



**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON JUSTICE
AND COMMUNITY SAFETY**

(Reference: [Inquiry Into Annual and Financial Reports 2022 - 2023](#))

Members:

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

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

TUESDAY, 14 NOVEMBER 2023

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**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.

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Amended 20 May 2013

The committee met at 9.31 am.

Appearances:

Gentleman, Mr Mick, Minister for Corrections, Minister for Industrial Relations and Workplace Safety, Minister for Planning and Land Management and Minister for Police and Emergency Services

Justice and Community Safety Directorate

Glenn, Mr Richard, Director-General,

Johnson, Mr Ray, Acting Deputy Director-General, Community Safety

McNeill, Ms Jennifer, Deputy Director-General, Justice

Aloisi, Mr Bruno, Acting Commissioner, ACT Corrective Services

Pamplin, Ms Narelle, Assistant Commissioner, Offender Reintegration, ACT Corrective Services

Russell, Mr Jason, Assistant Commissioner, Custodial Operations, ACT Corrective Services

THE CHAIR: Good morning, and welcome to the public hearings of the Justice and Community Safety Committee and its inquiry into annual reports for 2022-23. The committee will this morning hear from the Minister for Corrections, and then the Attorney-General later this afternoon.

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

The proceedings today are being recorded and transcribed by Hansard, and will be published. The proceedings are also being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses used the words, "I will take that question on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript. This morning we welcome Mr Gentleman, MLA, Minister for Corrections, and officials.

I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter, and may be considered contempt of the Assembly. Could you each confirm that you understand the implications of the statement and that you agree to comply with it?

Mr Gentleman: Yes, thank you, Chair.

THE CHAIR: Thank you. All witnesses have done so. We are not inviting opening statements, so we will get straight into questions. I also welcome Mrs Kikkert to our committee proceedings.

Minister, between 2020 and 2023, complaints about the corrections system have increased on a yearly basis. New complaints for this year include complaints about the

implementation of the new incentives and earned privileges policy. A case study in the official visitor annual report 2022-23, gave an example of where corrections staff initially declined to act on a complaint, and only did so after the Health Services Commissioner got involved.

Minister, my question is that complaints about corrections from official visitors have increased year on year since 2020, the earliest available annual report online. The complaints increased from 1,217 in 2021, the first reporting period, to 1,376 complaints in the latest annual report. That is about 3.5 complaints per detainee. As the detainee population has actually shrunk, it seems that complaints have increased. So, Minister, what is being done to address what looks like a situation that is getting worse?

Mr Gentleman: Yes, thank you, Chair. You did mention the incentive and earned privileges policy. That was introduced in September 2022 to encourage positive and pro-social behaviours amongst detainees. It recognises and rewards behaviour in line with the behavioural expectations established within the policy. The scheme has three levels—the basic, standard and enhanced. To start, detainees have been assigned IEP levels of standard or enhanced, and each level corresponds to different amounts of incentives and earned privileges. Of course, it was in September of 2022, so it was not in place in the timeline that you mentioned of 2020. With that, I will ask the directorate officials to provide some information about the number of complaints and how we are addressing those.

Mr Aloisi: Thank you for the question. I think one thing to note, particularly over the last year, is that corresponding to that increase in complaints we also had an increase in visits by the official visitors. I just wanted to note that there actually has been an increase in visits post COVID as well.

In terms of how we are addressing the complaints, we look at grouping complaints if there are, sort of, systemic themes. So, if there are some concerns around, for example, the incentives and earned privileges, what we do is see whether there are any sort of themes running in terms of those complaints, and whether there is something we can pick out. And what we have done in response to those complaints is then develop an action plan in terms of how we will address those issues as they are identified.

I think specifically with incentives and earned privileges, it has to be acknowledged that, as a new system, there is always going to be, as you would expect, some level of teething issues when something is implemented. So I think part of our process in regard to IEP has actually been refining the processes around that. We believe that we have made improvements in that area.

Generally, our approach is that when we do receive a response from the official visitors we review their reports. Often the complaints are handled directly by our operational managers, in real time, so we are not waiting for the reporting. And we try to address those as quickly as possible, notwithstanding the case study that was referenced.

Generally, our preferred method is to address it in real time if we can. Sometimes, because of the nature and complexity of the complaints, it might present challenges

where there might be a lot of additional work that we might have to do in order to address it. So some complaints can be quick fixes; others obviously require a bit more protracted, sort of, solutions. So I think we do recognise that complaints management is something that we obviously take very seriously. And we do want to be as proactive in our responses as we can be, but often there are limitations in terms of what the complaints might be and how quickly we can address them.

THE CHAIR: Page 18 of the report, has an issue where the incentives and earned privileges policy appear to have affected the frequency of lock-ins for women detainees. Can you explain the correlation there?

Mr Aloisi: I am not certain. I will have a look to see if we have any explanation for that. I will take that one on notice.

THE CHAIR: Thank you.

MRS KIKKERT: In the case study on the same page, the Official Visitors investigated a complaint about detainees not being able to obtain certain food items like eggs, and changes had resulted in less money for detainees in the cottages to buy food. Apparently, nothing was done to address it until the Health Services Commissioner got involved and Official Visitors investigated and substantiated the complaint.

Why did it take the involvement of oversight officials to address issues such as food shortage complaints?

Mr Gentleman: I think, as Mr Aloisi has indicated, the Corrections staff try and intervene at an early stage to resolve complaints. On occasion, I guess, it would have to go up the line, when it is not resolved in that position, and that is why other entities get involved.

MRS KIKKERT: But why was it not resolved at the first level of complaint—in regard to the shortage of food?

Mr Gentleman: I do not know that we actually had a shortage of food, but I will ask directorate officials to—

MRS KIKKERT: That was the complaint.

Mr Johnson: If I am reflecting on the particular complaint that I think it is, it related to the availability of food, which was not, in fact, completely in our ballpark. We have a provision of service, and there was a shortage of eggs at one point, so the shortage was not just for us; it was a shortage of eggs in the commercial providers, which we worked pretty hard to address. If that is the particular event, we can look at that. There was also some issue around the amount of money that was available for the cottages, and that money was increased as a result of the review. I am looking at Jason Russell—I think we did do a review and then there was an increase in the amount of money that went to the cottages for food.

MRS KIKKERT: By how much?

Mr Russell: I cannot tell you the exact figure off the top of my head, unfortunately, but once it was recognised that we needed to look at what detainees had available financially for food purposes, it was decided to increase that amount.

MRS KIKKERT: So the cottages are given a special fund for their food depending on how many detainees are in those cottages? Is that how you work it out?

Mr Russell: Yes, it is per detainee.

MRS KIKKERT: Can you take it on notice how much they are given?

Mr Russell: I can, yes.

MRS KIKKERT: Thank you.

DR PATERSON: Minister, one of the recommendations of the Healthy Prison Review was that Corrective Services engage with key stakeholders “to develop a strategy to prevent, track and respond to incidents of sexual coercion and violence at AMC”. The response from the government was agreed in principle. Most of the aspects of the response are in terms of responding to people who have been sexually assaulted or harassed with a trauma-informed approach, but there is nothing really around prevention of sexual violence. I am just wondering if there are moves to progress work in that space.

Mr Gentleman: Yes, there have been. Recommendation 4 of the review looks at cohorts, and we have introduced a strategy to reduce the number of cohorts based on minimising rather than avoiding every possible risk so that more detainees can mix. But we are very aware of that mixture as well, so the limitation on detainees mixing is obviously in place to maintain safety, security and good order and is driven by non-association, so we are looking at whether those associated groups should mix in that particular focus. I will ask the directorate officials to provide some more detail for you.

Mr Aloisi: I will add that in terms of the preventative space, as part of our integrated offender management framework, we have been, basically, upskilling our staff on how to work with people experiencing trauma. That is including introducing training around specifically working with people with trauma using gender-informed principles and relevant training. I will hand to Narelle Pamplin, who is Assistant Commissioner, Offender Reintegration, just to expand on what we are doing in that area.

Ms Pamplin: We have been actively working on that recommendation as a whole and taking on a whole-of-service approach. Representatives recently met across our organisation to look at the planned approach for dealing with the prevention of sexual coercion and violence across our services. We are going to be adopting an approach that looks at development of a framework for that prevention, including partnering with our community providers who are experts in this area and will give us the appropriate guidance on how to address those issues and how to manage those upon release, as well as in the AMC.

DR PATERSON: Thank you.

MR BRADDOCK: Just some questions about transitional release. I see in the annual report you said that throughout the financial year 21 male detainees were admitted into the TRC. What was the maximum number that were in the TRC at any one point in time over the year?

Mr Russell: Twenty-one would have been the maximum for a period.

MR BRADDOCK: At any one particular point in time?

Mr Russell: At any one particular point in time. Due to administration building issues, our staff had to take over one pod of the Transitional Release Centre, which meant that the TRC itself went back down to a 15-bed centre.

MR BRADDOCK: So now I am confused—you had 21 people in a 15-bed centre at once?

Mr Russell: Sorry; we have taken that back—the centre—so twenty-one I do not believe would be correct.

Mr Johnson: I think, if I understand your question, it is that over the time 21 passed through the centre. The exact number at any one particular time—my memory is that 11, I think, were in the centre at one particular time; that would have been the maximum we have had.

Ms McNeill: We went up to 12 at one point for a very brief period.

Mr Johnson: Twelve at one point, yes.

MR BRADDOCK: Okay. Can I clarify that in terms of the Transitional Release Program you are saying one female exited the program? How many actually participated in the program during the course of the year?

Ms McNeill: One.

MR BRADDOCK: Following on from that, it was announced as part of planning for future infrastructure for the centre that master planning would be conducted of improved facilities. Has anything progressed in terms of developing what will take over that transitional release function?

Mr Johnson: To explain the pathway we are taking, I think as you saw in the budget papers that the intent of the first phase is, broadly, to build a temporary facility inside the fence that we will use for staff accommodation, which will free up spaces in the detainee populated areas for use as program spaces, which we do not otherwise have. So it will give us, in the context of infrastructure, an immediate effect. It will take us a little while to get that building in place, probably closer to the end of next year.

Then the next phase is the feasibility study, which will look at what the reintegration centre's needs are. Then, as quickly as we reasonably can, we will go through the

process of infrastructure development and tendering and so forth, and we will progress to build the first phase of that. I would be loath for us to get ahead of ourselves in terms of what that looks like, but I think we have all got some thoughts of how it might look, and it would include less about accommodation and more about space to run programs and education—and as broad a range of programs and education as we can do within the space we have got.

MR BRADDOCK: Thank you. I also see that the eligibility criteria for transitional release was changed over the course of the year. What have been the outcomes of that change?

Mr Johnson: That may be one Assistant Commissioner Pamplin can answer. It certainly did change the number of those who were eligible to go through the Transitional Release Centre, so perhaps I will hand to her.

Ms Pamplin: It has changed the services we have provided within the centre. Because the major change has been the eligibility criteria being extended to two years post release, it has meant that we have been able to have a phased approach to reintegration in that time.

