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

WEDNESDAY, 22 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

APPEARANCES

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Amended 20 May 2013

The committee met at 9.47 am.

Appearances:

Office of the Director of Public Prosecutions
Williamson SC, Mr Anthony, Acting Director of Public Prosecutions
McCann, Ms Katie, Acting Chief Crown Prosecutor

THE CHAIR: Good morning, everyone. Welcome to the public hearings of the Standing Committee on Justice and Community Safety for its inquiry into annual reports for 2022-23. The committee will today hear from the Director of Public Prosecutions, followed by the Electoral Commissioner, the Inspector of Correctional Services and Legal Aid.

The committee acknowledges the traditional custodians of the land we are meeting on, the Ngunnawal people. We acknowledge and respect their continuing culture and the contribution they make to the life of 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 these words: "I will take that question on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript.

Today we welcome the Office of the Director of Public Prosecutions. 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. Please, could you each confirm that you understand the implications of the statement and that you agree to comply with it.

Mr Williamson: I understand the implications, and I agree to comply and be bound.

Ms McCann: Yes, I also agree to be bound.

THE CHAIR: Thank you very much. Obviously, I have a few questions related to the Sofronoff inquiry. Have you noticed any changes in the criminal justice system or the administration thereof since those findings were handed down? Have there been any adjustments within your own office, for example?

Mr Williamson: At a functional and operational level, day to day, there has been no discernible change. The ACT criminal justice system is going about its business as usual, as is my office as part of that broader system. As a result of the Sofronoff inquiry, I have delivered and arranged to be delivered a number of targeted CPDs, or continuing professional development courses, to the prosecutors which address issues that arose during the course of that inquiry.

THE CHAIR: You mentioned that you are the Acting DPP. Are you able to provide

an update on the filling of that role?

Mr Williamson: My appointment goes until the beginning of March. I understand from the Justice and Community Safety Directorate that they are in the final stages of engaging a professional legal recruitment firm to assist them with that recruitment process to permanently appoint a director. I understand they intend to put an ad out advertising that role in the very near future.

THE CHAIR: Last week, the Attorney confirmed that Mr Drumgold formally left the role on 1 September. So you are acting until March next year?

Mr Williamson: Yes.

THE CHAIR: That does seem a very long time to act in a position without an advertisement being issued. Are you aware of any reason for the delay in advertising for this role?

Mr Williamson: I am not across any of that detail, other than to say that I understand there were some issues in terms of the procurement for a professional legal recruitment firm to assist the directorate with that process. But, beyond that, I am afraid I cannot assist.

THE CHAIR: And that is being done under the direction of the Attorney-General through that JACS directorate?

Mr Williamson: Yes.

THE CHAIR: Is it usual to actually procure a recruitment agency?

Mr Williamson: I am not ordinarily involved in the JACS recruitment processes. I understand that, for very high-level legal positions—the director being one of the highest legal officers in the territory—it is not unusual. The Commonwealth DPP position was vacant and was recently filled, and I understand the commonwealth used a professional legal recruitment service. But, beyond that, I probably could not comment.

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

Mr Williamson: I do not know who it is.

MR BRADDOCK: In light of recent high-profile cases, I am interested in the relationship between the DPP and the AFP. How is that operating and how constructive is it at the moment?

Mr Williamson: The relationship is an extremely strong and extremely professional one. It has been the cause of some frustration to me that, in the immediate wake of Mr Sofronoff's inquiry, there was media reporting, which I would suggest was inaccurate, which would suggest that the relationship was dysfunctional and there was a significant amount of acrimony between my office and that of the police. That is not the case at all. Mr Sofronoff's inquiry identified and dealt with some tensions and

disagreements that arose in one particular case. Some of the media reporting portrayed that as the norm. It is not the norm at all. As I say, it is an extremely professional and productive relationship.

Last year we prosecuted over 4,700 matters. We have the same outcomes in terms of rates of successful prosecutions and the like as our counterpart prosecutorial agencies interstate. We could not have those outcomes and achieve those results without a strong relationship. I meet and talk with the Chief Police Officer and his executive regularly. Of course, from time to time, there will be differences of views in relation to a particular matter. It comes as no surprise that reasonable minds on occasion will differ. But when that arises we pick up the phone and we have a discussion and it is amicably resolved.

MR BRADDOCK: Does that involve having hard conversations? For example, in the recent case of the footballers where it was found the police may have misled or not provided all the evidence to the DPP, were you able to have constructive conversations about that matter with the AFP?

Mr Williamson: I did have constructive conversations, but the matter has been referred to the Professional Standards Unit in the AFP. So the conversations that were had were mindful of that trajectory and we were cautious not to compromise that investigation.

MR BRADDOCK: Thank you.

THE CHAIR: I have some supplementaries on that theme. Since the departure of Mr Drumgold, have you initiated any changes in managing the relationship between the AFP and your office?

Mr Williamson: I would not say I have initiated any wholesale changes. I have gone out of my way to make sure that the relationship remains strong and productive, and the Chief Police Officer has certainly taken the same approach. We meet regularly and we talk regularly. I addressed a muster of his detectives and he came and addressed a meeting of all the staff in my office. But, as I say, the relationship was never dysfunctional to begin with. It is a misconception that it was.

THE CHAIR: Thank you. I understand the Office of the DPP uses an average cost per matter KPI of $3,000.

Mr Williamson: Yes.

THE CHAIR: Page 111 of your report outlines that this target was exceeded by almost $1,000 in 2022-23, with an average cost per matter of $3,987. What do you attribute to this increase and not being able to meet that target?

Mr Williamson: I would attribute it to the substantial increase in the number of trial days that we spent in the Supreme Court. In the last reporting period, we spent 305 days in trial in the Supreme Court. In the reporting period prior to that, we spent 151 days in trial. That was almost a 102 per cent increase in the number of trial days. With more trials and more time in court comes more ancillary expenses, such as the need to

engage expert witnesses for those additional trials and the need to pay witness expenses. We are obliged to reimburse witnesses for their travel and accommodation if they come from interstate. With that significant increase in trial load came an increase in those ancillary expenses, which I would suggest is the main contributor to that increase.

THE CHAIR: Obviously there is one very high profile case that was done in that period. Was that increase in the number of days an increase overall?

Mr Williamson: It is consistent with a general upward trend in the number of matters the criminal justice system is dealing with, which is perhaps not surprising given that the ACT has a rapidly expanding population base.

THE CHAIR: How did you arrive at that $3,000 KPI figure?

Mr Williamson: It is a somewhat crude measure. It is simply a measurement of the total cost expended in relation to matters divided by the total number of matters dealt with by the office.

THE CHAIR: Based on previous periods? Is that right?

Mr Williamson: Within that reporting period.

THE CHAIR: Given this increase, are you going to be revising that target?

Mr Williamson: Yes. I will have a discussion with JACS about doing that.

THE CHAIR: There was a deficit of more than $2 million of your total cost for 2022-23. Did you have the money to actually cover that? How did you cover that deficit?

Mr Williamson: The money was provided by the Justice and Community Safety Directorate.

THE CHAIR: Will you be restructuring your funding requested because of that deficit?

Mr Williamson: Yes. I am in a constant dialogue with government about funding. It is ongoing and certainly that has been raised.

MR BRADDOCK: What have you done over the past year on the Sexual Assault Prevention and Response Program?

Mr Williamson: We have been a participant in the working group's processes in relation to law reform. We have increased the specialist training provided to our Sexual Offence Unit. Similarly, we have increased the amount of training we provide to the specialist AFP Sexual Abuse and Child Abuse Team, SACAT.

MR BRADDOCK: Have you seen any outcomes from those initiatives?

Mr Williamson: It is somewhat qualitative, but we would like to think that our engagement with victims is better. Of course, there is always room for improvement, but we have been working with the police and the Victims of Crime Commissioner to improve our processes in terms of how we engage with victims. We are doing that against a background of a significant increase in the number of sexual offence matters which are being referred to us from police.

MR BRADDOCK: Are we seeing success rates in obtaining convictions increase as a result of those efforts?

Mr Williamson: They are about on par with our counterpart jurisdictions. Over a longer period—say, a decade snapshot—there is an increase in the number of successful outcomes in sex offence prosecutions.

MR BRADDOCK: But we are still on par with comparable jurisdictions?

MR Williamson: Roughly.

THE CHAIR: The Crimes Legislation Amendment Bill, which the Attorney-General recently presented, criminalises juror misconduct—obviously, following determination of a high-profile case last year. You were consulted as part of the development of this proposed legislation. Did you express any views on the implementation of that offence and, in particular, compared with the power available—apparently, still—to the judicial officer to find such a juror in contempt of the court?

