LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON LEGAL AFFAIRS

(Reference: Inquiry into Annual and Financial Reports 2023-24)

Members:

MR P CAIN (Chair)
MR T WERNER-GIBBINGS (Deputy Chair)
MR S RATTENBURY

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 13 FEBRUARY 2025

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Secretary to the committee:
Ms K de Kleuver (Ph: 6207 0524)

By authority of the Legislative Assembly for the Australian Capital Territory

APPEARANCES

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Amended 20 May 2013

The committee met at 9.00 am.

Appearances:

Office of the Director of Public Prosecutions
Engel, Ms Victoria SC, Director of Public Prosecutions
Cantwell, Ms Katie, Senior Director and Head of Corporate Services

THE CHAIR: Good morning, and welcome to the public hearing of the Standing Committee on Legal Affairs for its inquiry into annual and financial reports 2023-24. The committee will today examine the Director of Public Prosecutions and the Attorney-General.

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

The proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses used 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.

We welcome witnesses from 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. Could you each please confirm that you understand the implications of the statement and that you agree to comply with it?

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

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

THE CHAIR: Thank you very much. As we are not taking opening statements, we will proceed to questions. Ms Engel, last week your office discontinued a trial in the Supreme Court in relation to a matter that had been listed to run for five weeks before a jury. Your office only notified the accused's representatives days before the trial was due to commence. As a result of the prosecution, this accused incurred a very significant legal bill. It has cost him a significant asset. He has always maintained his innocence. As you are aware, with respect to court orders in favour of a successful accused, whether the trial is abandoned or the accused is found innocent, costs are not available in Supreme Court criminal matters. Could you explain the circumstances for withdrawing this prosecution after such a lengthy lead-up time?

Ms Engel: If it is the matter that I think you are talking about, it was an allegation of serious family violence involving a vulnerable complainant. Consistent with my prosecution policy, the wishes of a complainant to give evidence are one of the key

factors in whether a trial proceeds.

As you might appreciate, an alleged victim of family violence may find the process of giving evidence difficult, for obvious reasons. In that matter, there was a change in position of the alleged victim. My office was not of the view that it was appropriate to force an alleged victim of family violence to give evidence in a matter against her will, and the matter was discontinued on that basis.

THE CHAIR: Did the change involve you reaching a conclusion that the case was unmeritorious?

Ms Engel: No. The direction was made solely on the basis that I was not prepared to force a vulnerable family violence victim to give evidence against her wishes.

THE CHAIR: Obviously, the fact is that the accused has had a charge and a prosecution with no result, the only effective result being that the accused is out of pocket by hundreds of thousands of dollars, with no reclaiming option. Do you think that is a fair outcome for the accused?

Mr Engel: I understand in that matter that, contemporaneous with my direction, the accused's representatives also sent a request that the matter be discontinued prior to trial, so that was in fact their request as well.

THE CHAIR: That would be fairly standard. They will always ask for that, won't they?

Ms Engel: It is, but I am answering your question as to the fact that there was no formal outcome; that was their request as well. Of course, it is most unfortunate that any accused incurs costs, as part of a prosecution process, if a matter does not proceed, but I am required to apply the prosecution policy, and in this matter I did.

THE CHAIR: Is it part of your policy to support an ex gratia payment to compensate someone who has been accused and found either not guilty or, in this case, the case is abandoned before the hearing?

Ms Engel: It is not part of the formal prosecution policy. If government wished to fund me in order to facilitate that, I would be open to that discussion, but I am simply not funded for that.

THE CHAIR: Absent the funding side of that policy, is it not open to you to have a policy where, in principle, you would support the payment out of the Treasury's funds of an ex gratia payment to someone who has either been accused and found innocent or accused and the case is abandoned before hearing?

Ms Engel: There are two parts to that question, Mr Cain. The first answer is that, in relation to matters that proceed to trial and end in not guilty verdicts, the test to proceed to trial is: is there a reasonable prospect of conviction and is it in the public interest to proceed? It is not: will there be an inevitable conviction?

Prior to my appointment, the then Acting Director of Public Prosecutions, Anthony Williamson SC, wrote in the *Bar News* about that principle, that not every

matter that runs to trial will result in a guilty verdict. I think it would be inconsistent with the principles with which my office operates that there would be payments every time there was a not guilty verdict. It is the nature of the system.

In relation to the other question, as to whether payments are made where matters are terminated, it is my understanding that that is inconsistent with most other DPPs across the jurisdictions.

THE CHAIR: It is your understanding that no jurisdiction provides any sort of compensation for costs to an accused who is found either innocent or where the case is abandoned?

Ms Engel: From the DPP. There are cost provisions in other jurisdictions ordered by the courts. In New South Wales, there is a process where, if somebody is acquitted, the judge is asked to look backwards and decide whether or not the prosecution should have proceeded, armed with everything that the court now knows. That is not something that exists in the ACT. In the Northern Territory, there are no cost provisions available, and my understanding is that, in most other jurisdictions, there are no cost provisions available.

THE CHAIR: If it is deemed to be a vexatious prosecution, is that a scenario where costs would be available?

Ms Engel: Deemed by whom, Mr Cain?

THE CHAIR: The court.

Ms Engel: I believe it would be a malicious prosecution and there would be civil remedies available to an accused.

THE CHAIR: That is civil.

Ms Engel: Payments through civil proceedings, yes.

THE CHAIR: In the absence of an ex gratia payment from government.

Ms Engel: That would be my understanding.

MR WERNER-GIBBINGS: The annual report gives details about the Witness Assistance Service. Are you able to quantify or provide examples of the impacts that the purchase of more therapeutic items and improvements to make meetings rooms more "cosy and inviting" have on those or are given to those who are accessing the DPP's services?

Ms Engel: I certainly can. In fact, I have correspondence that we have received from a victim of alleged sexual offending who wrote to one of my Witness Assistance Service officers on Monday this week, indicating:

> Just emailing to thank you again for taking the time to keep me posted and up-to-date, and also for making me tea this morning, bringing me snacks and

> a weighted blanket. I really appreciate you, your efforts, and your attention to detail, and most of all how warm and friendly you are. You have been so lovely to work with. I feel so grateful and happy to have you along with me on this incredibly tough journey.

Part of that communication related to the fact that my witness assistance officer had access to the weighted blankets, and was able to speak to that alleged victim of sexual assault and ensure that she was supported in the best way possible for her. It has a tangible effect on victims who are going through the system.

MR WERNER-GIBBINGS: Are there plans to expand or are there other areas that the assistance can be extended to—budget dependent, presumably?

Ms Engel: Certainly. In my view, as a bare minimum, that service in this jurisdiction should have a capacity of at least 20 Witness Assistance Service officers, which would bring us into line with other jurisdictions, all of whom have a far more robust and better resourced witness assistance service.

That would allow us also to move into the family violence space. Currently, the Witness Assistance Service officers are only able to support sexual violence complainants and homicide family members, occasionally with some support for extremely vulnerable family violence victims. With the number of family violence cases in the ACT—the number of allegations proceeding to court—last year there were some 800 matters finalised in the Magistrates Court. In my view, domestic violence complainants should have access to that kind of service to ensure that they are supported as best as possible to give their evidence.

MR RATTENBURY: You said you think there should be 20. How many are there currently?

Ms Engel: We currently have three permanent positions. We have three positions that are funded out of the Confiscated Assets Trust Fund. With those positions, the funding for that ends in June this year.

MR RATTENBURY: How many were there when you came into the position?

Ms Engel: Three. It is currently six, but unless I receive a further injection of funding, that, in theory, will go back down to three. That still falls well short of what I think would bring us into line with other jurisdictions.

MR RATTENBURY: I want to ask about referrals of prosecutions for matters of animal cruelty. In the City Services annual report, there is a reference to the fact that 13 matters were referred by the RSPCA to both City Services and the Director of Public Prosecutions. I am interested in understanding whether any of those matters have proceeded to prosecution, and just generally how you approach those kinds of matters, given what is sometimes the complexity of the background of the people involved in those matters.

Ms Engel: Yes, of course. I will have a look at the precise numbers in a moment. My office runs every single criminal prosecution in the ACT, both in the Magistrates Court

and in the Supreme Court, which is different to other jurisdictions, where police prosecution services exist, and the DPP is just focused on the serious, indictable matters. In addition to all criminal prosecutions, we also conduct all regulatory prosecutions, and we give advice to Work Health and Safety. We appear for and prosecute all traffic matters, and part of that includes RSPCA matters as well.

They will usually come into our office for advice, initially. One of my prosecutors will assess the brief on those two issues of whether there are reasonable prospects and on public interest. If the advice is to proceed, we will run that prosecution. That is the background to how the matters come to be.

In relation to the number of matters, there were two Animal Welfare Act matters that proceeded in the last financial year, and one of them was proved.

MR RATTENBURY: Two elements of the test, particularly relating to the public interest, are where there are issues of mental health and people's economic situations that are linked to these cases. Are they the sort of factors that are considered as part of that public interest test?

Ms Engel: Certainly. There is a quite exhaustive list set out in the prosecution policy. It is always, in all matters, a balancing act in relation to those matters. But they are the kinds of things that can be taken into account.

MR RATTENBURY: Is there an issue that you perhaps do not have the capacity to prosecute them all, or will they all be judged on that test? There are not matters perhaps slipping through that would otherwise merit further effort?

Ms Engel: Currently, the only assessment is: is it in the public interest, and are there reasonable prospects? Part of the public interest test does involve consideration of the financial implications of running a matter, so that is inevitably part of the consideration. Currently, I am confident that all the matters are being assessed, not taking into account whether or not my office has the resources to run them; but, given the volume of work that we are asked to undertake, and given the funding situation in my office, I expect eventually that that will be a factor that, unfortunately, is taken into account.

MR RATTENBURY: In assessing the prospects of those matters, are there any issues with the law that are providing barriers, or do you think that the construction of the offences and the way that the legislation is framed are adequate?

Ms Engel: I will answer with my current knowledge, which is that nothing has been brought to my attention in relation to issues, but I will take it on notice and seek some advice from the unit that conducts those prosecutions.

THE CHAIR: Ms Engel, you will no doubt be familiar with the controversy in New South Wales at the moment involving the criticism from the New South Wales District Court that the DPP is, in the view of some of those judges, running unmeritorious sexual assault proceedings which are doomed to fail. What assurances can you give this committee and, I guess, the community that there are not unmeritorious sexual assault prosecutions being run in the ACT?

Ms Engel: I can give you my assurance that they are not unmeritorious. The term "unmeritorious" does not, in fact, find its way into the prosecution policy. The test is "reasonable prospects of conviction". The assessment is made prior to the start of the trial or hearing. There are, of course, inevitably things that come out during a trial hearing that may change those issues. That is why it is difficult to predict the actual outcome of a trial, but—

THE CHAIR: We have all watched *Law and Order*, so I understand!

Ms Engel: Yes. I can give you the assurance that everything that proceeds to trial or hearing in my office is being assessed, consistent with the prosecution policy.

