



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: [Inquiry into annual and financial reports 2020-2021](#))

Members:

**MRS E KIKKERT (Chair)
MR M PETERSSON (Deputy Chair)
MR A BRADDOCK**

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 2 MARCH 2022

**Secretary to the committee:
Mr S Thompson (Ph: 620 50435)**

By authority of the Legislative Assembly for the Australian Capital Territory

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

APPEARANCES

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Privilege statement

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Amended 20 May 2013

The committee met at 10.02 am.

Appearances:

ACT Ombudsman

McKay, Ms Penny, Acting ACT Ombudsman

Macleod, Ms Louise, Acting Deputy Ombudsman

Andersen, Ms Symone, Acting Senior Assistant Ombudsman, Program Delivery Branch

Vonthethoff, Ms Rebecca, Senior Assistant Ombudsman, Assurance Branch

THE ACTING CHAIR (Mr Pettersson): Good morning. Welcome to the public hearing of the Standing Committee on Public Accounts inquiry into annual and financial reports 2020-21. Today the committee will be hearing evidence from the ACT Ombudsman, the Office of the Legislative Assembly and the ACT Auditor-General. Before we begin, on behalf of the committee, I would like to acknowledge that we meet today on the lands of the Ngunnawal people. We respect their continuing culture and the contribution they make to the life of this city and this region.

Please be aware that the proceedings today are being recorded and transcribed. They are also being broadcast and webstreamed live. When taking a question on notice, it will be useful if witnesses use the words: "I will take that as a question taken on notice."

In this session we will hear from the ACT Ombudsman. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could you confirm that you understand the privilege implications of the statement. We can just do that the first time people speak.

As there are no opening statements, I will lead off with a question. A large number of the inquiries that were made to the office were out of the jurisdiction of the office. Do you have any data about what these inquiries were usually about?

Ms McKay: Good question. Thank you. I have read the privilege statement and I am content with that. We do receive a number of inquiries that are out of jurisdiction. I will just turn to my colleague. Do we keep statistics on what those matters might be about?

Ms Macleod: Generally. I understand the privilege statement. The complaints that come into our office are also complaints that we receive in our role as the Commonwealth Ombudsman. When we have had a look in the past at the complaints that we get that are out of jurisdiction, often they can be about people complaining about their electricity or telco provider.

They might also be complaining about aspects of their life and their touchpoints with service providers who are not necessarily government. They might be in the private sector, in a retail setting and things like that. We classify those as out-of-jurisdiction complaints. Where we can, we will try and refer the person to the most appropriate complaint handling body or organisation to deal with those, to get assistance with

their complaint, but there are occasions where the complaint might be such that there is no-one who we could refer the person to.

THE ACTING CHAIR: So the inquiries listed in your annual report that were out of jurisdiction would be replicated in your reporting to the commonwealth as well?

Ms Macleod: Yes. That is right.

THE ACTING CHAIR: All right. Thank you.

MR BRADDOCK: On page 22 of your report you refer to Housing ACT, stating that it does not have a dedicated complaint handling system. I am just trying to understand the level of impact that arises from that shortfall. By “system”, are you talking about an IT system or is this more about the policies and procedures that need to be addressed?

Ms McKay: Thanks for the question, Mr Braddock. We conduct a program called a complaints assurance program, where we offer our services to different agencies to come in and look at their complaint handling, which is like a management initiated review. We review their complaint handling systems and provide them with some recommendations for improvement. We have done it in relation to the Housing ACT complaint handling system. We started that investigation back in 2019, and I think we reported in 2020—although it is not a public report; it is just for the agency themselves.

We made five recommendations in relation to their complaint handling program in that agency, mainly around developing internal process documentation and transitioning to a more effective system for managing complaints. In relation to those recommendations we did find that they were still using a lot of manual and hard-copy records, rather than an electronic system.

We also made recommendations about providing training for complaint handlers and reviewing and improving their communication with complainants and the public, as well as regularly reviewing their complaint handling systems. I understand, from our regular liaison with Housing ACT, that they are in the process of implementing those recommendations to improve their complaint handling system.

MR BRADDOCK: Does that include the ICT? I have notice that in your report you only reference the policies and procedures.

Ms McKay: We did look at their ICT. Recommendation 2 says that ACT Housing should transition to a more effective system for managing complaints to improve the quality and efficiency of its complaint handling and reduce its reliance on paper filing and case management systems. That really is referring to potentially improving their electronic systems of complaint handling, rather than relying on paper documents.

MR BRADDOCK: Okay. Have they demonstrated to you that they are making progress against that recommendation?

Ms McKay: I might turn to Ms Andersen, because she deals with the liaison with

Housing ACT. You might have a better idea, Ms Andersen.

Ms Andersen: I understand the privilege statement. Yes, definitely, they are making progress. As Penny indicated, we do not do a formal review against the recommendations, because we are working with them on improving their complaint handling systems. However, they are very aware of it and they are working towards improvements.

In fact, recent liaison discussions with them indicated that they really wanted to implement a majority of what we were discussing by the end of last year, COVID pending. However, as we all know, IT systems and the supporting artefacts that go with them are not necessarily as quick to transition to as policies and procedures. We have another liaison meeting with them this week, so we will continue to progress those conversations.

MR BRADDOCK: Thank you.

MR CAIN: Ms McKay, I refer to the inquiry into the Financial Management Amendment Bill, to which you provided a submission. I wonder, for the sake of the record of these proceedings, what concerns you have about this bill.

Ms McKay: We appeared before the committee the other day. Our concerns were really that we are a commonwealth agency providing services to the ACT under a services agreement, and part of that agreement is that we have to abide by the commonwealth procurement rules. We saw that there was a conflict between the parameters of the bill that has been introduced and the commonwealth procurement rules. We could not abide by both, so we asked for an exemption to that bill.

MR CAIN: Okay. Thank you. I note that the majority of the committee issued a report. There was a dissenting report from one of the members. Do you feel that the majority report satisfactorily addressed your concerns and alleviated any of those concerns?

Ms McKay: As I understand it, the majority report said that ACT agencies should still turn their mind to the provisions of the bill but were not to be bound by them. Our view, and our submission to the committee, was that we would prefer a clear exemption from that bill, which would be consistent with both our obligations under the commonwealth procurement rules and our obligations under the services agreement.

MR CAIN: Okay. Thank you. That touches on, I guess, your own concern for your own office. Given your role as Ombudsman, and ensuring that government processes are done appropriately under law and in accord with good governance principles, do you have concerns for other ACT agencies if this bill is passed as it stands?

Ms McKay: I did read the submissions of the other officers of the Assembly, who are in a similar position to ours but not exactly the same, and read their concerns around their abrogation of independence. I mentioned in my opening statement to the committee that I would have similar concerns if we were not in the situation that we are in of being a commonwealth agency providing ACT services.

MR CAIN: Which other agencies do you think, in particular, would be impeded by the passage of this bill?

Ms McKay: I refer to the agencies who are the officers of the Legislative Assembly, so those who appeared alongside us or at the same sittings as us the other day.

MR CAIN: I think the Auditor-General also made an appearance.

Ms McKay: The Integrity Commissioner, I understand, as well.

MR CAIN: And the Integrity Commissioner. Thank you. Broadly speaking, do you agree with their concerns about the effect of this bill upon their independence?

Ms McKay: Yes, I agree with their concerns. I understand their concerns. Our submission was focused upon how it would impact our office as it stands now, but we also indicated that, should the ACT make a decision in the future that the office or the services of the ACT Ombudsman not be performed by the Commonwealth Ombudsman, we would share the concerns of those agencies.

MR CAIN: If you did an investigation, following the passage of this bill unamended, it may well be that you would be making the same sorts of comments about the effect of this new framework under the control of the Chief Minister. It may well be that you would need to keep repeating your concerns. Is that something you envisage?

Ms McKay: Potentially, Mr Cain. We would have to look at it at that time.

MR CAIN: If passed as is, what practical impact would the bill have on the independence of your office?

Ms McKay: As we said when we appeared the other day, there is a provision—and I cannot remember the exact subsection number in the proposed bill at the moment—that could act as an exemption for our office, and so we would rely on that to exempt ourselves. But we asked the committee for was to make it beyond doubt—to put a clear exemption in there so that it was beyond doubt, for the future, that we were not subject to the provisions of the bill.