Mr Williamson: We expressed a view that we supported the introduction of that new offence. It is in addition to, but not in place of, the existing powers of the court to deal with contempt. The main catalyst for that aspect of the bill were comments made by Her Honour Chief Justice McCallum in the aftermath of the Lehrmann trial, where Her Honour expressed some reservation as to whether the existing contempt power was adequate to deal with what had happened in that particular matter. Her Honour also noted that other jurisdictions have a specific offence and it would be in the interests of justice for the ACT to follow suit, lest there be any confusion or doubt as to the ability to deal with that should it occur again in the future.

THE CHAIR: The bill also brings in majority verdicts. Do you have any view on the effect that this will have on perceptions of the ACT's justice system now that only 11 jurors are required to come up with a finding of guilty beyond reasonable doubt?

Mr Williamson: It will bring us into line with most other jurisdictions. There is nothing new about majority verdicts in Australia. It will certainly, at least to some extent, ease the lot of sexual offence complainants. We did have and we continue to have a higher rate of hung juries in sex offence matters than we do in other matters. It is impossible to say for certain how many jurors are holding out, as it were one way, one way or the other. But, anecdotally, it does appear that, from time to time, it is certainly one or two jurors that holds out. This would prevent the need for retrial in those matters.

THE CHAIR: Is there a risk that this will increase the chance of a miscarriage of

justice?

Mr Williamson: I doubt it; no.

MR BRADDOCK: WorkSafe has in the past raised the option of having its own in-house legal team to prosecute WorkSafe matters. I notice your statistics, but I want to make sure that the WHS team you have is working effectively with WorkSafe to ensure that any WorkSafe matters here in the ACT are effectively prosecuted.

Mr Williamson: We have an extremely productive relationship with the WorkSafe commissioner. I recently entered into a memorandum of understanding with the commissioner in relation to the prosecution of WorkSafe matters, whereby, on a case-by-case matter, we will consider engaging a specialist firm that deals with workplace prosecutions. The senior solicitors in that firm were previously workplace or work safety prosecutors in other jurisdictions and have prosecuted some of the most high-profile work safety matters in Australia. So, where appropriate, in discussion with the commissioner, we will engage specialist prosecutors to prosecute the matter, under my supervision and direction.

MR BRADDOCK: Bu you have not had cause to do that yet?

Mr Williamson: We have engaged that firm in one matter.

MR BRADDOCK: Thank you.

THE CHAIR: I have a couple of questions about the Drug and Alcohol Sentencing List. The Supreme Court has provided this list since December 2019 as a therapeutic pathway for those whose drug and alcohol dependencies have contributed to their offending. The Office of the DPP is on the treatment team, is my understanding. How have you rated the success of this treatment avenue now that it has operated for nearly three years?

Mr Williamson: It is probably more accurate to say that the office is involved in the drug court but not in the treatment team per se. It is still a judicial proceeding of a criminal nature. So, of course, the director is a key party to that. In my view, there are a number of benefits to the drug court.

The case law in relation to sentencing particularly insofar as rehabilitation goes is replete with observations from judicial officers that the strongest protection for the community is a rehabilitated offender who will not commit further offences. The case law also makes clear—and it is certainly consistent with my experience—that the road to rehabilitation is not necessarily a straightforward and easy one. People have hiccups and missteps along the way. This court is more positioned than a traditional sentencing process to show flexibility to ensure that, ultimately, the chances of successful rehabilitation are achieved.

THE CHAIR: Is the Office of the DPP not on the treatment team? I thought you said that you were. But now you are sort of saying—

Mr Williamson: We are involved in the drug court. We have a prosecutor who

prosecutes. The prosecutor is not providing clinical treatment and support; they are a party to the sentencing proceeding in that court—noting, though, that there is a more therapeutic focus in that court.

THE CHAIR: I noticed on page 46 of the annual report that there were 10 offenders finishing their treatment during 2022-23, that nine offenders' orders were cancelled due to noncompliance and a further two for offenders revoking consent. Is it true to say that the program is successful 50 per cent of the time?

Mr Williamson: What page is that, Mr Chair?

THE CHAIR: Page 46.

Mr Williamson: Could I take that on notice—the statistics? I just want to make sure I am completely across it.

THE CHAIR: Sure; that is fine. Are you happy to offer any suggestions on how this program could be even more successful?

Mr Williamson: The more support that is made available to offenders in the community, the more likely that they are to be rehabilitated. But I note, of course, that government has to continually wrestle with its allocation of resources.

THE CHAIR: I note that for 2022-23 the charge and issue of sexual assaults—this perhaps overlaps something which Mr Braddock touched on earlier—appears to be an increasingly prevalent one in the prosecution space, with over 100 cases taken on board by the Office of DPP. Are there any reasons for this increased number of prosecutions?

Mr Williamson: I would suggest that there are a number. One would be what I would describe as a discernible shift in community attitudes towards sexual offending. I think it would be fair to say that, historically, victims who were still somehow seen as partly to blame for what had happened, felt a degree of shame coming forward.

That is less so now, I would suggest. The #MeToo movement, I would suggest, has a role to play. I would also suggest that increased awareness and education programs in schools, universities and workplaces also contribute to a greater awareness, particularly in relation to the law around consent, which has a flow-on effect in terms of the rate at which people make complaints of sexual offending.

THE CHAIR: Are you confident that the approach to such allegations is consistent between the AFP and your own office, even though they have different roles?

Mr Williamson: Yes, I am. To improve our work in that space, the Attorney has recently approved funding for a trial of an embedded prosecutor, who will sit in the Specialist Sex Offence and Child Abuse Team at the Winchester Police Centre. That prosecutor's role will be primarily twofold: one, to provide what we call pre-charge advice. With the increased provision of pre-charge advice, we are hopeful that the AFP and the DPP will be on the same page consistently, or more consistently, at an earlier stage in the criminal justice process. Also, the prosecutor will provide more

general advice in relation to the law concerning sexual offending and the laws of evidence relating to sexual offending.

THE CHAIR: So this embedded prosecutor would be consulted as part of the investigation, if there is an allegation made?

Mr Williamson: Not so much in the investigation phase. Once the police have assembled a partial brief or full brief of evidence, it will be given to them to provide pre-charge advice. Part of that pre-charge advice process might include suggestions or recommendations from the prosecutor as to further lines of inquiry that might be explored. Then the prosecutor, in consultation with their team leader back in the main DPP office, will provide advice to police as to whether we think there is a reasonable prospect of success.

The advantage in this is that, historically, pre-charge advice throughout Australia is rarely given by DPPs. DPPs normally only become involved at the point at which the police have already charged, at which point the brief of evidence is given to us. That can create distress to victims, because the police and the DPP operate with similar albeit slightly different thresholds and it does regrettably occur from time to time that the police will lay a charge, only for the DPP at a later stage to take the view there is no reasonable prospect of conviction and then withdraw the matter. One can understand the upset that causes to a complainant. It puts them on something of an emotional rollercoaster. We are hopeful that, through the greater provision of pre-charge advice, we will reduce the incidence at which that happens.

THE CHAIR: Is this embedded prosecutor role a result of the Sofronoff inquiry?

Mr Williamson: I think you could say it is. As a result of the inquiry, we put our heads together to think about what improvements could be made in that space, and this was one idea that both the Chief Police Officer and I were quite enthusiastic about.

THE CHAIR: Thank you. On behalf of the committee, I thank our witnesses for your attendance today. If you have taken questions on notice, which I believe was the case, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*. Thank you.

Short suspension.

Appearances:

ACT Electoral Commission
Cantwell, Mr Damian AM CSC, Electoral Commissioner
Spence, Mr Rohan, Deputy Electoral Commissioner

THE CHAIR: Welcome to the public hearing for the committee's inquiry into annual reports for 2022-23. I welcome the Electoral Commissioner to this session.

The proceedings are being recorded and transcribed, and they are being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses used these words: "I will take that question on notice."

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 a contempt of the Assembly. Could you each please confirm that you understand the implications of the statement, and that you agree to comply with it?

Mr Cantwell: I understand and agree to comply with the arrangements.

Mr Spence: I understand and agree to comply.

THE CHAIR: We are not taking opening statements, so we will go straight to questions. I received correspondence dated 23 October from you, stating that the Electoral Commission will not deploy an overseas electronic voting system for the 2024 election. You outlined that this decision was based on "advice by federal security agencies and an analysis by the commission's Electoral Integrity Advisory Panel". Could you please provide the detail of this advice and table any relevant documentation?

Mr Cantwell: The advice received from the federal security agencies and the advice received from the Electoral Integrity Advisory Panel and, indeed, advice received from interacting with other jurisdictional commissions informed my position as the commissioner that the risks in deployment of OSEV in the 2024 election were not able to be mitigated to my satisfaction.

The detail of the advice is essentially around the nature of the electoral environment, and the increased risks to any ICT system—and, in particular, in our context an electoral system using an online arrangement, as OSEV does—were significantly increased from where they were in 2020, and increasingly so as months go forward.

On that aspect as well, recent experience and observations in other government agencies, at federal and state level, and large corporations being subject to a series of cyber attacks and leaking of information, reaffirmed the advice that was given to me that the risks were very quickly changing, and to the point where I could not mitigate those satisfactorily.

