



**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

STANDING COMMITTEE ON LEGAL AFFAIRS

(Reference: [Inquiry into Annual and Financial Reports 2024-25](#))

Members:

**MS C BARRY (Chair)
MR T WERNER-GIBBINGS (Deputy Chair)
MR S RATTENBURY**

TRANSCRIPT OF EVIDENCE

CANBERRA

TUESDAY, 11 NOVEMBER 2025

**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.

APPEARANCES

Office of the Solicitor-General..... 1

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Amended 20 May 2013

The committee met at 4.25 pm

Appearances:

Office of the Solicitor-General

Garrison AM SC, Mr Peter, Solicitor-General

Nikias, Ms Ximena, General Manager

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 2024-2025. The committee will today hear from the Solicitor-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 contributions they make to the life of the city and the region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be attending today's events.

This hearing is a legal proceeding of the Assembly and has the same standing as proceedings of the Assembly itself; therefore, today's evidence attracts parliamentary privilege, and as a result, the giving of false or misleading evidence is a serious matter and may be regarded as contempt of the Assembly. The hearing is being recorded and transcribed by Hansard and will be published. The proceedings are also broadcast and web-streamed 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.

We welcome witnesses from the Office of the Solicitor-General.

Mr Garrison: I have read the privilege statement. I am familiar with it.

Ms Nikias: I have read the privilege statement.

THE CHAIR: Thank you. Please note that as witnesses, you are protected by parliamentary privilege and bound by its obligation. You must tell the truth. Again, giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. As we are not inviting opening statements, we will now proceed to questions.

The responsibility of regulatory prosecution was transferred from the DPP to your office earlier this year. In budget estimates in July we were told that there was still a lot of work to be done to fully set up this function. I want to understand what the progress has been in finalising this function in your office. I will start with that and then I have a few follow-ups, if that is all right.

Mr Garrison: Certainly. Thank you, Chair. We assumed responsibility for regulatory prosecutions from 1 July. We received some funding in the budget for that function, which amounted to 4.5 FTE, which was three lawyers and 1.5 admin staff.

We were under the understanding as to what the volume of work was that was going to

come across to our office and what the future work would be. That turned out to be a significant underestimation of what that work was going to be. The other aspect to it has been bedding down the administrative and guideline functions in terms of how they are to be conducted because it is being conducted quite differently to the way they were when the DPP had them.

My office is not a prosecutor. The prosecutor is, in fact, the agency that is bringing the complaint. We have been drafting guidelines for the agencies in terms of how these prosecutions are going to function and operate but we have also been getting our systems and processes in place. We have had a great deal of cooperation with the AFP and with the courts in terms of trying to streamline and make the processes a little more efficient and we are also undertaking those processes with our clients as well.

One thing that has become readily apparent is that additional resources will be required. We cannot quite yet say to what extent but I have already been putting additional resources into that practice area. One of the advantages of the function being with our office is that there is a significant amount of advising work that has been done from other parts of the office. So the regulatory prosecution function itself may have certain resources but there is a lot of work that is being done elsewhere in the office in relation to some of those matters. We are also identifying other areas where we believe that we will be getting more instructions from, so there will be even more work, and this will form part of the review that will form the basis for further submissions to government in due course in relation to funding.

THE CHAIR: You have answered the questions I have, but I will ask you questions based on your response. You have just mentioned that there are additional areas of instructions that you anticipate will be coming through. What are those areas?

Mr Garrisson: Part of it—for example, there is now the mobile phone cameras. So that is an additional area of activity that will get fed into the prosecution of those road traffic offences. We are anticipating some instructions from the Electoral Commission, particularly in relation to people who failed to vote at the last election and we will be bedding down with the commission how that is going to function and operate. We are also working with other agencies on a broad range of matters. We have some agencies which have not previously looked at dealing with regulatory prosecutions for their areas of activity, whereas now they are starting to look at it as well. So it is a wide range and it would be a bit premature to disclose, but it does mean that the work will continue to expand and we will need resources beyond those that have been allocated so far. It was only ever intended as an interim measure to say, “Well, here are some resources. Let us see how it progresses.”

THE CHAIR: You mentioned that you underestimated how much work was going to come through during the transfer. What is that number?

Mr Garrisson: Yes. The number, let’s see, we took over—I have got the figures here. Since 1 July we have opened 255 files. We have had 27 completed hearings. There is a number of other complex matters. We have completed and closed 117 files. That involved convictions, offences proved and no convictions, some were not proved and dismissed. The usual range, as you would expect. We currently have 53 hearings listed for the rest of the year, which is a fairly significant workload.