THE CHAIR: You will be aware that, in November last year, the Chief Justice said:

> I want to understand why in the 2020s, jurors find it so hard to believe allegations of sexual assault.

Has that or any other reason caused a shift in your office's approach or policy in relation to prosecuting claims of sexual assault?

Ms Engel: The Chief Justice's comments have not impacted the approach that my office takes. In fact, it is specifically outlined in the prosecution policy that external factors, such as whether or not the decision will be popular or unpopular, or risk of reputation to the individual making the decision, are factors that cannot be taken into account. I am specifically obliged to disregard those types of issues.

The Sexual Assault (Police) Review that was conducted in this jurisdiction, initially in 2021, and with a further report released last year, did evince issues with the way that the jurisdiction was approaching the investigation and, by extension, the prosecution of sexual offences. That has resulted in a shifting of the way in which we approach these matters, to the extent that we are considering whether or not police historically—not today, but historically—had applied incorrect tests, both the test as to what was necessary to charge and whether they are applying incorrect assumptions, for example, about children being unreliable as a class of witness, which was one of the issues that came out of the SAPR review.

I think it would be correct to say that, following SAPR, there has been a shift in the ACT in the way that those matters are investigated, to the credit of police. That has resulted in there currently being 91 active charges in my office as a result of the SAPR review, one of which has already proceeded to sentence, because it was a plea of guilty on the very first return date, which was a matter that originally had not been investigated properly by police. There has certainly been a shift, but there has been no impact of the Chief Justice's comments.

THE CHAIR: In the following scenario, I want to check what approach you would take. It is a general scenario, where there is an adult complainant in a sexual assault matter, of sound mind, who either withdraws their complaint or expresses the view that they no longer want the matter to be prosecuted. What kind of advice are you providing to that complainant in that situation or to your prosecutors?

Ms Engel: Could you repeat the scenario?

THE CHAIR: Yes. The scenario is where the complainant either withdraws the complaint—and that could be at any time, even up to trial, as you are aware—or expresses the view that they no longer want the matter to be prosecuted.

Ms Engel: And it was an adult complainant of sexual assault?

THE CHAIR: Yes.

Ms Engel: Alone?

THE CHAIR: Yes; of sound mind, adult.

Ms Engel: And no issues of family violence?

THE CHAIR: The broad sexual assault. It could be a family violence matter, for example.

Ms Engel: There is some issue with me answering it in the generic sense because the policy does differ when family violence is in the frame.

THE CHAIR: I am happy to hear that.

Ms Engel: The prosecution policy in relation to sexual violence gives significant weight to the views of a complainant. It is not the only factor, and there will be other factors. Because I act on behalf of the community, obviously, the victim's interests form part of the community interests, but I cannot act solely on behalf of the alleged victim's interests. For example, if there was a prior conviction for sexual assault against another victim, and there was a fresh allegation, in particular—and I know your question relates to adult sexual assault, but if it relates to risk of harm to other children, for example, it might be in the overall public interest that the matter proceed. I would think it would be rare that a matter would proceed if it just relates to sexual violence, if it is against the complainant's wishes, but it does happen.

When you add family violence into the frame, that changes things because the prosecution policy requires my prosecutors and me to look at issues such as the cycle of domestic and family violence, and whether there are concerns that pressure is being put on a complainant, either by the alleged perpetrator or by family members. It is not unusual in family violence matters, including where there are sexual assault allegations; my prosecutors will request records from AMC, and calls are made. In fact, Mr Cain, you might have seen quite heavily publicised earlier this week a case in New South Wales where similar issues in the family violence space were happening within their prison system. So it is far more nuanced when you add family violence into the frame.

THE CHAIR: For the record, who is your instructing client in a prosecution matter?

Ms Engel: This is perhaps the point of difference between my office and the traditional legal framework. There is no single client. I act in the community's interests. Obviously, part of the community is the complainant; it is the accused. I am required to act with

fairness to both. But I do not take instructions from any individual client.

THE CHAIR: If a complainant wanted to withdraw, you are saying it is possible you could continue to run the prosecution?

Ms Engel: If it was a sexual violence matter, yes, it is possible. It would be relatively rare if it was sexual violence outside a family violence framework. If it was sexual violence or family violence allegations combined, so to speak, it would not be unusual that we would direct that to proceed.

My office—and this is where my Witness Assistance Service comes into play significantly—would obviously be working with a complainant to best support them and to ensure, if they did have to give evidence, that that would be done in a way that was the least harmful to them as possible. There are steps that we would be taking, and we would be working with them to try to ensure they are as supported as they could be, if the matter had to proceed.

THE CHAIR: Also, the Victims of Crime Commissioner is there.

Ms Engel: Not all the time. They are—

THE CHAIR: Or in a support officer's role?

Ms Engel: Not all the time, no. They are involved by referral in the sexual violence space. They are involved in many matters, but certainly not all of them. We have a good working relationship with the Acting Victims of Crime Commissioner and her office, and we do work to try to ensure that complainants are referred in; however, it is voluntary referral, so we cannot force a complainant to be engaged with those services. It is not unusual for my office to be the only agency supporting an alleged victim.

MR WERNER-GIBBINGS: I have about 17 questions, based on a really interesting article that I read at the end of last month. As a Crown prosecutor, your interests do not necessarily align with a victim-survivor's interests. There are legal obligations as well, and that can present friction.

You will not have time to answer this question, but we might come to it down the track. Have you been able to do any thinking about how to better represent, help or assist the interests—and this is a systemic interest—of victim-survivors? With respect to the stats, 90 per cent of women will not report their sexual assault to the police. Of the women who do, a quarter will see the perpetrator charged; fewer will see the perpetrator guilty. In terms of the stats, there were 23,000 reports of rape to police in Victoria between 2010 and 2019; there were 1,000 sentences. In New South Wales, in 2022, there were 9,138 sexual assaults reported to police; there were 1,016 convictions. Is that fairly similar in the ACT, that experience, from what you understand?

Ms Engel: I would have to rely on the statistics that were published as a result of SAPR. They certainly were consistent with that. It is consistent also with my experience in the Northern Territory.

To answer your initial question, I have thought long and hard over many years about

how alleged victims can be better supported through this process. As I said to Mr Cain, I do not act on the instructions of a complainant; however, I act in the community's interest. A complainant's interests—as is an accused's interests—are a part of that. I do not think it is to anyone's benefit that an alleged victim of sexual assault would go through the process without feeling supported. There is a distinction between the DPP only advocating on behalf of a victim, which is what we do not do, and doing everything possible to ensure that they are as well supported through the process as possible.

That is the part of process that I am very interested in ensuring we are doing properly, which is why I am so interested in ensuring that we have a witness assistance service that is well serviced and robust. My experience—and I have prosecuted sexual violence for 17 years—is that the way in which a complainant is treated, if they are treated respectfully through the process, is far more important, at the end of the day, than the ultimate outcome.

It does not mean the outcome does not matter. To address your question, from my understanding and experience, police in the ACT have done a lot over the last few years to ensure that they are investigating and progressing matters appropriately. But the part that I do have some impact on, if a matter comes into my office, is the way in which a complainant is interacted with and ensuring that they are treated as respectfully as possible.

MR RATTENBURY: I want to ask you about the embedded prosecutor trial that is taking place, with an embedded prosecutor in the sexual assault and child abuse team of ACT Policing. Are you able to give us an update on how that trial is going, and any evaluation of its efficacy?

Ms Engel: Yes, I certainly can. The trial finished at the end of last year, and I think that prosecutor has returned to the office. He remains in the sexual assault team within my office, so he is still working closely on those matters and is still interacting closely with the SACA team, the sexual assault and child abuse team, within police. As a result of funding from SAPR last year to address the already active 91 charges in my office, coming out of SAPR, we received short-term funding for two additional Crown prosecutors and four additional Crown advocates to deal with those matters and in order to give advice in those sexual assault matters.

My view was that, given the historical context to sexual assault investigations and prosecutions in this jurisdiction, the people giving the advice should be experienced trial lawyers, which is why I have now created a system where that advice is being given internally, at that level at which it now exists.

MR RATTENBURY: I take it that the trial is over and the position has been discontinued?

Ms Engel: Yes, that is correct.

MR RATTENBURY: Would you be of a view that it should be reinstated in the future or is it your view that it is no longer necessary?

Ms Engel: My view is that it was very effective to deal with the issues that were live in

this jurisdiction at the time it was set up. Now, the relations between police and my office are at a level where I am comfortable that that trial is no longer necessary.

THE CHAIR: Was that position as a result of the Sofronoff inquiry recommendations?

Ms Engel: I believe so, yes.

MR RATTENBURY: It actually came about, Mr Cain, because the former Acting Director of Public Prosecutions recommended it to the government to address the issues that Ms Engel has just spoken about.

Ms Engel: Yes.

THE CHAIR: Are there any other implications of the Sofronoff investigation that you are still working with and developing a response to?

Ms Engel: Yes, certainly. I sit on the board of inquiry implementation group and there are a number of issues, most of which have now been resolved. There are a number of matters that we are still finalising, including dealing with the contentious issue of sexual assault communications privilege and making sure that there are robust measures in place to protect those confidential records for a complainant. There are a number of things that we are still working through, and a number of risk mitigation strategies that I have already implemented and that I am continuing to implement, following that inquiry.

THE CHAIR: Is that part of your reporting to the Attorney-General or in your annual reports?

Ms Engel: Yes.

THE CHAIR: On behalf of the committee, I would like to 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*. The committee will now suspend the proceedings and reconvene at 9.45.

Hearing suspended from 9.30 to 9.45 am.

Appearances:

Cheyne, Ms Tara, MLA, Attorney-General

Justice and Community Safety Directorate
Johnson, Mr Ray, Acting Director-General
Ng, Mr Daniel, Executive Group Manager, Legislation, Policy and Programs
Blount, Ms Wilhelmina, Acting Deputy Director-General, Community Safety
Hutchinson, Ms Zoe, Executive Branch Manager, Justice Reform Branch

THE CHAIR: Welcome back to the public hearings of the Standing Committee on Legal Affairs for its inquiry into annual and financial reports 2023-24. 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 use 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.

This morning we welcome Ms Tara Cheyne, MLA, Attorney-General, and officials. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Could you please confirm that you understand the implications of the privilege statement and that you agree to comply with it.

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

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

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

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

THE CHAIR: Thank you. We are not taking opening statements, so we will proceed to questions. Attorney, various media outlets reported in November last year on the ACT Supreme Court Chief Justice's comments at a conference held by the Australasian Institute of Judicial Administration. Her Honour was quoted as saying:

> I want to understand why in the 2020s jurists found it so hard to believe allegations of sexual assault.

We are all in agreement, I think, that there is clearly a substantial amount of work that needs to take place to better support complainants in sexual assault matters; however, the courts must also strive to uphold the principles of the rule of law such as the presumption of innocence and the right to a fair trial.