I would not wish to provide the detail of the advice of the federal security agencies. I could not speak for them directly in this regard; rather, I would restate that the advice,

based upon an assessment of the nature of that environment, and capabilities and intentions demonstrated, and the potential of actors in that environment, caused me to consider that, as I said, the outcomes from a breach of the integrity around OSEV and the broader impact upon the electoral integrity of the 2024 election were beyond our capacity and resources to mitigate.

THE CHAIR: You further stated that "the increased security challenges of the 2024 electoral environment"—and you have touched on that—"were prohibitive for re-using OSEV". What challenges did arise that were not present in 2020?

Mr Cantwell: The number and the capacity of the threat actors—using that term—in that space, the capacity of us, as a relatively small agency with limited resourcing capacity, to be able to mitigate those potential actions and increased threats and, as I said, the broad range of advice received by the federal agencies, our own DDTS here in ACT government and, importantly, the Electoral Integrity Advisory Panel, all contributed to my assessment in that respect and caused me to make the assessment, as I have, that I have now detailed that we would not deploy for 2024.

It is simply a different environment to what it was in 2020. As I said in my formal correspondence, it is not to undermine or to suggest that the arrangements in 2020—the OSEV was deployed successfully—breached any risk threshold, but that was at that time. This is now a different era, regrettably, in many ways, but that is what it is. We have taken steps to continue planning to ensure as best we can to maximise the enfranchisement of those eligible overseas electors for the 2024 election by other means, but it will not be using OSEV.

THE CHAIR: Do you have any data from 2020 recording how many ACT residents overseas voted electronically and how many via postals?

Mr Cantwell: There were, on our report at the time for the elections of 2020, 1,551 votes recorded on OSEV, as it was employed in 2020. The second part of your question was about postal votes; is that correct?

THE CHAIR: How many did postal?

Ms Cantwell: I can check the detail, if my deputy could quickly check that, but we will certainly provide it—

THE CHAIR: We can hear it later or we can take it on notice.

Mr Spence: If the question is about how many overseas postal votes there were, I would have to look at the numbers for how many were sent. In terms of how many were returned in time to be counted, the number was either one or two.

THE CHAIR: Is that right?

Mr Spence: Yes. It must be noted, of course, that OSEV was in place, so the vast majority of electors who were overseas at that time used the OSEV system. The numbers that actually went out were also quite low.

MR BRADDOCK: As you have described, it will be a different setting in 2024 than it was in 2020, in terms of threats. Was any evaluation made in terms of the threats to the electronic system, which, although being stand-alone, could potentially be targeted in various ways?

Mr Cantwell: We are very alert to a range of threats, and any threats to elections more broadly. With respect to EVACS, it operates differently, as I am sure you are aware. It is not subject to the same threat channels or vectors as an online system is—an internet-based system such as OSEV.

Going to your point, yes, we continually undertake assessments of the integrity, the functionality and the reliability of all of our systems, and particularly EVACS, given its central role in delivery of our elections. As was reported in our election report for 2020 and since then, an ever-increasing number of electors take the opportunity to use electronic voting where it is available. We emphasised its use in a COVID-impacted environment in 2020, and it was very much taken up by the electorate more broadly. We absolutely take every step we can.

The assessments will be ongoing in that respect. The Electoral Integrity Advisory Panel focused initially on integrity issues surrounding OSEV and it will shift its focus, as appropriate, to the EVACS and other systems to identify and advise me on threats to its integrity, functionality and reliability as a core part of our electoral systems, and that will be an ongoing assessment.

MR BRADDOCK: Talking further about the EVACS, in terms of the ACT's adoption of the EVACS system, we are opening ourselves to a higher level of risk than other jurisdictions who are operating purely on paper-based ballot systems?

Mr Cantwell: I would challenge the simple conclusion, as you have offered it. Any voting system carries risks. We have used an electronic voting counting system for many years now, over 20 years, and it has performed as intended and with stated results that have been tested and verified over many elections since then. It would be unfair to make a direct comparison in terms of risk levels from one jurisdiction to another whereby one is using a paper ballot system and we are using both paper ballot and electronic based.

Again I would say there are a number of very well-developed systems in place and checks and balances that we continually engage with throughout the intervening period between elections to ensure that all of our systems operate as intended, that their security, integrity, reliability and functionality are as best we can possibly make them, and that address the challenges which are resident in any electoral system.

I am confident that that will continue to be the case. If otherwise, I would certainly be advising the Assembly, but the advice the commission has is that it is a trusted, secure system and we will continue to deploy it. I think that the electorate should take every confidence that it will continue to be the case.

MR BRADDOCK: I want to go a bit further into vote recording; I know you have pushed back in the past regarding having a voter-verifiable paper record of the electronic votes submitted. How do we ensure that what the voter sees when they are

inputting it into the EVACS system is actually being recorded in the back end, into the database?

Mr Cantwell: It is absolutely right that people should question and challenge the integrity of the system and see how we can demonstrate its integrity. Going to that very point, we will engage with a series of enhanced scrutiny measures, available to the public, whereby they can make their own assessments based upon that which we can demonstrate to them by our own processes to ensure that the system is operating as designed, that there is no malicious code or malfunction within it, and that in particular it is functioning in the way that it should; that is, it is counting and recording the votes and distributing preferences as recorded, as intended by each elector.

There will be more advice around that in the public domain as we develop the means by which we can demonstrate that. It is a continuation and an enhancement of those processes which we have always deployed, whereby we focused on certifying the functioning of a code that is not producing any malicious code. But this will go beyond that and demonstrate its integrity in terms of its broader function, and recording it and distribution of preferences of votes as intended.

The paper-verifiable process proposed by others in this space has been addressed a number of times before. I would reiterate that that in itself is an untried operational procedure. It introduces more risks and challenges, both operationally and in an integrity sense, than would otherwise be merited or cost afforded. The confidence that we have, and we will continue to promote, is well founded in practice, action and experience operationally over many years.

MR BRADDOCK: You mentioned enhanced security measures. Would you be able to list those for me?

Mr Cantwell: Sure. The annual report describes a range of those. The first one, of course, is understanding the environment. Going to your earlier questions around the nature of the threat, we have engaged broadly and routinely with federal security agencies, the Electoral Integrity Advisory Panel, itself consisting of a range of professional independent advisers, academics and, again, our own DDTS here in the ACT government, and invited those, some of whom have challenged our thinking—rightly, as invited to do so.

We have engaged with other jurisdictions. Again, most recently, having the appropriate security clearances for myself and the deputy, we have received briefings from federal security agencies about that detail of the threat, which I cannot disclose here. That is our understanding of the environment; then undertaking a range of integrity assurance measures.

I have spoken to those in a public transparency sense; that is, we want to, where we can, by both rehearsals and testing of our systems, open those up to more public scrutiny so that people can see for themselves and make their own judgements around how we conduct this and how the system is working.

The code for EVACS, for example, will be made publicly available. There will be no

non-disclosure agreement for 2024 for EVACS, as was suggested to us and as we enacted in 2020. People will be able to get that code in advance. We intend to publish that code as soon as possible. I think we are on the record as saying at least six months, but I am confident that we will be able to get that out well ahead of the six-month time line, noting we have just passed the 12-month time line out from the next election.

The funding we receive will continue to go towards the modernisation and integrity assurance measures of each of our systems to make sure that they operate as they should. Again, this is a continuous modernisation process to get ahead of the challenges and the potential threats, although we have not seen such a threat materialise, thankfully, in our environment.

I am on the record as saying that smaller jurisdictions like ours are potentially seen by others as being less resourced, less aware and perhaps more vulnerable to external threats. We pay close attention to these matters for those very reasons, and we leverage off our partnerships with our federal agencies and the other jurisdictions to make sure we understand and act in advance of those threats as they emerge. Again, it is an ongoing process.

I will make sure that we keep the community more broadly apprised of those integrity assurance measures so that they can, again, see for themselves and make their judgements as we go forward.

MR BRADDOCK: You mentioned that implementation of voter verification processes would introduce new risks. What would be the new risks associated with that?

Mr Cantwell: Just as an example—and we have spoken to this in our submissions previously—if an elector wants to cast a vote electronically, and then have at his or her disposal a paper record of such a vote being cast, and if that does not accord with the voter's recollection of what they just cast, that question would need to be addressed individually and collectively for that polling activity and, indeed, probably for the votes being cast at that point in time.

When you cast a vote using EVACS, the screen and the functionality of that screen, as was introduced and developed in 2020 and will again be modernised for 2024, requires the elector to ensure that that which they are about to submit as their vote is that which they intend to do. You simply cannot hit one "enter" and away it goes. You have to check the screen to make sure it is, and you are asked to confirm that is what it is. That process is as if someone is asking you again and again to make sure that is what you intend to cast.