There are three major phases. The first is to develop a case plan that is focused on reintegration needs, counselling, addressing criminogenic risks and making sure that we have a very clear understanding of the barriers for reintegration. The second part is addressing the education, industry, training and job requirements of the people in the TRC. The third is to re-establish family-ties leave so that we are actually focusing on making sure that, when a detainee is released, they have the strongest possible supports in the community. Really the major change in the cohort that we have seen is the length of time that people are able to spend within the TRC.

MR BRADDOCK: Thank you.

MRS KIKKERT: I would like to talk about the incentives and earned privileges. What provisions are made for detainees with short sentences to improve their IEP level, given that they can only apply for an increase in their level once every three months?

Mr Aloisi: We have actually changed the IEP policy because that was noted, so now a detainee can actually request an ad hoc review of their IEP status.

MRS KIKKERT: Great. So at what point are they eligible for it?

Mr Gentleman: On application—is it, Mr Russell?

Mr Russell: Upon application.

MRS KIKKERT: Upon application?

Mr Russell: I mean, obviously there is some work to do in the background by Corrective Services to ensure that we are making the right decisions around IEP, but by and large most detainees are well known to us, so a lot of the work is something

that we have already done, and we know what we are looking at. But once a detainee makes the application, we certainly assess it based on that.

MRS KIKKERT: What new amenities are accessible to detainees on the highest IEP level that would assist them in their rehabilitation?

Mr Aloisi: One thing that we are looking at introducing, at the moment, is a change to visits. We are looking at really re-establishing our pre-COVID levels in terms of visitation by family, noting that obviously connection with family is of critical importance to the rehabilitation of offenders. That is something that we are introducing, I think, as of December this year. We are looking at modifying that to increase it. That is something that people want to enhance—they will be able to access increased visits.

MRS KIKKERT: From my understanding, the IEP is supposed to be reviewed every year or so. Has that been reviewed in the last financial year?

Mr Russell: Yes, it has.

MRS KIKKERT: What complaints have corrections received from Official Visitors about the inconsistent application of the IEP, and what is being done to address them?

Mr Russell: One of the inconsistencies is always going to come from staff—people are people. So we have taken on a higher level of supervision of IEP reviews. Whereas area supervisors used to take carriage of a lot of, I guess you could say, the oversight of those reviews, we now have area managers that will actually take on a compliance perspective around those reviews and will ensure they are being done in a timely manner and that what is being completed in those reviews actually does reflect the true account of that detainee and their behaviour, and their participation in education programs, employment, et cetera.

MRS KIKKERT: Thank you. The daily average sentenced detainee population has decreased from 296 in 2018-2019 to 212 in 2020-2023, which is a 28 per cent decrease. The non-Indigenous population has decreased by 32.9 per cent, while the Indigenous population has decreased by only 2.7 per cent. In the same time frame the non-Indigenous daily average unsentenced detainee population decreased by 8 per cent and the Indigenous daily average unsentenced daily population increased by 5.5 per cent. At the same time as the daily average sentenced non-Indigenous population in the AMC has decreased by 28 per cent, why has the daily average sentenced Indigenous population decreased by only 2.7 per cent?

Mr Gentleman: Thank you, Mrs Kikkert. These numbers are referenced on page 61 of the annual report and reflect the custodial sentences that are passed on from the courts. The detainees are given a period in relation to their offences, and the courts make a decision on their time at Alexander Maconochie Centre.

MRS KIKKERT: Instead of implementing a board of inquiry for Aboriginal and Torres Strait Islander overpopulation in the justice system, your government opted for a review, stating that a royal commission-style inquiry may take years and that it would represent a significant expense. In contrast, and when a board of inquiry was

needed for Mr Drumgold earlier this year, it was commenced and concluded within eight months—the recommendations as well. Clearly, if you wanted to, you could do a board of inquiry in a timely manner. Now that you have demonstrated that, will you reconsider your preferred method and instead do what our Aboriginal and Torres Strait Islander community have asked for, and which they think is best, which is a board of inquiry?

Mr Gentleman: The government responded to that request, Mrs Kikkert, and made a decision on how we would proceed with the best outcomes in view for those Aboriginal detainees. I believe that is a correct decision. We will continue, of course, to look at our policies in regard to over-representation of Aboriginal and Torres Strait Islander people within the Alexander Maconochie Centre and do our best to support them whilst they are there.

DR PATERSON: Just going back to table 6 about the sentenced detainee population, there has been lots of criticism of—or public narrative about—the courts and a reduction in the sentences that have been given to offenders. From a Corrections point of view, what is your interpretation of why the sentenced detainee population has decreased so significantly, by almost a third, over the last few years?

Mr Gentleman: I would not speculate on the decision-making of the courts. I think, Dr Paterson, it is a decision they have made and I guess they look at the safety of the ACT community and how we can best contend with offences that occur across the territory.

DR PATERSON: But there is not a reduction in the numbers of people coming through, it is a reduction in the overall time—yes, the average detainee population. Is there a view of Corrections of that number, in terms of why you would say there has been a reduction in the detainee population in AMC?

Mr Johnson: I think it would be difficult to put it down to one thing. A number of policies and programs have been put in place to try and reduce the number of people on sentence. One would hope that they are having some success over time. I think more work would need to be done on confirming the types of offences and the types of offenders that are coming through, and if they are lesser crimes or less likely to lead to recidivism, then they are more likely to go into the Community Corrections space for the first round of sentencing. So there would be a lot of things that could impact on that and we certainly do a fair bit of thinking about it. Could I say we have an answer to that? Firmly, no.

DR PATERSON: I was wondering about bail officers, parole officers and intensive correction orders and how they are managed. Do they all fall under Corrections?

Mr Aloisi: Yes.

DR PATERSON: How many bail officers do we have in the ACT?

Mr Aloisi: Currently we have three bail officers and part of that was in response to a review we did of our bail systems and processes. Within Community Corrections we have done what has been done in the offender reintegration space. It sits under the

integrated offender management framework, and that is the idea that we would look at how we manage our clients within the community space as well. I think there has definitely been a shift in the processes or the approach we have taken and the underlying philosophy, moving from more of an administrative system to one that looks at the individual more holistically and looks at those things that really make meaningful impacts and changes in people's lives. So as part of that we have reviewed our bail processes and from our review we acknowledge that we were probably underdone in that space in terms of bail officers.

We have seen, as the annual report reflects, a reduction in the number of people subject to community orders, and to bail as well. I think we acknowledge that with an attention to resources there we could do greater work in terms of the development of a bail management plan, similar to what we do for our sentence clients. Acknowledging it is a bit trickier in that space because they are only an accused person at that time, so it is hard to engage them in other offence-specific rehabilitation programs, but we definitely acknowledge that is an area where we would like to focus greater attention in the bail space because it is an opportunity to intervene at an early stage.

DR PATERSON: There has been lots of, again, public discussion particularly around dangerous driving offending and recidivist offenders, and Operation TORIC has really highlighted the number of people who are committing offences while on bail. Do you think, any time soon, there will be some next steps in terms of either more bail officers or more holistic approach to how—

Mr Aloisi: In terms of the approach of how we are looking, and how we case manage in that space, definitely those changes have come into effect. We have started that. We have introduced the bail support plans, and again, they are effectively a precursor to a case management plan if that person goes on to be sentenced. So it actually helps in the longer term as well.

In terms of more resources in that area, absolutely I think that is something that we would look at. We have just stepped up recently—I think it was last month—to three from where we have had two for some time, and we have also looked at putting additional resource into the courts. We are going to commence a second court duty officer in the courts. The purpose of that is to actually capture the person—not in a literal sense, but a metaphorical sense—when they are in court, because we often find that between the person's appearance in court and connection with community operations, sometimes people can get lost in the transition. Often it is for simple reasons like not having a phone number or contact details, or having incorrect contact details recorded, so we have recognised that is an opportune moment to get in and assist the person and commence them on that journey sooner rather than later.

DR PATERSON: How many residents are there in the ACT that are currently on bail?

Mr Johnson: While Mr Aloisi is looking for that, I think it is useful to reflect on the fact that not all people on bail would be supervised by corrections, so there would be a pool of people that are on different bail arrangements provided by court, but they are not the majority. The total number on bail may be something that we do not actually have. We have the total number that we would be supervising, and if we do not have

the data, we can take it on notice.

Mr Aloisi: As the Deputy Director-General mentioned, for those who are subject to our supervision, as of 4 October, there were 184 persons subject to a bail order with no other concurrent orders.

Mr Glenn: Just to add, as with lots of these questions, across the justice system there are other parts that plug into the question; for example, in relation to bail, there are justice reinvestment programs that are directed towards supporting particularly First Nations people who are on bail to be able to maintain their bail conditions. They sit strictly outside the corrections system, but they are a component of the continuum of support that we seek to provide people.

MRS KIKKERT: You mentioned that community service offenders have decreased over time, but their breaches have increased at the same time from 29 per cent to 39 per cent. What has been done to address this, and what do you think the reason is that they are breaching those orders?

Mr Aloisi: It is a difficult proposition in terms of breaching and in terms of completion rates of orders more generally, and it is probably a difficult metric to interpret. High completion rates of orders can actually mean we are not doing our job in terms of applying enough rigour around our supervision; so really high completion rates might not necessarily be indicative of good work. It is a balance of ensuring we are administering the order from both perspectives; the perspective that we obviously want the person to successfully complete the order where possible, but we also want to make sure that we are safeguarding the safety of the community as well.

In terms of completion rates and in terms of breaches, it is a balancing act, because obviously we as Community Operations will be responsible for reporting alleged breaches, whether it is to the Sentence Administration Board or the courts, so we have a role there. Obviously, the way the court or the Sentence Administration Board deals with that breach by making their own independent decision. There are a number of factors to that, including individual behaviour. As well, particularly in the ACT where we have small numbers of clients, often you will see fluctuations in indicators such as that because of the small sample size.

MRS KIKKERT: Has there even been a time when an offender breaches their orders and you are able to identify it and fix it, and what has that been?

Mr Aloisi: Absolutely. It depends on what the breach is, but if there is a breach where it gives us evidence to believe that there is some area—whether it is around their mental health, drug and alcohol use—whatever the associated reason for the breach might be, we will always work to address it. We try to work from an approach where we want to make sure the person succeeds, but as I said, we do have to balance that with the safety of the community as well. Depending on what that issue is, we will try to address it.

More recently, we have had legislation enacted which has given us the provisions around exercising discretion in relation to good behaviour orders. We did have discretion for good behaviour orders, intensive correction orders and parole during

COVID, but those were implemented as part of the COVID emergency amendments. We can use discretion as a way of more therapeutically interacting with the individual and making sure that we are not setting them back in a way—again, acknowledging the risk of the breaching behaviour as well.