Attorney, in the light of these comments from the Chief Justice, do you have any views as to the appropriateness of the Chief Justice's comments?

Ms Cheyne: I have spoken with the Chief Justice about this. In fact, she raised it with

me and asked if I had any comment, and I did not and do not.

THE CHAIR: Do you think Her Honour's comments will impact upon the presumption of innocence for defendants of sexual assault allegations in the eyes of jurors?

Ms Cheyne: I respect the impartiality of the courts. I respect the legislative frameworks that are applied in decisions and in sentencing, and I have full confidence in the Chief Justice and judicial officers in exercising that.

THE CHAIR: Did the Chief Justice's comments lead you to have a particular conversation with, for example, the DPP or your directorate for any reason or, in particular, to reinforce the presumption of innocence and the right to a fair trial as the basic fundamental principles of our justice system?

Ms Cheyne: Certainly, Mr Cain, I obviously regularly we meet with the directorate. I think I met with the DPP before those comments were made and/or published. The short answer is no, and also that I respect that those principles are widely understood and they receive the appropriate attention in all matters.

MR WERNER-GIBBINGS: Attorney, good morning. Like me, you have been in the role for a very short time and there is a lot to learn. What are the key things that you are learning in this role? How are you going to take them forward? Actually, I refer to one that is specific for me—the priorities with the inquiry into the AMC perhaps down the track. In the priority speech you mentioned that you and Minister Paterson visited AMC. The key takeaways?

Ms Cheyne: Thank you, Mr Werner-Gibbings, and I note the former Attorney smiling.

THE CHAIR: That could have been the former Attorney-General's question.

Ms Cheyne: It could well have been.

MR RATTENBURY: I am looking forward to this question.

Ms Cheyne: And he may have plenty of supplementaries. What I would reflect, Mr Werner-Ginnings, is the breadth of this portfolio. Perhaps I will go to the AMC in a moment, but, particularly in the context of budget considerations and in the fiscal environment in which we are in, it is really quite clear to me that there is no silver bullet in terms of anything that we do. For example, legislative reform needs to be supported obviously by an evidence base but also by community education, wraparound supports and changes usually do have that ripple effect across all sorts of different service providers.

It has also become quite apparent to me that, for example, if we increase the capacity of the courts through new magistrates, for example, or additional magistrates, that then that also requires consideration of what the capacity is of what feeds into the court processes, whether that is Legal Aid, our community legal centres, the DPP, the Office of the DPP, Victim Support, wraparound services, community providers and so. Clearly, that is in the early stages of my thinking, but that is certainly a dominant reflection that I have had over the last two and a bit months.

In terms of the visit to the AMC, the overwhelming impression that I got was the officers' commitments to their roles and how they undertake their work and the consideration that they apply, particularly in the context of all of the legislation and procedures with which they need to have due regard. Probably what struck me was that there is not a lot of industry associated with AMC. It was established, as we know, as a human rights place with a real focus on education, but I suppose the education can take many different forms, including in how people act alone and also how they like to apply themselves.

I think it was the former Attorney who introduced the bakery. That seems to be incredibly successful, but it has given me something to contemplate, I suppose, about how much more we could be assisting detainees now and to support their transition. The Transitional Release Centre certainly does some pretty amazing work in supporting detainees transitioning back into the community. But I think there is a consideration about whether we are setting up detainees when they are released so that they are best supported—whether that is housing, having appropriate funds available to them, having a skill or a job to go to.

All of those things are front of mind. I do not have any easy answers at this stage. But certainly that is the impression that I was given. I really thank the officers at AMC and the commissioner, Ms Close, for giving us the opportunity to understand the facility at large.

MR WERNER-GIBBINGS: Thanks very much. What did you mean by "industry"? Is that productive work, processes and procedures and the whole education into skills? Is that what that means and you did not notice that much at AMC?

Ms Cheyne: It certainly is present. There are registered training organisations who are providing that sort of training. It did give me pause to consider whether that could be expanded further, and obviously that is a conversation to have with the Minister for Skills as well. There is an extensive library, which is terrific. Libraries ACT has recently established a partnership there.

But I suppose, with the limited knowledge I have about the prison system in New South Wales, for example—and I appreciate there are some private providers there too—there is a greater focus on industry and, I guess, "keeping busy"—is the way I would put it—in having a purpose each day in terms of what someone might be building, creating or servicing or whatever that may be. I certainly was struck with the horticulture at AMC, as Minister for City Services. The gardens were top-notch, with beautiful flowers and also very capable people mowing.

All of those things are front of mind for me at the moment. Again, there are no easy answers at this stage, but Minister Paterson and I came away with a lot of interest and further discussions to be had.

MR RATTENBURY: Attorney, yesterday, we had the Legal Aid Commission appear and give the evidence before the committee. As part of that evidence, they indicated that, under the new National Legal Assistance Partnership agreement, they were to receive an additional $80,000 out of a budget of $24 million. This is about a third of

a per cent. Why was Legal Aid granted so little additional funding as part of the National Legal Assistance Partnership agreement?

Ms Cheyne: Thank you, Mr Rattenbury. The new partnership agreement was signed in November and will commence, as you are aware, on 1 July. On the one hand, it is the most significant investment that the Australian government has ever made to the legal assistance sector, with approximately $800 million in additional funding and a particular focus on uplifting legal services responding to gender-based violence.

In terms of Legal Aid and certainly the response from the legal assistance sector at large in the ACT and nationally, I also respect that not all of the money review recommendations have been implemented to the extent that there was hope for and, equally, that there had been, I guess, some expectations raised about what that would look like. I certainly take Dr Boersig's comments very seriously about the extent of support that Legal Aid provides as a proportion in the community. What was important for us was to ensure that none of our providers' funding in the new partnership agreement would go backwards, and we made that clear prior to the signing of the new partnership agreement.

Perhaps one silver lining, Mr Rattenbury, is that the finalisation is in November. There is another SCAG meeting next week. But, finalising it in November has provided that funding certainty to providers. On balance, as much as I reflect and respect that there is still a gap, I suppose, in what ideally, in a perfect world, would be achieved, providing certainty—rather than being in an election year or hurtling towards the new financial year—was important. I cannot speak for my state and territory colleagues, but I think it is clear that we did all sign up to it in November.

MR RATTENBURY: I certainly agree that the timing is the one strong benefit in it. Overall, how much money did the ACT legal assistance sector receive as part of the agreement?

Ms Cheyne: I do not have that in front of me. Mr Ng?

Mr Ng: Thanks for the question, Mr Rattenbury. The funding increase from the current National Legal Assistance Partnership to the National Access to Justice Partnership, the ACT will receive a total of $75.709 million over five years. That is an increase from $45.597 million under the National Legal Assistance Partnership.

MR RATTENBURY: So an increase of $30 million over five years, you said?

Mr Ng: Yes; that is right.

MR RATTENBURY: So about $6 million a year, give or take. I am sure there is a graduating thing over the five-year cycle.

Mr Ng: That is right, Mr Rattenbury. Included in that, though, there were a range of previously commonwealth-administered funding streams, which have been folded into the National Legal Assistance Partnership. That was to a few ends, but one of the significant one was to streamline the reporting requirements for service providers. One of the big bits of feedback was the high level of administrative burden from reporting

across a range of different streams. The conglomeration into the National Legal Assistance Partnership was also intended to streamline the reporting requirements.

MR RATTENBURY: Did the ACT get a proportionate share of the $800 million then by the population share? I do not have the maths in front of me—$30 million out of $800 million.

Ms Cheyne: I also do not, Mr Rattenbury. We can probably caution comparisons for a few different reasons.

MR RATTENBURY: Sure.

Ms Cheyne: But Mr Ng might be able to assist me.

MR RATTENBURY: It is all right; I will do the maths later. It is fine.

Mr Ng: I could add, Attorney, that there is a funding distribution model that was applied to a distribution across different streams of funding. That distribution model changed across various things, like baseline funding versus funding for particular services which are more localised for different areas. But there were different funding distribution models that were applied to the disaggregation of the format of the investment.

MR RATTENBURY: Who took the decision and how was that decision taken regarding the allocation of the available funds within the ACT? Was that directed by the commonwealth or was that a decision taken by the ACT government?

Mr Ng: It was a negotiation between the commonwealth, states and territories, but it did work within the paradigm of the quantum of money that the commonwealth was able to access from its budget process.

MR RATTENBURY: What was the rationale for the money allocated to the Legal Aid Service? Dr Boersig gave evidence yesterday that they do 60 per cent of the matters in the ACT. They clearly did not get 60 per cent of the additional funding available in the territory. Obviously, our community legal centres provided tremendous resource as well. But what was the policy rationale for that division of money from the commonwealth or from the ACT government's point of view?

Mr Ng: Mr Rattenbury, as the Attorney mentioned, the overriding consideration and objective from the commonwealth in terms of an injection of further funding was better support for victims of gender-based violence.

THE CHAIR: It is my understanding that a schedule for Legal Aid to pay barristers has been stagnant for about a decade, which means, in effect, that they are getting a third, or even a quarter, of what they would get from other clients. Is the funding from ACT just a lump of money, is it parcelled up for particular aspects of Legal Aid's work, or is it just one lump of money for Legal Aid to do with as they wish?

Ms Cheyne: It is a mixture. Legally, it does receive a broad recurrent funding pool; then, as an independent agency, it manages its finances within that pool, and there are

aspects of initiative-based funding that are provided from time to time.

MR EMERSON: I have a question about Indigenous incarceration rates, in relation to recidivism and so on. New Productivity Commission data, the *Report on government services* data—I think it was released last week—indicates that our Indigenous incarceration gap grew in the last year. I understand, from a response to a question on notice, that the government's goal is parity by 2031. Given that that is the goal, and we have seen another short-term increase, what is the level of concern about this latest data, and are there shorter-term goals and milestones in place to ensure we are actually moving toward this long-term goal?

Ms Cheyne: Yes, absolutely, Mr Emerson. I appreciated the questions in question time last week on this as well. This data is complex, for a few different reasons, which I will try to step out as best I can. In the last financial year, the First Nations detainees accrued imprisonment rate decreased by 47.4 per 100,000 adults; but, even though that rate has decreased, First Nations adults are still 22.7 times as likely as non-Indigenous persons to be imprisoned in the ACT. Similar trends were observed in the age-standardisation rates.

Importantly, the ACT has the lowest overall imprisonment rate of any jurisdiction. That means that any fluctuation in rates of imprisonment for any population or demographic is usually quite significant. The change of a few persons can greatly affect that percentage.

The former attorney commissioned the Jumbunna Institute for Indigenous Education and Research to undertake an independent review into the over-representation of First Nations people in the justice system. They have delivered a first report to us, and now a second phase of the review is underway, which is a wider consultation, especially with the Aboriginal and Torres Strait Islander community here in the ACT, and across government and non-government stakeholders.

MR EMERSON: Is there a reporting date for the final reporting? I thought it was supposed to be the end of last year.