Our view is that having another process on top of that, which introduces the question that almost certainly would arise if someone's memory of that which they intended to cast is not what they see on a piece of paper, would introduce unnecessary challenges to that vote that has already been validated by a well-established and credentialed system of checking in the first place.

In terms of practical outcomes, though, I would also offer that I think the community

should take and can take confidence from the broader range of integrity assurance measures that are in place, and those things are ongoing. Some of those I have described here, but I have also listed those in the annual report. It is not just about making sure that your vote is cast as you intended to do; it is about the broader range of systems.

You have raised one of those points, about making sure the votes are recorded appropriately in the system. We can rely upon the data going forward. As you know, we have a casual vacancy that we are about to work through. We can go back and do a redistribution of preferences for casual vacancies as necessary, using that data which was recorded at the time. Again, those integrity assurance measures are broad-ranging, they are ongoing, and are available for the public to scrutinise and make their own assessments.

If you allow me, I will ask Rohan, our deputy, to speak to any of those risks that you have spoken to in that particular instance around a paper-verifiable printout.

Mr Spence: I think you have captured it quite well there. Any disparity between what the voter recalls their vote to be and the printed-out receipt of that, in some circumstances, will increase the view of issues with integrity, which we can assure you, as Damian has stated, through open-source software, external review and certification of the code and the scaffolding of assurance around it, the computer will have recorded correctly. These electors may well have selected 30 or 40 preferences. A full recollection in their mind of what they have recorded in comparison to the printout may well not align, and that is going to raise greater integrity concerns. The scaffolding that is in place is, in the view of the Electoral Commission, sufficient without the introduction of something like a paper-verifiable printout.

Mr Cantwell: I think we referenced where Victoria has trialled such a system and discarded it on the basis of unnecessary introduction of additional integrity questions—unwarranted questions. The costs and functionality were beyond the VEC's capacity. For that reason, and for other reasons, we have declared, publicly or otherwise, that it is not a proposal that we would entertain.

THE CHAIR: Can you confirm whether votes are in any way at all transmitted over the internet or onto a server?

Mr Cantwell: I will ask Rohan to talk to the operational aspects of this. As you know, with EVACS—again, our online information system on our website has further detail on this, should the public wish to look at this further, or can ask us questions directly if they wish—each of the polling locations is a closed system, so it is not connected to the internet. The votes are recorded within that local area network, and not transmitted broadly across the internet as such.

We are looking at means by which we can add additional, further redundancy to the capturing of those votes for the 2024 election. That is a work in progress. But it is not exposed to the threats as an online internet-based system such as OSEV would be, as an example, by comparison. It operates separately, in a closed circuit.

Mr Spence: That is accurate. It is an isolated LAN in each polling place. The votes

that are ultimately counted are taken directly out of the server and transported back to the central scrutiny location for input into, again, an isolated, non-internet-connected server, and counted.

THE CHAIR: You said earlier that the code is open source, and the public can access it.

Mr Cantwell: The code for EVACS—

THE CHAIR: Yes.

Mr Cantwell: will be available to the public, and we will make sure we make that announcement once we have gone through the certification and verification process ourselves and tested it ourselves. We need to ensure that it is in compliance with the newly enacted—or about to be enacted—legislation, the Electoral and Road Safety Legislation Amendment Bill 2023, to make sure that encompasses all of those actions that are required, as might be appropriate from the code point of view, and that will be available to the public to scrutinise and offer any viewpoint they wish.

THE CHAIR: Is there a risk that, with it being out there, there is some way it can be manipulated or hacked?

Mr Cantwell: The code which will be available to the public is not the live code that we will use on the day, per se; rather, it will be sufficient for them to see that it is the code which will be used. I will certify that this is the code to be used for the 2024 election, and invite the public to scrutinise it, using whatever system they wish.

I welcome that advice. We received advice which identified in the 2020 election how the EVACS code functionality was not implementing the counting of transfer values at the time, as was required by legislation. That was a positive outcome for everyone to ensure that that was addressed at the time. Contributions were made by the public and the academic authors of that report at the time. We engaged with at least one of those academic authors in the Electoral Integrity Advisory Panel, as it related to OSEV. We will continue to work with all members of the public, academics or professionals who wish to advise us and help us out in this space.

MR BRADDOCK: In terms of the regulation coming out that specifies 250 signs per candidate or, for a party fielding 25 candidates, it can be a total of 6,500 signs across the ACT, how will the Electoral Commission ensure compliance against such a figure?

Mr Cantwell: I will ask Rohan to speak to the specifics of that, because Rohan has been more closely involved with the detail of that matter, in a legislative sense, than I have in the last couple of weeks.

Mr Spence: In a similar way to movable signs being regulated and enforced in previous elections, it is a matter for TCCS and the city rangers to oversee the number of signs. It is not an Electoral Act piece of legislation, the movable signs regulation. The complaints will surely come to the Electoral Commission, but they will be passed over to the city rangers for oversight.

MR BRADDOCK: If the city rangers find that some candidate has exceeded their limit, will they then bring that to your attention or will they just take action themselves under the movable signs code?

Mr Spence: I believe they enforce provisions under that code.

Mr Cantwell: It is probably a question best addressed to them. It is up to the TCCS team to develop their operational procedures and respond as they should.

THE CHAIR: In the 2023-24 estimates in July, you advised that a draft service delivery plan for the next election would be ready 12 months in advance. Has that been issued?

Mr Cantwell: No, I have not issued it publicly. It has been developed and endorsed by the commission. It seeks to capture the broad range of operational considerations in the delivery of the election. The intention of the commission is to make that, in whole or part, available to the public soon so that, again, the public can see the sorts of issues there are, some of which we have addressed here today or spoken to here, particularly around the key risks to electoral integrity, and we can ensure that we deliver the highest quality electoral services to the ACT community and outline how we are going to deliver on that undertaking, in addressing those risks.

THE CHAIR: Will it be published this year?

Mr Cantwell: We have a commission meeting coming up on 5 December. I will discuss it with commission members. If it is not before the end of this working year, certainly it will be early next year. My view is that, like the code, the sooner we get this out for the public to have a look at, the better, as it serves a couple of purposes. Firstly, it advises and informs those members of the community who have a keen interest in this—and there are clearly some, and good on them. They can see how we are planning to deliver the election for 2024. Parties and candidates clearly will be concerned and interested in how we will deliver the election. We have a party briefing coming up on 8 December—party and candidates' briefing. That will spur some interest.

It will also help to inform the community that, "Hey, there's an election coming up in September-October 2024. This is an important event. You have an obligation to enrol and vote. We require you to do so, and this is the means by which we are going to deliver the election." My plan is to have that, in whole or part, available for public scrutiny, probably published on our website, in the first quarter of next year.

Mr Spence: It needs to be noted that the recent amendment bill only passed at the very end of October, and that significantly influences the delivery plan for this election. There is still work in operationalising the impact of that amendment bill.

THE CHAIR: How many electronic voting booths will be used?

Mr Cantwell: We are looking at the analysis now. The election operations team, with the deputy's oversight, is looking at the number. I have not yet determined the number.

That will be advised as part of the election service delivery plan in the first quarter of next year, I trust.

We are looking at the analysis in a resource sense as well, to make sure we are taking the right decisions around cost-benefit analysis, the voter demand which we saw in 2020, the expected voter demand, the redistribution outcomes, of course, which have recently concluded, and to ensure that we are not at risk of wasting public resources in the delivery of the election.

Standing up a polling booth and maintaining it for the hours needs to be based upon a careful assessment of the voter demand, the voter load. We are seeking to ensure maximum accessibility without causing risks of undue queuing and like. It is also about making sure that those voting centres are available where the public can most benefit from their location, and the timings, so that we do not have staff standing around with very few votes being recorded, as was the case when we delivered the actual polling locations for the 2020 election. Again, it was a different context and a different environment, with COVID impacts.

THE CHAIR: Will these booths be available at every polling station?

Mr Cantwell: The electronic voting booths?

THE CHAIR: Yes.

Mr Cantwell: Yes, they will be.

Mr Spence: Early voting stations, not static polling places.

THE CHAIR: Pardon?

Mr Spence: Electronic voting is available at every early voting centre, not at the single-day polling locations on the final day of the period.

THE CHAIR: That will be clear when you have issued your delivery plan?

Mr Cantwell: Yes. We will make sure that is the case. We will use, as we did for 2020, those means by which the public can see the voter load at any one point in time. The design of that for 2020 was so that it would minimise, in a COVID environment at the time, the potential for unforeseen queues that a voter might have to confront when they turn up to vote. We use all means we can to make sure the public can make the best decision around where to vote.

THE CHAIR: On behalf of the committee, I would like to thank you all for your attendance today. If you have taken questions on notice, please provide your answers to the committee secretariat within five business days of receiving the uncorrected proof *Hansard*. The committee will now suspend the proceedings.

Hearing suspended from 10.45 to 11 am.

