



**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

FRIDAY, 21 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

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

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Amended 20 May 2013

The committee met at 1.35 pm.

Appearances:

Public Trustee and Guardian

Hakelis, Ms Robyn, Acting Public Trustee and Guardian

Hughes, Mr Callum, Senior Director, Finance

Lacey, Ms Danae, Senior Director, Client Services

THE CHAIR: Good afternoon, and welcome to the public hearings of the Standing Committee on Legal Affairs for its inquiry into annual and financial reports 2023-24. The committee will today examine the Public Trustee and Guardian, and the ACT Human Rights Commission.

The committee wishes to acknowledge the traditional custodians of the lands 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 events.

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 from the transcript questions taken on notice.

This session we welcome witnesses from the Public Trustee and Guardian. 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 please confirm that you understand the implications of the privilege statement and that you agree to comply with it.

Ms Hakelis: I acknowledge the privilege statement, and I agree with it.

Mr Hughes: I acknowledge the statement.

THE CHAIR: Thank you very much. We have someone online too.

Ms Lacey: I understand and accept the privilege statement.

THE CHAIR: Thank you very much. We will go straight into questions, and I will lead off. In the Audit Office's report no 6 of 2024, *Business transformation program: ICT renewal*, on the activities of the Public Trustee and Guardian, published last August, the audit found that the Public Trustee and Guardian's planning for its ICT renewal activities was poor, as were governance and administrative arrangements for its implementation.

The Auditor-General handed down nine recommendations. Does the Public Trustee and Guardian agree or agree in principle with each of these recommendations?

Ms Hakelis: Thank you for that question. Yes, we certainly do. The government response was submitted in December, and in relation to the nine recommendations, we do agree. One of the recommendations had already been implemented prior to the audit report being finalised, and that was in relation to procurement applying to the PTG agency. The previous PTG directed the agency to follow procurement law. I have seen a copy of that correspondence that has gone to the agency, so that has been completed—that particular recommendation.

The remaining recommendations primarily are to be finalised by 30 June, and what that involves is engaging closely with JACS and the ICT infrastructure that JACS has and implementing that and incorporating that into the PTG's ongoing IT issues.

In terms of our internal framework, in trying to address the government response, we have an IT risk committee which just met last week. We have specifically spoken about these particular recommendations and how we can implement them by the 30 June timeframe, and they have also been added to our internal audit and risk committee so the audit and risk committee can make sure that we are complying with the recommendations that we have agreed with.

THE CHAIR: Has the Public Trustee and Guardian invested further into the CRM system since the report was published?

Ms Hakelis: No, not since the report has been published; there has not been any further investment.

THE CHAIR: Okay. Does the Public Trustee and Guardian still have any contracts with software vendors for the purpose of developing and implementing aspects of the business transformation program?

Ms Hakelis: We have an ongoing relationship with a particular provider who are able to give us support with the program that was implemented under the business transformation project; that is called Dynamics. We do have an ongoing relationship with the provider and that is to try and fix issues that arise—so, quick fixes to make sure that the program is operating effectively. Aside from that, there is no overarching implementation; it is just immediate IT support that is being undertaken at present.

THE CHAIR: What was the name again?

Ms Hakelis: Dynamics.

THE CHAIR: It is just called “Dynamics”?

Ms Hakelis: Dynamics is the name of the program that was implemented under the business transformation project that is being used by some parts of the PTG.

THE CHAIR: And what is the cost of that current support contract?

Ms Hakelis: At this very moment, there is actually not a contract in place. That is something that I am just negotiating and trying to figure out—exactly where we are up

to and how we can get best value for money and enter into that contract.

THE CHAIR: Sure. Mr Werner-Gibbings?

MR WERNER-GIBBINGS: A question about the number of people in the 2023-24 financial year that ACAT appointed the Public Trustee as guardian for—250 people in 2023-24. The previous two financial years, the number of referrals was a steady 216. Do you have a reason or an insight into the reason for the increase in the number of referrals?

Ms Hakelis: Sorry, just to clarify your question: was that specifically an increase in referrals in relation to guardianship orders?

MR WERNER-GIBBINGS: Guardianship orders, yes. There were 250 guardianship orders made by ACAT to the Public Trustee in 2023-24, and in the two financial years previous there were 216 in both years. It is not a massive increase, but it is up on the trend, and I am interested if there are observations that you can make on that.

Ms Hakelis: Thank you for that question. The way that people are identified to ACAT can be through various means. I do understand that COVID may have impacted those numbers, where people were probably identified and brought to the attention of people who could refer our clients to ACAT for an order to be made, and that, to some extent, could account for the increase that has taken place in 2023-24; but, otherwise, I am happy to refer to Ms Lacey. Do you have got any further details about that increase?