MR CAIN: Do you think such an exemption, if granted, should also apply to the Legislative Assembly, the Auditor-General and the Integrity Commissioner?

Ms McKay: That is absolutely a matter for government, Mr Cain.

MR CAIN: Thank you.

THE ACTING CHAIR: I note that there has been a consistent increase over the past couple of years in the number of complaints about ACT Policing. I was wondering if there were any emerging trends in what those complaints were about.

Ms McKay: I, like you, have asked that question, Mr Pettersson. We had a look at that before we came to appear before you today, because it is a marked increase in

complaints, but we could not see any particular trend. There were no red flags for us in terms of spikes about a particular issue. All we could put it down to at this point, without any sort of further analysis or looking further into it, was that, over COVID, citizens had greater engagement with police and that may have resulted in an increase in complaints. But we could not say anything particularly—unless Ms Andersen has anything to add?

Ms Andersen: No. There were no emergent trends. The increase was consistent across all complaint types. There was no particular spike in any category. There were no trends or complaints in relation to COVID compliance activities, so there was nothing that indicated a particular issue that needed to be focused on specifically.

THE ACTING CHAIR: Just bringing that all together, there was no spike in complaints related to COVID compliance activities? Is that what I just heard?

Ms Andersen: We look to whether there have been trends, but there was nothing there. Having that holistic look across the complaints received to see if there were environmental factors that may have contributed to a particular increase in complaint type but there was nothing there that we could see.

Ms McKay: I can confirm that, no, there was nothing in relation to COVID specifically. When we looked at COVID-related complaints, only about 10 per cent of our complaints overall were related to COVID issues. It was not that the increasing complaints about ACT Policing were in relation to COVID issues; we just surmised that, because of the greater engagement between the community and ACT police over the period of COVID, there were more complaints arising.

THE ACTING CHAIR: Are there categories that you put complaints into when it comes to ACT Policing?

Ms McKay: Yes. I will turn to Ms Andersen. Do you have that to hand?

Ms Andersen: Yes, I will do. Just bear with me. We talked a little bit, I think, about this at our last appearance, so if anyone else finds it quicker than me then please let me know.

Ms McKay: I think the answer is that we do. We can take it on notice if we do not have it to hand. It might be easier.

Ms Andersen: Yes. Apologies.

THE ACTING CHAIR: It is all right. Could you take on notice for the 2018-19, 2019-20 and 2020-21 periods to provide a breakdown of those complaints into their categories?

Ms McKay: Certainly. For ACT Policing in particular?

THE ACTING CHAIR: Yes.

Ms McKay: No problem.

THE ACTING CHAIR: Thank you.

MR BRADDOCK: Following on from that spike, I was wondering: what are the resource implications arising from that increase in complaints?

Ms McKay: Sorry, Mr Braddock. You broke up a little then. Could you repeat the question?

MR BRADDOCK: Sure. I was wondering: what are the resource implications that arise from that spike and, if that continues, will you need further resources to be able to handle the volume of complaints?

Ms McKay: Yes. We have had an increase in complaints, as reported in our annual report. I can also say that, looking at the first six months of this financial year, that is not continuing. It is starting to go down again. So yes, it has resource implications for us. We cannot investigate everything; we would have to choose what we investigate. In terms of our monetary position, you may be aware that we received less money in the budget for this year. It is about \$180,000 less than we had in the previous two years.

We are starting to look at how we provide the best level of service to the ACT community within the funding envelope that we have been provided with. We are having discussions with CMTEDD, and looking at our services agreement and looking at where we can potentially change things to make sure we are concentrating our efforts in the best ways possible.

MR BRADDOCK: Thank you. Coming to freedom of information requests, I note that on page 26 of your annual report you say that time frames may also be delayed where agencies are slow to provide copies of relevant documentation. Can you please provide some further information on whether that happened over the course of the financial year, how many times and what was the extent of agencies being slow in providing documentation?

Ms McKay: Do we have that information to hand, Ms Andersen, or is that something we would need to take on notice?

Ms Andersen: I think we would need to take that on notice. Yes.

Ms McKay: Yes, we will take that on notice, Mr Braddock, and let you know.

MR BRADDOCK: Thank you.

MR CAIN: Ms McKay, I have a question regarding complaints about ACT directorates and agencies.

Ms McKay: Yes.

MR CAIN: In your breakdown in the quarterly report of the complaints about ACT directorates and agencies, CSD and CMTEDD have the highest number of complaints.

Ms McKay: Yes.

MR CAIN: CSD, according to the 2021 State of the Service, has under half the workforce of CMTEDD, but has significantly more complaints. Have you been able to get to the bottom of why that is so?

Ms McKay: In terms of the numbers of complaints that we receive about ACT agencies, CSD, JACS and CMTEDD are generally the top three. That is mainly because CSD has ACT Housing, and we get a number of complaints about ACT Housing; JACS incorporates the AMC, and we get complaints about the AMC; and CMTEDD incorporates Access Canberra. Those services do attract a number of complaints. In terms of staffing levels of those agencies, that is certainly not something that we would propose to comment on, Mr Cain.

MR CAIN: With the CSD complaints—again, an approximation is okay—how many of those complaints relate to housing, percentage wise?

Ms McKay: We will just have a look for you. Do you have it, Ms Macleod?

Ms Macleod: During 2021 the office received 130 complaints about Housing ACT.

MR CAIN: Thank you. And what other areas of CSD's operation are attracting a high number of complaints?

Ms Macleod: Mainly it is Housing ACT that we receive complaints about when it comes to CSD. We also receive a small number of complaints as they relate to the Reportable Conduct Scheme—so how CSD, in fulfilling its obligations under the Reportable Conduct Scheme, has handled those reportable conduct investigations it deals with. We are talking there about the child protection space and dealing with kinship carers and other carers. So that would be the other precaution.

Ms McKay: But it would be a minority.

Ms Macleod: It is a minority.

Ms McKay: Looking at the figures, Mr Cain, we received 140 complaints in relation to Community Services Directorate and 130 of those were about ACT Housing. So there were really only 10 further complaints in other areas.

Ms Macleod: Yes. The other category might be in relation to FOI, so how the agency has handled its obligations under Freedom of Information.

MR CAIN: I have a supplementary question. Access Canberra is listed as making up 16 of the 25 complaints received within CMTEDD—I think I have got that correct—which is obviously a significant majority. What type of complaints are raised about Access Canberra that need to be investigated?

Ms Macleod: In relation to Access Canberra, there are a broad range of issues that we get complaints about. It can include licensing and registration, building noise and

development approvals, not following policy and procedure, parking and traffic infringement notices, working with vulnerable people registration practices and fair trading complaints. Depending on the types of complaints coming in, we make an assessment as to whether or not we do need to investigate. That can involve an assessment about whether or not the person has complained to Access Canberra in the first instance; whether we think an investigation by our office will achieve a different, better outcome for them; whether it could be a change in decision or it might simply be a better explanation of Access Canberra and that particular subset of issues in what the decision was of the agency. So it really depends on what might trigger an investigation by our office.

MR CAIN: Are you able to say which category of complaints would likely lead to an investigation and which ones tended not to?

Ms Macleod: Unfortunately, I do not think I can be more specific than that. We look at the vulnerability of the complainant and we look at how many times they may have had to engage with Access Canberra on the particular issue. It is those types of indices that may prompt us to commence an investigation, particularly if we see that there is an indication of a failing in public administration, poor communication or things like that. We have that broad range of issues that I covered. It can prompt an investigation in any of those categories.

MR CAIN: Have your investigations, once concluded, come up with some common concerns about the operation of Access Canberra?

Ms Macleod: I would say not, generally. We find that Access Canberra is quite responsive. They focus a lot on trying to improve their communication and the exercise of their responsibilities generally as a regulator. In a lot of those areas—like licensing and registration, and building and development applications—there are regulatory aspects, and often we find that it is not necessarily the case that we will get a better outcome when investigating; it is more likely that we are going to have to explain the decision or provide an assurance that the actions taken by Access Canberra were reasonable in the circumstances and accorded with their regulatory responsibilities.

MR CAIN: Were any of your recommendations or observations not taken up by Access Canberra?

Ms Macleod: I might have to take that question on notice.