Ms Cheyne: It was supposed to be the end of last year, but, at the request of Jumbunna, we have agreed that that can be extended. They have asked for some more time to allow them to get as much stakeholder input as possible. Again, on balance, I would love to get this report into my hands as soon as possible, but I also want to have the best and most considered data and information possible to inform how the government responds to it. We are expecting it in the first half of this year, Mr Emerson, and I am expecting that it will have some practical measures that the government can then review and look to instigate, depending on government decisions and processes from that.

I note that we have seen from that first report that the imprisonment rate for Aboriginal and Torres Strait Islander people in the ACT was approximately five per cent lower in 2023 than it was in 2017. This has occurred at the same time as the national rate of Indigenous imprisonment has increased by 10 per cent.

MR EMERSON: Is that five per cent or five percentage points?

Ms Cheyne: Five per cent. We are five per cent lower in the ACT, and Indigenous imprisonment increased nationally by 10 per cent.

MR EMERSON: Not as a proportion of the population but the total?

Ms Cheyne: Yes. Certainly, the point I was making before about the ACT having the lowest imprisonment rate or numbers across the entire population means, as I said, that any change is reflected quite significantly in any percentage changes. We also have a comparatively lower level of non-Indigenous imprisonment to the rest of the country. That means, again, the data is being presented in a particular way for that reason.

MR EMERSON: I suppose my view on it would be that if it is a smaller portion of the population having those problems, hopefully, it is a smaller problem that we can tackle in response to those recommendations.

Ms Cheyne: That is my hope.

MR EMERSON: The reoffending rate for non-Indigenous inmates decreased slightly, which is great, but it increased for Aboriginal and Torres Strait Islander people. Do we have an understanding of why that is the case?

Ms Cheyne: Again, I think it is multifaceted, Mr Emerson. There is not necessarily one reason. Equally, there is not one silver bullet that responds. As I mentioned before, in response to Mr Werner-Gibbings, certainly, Minister Paterson and I are looking at how we can support detainees when they re-enter the community so that, effectively, their life takes a different course. I am hopeful that we get some different ideas or new ideas from the Jumbunna report that we can implement.

We already have a particular focus on a drug and alcohol sentencing list, which provides for a different sentencing approach that is much more restorative and rehabilitative. I do not know what the rates are—I am sure I have it somewhere—of First Nations persons versus non-Indigenous persons through that sentencing list. I understand that the court has had significant success so far, and the trajectory is that it is well on its way to paying for itself, in terms of community outcomes.

MR EMERSON: I have one more on recidivism. We have our plan for reducing recidivism by 25 per cent by 2025. I have had concerns raised with me about how we are defining recidivism. I am sure you have had them raised with you as well. I understand that, in other jurisdictions, it is defined as the total reoffending rate, but we are using a definition that is focused on the reimprisonment rate. A media release from last year, in September, indicated that phase 1 of the plan had contributed to a 19.6 per cent decrease on the 2018-19 recidivism rate.

When I looked at when the plan was introduced, which was August 2020, and where we are at in terms of the total reoffending rates, for people leaving prison and getting any kind of correctional sanction, which could be community corrections based or reimprisonment, we have only seen, since the program was introduced and the recent data, a one percentage point decrease in that number. I want to understand why we are using that definition of recidivism. Why are we narrowing it to reimprisonment?

Ms Cheyne: That decision on definition would have been taken before my time, Mr Emerson, so I will ask the officials to assist me.

Mr Ng: I might start and then pass over to my colleague Ms Hutchinson to give some further detail. In terms of the government's assessment of recidivism rates, there is a more sophisticated approach which engaged the Australian National University to support government to better test the success of initiatives that are aimed at reducing recidivism.

One of the key components of the plan, which you have observed, is a research collaboration with the ANU, and ANU is formally evaluating a range of secondary measures of recidivism which will inform a broader picture of success of the target. Although the rate at which adult offenders return to custody is an important indicator, there are several other secondary indicators that are expected to be important for measuring ACT's success.

I can take you through some of these, Mr Emerson. They are the reduction in the rate of reoffending and reduction in the seriousness of offending, reduction in the frequency of offending, reduction in female population and the like. A range of these secondary measures that have been formed by ANU can inform the assessment of success of the programs.

One process we are undertaking at the moment is a data linkage project with the Australian Bureau of Statistics to try and track these secondary measures across de-identified linked data through our justice system. That is probably another way that we are measuring. It is not just the top-line indicator that we are considering to be the primary measure of success. There are these secondary ones as well. I will pass to Ms Hutchinson, to see whether there is anything else she wants to add.

Ms Hutchinson: I acknowledge the privilege statement. Noting some of the limitations of using a single measure of recidivism, last year the government launched a new phase 2 of the reducing recidivism plan. That is called RR25by25 and Beyond: A Justice Reinvestment Strategy for the ACT. That plan builds on the successes of the first phase of the reducing recidivism plan. It starts to look at a broader range of measures around justice system health. It does pick up on some of the matters that my colleague outlined.

Specifically, on page 29 of that plan, it has a table around measuring successes, which includes that recidivism rate that is outlined in the *Report on government services* data, but it also includes the recidivism rate on return to community corrections, the rate of reoffending without incarceration, the rate of incarceration of First Nations people, the rate of incarceration of women, the percentage of individuals referred to specific non-criminal justice supports or diversions, the remand rate, youth and young adult-related indicators, and perceptions of community safety.

It tries to pick up more generally on justice system health, and it looks at the broader picture in relation to justice reinvestment in the ACT and impacts, in terms of both victims and offenders, of the justice system.

Mr Johnson: The focus on prisoners returning to prison still has merit, in the sense that the less people you have in prison, the better the chance. There are a whole lot of

impacts on prison sentence where you might be able to do something more restorative in a community context.

I mentioned this briefly yesterday in the corrections space: one of the things that this data tells us is that we are being successful in terms of the journey in keeping people out of prison. It is telling us that maybe those returning to the system are coming back into community corrections, and there is an implication that that is at a lower level of offending.

There are a number of ways to look at this data, and there are some cautionary notes about it. Underlying the ACT situation, in terms of both population in imprisonment and population in the community, we are half the national average, in terms of the number of people in both prison populations per 100,000 and in the community corrections space per 100,000. I think that is a useful context for the ACT.

MR EMERSON: I think most of us feel that the ACT is a pretty safe place. As I said earlier, when you have a smaller population, maybe it is a smaller problem to tackle. Going to your point, coming out of community corrections orders, I think the ACT has the second-lowest rate of people returning to Corrective Services after that, which would indicate how important it is to address this Indigenous imprisonment gap.

My last one is on the new strategy. Do we have a reporting date for when this data will come through, and when will we be able to access that? Will that all be made public?

Ms Hutchinson: Yes. As part of this new strategy, there will be yearly reporting to the Legislative Assembly, so it will be transparent.

THE CHAIR: Attorney, I have a question that I know I have approached the former Attorney-General about before, and the department, regarding section 435 of the Crimes Act. As you would be aware, it imposes a six-month limitation period for initiating civil actions against police officers. As several legal advocates in our community have outlined, including the ACT Bar Association, this short time frame restricts injured parties from seeking redress against the Crown.

At budget estimates in July last year, I asked the then Attorney-General about any plans to repeal section 435, as has happened in New South Wales, to which he said he was seeking advice from the directorate. What advice have you received since commencing your role regarding a proposed repeal or otherwise of section 435?

Ms Cheyne: I am very aware of this issue. Certainly, with respect to the top five things that the Bar Association raised with me in my first meeting with them, section 435 was among them. I am aware of the issues around section 435. I am also aware that it was brought to the community's attention due to the decision in Glavinic. That decision is currently under appeal, so I am cautious about what I say publicly, given any law reform, as you would well know, will need to account for possible interactions with ongoing litigation in that way.

I have certainly received some preliminary advice from the directorate about the limitations of a six-month period in which notice is given before launching the proceeding and the consequences of that. The critical question that has been put to me

in the first instance, Mr Cain, is whether section 435 is the appropriate mechanism for limiting the commencement of civil actions against law enforcement, or whether there is another more appropriate legal mechanism that achieves the policy objectives supporting the performance of public functions.

I very much respect the Bar Association's comments. They have made it clear to me that an arbitrary time frame that is provided for through section 435 is necessarily, in its application, restrictive and potentially disadvantaging victims. But it is also vital that we have appropriate liability protections in place for public authorities, including law enforcement, to undertake their functions.

That is the status of my understanding at the moment, Chair. It is something that I am keen to follow closely with the appeal and to consider further the appropriateness of section 435 as the mechanism, in consultation with stakeholders.

THE CHAIR: I asked the then Attorney-General and Ms Burgess from the department about this in July last year. I asked, "Why can't you just repeal 435?" I put it as simply as that, in order to get an explanation. Their words—this is from page 736 of the *Hansard* from last year's estimates—were:

> I do not have the specific information in front of me, but I understand that, as I said earlier, there is a framework in the New South Wales legislation that is lacking in our legislation.

They were saying, in a sense, that they did not have the information in front of them. Could you take on notice providing that information, and provide some information to this committee as to what is so distinctive about the New South Wales framework that means a simple repeal is apparently not straightforward in the ACT? Are you able to provide the committee—

Ms Cheyne: I think I can answer that, Mr Cain—at least, to the best of my ability.

THE CHAIR: Okay, answer it now.

Ms Cheyne: My understanding is that it is not as simple as a straightforward repeal because we need to ensure that there are appropriate liability protections in place for public authorities, which includes law enforcement, and that needs to be assured in other areas of the legislation, if it is not in 435.

THE CHAIR: You are awaiting the outcome of a particular appeal, and I am not wanting to explore that particular case.

Ms Cheyne: Of course.

THE CHAIR: Are you able to say now whether you think how the court decides that particular case will be the next step in formulating a firm view on how to deal with this—

Ms Cheyne: I am not aware of what the particulars of the appeal are, Chair, so that makes it difficult for me to answer. However, if the particulars relate to this section,

that may limit, or at least delay a little, any work that we do on this. However, I want to assure this committee, the Bar Association and others who have brought this to my attention that a lot of thinking, a lot of analysis, has already taken place within the directorate. Depending on the outcome of the appeal, I am prepared to consider it further.

THE CHAIR: I know you mentioned this earlier: what was the particular name of that case?

Ms Cheyne: It is Glavinic.

MR WERNER-GIBBINGS: Minister, you recently made a decision about the Law Reform and Sentencing Advisory Council, for which there was a review. How far along was the bail review that the council was undertaking?

Ms Cheyne: Thanks, Mr Werner-Gibbings. Certainly, I take the opportunity again to express my thanks to the council for the work that it has undertaken, and particularly in relation to the dangerous driving inquiry, which was delivered the day before we entered the caretaker period.

In terms of the bail inquiry, both the dangerous driving inquiry and the Bail Act inquiry were referred to the council by the previous Attorney-General at the same time. That has perhaps given an impression that those reviews were being undertaken concurrently. However, on engagement with the chair and other members of that council, it became clear to me that the Bail Act review was in its infancy, in that it had not undertaken any substantive work at that stage.