An example might be someone who has had a long history of polysubstance abuse, and we know, for example, that the drug use might be associated with their offending behaviour. Say, for example, that that person does a urine drug screen and we detect cannabis. I will use that as an example; again, not minimising the effects of cannabis, but we might detect some cannabis in the urine drug screen. Then we look at that individual, look at their history of compliance, look at the gains they have made and then make an assessment as to whether we might exercise discretion around that detection, rather than a formalised breach, because the outcome of the breach might adversely impact their—

MRS KIKKERT: Be more harmful to them?

Mr Aloisi: Yes, their rehabilitation trajectory. It might be better actually keeping that person in the community as best we can and having them stay connected with their employment, their education, their family and those sorts of things.

MRS KIKKERT: Is it just one officer that makes that initial decision based on the breach of the offender, or is there a review team?

Mr Aloisi: It starts with the officer making, effectively, a recommendation to their team leader. There are usually between five and seven people in each team of community corrections officers. Their team leader will review those decisions before a decision is made whether to exercise discretion or not. That is part of the framework we developed as part of the GBO discretion.

MRS KIKKERT: The team leader is usually a correction officer?

Mr Aloisi: Yes. In terms of their delegations and the authorities, they are equivalent to a community corrections officer, and typically they have been people who have come through the ranks.

MR BRADDOCK: Can I have an update on the implementation of smoke-free AMC?

Mr Gentleman: Yes. I am very pleased with the way that it is rolling out so far, but I will ask the directorate officials to give an update.

Mr Aloisi: I think it is fair to say that, by and large, the implementation has progressed pretty well and without major incident. The credit for that goes to the extensive planning that went into the implementation. I think it has been a long journey. Definitely the feedback we have, from detainees who we have spoken to and who have provided information, is that there was a high level of awareness that it was coming in. Most detainees were not surprised. You might have people more recently into the AMC who might not have had as great exposure to a lot of the communication, obviously, but I think for the most part it was very well

communicated.

I think part of the success of the implementation has been the level of consultation that has occurred with a range of stakeholders, including detainees. There was a lot of work that went into engaging them in terms of the implementation, right down to what incentives we would provide around it and how it would be managed.

I do think we have approached it from the perspective of the health approach. First and foremost, acknowledging the benefits for the individual, and acknowledging that, obviously, we have to be mindful of the work, health and safety implications of it as well. We have definitely taken a fairly, I would say, health-oriented approach to it, where we have tried to make sure we have a number of options available for detainees—whether that was support in terms of quit skills, whether it is provision of NRT. We have had a multipronged approach, which I think has really supported the implementation well.

MR BRADDOCK: I noticed the Inspector of Correctional Services provided a report to ACTCS regarding the NPM visit about this. Is it possible to obtain a copy of that report?

Mr Johnson: It is the Inspector's report, yes?

MR BRADDOCK: —which is provided to you. Are you prepared to release it?

Mr Johnson: Yes, I am aware of the report you speak of. Perhaps I will take that on notice in the first instance, because I am not sure of the nature of the report.

Mr Glenn: Sorry, Mr Braddock. Which report are we talking about?

MR BRADDOCK: Page 11 of the Inspector of Correctional Services annual report she refers to an NPM visit to discuss the smoke free transition and she says:

The findings of this visit have been provided to ACTCS for consideration, however, will not be tabled in the ACT Legislative Assembly or made publicly available at this time.

I am asking whether you would agree to the release of the report.

Mr Glenn: I think we will need to take it on notice and speak to the Inspector.

MRS KIKKERT: Has there ever been any breach of the new smoke-free policy?

Mr Aloisi: I would have to get the specifics. I suppose what I would just say in response to that, is that what we have tried to do is transition the response. So, we have not wanted to start too heavy-handed in terms of, for example, the discovery of contraband tobacco or tobacco related products. I think we really wanted to promote it as a significant change for detainees. We definitely have taken that approach but obviously at some point we do have to move into, unfortunately, that disciplinary space. To the best of my knowledge I am not aware of any specific breaches. I am not sure if we can take it on notice?

MRS KIKKERT: Has there been any noticeable increase in tobacco being smuggled into the prison?

Mr Aloisi: Again, this is only preliminary, but as far as we are aware there is no indication that we have detected an increase in tobacco products. I mean, previously they were allowed in the prison, but there is no indication at this stage that there is an issue of significant contraband. But, again, that is only based on the information we have.

MRS KIKKERT: I am interested in electronic monitoring. Can you give us an update on how the progression of the feasibility study is going?

Mr Gentleman: This is an opportunity for us to look at other ways of monitoring detainees across the territory. The territory officials will have detail for you on that.

Mr Aloisi: I can give a quick update. So, we have a dedicated project manager that was part of the funding. They commenced work on that project in September. The scoping of the feasibility study is underway but we have not presented to procure a consultant to actually do the feasibility study. We are just scoping that at the moment with key stakeholders. Work has also commenced on looking at the costings for the small scale trial of the electronic monitoring in relation to the intensive corrections orders.

MRS KIKKERT: In the feasibility study will you be looking at ways to increase the range of offenders that would be eligible for it?

Mr Aloisi: Yes, it definitely is part of the feasibility study. We will be looking at what the range of options are that we can explore in regard to electronic monitoring. As we know, there are a lot of applications for home detention. It is used in the domestic and family violence space in terms of geospatial restrictions. So, there is definitely a wide range of uses for it. Some state and territory jurisdictions use it in the bail space, for example. So definitely as part of that feasibility study we will be looking at the wide range of options to employ electronic monitoring.

MRS KIKKERT: When do you think this feasibility study will be finalised?

Mr Aloisi: According to the project plan I think it is scheduled for the end of 2024, for the feasibility study to be completed.

MRS KIKKERT: This time next year.

MR BRADDOCK: The dangerous driving inquiry recommended that the feasibility study also look into the use of electronic monitoring in order to be able to detect speeding. Is that to be included as part of it?

Mr Aloisi: I believe we are having discussions with police around that.

Mr Johnson: I guess the only item would be whether it is covered under different legislation that already exists around tracking and so forth which would be a matter

for the police to contemplate. There potentially is a meshing and we are going to have to make sure we get that sorted as we go forward in the planning.

DR PATERSON: There has been a bit of commentary in judgements made at the court around sending to people to AMC and the conditions at AMC, including last week when one of the judges said she had real concerns about sending a 71-year-old to AMC. Have any of the judges or magistrates ever done a tour of AMC in their time in the judiciary?

Mr Glenn: Their associates have but I personally do not recall taking a tour with magistrates or judges. I just do not. That is not to say they have not been through. I cannot comment on that. I know we certainly open the doors for their associates. We have also done a number of tours now for the Sentence Administration Board. We continue to keep the doors open for all of our stakeholders so at any time they would like to come and have a look through and get a better understanding of what the facility looks like, they can.

DR PATERSON: Maybe an invitation from Corrections to the judiciary?

THE CHAIR: Is there anything to take on notice in that line?

Mr Glenn: I have regular engagement with the members of the judiciary. I think they are aware of their—in fact, they have an entitlement to visit the AMC if they wish. I am certainly aware of instances where judges have viewed parts of the facility in relation to particular matters. Whether they have gone for a general visit is another question, but certainly we can reinvigorate that invitation in discussions with the head of jurisdictions.

Mr Johnson: Chair, if I may, I can take a question that was on notice. I have some information that I can pass back to the committee if that is useful.

THE CHAIR: Sure, if it is going to be quick.

Mr Johnson: Just in terms of the money that was provided to cottages per detainees; it was increased from \$55 to \$65 in 2022. So, that is per detainee per week. It was then reviewed in January 2023 and increased to \$70, in line with—in fact, a bit better than—CPI. We will aim to continue to look at in the context of CPI.

MRS KIKKERT: And that is for both genders, female and male?

Mr Johnson: Yes.

THE CHAIR: We have gone slightly over time but thank you for your patience. On behalf of the committee I would like to thank our witnesses for your attendance today. If you have taken any questions on notice please provide your answers to the committee secretary within five business days of receiving the uncorrected proof of Hansard. This hearing will resume at 1 pm today. Thank you.

Hearing suspended from 10.17 am to 1.01 pm.

Appearances:

Rattenbury, Mr Shane, Attorney-General, Minister for Consumer Affairs, Minister for Gaming and Minister for Water, Energy and Emissions Reduction

Justice and Community Safety Directorate

Glenn, Mr Richard, Director-General

McNeill, Ms Jennifer, Deputy Director-General

Williams, Ms Kelly, Executive Group Manager, Legislation, Policy and Programs Division

Hutchinson, Ms Zoe, Executive Branch Manager, Justice Reform Branch, Legislation, Policy and Programs Division

Kimber, Ms Bianca, Parliamentary Counsel, Parliamentary Counsel's Office

Dening, Mr Richard, Senior Director, Restorative Justice Unit, Legislation, Policy and Programs Division

ACT Courts and Tribunal

Nuttall, Ms Amanda, Principal Registrar & CEO

ACT Government Solicitor

Garrison, Mr Peter, AM SC, Solicitor-General for the ACT and ACT Government Solicitor

Office of the Director of Public Prosecutions

Williamson, Mr Anthony, Acting Director of Public Prosecutions

Sentence Administration Board

Mulligan, Mr Dominic, Chair

THE CHAIR: We will now resume today's public hearing of the Justice and Community Safety Committee in its inquiry into annual and financial reports 2022-23. The proceedings today are being recorded and transcribed by Hansard, and will be published. The proceedings are also being broadcast and webstreamed live. When taking a question on notice it would be useful if the witnesses could say, "I will take that question on notice." This will help the committee and the witnesses to confirm questions taken on notice from the transcript.

We welcome today Mr Rattenbury MLA, Attorney-General, and officials and witnesses from the Sentence Administration Board and the Coroner's Court. For the Hansard please state your name and capacity in which you appear when you first speak. I remind witnesses of the protections and obligations afforded by parliamentary privilege, and draw your attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Would you each at this table, I guess, confirm that you understand the implications of the statement and that you agree to comply with it?

Witnesses: Yes.

THE CHAIR: Thank you very much, all of you. We will not be taking an opening statement so we will move right into questions. Attorney, I am just wondering what sort of interaction you have had with the Chief Justice regarding the non-exercise of her discretion to pursue Mr Drumgold for allegedly making false claims in her courtroom—obviously, I am making reference to the Sofronoff inquiry—or to use her discretion with respect to the juror whose misconduct led to a mistrial. Have you had discussion with the Chief Justice about her approach to those particular issues?

Mr Rattenbury: No, I have not, Mr Cain. I think, given the separation of powers in our Westminster system, it would be inappropriate for me to raise those matters with her.

THE CHAIR: Yet you have brought in amendments just recently to introduce an offence for juror misconduct. Was that something you have discussed with Her Honour or any judicial officer?

Mr Rattenbury: I noted Her Honour's comments. During that trial last year when a juror was dismissed Her Honour made public comments observing that there was no offence available in the ACT. In light of that, I asked the Justice and Community Safety Directorate to examine whether we needed to consider closing a gap in the law there or whether it was something that other jurisdictions had that the ACT did not—and that was certainly the nature of the Chief Justice's public comments. JACS went about developing that amendment after my request. Through that, the courts will have been consulted as a normal part of that development.