MR CAIN: Okay, thank you.

THE ACTING CHAIR: I have one last quick question before we finish up. In regard to surveillance devices and the inspection of their records, what shortcomings did your previous inspections find relating to the record management of surveillance devices?

Ms McKay: Sorry, Mr Pettersson. We missed the beginning of that question, but it was in relation to surveillance devices, wasn't it?

THE ACTING CHAIR: Correct.

Ms McKay: I have my colleague on line. I hope that she is there because we cannot see her. Ms Vonthethoff takes care of the law enforcement inspection side of our business.

Ms Vonthethoff: I have read and understood the privilege statement. Thank you for the question about our surveillance devices work. As ACT Ombudsman, we inspect ACT Policing's use of ACT surveillance device powers. In the annual report for 2021 I think we summarised some of the findings that we made about ACT Policing's use of surveillance devices.

Coming out of our inspections, we made nine suggestions that were included in the 2020-21 annual report. Those related to issues like requiring staff to assess the privacy impacts of continuing to use surveillance devices under extensions of warrants, developing and implementing procedures to inform the Chief Officer of ACT Policing when use of a surveillance device was no longer needed under a warrant, and taking various steps in relation to specific warrants where we had identified issues in ones that we had reviewed. We also made two better practice suggestions that related to ACT Policing warrant applications and affidavits.

Those are instances where we did not find non-compliance but, based on our experience as an oversight body, we saw ways in which those applications and affidavits could be improved. If you are asking about any findings from years before that, I would need to take that on notice and come back to you, as I do not have that to hand.

THE ACTING CHAIR: No, that is quite all right. With regard to one particular sentence—the Ombudsman saw an improvement in ACT Policing's engagement with the office during inspections from 1 January 2019 to 30 June 2020—what were those improvements and were there any shortcomings still not covered?

Ms Vonthethoff: The improvements that we see relate to things like how engaged an agency is with our inspections and how prepared they are with the material that we have asked for before we come in. We typically send out correspondence four to six weeks before the inspection saying, "Can we please have this set of records, and can you please make sure that you have available to us, when we are at the inspection, officers who can speak to any questions we have about those matters."

That is the kind of improvement that we saw over that period for ACT Policing, as we did for a number of agencies that we oversee in our commonwealth capacity. Again, I would have to take on notice the specifics of any concerns that remained unaddressed, but if we had had any significant concerns in that respect, then we would have flagged them in the annual report.

THE ACTING CHAIR: If you could take on notice what you do have, that would be wonderful.

Ms Vonthethoff: Sure.

THE ACTING CHAIR: Thank you for your appearance today. We will now suspend briefly while we swap officials over. Thank you.

Ms McKay: Thank you

Ms Andersen: Thank you.

Short suspension.

Appearances:

Burch, Ms Joy, Speaker of the Legislative Assembly for the ACT

Office of the Legislative Assembly

Duncan, Mr Tom, Clerk

Row, Mr Stuart, Director, Information and Digital Services

Skinner, Mr David, Senior Director, Office of the Clerk

Turner, Ms Rachel, Executive Manager, Business Support Branch

Prentice, Mr Malcolm, Chief Finance Officer

THE ACTING CHAIR: We will now hear from the Speaker, Clerk and officials of the Office of the Legislative Assembly. I remind witnesses of the protections and obligations afforded by parliamentary privilege, and draw your attention to the privilege statement. Could all new witnesses state for the record, when they speak for the first time, that they understand the privilege implications of the statement.

MR BRADDOCK: I would like an update on the questions on notice database; I asked about this at the last round of hearings. I am wondering when that might become available for people to access.

Mr Duncan: I understand the privilege statement. I might get Stuart, if he is on the line, to address that. The short answer is that there have been some delays, but I will get Stuart to elaborate on that.

Mr Row: We are in final testing mode. We received an upgrade last week. We hope to do internal testing within the next fortnight; then MLAs will be able to test their part, and hopefully go live within about six weeks.

MR CAIN: I have a question regarding the recent inquiry into the Financial Management Amendment Bill 2021. The minister defended the bill as drafted by arguing that sections 10 and 102, and 102 of the commonwealth Public Governance, Performance and Accountability Act—let us say the PGPA Act—permit the commonwealth finance minister to make rules, according to the minister, in a way similar to what is proposed under this bill. Perhaps this is a question for the Clerk: are the provisions in the commonwealth legislation generally equivalent to what is being proposed in this ACT bill?

Mr Duncan: Thank you, Mr Cain, for the question. We were asked by the committee to comment on that very point that you have raised with us, and we lodged an additional submission to the committee which was published by the committee and it is on the Assembly website. We went into some detail about the confusion about conflict of laws. We put the view to the committee that we thought that the government had conflated two entirely different legal concepts. We put the view that if you have one act that says an office is not subject to the direction of the executive, it is probably not a good idea to have in another act, if it was passed in that form, that the office is subject to the direction of the executive. That is the conflict that we see.

That was the point that we put to the committee. As I said, we explained it in a lot more detail. David Skinner might want to add to what I have just said, but on

21 February we wrote to the committee and gave our view on the very issue that you have just raised, Mr Cain.

MR CAIN: Thank you. I do have a copy of that.

Mr Skinner: As was indicated in the office's supplementary submission, and without purporting to have wide-ranging expertise on that commonwealth act, there was nothing that we could see in the commonwealth act that gave the capacity for a minister to direct independent statutory officers, including parliamentary clerks. Indeed, with respect to the Parliamentary Service Act, which makes provision for the parliamentary service agencies, which includes the Department of the House Representatives and the Department of the Senate, the only person that can direct those two independent statutory offices are the presiding officers. There is a range of conditions that those presiding officers have to satisfy, including consulting with the Parliamentary Service Commissioner and issuing such a direction in writing.

Again, the position that we regarded as applying there was that it was not the direction of the executive that would apply in those circumstances; it may be possible in certain circumstances for the presiding officers to issue certain directions, but certainly not the executive in respect of those matters.

With respect to making rules or making a framework, under the procurement act, for instance, or the Financial Management Act, there are already provisions that allow ministers to issue certain rules or make guidance around how financial management or procurement ought to be conducted. There are actually carve-outs under those acts already that protect, say, the office and officers of the Assembly. For instance, in relation to procurement directions, the minister cannot direct the office or officers in respect of their conduct in relation to procurement.

Certainly, there is a framework that is applied. That is a different matter. We said in our supplementary submission that there are already statutory provisions by which, conceivably, a minister could seek to address some of the issues that seem to be at the heart of the bill. They are our general observations.

MR CAIN: Thank you. With the minister's statement that it simply reflects what is happening at the commonwealth level, what comment do you have about the minister's assessment of the bill?

Mr Duncan: I might attempt to answer that, Mr Cain, but David might want to cut in. It is a bit dangerous comparing what happens here with the commonwealth, because you are not comparing apples to apples. For instance, the commonwealth parliament has not passed the Latimer House principles; we have. The Latimer House principles set out that we endorse a separate, independent Office of the Legislative Assembly.

As David pointed out, nowhere in the commonwealth act does it say that a minister can direct; all that the commonwealth act says is that you may pass laws that the parliamentary agency is obliged to follow. We follow the Government Procurement Act, which says, at section 22A:

- (1) A territory entity must pursue value for money in undertaking any

procurement activity.

(2) Value for money means the best available procurement outcome.

That is the process that our agency and the Electoral Commissioner follow. We follow those laws. That is what agencies do; we do follow the law. If the government wanted to propose that that law be amended, we would follow that amended law, of course. But our question is: why do you need to put a clause in a bill that allows independent officers to be directed?

Mr Skinner: The only thing I would add is that there is already a responsibility for the Clerk, who has an equivalent status to a director-general under the Financial Management Act, at section 31. When you take those provisions that are establishing equivalence between a director-general and the Clerk, and a minister and the Speaker, section 31 talks about a director-general being accountable to the responsible minister. In our case it is the Clerk having the responsibility for financial management to the Speaker. Importantly, it says “for the efficient and effective financial management of the public resources for which the directorate”, or in our case the office, “is responsible”.

That is already a clear, principled framework for how chief executives, directors-general or clerks are to conduct themselves in relation to financial management. They are the sorts of provisions that, in the Clerk’s decision-making, would already apply.