Ms Lacey: Thank you, Robyn. It is really demand driven. When ACAT receives an order for consideration of a guardian to be appointed as a substitute decision-maker, ACAT needs to be satisfied that the person has impaired decision-making, which is usually supported by medical evidence. I would say, due to our aging population and, also, as Ms Hakelis said, COVID; I would expect that that has had an impact on the numbers. As you rightly note, it is not a huge increase in numbers. We certainly do not go out to seek to be appointed as guardian of last resort, but it is very much a demand-driven space from the community and those people who require that type of substitute decision-making arrangement.

MR WERNER-GIBBINGS: Thank you. Are you able to tell me if there were more applications made to ACAT for guardianship orders in the previous financial year compared to the two before? There were more applications; there might be more referrals, which would be also interesting.

Ms Lacey: The number of applications to ACAT did increase in line with the numbers that we were seeing having been appointed as guardian of last resort.

MR WERNER-GIBBINGS: So the question might be: why are people making more applications? I will leave that for the moment. I might come back to it.

MR RATTENBURY: The office manages affairs for vulnerable people on their behalf, but you also have oversight of private managers who are appointed by ACAT. I wonder if you could tell me how many people are managers that have been appointed by ACAT in the ACT, at the moment? How many of those are there?

Ms Hakelis: Yes, we can. I will again refer to Ms Lacey, who has those statistics.

Ms Lacey: Thank you for the question. Currently, we are aware of 863 active orders in the ACT where private managers have been appointed by ACAT.

MR RATTENBURY: Thank you. I wanted to then understand whether all those managers are up-to-date in lodging their annual examinations and explore your oversight role of those private managers.

Ms Lacey: No, they are not up-to-date and that is for various reasons. It can be that the manager does not understand that they are required to lodge annual accounts with the Public Trustee and Guardian. We do work consistently with ACAT to try and have the tribunal members explain that, upon their appointment, there is that requirement under the legislation. That is ongoing. That work is ongoing.

The last time we met with the Assembly, we stated that we had put in place a reminder-letter process being sent out to private managers on the anniversary of their appointment—to lodge those annual accounts with the Public Trustee and Guardian. Because of ACAT's decision to cease sending those letters sometime during the COVID pandemic—adjudicative difficulties during that time—there was some delay in us being aware that that process had been ceased by ACAT. We took steps to re-implement that, and that has seen a large number of managers have several years examined by the PTG. The numbers indicate that we have not quite got around to absolutely everybody, but we do continue to work with ACAT.

We have also made a commitment to roll out training for newly appointed private managers and private guardians in understanding their roles. It is not something that we necessarily are tasked to do, but we do see it as an important community engagement process to ensure that we offer that support for people in understanding their roles, where it may not be communicated well from ACAT.

MR RATTENBURY: Thank you. That sounds like good progress. When did you start sending out those annual reminder letters?

Ms Lacey: It was April 2023, I believe, but we also have been aware that there has been a significant change in circumstances with private managers since the time of appointment, which could have been around 2020 or 2021, so we have lost contact with some of those private managers, and we are working to re-establish that communication with them.

MR RATTENBURY: What steps do you take when there are these issues or discrepancies in the way that the private managers are doing the role as compared to how they are supposed to do it?

Ms Lacey: I must say it is a low number. Most private managers do the right thing and have a good understanding of the support and care they are providing and those decisions they make for their family members, usually. But we do have an obligation to refer the matter to ACAT for review of the order and the arrangement/appointment of the private manager if we suspect that there is maladministration or if there is

non-compliance from the private manager to comply with the annual examination of accounts. ACAT generally then call a hearing to understand what is going on for that private manager, and the represented person, and they will take steps accordingly.

MR RATTENBURY: Thank you.

THE CHAIR: Another audit report of the Public Trustee and Guardian, no 3 of 2023, *Financial management services for protected persons*, was published in June 2023. I know that is a little while ago. The audit report made 17 recommendations and found that the Public Trustee and Guardian's delivery of financial management services to protected persons, and its role in examining financial accounts submitted by private managers, had been poor.

The Auditor-General described the situation as featuring:

Shortcomings ... across a range of governance, administrative and service delivery arrangements.

I am wondering if you have an update on responding to that report, or whether it is all completed, and what changes were made?

Ms Hakelis: Yes, thank you. I can initially take that question and then refer to my colleagues for any additional detail. That particular report is outlined from page 23 of the annual report, and of the 17 recommendations all but one were agreed; one was agreed in principle.