THE CHAIR: So you say that there is no offence, which is what you are bringing in, but wasn't it available to the court to produce a finding of contempt of the court for the juror misconduct?

Mr Rattenbury: Yes, you are correct, Mr Cain. The observation I was making was that in the Chief Justice's comments—and this is my broad recollection, not a specific quote—she made a specific reference to jurors seeking information outside of directions. That is the piece of legislation that has been introduced to the Assembly.

THE CHAIR: Why not leave it in the hands of the judiciary to produce that contempt finding rather than bringing a new offence into being?

Mr Rattenbury: I noted the comments of the Chief Justice, where she observed in her remarks the absence. That is why I sought advice, and the advice I was given was that it was suitable to consider closing that gap or providing that additional option for the courts to consider.

THE CHAIR: Will the power to issue a ruling of contempt be still available?

Mr Rattenbury: Yes.

Mr Garrisson: Mr Cain, my understanding is that that ability for the court to find someone in contempt remains available. My understanding is also that the law that has been passed to deal with juror misconduct more or less brings this jurisdiction into line with a number of other jurisdictions that have similar laws.

THE CHAIR: Attorney, with respect to the finding in the Sofronoff report that Mr Drumgold misled Her Honour, are you planning to bring in a legislative amendment to cover that occurrence, given that there has been no action by the court on that?

Mr Rattenbury: Nothing has been identified to me, Mr Cain. In the same way, where there was an evident space or gap, that will need to be filled in a similar way.

THE CHAIR: It does not concern you as the Attorney-General for the ACT that that behaviour has not been acted upon by our judicial system?

Mr Rattenbury: Well, I think you are asking for my opinion there. What I would say is—

THE CHAIR: Well, you are the legal officer of the ACT.

Mr Rattenbury: I am the Attorney-General, yes, that is correct. The observation I would probably make on that is that I think there has been a range of consequences applied to Mr Drumgold as a result of the findings of the Sofronoff review. He is obviously no longer the Director of Public Prosecutions. The court, as you have correctly noted, does have discretion. At this point the court has not exercised that discretion, and that is a matter for the courts.

DR PATERSON: Attorney-General, my question is with respect to a question on the notice paper No 34, where I asked about different types of dangerous driving crimes for the last eight years, perhaps, and some more clarity on the sentences from the dangerous driving report. In the response that I got it says that responses are limited to the period 2019-20 to 2022-23, “reflecting the availability of reliable data”. I am just wondering: why is data prior to 2019 unreliable?

Ms Nuttall: Dr Paterson, we upgraded the case management in 2019 and the data that was in the earlier case management system was not reliably able to be transferred into the new system. So, we have not been able to provide the data that was collected in the old system.

DR PATERSON: The data still exists though, does it not, because the—

Ms Nuttall: It is about the way the data can be interrogated from the system. So it is just not able to be interrogated in the same way. One of the reasons for updating the case management system was so that we could have better capability of extracting data.

DR PATERSON: I guess that goes to the second part of my question. Again, I am concerned about the data that is being presented. There are multiple repeats in the data. So the sentencing data lists the charge against a specific offence but what that means if an offender has committed multiple crimes is that that same sentence is used multiple times in the determination of these results. I feel that the numbers presented are problematic and I guess my question is: has there been any consideration of having some data analysis done to be able to replicate the results of what was

presented in the questions on notice?

Ms Nuttall: I am sorry, Dr Paterson, I cannot recall the exact nature of our response to that. It is some time since we did that. The courts and tribunal are undertaking some work on data integrity and collection of our data. We concede that the collection of data has not entirely been satisfactory, and we are working on some rules in terms of data entry that will assist us in being able to have more reliable data. I am not entirely sure how we have double counted in that, so I am not really sure what the issue is. I might have to take that issue on notice in terms of whether any of our work will rectify that particular issue.

DR PATERSON: Thank you. How is the data extracted from the ACT to contribute to the ROGS data, nationally? Because that, again, was quite different to the data that I was given.

Ms Nuttall: I will have to take that on notice, Dr Paterson. I am not aware of the specific details of how we transfer that data. They are accounting rules that we are required to undertake for different types of data transfer. There are accounting rules for the data that we provide to the ABS, and there are also accounting rules for the way that we provide data to ROGS, so I will have to take that on notice in terms of the specific details.

DR PATERSON: I guess my overall question goes to the integrity of data that we have, in that the ROGS data is different to the data that I have received, which is different to other people's analysis of this data. I guess the fact that there is really inconsistent information that we are trying to base policy decisions and determinations on is really problematic.

Ms Nuttall: It will depend on what we are counting for the specific areas. There are different codes that certain types of offences go into, and accounting rules, and they are different in terms of the different forms in which that is collected. We really need to understand what is going into that data to understand whether there are inconsistencies, or whether they are telling us different pieces of information.

Mr Rattenbury: I think the important observation, if I might, is that the ACT follows the prescribed rules with the ABS and various other agencies. These are not unique approaches that the ACT is taking.

MR BRADDOCK: The ACT government used to produce the *ACT Criminal Justice Statistical Profile*. I think the last year was June 2019. Why was that stopped—because surely that would have been a useful data basis for these discussions?

Mr Glenn: Mr Braddock, I might come back on notice with a more detailed answer, but what I can say at the moment is that we had a review of the *ACT Criminal Justice Statistical Profile* done by the ABS, and there were some suggestions as to how that profile could be changed and adjusted. That work then melded into COVID, and we need to come back to that.

There were some issues along the lines that Dr Paterson has highlighted. Every time we produce a different data set that potentially has a different set of accounting rules

behind it, we end up in a conversation about whether the data is correct or whether we are actually talking about different things. So we have a broader piece of work around our data, which I think goes to some of the work that Ms Nuttall is talking about around data integrity and project data within the courts. The integrity of the data is fine; it is the analysis that we are working on.

MR BRADDOCK: Is the intent to, at some point in the future, reinstate such a data-based exercise?

Mr Glenn: I do not think we have a specific intention there. It actually goes to the question of how we best represent the data that we have—whether that was the correct tool, whether ROGS is the correct tool, or whether different ways of interrogating the data we have within ICMS, which is the system that the courts have for the data, is the best approach.

In parallel, we have had a whole series of projects that are running with ABS and others around data linkage projects, so there is quite a lot of work going on in the data space. I think we just want to make sure that we are giving the best contribution to the public discussion about data that we can, rather than just continuing to replicate old forms that we have put out in the past.

MR BRADDOCK: I suppose I am trying to hear what future action you are planning to do to improve the quality of the data that is provided on the criminal justice system here in the ACT. Are there any plans to improve what data is being provided?

Mr Glenn: I am not going to accept the premise that we need to improve the quality of the data. I think we need to be able to have data that is of utility for the public discussion about the criminal justice system. ROGS is a component of that, and we are always going to have to do ROGS because we participate in that process. Whether there are other steps that we can take on a jurisdictional basis to be able to deal with data is an ongoing question, and I do not have a specific answer to the next step, other than it is work that is ongoing.

MR BRADDOCK: I want to talk about the Parliamentary Counsel's Office. As a private member, I struggle to get the level of effort and priority given to the work that I would like to see drafted, due to competing priorities from the government and other private members. What is the current resourcing of the PCO, and has that changed since the number of members increased here in the Legislative Assembly?

Mr Glenn: I might invite the Parliamentary Counsel to assist with that.

Ms Kimber: I have read and agree with the privilege statement. Our budget for drafters has not increased since the increase in the number of MLAs.

MR BRADDOCK: Sorry; you said “has not”?

Ms Kimber: It has not.

MR BRADDOCK: What is the average delay before PCO is able to allocate the resources to commence drafting, given the other competing demands?

Ms Kimber: It is very dependent on any particular workload. It really varies. The stats tend to indicate that the year prior and the year of an election are often our busiest periods. We have done some statistics to identify, in terms of complexity, how long drafting would normally take and how long we would need.

MR BRADDOCK: Have you found that demand from the members is outstripping your capacity to meet those demands?

Ms Kimber: There is a longstanding agreement for the drafting of private members' work. That has always required that we draft it, but subject to the competing priorities of the government. That will mean that there are times where we are not able to achieve the time frames that are sought by private members. In those instances, we attempt to negotiate a suitable outcome for the member.

MS LEE: Attorney-General, I have a couple of questions in relation to your role as Attorney-General and the handling of the serious allegations against Mr Davis, following on from the session that we had yesterday. You said that your chief of staff first discussed the matter with you on Monday, 6 November. You have said that publicly yourself.

Mr Rattenbury: Yes.

MS LEE: Yesterday Minister Davidson confirmed that she had actually had knowledge of it a week prior.

Mr Rattenbury: Correct.

MS LEE: Can you confirm for the committee that you, at no time between 29 October and 6 November, had knowledge of these allegations? So your minister—a minister in your cabinet, in your party—and your chief of staff, who both had this knowledge a week before you, at no time approached you.

Mr Rattenbury: Correct.

MS LEE: Is that usual, that you would expect information of such a serious nature to be kept from you for that long?

Mr Rattenbury: I do not agree with your characterisation that it was being kept from me, Ms Lee. Our party trusts people to perform their roles within it. As I think I commented in this committee yesterday—but it might have been to the public, through the media—the chief of staff and Minister Davidson felt that the information they had received was quite uncertain. In the course of that week they were seeking to better understand that information. As is available publicly in the document we have released about our internal review, they also took into account the fact that Mr Davis was not in the city and it was difficult to move forward with any sort of consideration of the matter in light of his absence. We have been very transparent about that. You may disagree with that approach, but we have been absolutely clear about it. Your persistent questioning does not change the actual underlying facts.

MS LEE: Are you going to let me finish questioning?

Mr Rattenbury: I was finishing my answer.

MS LEE: In terms of the internal review that your chief of staff undertook, the report that you have made public states—and I am quoting directly from the report:

Mr Davis is well known across the ACT LGBTIQ+ community and is apparently particularly known to have a preference for younger people.

Can you confirm for the committee that, when you say that these allegations were first raised with you on 6 November, that was the first time that you had ever heard those “rumours”?

Mr Rattenbury: Can you just remind me where that quote is, Ms Lee.

MS LEE: It is on the second page of your chief of staff’s internal review document, which you have published.

Mr Rattenbury: Sorry. It has been a busy couple of days. I am just making sure I am at the right place.

MS LEE: Sure. It is the first dot point on that page.

Mr Rattenbury: Yes, indeed. I see. This is why I wanted to check the location, because what it actually says above that is that “findings from this meeting” are that “Mr Davis is well known”. That was part of the information we were trying to gather to understand these circumstances. That was a piece of information that came to us through the work of the chief of staff examining these matters. To answer your question specifically: that was new information to me.