MR CAIN: How would you describe the minister’s assessment of this bill compared with the commonwealth legislation?

Mr Duncan: I have a different view, Mr Cain. As I said in my earlier answer, in comparing us with the commonwealth legislation—or Queensland, Victoria or New South Wales legislation—I do not think you are comparing apples to apples. You could go around Australia and find different provisions in different laws.

As I said, we have a provision in the Office of the Legislative Assembly act which says that the Clerk and the office are not subject to the direction of the executive. We have similar provisions in the Electoral Act, the integrity act and the Auditor-General Act.

Also, we are probably the only jurisdiction where the Speaker appoints officers of the parliament. The Speaker appoints the Clerk; the speaker appoints the Auditor-General, the Integrity Commissioner and the Electoral Commissioner. In the commonwealth, that is not the case. There is a whole different process. As I said, it is not quite apples and apples and, in trying to compare what happens in the commonwealth with both the legislative framework and the mode of operation, I just do not see the comparison there.

MR CAIN: I noticed the recommendations of the majority committee; obviously, there was a dissenting committee report as well. Recommendation 2 is that the office of the OLA may consider the framework as a recommendation—it seems rather otiose, in my opinion, because I am sure you have been—“and not be subject to any

executive directions in making a decision to which proposed part 9A would apply”. Does that bring you some comfort?

Mr Duncan: I am in dangerous territory here, Mr Cain, because you are kind of asking me to give my view on a committee report. In fact, the very committee that drafted that report is the one that I am appearing before right now. Having said that, there is—

MR CAIN: I am just a visiting MLA with curiosity; that is all.

Mr Duncan: Indeed.

THE ACTING CHAIR: A visiting MLA here by leave, Mr Cain.

MR CAIN: Thank you, Chair; I appreciate it, too.

Mr Duncan: I hope to satisfy that curiosity, Mr Cain, but I am being a little bit careful because, as I said, it is now in the hands of the Assembly and the government, in terms of a government response. Certainly, our recommendation to the committee in our submission was that the whole clause purporting to direct the Office of the Clerk and the independent statutory officers should go; that was our submission.

Certainly, that is not what the majority of the committee has done. Certainly, this goes some way to addressing our issues. Again, I do not want to comment on why the committee decided to go where it has, because it is the committee’s right to decide how it frames its recommendations. Certainly, this is a lot better than what was in the bill, as far as I am concerned.

MR CAIN: One final question: if the bill is passed unamended, what impact could that have on OLA? Also, if it is passed according to the recommendations, what impact would that have on OLA?

Mr Duncan: Mr Cain, it is a little bit hard to tell because we do not actually know what kind of direction the Chief Minister would intend to make. The government announced in the presentation speech that there had been consultation with some directorates and the unions. I think the evidence before the committee showed that none of the officers of the Assembly or the Office of the Legislative Assembly were consulted. Apparently, there are two discussion papers that have been drafted and circulated, but we have not seen those discussion papers. So it is a little bit hard to tell, Mr Cain, what the effect would be. But we go back to the principal point: you have independent statutory office holders for a reason, in that they are supposed to be independent. I say in my submission that each time you chip away at independent bodies with these sorts of provisions in acts, they become a little bit less independent.

Mr Skinner: We have been at pains, Mr Cain, to point out that the office does not take any particular issue with the policy that is being advanced by the government. That is a matter for the government. We are not trying to get into a debate with anyone about the philosophical underpinnings of what is going on in the bill, in terms of an insourcing framework.

The concerns that we have been expressing are around the capacity of the Chief Minister to give a direction in relation to the entity's obligations under that framework when it becomes an instrument of some sort. It also includes, in that section, that the Chief Minister may give a direction in relation to any other matter for the part.

That clause is the one that causes us most concern. As the Clerk indicated, and it seems the committee has agreed, if the office and officers of the Assembly were to be removed from those proposed sections of the bill about what the meaning of a public sector entity was, and the operation of the bill was confined to the regular public service, that would alleviate, certainly, the concerns that we had expressed.

We were very much at pains to not get into a policy argument, if you like, with the government. This is an issue of the principle of that separation between those branches of government and ensuring that all members have confidence that the Clerk and staff of the office are in a position to be independent to the greatest extent possible.

MR CAIN: Finally, Madam Speaker, do you have a view on this bill and how it would impact upon OLA's integrity and independence?

Ms Burch: I would add nothing further to what Mr Skinner and Mr Duncan have said.

MR CAIN: Meaning you affirm their statements and concerns?

Ms Burch: You have had a submission and the reply regarding some of the confusion that Mr Duncan referred to. I think that is useful material to consider, Mr Cain.

MR CAIN: As Speaker, what is your view on this bill and whether it should be passed?

Ms Burch: As I have said to you, Mr Cain, there are merits in any bill brought before the Assembly, but I think the OLA's comments have been provided.

MR CAIN: Do you agree with those comments?

Ms Burch: Mr Cain—

THE ACTING CHAIR: Mr Cain, you are being repetitive here.

MR CAIN: I do not believe the Speaker answered the question; that is all.

THE ACTING CHAIR: Mr Cain, you do not get to dictate how someone answers your question. Just repeating it is not a good use of this committee's time, especially when you are not even a member of this committee.

MR CAIN: Thank you; I was just looking for a direct answer to the question and—

THE ACTING CHAIR: I have a supplementary. Mr Duncan, how do you determine best value for money?

Mr Duncan: How do I determine best value for money?

MR CAIN: How is that a supplementary, Chair?

THE ACTING CHAIR: It refers to one of his previous answers. Mr Cain—

MR CAIN: Not to my question.

THE ACTING CHAIR: Mr Cain, if you interrupt me once again, I will ask you to leave.

Mr Duncan: Mr Pettersson, the usual process is that, for a procurement process, if it is over a certain amount, if it is over \$25,000, we will seek three written quotes from the source from which we wish to procure. If it is over \$200,000, it goes to a public tender. We will set up a review. With respect to the more common one for us, we do not deal with huge amounts of outsourced material, and I think we provided the committee with a list of those sorts of services that we do outsource. As you can see, the majority of them are less than \$200,000, so they do not require a full public tender.

In the case of a tender, there are extra things. I will cross to Rachel or Malcolm for Government Procurement Board considerations, where it has to go to the Government Procurement Board. I might look to one of my colleagues to give you the technical details about how the assessment of value for money is made.

Mr Prentice: The evaluation is a two-stage approach. Essentially, we look at the technical aspects of any response, whether it be a quote process or a tender process. We would form a view as to who was technically the preferred supplier. The price is looked at as a separate part of the process. The combination of the two—the best technical and the best price—are put together in the procurement method that is put out by Procurement ACT, and that forms the value for money assessment.

THE ACTING CHAIR: Where do those processes come from? Where are they written?

Mr Prentice: The processes for the procurement are set out in the procurement guidelines and in the act. There is a lot of guidance material on Procurement ACT's website to assist agencies to go through the procurement process.

THE ACTING CHAIR: Are there any sections of the Financial Management Act that place an obligation on the directors-general, and including the Clerk of the Legislative Assembly, to follow a requirement prescribed by regulation?

Mr Skinner: From my knowledge of the Financial Management Act, there are provisions that allow the Treasurer to issue guidance. I am trying to find the right section. He can certainly issue regulations.

THE ACTING CHAIR: Part 4, section 31A?

Mr Skinner: Yes. Certainly, the office is bound by the Financial Management Act; there is no doubt about that. And it would be bound by any regulation that the

Treasurer makes, without doubt. At section 4 you can see there are some special provisions that draw equivalence between officers of the Assembly, the Clerk of the Assembly and directors-general. It draws equivalence between a minister and the Speaker for the purposes of the act. Where you see a reference later on to the minister, that is a reference to the Speaker in our case. When you see a reference to a director-general, that is a reference to the office of the Assembly or the Clerk.

If I understand your question, it is: where the Treasurer makes a regulation under the FMA, does it apply? The answer is yes. One of the issues that the Clerk raised in his supplementary submission is that it would seem that there would already be some ways under existing statute for the sorts of things that have been contemplated by this bill to have been achieved, through a different form of regulation. The thing that would not be there, of course, though, is the power to give a direction. I think that is the key distinction.