It is indicated throughout the report that the status is complete in relation to all of those recommendations except for recommendation 2, which ties into the IT issues that we were discussing earlier—that the PTG is still progressing our thoughts in relation to IT.

THE CHAIR: So, broadly speaking, if the Auditor-General looked into the same area from today, are you comfortable that he would not find the deficiencies that were found in that report I have mentioned?

Ms Hakelis: I think I am comfortable that it has indicated all the recommendations have been completed, yes.

THE CHAIR: In your opinion, what was the most significant change or improvement?

Ms Lacey: I think all of the recommendations, and adopting all of those, were significant in their own right. We have very much been on the track of continuous improvement in all of the functions across PTG, with a focus particularly in our financial management services area, and we always welcomed the report as an opportunity to improve.

MR WERNER-GIBBINGS: Cryptocurrency—the Public Trustee and Guardian identified cryptocurrency in deceased estates as a fraud risk. I do not yet have requisite cryptocurrency expertise. Why is it a fraud risk and what are the steps being taken to mitigate that risk?

Ms Hakelis: Thank you for the question, and I will hand to Ms Lacey in a moment. I am not actually sure that it is specifically in relation to estates. Cryptocurrency is a fraud risk, particularly if it is a new and emerging particular piece of technology. While we do have risk registers that might be able to control someone stealing a physical item for example, cryptocurrency, as you have indicated, is a developing area where lots of people are trying to learn about it and trying to manage it, so in that sense, it is a risk. We have a cryptocurrency wallet, and we are actively turning our minds to how we can appropriately address any fraud issues that might arise. I will now refer to Ms Lacey who has got some further detail; it is not specifically in relation to estates.

Ms Lacey: Thanks, Robyn. It is not in relation to estates. It can relate to other clients, where the PTG is engaged to provide services, and that could include our confiscation of criminal assets work, as well as when we are acting as substitute decision-maker, as a financial manager or in our capacity as trustee.

I am part of a national working group with the other states and territories' trustees. We are engaging Kimberley Martin to provide us comprehensive advice on where our roles and responsibilities lie with regard to digital assets and rights, because we do see this as an emerging space. PTG does not currently hold any cryptocurrency on behalf of any of its clients.

We do recognise that there are matters within our confiscation of criminal asset space and, in time, we may be tasked with managing that type of asset upon forfeiture to the territory. We are working closely with the DPP in that space to ensure that that is dealt with in a really sensible way, and that will be transferred between the AFP and the PTG—lots of controls in place. We did want to call it out there for prudence to ensure that, if we were tasked with dealing with cryptocurrency, we had that risk identified and that we could deal with that accordingly with internal policies and, also, adopting advice from a professional in that space.

MR WERNER-GIBBINGS: Thank you very much. The working group that you identified is still treating cryptocurrency as an emerging issue. Probably, I suspect sooner rather than later, it will have well and truly emerged, but the implications of its use will continue to spread. Is the working group looking at what is happening now and making plans to expand its knowledge base and its actions down the track?

Ms Lacey: Yes, that is correct. It is already here, and it has already emerged. The issues that are emerging are in relation to our role as a trustee, and how we operate in that space nationally. Also, we work closely with the AFP, and we have received training and consultation with the AFP on how they work with this type of asset in the work they do. We are continually holding stakeholder meetings within that space as well. We work closely with another national group in the confiscation of criminal assets that has a very large focus on cryptocurrency and the dealings of that, and that is with the commonwealth and the states and territories too. So we are very much aware of the risks that cryptocurrency and digital assets pose for our agency and very committed to ensuring that we can manage those accordingly.

MR RATTENBURY: Ms Hakelis, I am conscious that you have only been in the role a short period of time in an interim position. I would be interested if you have any reflections for the committee in terms of the scan you have done of the organisation and

what areas need particular work. Are there any outstanding issues that have emerged for you in taking on the role?

Ms Hakelis: Thank you for the question. In the time that I have been there, I have been lucky enough to closely engage in the work that is ongoing in the PTG. I have attended ACAT hearings, and I have seen our guardians and financial managers attend those hearings and how fulsomely they understand the legislation and understand the way that they need to care for our clients and ensure that the most vulnerable people in Canberra are being looked after. I have been otherwise out on property visits with our property team ensuring that estates or other property are kept secure and kept visibly appealing to make sure that people feel safe in and around properties that we are managing.

I think my initial reflection is that the agency is undertaking some amazing work, and it is a privilege to be part of it, particularly noting the vulnerable Canberrans that are our clients. It is great to get to work with such wonderful and dedicated people.