It is important for me to correct the record in that regard. I think it was the Bar Association that said that the work that had been done on that had been effectively discarded. My overall understanding is that there was not a substantive amount of work being considered.

I want to make it clear that one of the reasons that informed the decision is that there had been a Bail Act inquiry by the previous version of this committee, again led by Mr Cain, and that has provided a range of very useful recommendations, to which the government provided its response last week, and that is the basis for reform as a starting point. Given the community expectations that we move quickly on this, and given the stage at which the Bail Act review was, I am hopeful that we are able to move more quickly than we otherwise may have been able to, without compromising appropriate levels of consultation, engagement and consideration of evidence.

MR WERNER-GIBBINGS: As to consultation on the mission of the LRSAC itself, has the government given up consulting on law reform? Are you continuing to do it?

Ms Cheyne: Absolutely, we will be continuing to do it. We already undertake it in many different ways. One of the points that was made to me was that a significant proportion of the membership of the council were ex officio roles, and related to a large number of people that we already consult with regularly.

I do not deny the fact that there is a useful element, in part, in bringing together people

who we consult with regularly through a council, aided by some additional community members and academics. However, in the context of everything I am aware of, community expectations and the very useful previous inquiry, it led me to take the difficult decision to discontinue the council. It certainly does not mean that consultation will not happen or that law reform will be conjured up in my head and proceeded with in that way.

We do have to consult. As I reflected earlier, it has been very clear to me that any change that we make to one part of the legal system has repercussions for other parts, and that is exactly why consultation is so relevant, and remains so.

MR WERNER-GIBBINGS: That is good to hear. My colleague distributed a media statement that had some fairly strong opinions. I would like to test one or two of them. I was not here in the last term, but I quote:

> Last term, Labor tried their hardest to undermine the evidence-based work of the Law Reform & Sentencing Advisory Council.

What is that in reference to?

Ms Cheyne: Mr Werner-Gibbings, I have no idea, to be frank. I understand that now Minister Paterson had some comments at the time about the overall membership, in terms of duplicating the function, but I am not aware of any comments that the Labor Party made about the quality of the work, the quality of the membership or its product, particularly given that the dangerous driving review report was only delivered to government the day before the caretaker period.

MR WERNER-GIBBINGS: Another was:

> The consideration of issues around sentencing and the law reform should be entrusted to experts and community members who base their decisions on substantial evidence and consultation ...
>
> Now this Assembly committee inquiry set up by the Independents for Canberra and the Labor Party is just going to replace the hard work of these community members with political exposition and hot air.

From now on, sentencing and law reform will not be approached in a way that listens to experts and community members, or there is no evidence based consultation; it is politics from now on?

Ms Cheyne: That is not the approach that I will be taking, Mr Werner-Gibbings. I certainly take very seriously that, in many aspects, the role of the first law officer is to be above politics. Mr Cain and I have already had several conversations about this. I note that the previous iteration of this committee was incredibly productive in terms of its inquiries and the reports that it undertook. Certainly, there were dissenting remarks from time to time, but, as a committee, and as an observer of that committee, it seemed to work very effectively in providing at least a considerable number of recommendations in each report that were consensus based. I would not suggest that committee inquiries are necessarily political or places of expositions of hot air. I think they are very valuable.

THE CHAIR: Yes. We leave all that at the door when we come into the committee.

Ms Cheyne: We certainly try to.

MR WERNER-GIBBINGS: Which inquiries was Mr Rattenbury referring to when he said "the Assembly committee inquiry set up"?

THE CHAIR: That is going a bit offline, I think.

Ms Cheyne: Yes. I do not know.

THE CHAIR: Minister, do you want to respond?

Ms Cheyne: Yes. I do not know—unless you have an inquiry you are about to tell me about.

THE CHAIR: I have two supps on the substantive line of questioning. I note the government response to the JACS inquiry on bail is not published on the former committee's web page. Procedurally, I am not quite sure when this is going to appear somewhere.

Ms Cheyne: Mr Cain, I noticed that myself on the weekend and it annoyed me too. I am not sure whether that is a step that the directorate has missed. I do not believe so, because it is available on our drive for when papers are tabled. It is certainly there, but it does not reach the same importance of publishing it for everyone to read. Hopefully that is addressed soon. If it is for us to do, and the Clerk's office is seeking us to do something, I would love to know so we can rectify it.

THE CHAIR: I just received immediate advice that it is being attended to. Thank you, secretariat.

Ms Cheyne: Wonderful.

THE CHAIR: Finally, before we get to Mr Rattenbury for some supplementaries on this, is the disbandment of the council an indication that you disagree with how the former Attorney-General dealt with bail and sentencing reform?

Ms Cheyne: No.

THE CHAIR: That is for the record.

MR RATTENBURY: Attorney, there was obviously money allocated to this program. What is the status of the money that had been allocated to this piece of work?

Ms Cheyne: As you are aware, Mr Rattenbury, the quantum up to June 2025 that was allocated from its establishment was $1.4 million. My understanding is that $650,000 has been not spent. In light of some of the observations that we have had at AMC, we are seeking how we can direct that remaining funding in a practical way to support detainee outcomes on release.

MR RATTENBURY: Is it permissible under Confiscated Assets Trust Fund rules, for want of a better word, to make that allocation or does money need to go back into the fund and then a new decision needs to be made to allocate it out of the CAT?

Mr Ng: Mr Rattenbury, what I would say is that meeting the criteria of the CAT Fund will depend on the exact form of the proposal when it manifests. There are quite broad categories under the legislation, including, broadly, criminal justice activities. To the extent that the Attorney is describing activities within the AMC, a lot of things in that space might fall under that broad category.

MR RATTENBURY: Thank you.

THE CHAIR: Forgive me if I have not heard the answer to this: where is that $650,000 going?

Ms Cheyne: The directorate is preparing options for me, Mr Cain, so a decision has not been made yet, but, in discussions with Minister Paterson about the best use of these funds, we are looking at practical initiatives that support detainees at AMC.

THE CHAIR: When do you think you will know the answer to that question?

Ms Cheyne: Once I receive advice, which I hope is soon.

MR RATTENBURY: I want to ask about reform on same-day alcohol delivery services. There has been a range of community representations made to the government and various members of the Assembly. The government undertook consultation in the last six to 12 months. What are your plans for reform in this area?

Ms Cheyne: Thank you, Mr Rattenbury. The listening report from the public consultation that occurred in late 2023 was released at the end of June last year on the YourSay website. At the time, I wanted to be clear in that report that we had some further policy work to do with stakeholders, particularly on the subject of marketing alcohol and how that relates to same-day delivery. Since then, just before we were in caretaker mode, national cabinet undertook an agreement about practical action to address gender based violence and that included reviewing liquor legislation, regarding best practice reforms.

We are working with other states and territories now about the scope of that review. We expect that it will dovetail with our own commitments, which I certainly acknowledge have their genesis with you, to review alcohol advertising laws and to reform online alcohol sales. We appreciate that we need to do some further research. I would reflect that, particularly given the unique nature of the ACT within New South Wales, where there is national consistency, that would be preferable. That is probably the best update I have at the moment.

MR RATTENBURY: Community advocates have made the observation that, currently, online alcohol sales and deliveries can occur from 7 o'clock in the morning through to 11 pm at night. It is an extraordinary span of hours in which people can order alcohol. Their suggestion is that that be changed to 10 am to 10 pm. What is the

government's view on the appropriateness of that constriction of hours?

Ms Cheyne: That is something that is worth considering further. I am conscious of not trying to have an unintended impact on people who, for example, may not be driven by a particular behaviour or addiction but are simply getting their groceries. For example, a 7 am delivery time might best work for them, for everything that they seek to have delivered. That is the other side of the coin, I suppose. I certainly reflect that perhaps consumption of alcohol at 7 am, or the delivery of alcohol to be consumed at that time, is problematic. It is certainly worthy of further consideration.

MR RATTENBURY: Another key ask from the advocates is a two-hour safety pause, essentially to build in an inability for people who have already consumed a lot of alcohol to keep drinking and to extend the delivery time frame. Again, do you have a view on the appropriateness of that policy ask?

Ms Cheyne: I certainly understand its merits, but, equally, a similar issue is: what does the two-hour delivery delay do in the context of a broader shop or where there may be a legitimate purpose for needing something more quickly? I am not going to provide suggestions on what that may be, but there probably would be a few examples. It is just about making sure that the problem that we are trying to solve has the right approach taken to it.

MR EMERSON: Did you make any pre-election commitments on moving on this within a particular time frame? I noticed that South Australia has already introduced a draft bill. Do we have a time line, and was that something that was committed to before the election?

Ms Cheyne: I am not sure there was a time frame associated with it, Mr Emerson. Generally, but not always, time frames of our election commitments are for within the term, and I think that is the case here. If I am wrong, I will correct myself.

MR EMERSON: Maybe take it on notice.

Ms Cheyne: Yes.

MR EMERSON: Essentially, same-day delivery of alcohol is not regulated yet. Is that the essential position?

Ms Cheyne: I think the industry would argue that they are regulating themselves.

MR EMERSON: It is not regulated by government. There is no government regulatory framework per se?

Ms Cheyne: Yes. I would say we have two categories of stakeholders: the industry and people who are concerned about the broader issue. I think I could reflect fairly that industry would say that the way they have regulated themselves is pretty good practice. But many of us here would say it is all well and good to say that, but, when it does not have a layer of government regulation over the top of it, it is at the whim of industry and could change at any moment, and that may not, as Mr Rattenbury was highlighting, be appropriate.

MR EMERSON: In the research that has been done by the directorate, is there any emergent persuasive argument that unregulated same-day delivery, without a government framework, is a net social good or even net social neutral?

Ms Cheyne: I would not categorise it in those terms. I do not think that is one of the terms of reference we have been looking at this issue through. I note that I believe it is fair. It has issued some case studies about where it is not a social good and, in fact, it has had some pretty terrible consequences. But as to how extensive that issue is is something that remains a little unclear at the moment. Again, it dovetails with other issues such as advertising and gender based violence as well.

MR EMERSON: Thank you, Minister.

THE CHAIR: I have a minor procedural matter. Minister, I am just checking: regarding Mr Emerson's last question, were you taking it on notice?

Ms Cheyne: If it assists the committee, yes, I will take it on notice.

THE CHAIR: Thank you. I just wanted to clarify that.

MR EMERSON: I have a question about the independent review of the ACT Restorative Justice Scheme and related independent research into models of alternative restorative justice regimes which are particularly focused on sexual violence. Has that review and related research been completed?

Ms Hutchinson: The review of the restorative justice regime is ongoing and we expect the final report in the first quarter of this year.

MR EMERSON: I am going to sneak in another one about something that is ongoing: a pilot trialling Aboriginal court experience and a report prepared by a First Nations psychologist which could lead to legislative changes. Do we have an update on the time frame for that pilot? I understand that is due to be completed in June this year.