THE ACTING CHAIR: Isn't the direction in the proposed bill that you follow the regulation?

Mr Skinner: The language in the bill talks about giving a direction in relation to the entity's obligations or any other matter through the relevant part.

THE ACTING CHAIR: Isn't it a bit redundant?

Mr Skinner: That provision?

THE ACTING CHAIR: Yes, if—

Mr Skinner: That provision in the bill—

THE ACTING CHAIR: If the direction says you have to follow the regulation, and you already have to follow regulations, isn't it just redundant?

Mr Skinner: To have this bill?

THE ACTING CHAIR: I am talking specifically about the clause.

Mr Skinner: Is the clause in the bill redundant?

THE ACTING CHAIR: If you already have to follow the regulations, as evidenced in other parts of the Financial Management Act, and if the direction in the proposed bill is simply that you must follow the regulations, I am unsure of—

Mr Skinner: But doesn't that beg the question: what is the need for the direction-making power under the bill?

THE ACTING CHAIR: I understand that point completely.

Mr Skinner: The concern, Mr Pettersson, is that there would seem to be existing statutory mechanisms to provide a framework of the sort that seems to be sought in this case. They can be done without having an explicit provision around

direction-giving powers. The question then is: why is there a need for those sorts of powers in this case? We have not yet heard an argument advanced that would seem to support that approach.

THE ACTING CHAIR: My view would be that it is redundant; the framework would already apply, so as much as—

Mr Skinner: I understand, I think, the point you are making. The point is that the Treasurer could already make regulations in relation to an insourcing proposal, and as long as they are in the part of the bill that relates to the regulations, as long as they are in the part of the act that applies to the office, we would be bound by them, and we would apply them as necessary, in the same way that if any law was made, we would follow the law. We will always follow the law. The bill gives a discretion to the Chief Minister to give a direction without any other framework in place, or any other basis for the power to the officers and to the Clerk. I think that is the difference.

It seems to me that you are saying that this could already be achieved under existing statute. We would say: that is a good thing; that might be an alternative way to proceed.

THE ACTING CHAIR: If a majority of members of the Legislative Assembly did hold the view that they wanted to reduce outsourcing across the ACT government as well as across the independent office holders, what is a way they could advance that?

Mr Duncan: That would be up to Treasury. That is a policy question for Treasury and Procurement, Mr Pettersson. I would imagine that they would have to amend the Government Procurement Act 2001 to say that the territory must pursue value for money in undertaking any procurement activity and in a way that improves insourcing, or whatever. In other words, that value for money is not the sole criterion anymore; there are other criteria that the government of the day decides it wants to pursue.

As you and Mr Skinner have just been talking about, there are all sorts of ways that you can do that. You can issue regulations under the Procurement Act and you can issue regulations under the Financial Management Act, but, as the law currently stands, in any procurement for outsource activities the main principle that applies under the relevant laws is value for money in undertaking any procurement activity.

Mr Skinner: Just to clarify, that is the case for procurements. Of course, insourcing is not a procurement. An insourcing arrangement is the taking on of additional staff. We just need to be clear that under section 31 of the Financial Management Act, there is the responsibility for effective and efficient stewardship of public funds. I think the same sorts of principles are enlivened there, and the Director-General, the Clerk or the officer, needs to balance the benefits and the efficiency and efficacy of an insourced, staffed approach, versus an outsourced, contracted approach. That is the sort of calculus that would need to be brought to bear. And were there to be a framework that articulated how one might pursue that evaluation, that is all good and well.

I think it becomes problematic when a minister or a chief minister can provide specific direction in relation to obligations and other matters, because that is no longer just a framework—that is the executive involving itself in shaping decision making,

perhaps in an ad hoc way, rather than a generalised legal principled way. With the stroke of a pen, a direction of any sort within the meaning of the proposed provision could be given. I think that can create problems with independence.

THE ACTING CHAIR: But doesn't that exist already by the fact that you have to follow the regulation of the minister—

Mr Skinner: There is a difference between giving a direction and providing for a framework. There is a difference between the chief minister giving a particular direction in relation to a particular matter, and a particular obligation that the chief minister might regard as being important, and there being a framework in which people can use and apply the framework, and exercise the Clerk's, or the Office of the Assembly's or the head of the statutory agency's judgement as to what the outcome will be.

THE ACTING CHAIR: I was hoping to get an update on the restructuring of the committee office?

Mr Duncan: Thank you, Mr Pettersson. So you might recall Rosemary Laing, the former Clerk of the Senate, did that review of committee support. She spoke to about 60 people, including almost all non-executive members, I understand. She recommended a structure which we then sought some further additional advice on. We engaged a consultant to come up with a structure, and that report is now out for staff consultation.

We are expecting staff to come back to us on that proposal, as early as next week. Once we have taken that consultation into account, we hope to adopt a final structure and we then hope to start advertising positions. We will be lodging a budget submission for that structure through admin and procedures, and the Speaker. We are hoping, all things going well, Mr Pettersson, that by the end of June we can have a new committee office structure, which I know committee members are eagerly anticipating and waiting for, as much as I am. That is where it is now. Currently, it is out for consultation with staff and unions.

MR BRADDOCK: I was interested in OLA's education programs. Can you please tell me what resourcing is allocated to support those programs?

Mr Duncan: I think I will get David to answer that question.

Mr Skinner: I am David Skinner, Senior Director, Office of the Clerk. Mr Braddock, as you probably know, there are two officers who deliver education, and a public affairs officer who also makes a contribution. There is the manager of the education and engagement function and then there is a part-time education and engagement officer. The public affairs officer, which is also a part-time position, makes a contribution to the more general engagement activities and will occasionally be involved in direct education programs. There is a cross-over between education and engagement, of course, but the bulk of that work is essentially done by—I hesitate to say half the staff—1.5 FTE.

MR BRADDOCK: And how many dollars are attached to those programs?

Mr Skinner: I think we would probably have to take that one on notice, unless Mr Prentice's impeccable memory is able to help out. I should make clear that there is the staffing costs associated with those two positions. That is a full-time senior officer, grade C, and a part-time ASO5. So I guess we are talking in the order of \$200,000 in staffing and admin costs. But we could take that on notice if you wanted a specific—

Ms Burch: Can I suggest, David Skinner, that while Malcolm is trying to find the figures, if he is, you go through some of the programs that fall under the education department—those in house and those that we were recently proposing to be out of house: to be going to schools, where possible.

Mr Skinner: Yes, sure. Mr Braddock, as you would be aware, COVID has presented a significant range of challenges in terms of having our education programs delivered in the Assembly. Given the issues with ensuring that we are managing our duty of care to people in the building and the students, we want to keep opportunities for transmission as low as possible. So one of the things that the education team has been stepping up is online resourcing and teacher resources. They have also been involved in going into schools at various junctures when COVID permitted. The next thing that they are very interested to pursue is an arrangement where some of the more popular programs can be delivered remotely into schools—for instance, with a teacher and a smart board.

One of our more popular programs, of course, is Meet the Member. We have had very good feedback from students and teachers about those programs. I understand that the Clerk has written to the Director-General of the Education Directorate—the directorate has a protocol for when VIPs visit schools—seeking some confirmation that that is something we could proceed with. And that would give us an opportunity to keep that program running and do more delivery in an online environment but still be interactive and not just rely on audio visual resources and other online resources. You would be able to interact with members, interact with the education team and so on.

MR BRADDOCK: A key question I have is whether it is sufficient to meet the demand from community groups and schools across the ACT?

Mr Skinner: In the past, we have always been able to meet the arrangements that applied pre-COVID; in fact, the same arrangement applies in COVID: all schools are written to, inviting them to participate in the education program. Before COVID, that was primarily school groups coming into the precinct. We were always able to meet that demand. But that is not to say that there is not unmet or untapped demand out there or that there are not things that we could be doing if there were more resources. I guess, more resources are always welcome.

It is a statutory function of the office to provide parliamentary education. So it is not an optional thing that we do; it is a statutory requirement. We work as closely as we can with schools to see that they are integrating it with the civics parts of their curriculum. So the long answer is that there are always going to be more things that we could do. There are elements where we could see, with more resources delivered, certainly different outcomes. I would probably leave it at that, at this point.