There are audit reports that the PTG has faced. I am acutely aware of that, and I think it is fair to say that the previous PTG has done a brilliant job of really implementing a strong risk framework in the agency. I would say that that is in a stage of development. I am very keen to progress what the previous PTG has implemented, but I think our risk management is in a state of development. In saying that, JACS is rolling out a comprehensive risk management tool that starts in March, which is perfect timing for the PTG to take that next step up and make sure that we can enter that next stage of risk maturity.

MR RATTENBURY: Thank you. In terms of particular pieces of work, over a number of years now there has been a growing movement and policy direction in the PTG to move from substitute decision-making towards supported decision-making. Are you—the royal “you”—able to give me an update on how that work is progressing?

Ms Hakelis: I am happy to refer to Ms Lacey.

Ms Lacey: We have invested considerable time in a project to develop a training package and resources for people appointed as private guardians and private managers. That is something we are working on with ACAT, actively, now, to deliver those sessions in person or online or a combination of both to support people in those decisions.

In my prior role to taking up this opportunity, I spent a great deal of time in ACAT very much trying to not be appointed but instead highlighting, under the legislation and the changes that we saw in 2023, and demonstrating where supported decision-making could be made available to a person and to really test that before an order was made to put in place a substitute decision-maker. We are certainly very, very committed in that space.

A new subteam within our agency has been created to ensure that we deliver that support not only to private managers and private guardians but also to community members who may be in that supported decision-maker role for their family or friends. And we have been working with the legal and policy people with the Human Rights

Commission to consult on phase 2 of the supported decision-making framework that we are wanting to roll out in the territory, which will really embed those roles when someone has that position as a supported decision-maker in an individual's life, and to really ensure that we are there and equipped to help people with understanding that role.

MR RATTENBURY: Thank you. And are there any barriers to the continued roll out of that work or do you think it is now a process of just persisting at it?

Ms Lacey: I think persistence is very much key. I have flagged with the Human Rights Commission policy team that the third parties in an individual's life are usually the trickier ones to work with—banks or super funds or other federal stakeholders in that space—to really understand and accept a supported decision-maker in lieu of having an official document being an order or an enduring power of attorney instrument. However, that is part of the developed world and how we deliver that change with the way we operate in those spaces. We will ensure that we continue that work.

I am also in another national group working with elder abuse considerations, and another newly formed advisory committee for the update to the *Power to Choose* booklet, and things like that, for enduring power of attorneys. So this agency is very well versed and very well ingrained in ensuring that that supported decision-maker framework goes as far as it possibly can.

MR RATTENBURY: Thank you.

THE CHAIR: Regarding GreaterGood, what is the process for choosing beneficiaries to receive funds from a GreaterGood account?

Mr Hughes: I can answer that. We have some different tiers within the GreaterGood part. Ms Lacey, do interrupt if I do not answer correctly. Generally, we have memorial accounts, which are set up by a person's will. In that will, they will explicitly put in there that that is to benefit a certain cause or a certain charity. Generally, they will give us the ABN of that charity as well, and if that charity no longer exists, they will have what we are to do with the benefits from there. It will most likely be to another charity with like causes.

We also have accounts set up where people are still living and are giving into those funds continuously. Every year they may change their cause that they want to contribute to, so we are in contact with the settlers of those accounts periodically at a minimum to find out who they would like to contribute to.

Then there are some where we do not necessarily have contact with people anymore, and that is where our board will come into that so we can get some submissions from charitable causes into GreaterGood, and we will take that to our board meetings for a decision to be made.

THE CHAIR: How many bequests were made to GreaterGood accounts in 2023-24, and how much money was received from those bequests? You might prefer to take that on notice.

Mr Hughes: I might have to take that on notice. I cannot remember off the top of my

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head. I did not do the financial statements for that.

THE CHAIR: On behalf of the committee, I would like to thank you for your attendance today. Ms Hakelis, congratulations on your appointment, and all the best with your new role.

Ms Hakelis: Thank you.

THE CHAIR: It is an interim role?

Ms Hakelis: I am just acting—only interim.

THE CHAIR: If you would like to be before us next year, that might be a factor in your application or otherwise! If you have taken any questions on notice, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*.

Hearing suspended from 2.04 to 2.20 pm.

Appearances:

ACT Human Rights Commission

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

Mathew, Dr Penny, President and Human Rights Commissioner

Rowe, Ms Margie, Acting Victims of Crime Commissioner

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

THE CHAIR: Welcome back to this public hearing of the Standing Committee on Legal Affairs for its inquiry into annual and financial reports for 2023-24. The proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and web-streamed 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.

This afternoon, we welcome witnesses from the ACT Human Rights Commission. 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 privilege statement and agree to comply with it.

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

Ms Griffiths-Cook: I also acknowledge and agree to comply with the privilege statement.

