Assembly in February requiring us to provide a government response by the first day of the last sitting week, which is impending. That requires us to both provide the time frame for introducing the right to a healthy environment but also report back on the consultation that we have undertaken. On 30 June we released a discussion paper for community consultation and there was a public panel that kickstarted that. That was open until 31 August. We are preparing a listening report of what we have heard, and that will be published on the YourSay website soon.

There are a range of issues for consideration with regard to protecting the right to a healthy environment. You might be aware that there is no standalone right to a healthy environment in the international human rights treaties. On 28 July, right in the middle of our consultation this year, the UN General Assembly passed a resolution recognising that the right to a healthy environment was a human right. Australia was one of those member states, all 161 of them, that voted in favour. That is a really important resolution and something that we are taking into account. Given that this is subject to cabinet consideration, I am probably limited in how much more detail I can go into at this stage.

MR BRADDOCK: That is fine. Thank you.

DR PATERSON: I am not sure if you can go into the detail, but what was the response to the discussion paper? How many people responded? Did you receive a good response or a strong input?

Ms McKinnon: Yes, we received quite a number of submissions. I can provide the number on notice. Certainly, the community was very interested and we had both written submissions and people filling out a survey regarding their thoughts on the right to a healthy environment and what aspects should be protected and how that might impact. There was a lot of community interest and feeling that a healthy environment is really important to the Canberra community and that it could make a real difference to have that level of protection.

DR PATERSON: Will we be watching other jurisdictions internationally and how they progress this right?

Ms Cheyne: Yes. It has certainly been a feature of that consultation to draw on experiences elsewhere. The contemplation of this is first of its kind in Australia, I believe.

THE CHAIR: Regarding the discrimination bill exposure draft, I have received from faith communities concerns that religious bodies will have to prove to a secular tribunal or court that religious decisions must meet the threshold of reasonable, justifiable and proportionate. According to their faith position, they would believe so, but perhaps a secular court would not, so how do you address that concern and are you planning to address that concern in any changes to the exposure draft?

Ms Cheyne: As I mentioned, that draft bill was intended to assist with public consultation, so all feedback received is being taken into account.

THE CHAIR: Thank you. I would like to thank Minister Cheyne and her officials for their attendance today. If witnesses have taken questions on notice, could you please provide answers within five working days of receipt of the uncorrected proof transcript.

Ms Cheyne: Mr Cain, just so that we do not have to take something on notice: we received 22 written submissions to the right to a healthy environment consultation and 40 items of written feedback on YourSay.

DR PATERSON: Thank you.

THE CHAIR: Thank you.

The committee adjourned at 11.16 am.