Ms Hutchinson: To clarify the question, you are asking about the court experience reports?

MR EMERSON: Yes, for First Nations people.

Ms Hutchinson: I do not have any information about that.

Mr Ng: Mr Emerson, that is an issue being run through ACT Courts and Tribunal. I would be happy to take that on notice and come back to you with information about that.

MR EMERSON: It would be great if we could get an update on progress and whether there is any legislative reform.

THE CHAIR: I have a few questions about Jack's Law. Recent reports have found that there has been a spike in knife related incidents in the ACT since 2024, with 48 knives

being seized by ACT police officers during such incidents, including from children as young as 13. In the lead-up to the last election, as you would be aware, the Canberra Liberals moved a motion in the Assembly and promised to introduce law reform to enable ACT Policing officers to use metal detecting wands in public to prevent knife related crimes by revealing the weapons. It would be known as Jack's Law. Attorney, how many knife related offences were brought before the ACT Magistrates Court in 2023-24?

Ms Cheyne: I do not have that information. I am sorry, Mr Cain. I will take it on notice and will answer to the best of our ability.

THE CHAIR: If the answer could come back today, that would be great; otherwise, take it on notice. And how many knife related offences were brought before the ACT Supreme Court in the same period: 2023-24?

Ms Cheyne: I have the same response, Mr Cain.

THE CHAIR: And what percentage of knife related offences brought before an ACT judicial body resulted in imprisonment in 2023-24?

Ms Cheyne: I will take it on notice.

THE CHAIR: Thank you. And, to the best of your knowledge, how many of the recent offenders were on bail?

Ms Cheyne: I will take it on notice.

THE CHAIR: Thank you.

MR RATTENBURY: I heard the Chief Police Officer discussing this matter on radio recently. My recollection is that he indicated that the number of police detections of people carrying a knife was consistent with previous years. Are you aware of that and are you able to provide us with the data from, say, the last five years regarding the number of matters where police identified somebody who was inappropriately or illegally carrying a knife?

Ms Cheyne: We will do our best, Mr Rattenbury. I am reading your tabling statement in response to the Assembly resolution last year and it says the statistics do not show that offences involving knives are significantly greater in public places, schools and other locations in the ACT. In fact, the statistics show that the number of offences involving a knife have remained steady over the past five years.

MR RATTENBURY: Thank you.

MR WERNER-GIBBINGS: I have two questions on restorative justice agreements in the ACT. Are they successful, and is the restorative justice process being deemed a successful process? How many agreements were entered into in 2023-24, and what was the compliance rate?

Mr Ng: Mr Werner-Gibbings, I am not sure whether we can give you a value judgement

about the relative success, but I will pass the question on to Mr Dening to discuss the statistics you have asked for.

Mr Dening: I acknowledge the privilege statement. I do not have the exact number of agreements at my fingertips right now, so I will have to take the question on notice. I can let you know that there were 28 conferences in 2023-24 and that, from the agreements that were formed in those conferences, there was a 96 per cent compliance rate. We are fairly proud of that rate of compliance. What it reflects is, I guess, the very careful way that those agreements are brought together.

MR WERNER-GIBBINGS: What does "compliance" mean?

Mr Dening: "Compliance" reflects on whether the items that the person harmed and the person responsible for the crime agree needed to be completed to address the harm that had been caused had, in fact, been performed. Under our legislation, we can allow a maximum of six months for that to occur, but, otherwise, the person harmed and the person responsible can agree together about a suitable time frame for those actions to occur.

The sorts of things that they might agree to is that the person responsible will complete some form of counselling or education, or, alternatively, that they might do something that directly addresses the harm, such as performing some work to repair harm that has been caused or repaying some losses that the person harmed might have experienced. There is a range of things and it will also depend on what might be achievable for the person responsible, noting that we work with people as young as 10 who may be responsible for offences.

On the number of conferences and the number of agreements, I cannot just say there were 28 conferences and 28 agreements, because not every conference results in an agreement. It is really up to the person harmed, whether they think that there needs to be something formally recorded and followed up. Sometimes it is enough that the issue was discussed. At other times, more informal agreements are made. We just respond to the needs of the person harmed.

MR EMERSON: What is the trend on restorative justice agreements over the past three to four years? Have they been about the same or is the number increasing or decreasing?

Mr Dening: There is consistently high compliance and—

MR EMERSON: Sorry—how many agreements are being entered into?

Mr Dening: From recollection, it has been going up over the last couple of years. It had declined from about 2016. We understand that the reason that might be the case is that, in 2016, we included adult people responsible and more serious offending. As a result of that, we received more referrals after a guilty plea or finding. When we had been working mostly with young people and less serious offences, most referrals were coming from the police, and most of them were coming as a diversion. My educated guess is that, during that period of scheme, justice was really for the victim to extract themselves. When we moved to working with adults and more serious offences and matters were continuing to the court—and we were more following parallel to the

court—justice was also being extracted by the state and by the victim. The victim, I would suggest, felt less need to impose an outcome. They saw that the state or the territory was taking a course of action of justice and that their needs were being met supplementary to that. In the figures that I have seen, there is a drop at that 2016 point, when more of our conferences were not resulting in a formal agreement. I hope that makes sense.

MR EMERSON: That is very well explained. Thanks very much. Regarding the four per cent of non-compliance, what happens if there is non-compliance with a restorative justice agreement?

Mr Dening: If there is non-compliance, we will report that back to the referrer. What that means beyond that—

MR EMERSON: It is not your decision.

Mr Dening: Yes. It largely depends on who the referrer is. In the case of police, where the referral was made as a diversion, the police are left with a decision about whether they would refer the matter for prosecution. In other cases, it may have less impact. It would just depend. Of course, we take it seriously and work with people really closely to help them towards complying with their agreements, noting that all the good work that goes into a conference can really be undermined if the person who said they would do something did not do it. We care a lot about that and we help as much as we can, but, ultimately, it is in that person's hands.

MR RATTENBURY: Are you able to give us any information on the trend of referrals from ACT Policing to Restorative Justice?

Mr Dening: Yes, I can let you know that referrals have been declining from ACT Policing. I could not tell you exactly when that started, but it has declined since around 2019-2020. We understand a few different things about what might be happening in that space.

MR RATTENBURY: Could you outline why you think that is the case?

Mr Dening: We engage regularly with police and talk about how referrals are going. We have a very close relationship with our colleagues at ACT Police. We see them as partners in administering the scheme. The feedback that we have had from police is that, as we have moved into working with adult offenders, with serious offences and working with domestic family and sexual violence, the rate at which referrals are put through our service has slowed down.

MR RATTENBURY: You mean the time to undertake the restorative justice process?

Mr Dening: That is right. It has slowed down, and that reflects the extra working resources that are involved in working particularly with domestic family and sexual violence, which came online in late 2018. That may flow onto that kind of 2019-20 timeframe. The feedback is that that slowdown impacts on their ability to administer justice in a timely manner.

Of course, when a matter comes to us, we will work with the person harmed and the person responsible to understand their needs in relation to the matter. It may be that a person harmed does not wish to participate in a process; in which case, because we are a victim-centred service, that matter is returned to the police. Understandably, that provides a little less certainty to police when they are making a decision about how to deal with a matter. It also may make it slightly more difficult for them to progress the matter to prosecution, noting that there has been a gap. I should say that this is feedback that I have received through those regular meetings.

It has been difficult to understand exactly what has been going on over the last few years, because COVID, of course, has really muddied the waters on things. It was very hard to understand in 2020-21, 2021-22 and so on exactly what we were seeing. You are probably aware that there was a drop in reported crime—a fairly significant one-during that period. So it was hard to know if a drop in referrals was directly related to a drop in crime or whether it was related to some other factors.

But, as we have moved into the last two years, we have begun to understand that there may be other more structural issues to do with moving into phase 3 and working with domestic family and sexual violence, which we need to understand better and work through. So it has been really great timing to have the review going on to help us to understand that a little bit better.

It has also been really great to have the increased investment in Restorative Justice in the last few years. Already we are noticing, as those resources are coming on board and people are completing their training, that our waitlist is reducing dramatically, and we are hopeful that this will feedback to police. We are certainly communicating about it and letting them know that wait times are reducing, and hopefully they are noticing that too, and hopefully that will have positive feedback on those referrals.

MR RATTENBURY: It does seem surprising that, at a time when the scope of the scheme is increasing, referrals are declining. So it will be interesting to see the outcomes of the review. Just briefly, are there trends from other referral agencies, probably particularly the DPP, in terms of referrals?

Mr Dening: The DPP have not been a particularly active referrer for probably about 15 years. They were a very strong referrer at a certain point in the time in the life of the scheme.

MR RATTENBURY: Why do you think the DPP have not referred matters?

Mr Dening: My understanding is that there is an issue in relation to the referral window that is available to the DPP. The DPP can make a referral at the first mention, or before the second mention, of the matter. I understand from the DPP that it is very difficult for them to look very closely at their matters prior to the second mention and that this restricts their ability to make a good decision and perform the consultation that the act requires that they perform before making a referral, and that that has served as a barrier. I understand that feedback from the DPP. I also understand that they have been engaged with by the Centre for Innovative Justice, who performed the review and we are expecting that those reflections will be reflected in the findings of the Centre for Innovative Justice.

MR RATTENBURY: Minister, this is an area in which I have no expertise. But I am told that, under the ACT's cannabis legislation, people are allowed to grow plants outdoors but not indoors. Given Canberra's climate, this presents particular challenges for people who may want to grow their own plants in the ACT. Are you able to provide any policy considerations, or is there any policy consideration of perhaps being able to change that in order to facilitate that for people in the ACT, or are there particular issues as to why that would not be an appropriate reform?

Ms Cheyne: I have no idea, is the answer.

Mr Ng: Mr O'Neil has just reflected to the Attorney that that is matter for the health portfolio, nor do I have a view on the question you asked, either. That is a matter for the health portfolio rather than the Attorney-General.

MR RATTENBURY: Because that legislation sits with Health?

Mr Ng: That is correct, yes.

MR RATTENBURY: Okay; thank you. I will take it up with them.

Ms Cheyne: Sorry.

MR RATTENBURY: No; that is okay.

THE CHAIR: I have some questions regarding vicarious liability in abuse law, in particular, with respect to the recent High Court decision in Bird. As you would be aware, the Bird decision held that institutions cannot be held vicariously liable for child abuse, as an example, perpetrated by persons who are not deemed an employee or agent of the institution. I have met with a number of stakeholders—as I am sure you have as well, Attorney—regarding this matter, and some with opposing views of course as to the implications of Bird. What is the ACT government's position on this decision in terms of plans for legislative reform? What impact, do you think this decision will have on ACT victim-survivors of historic child sex abuse?

Ms Cheyne: Thank you, Chair. Yes, absolutely. I am very aware of the concerns that have been raised from child sexual abuse survivors and victims. This matter was discussed at the Standing Committee of Attorneys-General in November. It was agreed at the time that Victoria would take the lead in providing some further advice back to that meeting, with a view to considering a nationally consistent response. I have been eagerly awaiting that meeting, which is next week. I would say, Chair, that, if not enough progress has been made, I am very open to taking steps for the ACT to act.