Appearances:

ACT Inspector of Correctional Services
Minty, Ms Rebecca, Inspector of Correctional Services.
Costello, Mr Sean, Deputy Inspector of Correctional Services.

THE CHAIR: Welcome back to the public hearing for the committee's inquiry into annual reports 2022-23. Proceedings today are being recorded and transcribed by Hansard and will be published. Proceedings are also being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses 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.

Today we welcome the Inspector of Correctional Services. 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. Please could you each confirm you understand the implications of the statement and that you agree to comply with it.

Ms Minty: I acknowledge the privilege statement and agree to comply with it.

Mr Costello: I also agree to comply with it. Thank you.

THE CHAIR: Thank you. We will go straight into questions. Youth crime and incarceration appear to have significantly spiked in the last year. Youth justice related appearances in courts are up 80 per cent over last year, and the number of annual youth custody days has almost doubled, from 3,348 three years ago to 6,672 last year. Completion of case plans in the reporting period has gone down to 55 per cent, compared to a 100 per cent completion rate last year. This increase in youth incarceration appears to have taken a toll on performance in at least the completion of case plans. Have you observed whether there are any areas of Bimberi that are struggling to cope with this spike?

Ms Minty: In relation to youth justice, my mandate covers the oversight of Bimberi Youth Detention Centre—the treatment and care of young people in Bimberi. To give some context, we recently conducted an NPM visit to Bimberi, in June this year. At the time, the number of young people remained relatively low, around the 10 to 12 mark. I acknowledge what you are saying, but the actual number of young people in Bimberi at that time was relatively low.

I understand it does fluctuate and it has approached 20 more recently, but I can only comment on when we were on site and the numbers that we saw there. I think the length of stay for a number of young people that had been in there was very significant. A real challenge for the justice system is to try to reduce the time that young people are spending in Bimberi. I cannot comment specifically on case plan completions.

Mr Costello: By way of background, NPM stands for National Preventative Mechanism, which is a relatively new, in Australia's terms, type of visit by bodies

like ours. Under some United Nations treaty obligations that Australia has signed up to, organisations like ours—rather than going in every three years and doing a formal comprehensive review, as we are mandated to do under our act—can visit periodically to identify issues that may be prevented so that ill-treatment can be prevented, rather than responded to retrospectively. That was a pilot visit the office conducted under that new mandate.

MRS KIKKERT: Was there any significant issue raised during your last visit?

Ms Minty: We are intending to table that report soon, in the next sitting period, so I do not want to be drawn on the contents of that report. It did look at a specific issue of segregation and isolation of children and young people. That will be made public in the Assembly shortly.

MRS KIKKERT: Next week? That is our next sitting.

Ms Minty: That is certainly my hope, yes. As Sean alluded to, it is not a whole-of-Bimberi review; it focuses on a specific issue in a great more detail than we are able to do in a healthy centre review. It is looking at the practices of separation, segregation and isolation of young people.

MRS KIKKERT: Okay. Thank you.

MR BRADDOCK: On page 11 of your annual report you refer to some work you did on a smoke-free AMC. You mentioned that the findings were provided to ACTCS but will not be tabled in the Legislative Assembly or made publicly available. Can I understand why that is the case?

Ms Minty: Sure. The purpose of working as a National Preventative Mechanism is to work in a really constructive way with detaining authorities to improve the treatment and care of children and young people, or adults in my case. Generally, good practice is to make those reports public. Indeed, that is a requirement under my act for when I am doing an examination and review.

However, the NPM mandate is broader than the functions that I have currently got under my legislation. What we see around the world, with the optional protocol to the convention against torture, is that there are a range of ways that an NPM can carry out its functions. Sometimes doing a report that is not made public may be a way of building engagement with the authorities, understanding an issue and bringing it to attention in a more low-key way than a public report.

Certainly, it is my intention that the majority of our reports will be made public, because I think there is a strong public interest and my office is set up to provide transparency. In this case, again, it was a pilot. It was the first time we did an NPM, a short visit. The purpose of us focusing on smoking was that we were hearing from corrections about the significant measures that they had put in place to introduce the smoking ban at AMC. There were regular briefings to the community sector and to detained people. We wanted to go in and talk to detained people, understand how things were and get a better understanding of the situation.

We put together a report. We did a survey of detained people and staff. I thought it appropriate on this occasion just to keep it as information for us and to pass on any issues to corrections. It is certainly not trying to hide or cover up anything that we found, or protect anyone, but I think it is important that when an NPM carries out its function it retains the discretion as to whether to report publicly. The practices around the world vary. For example, in France every time a visiting body does a visit they do not produce a report; they produce a summary or some dot points. Other NPMs do not always produce public reports. So it is very consistent with international best practice.

MR BRADDOCK: Are you able to disclose what you found or give your impressions as to how the AMC is handling the smoke-free transition?

Ms Minty: In a very general sense, we found that the preparations that corrections had put in place were very evident. I think detained people were well aware the ban was coming in. There was plenty of public awareness. We were fairly assured that the preparation work had been done.

I would say more generally, though, that the transition to smoke-free was an important project for corrections, and to date it appears to have gone well, but each new incarcerated person coming into custody is a new episode of having to go off cigarettes. So it is really just the start of a process. We see a high churn of detained people, especially on remand, so every time that person is coming in and having to go off cigarettes again, yes they have access to nicotine replacement therapy and yes that is important, but I think we need to be mindful that the smoke-free transition is not over. It happens on a daily basis for detained people.

I go back to the recommendations from the Healthy Prison Review about needing to have activities, programs, education. These are things that help people to cope with transitioning to giving up smokes. I think it is an important thing to remember that it is an ongoing process.

MRS KIKKERT: Are you confident that AMC is able to meet that demand of continual transition of incoming detainees on a daily basis?

Ms Minty: For transitioning to smoke-free?

MRS KIKKERT: That is correct; yes.

Ms Minty: I think that the nicotine replacement therapy options are very adequate.

MRS KIKKERT: Helpful?

Ms Minty: Helpful and in line with good practice. I certainly do not see any concerns there. What I would like to continually see is, as I mentioned, education programs. We are still seeing some delays in the volume of programs. It is something that we talked extensively about in the Healthy Prison Review. It is taking longer than it should, in my view, to have programs. In the last financial year I understand there were nine different programs, but many of those were very short—two, three, four hours and then they are done. That needs more improvement.

MRS KIKKERT: So providing structured daily activities and programs for the detainees will help them even more with transitioning to a smoke-free environment?

Ms Minty: Absolutely. There have been some positives as well, in that now in the recreation space there are three custodial officers to provide a presence, expanding the hours that detained people can use those recreation facilities. It used to just be Monday to Friday, nine to five, but it has expanded. I think that is really positive, but there is more work to be done.

MRS KIKKERT: Can you elaborate a little about the education needs of the detainees?

Ms Minty: I think there is a range of education. There is the vocational education, giving people work skills. There are basic literally and numeracy programs. I understand that there is some screening in place, but there is still a need for those more comprehensive programs. As I said, I am aware of nine vocational programs offered in the last financial year. There need to be more brought online.

In terms of tertiary education, another thing that we raised previously were the limitations around access to university education because of problems accessing software, accessing computers et cetera. I understand that there have been some improvements in that space—there is an education officer now to help facilitate that—but there are only a dozen or so people doing that. The prison was originally designed as one built on education. It would be good to see more than a dozen people doing tertiary education and the vocational education that will provide the skills needed on exit.

MRS KIKKERT: More variety and more time spent on it. When was the last time you visited AMC?

Ms Minty: I would have to take that on notice, to be honest. My team were out there—

Mr Costello: Yes, we were out there. We will take that on notice, but it would have been approximately six weeks ago.

MRS KIKKERT: Six weeks ago.

Mr Costello: Yes.

MRS KIKKERT: Was that a routine visit or was that based on an incident report?

Mr Costello: The AMC holds what it calls a collaborative forum, where oversight agencies come together to discuss matters of mutual interest with corrections. We attended that forum, then I and another staff member took the opportunity—particularly as I have returned recently to the jurisdiction—to walk around with one of the official visitors and chat to some people. It was an opportune time to have a look around, but there was no specific incident we were looking at.

MRS KIKKERT: Great. Okay. On page 15 of your report you reference a business

case for a multipurpose industry building that was put forward but not approved. Can you tell us some more about that and could you clarify whether the multipurpose industry building mentioned is the reintegration centre that was first announced by the government and then dumped?

Ms Minty: It was in the Healthy Prison Review 2019 that we originally made a recommendation for a simple multipurpose centre to address the lack of industry or ability to do programs, like a metal workshop or car fabrication or forklift training. The recommendation was that a building be put in to give some flexibility to provide more activities. That was accepted in the 2019 Healthy Prison Review.

I understand that corrections put a business case forward that was not accepted. I cannot speak further to that; that question would be best directed to corrections. In the 2022 Healthy Prison Review we saw the same need and the fact that it was an accepted recommendation, so we made that recommendation again. It was not the reintegration centre; that was a separate project and an initiative of corrections. It was for a centre or a shed, for want of a better word, within the footprint of the AMC.