MS LEE: According to that same report, your chief of staff said that Ms Davidson, on 31 October—so this is before it came to you—another staff member and your chief of staff met to war game the situation. Does it not concern you that there seemed to be at least several meetings and it still had not been reported to you, as the party leader and as the Attorney-General of the ACT?

Mr Rattenbury: I think your characterising of “war gaming” carries a particular connotation which I do not accept. What the document actually said was:

Ms Davidson, and the other staff member ... reconvened to discuss what further actions could be reasonably taken at this stage.

I think what that points to is a considered approach to dealing with a very difficult circumstance.

MS LEE: Do you think that you should have been told by your own minister earlier, when she first found out?

Mr Rattenbury: I support the decisions that Minister Davidson took at the time.

When one looks back at these things with hindsight, one may always consider, “Might they have taken a different approach?” but I know that Minister Davidson was deeply troubled by this information. She was uncertain about the nature of the information available to her and she was seeking to move forward with it to better understand, as the review points to, “what further actions could reasonably be taken at this stage”. The rest of that sentence says:

We wanted to ensure that our initial thinking represented the best course of action ...

These are people who take these matters very seriously. I think we have been extremely clear that we took these matters very seriously. There was no suggestion of a dismissal, of thinking that this was not important, of in any way diminishing the seriousness of these allegations. What this report articulates and what my public commentary articulates is a group of people who understood the seriousness of these matters and sought to get absolute clarity on what our responsibilities were, to ensure that we stepped forward in an appropriate manner.

MS LEE: You mentioned yesterday in the hearing that it was in fact Mr Davis who came to you on the morning of 6 November.

Mr Rattenbury: Yes.

MS LEE: What did he say to you in that meeting?

Mr Rattenbury: The context for that is that Mr Davis had just come from a meeting with the chief of staff and Minister Davidson, in which they had outlined the nature of the allegations that had been made. He asked them in that meeting that he be the one who approached me to talk about that. He came to me and described in broad terms what had been put to him. Following that conversation, I had subsequent conversations with the chief of staff and Minister Davidson, because I wanted to understand the full set of perspectives so that I could consider what further steps needed to be taken from there.

DR PATERSON: We have so many codes of conduct: the members’ code of conduct, the ministers’ code of conduct. We have ethics advisers, the Commissioner for Standards, the Integrity Commission, and we have got human resources here. There is also the ombudsman and the police. All of these avenues are established and set up to protect victims and see that people who have complaints made against them achieve some sort of just outcome. None of those processes or pathways were implemented or undertaken by you, your chief of staff or Minister Davidson.

As Attorney-General of the ACT—where we have expectations on every other person and workplace in our community—can you imagine if this happened in another business and you looked at them and said, “For God’s sake, where are all these pathways, codes of conduct and standards that you have?” We have all of them, but they have not been touched on, not once, by your internal investigation or process. I question the actions that you have taken.

Mr Rattenbury: I thoroughly dispute your characterisation of that, Dr Paterson. What

we did was form an initial understanding of what the situation was. We sought a range of advice from a range of people. I will come back to the question that Ms Lee asked me—

DR PATERSON: But none of the formal processes—

Mr Rattenbury: I will come back to the question that Ms Lee asked me yesterday about reporting to the Speaker. Having reviewed that matter, what I can tell the committee is that that was an oversight, and that has been completed today. However, in getting to that point, we did the sorts of things that you are referring to. We sought advice from corporate affairs and the Chief Minister, Treasury and Economic Development Directorate on what reporting obligations we had. They sought legal advice. That advice came back to us. It suggested a number of channels, which we fulfilled, which included Policing, the Integrity Commission and the Clerk.

DR PATERSON: Are you able to table that advice that you received from—

Mr Rattenbury: No; it is legal advice. I do not believe I can.

DR PATERSON: When did you request that advice?

Mr Rattenbury: Let me finish the information. That advice did not contain a recommendation or information that we had a responsibility under the policy that Ms Lee identified yesterday. I am not seeking to throw other people under the bus nor to diminish our responsibility. We took the exact steps you are describing. We sought professional advice, and that professional advice did not identify that obligation under that policy.

We also reported it to the Clerk, with our knowledge that we needed to think about the Commissioner for Standards through the Assembly, and the Clerk did not identify our obligation under the policy that Ms Lee identified, the Child Safety Code of Conduct policy. I make that observation for two points: one is that we sought advice from the appropriate agencies along the lines you are suggesting, and I think—

DR PATERSON: On allegations of child sexual abuse?

Mr Rattenbury: On allegations of alleged sexual misconduct.

DR PATERSON: On what date did you seek that advice?

Mr Rattenbury: I would have to take that on notice to give you an exact date. I believe it was Tuesday, 7 November. The point is that I think there is a learning here. Clearly, despite the systems that are set up, even through government and through the sorts of channels you suggest, there have proven to be lessons to be learned, because we were not given the advice that Ms Lee identified yesterday. I acknowledge that.

THE CHAIR: You said you sought advice. Did that advice come from the ACT Government Solicitor?

Mr Rattenbury: I believe it did, yes.

THE CHAIR: You believe it did. Could you confirm whether it came from the ACT Government Solicitor or not?

Mr Garrison: Mr Cain, my office was asked for relatively high-level advice from the Chief Minister's directorate.

THE CHAIR: So the answer is yes?

Mr Rattenbury: Yes.

Mr Garrison: Yes.

DR PATERSON: Why was this advice not outlined anywhere in your internal report?

Mr Rattenbury: Because it is legal advice.

DR PATERSON: So that does not contribute to the decision-making on any of the—

Mr Rattenbury: It absolutely contributes to it. This is the report that the Chief of Staff put together. I think your question goes to: he might have written it differently. You are judging that with hindsight. He wrote this report with the best knowledge he had and with the best professional judgement he had.

THE CHAIR: Just to clarify something: the advice was asked for by the Chief Minister's department, so it is the Chief Minister's officer who has that, as privileged advice. Is that correct?

Mr Garrison: The legal professional privilege belongs to the territory and can only be waived either by the Attorney-General or by me. The advice, as I sought to start to explain, was at a relatively high level. There was no knowledge of the factual detail of the matter. It related to what the legal reporting obligations are in general terms. It was simply to point out what those high level legal obligations for reporting are. They were not, as I recall, fact specific, other than being aware that matters had been raised in the media.

THE CHAIR: Attorney, are you willing to waive the territory's privilege over that advice, the request for the advice and the advice itself—

Mr Rattenbury: Mr Cain, I—

THE CHAIR: and provide it to this committee?

Mr Rattenbury: It would be fair to observe that I clearly have a conflict of interest in making this decision. I do not think it would be appropriate for me to make that judgement. I have a direct and material interest in the circumstances, given the nature of this committee. I probably need to defer the decision to the Solicitor-General. I will have to take some advice on that, but I do not think—

THE CHAIR: It is the territory's advice. The lawyer does not have the—

Mr Rattenbury: Yes, but, Mr Cain, you will appreciate that I am directly involved. I think in any other circumstances anybody would consider that to be an evident conflict of interest.

THE CHAIR: Yes, but waiving the privilege obviously would show that you have well and truly overcome any conflict.

Mr Rattenbury: Mr Cain: two things. I think that I and my colleagues have been incredibly transparent in this exercise. Going back to Dr Paterson's matter, where she talked about this happening in any other organisation, have you ever seen anybody else publish the level of information about process that we have? Secondly, I regularly receive advice, as the Attorney-General, that the government should not waive the legal privilege. Perhaps I can defer to the Solicitor-General on why I regularly receive that advice.

THE CHAIR: That is okay; we will go to other supplementaries.

Mr Rattenbury: No. You asked the question; do you not want the answer?

THE CHAIR: No. I think I have the answer, thank you.

DR PATERSON: Attorney-General, why was the advice that you had received not mentioned yesterday in your media release? I guess the question that everyone is very concerned about is that this document that you put out is actually not clear at all. It is very confusing and raises a lot of questions. More and more information keeps coming out, so it is very difficult to believe that we have the entire story on this. I ask: why did you not mention this advice in your media release or in any of your time lines?

Mr Rattenbury: Firstly, again, that is your opinion. I think we have been excessively transparent. We provided a range of documentation, detailed statements, and I stood in a press conference yesterday until the journalists ran out of questions.

DR PATERSON: It is about the answers you are giving. My question is: why did you not mention it in the press conference?

Mr Rattenbury: Which bit?

DR PATERSON: The advice that you received from—

Mr Rattenbury: No-one asked about it. We sought to focus on the information we thought was of most relevance, but I am now sitting here answering the questions for you.

MS LEE: Attorney-General—perhaps this could be answered better by the Solicitor-General; I am not sure—just going back to the advice that you did receive, you confirmed that it was done through CMTEDD.

Mr Rattenbury: Yes.

MS LEE: You have taken on notice whether it was on 7 November.

Mr Rattenbury: I am almost certain it was that day, but I will double-check.

MS LEE: Yes. We have almost an hour left, if someone is able to get that information. Surely it is not that hard to check, for the committee's benefit, to have confirmed.

Mr Rattenbury: Yes. I do not have time to sit here and send a text, but if someone is listening—

MS LEE: Yes. I am sure that someone is listening in.

Mr Rattenbury: they might well send it to me.

MS LEE: On that, in terms of the advice that was sought, did you personally seek that through CMTEDD?

Mr Rattenbury: My chief of staff sought it.

MS LEE: Through the department?

Mr Rattenbury: Yes.

MS LEE: Did the department directly go to you, Solicitor-General, for that advice? I am just trying to get the process of how that happened, not the actual legal advice itself.

Mr Rattenbury: Sure. I understand.

Mr Garrisson: It was raised with one of the senior lawyers in my office. We were unaware that it was a direct request from the Attorney-General's office. It was merely an inquiry and a high level of generality about legal obligations and therefore it dealt with what the legal obligations are in relation to something of the character that had been disclosed in the media. It dealt with possible different legal reporting obligations and it was simply at that high level of generality. The advice was provided back to the Chief Minister's directorate, and that is where it lay.

MS LEE: Is it the usual process, Attorney-General, when you are seeking legal advice from the territory's solicitor, despite the fact that you have your own directorate, you go through CMTEDD?

Mr Rattenbury: No, Ms Lee. Normally, if I needed legal advice from the Government Solicitor we would communicate directly. In this case, we saw this in the first instance as a matter where we sought support from corporate services. We saw it perhaps sitting more in the HR space and process space, rather than seeking direct legal advice. I understand that the agency then sought that legal advice. That was the choice that they made. We went to the agency and asked what our responsibilities were.

MS LEE: Right. When the agency, in this case CMTEDD, seeks legal advice from you, Solicitor-General, does that come directly from the agency or does that go through the Chief Minister's office?

Mr Garrisson: From the agency. Very, very rarely would any request for advice come from the office of the Chief Minister.

MS LEE: Thank you. I appreciate that.

DR PATERSON: Did you, Attorney-General, receive any other advice from any other agencies or speak to anyone else about this issue that informed the path you took?

Mr Rattenbury: I will take that question on notice, Dr Paterson.