THE CHAIR: What are the complexities or, sorry, the makeup of those 53? Are they, you know, dog-related matters? Are they failure to vote? I do not anticipate failure to vote will go to a prosecution, but yes.

Mr Garrison: No, I do not have the breakdown of those immediately, but most of them are road traffic offences. But as the client agencies become more familiar with the systems and we continue to work with them to assist them in getting their systems aligned—we have matters involving the animal welfare authority and the Gambling and Racing Commission. We also expect some matters from the planning and construction area through Access Canberra. All of whom, of course, are agencies for whom we are doing work anyway and we provide quite a bit of advising to those agencies.

THE CHAIR: In those 235 matters that you took over, how many of those were outstanding, prior to you taking over, for more than 12 months? Happy for you to take it on notice.

Mr Garrison: I would have to take that on notice but I do not know that—well, we might be able to answer that. Well, I will have to take it on notice, Chair.

THE CHAIR: One last question, if that is all right, before I hand over to my colleagues.

Mr Garrison: Certainly.

THE CHAIR: You mentioned that the guideline functions were different to how the Public Prosecutions Office ran, to what you intend to run. Can you explain what that difference is?

Mr Garrison: Part of it is about where the decision-making lies. Under the former model basically the DPP would make the call about whether a prosecution proceeded and whether it was resolved or discontinued. We are not the prosecutor as such. It is the agency that is actually commencing the prosecution. We are the advisers and the representative, and we give advice about matters, but in the end the call will be made by the agency as to how a matter progresses or not. That is one of the significant changes.

But also we have had to rework the guidelines, the information, to make it accessible both for my office and for the client agencies in terms of, “Well, here are the processes and here is how they have had to work.” We had limited success in getting updated or current manuals, for example, from the DPP so that, “Well, we will put those together.” It has been a very useful exercise for my team and also for the clients because we have worked with them in terms of finalising what those guidelines look like.

THE CHAIR: I know I said it was the last one. I promise this is the last one before I move on, just for my own understanding because I have been out of this space for some time. So previously, for example, for animal welfare matters the Director of Public Prosecutions would make the decision whether to prosecute so it did not need advice. Are you saying you are providing that advice to either the agency or the director, whether or not there are grounds for prosecution? Is that the new model?

Mr Garrison: Yes. Well, I mean, normally the agency will itself decide that they want to prosecute a matter and they will provide a briefing to our office in relation to it. We will provide any further advice that may need to be required and ultimately it is the client's call as to whether a prosecution proceeds or not. However, of course, we are bound by the Model Litigant Guidelines which set the parameters for how litigation is conducted. The DPP, of course, have their own guidelines and they are not dissimilar to what we operate on.

So what we have done is we have created material for the clients to guide them through their decision-making processes in relation to how they come to that decision, what information is to be provided to our office and at what point, because one of the key issues is for the instructions to be provided early enough that you can properly assess whether a prosecution should proceed or not.

It is also very important to ensure, for particularly the penalty notice offences, that the offender properly understands that if they decide to dispute it, they are going to have to go to court. We have found that a number of matters where they have not responded or they have decided to deny it, once they actually realise they have got to come to court, it changes. So you see a lot of the matters are resolved and we want to try and make sure they get resolved a lot earlier than they were previously.

THE CHAIR: That is really useful. Thanks.

MR RATTENBURY: Can I just perhaps summarise back to you then, in terms of the workload, you have had 255 files since 1 July. Did that include a backlog that came across or is that just matters that have arisen since then?

Mr Garrison: Yes. No, that included the matters that we took over on 1 July.

MR RATTENBURY: And some more have come since then?

Mr Garrison: Yes.

MR RATTENBURY: Okay. In terms of resourcing then, you have 4.5 FTE that you are funded for. You are using other resources in your office.

Mr Garrison: Yes. Yes.

MR RATTENBURY: And presumably the agencies are also having to provide resources, if they are now the prosecutor and sort of in some ways responsible for the matter, as you have described it.

Mr Garrison: Yes.

MR RATTENBURY: So there is actually quite a lot of resources going into it.

Mr Garrison: I think, Mr Rattenbury, that all that has happened from—the clients have always had to reflect on whether or not they were going to prosecute a matter. So the DPP had to receive a brief.

MR RATTENBURY: Of course.

Mr Garrison: One of the things that we have focused on at the front end was to assist the clients in identifying what sort of evidence they need to gather, when they need to gather it and all that, so there is actually a clear framework within which it can be provided. It may mean that we say, “No, no, you need a bit more evidence.” I think it is too early to form a view about whether it is impacting the clients in terms of their resourcing.