MRS KIKKERT: Did you get a chance to read or view the business case that was not approved?

Ms Minty: No, I have not.

MRS KIKKERT: You were just told about it and it was not approved?

Ms Minty: That is correct; yes.

MRS KIKKERT: Okay. Thank you.

THE CHAIR: I note that page 18 of the annual report contains a table that summarises critical incidents that were reported to your office during the reporting period. In this reporting period there were three incidents involving assault or use of force that resulted in admission to hospital. One was reviewed, another was under consideration at the time of writing and another was not reviewed. Can you share with us some general details about each incident?

Ms Minty: I can share information about my decision whether or not to review it. Critical incidents are defined in our act. They include a range of serious incidents. If an assault occurs, it has to result in an admission to hospital of either a detained person or a staff member for a review. We have criteria that we have developed internally to decide whether or not we will conduct a review of those critical incidents.

I do not think I will talk about the details of them because I do not think that would be appropriate here, given that we have decided not to conduct reviews of them. Certainly, with the two assaults that we have decided not to review, the relevant considerations were around public interest in the harm caused and whether or not it is appropriate to review it, because our office has fairly limited resources and we are not able to conduct a review of every critical incident.

MRS KIKKERT: Does that include violent interactions between two detainees? If

neither of them is hospitalised then you will not look into that matter?

Ms Minty: Yes. Section 17(2) of the Inspector of Correctional Services Act defines a critical incident. It is an assault or use of force that results in a person being admitted to hospital.

MRS KIKKERT: Right. One of the incidents was reviewed. Are the detainees involved in that interviewed by you?

Ms Minty: It will depend on the circumstances. We have previously. I can think of multiple occasions. Sometimes it may be that the person has been released from custody. Sometimes they may not wish to talk to us. But we certainly value their input when we are doing critical incident reviews. In the hostage situation, we spoke to that detained person. When there was the riot in the accommodation unit, we actually used PrisonPC to put a note out to detained people, to offer them the opportunity to talk to us, and then we walked around to the units. It is something that is important. It has to be done in a way that protects detained people so that they feel safe and comfortable to talk to us, with as much privacy as possible, certainly away from staff and other visitors, because I think confidentiality is important.

MRS KIKKERT: You have interviewed detainees who were involved in physical interactions many times. Is there a correlation between them acting up and misbehaving in prison and not having a structured activity?

Ms Minty: That is a difficult question to answer. The critical incident review that we did of the concerted ill-discipline in remand unit 1 that resulted in fires, for me, was a clear example of lack of meaningful activity. From memory, that unit held 37 detained people and all but two, from my recollection, were in the unit at 2 o'clock in the afternoon, not engaging in meaningful activity. In that case, there was home-brew and various other factors, but it is when you combine these factors. In that report we did conclude that that was a factor that led to unrest.

MRS KIKKERT: Yes. In the incident that you did review, was there any damage to property?

Ms Minty: The incident in this reporting period?

MRS KIKKERT: Yes. One was reviewed, another was under consideration at the time of writing and another was not reviewed. In the one that you did review, was there damage to any property?

Ms Minty: In addition to the Bimberi review, we will be tabling a critical incident review in the Assembly next week. That was an assault that resulted in an admission to hospital. Your question was: was there any damage to—

MRS KIKKERT: To property.

Ms Minty: Not in that case; no.

MRS KIKKERT: So you will table two reports next sitting week?

Ms Minty: Yes.

MRS KIKKERT: Okay. I am looking forward to reading those reports. Thank you.

MR BRADDOCK: You made a submission to the statutory review into your role. I am interested that you made the argument for becoming an officer of the Assembly. What are the limitations of the current structure that led you towards that conclusion?

Ms Minty: Thank you. That recommendation from our submission to the review of our act probably has two aspects to it. One is around independence. I am independent of government and I report to the Assembly. With the advent of OPCAT and people and governments around the world, particularly in Australia, looking at what independence means, being an officer of the Assembly gives an additional degree of independence and makes it very clear that we are not part of the Justice and Community Safety Directorate or the Community Services Directorate. It is the most independent you can be, as a statutory body.

The second aspect—and it is something that I and Neil, my predecessor, have brought before this committee previously—is around financial independence. The key example is that, as I am sure you are aware, when we were established in 2017 we were funded initially for adult corrections. Bimberi was added fairly late in the piece, without commensurate funding. We have been putting a budget bid in for four years, without any success. The process by which we put the budget bid in is that it goes through the Justice and Community Safety Directorate. Being an officer of the Assembly would bring additional independence, I suppose, in trying to put forward our case for additional funding. That was the main rationale.

MR BRADDOCK: Just one clarification. There is a paragraph there where you mention that, should you become an officer of the Assembly, the change is likely to further entrench the possibility that your reports, when tabled, will become inadmissible in legal proceedings. You go on to say that there are advantages and disadvantages. Can I understand what those are?

Mr Costello: I can speak to that, if you like. There is a Supreme Court matter on foot, with a decision pending, which is likely to rule on that question—to answer whether, under the existing legislation, our reports are subject to parliamentary privilege. If they were, they would effectively be inadmissible in legal proceedings and other privileges may attach to them.

I am not sure if advantages and disadvantages is the right way of talking about it. It is what it is. The question would come down to whether they are prepared for the Legislative Assembly or not. If they are then they are yours and they attract the parliamentary privilege that all matters in this place would attract.

Parties to civil proceedings may say that they would quite like to be able to use our reports as evidence of matters, but on the other side of the coin there is good reason for privilege to attach to documents prepared for parliament. What we are saying there is that there is a question presently as to whether parliamentary privilege already attaches to those reports. If we were to become an officer of the Legislative Assembly

it would be even more likely, but it is a legal question that has not been resolved.

MR BRADDOCK: Are there many instances where your reports are utilised in court proceedings?

Mr Costello: The matter on foot was one in which the parties sought to submit our report as evidence in the proceedings.

MR BRADDOCK: Just that one? Are there any more out there?

Mr Costello: Not to date. I think in other jurisdictions the matter has arisen—for example, in the context of coronial inquests. That would not be an unlikely eventuality where it might become an issue. The other thing perhaps to note is—as is the matter that is on foot—the ACT is the only jurisdiction to have a direct right of action under the Human Rights Act. It may be more common in the ACT that it arises because a prisoner may seek to commence a proceeding under that legislation and then somehow rely on our report to support the action.

MRS KIKKERT: Are there any recommendations from your office that ACTCS has claimed are implemented but you disagree with their assessment?

Ms Minty: Yes, there have been. The one that immediately springs to mind, and it is a bit of a moot point now because there is a ban on smoking at the AMC, is around requiring smokers and non-smokers to share cells. We had raised that previously. The government response to the most recent review was that they are never required to share cells, yet our experience, going out to AMC and visiting and being in the cells and in the units, in the cottages, was that that simply was not the case.

There are others. Going forward, one thing that I am looking to do is to make fewer recommendations but really work concertedly on implementing them. That includes working closely with corrections, because I think a dialogue is important. I think being able to clarify if there is any confusion, any misunderstanding, is important.

There is another recommendation in relation to the classification system. We had recommended that it be reviewed for cultural bias because we noted that a significantly higher proportion of Aboriginal and Torres Strait Islander detained people were more highly represented in uses of force and strip-searching. That recommendation was not completed, for various reasons, which the government have included in their response. That is something that we still consider a very important issue and deserving of further attention, so we will continue to work with corrections on that.

MRS KIKKERT: So you will be monitoring how Corrective Services will be implementing some of your recommendations?

Ms Minty: Yes. Sometimes it is as simple as going out to AMC and observing, but sometimes it is more complex, including understanding the policy processes behind the scenes.

MRS KIKKERT: One of the recommendations where you disagreed with Corrective

Services was recommendation 19:

> We have not been provided with a strip-search register that, in our view, complies with section 110 of the Corrections Management Act 2007.

Could you elaborate on that, please.

Ms Minty: That is recommendation 19 from the 2017 Healthy Prison Review?

MRS KIKKERT: That is correct; yes.

Mr Costello: 2019.

Ms Minty: 2019; sorry. Our concern there was in relation to the old custodial database system and its ability to keep the data as required by the act. Instead, the data was being kept in spreadsheets. They have now transitioned. Just over a year and a bit ago they moved to CORIS. We have had some sessions with a corrections technical person to work us through the system. My understanding is that this will be addressed, but it is something, again, to keep monitoring.

MRS KIKKERT: Great. Thank you.

THE CHAIR: I think we are fairly close to finishing. Any closing words?

Mr Costello: Chair, I might just add to my answer to Mr Braddock earlier. I should clarify that my understanding from that proceeding is that the preliminary view, or an early decision, was that parliamentary privilege did apply to our reports, but there has not been a written decision as yet. I wanted to clarify what the state of play might be.