Ms Burch: I think that goes to some of the different approaches, too, Mr Braddock, about building and broadening a scope about how we go about that interaction between OLA and its function, and members, and the broader community.

MR BRADDOCK: Yes, and I totally support that. That is why I was asking the questions.

Ms Burch: Yes.

Mr Prentice: If I could just add, the salary cost for the positions that David mentioned is in the vicinity of about \$240,000. There are other administrative costs, but they are all rolled into one budget, and it is difficult to separate them out, at this point in time.

MR BRADDOCK: Thank you. I appreciate the quick calculating that you did, Mr Prentice.

THE ACTING CHAIR: Mr Cain has a substantive question.

MR CAIN: I have a question regarding the strategic plan. On page 6 of the annual report, you reference that that plan is being developed. What will this strategic plan achieve, who will be preparing it, and what is the timeline for its delivery?

Mr Duncan: Mr Cain, I will start off with that, but I will hand over to David, who is in charge of this project. We do a strategic plan for 2022 to 2025. The last strategic plan has almost finished. We very much try to get buy-in from Assembly staff in developing the strategic plan. I might hand over to David, who will give you some more specific details about how it is going to be rolled out.

MR CAIN: Thank you.

Mr Skinner: The approach that we have adopted—and it has been, I think, quite a successful one—over the last two iterations of the strategic plan is to heavily involve staff in its development. The way that we have tended to do that is through the establishment of small working groups with some team leaders who consider and respond to a range of propositions around the challenges that lie ahead—any changes in the operating environment. Obviously, COVID and the business continuity and WHS challenges that it provide, will be an important feature of our considerations in this next iteration.

So staff will go off in these groups and prepare, through some structured feedback, some input for the office's executive management committee to consider. In addition, we will be looking at things like the survey of members that was conducted throughout February. We will look at any gaps in our service provision, or areas where members think we might be able to improve our services. Then we will try to develop some priorities and some key strategies for working towards the outcomes that we have set for ourselves. At the high level, our values are unlikely to change. We would hope that the organisation does not chop and change its values too often. But the sorts of things that we have identified before as our outcomes or our key areas

of focus, have been supporting the Assembly as an institution, supporting members in the way that they are able to perform their duties as elected representatives, and also, building an organisational capability that allows the office to be effective more generally. They are our three primary organisational principles.

As to the timing of that exercise, that will start kicking off over the next month and we would like to give staff a reasonable bandwidth of time to undertake that work so that we are not competing with other priorities. I would expect that at some time very early in the new financial year, we would see some progress on that front.

MR CAIN: Thank you. And who will be preparing the report?

Mr Skinner: What typically happens, Mr Cain, is that all the input will be collated, there will be a write-up into a planning document, and we would consult with the Standing Committee on Administration and Procedure and receive their comment. In the past, I think we have put it back to the staff for any additional comment and then it has been ratified by the EMC and the Clerk as being the plan going forward.

MR CAIN: Will there be any external advisors involved in the processing of this report?

Mr Duncan: No. Again, Mr Cain, I would not describe it as a report, as much as a planning document. In the past, going back many years, we had consultants that we had involved in the preparation of these sorts of documents. But we have, over a period of iterations, learned that the best results draw on the expertise of our staff and their knowledge of the work that they do. Ultimately, the plan is very heavily influenced by those perspectives.

MR CAIN: Thank you very much.

THE ACTING CHAIR: I was hoping someone could talk me through the building upgrades we have seen in the report period and then what possible future building upgrades are being considered.

Mr Duncan: I might, Madam Speaker, through you, pass to Rachel. I think she would probably be the best person to answer this.

Mr Prentice: Well, she was not here when that happened. The two major building upgrades in 2020-21 are outlined on page 5 of the report. There is a short summary there. The upgrade of the members entrance was the biggest project. The budget for that was \$900,000, and it came in on budget. The other major project was the upgrade of the heating, ventilation and cooling system on the ground floor, where the budget was \$830,000. Again, that was finished on time and on budget.

We also, each year, have a series of capital upgrades that are funded through the Better Infrastructure Fund program. The largest one in the reporting period was the upgrading of the courtyard and bringing it up to standard. It was about \$90,000 to do that.

The ones that are occurring in 2021-22 are all upgrades being funded through the

Better Infrastructure Fund program. We do not have many capital works projects in 2021-22. The biggest one is the upgrade of the fire protection systems. The fire panel is being upgraded to get all the componentry up to the latest spec. Then there are other mechanical services upgrades within the building.

We are replacing some of the window coverings, particularly in the main committee room. Then there are some other minor projects like the auto doors upgrade. They are the main things that are happening in 2021-22. Looking forward, I think the next project on the capital works front is probably the design of the public entrance to the building.

THE ACTING CHAIR: And what is the time line for that project? I do know it is early days, but what are we looking at?

Mr Prentice: In 2021-22 we are starting to do some of the preliminary design work. I think it has got to fit in with the upgrade of Civic Square, and I am just not sure if the Clerk or Rachel know more about that.

Ms Turner: I will just add to that. I confirm I have read and understand the privilege statement. In relation to moving forward, we are preparing plans to look at redesigning the public entrance to improve security and also access. Where we are at the moment is that we have some initial drawings. We have begun conversations with the ACT Heritage Council, more broadly, around plans in the general precinct to do with CMAG. I guess over this next 12 months we will cost those, finesse those and work to align them. We do not want multiple phases of construction on the different buildings that make up the Civic Square precinct all happening over the next couple of years.

THE ACTING CHAIR: That makes sense. Stop me if I should not be asking this question, but what is the cabling work that is going on at the moment? What on earth are they doing?

Ms Turner: It is primarily around the UPS from the basement, but I might let Stuart answer that. He will have a more technical answer for you.

Mr Row: It is basically a backup power supply so that if the power drops out there is enough power to allow us to shut down. What is there is about 15 years old and it is a lot of work to replace that. But at the same time we are cleaning out a lot of the computer rooms and replacing a lot of cables. It is a fair chunk of work.

MR BRADDOCK: Are there any works planned to help encourage the users of the building to engage in active travel to and from work?

Ms Turner: As you probably recall, we undertook a survey in November about the use of active transport by both members and their staff and OLA staff. We had a really good response. Currently we have actually got architects designing a potential solution to end-of-trip facilities specifically for our precinct and that would, most likely, be located in the Assembly building. The feasibility study is underway. We hope to get the results of that and some indicative costings next month.

MR CAIN: On page 7 of the report regarding Hansard, you mention investigations into the streamlining of *Hansard* will continue, with key considerations including approving accessibility and reducing overall costs. What metrics are these two considerations being measured by?

Mr Duncan: I might try to answer that. As you know, the current Hansard system is that we tape-record proceedings and we send it to an external provider who then transcribes it and brings it back as an uncorrected proof. Then we edit those proofs and issue a final *Hansard* some weeks later.

We have been looking at the option—and other parliaments are going in this direction—of a captioning system that enables captioning to be done. You will see on various TV stations and things like that that captioning has advanced significantly in recent years. The accuracy is a lot better. We are wondering whether we could move to that system. The executive manager of the committee which I chair is currently looking at that option.

We have done a background paper on that option. We have reached out to a possible provider to give us some details but we just want to get a sense of the costs of it, the practicality of it, the accuracy of it. We know that members rely heavily on *Hansard*, both the Assembly on demand version but also the hard copy version.

There is a lot of work to be done in that place but I think it is fair to say that we are very keen to move on that option because it offers a lot of advantages for hearing-impaired people obviously watching the Assembly proceedings. They can see the captions there. Yes, we are keen to move on that.

It is pretty early days but I hope probably towards the end of this financial year, in probably in next year's annual report, we will be able to report some progress on that.

MR CAIN: How would that enhancement affect the delivery of the official *Hansard* record?

Mr Duncan: My hope is that we will be able to deliver it a lot quicker. Currently, as I understand it, you get an uncorrected proof *Hansard* of question time that afternoon, which is edited. Question time finishes around 3 o'clock and I think by 5 members get a copy of the *Hansard* question time. It is not until the next day—I think we guarantee to get it to members before 9 am—that they get an uncorrected proof transcript.

The possible advantage of this captioning project is that we will get able to give it to you a lot quicker. How much quicker, I am just not sure of. But certainly the aim is to get members the *Hansard* as soon as practical. I think that is the enhancement that we are trying to achieve.