My instinct is that it would not. It just means that the work to prepare the matter is done in a more timely fashion and spread out over a slightly longer period, rather than, “Gosh, we have got this prosecution on in a week’s time. We now need to drop everything and do all the evidence-gathering in a hurry.” Part of our aim is to make sure that those processes occur in a timely fashion and informed decisions can be made by the client agencies and the prosecutors; but also so that the offenders can get enough information at an appropriate time to say, “Gosh, yes. Look, no, I do not really want to go to court and I will pay the \$90 fine,” or whatever it might be.

MR WERNER-GIBBINGS: Mr Garrison, page 42, annual report. The increase of legal opinions being provided to directorates, agencies and statutory officeholders across the government has increased by 55 per cent. I have a “What is driving the increase” question and another one following. Can you please enlighten the committee, what is driving the increase in that work?

Mr Garrison: I will do two things. One, I will explain that there will be an addendum coming out to the annual report. The figure is actually 26.5 per cent.

MR WERNER-GIBBINGS: Can you explain the increase of 26.5 per cent? That is almost a quarter. No, it is just over a quarter.

Mr Garrison: We have seen a very significant increase in our work across a range of areas over the last year. For example, we have had a significant increase in our historic sexual abuse claims. We have a significant increase in the advices that are provided, right across the board, for example, in protection orders in our employment practice in relation to individuals, public servants, who we take instructions from to get protection orders in relation to the circumstances of their employment. We have seen a significant change, I think, in the risk profile for public servants. So that includes people who are working in health, people working in child, youth and family areas, a significant increase in applications for staff who are in housing and other areas as well.

So with the increase in work comes an increase in the number of advices. Now, an advice can be a very significant piece of work that could take weeks to prepare or it can be an advice that takes half an hour to advise the client about how it goes. One of the things that you will also have noticed from our statistics is the number of urgent advices that we have completed, which has increased significantly in the last year. Of course, the urgent advices often tend to be shorter. You complete them obviously in a much tighter timeframe, and that also combines to increase the number of advices that have been provided. It is very much right across the board in all areas of practice.

MR WERNER-GIBBINGS: Okay. So the other question in terms of increases is that

court attendances have increased by 11 per cent? 11 per cent is the figure?

Mr Garrison: Yes. Yes, court attendances is 4.4 per cent.

MR WERNER-GIBBINGS: Beg your pardon.

Mr Garrison: My apologies again, yes.

MR WERNER-GIBBINGS: Well, in which case that is a bit less of a “What has driven that?” That is kind of within the statistical mean of 4 per cent thing. We will go back to the 26 per cent, and you mentioned it has **steeped** in the past year.

Mr Garrison: Yes.

MR WERNER-GIBBINGS: What we are looking at this year—is what happened last year a trend in terms of, are we seeing that number increase being replicated prior to sort of three or four years before? I am not familiar with the annual reports.

Mr Garrison: I think we have seen a steady increase over the years and this last year was far more significant. I think we can anticipate that, for this year, there will also be a significant increase.

MR WERNER-GIBBINGS: A significant increase on 2024-25, or a significant increase—

Mr Garrison: Yes.

MR WERNER-GIBBINGS: Right, okay.

Mr Garrison: Now, it may not reach that level, in which case we might say, “Okay, thanks. It is a momentary blip.” But I suspect not. So for example, for the regulatory prosecution function which we have commenced this year, advices have to be given on each of those matters, and often more than one advice, so that will go into the mix as well. So I think that it is safe to say that the work will continue to increase and the number of advices we provide will continue to increase. The level of urgency around the instructions we receive is consistently high and I certainly do not see a significant change into the future.

MR RATTENBURY: I wanted to follow up on a question on a notice that I put to the minister for housing. It is number 676, if that means anything to you, but it is about the role of the government solicitor’s office in supporting Housing ACT in ACAT matters relating to tenants.

I found two particular issues interesting. One is that the number of matters seem to be increasing in recent times, and in particular, the cost of matters has materially increased. Probably the key figure there is from 2023-24 there were 22 matters that cost \$465,000. In 2024-25, there were 16 matters that cost \$1.28 million, around \$80,000 a piece, on average. Averaging is never a winner, but it just gives a sense of scale. I am interested to get your understanding of those seeming increases.

Mr Garrison: I should point out, Mr Rattenbury, that my office was not consulted in relation to the answer to that question. As I think we have commented extra-curially, the number of requests for advice we get from ACT Housing is relatively small compared to the overall number of matters that they undertake. So for example, in the number of matters we act in ACAT for housing, it is normally only the more complex matters or matters where issues of the Human Rights Act have been raised, often by Canberra Community Law, as is appropriate. But also that then requires legal expertise and knowledge in order to respond to those submissions.