THE CHAIR: Given your understanding and position at the moment, where would that take the ACT if you did so act?

Ms Cheyne: I need to attend the meeting next week, Chair, to understand where other Attorneys-General are at with their thinking. My understanding is that others have also, certainly at officer level, have suggested that their Attorneys are minded to act as well. I do not want to pre-empt a discussion that we may have at SCAG next week. But this

is a significant issue and one that I do not want to compromise the outcomes of and further the harm for victims by taking too long. That is what is informing my thinking at this stage. Certainly, I am minded to pursue legislative reform. Ideally, it would be nationally consistent and we would adopt that together. But, if that is not the status of where we are at come next week, then I will be seeking further advice from the directorate about what the ACT is able to do and in what timeframe.

THE CHAIR: Has, either at the gathering of the Attorneys-General or within your own directorate, consideration been given to the possible impact of amending the Bird approach—for example, the impact on the not-for-profit sector? If people attend a not-for-profit gathering—it could be a Landcare group, for example—and abuse takes place by a volunteer, who is arguably under the direction of some supervisor, would that not-for-profit organisation, incorporated or otherwise, be held vicariously liable?

Ms Cheyne: I would note, Mr Cain, that I am aware that a vast number of not-for-profit organisations are part of the Redress Scheme, for example. So I think the nature of vicarious liability and certainly the numbers of victims who have come forward with their concerns and seeking change shows what a significant issue this is in terms of justice and fairness. That is one of the primary considerations for me. But any legislative reform that we undertake, especially if it is not going to go down the path of nationally coordinated, will, of course, be subject to consultation.

THE CHAIR: I think the intent is to make sure people who have suffered grievous harm are somehow compensated through the judicial system, recognising that a civil remedy is not always available, because sometimes the perpetrator has passed on. Some have brought their concerns to me that, if Bird is addressed legislatively, the not-for-profit sector could experience serious unintended impacts, particularly on their insurance premiums and their volunteer participation. In fact, their real existence could be in jeopardy if, as I said earlier, abuse happens during an activity of, say, a Landcare group and the organisation or even the supervisor is found liable. Arguably, that would have a serious impact on our volunteer community.

Ms Cheyne: Mr Cain, I take seriously those points you are raising, and I certainly would not want to be seen to be dismissive of them. I think there could be consequences, but I am reminded not to provide commentary at this stage on what may be a hypothetical. But I certainly take your point.

THE CHAIR: Is there a timeline that you are working with on this issue?

Ms Cheyne: I will have a clearer timeframe next Friday.

MR RATTENBURY: Attorney, do you have any advice or indication on how many cases in the ACT or how many applicants could be affected by this decision?

Ms Cheyne: No, Mr Rattenbury. I recall you asked me this question in question time in December. I do not think I have that data. But certainly, Mr Cain, and yourself, I would expect, and I have received multiple representations of people concerned. But, in terms of the quantum, I do not have that immediately available unless someone does. But I presume it is also potentially hypothetical.

MR RATTENBURY: Okay. Thank you.

MR WERNER-GIBBINGS: This question might be moot. Two weeks ago, DeepSeek was all around the news and decisions were made federally. How has that impacted what the ACT government is doing? What is the ACT government's approach to DeepSeek and equivalents that will be coming later?

Ms Cheyne: Thank you, Mr Werner-Gibbings. That is a pertinent question. I think there is an understanding and an appreciation across government that artificial intelligence in and of itself, as a concept, has many benefits, especially where it may be able to automate processes or provide quick analysis or whatever it may be. Where the challenges arise is when a particular product poses a risk to our own technology, estate and our data in how it is captured and how it is used.

DeepSeek attained significant amounts of data to train its AI model. That data is subject to foreign control and risks of influence. For that reason, the Secretary of the Department of Foreign Affairs, as you recognised, issued a mandatory direction under the Protective Security Policy Framework to prevent the access, use or installation of DeepSeek products, applications and services from all Australian government systems and devices. Then, under the ACT's Protective Security Framework, two days later, I issued a direction that was consistent with that, restricting the use of DeepSeek in the ACT government due to that unacceptable security risk.

MR WERNER-GIBBINGS: And, I guess, that is likely to be the process if other AI programs, depending on where they come from because we have Bing and Copilot on our computers.

Ms Cheyne: I would say, Mr Werner-Gibbings, that an AI product in and of itself is not always risky. But a product like DeepSeek, through the analysis or the assessment that Australia undertook a sovereign decision—notwithstanding that there were plenty of moves afoot in the other nations—was about protecting our national security interests. So, I would expect, based on the advice that we received from the federal government on future products, that similar assessments will be undertaken into those and any emerging technologies that come along.

THE CHAIR: Is DeepSeek banned on ACT government devices?

Ms Cheyne: Yes.

THE CHAIR: And TikTok?

Ms Cheyne: Yes.

THE CHAIR: What other apps are specifically banned on ACT devices? Could you provide a list for the committee of all the—

Ms Cheyne: I believe it is those two.

Mr Johnson: At this point, in terms of the prohibition as a result of advice we have had in terms of the security of them, those are the two. Of course, as you create an ACT

government platform, there are other things that the ACT government system allows and does not allow. But they are the only two that have been declared under the provisions we have just spoken about.

THE CHAIR: Okay.

MR RATTENBURY: Attorney, in the previous session with the Director of Public Prosecutions, she spoke about the significant benefits offered by witness assistance support officers.

Ms Cheyne: Yes.

MR RATTENBURY: As I am sure you are aware, I was involved in that. They had three temporary positions. Have you had any discussions with the director about the ability to either continue those roles or potentially grow those roles?

Ms Cheyne: Thank you, Mr Rattenbury. Yes. In our first meeting, the director certainly impressed upon me the value of this service—and I think that was clear today in the evidence that she provided. As you heard, and are aware, the ongoing funding is for three positions and that an extra three were provided for under the Confiscated Assets Trust. As you also are particularly aware, that trust and the quantum that is within it fluctuates from year to year. So, as an ongoing funding source, that is really not the intention for it. But I think the evidence that we have seen and heard from the director about its value is certainly front of mind for me. Like all decisions of this nature, it will be subject to budget processes. But I am actively considering the mechanisms with which we can ensure that this service remains high quality.

MR RATTENBURY: Thank you.

THE CHAIR: I have a question regarding electronic monitoring. As you are aware, the government has a plan for a staged implementation of electronic monitoring—it was also a policy of the Canberra Liberals in 2024—and will, if implemented, will bring the ACT in line with all other Australian jurisdictions. A media release on 6 September said that there would be a staged implementation. Where are we up to with introduction of electronic monitoring in the ACT?

Ms Cheyne: Minister Paterson and I, are undertaking this work technically. Minister Paterson is the lead minister, but I will assist to the extent that I can. From the experience of other jurisdictions and stakeholders within the ACT, they have shared that electronic monitoring by itself is not the whole answer, though it certainly can be part of it in circumstances. But it is has been impressed upon us that wraparound support and engagement is necessary to have the most positive impact.

There has been feasibility work that was funded in the 2023-24 budget. That work is nearing completion and will inform the planning of the staged implementation of electronic monitoring. That study includes consideration of at which point electronic monitoring could be utilised within the criminal justice system; legislative and human rights considerations; a review; in other jurisdictions, technical opportunities and limitations of it; the potential outcomes and impacts of introducing it; and how key justice agencies would be impacted by the introduction of it from inception to delivery.

Going to one of my opening points, Chair, this is probably a quite good example of where we can invest in one aspect of the justice system but it has consequences for the rest of the system. That is front of mind for me at this time. The introduction of it and the final implementation plan is subject to the passage of legislation, then budget funding and then procurement of the product. The first stage of an approach to the market for a provider is underway through the release of a request for expression of interest. You may be aware that we have committed to trialling in the first instance for domestic and family violence perpetrators, at the right time. But, again, the success of that trial is very much contingent on ensuring that we have the support and engagement of all domestic and family violence stakeholders as we undertake this planning process.

THE CHAIR: Do you actually have a timeline for drafting legislation, procuring funds and actually commencing the use of them? Is there a timeline that you can make available?

Ms Cheyne: Not that I can immediately share, Chair, simply because the funding relating to it is obviously subject to budget processes. So, necessarily, those are considered by government and I cannot pre-empt them.

THE CHAIR: What about drafting of the legislation? That is something obviously with your department—or is that with Dr Paterson?

Ms Cheyne: Minister Paterson is the lead and is supported by me. In terms of the drafting of the legislation, again it is reliant on that feasibility work which is nearing completion.

THE CHAIR: The media release, on 6 September last year also noted that the government is working closely with domestic and family violence stakeholders to navigate the complexities of using electronic monitoring in cases involving family violence. What kinds of complexities did the government then have in mind that you are able to comment on?

Ms Cheyne: I think it goes to that point regarding wraparound services and support, and that electronic monitoring as a standalone action is not the whole answer. There is no silver bullet here. It is a tool that, when used effectively, can have some really positive results, but it should not be used in isolation. That is what we have been working on really closely with domestic and family violence stakeholders.

THE CHAIR: Are you able to say which particular stakeholders you are consulting with?

Ms Cheyne: DVCS is an obvious one. Certainly, I have had a meeting with them, and I understand Minister Paterson has as well. Of course, the Human Rights Commission is very engaged in this issue and what this looks like. I am sure there are plenty of others, but I do not have that in front of me at this stage.

Ms Blount: Minister, if I may. I have a list.

Ms Cheyne: Sure, go ahead.

Ms Blount: There was a discussion paper that was released after that media release. We did targeted consultation, so there were a range of stakeholders that we sent it to, but in relation, particularly, to domestic and family violence: The Women's Legal Centre, Domestic Violence Crisis Services, the Canberra Rape Crisis Centre, Domestic Violence Prevention Council, Toora Women, Yeddung Mura and Winnunga.

THE CHAIR: Thank you. And, finally, you talked about trying to forecast the impact, so what sorts of forecasts have you done on the impact of electronic monitoring on recidivism? Are you able to comment on that?

Ms Cheyne: I am trying to be as helpful as possible, Mr Cain, but I think, with the feasibility work not yet having been finalised, I cannot provide that at this stage.

THE CHAIR: Mr Werner-Gibbings?

MR WERNER-GIBBINGS: Thank you. This is possibly a little bit into the weeds. The ACT government's election commitment to expand the legal definition of what it means for a protection order to be personally served on a respondent—what does that mean?

Ms Cheyne: Thank you, Mr Werner-Gibbings. We are seeing, again, right across the different arms or elements of the justice system, domestic and family violence having an impact, and one of those is in relation to personal protection and family violence orders. That is having an impact on the courts in terms of the numbers that are being presented seeking an interim order and then proceeding to a final order, as well as having consequences for ACT Policing.