MR CAIN: It sounds very worthy. Is there any estimation of the cost if that is where you go?

Mr Duncan: I am looking to my colleagues. I know this was discussed. We have got an approved quote, I think, but I am happy to take that question on notice for you and come back to you. I think we are still scoping the specifications; so the cost may

change, I think, depending on what kinds of things we ask for in the time frames. Obviously the quicker we ask for it, the more it is going to cost. I am happy to take that question on notice and get back to you.

MR CAIN: At budget estimates in October 2021, I made a query regarding the process of online petitions. It is my understanding that OLA does not actually check the validity of e-signatories to an online petition and that responsibility sits with the sponsoring MLA. I am just wondering what kind of assistance does OLA give to MLAs in ensuring the integrity of these e-petitions.

Mr Duncan: I will have a stab at answering that. I think the e-petition system is a system that we used from the Queensland parliament. We got the system very cheaply, but we have spent a lot of money just making sure it is up to standard for our own standard. We used whatever safeguards the Queensland parliament had. I think the Tasmanian parliament also uses the e-petition system.

I think we said in that evidence that we gave you back when you asked that question that the person has to be from an ACT address to sign an e-petition—only residents of the territory can sign an e-petition—which is different to a paper petition because, as you would be aware, anyone can sign a paper petition and, in fact, people often do. You will often hear members or me reading out petitions and some of the petitions either are out-of-order petitions, because they all the petitioners are from interstate, or some of the paper petitions might have 70 per cent local residents and 30 per cent interstate residents. The safeguard is in the design of the system. You can only enter it if you are an ACT resident.

The normal computer safeguards against hacking and things like that are hopefully there. I will defer to Stuart for more technical details. But certainly we have leveraged off the Queensland parliament and other parliaments as well.

We have not been told of any data integrity or security issues in relation to e-petitions, but that is not to say we should not remain vigilant. But I am not aware of any compromised signatures on e-petitions.

MR CAIN: If Mr Row would like to contribute there.

Mr Row: I do not have much to add about that. The software that we are running now is probably eight to 10 years old, and it is a bit of a black box. We are in the process of replacing that software and I am hoping by the third quarter of this year we will have a new one in place.

THE ACTING CHAIR: Obviously any updates on that progress would be much appreciated.

Mr Row: Sure.

Ms Burch: Mr Cain, you would be aware that, as Mr Duncan alluded to, with paper petitions it is up to the MLA, when they sign it off, to count the number of ACT residents—sometimes it is a bit difficult, depending on how popular your petition is—to go through sheet by sheet to exclude those from interstate.

THE ACTING CHAIR: Madam Speaker, officials, thank you for your attendance today. If witnesses have taken any questions on notice could you please provide answers to the committee's secretary within five working days. We will take a brief suspension while we switch over. Thank you.

Short suspension.

Appearances:

ACT Audit Office

Harris, Mr Michael, ACT Auditor-General

Stanton, Mr Brett, Assistant Auditor-General, Performance Audit

Sharma, Mr Ajay, Assistant Auditor-General, Financial Audit

THE ACTING CHAIR: Welcome back everybody. We will now hear from the Auditor-General and his officials. Can I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could all new witnesses confirm that they understand the privilege implications of the statement? As there are only three of you, let us just get that out of the way now.

Mr Harris: I have read the privilege statement and I understand it.

Mr Stanton: I have read the statement and understand it.

Mr Sharma: I have read the privilege statement and I understand it.

THE ACTING CHAIR: As there are no opening statements, I will lead off with questions. I was wondering if you could explain to the committee the corrigendum that has just recently been sent through to us and the circumstances which caused this to arise.

Mr Harris: Thank you for the unexpected question. I can explain the circumstances. As the committee is aware, we have been through a budget process to change the way in which we not only prepare and present our budget but the way in which we manage our finances. One of the reforms that I put in place was a change to the billing system to charge for our fees, and we effectively put in place a quarterly billing system to improve and to moderate our cash flow through the year rather than having it coming in lumps in two parts of the year.

When we got to the end of June this necessitated an assessment of work in progress in order to provide the appropriate accruals in our 30 June statements between work in progress that would be billed in the coming year and work in progress that would be accrued in the financial year to which this annual report and financial statements refer. We did that, and we made an assessment of that work in progress. We prepared the statements accordingly with those accruals. We sent them to our auditors, our independent auditors. They went through the statements and they provided a clear opinion as to the accuracy of those statements. Subsequent to that event we then signed the statements after our audit and review committee had assessed them and recommended to me that I sign them. I did so, and we prepared the annual report accordingly.

Subsequent to those events, my very diligent finance team, when they were doing the reversals of the accruals, which is a standard practice at the beginning of every year, discovered that we had in fact miscalculated our accruals, our work in progress, and we had misallocated between the 2020-21 year and the 2021-22 year. As part of that

process, we had partially double-counted part of that work in progress.

I stress that, once they made me aware of that error, I had no option but to go back to our auditors, disclose the error, and ask them to reassess our financial statements. I have to stress that these are journal entries and accrual entries between years. They do not impact the cash in my bank account in any way, shape or form. To a very large extent, if you look at the two years together, there is actually no impact at all. Had this been not a material change to our statements, we would not have been required to issue a corrigendum. In my view, I would have in any case, but it was material to our revenue because it substantially changes the outcome in one year, but across the two years it has no material impact on the outcomes. As I said, they are not cash entries; they are accrual. They were the circumstances.

I had no option but to redo the financial statements, resubmit them to my independent auditors and have them reassess and revise the statements. Once I had done that, it was necessary to issue a corrigendum. The corrigendum appears to be very large and complicated but in essence it is not, because there are only a couple of numbers in our financial statements that are actually impacted. The trouble is that those numbers are referred to in multiple pages across the annual report. The material reporting change is a change from a large surplus in 2020-21 to a deficit. That was what necessitated most of the changes that are reflected in the corrigendum.

THE ACTING CHAIR: Are there any new processes in place as a result of this?

Mr Harris: Yes, there are. The assessment of work in progress is largely derived from the financial audit team doing a verification of that work in progress. Apparently we did an assessment of what went wrong and there had been insufficient dialogue between the finance team and the financial audit team to verify the assessments of that work in progress.

I have to say there was inadequate work on the part of our independent auditors to check the paperwork as well. Had they done their job more efficiently, they would have picked up the error and we would have fixed it before we published our financial statements. I am not attributing blame to our financial auditors; I am simply making a point that they have some work to do as well as us.

Our internal processes have now been changed to ensure that no work in progress estimate is put into our accruals until it has been double-verified with the financial audit team.

THE ACTING CHAIR: How does the Auditor-General choose your external auditor?

Mr Harris: I do not. It is appointed by the Speaker of the Legislative Assembly. There is a tender process that the Speaker conducts in order to choose independent auditors to audit our accounts, and that process is conducted completely independently of me. I have no part to play in that and I have no say in either the tender process or the selection process, as it should be.

THE ACTING CHAIR: That makes sense. It is a shame you said that now because

we just had Madam Speaker before us, and we are not going to see Madam Speaker for a while. I am not sure we will get to follow that one up anytime soon.

Mr Harris: This is a perfect storm of events which, in normal circumstances, you would never expect to happen. If you look at the approval process, my finance team put together the statements. Those statements are run through the executive for a look, and the statements are then sent to the audit and risk committee. The audit and risk committee go through those statements and they provide a recommendation to me to sign or to not sign or to make adjustments, and they frequently make minor adjustments.

In this instance they did make a few minor tweaks but they gave me a recommendation to sign it. The statements are then sent to the independent auditors, they go through their process, they come back to me in the normal course of events with variations where they find irregularities or whatever—and there were one or two in this process, as there always are.

They went through their process, they gave me a clean opinion. on the basis of all those approvals. I signed it, but we still found an error. It was fortune we found the error.

MR BRADDOCK: Firstly, does the external auditor they conduct the audit to a certain standard?

Mr Harris: Yes, they conduct the audit according to Australian standards and in the same way that we conduct our audits. We all operate under the same accounting and auditing standards.

MR BRADDOCK: In this case this audit did not match up to that standard?