Ms Toohey: I also acknowledge the privilege statement.

Dr Mathew: I also acknowledge the privilege statement and agree to be bound by it.

THE CHAIR: Thank you all. We are not taking an opening statement, so I will go right to questions. Since 1 July 2024, the Human Rights Commission has assumed the role of ACT Privacy Commissioner. Could you please provide an update on how you have gone about performing those duties?

Ms Toohey: I am happy to, Mr Cain. We took over the function on 1 July, as you indicated. We had about 15 complaints transferred from our colleagues at the Office of the Australian Information Commissioner. Those matters were all active and on foot, so we have been endeavouring to progress those. In the first half of this financial year, we had an additional 12 complaints lodged. We are endeavouring to move through those to resolve them. Of 25, we have closed 10 that have been active over that period. Some of those have been brought under the human rights provisions, under the Human Rights Act.

We have been part of the reinvigorated Privacy Contact Officers network across the ACT. We have put some information on the website. We have done a number of

seminars on the Privacy Act. There is obviously quite some interest in it, because it has come back to the ACT. As I have indicated before, we are well-positioned to carry out that function, given that it sits alongside my responsibilities under the Health Records (Privacy and Access) Act and also under the Human Rights Act.

THE CHAIR: What have been the primary challenges as part of this new role?

Ms Toohey: As you know, in bringing on a new jurisdiction, it is about making sure that people know where to go. While the numbers that went to the federal commission were quite small—they used to get about a dozen a year—privacy matters, as you may be aware, are often quite complicated. We have had very good engagement with the directorates in our new role. Some of the challenges are around people’s understanding of the legislation more broadly. As you know, often people will say, “It is privacy,” without really knowing what that means. That has been part of our role, in terms of managing those matters and trying to educate the directorates but also, particularly, the public around what those obligations are. As you know, we administer the privacy provisions around ACT agencies, which is quite different to the federal Information Commissioner, who has broad responsibilities across the private sector.

THE CHAIR: It is my understanding from the Minister for Human Rights that the money previously provided to the Office of the Australian Information Commissioner has been allocated to your resources in this new role.

Ms Toohey: Yes.

THE CHAIR: I think that was \$177,000.

Ms Toohey: Yes.

THE CHAIR: Is that the only additional resource you have been provided with?

Ms Toohey: Yes.

THE CHAIR: Why do you think it was necessary for the ACT to assume these duties rather than leaving them under the previous arrangement?

Ms Toohey: Mr Cain, I was only notified that the Office of the Australian Information Commissioner had indicated that it could no longer carry out those functions. I was not privy to any other information. Given my role, I was approached by the directorate, and I agreed to take it on, given that, again, it aligns with other work that I do. As you are aware, I have a number of complaint-handling responsibilities, so of itself it was not that different to the work we currently do.

MR WERNER-GIBBINGS: Regarding applications for financial assistance for victims of crime, I have here that, since the last reporting period, there has been an 11 per cent increase in those applications, and, since 2018-19, there has been a 167 per cent increase. Could you give me your insights into why that is happening.

Ms Rowe: We have looked at that ourselves, because it is a significant increase over the last six or seven years. They are year-on-year increases, as you would know from

the table in the annual report. I think that speaks to greater knowledge of victim support in general. Any increase in the number of clients that we are assisting in one part of the organisation is going to lead to an increase in applications for financial assistance, because those clients are going to be advised of their entitlements in that regard. We have had year-on-year increases in the number of clients coming to Victim Support, and part of what they can access is financial assistance, if they are eligible. I think it comes down to that.

You have probably noticed that there was a considerable increase in applications for financial assistance for victim-survivors of sexual violence. I think that has come about, in part, because of our involvement in the sexual assault police review. For example, one of the things that we were required to do was to contact 181 victim-survivors whose matters did not proceed. Many of those had not had contact with Victim Support beforehand. Part of that contact was to advise them of our services and, in doing so, we advised them that they may have entitlements to financial assistance. I think that has been part of the reason for the general increase in the first applications but also in relation to the sexual violence applications.

MR WERNER-GIBBINGS: It is then a positive that more people are aware of their entitlements or opportunities to seek financial support?

Ms Rowe: From our point of view, yes, because those payments—

MR WERNER-GIBBINGS: There is greater awareness.

Ms Rowe: go towards assisting people to recover from the impacts of crime.

MR WERNER-GIBBINGS: Quite. Has expenditure increased by 167 per cent? Do they track?

Ms Rowe: Not necessarily. Expenditure has definitely increased. In fact, the government has a project at the moment to address the expenditure in the Financial Assistance Scheme.