MS LEE: Chair, can I, before some of the supplementaries—

THE CHAIR: Sure.

MS LEE: I was on the time line of the conversation that you had with Mr Davis on Monday, 6 November. Was there anyone else at that meeting with you and Mr Davis?

Mr Rattenbury: No.

MS LEE: I do not think we quite got the full extent when I asked you what he said to you; it was only to the extent that he had allegations levelled at him. I am not sure that you went further than that.

Mr Rattenbury: That was the extent of it. That was the broad canvass of the conversation.

MS LEE: You did not seek to ask him any questions about whether there was any basis to these allegations?

Mr Rattenbury: Yes; of course I did.

MS LEE: What was the conversation?

Mr Rattenbury: Ms Lee, I think we are getting well into a category where these questions are not relevant to this committee.

MS LEE: Are you objecting to answering the questions?

Mr Rattenbury: What I am saying is: I am trying to understand what you think the boundaries are in the nature of information I need to disclose in this context. This is a highly sensitive matter, but I understand you have great political interest in it.

MS LEE: I think it is a community interest for everybody.

Mr Rattenbury: These matters are now subject to a range of considerations by a range of agencies, and I would probably want to seek some advice on perhaps understanding where you want to finish this, in terms of how far I should go in relaying those conversations. What I can say—I have said this publicly—is Mr Davis was very clear with me that he felt he had not undertaken any activities that were illegal.

MS LEE: Okay. You, as the Attorney-General of the ACT, have said, publicly on multiple occasions—and I will quote one of them:

My office at this point has not seen any information or evidence of illegal activity.

Mr Rattenbury: Correct.

MS LEE: You have said that repeatedly—that you have seen nothing illegal—and yet the report from your chief of staff does refer to certain exchanges of photographs and text messages.

Mr Rattenbury: Yes.

MS LEE: Including that of a sexual nature?

Mr Rattenbury: That is my understanding—yes.

MS LEE: And, in terms of the exchange of that information, including photographs, they were with somebody who was under 18. How can you as the Attorney-General of the ACT have stated on multiple occasions with such certainty that there was nothing illegal when your chief of staff's own internal report has referred to exchanges of sexual material, including a party who is under 18?

Mr Rattenbury: What I have said—and I have sought to be very careful with my words—is that we are not aware of any matters that are illegal. On the exchange of images, we have endeavoured to understand the law on that matter. To the best of our understanding, that exchange of images was not illegal, but we are conscious that—and this was identified in a comment from a journalist yesterday—there are also federal laws that may apply, and that is the basis on which we felt it was necessary to report this to ACT Policing.

I need to be very clear, Ms Lee. You are judging this matter in hindsight. What I have also been extremely clear about is that this all moved very quickly. From Monday to the completion of the report on Friday, the clear intent was that this was meant to be an initial review to understand the circumstances. We did not seek to make definitive findings. We do not consider ourselves to be an investigative organisation. As I have been—

MS LEE: And yet you undertook an internal investigation. That was the basis and the justification for why you did not go to the police earlier.

MR RATTENBURY: What I have said is that we did an initial review to understand

the circumstances we were facing and understand our reporting obligations. I think most people in the community would consider that to be a common-sense approach.

THE CHAIR: I might make sure everyone is aware of where we are tracking. We might start a fresh line of—

MS LEE: Sorry—I have just one more, if that is okay, Chair.

THE CHAIR: Okay.

MS LEE: In that answer, Attorney-General, you alluded to the fact that there may be some commonwealth laws that you might not be familiar with, in terms of whether there was anything illegal. This is an ACT fact sheet that states: “All adults must report sexual abuse.” It clearly says:

You must report information you have about sexual offences committed against anyone who was under 18 at the time the offence was committed.

You say, continually, that you had stated as Attorney-General that you have seen nothing illegal and you say that you may not be aware of some of the commonwealth offences, but we are talking about something clearly stipulated—not only the policy that we discussed yesterday in the hearing about your obligation in this place but also the ACT government’s own fact sheet. This is the ACT government’s own fact sheet, and you are the Attorney-General.

Mr Rattenbury: We looked at a number of sources, Ms Lee. My chief of staff looked at a number of sources and his advice to me was that there appeared to be a number of different versions available on the internet about what the rules are in relation to this. I want to be very clear with you: we were not seeking to draw a definitive conclusion. You are scrutinising me over a three-day time line. In that initial review, we identified areas of concern and that is why we took the decision to take the material to ACT Policing. We did not seek to form a definitive view.

What I have said publicly is that, to the best of our knowledge, we did not consider there to be any illegal activity. But we have been absolutely clear that maybe others who are more expert in this space may provide different advice. We have been upfront about that. I cannot be any clearer to you, despite your persistent questioning.

MS LEE: I understand, but can you see that there is concern amongst the community that, as the Attorney-General of the ACT, you have repeatedly stated that you saw nothing illegal. You make that assertion and then in this place you say, “We didn’t try to make a definitive conclusion.” That is exactly what you have been doing for the last couple of days. Can you see that concern would be raised about that?

Mr Rattenbury: I think you are putting words into my mouth, Ms Lee. We have been—

MS LEE: I am happy for you to check the transcript.

Mr Rattenbury: I think the community sits down, looks at what we have done and

says, “The Greens have been serious and diligent about this. They have acted quickly and they have referred to the appropriate authorities.” I think most people in the community would consider that an appropriate course of action.

MS LEE: Not the 17-year-old who felt compelled to go to the media.

Mr Rattenbury: That is your commentary.

MS LEE: That is what they have said.

Mr Rattenbury: I do not know why they did that. We continue to have contact with that young person. We continue to offer them support. I cannot speak for them. They are free to take the course of action they wish.

MS LEE: Finally, can you clarify this. The report of your chief of staff, on page 2 at the dot points—this is in reference to the findings of the meeting with the 17-year-old individual—says:

He made allegations that Mr Davis was persistent in his messaging, engaging on multiple platforms.

It goes on to say:

He also said that Mr Davis has been in touch with him as recently as Sunday 6 November 2023.

Obviously, there is a typo. Can you please clarify: is it Sunday, 5 November or is it Monday, 6 November?

Mr Rattenbury: I do not know the answer to that, Ms Lee. I had not picked up that typo.

MS LEE: There are 45 minutes. Perhaps somebody from your office is able to confirm that before the end of the hearing.

THE CHAIR: We will have just one more supplementary on this substantive line from Ms Lee. Dr Paterson has a supplementary.

DR PATERSON: Attorney-General, the last bit of evidence in your internal report is on Thursday, 9 November and it states that the conclusion is that your chief of staff “felt it necessary to report the matter to police”.

Mr Rattenbury: Yes.

DR PATERSON: Why did he wait 24 hours to inform you and report to police? Why didn’t he report to police on the Thursday, before the media reported it?

Mr Rattenbury: I have not asked him that question, Dr Paterson.

THE CHAIR: Take that on notice, then.

Mr Rattenbury: No—the chief of staff is not a witness to this committee.

THE CHAIR: No, but you are. You are involved in this matter.

Mr Rattenbury: Fine. I will take it on notice.

MS LEE: I just want to confirm that you are going to come back to the committee with the clarification of 6 November or 5 November.

Mr Rattenbury: Ms Lee, I will have to take it on notice. You are asking me to text people and seek information at the same time as I am continuously answering questions.

MS LEE: Are you saying that no staff members are watching this right now?

Mr Rattenbury: No; I am not saying that. I am saying that involves me actually stopping, and you are continuing to pepper me with questions, and I do not know if I will have a chance to—

MS LEE: I am sure they will hear you if you say, “Alright. I’ll get that information to you,” and they will work on it.

Mr Rattenbury: Sure. We will see how we go. I am concentrating quite hard on the questions you are asking me.

MS LEE: Yes, and that is a question I am asking. So, if you can concentrate on that question and ask—I think we have 45 minutes left—surely you can clarify.

Mr Rattenbury: But I will have 45 minutes of other questions.

MS LEE: Surely you can clarify it. So, if they are listening, surely—

Mr Rattenbury: I will do my best, Ms Lee. Otherwise, I will take it on notice. That is the usual rule of these committees.

THE CHAIR: Thank you, Attorney. I will move to my questions, although, Attorney, I will make a comment: it is very common that a witness, including ministers, get information during the proceeding, because they do have their advisors watching. I think what Ms Lee is—

MS LEE: Is reasonable.

Mr Rattenbury: Mr Chair, the longer you talk the more chance I have.

THE CHAIR: I beg your pardon?

Mr Rattenbury: I was observing that I have now had a chance to look at it. The answer is 5 November.

MS LEE: Sunday, 5 November?

Mr Rattenbury: Sunday, 5 November is the last time they had contact.

THE CHAIR: It is my turn for my—

Mr Rattenbury: Sorry—I now have the other answer. The advice was sought on Thursday, 9 November.

MS LEE: Alright. I have some more supplementaries, then.

THE CHAIR: We will start a fresh line of substantive questioning with me, and obviously we have Ms Lee visiting and I am happy to throw my opportunity to her.

MS LEE: Thank you, Mr Cain. Attorney-General, thank you for clarifying both of those questions very quickly. If 5 November was the last time that Mr Davis was in contact with the 17-year-old individual, can you please clarify this, given that your chief of staff's internal report itself talks about the risk that Mr Davis may attempt to remove evidence: was that something that Minister Davidson and your chief of staff were concerned about given the contact on Sunday, 5 November, before you spoke to Mr Davis?

Mr Rattenbury: I am sorry. I do not understand the question that you are asking, Ms Lee.

MS LEE: In terms of the time frame, if the last contact that Mr Davis had with the 17-year-old individual was on 5 November, the Sunday, which is the day before you were aware of any rumours even about Mr Davis—

Mr Rattenbury: Yes.

MS LEE: can you please clarify—and this is in direct reference to what is contained in your chief of staff's internal review—that there was no contact from your chief of staff to Mr Davis prior to 6 November because there was a concern, as outlined in the report, that Mr Davis would attempt to get rid of evidence.

Mr Rattenbury: The report is quite clear. The chief of staff, Ms Davidson and Mr Davis met in the office on Monday, 6 November at 8.40 in the morning.

MS LEE: Yes. I am asking if that is the only time that they met, not—

Mr Rattenbury: That is what the report says and that is my understanding—yes.

MS LEE: The other time frame that you have stated and confirmed is about advice that you sought, which was on 9 November. Why did you wait three days to seek that advice, given that you first became aware or were told on 6 November?

Mr Rattenbury: Ms Lee, there was a range of discussions going on, as I have outlined repeatedly. My office was trying to understand the nature of the allegations, the information, and, as that became clearer, that is when the advice was sought.

DR PATERSON: I have a supplementary.

THE CHAIR: Dr Paterson.

DR PATERSON: Minister, was that advice sought for the benefit of ministers or for the benefit of the ACT Greens?

Mr Rattenbury: It was sought to understand what our obligations were as members of the Assembly.