The other aspect is that the figures that I understand were provided in answer to that were en globo. So, for example, we are defending a class action in relation to ACT Housing, in relation to its housing acquisition program, and that is in the Federal Court. Federal Court litigation is not inexpensive. So there are a range of other matters that are significant that are included in those figures. As you said, averaging can be a dangerous thing, and so that would skew the figures.

MR RATTENBURY: You said the ones you are involved in are a small proportion of what Housing ACT does. So Housing ACT will have its own team of in-house lawyers that deal with the more day-to-day matters?

Mr Garrison: They do not have in-house lawyers. They have housing officers who will do appearances before the tribunal. What will often happen is that they will either commence or be defending an application that is in the tribunal and it will take its course, or it will reach a point where there is a decision made that they actually need legal advice in relation to the matter.

The tribunal is designed to be friendly to non-lawyers. We have no particular visibility of the number of matters that housing conducts in the tribunal, only the relatively small number of matters that come to us. Often, as I said, it will be because there have been issues raised by lawyers representing the other party in relation to the Human Rights Act or associated issues.

MR EMERSON: I would like to ask about personal injury claims, specifically related to footpaths—damaged footpaths and so on.

Mr Garrison: I am sorry, to—

MR EMERSON: Related to damaged footpaths.

Mr Garrison: Yes.

MR EMERSON: I have asked a few questions about this.

Mr Garrison: Yes, I have noticed.

MR EMERSON: I note your office has been involved in defending the government against these claims.

Mr Garrison: Yes.

MR EMERSON: Are you able to provide us an account of why claims are successful, or what are the conditions that lead to a successful claim brought by a resident? Or can I do it and you tell me if I am wrong?

Mr Garrison: Does that invite a yes or no answer?

MR EMERSON: I mean, if I were to trip on a footpath that the government did not know was damaged and ought not to have known was damaged, I just tripped on a footpath, but the government, I would assume, is not liable for any injury sustained as a consequence of that.

Mr Garrison: That would be the ideal. Invariably, it is more complex than that. For example, the territory has a system for the inspection of footpaths and it is a question of whether they have exercised reasonable care. So, even if they did not know about it, the question is: “Ought they to have known about it?”

So, you reach the point of saying, “Well, what is the evidence?” So what is the evidence of the process of the system of inspections, and all of those associated issues which get ventilated in—not many of the claims run to a hearing, and you will have competing evidence so people will produce engineers’ reports to say, “Well, you should have known this and you should have known that.”

Through all of these processes, for example, you generally will get to a mediation and we are a great respecter of the process of mediation to resolve claims. In particular, you have to take into account—I do not want to describe it inelegantly as the risk, there is always a risk in conducting litigation and in particular, claims for negligence and/or occupiers liability. So you assess those risks based on the evidence that has occurred, that has been gathered during the course of the matter. You look at the injuries that the person has sustained. You look at what the long-term issues are for that. You do an assessment of what the possible liability is and then you also look at the quantum of it. Mediations are usually about each side compromising those various elements to reach a mutually satisfactory outcome.

The alternative is a matter that runs in court, and, of course, the territory takes the risk that it might lose, but also the plaintiff takes the risk that they may lose, in which case they are liable for the territory’s legal costs. It is often not appreciated until the plaintiff gets to a mediation and can actually hear what is likely to happen and what may happen and what the to-ing and fro-ing is between the parties. So it was not a yes or no answer.

I think each case is on its merits. There are some matters which you look at and say, “No, we have to run this case because it has got some very serious issues of law.” So every so often a case comes along where, if a plaintiff is successful, it actually expands the issues of legal liability and those are matters that need to be tested. I can say, mercifully, I do not think that happens very often. But we approach every matter on the basis that if we can resolve it without taking it through the litigation process, that is a preferable outcome.

MR EMERSON: In what proportion of those cases, does someone come forward having made a Fix My Street request, having indicated to the government there is a specific path that is damaged, and becomes injured? Do you have any idea?

Mr Garrison: I could not tell you that, and I do not think we could actually obtain that data because it would mean looking at each and every matter that we have conducted to see what information was there. I cannot really take that very much further.

MR EMERSON: Sure. I suppose the question is, I assume those cases are pretty cut and dry. You know, if someone reports an issue to the government and then the same person, or someone else, sustains an injury because of that issue, then you can be sure the government knew about it?