MR WERNER-GIBBINGS: What does “address” mean?

Ms Rowe: The government is currently considering the rate of payments paid in recognition of crime. Legislation has already passed, for example, to bring in changes from 1 July this year, but the actual rates themselves have not been set. What we do know is that one of the biggest aspects of the scheme’s expenditure is the \$50,000 payments for sexual assault claims under section 203, for assaults that occurred before 2016 when the scheme changed. Payments at those levels will end after 1 July this year, except for the existing applications that are in place. They will be replaced with a different amount, and that amount has not yet been set. There is a significant amount of those applications at \$50,000 a payment. That adds to the financial assistance expenditure.

One of the things I should point out, though, is that the most significant increase that we have seen lately is an increase in immediate needs applications, and that is nearly a 50 per cent increase in the reporting period. Payments for immediate needs, which are

usually home security or relocation expenses, usually for victim-survivors of family domestic violence, are smaller payments. They are capped at \$4,000, and they are for home security. So, while the applications have increased, they are applications for smaller amounts of money so they have not contributed to the overall increase in the same way.

MR WERNER-GIBBINGS: I understand. Who will be setting the new rates?

Ms Rowe: I think the government will be setting the new rates.

MR WERNER-GIBBINGS: It will be an issue for the government. Will any advice come from or be requested of the Human Rights Commissioner as to what would be appropriate?

Ms Rowe: We have been in discussions on the legislation—the LBP grant; I cannot remember what that stands for—to give our views on what should be considered. We have particularly asked them to look at what other jurisdictions do. One of the points that we have made is that, as I said, legislation has already gone through to remove aggravated circumstances for offences and to bring in flat-rate recognition payments. One of the consequences of that is that, where victims are subject to multiple offences, that would, under the current system, attract a payment for aggravated circumstances. They may only be entitled to the flat-rate payment. We would be urging the government to look at the inequity of that and make sure that there is an equitable response to victims of multiple crimes.

The classic example I can give you is a child that has been subjected to multiple sexual assaults getting the same amount as a child that was subjected to one sexual assault. The intent of the scheme is to appropriately recognise the harm, and that there is recognition that multiple offences exacerbate harm.

MR WERNER-GIBBINGS: What do other jurisdictions do, or is there best practice?

Ms Rowe: I think there is. Other jurisdictions have flat-rate payments. They have a course of conduct top-up. For example, in a child sexual matter where there is a series of offences that form a course of conduct rather than just one offence, there is an additional payment, or it accelerates the offence into a higher category.

MR RATTENBURY: In the context of the recent decision by the government to abolish the Law Reform and Sentencing Advisory Council, the President of the Bar Association made interesting commentary about the fact that that council had been about to start a piece of work on bail, as you would be aware. His observation was that the Bail Act actually precedes the ACT's Human Rights Act and therefore warrants careful consideration in light of it now being in a human rights framework. I am interested to explore whether the commission has done much thinking about the status of the Bail Act and what concerns you particularly have with the Bail Act in its current form.

Dr Mathew: Certainly one of the main concerns from a human rights perspective is the number of presumptions against bail. I note that there was a committee inquiry into administration of bail. We have had one judgment—in Islam—making a declaration of

incompatibility with respect to section 9C of the Bail Act. It was recommended that the status of that declaration of incompatibility be clarified. The government's response has been perfectly accurate. It said that a declaration of incompatibility does not override the legislation and does not strike it down in any way. But, to have true dialogue about what the Bail Act should say, we need to grapple with the reasoning of the court in that case. Certainly, having read the decision, I found the reasoning very compelling. Why single out particular offences in that way? Human rights are usually about having a presumption in favour of liberty and allowing the courts to look at the particular circumstances of the case.

The commission has intervened in a number of cases, as you might be aware, in applications for bail where the accused have raised the fact that, historically, remanded prisoners have not been accommodated separately from convicted prisoners, and that has successfully resulted in lifting that presumption in a couple of cases. Most of the accused have not actually received bail at the end of the day. The judges have looked at the other circumstances. They consider: is this person a flight risk; are they a risk to the community? Most of the time they have decided against grant of bail in any event. I think we need to have a mature discussion about what the Bail Act says, given that we are now operating in the context of human rights. I think it is correct to say, as the Bar Association pointed out, that the Bail Act was introduced just prior to the introduction of our Human Rights Act.

Also, in our submission we talked about having more supports for people so that they can actually meet their bail conditions, and we are not dealing with breach of bail and then people being remanded in custody. There is a range of things to be looked at. One of the other points that we made in our submission and was picked up by the committee's inquiry was having regard to the person's status as a member of the Aboriginal or Torres Strait Islander community, as is the case in Victoria, and specifically taking that into account when looking at the background of the offender concerned.