Mr Harris: In our understanding of what went wrong, in normal circumstances you would go to the work papers behind the calculation of each accrual and you would examine the calculations in those work papers. It seems, as we understand it, that our external auditors had some relatively new people on the audit and they did not ask enough questions about the work papers sitting behind the calculation of our accruals.

In our opinion, after the event they should have examined more closely the work papers that led to our view of what the accrual number was, and it appears that they did not do that work as diligently as perhaps they should have. There have been some lessons for them to learn along the way as well. But I have to say these auditors have done our books for a while; they know us very well.

MR BRADDOCK: The audit office had a recent change to its budget. It was increased in order to get it to a longer term financial setting. Does any of this have any implications in terms of the financial viability of the audit office in that setting?

Mr Harris: No, none at all. As I said, these are non-cash accrual adjustments that effectively tried to allocate the revenue that is going to be earned to the year in which it is going to be earned.

We are effectively saying we have sent an invoice to agency A for \$100, \$50 of that invoice is for work that has been done in 2020-21 and \$50 is for work that is to be done in 2021-22. The \$50 for 2020-21 we can account as a revenue line in our profit and loss statement for 2020-21, the \$50 for the subsequent year we take into our balance sheet as money to be earned in the future. What we did was get that 50/50 split wrong, and we took more of the \$100 into 2020-21 than we should have done. What we have effectively done is artificially moved revenue from one year to another year, and what we have now done is reversed that error and put it back.

In terms of the longer term, that is why I am saying that if you look at the two years or three years there is no material impact either to our financial position or to our strategy. In fact, our strategy was to get us back to surplus in 2021-22 and we are on track to achieve that.

MR CAIN: Auditor-General, I reference your report late last year on the Campbell Primary School modernisation project, which found that “probity was not demonstrated in the procurement process to deal fairly, impartially and consistently with suppliers”. My takeaway from the report is that there were significant failures in the decision-making processes and governance of this procurement. That is my comment. However, last Friday, when the education minister presented to the education and community inclusion committee, the education minister, who is also the Deputy Chief Minister, said:

As far as I am aware, there was nothing that was done wrong and the procurement processes were followed.

Given her standing in the government, has her assessment caused you to reflect on the report and whether you need to modify it?

Mr Harris: I stand by the statements in my report, Mr Cain. I feel no reason to change it or modify it.

MR CAIN: Do you think that the Deputy Chief Minister’s comments are a fair representation of your report’s findings?

Mr Harris: I have not seen the minister’s comments, Mr Cain, but my findings clearly indicate a failure in probity, a lack of probity, and a failure in decision-making in the processes that applied to Campbell Primary School procurement.

MR CAIN: I draw attention to page 4 of your summary, where you point out:

... the Acting Executive Group Manager ... Education did not sign or endorse the third signed Tender Evaluation Report—

which recommended Manteena as the provider—

but instead provided an Executive Brief to the Director-General of the Education Directorate that sought approval to enter into a contract ... with Lendlease.

What comment do you have about that variation of a normal procurement process?

Mr Harris: In normal circumstances the delegate, who was the acting general manager, would sign that recommendation. I find it perplexing, at the very least, that the acting general manager chose not to sign that but instead referred it to the director-general. That is an unusual practice.

MR CAIN: I notice in your recommendation 1—and I think it is linked to that statement—you recommend that there be an explicit requirement for the preparation of independent probity advice where a delegate or decision-maker seeks to overrule the recommendation of the tender evaluation team. Related to that part of your recommendation, if the Financial Management Amendment Bill is passed as it currently stands, what impact would that have on the ability for an independent recommendation to be set in place, according to your recommendation?

Mr Harris: That is an interesting question, Mr Cain. I have not examined that aspect of relationships with the bill that you refer to. There are already requirements for the provision of probity advice within tender procurement processes, particularly large tender procurement processes. The issue here, as is the case with some other procurements, is the lack of understanding of the necessity for independent probity advice. The question that you raise is one that needs consideration. As I said, I have not considered the relationship between the two, given that my report here and the recommendation was written before I had access to the draft bill that you are talking about.

In a broader answer to your question, I would have concerns if that bill were to, in any way, impact on the independence that I have. At this point in time I do not have any reason to believe that it does. I would also have concern if tender processes were constrained in the sense that independent probity advice, or indeed any other independent advice, was not able to be sought. I do not believe that is the intention of the bill. Nevertheless, there are sometimes unintentional consequences that arise if interactions with other pieces of legislation have not been appropriately considered.

MR CAIN: Regarding again this report on the Campbell Primary School procurement, what was it that led you to make this project the subject of an audit?

Mr Harris: I had representations from various sources that led me to the view that it would be reasonable to examine this procurement process.

MR CAIN: Are you able to amplify those sources and whether they are from a particular part of the business community? Are you able to give a general statement regarding these sources?

Mr Harris: I had representation from Manteena, the company involved, but I also had some representation from other individuals. I do not think it would be fair to name those other individuals; indeed the legislation would suggest that it would be best if I did not.

MR CAIN: Are you able to say whether these individuals were also part of the construction and building sector?

Mr Harris: No, they were not.

MR CAIN: Are you able to say what sector they were from?

Mr Harris: Again, given the protections under the PID legislation, I would prefer not to answer that question, Mr Cain.

MR CAIN: I completely understand that. I was just seeing what you were able to say, of course. Again, the Deputy Chief Minister seems to feel very differently, even to the Integrity Commissioner, who last week issued a very broad investigation into procurement in the territory. Were you surprised by the scope of the Integrity Commissioner's investigation, as announced last week?

Mr Harris: No, not particularly. I have had a couple of discussions in the public accounts committee in relation to procurement, and some of my concerns in that area. Indeed, the Integrity Commissioner and I work quite closely, as you would appreciate. As we are required to do under our various pieces of legislation, we speak quite frequently. Much of the commentary that he has made is informed by information that he has obtained from me under appropriate arrangements.

MR CAIN: Are you able to describe what relationship you will have to the Integrity Commissioner's investigation?

Mr Harris: That will depend upon where his investigation takes him. He, obviously, conducts his own investigations under his own legislation in ways which are different to me. In his first report he wrote at length on the different methodologies that we use and the different purposes for which we do investigations. Notwithstanding that, where we are doing investigations that cover the same territory, for reasons of efficiency, as much as anything else, if he feels that there is information that I have which he would like, which he would have to get from the same source as I got it, it is more efficient for the agencies to obtain it from me, provided it is able to be shared. Most of it is, but not all of it. We work closely in that regard, sharing information where it is appropriate to do so.

I was not surprised that he is looking at this area, given the conversations that we have had, but I must emphasise that he is asking a different question to the questions that I am asking when I am doing a performance audit. I am looking at matters of efficiency and effectiveness. If I happen to find matters of illegality, at whatever end of the scale, either minor or at the corrupt end, I would, of course, immediately refer it to the appropriate body. In the past that would have been the AFP; given that the Integrity Commission is here now, it is more likely to be the commissioner, rather than the AFP, although it could be either or both. And we do so, when we find such material.

MR CAIN: Do you have any other investigations, or proposed investigations, into procurement projects in the territory?

Mr Harris: We have a performance audit on foot at the moment in relation to contract arrangements at West Basin. We are, this week, tabling an audit on the broader question of fraud prevention. We have a couple of other audits in the planning phase in relation to procurement activities. One is in relation to emergency services. I have a growing concern, which I have been discussing with the public accounts

committee, in relation to procurement—not to the depth that the commissioner has expressed, but that is because I am looking at it through a different lens.

MR CAIN: Is the proposed fraud prevention audit with respect to procurement in particular or—

Mr Harris: No, it is the general question of how agencies deal with fraud prevention in terms of making staff aware of the circumstances that might arise, training issues and those sorts of things. It is not procurement in anything in particular.

MR CAIN: But procurement process would obviously fall within scope, as one of the activities of government?

Mr Harris: Yes, it can do.

MR CAIN: And it may be open to such conduct.

Mr Harris: Certainly.

THE ACTING CHAIR: Mr Harris, Mr Stanton and Mr Sharma, on behalf of the committee, thank you for your attendance today. If witnesses have taken any questions on notice, could you please provide those answers to the committee secretariat within five working days. This was the committee's final hearing into annual and financial reports for 2020-21. Today's hearing is now adjourned.

The committee adjourned at 11.59 am.