Mr Garrison: Possibly. As I said, I am not trying to prevaricate, it is really—you need to look at each case on its own merits because they all have their own peculiarities. If that person has walked that way for the last ten years and knows exactly what the footpath is like, you could theoretically have issues of contributory negligence for not keeping a proper lookout. I mean, these are all the sorts of things that arise in the course of a case. I am not suggesting that that happens in all of them. It just is my concern that we do not want to apply general rules to cases. We need to look at each on its facts. Does that help?

MR EMERSON: Yes, I think so. I have got this table in front of me. You mentioned this consideration of whether the government ought to have known about an issue. I received a response to a question on notice which provides a table indicating the timeframe on which different areas of the city—different parts of the footpath network—are supposed to be audited by the government for their condition. Is that table provided to you in these cases, or is that a key piece of information when someone makes a claim that you would consider?

Mr Garrison: I honestly do not know the table you are referring to. I do know that we would ordinarily ask for instructions about supervision and inspections and so forth. The table you are describing might be amongst the material that we are provided, but we ask for specific instructions about a range of things that, based on our experience, we know are relevant to considering the issues of liability.

MR EMERSON: Right. So the agency might refer to the table and then just tell you, “We are supposed to do this every two years” or one year or whatever.

Mr Garrison: I also know from experience it actually fluctuates from place to place.

MR EMERSON: Yes. Some places, it is one year. Some, it is four years.

Mr Garrison: It can also happen that the inspection occurred 10 days before the accident or 10 days after the accident. It is still being inspected in accordance with a proper process. The fact that the person has tripped and fallen does not necessarily mean that there is not a process in place for inspecting the thousands of kilometres of footpaths that exist in the ACT. I cannot remember what the figure is but it is quite substantial.

MR EMERSON: I think it is 4,000, 4,500.

Mr Garrison: It is a lot.

MR EMERSON: Yes. 850 kilometres of gaps. I know that number.

THE CHAIR: I just have one burning question, and it probably is a question that you would like to take on notice. Solicitor-General, you mentioned that the APS risk profile has increased, just going back to a response you gave to one of the questions Mr Werner-Gibbings asked around protection orders for APS employees.

Mr Garrisson: Yes.

THE CHAIR: I think one of your responses was that the risk profile for the APS has increased. I just wanted you to tease that out a bit. What do you mean when you say “the risk” and what is driving that?

Mr Garrisson: I think what we have seen, and it has been occurring for some time, is that there is an increasingly—not hostile, but increasingly aggressive approach by citizens to a range of issues. The interactions between government and the citizen cover a broad range of issues and they are matters where decisions would be made with which the person is unhappy, and we have a situation where you have persons who are now reacting in a way which creates a risk for territory employees in a number of highly sensitive areas of business. So if you think about it, health, children, housing and a range of other matters where people feel aggrieved, and we have seen a more aggressive approach by some people to dealing with those issues. It is, particularly in the last 12 months, a significant increase in the requests for protection orders for territory employees because of the way the issues are being responded to by the citizens.

THE CHAIR: Do you know what is driving that increase, you have said, in the last 12 months?

Mr Garrisson: If I knew the answer to that, I would be solving a lot of the problems of the world, I think. So for example, ACT Housing has a number of its officers who try to deal with complaints that are made about their tenants and the response by the tenants can be very aggressive and very nasty.

We deal with highly personal issues, like the animal protection area. So you seize a person’s dog and that is taken very, very seriously. You will be aware of media reports about certain individuals who have taken steps to, for example, break in and rescue their dogs and do all those sorts of things, but also act very aggressively against the territory’s officers who are trying to address the complaint about the dog. They are just a couple of examples of the areas, and I think it is probably something that is being experienced not just in the ACT but elsewhere.

Youth and children, families, is a significantly emotional, difficult area of work for both the staff at CYF and my lawyers, and indeed for the families who are part of that process, and people react badly sometimes to some of those circumstances.

THE CHAIR: If you could take this on notice, because I know we are running out of time, is there a table that indicates how many protection orders have been sought? Do you currently collect stats on that?

Mr Garrison: Yes. I think we have got that.

Ms Nikias: We should be able to.

Mr Garrison: Yes. Well, we can take that on notice.

THE CHAIR: That would be awesome. Thank you very much and thank you for accommodating the last few minutes as well. On behalf of the committee, I thank you for your attendance today. If you have taken any questions on notice, please provide your answers to the committee secretariat within five business days of receiving the uncorrected proof *Hansard*.

On behalf of the committee again, I would like to thank all witnesses who have assisted the committee through their experience and knowledge. We also thank Broadcasting and Hansard for their support. Thank you very much for attending.

The committee adjourned at 5.08 pm