MR BRADDOCK: Thank you.

THE CHAIR: Thank you. On behalf of the committee, I thank you both for your attendance today. If you have taken questions on notice, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*. We will have a very brief break while we welcome our next witnesses. Thank you.

Short suspension.

Appearances:

Legal Aid ACT
Boersig, Dr John, Chief Executive Officer, Legal Aid ACT.
Monger, Mr Brett, Chief Financial Officer, Legal Aid ACT

THE CHAIR: Welcome to this public hearing for the committee's inquiry into annual reports for 2022-23. We welcome Legal Aid to this session. The proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses used these words: "I will take that question on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript.

I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw 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. Please confirm that you each understand the implications of the statement and that you agree to comply with it.

Dr Boersig: I do.

Mr Monger: I do.

THE CHAIR: Thank you. We are not taking opening statements. We will dive straight into questions. The expiration of the National Legal Assistance Partnership is looming large. It is due to terminate in 2025. A review of the partnership is currently underway, with a report slated for publication on 22 December this year. Are you able to provide the committee context regarding the Legal Aid Commission's involvement in this review?

Dr Boersig: Certainly. Dr Mundy is head of that review. That is significant because he did a Productivity Commission report in 2013 which looked at legal aids around Australia, as well as other service providers, so he comes forearmed in that sense and with a history, which is great when someone is reviewing the partnership agreement.

There are some major issues associated with the review, everything from wage parity across the sector through to scale of fees for private practitioners, through to the allocation of resources through the Legal Aid CLCs and Aboriginal organisations. It will review the mechanisms. At the moment, it is a national partnership agreement which delivers the money to the Treasury and then to us. It is a very cumbersome process because it has to be signed off before additional money comes in. It has to be signed off by each state and territory jurisdiction. That sometimes slows the delivery of additional funding. They will be looking at mechanisms which might expedite that. They will be looking at issues around urban services, as against rural and remote services. Obviously, we provide a highly urban service, although we provide about 10 per cent of our work to people in New South Wales who utilise the Family Court, because it is a central registry.

There is a funding cliff for all of us. The out years are zero. I will ask Brett to correct me if I have this wrong, but about 35-plus per cent of our budget is at risk at the end of that funding period. Obviously, that is an issue for all of us, including CLCs, but in particular because of changes to workplace relations that have come out this year. That will have an impact on who gets redundancies, payouts and so forth. This is a significant issue for us. As to the timing, you said it is due on 22 December. Whether it will be published then by the commonwealth Attorney—the process there. I do not expect we will know more about this until well into the first part of the new year.

THE CHAIR: Do you think there will be a major restructuring of how states and territories collaborate with the commonwealth on these arrangements?

Dr Boersig: There might be mechanism change in terms of the actual delivery of money from the commonwealth to the territory, whether that is through a national partnership agreement or some other mechanism. I think they will be looking particularly at Aboriginal Legal Services and whether Aboriginal Legal Services stay inside the national partnership agreement and the funding envelope that already has CLCs and Legal Aid—whether they are brought back to be directly funded by the commonwealth. I think that is an issue for our family violence branch, legal services and Aboriginal Legal Services.

THE CHAIR: Do you expect the ACT government to fill any funding gap should the commonwealth not continue its payments?

Dr Boersig: That is a significant question. Ultimately, the issues revolve around the use of Commonwealth funds and territory funds for respective areas of law—that is, commonwealth areas of law or territory areas of law. There is some blending of that funding now around family violence and information, referral and so forth, but essentially the commonwealth will fund commonwealth law matters—family law, employment, consumer protection, and those kinds of areas—whereas the territory funds care and protection, crime, and other sorts of civil works. There will be real questions around that and questions probably for the Law Society as well, in terms of their statutory interests to funding.

THE CHAIR: Are you satisfied with the engagement with the ACT government? You are not waiting for answers to questions for a period and—

Dr Boersig: No. We have provided content and information that has been utilised by government in their submission, and that has been useful. It has been useful that it has been delivered in that way. We are but one player in a very big field on this, of course. There is a national legal aid submission. A whole range of submissions have gone in. I have to say, the commonwealth government will have plenty of information upon which to make some interesting discretionary decisions about the use of funding. Obviously, we all see the need for greater investment in Legal Aid and we will see how that is reflected.

THE CHAIR: Mr Braddock.

MR BRADDOCK: I have a question in terms of the colleges program. I have noticed that, on page 29 of the annual report, you say you have done 653 legal education

sessions. Do you have any stats on the number of people who are coming to you seeking advice on the colleges program?

Dr Boersig: We do. I can take that on notice and tell you. That is a great program. You will not be surprised to hear that, if you want kids to have access to information upon which to make good decisions, you have to go where they are, and that is where they are. What surprised me the most in terms of the stats that came out of that—and I can send you our report of all this—are, broadly speaking, the family violence issues. Just to be there and available independently for young people is really important. It is like the health justice partnerships—being in the hospitals, being in the obstetric wards, being available for women in particular who are in difficult situations, whether it is about care and protection matters or family violence matters. It is a place we should be available. Even when the numbers are not huge, people are really important.

MR BRADDOCK: And it is transformative for their lives.

Dr Boersig: Yes.

MR BRADDOCK: Are the resources that are put into that program static? Are they increasing?

Dr Boersig: The investment comes from the education—I will have to go to Brett on the actual numbers. We are paid, essentially, for a junior lawyer to go out. We rotate, because of the nature of the work, through a number of lawyers who go out through our outreach program. I think it is a junior lawyer position. I would be keen on seeing it expanded, simply because we are at each of the colleges once a fortnight and I reckon if we were there—you know what kids are like: if you are in front of them, they will come and see you; if they have to wait a week, they may not. I think there is a good argument for us being there and available, given the data that is coming through about both the quantity and the qualitative work that is being done there.

MR BRADDOCK: And the number of colleges that are being built and the population that is increasing.

Dr Boersig: Absolutely. All of that is reflective. We talk to government regularly about the value of the program to kids.

MR BRADDOCK: Thank you.

THE CHAIR: Back to a common theme: your accommodation status. Could you provide an update on the finalisation of your accommodation arrangements at 2 Allsop Street?

Mr Monger: Yes, Mr Cain. We have spoken about this previously. We have currently signed off the lease for our existing premises. Given the large number of staff that we increased to, to try to work through the volume of work, we actually have more space in our premises. We have an extra 250 square metres, which delayed things a little bit. At the moment, we are upgrading the lighting and the front door of the accommodation to a disability-compliant front door—it is not currently there—which is going to be partially funded by the building owner. We are then going to restructure

or refit the premises to better suit our work environment. That includes being COVID-friendly, but it also includes the increase in staff and any other potential changes that we have underfoot in the next few years. It is a long process. We do not want to do this for just this year.

We are currently going through a procurement process on the major construction works that are going to be needed: building more offices, building more meeting rooms et cetera. We are going through that program as we speak. We have not spent a large part of the money. I am expecting something in the order of $1½ million will come from the construction costs that we banked in prior years. We are talking about something in the order of $400,000 to purchase new furniture. The existing premises are 12 years old. The furniture that we have is 12 years old. We are trying to make it more work-safe by having sit-stand desks and that sort of thing. We are changing our environment in that way.

THE CHAIR: Thank you. In two successive annual reports, you cite "government green policy" as the single biggest issue delaying negotiations for a new lease, but you have actually signed that lease. At the moment, what is the nature of the "government green policy", as you have described it?

Dr Boersig: In essence, the policy is moving away from gas to electricity, and the exhortation from the Attorney was to have that principle in practice in the leasing arrangements. Where the rubber hits the roads is that there is now a break-lease clause in our agreement. That break-lease clause operates without penalty for us if, after five years, the owners of the building need to repair the gas or change the gas and they are not prepared to move to electricity. Then we have the option to break the lease. If that happens, we would go to the Attorney for the Attorney's view about whether we should continue in the premises or opt to break the lease.

THE CHAIR: When you say "if, after five years"—

Dr Boersig: That is right. From the signing of the lease. We have a minimum period in which we do not have to utilise the break-lease clause, but after five years we would go to the Attorney if the owners were not of the view that they would change the building from gas to electricity.

THE CHAIR: When was the lease actually signed and when does it commence?

Mr Monger: 1 July 2022.

THE CHAIR: What term is it running for?

Mr Monger: It is a 10-year term, but, as Dr Boersig said, we have a minimum five-year term where we can be in there. Part of the reason for that was that, if we were spending $2 million or $1½ million on the construction, we wanted to make sure that we were in there for a reasonable amount of time.

MR BRADDOCK: Just quickly, going back to my last question, can you please take that on notice, in terms of the stats for the college program, and also the resources put into that program?

Mr Monger: Yes.

MR BRADDOCK: Thank you. The substantive is: the case study on page 46 refers to a family violence matter where the perpetrator takes a family violence order out on the victim. I want to try to understand. Do you have any information as to how frequent an occurrence that is? And what is the process to address that sort of situation happening?