So we are prepared to do more work. It will be done as part of the Law Reform and Sentence Advisory Council, but we are certainly prepared to talk more about what should happen with respect to bail.

MR RATTENBURY: Thank you.

THE CHAIR: Interestingly, the previous inquiry by the Standing Committee on Justice and Community Safety that I chaired probably did not cover this particular issue or the administration. A potential inquiry into human rights compliance of the Bail Act, and indeed of the AMC, is something this committee could discuss. That is just a comment.

MR EMERSON: I have a question for Ms Griffiths-Cook. At a hearing earlier this week, the Commissioner for Aboriginal and Torres Strait Islander Children and Young People advised the Standing Committee on Social Policy that child sexual trafficking is being perpetrated against Aboriginal and Torres Strait Islander children in the ACT. Is that surprising to you? Have you heard any reports of that?

Ms Griffiths-Cook: I would not say that I have necessarily heard reports of trafficking, to use that term. Certainly a concern for me, and it has been for some time, is the issue

of child sexual exploitation. As far back as 2018, from recollection, I raised concerns about a cohort of young women who were at risk of sexual abuse and exploitation by adult men. Those young women are now adults, but what we are seeing is another cohort of young women, in the here and now, who are certainly both at risk and being exploited by adults in our community, including through the provision of illicit drugs to facilitate compliance for those activities.

MR EMERSON: That is alarming. What are the risk factors? Where is this happening? Is it in specific pockets of the community? Are you able to provide any detail?

Ms Griffiths-Cook: I would not say there are particular pockets in the community as such. I think it comes down to the vulnerability of children and young people, but particularly the vulnerability of children and young people who are under care and protection. The information that I have available to me suggests that, for the children and young people who are being sexually exploited—the young women in particular who are being sexually exploited—it is by unrelated adult men. Some are known and some are not necessarily identifiable at this point in time. That is certainly something that we are trying to improve, in terms of knowing who the men are that are involved in exploiting children and young people. Alongside that, I have been doing some work to improve the identification and the responses for children and young people where we identify that they are exploited.

Just this week, I facilitated and stood up two separate training opportunities—running as we speak. It is cross-agency collaborative training for CSD, ACT Policing, Education, Health, and some non-government providers who are involved in supporting children and young people, particularly those in residential care. We brought down Project Paradigm from Queensland to provide this training, so that the staff who need to work together in responding to these incidences when they are identified are jointly trained and get the same knowledge base. Ideally, by being jointly trained, they are actually building the connections to be able to respond more effectively by having some of those collaborative arrangements already in place through the course of the training itself.

MR EMERSON: Thank you. Does the commission work closely with the Commissioner for Aboriginal and Torres Strait Islander Children and Young People? What is the level of collaboration?

Ms Griffiths-Cook: Yes. Our teams—and I know Commissioner Turnbull-Roberts is still building her team—certainly cross-refer matters. Where we have a matter brought to us, we will ask the family or the individual—depending on whether it is a young person or it is family members of children and young people—whether they are aware there is a Commissioner for Aboriginal and Torres Strait Islander Children and Young People in her own right. If they are not aware, we give them some information about that and give them to option to be referred there if they would like to do so. Having said that, we are still an option for Aboriginal and Torres Strait Islander children and young people and families. It was very much the case that, in setting up Commissioner Turnbull-Roberts' office, people would still have the choice to bring their matters to us as the commission or have those matters supported and dealt with through Commissioner Turnbull-Roberts' office. We do cross-refer and jointly work on some matters as well. We have a role in going into court settings, including us stepping into

a court space if we need to do so to represent the rights and interests of some of these children.

MR EMERSON: Thank you. Has Commissioner Turnbull-Roberts ever raised with you the prospect of sexual trafficking?

Ms Griffiths-Cook: Not trafficking, but we are talking jointly—

MR EMERSON: Exploitation in general?

Ms Griffiths-Cook: about the issue of child sexual exploitation. I listened to her evidence. I am unsure whether she was talking about the same thing. Given the nature of what she was presenting there, I anticipate we are talking about the same issue and are perhaps just using different language.

MR EMERSON: We have spoken about victim support already, but what community based support services are available to victims of sexual assault in the ACT that you are aware of? I am thinking specifically for children and young people. And is it your sense that they are sufficiently resourced?

Ms Griffiths-Cook: I might pass to my colleague in a moment. The information I receive from some of our community agencies is that they are increasingly seeing children and young people impacted by sexual violence and other forms of violence, and that they do not necessarily feel that they are sufficiently resourced to provide the kind of targeted and specific responses that children and young people need, which are often different to those that might be required by adults in similar situations. I will pass to my colleague, Commissioner Rowe.