Under the legislation, at the moment, it states, and I am paraphrasing, that these orders need to be personally served upon a person, so that means, effectively, serving the order face-to-face to the person. You can imagine that in some situations people might not want to be found, or may not come to the door, or may simply be away or all manner of reasons.

When we are seeing the use of these orders and the granting of them in the numbers that we are, that is then having a flow-on effect to ACT Policing. I would argue, and I believe that CPO would be in agreement, that in some cases it can be very straightforward and in others it can take days or weeks or longer. Anecdotally, I understand from the courts, that that is their understanding as well, so, in terms of them being able to be in place as a protective mechanism, that has further consequences for a person who is seeking them.

What we are hoping to look at in this term of government, and ideally as soon as possible, is this: is it necessary for an order to be personally served on a person in the way that it is currently defined and executed, or can there be something else that is more streamlined, particularly with the technologies available to us in this day and age, and further supports ACT Policing in not having to spend days or weeks or months looking out for a person, trying to find a person, attending their premises and seeking to get them to answer the door. That work is in its infancy, but hopefully that demonstrates why it is an election commitment.

MR WERNER-GIBBINGS: Yes, absolutely. So, really, there is not yet an implementation timeframe—

Ms Cheyne: No.

MR WERNER-GIBBINGS: Has this work been done in other jurisdictions or have similar changes been made in other jurisdictions so that there might be an expected outcome that we could be looking for, or is it more that we are at the forefront of this sort of legislative change, so it is a hope for an outcome?

Ms Cheyne: In terms of other Australian jurisdictions—

MR WERNER-GIBBINGS: Yes.

Ms Cheyne: I am not sure; I do not think so. In other jurisdictions, globally, there are some different approaches, notwithstanding that it is not necessarily comparing apples with apples in what these orders look like, but in some jurisdictions, there is a greater level of flexibility.

MR WERNER-GIBBINGS: That will be interesting; thank you.

THE CHAIR: Mr Rattenbury?

MR RATTENBURY: Attorney, I want to ask whether there is any work underway to repeal the Sex Work Act 1992 so that sex work businesses will be regulated in the same manner as any other businesses. Certainly, there have been representations from key community organisations about progress we have seen in other jurisdictions in changing the law. The ACT probably has gone from being a frontrunner to being somewhat left behind by latest reforms. Is it on your agenda for this term to consider these matters?

Ms Cheyne: In terms of the work that has been underway on it so far, I do not believe it has been particularly well advanced; however, I am very open to it, Mr Rattenbury. I have not had discussions with stakeholders, or those who are making those representations, at this stage, but I would be more than happy to consider it.

MR RATTENBURY: Has the directorate had any interaction with other jurisdictions about those reforms?

Ms Cheyne: I will ask the directorate.

Mr Ng: Not in the recent months, Mr Rattenbury.

MR RATTENBURY: Thank you.

THE CHAIR: Attorney, I note, with some concern, that of the ACAT annual reports, the last one that is actually published and available on their website is 2021-22. So, there is no annual report or annual review for ACAT operations for 2023-24, or even 2022-21. Have you met with the ACAT president to discuss this significant lapse?

Ms Cheyne: I have met with the ACAT president. I have not discussed this lapse, Mr Cain. That is unfortunate and frustrating, and we will see what needs to be done to get those up.

THE CHAIR: So, you have not. Do you have any idea when these reports might actually be available?

Ms Cheyne: I expect they are available somewhere, but in terms of access to them, Chair, I do not have enough information or knowledge about what has happened here to be able to give you an accurate answer at this stage. But I will ensure we take some action on this and come back to the committee as soon as I can.

THE CHAIR: Okay, so you are happy to take on notice—

Ms Cheyne: Yes.

THE CHAIR: at least to communicate to the committee the status of those reports and when they are going to be available?

Ms Cheyne: Yes, of course.

THE CHAIR: Thank you. Mr Werner-Gibbings?

MR WERNER-GIBBINGS: There are a couple of excellent retirement villages in Brindabella, but, when you go doorknocking, there are a lot of conversations about how residents can be better empowered or exercise rights. What is the ACT government's policy on enabling retirement village residents to take action if they are concerned about certain issues?

Ms Cheyne: That is a great question. Thank you, Mr Werner-Gibbings. Something that I think is not as well understood as it could be is that residents in retirement villages can access the ACT Human Rights Commission, which can investigate and conciliate complaints regarding retirement villages. In the last year or so, effectively a working group has been established across government with Access Canberra which maintains a register of retirement villages, and the Human Rights Commission has been part of that as well. We have been working on doing more to bring to the attention of residents that this is a service that is available to them.

MR WERNER-GIBBINGS: Requests I heard, certainly when I was campaigning, were about more avenues for managing complaints. It was mentioned to me previously that the government had indicated it would look at changing legislation to improve the transparency of complaints management. Is that on the radar?

Ms Cheyne: I believe that, under the Retirement Villages Act, what is already available to residents in terms of engaging the ACT Human Rights Commission and also making complaints to ACAT is considerable. I cannot recall exactly what previous commitment may have been made about the legislation or updating it. However, I do know that, in our discussions regarding election commitments and parliamentary agreements, there has been conversation about rental and strata commissioners and how they interact with retirement villages in that representation. Very much so, I do not wish to undermine the

powers that already exist with the ACT Human Rights Commission. In fact, we perhaps need to do a little more to share with as many people as possible what is available. I would be very happy to see whether Ms Karen Toohey would be available to meet with you if you have had those sorts of representations. We have been able to give briefings to other members.

MR WERNER-GIBBINGS: That would be helpful.

THE CHAIR: Attorney, this is with regard to the minimum age of criminal responsibility. As we are aware, it will be raised to 14 on 1 July. There is a situation where a 13-year-old is currently being prosecuted. Legal Aid have argued that the prosecution of a 13-year-old between the notification of the changes and the date on which they come into force, which could be well after 1 July, is an abuse of process. I wonder whether you have had that submission from Legal Aid? How have you responded to that?

Ms Cheyne: Decisions to prosecute are matters for the Director of Public Prosecutions. I do not think there is any comment that I can make.

THE CHAIR: It was too short a session with the DPP this morning to ask that. But, with Legal Aid having concerns, it touches on the legislation and the policy that is driving it. In anticipation of this change on 1 July, has it come to the front of your department's mind that there may be some unintended consequences in this period, as we are awaiting the change?

Ms Cheyne: I seek the department's advice.

Mr Ng: Mr Cain, all I would say is that the current legislation reflects the legislative intent of the implementation of the minimum age of criminal responsibility reforms.

THE CHAIR: Do you have any comment on the prospect that a 13-year-old who is charged now, for example, may not be prosecuted until after 1 July, when the age is raised to 14? Does that cause you—

Mr Ng: I would not seek to comment on those proceedings.

THE CHAIR: As a general scenario, not a particular scenario, does that cause you any concern at all? Is that how you intended the legislation to operate?

Ms Cheyne: The intention of the government at the time, and now, was for the age to be raised in a two-stage way—being raised to 12 and then to 14. Any operation within the legislation as it stands is being undertaken rightly and is again a matter for the DPP.

THE CHAIR: As you would be aware, during the debate there was some criticism of the carve-out provisions for the 12- to 14-year-old age bracket. Has the government reflected upon those criticisms or other submissions that you have received? Are there any plans to amend the carve-out approach at all before 1 July?

Ms Cheyne: No.

MR RATTENBURY: As a supplementary, regarding Mr Cain's question about this specific matter, are there not transitional provisions in the legislation that will address the concern that Mr Cain has raised?

Ms Cheyne: I understand that, but how about I take that on notice?

MR RATTENBURY: It was not meant to be a pop test on the legislation, Attorney. Perhaps the officials might help us with—

THE CHAIR: We have a subject matter expert on the committee too. Perhaps—

MR RATTENBURY: It is not my place to answer the questions, Mr Cain. As tempting as it has been numerous times this morning—

THE CHAIR: It was just a comment, Mr Rattenbury.

MR RATTENBURY: I have restrained myself carefully.

THE CHAIR: Have you?

Ms Cheyne: It has been admirable.

THE CHAIR: You are still?

MR RATTENBURY: That is why I am asking officials whether they might describe to us the transitional period to address your concern.

Mr Ng: Mr Rattenbury, my understanding is that the application, or the request that has been made by Legal Aid, is available under the current legislative framework. The outcome of that application is a matter for the court. The legislation certainly does not preclude, as I understand it, the type of request that Legal Aid has made.

MR RATTENBURY: Mr Ng, regarding 1 July, when the new legislation takes effect, my recollection is that the provisions prevent the continuation of prosecutions. Those who would be custody at that time would transition out of custody.

Mr Ng: Indeed; yes. That is right, Mr Rattenbury. There are transitional provisions which kick in from the commencement of the higher age. I thought you were referring to the request, with reference to Legal Aid—

MR RATTENBURY: No—sorry.

Mr Ng: and avenues of process regarding the commencement of proceedings earlier. So, yes, there are. I would be happy to take on notice the detail and will provide to the committee what those exact transitional provisions are.

MR RATTENBURY: Thank you. The chair, in some ways, seems concerned that there would be ongoing prosecution against this young person. My understanding is that would not be possible under the transitional provisions.

Mr Ng: Yes; indeed. I apologise. I misinterpreted that question.

THE CHAIR: So that is the answer to my question, I guess.

Mr Ng: Yes; that is right.

THE CHAIR: The prosecution would not continue if they were still 13 years old and it was not one of the carved-out offences.

MR RATTENBURY: Yes. That is my understanding.

THE CHAIR: That was really what my question was seeking.

MR RATTENBURY: I do not think there is any need to take that on notice. I think that has been resolved.

THE CHAIR: Yes. We have perhaps a minute for any other short questions.

Ms Cheyne: Mr Cain, with your indulgence—we will be guided by you and the committee—I might be able to respond to some of the matters we took on notice, if that is useful. In response to Mr Emerson's question about the time frame for reforms on aspects of same-day delivery, there was no time frame provided in the election commitment. And I believe Mr Ng can now give you some further detail about restorative justice.

Mr Ng: Yes; indeed. Mr Chair, there was a question from Mr Werner-Gibbings about the relative success of conference activities. I declined to provide an opinion, but I think it would be useful to refer the committee to the client satisfaction statistics that are reflected in the JACS annual reports—not only for 2023-24 but for previous years as well. For 2021-22, there was a 99 per cent satisfaction rate for participants; in 2022-23, it was 99 per cent; and, in 2023-24, it was 98 per cent. That is the first bit of information. The second bit of information is around the number of restorative justice agreements for 2023-24. That figure is 16.

THE CHAIR: On behalf of the committee, thank you all for your attendance today. If you have taken questions on notice—the record will show that—please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*. On behalf of the committee, I thank witnesses who have assisted the committee through their experience and knowledge. I also thank broadcasting and Hansard staff for their support. If a member wishes to ask questions on notice, please upload them to the parliamentary portal as soon as possible and no later than five business days from today.

The committee adjourned at 11.45 am.