Dr Boersig: People on both sides of the coin come to us for assistance. The bulk of the work is driven by victims in these circumstances, or applicants, although, from time to time, we do assist respondents. That is sometimes complex, because there are times when the respondent is actually a primary victim; it is just a question of who got in first to lodge the application. It is also an issue in relation to non-binary relationships. We do a lot of work with the LGBTI+ community around this. There are some complexities that we manage in that context, and we work closely with, for example, the Rape Crisis Centre around providing that assistance.

Frankly, things work best when there are good, capable people assisting people on both sides. You get a better resolution, whether it is in family law or in family violence matters, if you have good, capable lawyers involved to bring matters to an appropriate resolution. That is our job: without fear or favour, provide services to both sides. If we have a conflict of interest, we will refer that matter to the private practitioners, and that happens from time to time.

MR BRADDOCK: Do you see this legal tactic being utilised in terms of perpetrators actually taking out family violence orders against their victims?

Dr Boersig: It does happen from time to time, but I would have to say to you that there would be a very small percentage of matters in which you could identify that. The complexities of people's interaction would make that more difficult. You see the allegations, of course, from time to time, in other jurisdictions. Particularly in the Family Law Court, there are certain allegations made on both sides around this kind of thing, but, statistically, I would say it is a very small number in practice.

MR BRADDOCK: Thank you.

THE CHAIR: I have some questions now related to the Sofronoff inquiry. As you would be aware, there was an article in the *Australian* in May this year. I will quote from it because I am asking for your commentary on it. It says:

> Mr Lehrmann revealed for the first time that when he tried to get legal assistance for his defence, Legal Aid ACT insisted it would not allow Ms Higgins to be challenged in court as a liar, but simply "perhaps mistaken about versions of events".

The article says that, in your capacity as CEO, you were responsible for that decision. Obviously, I am asking for your comment on the veracity of what was said, and, indeed, what was your role and the role of Legal Aid after being first approached by Mr Lehrmann?

Dr Boersig: I cannot speak to you about his particular situation, because of issues of privacy and confidentiality. To speak with you about that particular matter, I would need his consent. I can talk to you generally about how we approach things in court and how we manage things. I am happy to. If you want to press that, I would need to get advice on that and I would take it on notice, but I can speak to you generally now around the approach that we take in relation to all sexual assault matters—all matters.

THE CHAIR: Can you clarify: was there actually a lawyer-client relationship at any time?

Dr Boersig: The difficulty we face is that, under our secrecy provisions, I am not allowed to disclose whether someone has a grant of legal aid or not. Those secrecy provisions were drafted when we were still at school, in the 70s, in a different time and a different place, around legal aid, and around disclosure of whether someone is on legal aid or not, where it is seen as pejorative. I do not think this applies. The amendments that were done a few years ago in relation to the secrecy provisions did not really alter that position.

In relation to an individual—if I am approached, for example, by a journalist who says, "So and so told me this: blah blah blah," I cannot comment one way or another to that journalist, for two reasons. Firstly, it is a breach of the act. I cannot deny or affirm whether the person has legal aid. This is very awkward, let me say. Secondly, I would have to have the authority of a client to disclose that personal information. For example, if in the course of my discussion with a journalist I disclosed confidential information that would harm that client, I would be in breach of my duties.

That is my difficulty. If you want to press that, I would need to take it on notice and get advice from the Government Solicitor, and I would be happy to come back to you, if that were the case, but I am more than happy to talk to you about how we approach matters, if that would assist at the minute.

THE CHAIR: I have one more thing that was referenced in this article: the claim that Legal Aid did not want to fund Mr Whybrow, Mr Lehrmann's counsel, as he was—and this is from the article and I am inviting your comment—"too aggressive", with Legal Aid solicitor stating, as the article says:

> Legal Aid didn't like the way Mr Whybrow practices or the way he operates.

Are you able to explain what happened there or is this a policy of your office?

Mr Boersig: Speaking generally—not particularly about Mr Whybrow but generally—in relation to any matter, we look at the most appropriate person to represent people in court. That is a discussion. Some people have strengths and weaknesses. I personally would never describe anyone at the Bar inappropriately, but people have strengths and weaknesses, so, if I am running a criminal trial, I would not get a family lawyer to do it, because the expertise is in that. And they can be on different trials and in different capacities. You discuss that. It is like picking between different Italian restaurants—who provides the best lasagne and who does not? Those kinds of discussions are normal to have in relation to the choice of an advocate.

A lot of criminal work and a lot of litigation work, as you all know from your backgrounds, is about how you present a case and how you manage the evidence of the witness. There are lots of tactics around how you address a jury and how you do not address a jury. The kinds of discussions that everyone has in the legal profession are about who the best fit is for people in a matter. What I am saying is that those kinds of discussions are normal

I cannot say anything to you in relation to Mr Whybrow, except that I personally would never speak in adverse terms about someone at the Bar; I would always speak about the relative strength of witnesses. And, of course, in particular cases, you need to look at, in fact, how you would manage those cases.

THE CHAIR: Are you endorsing the Legal Aid solicitor's view as reported by the newspaper?

Mr Boersig: I would not endorse any view that spoke adversely about someone in those terms.

THE CHAIR: Was there any training or sanction on the lawyer who made such a statement?

Mr Boersig: I am not confirming that it was actually said. I can indicate to you more broadly that, any time something comes up—of any nature, this or otherwise—we look closely at what was said. If I can speak more broadly, Mr Cain, regarding the way sexual assault matters are managed now, they are ethically and appropriately managed according to the Bar rules. There was a time, 40 years ago, when I first started practising, when things were particularly robust and could slip very quickly into intimidation and bullying of victims in the witness box. This is contraindicated now. This is not in accord with ethical and policy guidelines. We need to treat people with respect on both sides.

On both sides of the equation, many of our clients are victims or have been victims. It is part of the reason that are there. We need to be trauma-informed, if I can use that term. This is not about being woke; this is about being ethical in the way we practice. You do not bully, you do not harass; you put your case and your put your case strongly, but you do not slip into the old ways law was practised, say, 30 years ago.

THE CHAIR: Thank you. Mr Braddock.

MR BRADDOCK: I have a question about the Tenancy Advice Service. I notice you said it received high demand in the last year. Can you please talk a bit more about trend in that demand? What are the major themes that are coming through or are any changes going on there?

Mr Boersig: During COVID, there was a definite spike in demand. That related, in part, to some of the legislation from the government and people not understanding it, both landlords and tenants, and following that through. More people asked for advice and more people were at home. There were a lot more calls during the day because people were at home. That trend has gone down a bit. Those numbers spiked and they have gone down, or they are going down a little bit—not by much; there are still a lot

of people.

The government's amendments were significant and raised lots of questions for people, and that is good. That is what we are there for: to provide clarity in decision-making. As that particular crisis trended down, other issues around the cost-of-living have come up, but I think some of the issues around CPI and maintaining tenants have now normalised. I think that we will see the trends coming back to more normal trends.

THE CHAIR: Perhaps continuing my earlier line, are you able to say how frequently you engage particular barristers for your cases? In particular, has Mr Whybrow been engaged by your office in the last 12 months?

Mr Boersig: No—Mr Whybrow has not been engaged by our office in the last 12 months. We have regular dialogue with the Bar Association about briefing the Bar. There is no-one blacklisted, if that is behind it at all. We would be very happy to engage Mr Whybrow if there were an appropriate senior matter for him.

We focus in particular on junior barristers and working with junior barristers as they go to the Bar and work through a lot of our matters. There is a bit of a dearth at the moment in the ACT of senior junior barristers—that is, people who are not senior counsel but have 10 or 15 years of experience. There is a hole. We keep making judges, or they keep retiring, and all of us are finding it harder.

We are happy to go further afield to both Melbourne and Sydney to find, in particular, a barrister in that category. Part of the issue, of course, for the Bar is the tax account rule. Are they available? Senior junior people, and now people such as Mr Whybrow, have their dance cards pretty full. I can think of two barristers I know who are booked up for all of next year.

THE CHAIR: Very briefly, in the last minute or so, have you noticed any significant change in the administration of the criminal justice system since the issue of the Sofronoff report that may reflect on either the recommendations or the commentaries on Mr Sofronoff?

Mr Boersig: I think all of us have a heightened awareness around our duties to the court, and the issues around disclosure, privilege and confidentiality are matters that will exercise all of us over many years to come. We need judicial proceedings that are fair on all sides and appropriate on all sides. Those commentaries will be live for quite some time.

THE CHAIR: On behalf of the committee, I thank you both for your attendance today. If you have taken questions on notice, and I believe that is the case, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof of the *Hansard*. The committee thanks broadcasting and Hansard staff as well for their support. If a member wishes to take questions on notice, please upload them to the parliamentary portal as soon as practical and no later than five business days after the hearing.

The committee adjourned at 12 pm.