Ms Rowe: Thank you. There is obviously the Canberra Rape Crisis Centre which provides support to victim-survivors. Victim Support also provides support, including to children. We provide case coordination and support within our office, but the therapeutic aspect of that is through broker counselling services. We have some very good child-specific services that we can refer children to for counselling who specialise in the field of sexual assaults. That counselling is free under the Victim Services Scheme.

MR EMERSON: Thank you.

THE CHAIR: In 2023-24, 124 victim rights concerns were raised with Victim Support. That is an over 41 per cent increase from the previous year. The report does not, in my opinion, specify what these concerns are or how they were addressed systematically. Do you mind commenting on what the common issues being raised are and how the government is addressing these concerns to prevent reoccurrence?

Ms Rowe: There is a lot. These are on pages 65 to 69 of the annual report. In the list of the concerns, it sets out, in general terms, what the concern related to. I take your point that a concern that talks about respectful engagement does not really elucidate what that is. We do not have details in our reporting data that I can go through to tell you exactly what all of these are. Our reporting this year—and in light of the charter review that is commencing next month—has certainly put our mind to the fact that we need more

information about what is actually occurring.

Respectful engagement can cover many things. It is generally about the way that people feel they have been treated by a justice agency. Victim Support itself is a justice agency subject to this, but the police and DPP are the more significant agencies. It can be about feeling fobbed off or not receiving adequate explanations. There are separate charter concerns in relation to not being given information in a timely way. Generally, that would be recorded differently, but it can be about lack of respectful treatment as well if victims feel that they have not been kept up to date. It goes into explaining actions and failure to take actions.

One of the things that the reporting this year made us want to consider is how we can best get more information on the resolving of the concerns. You would note that, in here, many of the concerns have “no” next to them, as to not being resolved. That also applies where a victim is not satisfied with the resolution. It does not mean that the concern has not been progressed; it means that perhaps, for example, an apology has been given and the victim is not satisfied that it is adequate to resolve the concerns. That would be recorded as a no.

The other thing to note about this reporting is that, in the concerns we have received, there are not a lot of referrals to other agencies. There are some referrals to Professional Standards, for example. Again, that is something we would like to explore in the charter review, to get a sense of what victims might want. Our sense from working with victims is that these concerns are usually raised in the course of criminal proceedings. They are not very much attracted to a referral to my colleague, the complaints commissioner, for example, for conciliation, because they understand that might not necessarily result in a finding. They are in the middle of criminal proceedings; they have a lot on their plate. They are usually impacted by trauma, and there is the thought of going through further proceedings that will not necessarily achieve a result for them. While conciliation can try to do that, it is not a judicative of process. They tend to make the complaints to the agencies themselves—complaining to agencies like DPP themselves—but they raise the concern with us as well. It has already gone to the agency. It speaks to the necessity of an enforcement mechanism for the rights under the charter. I think that, if there were enforcement, it may feed back into greater observance of victim rights in the first place and we would not have so many concerns registered.

THE CHAIR: Thank you.

MR RATTENBURY: There is the minimum age of criminal responsibility. We have seen the increase and we are due to move to the age of 14 on 1 July. I would be interested in the commission’s point of view and whether you have seen any particular issues in the implementation of that new process—in support for those who have gone into the system already and issues emerging for 12- and 13-year-olds.

Ms Griffiths-Cook: My concern to some extent is that we are going to 1 July and I am not sure that we have sufficient alternative supports available for, for example, the Therapeutic Support Panel to refer to. The panel is and will continue to be a very useful mechanism in terms of being able to consider the needs of children and young people early, when they are referred sufficiently early. But I think there are some service areas that would benefit from greater investment. I have seen, in the last year, 13-year-olds

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still being placed in Bimberi. As of 1 July, most 13-year-olds will not be able to go there. We will need to think differently about the kinds of service responses we need for young people of those ages.

In my view, some of the things that might benefit are particular ways in which we offer a circuit breaker for children and young people, where they perhaps need some time to settle down and receive some counselling and support to actually understand what is going on for them—what led to whatever the behaviour was that would otherwise have seen them perhaps placed in Bimberi—and then we need some services available to refer them to, to get the kind of help that they need, and to understand and regulate emotions, for example.

THE CHAIR: Thank you for that. On behalf of the committee, I thank you all for your attendance today. If you have taken any questions on notice, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*. On behalf of the committee, I thank all witnesses who have assisted the committee through their experience and knowledge. We also thank broadcasting, and Hansard staff for their support, and also our valuable secretariat. 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 2.51 pm.