DR PATERSON: Why did you not raise this with the Chief Minister or Deputy Chief Minister?

Mr Rattenbury: Because we were working to complete our internal review. I realise there is everybody's hindsight. We had set a time line to complete this review by Friday. I think that is quite a fast turnaround. We were conscious it was an initial review to understand our circumstances and the nature of the allegations that had been put to us. As everybody looks at it now, we see of course that the story then went to the *Canberra Times* and was published on the Friday morning. That was not a time table that we were in control of, nor were we aware of it when we set a deadline for our work internally. That did force us to then reach out to the Chief Minister, knowing that it was going to become a matter of public knowledge, because our agreement with the Labor Party is that we share these things before they become public. That is what we did and we fulfilled our duties under that agreement.

DR PATERSON: Just to reclarify: was the advice sought for you as a minister or for the ACT Greens?

Mr Rattenbury: It was sought for me as a member of this place to understand what my obligations were.

DR PATERSON: Can every member contact CMTEDD and receive that advice?

Mr Rattenbury: Certainly ministers can.

DR PATERSON: So it is as a minister—ministerial advice?

Mr Rattenbury: I imagine non-executive members would go to the Clerk. We all have channels through which we are able to seek this advice in order to ensure that we act in the appropriate manner. As the executive, the pathway for us is through the executive support services.

MR BRADDOCK: Chair, on a point of order: we are here actually for the annual reports hearing. There are a large number of officials who have done a significant amount of work to prepare for this hearing. I would like to put some questions actually related to the conduct of the directorate.

MS LEE: I have a couple of supplementaries.

MR BRADDOCK: We have asked plenty of questions on this particular topic.

THE CHAIR: Noted, Mr Braddock. We will proceed.

MR BRADDOCK: Chair, I then request an in-camera hearing to discuss whether this is in accordance with standing order 259.

THE CHAIR: We will take a short break for a private hearing.

Short suspension.

THE CHAIR: We will recommence the hearing. I have two procedural matters to alert you all to. Firstly, apologies for asking you all to leave; it would have been easier if the committee had left, in order to have our private meeting. The second point is that the committee has made the following resolution about the further conduct of this hearing. For subsequent substantive questions, there will be only two supplementaries allowed, and I will be very strict about chairing that. For the remainder of this substantive line of questioning, which is with me, even though Ms Lee asked the substantive, I will allow only two more supplementaries, but I will throw to Ms Lee for that.

MS LEE: Thank you. Attorney-General, going to the internal investigation that you tasked your chief of staff to undertake in relation to looking at this issue, did it not occur to you as Attorney-General that tasking a staff member to look into the conduct of an elected representative in this place was going to put into play a bit of a power imbalance?

Mr Rattenbury: I do not consider that to be the case, Ms Lee. The staff member in question is highly professional, well experienced and highly skilled. I did check with that staff member as to whether they had any discomfort. I said, “My view is that this needs to be done. I would like you to do it. Are you comfortable with doing that piece of work?” The staff member indicated to me that he was, so I had no concerns along the line you are suggesting. It should be borne in mind, of course, as I have stated a number of times, that this was not a definitive investigation; it was an initial review to understand the circumstances that we faced.

THE CHAIR: Just to clarify, this is one last supplementary before we move to Dr Paterson for a substantive.

MS LEE: In relation to the actions that you took, after you were made aware on 6 November, you mentioned and you clarified that the advice that you sought did not happen until 9 November.

Mr Rattenbury: I will check that on notice, Ms Lee. That is the text message I received. I feel surprised by that date, and I want to double-check it.

THE CHAIR: Okay, thank you.

MS LEE: That was not the answer, though. He was just checking that. The question—

THE CHAIR: You are going to take that on notice? That was the supplementary that—

Mr Rattenbury: I would like to take that on notice and double-check.

MS LEE: But that was not the question. He has just interrupted to say he wants to check it. That was not the supplementary question.

THE CHAIR: All right; what was the question?

MS LEE: I have not got to it yet. That is my point.

THE CHAIR: Okay.

MS LEE: In relation to that, again, I ask you to clarify why it took so long, until 9 November, for you to seek that legal advice.

Mr Rattenbury: Yes, that is why I want to check that, Ms Lee. I want to double-check that date.

MS LEE: Okay. Thank you, Chair.

THE CHAIR: We will go to Dr Paterson for a substantive, and we will only have two supplementaries.

DR PATERSON: With the law and sentencing council, attorney, can you outline where that is up to, what they will be looking at and provide some more information?

Mr Rattenbury: I would be pleased to. I think cabinet has now approved the appointments. Without getting into too much personal detail, there have been some availability issues with some of the members. I expect to be able to announce that publicly very shortly. There have been some personal logistic matters that have delayed that announcement, but I expect it to be made, certainly, before the next sitting. It will be in the next week or so.

DR PATERSON: Is there any further clarification of what that council will be inquiring into?

Mr Rattenbury: I expect to announce the terms of reference for their initial work at the same time as we confirm the membership of the group. So it is very close; that is the short answer.

THE CHAIR: Mr Braddock, a substantive?

MR BRADDOCK: Yes. I understand there was a restorative justice roundtable last week which talked about the scheme stage 3 relating to domestic violence and sexual offences. Can you give me a bit more information on that discussion and the report, and what the ACT government is doing about that?

Mr Rattenbury: Certainly, Mr Braddock. I will invite my colleague from the Restorative Justice Unit to come to the table as well. While he does, the purpose of that roundtable was, firstly, to present an evaluation by the Australian Institute of Criminology on the phase 3 work. Phase 3 of restorative justice, as members are probably aware, started around 2018. That brought domestic and family violence and sexual violence matters into the Restorative Justice Scheme.

The AIC has undertaken an evaluation of that work. This roundtable was an opportunity for them to present their work to key stakeholders in the ACT who have an interest in this space. We also took the opportunity, while having all of those people in the room, as we enter into the phase, to look at doing some work on considering possible expansion of restorative justice work in the future. There is also the recommendation of the SAPR report to look at whether there are other possible civil pathways that people might pursue in terms of sexual violence matters.

The people who came to the roundtable had an interest in all of those discussions, so we took the opportunity to, in broad terms, canvass with that group of people that there are a couple of other pieces of work coming and to seek any questions or comments they had on shaping that work as we develop the details a bit more.

Ms Hutchinson: In terms of the additional findings of the evaluation, there were a lot of positive things that came out of it in terms of restorative justice in the ACT. The ACT has been at the forefront of opening up and expanding the process to matters relating to family violence and sexual assault.

Importantly, the evaluation found that restorative justice provided an important mechanism for persons harmed to seek redress in the aftermath of those types of offences. It also allowed a space for persons responsible to address the factors associated with their offending.

There was broad support for the use of restorative justice as an alternative pathway. Very importantly, it found that, with the justice needs identified by the person harmed, many of which fell outside the traditional justice system, these goals were met in terms of increased feelings of security, increased feelings of safety, access to supports, feeling heard, retaining a sense of control, and an improved understanding of the crime. They are some of the key outcomes.

MR BRADDOCK: Thank you for that, Ms Hutchinson. What will be the next concrete steps following on from that roundtable?

Ms Hutchinson: The government is currently actively considering the report and its outcomes. It will feed into the review that the Attorney-General has announced into the Restorative Justice Scheme. As part of that roundtable process, there was an opportunity for a collection of initial views and thoughts from stakeholders around the table about the opportunities in this space and how that might feed into the next steps.

MS LEE: Attorney-General, yesterday in the hearing you confirmed that your chief of staff reported the matter to police on Friday.

Mr Rattenbury: Yes.

MS LEE: I cannot remember what the date was; was it the 10th?

Mr Rattenbury: Yes; Friday, 10 November.

MS LEE: Friday, 10 November, at around 10 am, I think you said.

Mr Rattenbury: Yes, I did.

MS LEE: Can you please confirm for me how that report was made and what information was provided to police?

Mr Rattenbury: I am just checking my notes, Ms Lee. The report was made by the chief of staff attending the police station and providing all of the material that he had.

MS LEE: Did you get a police report or a confirmation of the reporting?

Mr Rattenbury: I know that the chief of staff has an incident reporting card, if you like. It is a little card with an incident number on it and a contact officer.

MS LEE: Is that something that you can table for the committee?

Mr Rattenbury: I would like to seek advice—this is a genuine question—about the public disclosure of that information. I do not know what the rules are. That is a genuine question, Ms Lee; I actually do not know. I am happy to take that on notice.

MS LEE: Yes; thank you, Attorney-General.

Mr Rattenbury: And whether, if necessary, we consider whether that goes to the committee in confidence, in private; I genuinely do not know.

MS LEE: I understand; thank you.

THE CHAIR: I will give my substantive to Ms Lee.

MS LEE: Thank you, Chair; I appreciate that. Attorney-General, you mentioned yesterday at the hearing that there had been one previous incident that had been raised with you about an inappropriate relationship that Mr Davis had with a staff member. Can you confirm when that was?

Mr Rattenbury: When what was?

MS LEE: The inappropriate relationship that you referred to yesterday in your answers.

Mr Rattenbury: Some years earlier.

MS LEE: Do you remember the exact year?

Mr Rattenbury: No, I do not recall the exact year.

MS LEE: Was there an investigation done then?

Mr Rattenbury: No.

MS LEE: You said that he was counselled.

Mr Rattenbury: Yes.

MS LEE: You received notice of an inappropriate relationship, you counselled him and that was the extent of it?

Mr Rattenbury: Mr Davis disclosed it to me.

MS LEE: Yes; then you counselled him and that was the end of the matter?

Mr Rattenbury: Yes.

THE CHAIR: I think we will move on, Ms Lee. Dr Paterson?

DR PATERSON: Attorney, page 60 of the JACS annual report shows that there has been a reduction, by almost a third, in the detainee population at AMC over the past four years.

Mr Rattenbury: Yes.

DR PATERSON: There has been lots of discussion in the community around sentencing. I do appreciate that, in that time, we have introduced intensive corrections orders, so that would have an impact. My question comes from community concerns about reductions in sentencing. We cannot seem to get good evidence on sentencing. I asked the Minister for Corrections this morning about what their understanding was as to why there has been such a substantial reduction in detainee population. Minister Gentleman did not offer a comment on that.

I am asking you, because the people that hit the courts are referred by the courts in whatever direction, so they are in control of this figure, basically. What is your understanding, or do you think it is right to surmise that there has been a significant reduction in length of sentences in the ACT over the past few years?

Mr Rattenbury: I am surmising. These results are complex. There is a significant range of factors in play. In the period around 2018-19, that was when the jail began to hit its highest-ever levels of population. Probably the year or so before that—the graph only goes back so far—would show a similar increase.

The government was concerned about the increasing rate of incarceration. The ACT has historically had a low rate of incarceration, if you look at it per 100,000 people. At the time that the prison opened, we had a far lower rate than the rest of Australia. Over time we have gone up quite substantially, in the order of 160 to 170, from a figure that was around 60 to 70 before the jail was opened. It had gone up a long way.

That was when the government made a very clear decision to focus on justice reinvestment and think about alternatives to incarceration. That was premised on the idea that, for a lot of people, incarceration is not at all rehabilitative and there are other ways to effectively break the crime cycle. That is the macro background.

In terms of what influences these factors, the government has put a range of programs in place, some of which are preventive—things like the investment in support services at high-density housing projects around the city, which has seen a substantial reduction in police call-outs, in the order of 50 to 60 per cent on some occasions, if I recall the data correctly, at certain sites.

That is one factor. We are seeing less people actually being involved in criminal activity. For this time period, I know that there is a lot of consideration of what impact COVID had on offending levels and all of the related issues. We have, of course, put in place measures like the drug and alcohol sentencing list which, again, seek to treat offenders differently. The people who are going into that program are people who are regularly going through the courts. As the evaluation of that shows, we have seen a significant reduction in offending from those cohorts of people. I think there is a whole range of factors going on, including things like the Circle Sentencing Court, which seeks to culturally address Aboriginal and Torres Strait Islander people. That is a longwinded way of saying I think there are a number of factors at play here.

DR PATERSON: I acknowledge that, but I guess one of the concerns that has been pretty loud and clear, particularly around dangerous driving offences, recidivist drivers, and also sexual assault sentencing and domestic violence, is that we are not anywhere near hitting the maximum penalties for those crimes. You could argue that the maximum penalties for these crimes are set by the Assembly and determined as a benchmark for what the Assembly community sees as the standard for sentences.

There has been this concern. I have been asking for sentencing data. I am still waiting for the sexual assaults sentencing data to come through. That is delayed. I have been asking for that since estimates. We do not have good data on this, or you are unable to present the data on this. That we have had such a substantial decrease in the prison population raises the community's concern about sentencing. I raise with you, again, that we are not actually interrogating whether there is an issue here. Have we spiralled down to really, really light sentences in the ACT?

Mr Rattenbury: I do not believe there is a direct correlation between—

DR PATERSON: But we need evidence. This is the thing. We are not getting evidence to back this up one way or another, and that is what I keep on about.

Mr Rattenbury: The government has a substantial range of evidence. You have some—

DR PATERSON: Yes, but you cannot present any, and that is—

Mr Rattenbury: No, that is not the case, Dr Paterson. We have presented a range of data to you. You have either disputed the data or have asked for further data. That is a perfectly reasonable thing to do and we will continue to provide that to you. Some of

it takes a little time. These are complex matters.

I reflect on, for example, the issue of dangerous driving. Last year the ACT had a terrible road toll. It was 18 persons. It was unacceptably high. I have heard a lot of people comment on the fact that that road toll was driven by repeat offenders and people who are on bail and other orders. When you actually interrogate that data, only two of the accidents out of the 18 fatalities involved people who were on orders or on bail.

DR PATERSON: It is two too many though.

Mr Rattenbury: It is two too many, but the public discussion has been about all these deaths being caused by people on bail—

DR PATERSON: I do not believe that to be the case.

Mr Rattenbury: That has been a degree of narrative in the public space. People are entitled to put that view, but what I am saying is that we need to be really careful to try and think through these things carefully and understand them and get to the bottom of the problem.

DR PATERSON: I agree, which is why some solid evidence to understand some of these things would be helpful.

THE CHAIR: We will take that as a comment.

MR BRADDOCK: We asked earlier about the electronic monitoring trial here in the ACT, which was covered under the budget. Can I please have an update on that, and particularly whether that will also address some of the concerns raised about dangerous driving, including speeding?

Mr Rattenbury: Yes.

Mr Glenn: Mr Braddock, I think we answered that question in the session with Minister Gentleman. I do not think we have anything in addition to that.

MR BRADDOCK: It is not a justice-related question here?

Mr Glenn: I think it is the same question. The answer is going to be the same. It will be the same officer I will bring to the table to answer that.

MR BRADDOCK: Okay. Fair enough. Can I please also touch on the sexual assault court. I understand there was also a roundtable about that. I would be interested in an update on where that is going.

Mr Rattenbury: As you may recall, Mr Braddock, this was a recommendation that arose in the *Listen. Take action to prevent, believe and heal* report. I cannot remember the exact words of what it asked the government to look at, but it was along the lines of “the government consider the value of implementing such a court in the ACT”. The government agreed to consider that. The government engaged with the courts to seek

their advice, and the courts came back with some reservations about that approach.

The broad nature of those reservations was that, in a small jurisdiction, that would potentially put a challenging workload onto a small number of the judicial officers, and also a concern that it would actually slow the matters down. At the moment, all six of the judges, plus any acting judges that are in place, will deal with sexual assault matters, so they can come on as the listing enables. If it was to go into a specialised stream, there is some concern that by making them all sequential it would potentially delay matters. We are very conscious that, particularly for these types of events, delay is distressing for victims of those matters.

I convened the roundtable to bring together a range of stakeholders. I was very grateful that the Chief Justice, the Chief Magistrate and another of the justices attended to share that information with the experts, and we had a lot of experts in the room. Dr Paterson was in the room. It also allowed the courts to be able to hear the concerns the community sector organisations had.

What the courts have suggested is that there may be better ways to improve the experience in the courts for victim-survivors that do not specifically require a dedicated court, but there are issues around the training of judges, procedural changes and the like. The conversation I wanted to have with the community was about how we prioritise those pieces of work and how we make the most improvement as quickly as possible. The government have not ruled out the possibility of a dedicated sexual assault court, but we have put the view to the community that we think there might be steps that we can take first that would be better.

MR BRADDOCK: What would those steps be?

Mr Rattenbury: Things like improved judicial training. One of the issues identified last week was whether we need bench books in the ACT.

MR BRADDOCK: Sorry; a bench book?

Mr Rattenbury: Ms Nuttall can describe a bench book better than me, probably.

Ms Nuttall: Bench books can take many forms, but often it will be a guide for judicial officers. It will provide some guidance on the jurisprudence that is in place in relation to a particular area of law and some academic research around those types of issues as well.

Mr Rattenbury: It is a bit of a handbook for judges, really, if I was to describe it. Those were the sorts of matters that came up. I was really pleased with the conversation. We probably ran out of time a little bit. We went over time, and there could have been much more of a conversation, but we were very clear with the stakeholders in the room that we see that as the beginning of a conversation. I am keen for those stakeholders to continue to have input and give the courts feedback directly on the way that they may improve the processes within the courts.

MR BRADDOCK: Thank you.

MS LEE: Attorney-General, on page 1 of your chief of staff's internal report, paragraph 5, it says—

MR RATTENBURY: Sorry, Ms Lee. Just bear with me a moment.

MS LEE: Sure. It says:

We were concerned that if we were to contact him directly over the phone, he may attempt to contact any alleged victims and remove evidence.

Then two paragraphs down it again goes on to say:

... we agreed that it was important to a) preserve any potential evidence ...

Did you ask your chief of staff and/or Ms Davidson about why they formed that view?

Mr Rattenbury: I think those views have been set out here. I think the chief of staff has articulated it very clearly.

MS LEE: On what basis would they have concerns that there would be the removal of evidence? They said they had them, but they have not stated why they formed those views.

Mr Rattenbury: I think it is common sense, Ms Lee.

MS LEE: Had Mr Davis done anything like that before?

Mr Rattenbury: Not that I am aware of, no. I think it is a commonsense observation.

MS LEE: That people might remove evidence? Did you share that concern?

Mr Rattenbury: These are the concerns that the chief of staff and Ms Davidson expressed in their report.

MS LEE: Yes, and I am asking did you share those concerns, as well?

Mr Rattenbury: I was not involved in that conversation, so I could not have shared—

MS LEE: No, but do you share them?

Mr Rattenbury: I think, again, it is a commonsense concern one might have.

MS LEE: Yet you still waited until Friday to go to the police.

THE CHAIR: That is a statement.

Mr Rattenbury: Yes, that is a statement.

THE CHAIR: Thank you, Ms Lee, and thank you for joining us. Just a couple of quick ones on the matter, *Drumgold v Board of Inquiry*. We note that in September

there was a notice of discontinuance removing you, as Attorney-General, from this case as a defendant. Do you know why you were removed as a defendant?

Mr Rattenbury: Perhaps I will ask Mr Garrison to address that matter.

Mr Garrison: Mr Cain, when the proceedings started, there were a range of parties joined to it. Following discussions with the legal representatives of both, but particularly Mr Drumgold, it was recognised that, really, the only appropriate parties were the Board of Inquiry and the territory.

THE CHAIR: Mr Drumgold accepted that that was the correct conclusion?

Mr Garrison: His legal representatives did, yes, and so the application was made by consent.

THE CHAIR: Regarding the originating application to the Supreme Court from Mr Drumgold, as plaintiff, it listed his address as the office of the DPP—that was on 25 August—which is where his former workplace is. Are you aware why Mr Drumgold used his previous work address in his originating application?

Mr Rattenbury: No, I am not.

THE CHAIR: Could you confirm for this committee the exact date that Mr Drumgold resigned, and the exact date that you accepted that resignation?

Mr Rattenbury: Does anyone have that to mind? Otherwise, I will have to just take it on notice so that I can give you an exact date.

THE CHAIR: Take it on notice?

Mr Rattenbury: I think we might be able to answer that.

Ms McNeill: I know the resignation was with effect from 1 September, but in terms of the date it was delivered, I do not have that to hand.

THE CHAIR: We have an extra witness just for the next 60 seconds.

Mr Williamson: Thank you. I understand the privilege statement and accept it.

THE CHAIR: Just to confirm, he offered his resignation on 1 September?

Mr Rattenbury: No, it took effect on 1 September. It was either late July or early August that he resigned. I will have to check the date. I cannot recall.

THE CHAIR: You will get that back to us?

Mr Rattenbury: Yes, I am happy to provide it on notice. It is clearly known. I just cannot think off the top of my head.

THE CHAIR: I think that might be the end of that line of questioning.

Mr Rattenbury: Actually, Mr Cain, I think we have an answer for you already.

THE CHAIR: If you have some answers now very quickly, I have some short questions.

Mr Glenn: Mr Cain, on 6 August Mr Drumgold resigned from his position, as we said, effective from 1 September.

THE CHAIR: He resigned, but the resignation was effective 1 September.

Mr Glenn: Yes.

Mr Rattenbury: Sorry; to be clear about that, he did not come back to work at any point up until 1 September. He was accessing a range of benefits—leave and such matters—he was entitled to.

THE CHAIR: Obviously, you would understand my confusion when on 25 August he listed his return address as the office of the DPP.

Mr Rattenbury: I understand your confusion; yes.

THE CHAIR: On behalf of the committee, I would like to thank our witnesses, who have assisted me through their experience and knowledge. We also thank Hansard and broadcasting for your support. If a member wishes to ask questions on notice, please upload them to the parliamentary portal as soon as practical, and no later than five business days after the hearing. This meeting is now adjourned.

The committee adjourned at 2.30 pm.