



**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

WEDNESDAY, 12 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

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Amended 20 May 2013

The committee met at 4.35 pm

Appearances:

Director of Public Prosecutions

Engel SC, Ms Victoria, Director of Public Prosecutions

Graczol, Ms Melinda, Deputy Director of Public Prosecutions

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 Director of Public Prosecutions.

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 this 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.

This hearing is a legal proceeding of the Assembly and has the same standing as the proceedings of the Assembly itself. Therefore, today's evidence attracts parliamentary privilege. Giving 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 being broadcast and webstreamed live. When taking a question on notice, it would be useful if the witness uses the words, "I will take that question on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript.

We now welcome witnesses from the Office of the Director of Public Prosecutions. Please note that as witnesses you are protected by parliamentary privilege and bound by its obligations. You must tell the truth as giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly.

Please note that we have received your opening statement and published it on the webpage for this inquiry so you do not need to read it out. We will now proceed to questions.

My first question is around the funding issue. It is one that has been very topical recently. We have passed a motion in the Assembly calling for more funding for the DPP and the Attorney-General appears to be committed to that. In budget constrained organisations leaders have to make hard decisions about priorities. I want to understand from your point of view, what you have been doing and what you can or cannot do.

Ms Engel: Certainly. So I should start by saying, I have read and acknowledge the privilege statement.

Thank you for the question. Part of the difficulty for my office is that we have no capacity to turn off the taps at either end. I have referred to that in the opening statement. So when police charge, when they determine that there is sufficient evidence, applying

their test to charge, those matters come to my office. Whether or not ultimately we take a matter through the court system, in its entirety or whether it resolves by way of an appropriate plea of guilty, or a decision is made to take that matter out of the system, it still requires my staff to analyse that material, to consult with alleged victims of crime if it is a victim matter, to consult with the police and to review that matter fully.

So every single matter, where police charge, and as you would have seen there were over 20,000 in the last financial year—charges that is—requires input and work by my staff, no matter whether it makes its way through the system eventually or not. Then similarly, on the other end, the court lists, as they need to, consistent with their obligations. We do not have the ability to control the listings process. So we are really wedged in between two other agencies who have to comply with their own obligations, for the police to charge as they see fit, and for the courts to list as they see fit. And we are really stuck in the middle.

We have attempted, over the last year, to implement a range of efficiency measures. I have referred to some of those in the opening statement, including setting up collaboratively with the Chief Police Officer, the Nominal Informant scheme, which has been very successful. We have taken the approach of more proactively considering the second step in any prosecution test, the public interest test, that is, considering whether matters need to be within the criminal justice system and making those decisions.

The third thing that we have done is more proactively considering the appropriate resolution of matters, which assists victims of crime and, of course, assists defendants as well, to ensure that matters can come to a timely resolution where appropriate. Not all matters can resolve, obviously, but where they can, we are taking more proactive steps to try to do that to save the whole system from matters unnecessarily proceeding through the court.

THE CHAIR: Thank you, that is really comprehensive. You mentioned the Nominal Informant scheme?

Ms Engel: Yes. So that is a scheme the Chief Police Officer and I set up last year, I believe and—

Ms Graczol: Implemented this year.

Ms Engel: Implemented this year, that is right. And what that involves is a dedicated police officer. At the moment there is one. There is talk about whether that might increase. That person is available as what is known as the nominal police informant. So when defence make requests for disclosure, for example, that can be streamlined. Rather than having to wait for the usual processes where the request goes to the police officer—the police informant in charge of the investigation, and sometimes there are delays—that can be made at court. We have the nominal informant at court. They have a close working relationship with my staff who are at court. When there are issues that arise in court that nominal police informant is there to deal with those on the spot, which speeds up requests and disclosure, and things like that.

THE CHAIR: Right. Just for my benefit, the disclosure is made by the defence solicitor,

then the nominal informant officer sends the disclosure to your office or?

Ms Engel: So what happens is that the—for example, one of the tasks of the nominal informant is to help to facilitate timely disclosure of brief material from the brief of evidence. So if, for example, there is body-worn footage or CCTV footage, that can be played by the nominal informant to the defence lawyer physically at court, for example, to stop the delays that happen with needing to redact material before it can be formally disclosed. So it streamlines that whole process.

THE CHAIR: Yes. Okay, that is interesting. Thank you for that. Also, just in line with that as well, there has been some criticism in the media from your friend, Peter Woodhouse, about cases you have decided to prosecute. I wanted to get your views on that and how you respond to that? I think it is really important to put it on the public record.

Ms Engel: Yes, sure. So my role is to provide a robust prosecution service to Canberrans, that includes prosecuting without fear or favour. Sometimes decisions I make will not be popular with everybody in the community, perhaps not surprisingly. It is not my job to make decisions that will always be popular. It is my role to act with integrity and to comply with prosecution policy.

I think the very least that Canberrans deserve is a DPP who is prepared to be robust and to make difficult decisions, despite that, at times, it might mean that both the office and me are subject to public criticism. That is part of the role. I think Canberrans can, and should be, confident that they have a director that is prepared to make difficult decisions, even if it means I am subject to personal criticism.

THE CHAIR: What discussions have you had with the government about budget supplementation following the motion in the Assembly?

Ms Engel: Certainly. So I have regular meetings with the Attorney-General. We have been provided with a limited short-term resource to assist us to build a budget bid for next year. That is, those conversations are continuing. Part of the difficulty that we have is that we need to fix our baseline budget to come to terms with the steady increase, and at times, surging increase, across the last 10 years in the criminal justice system. Layered on top of that, is that the demand is increasing in real time. So these conversations are targeted towards budget bids for next year whilst the demand continues to surge in real time.

THE CHAIR: So what are you doing to manage—I know you have mentioned a few things, but there are obviously things that you cannot—that have to be funded. So what are you doing?

Ms Engel: So part of the impact of the long-term deficit for base funding is that matters are delayed. That is very unfortunate. It has an impact on the whole justice system, both the courts, Legal Aid, potentially on remand times. Unfortunately, that is an inevitable consequence of the long-term deficit of base funding. So we are managing as best as we can, but inevitably things are not progressing as quickly as they could or as we would like them to be.

THE CHAIR: That is a really, I guess, interesting position to be in, because then there are flow-on consequences, additional costs on the entire system across the—

Ms Engel: Precisely.

THE CHAIR: Yes. That is really disturbing to hear.

Ms Engel: And that is one of the reasons why, and one of the things I mentioned at the estimates hearing was that, investment in the DPP is an opportunity for the criminal justice system because it will mean that we can look at matters faster, it means that we can—for those matters where the public interest means they actually do not need to proceed to prosecution, we can take them out of the criminal justice system. It means that we can, where matters do proceed, when they meet those two tests—the reasonable prospects of conviction and the public interest—when those matters are proceeding through the court, they can proceed efficiently in a way that has benefits across the whole system. So that is why one of the messages that I have been attempting to cut through to reach the government with, that I think I have been able to reach the government with, is that investment in the DPP is something that actually benefits the whole criminal justice sector.

THE CHAIR: Exactly, the cost savings across all of those other agencies are significant. My last question is, what does the impact of funding have on the witnesses assistance program. I know that program is really important to guide witnesses and help them through the criminal justice journey. Can you talk a bit more about that?

Ms Engel: Certainly. It is a very important issue. It is one that is, as Mr Rattenbury knows in his former role, a part of the DPP that I consider pivotal, because it is that role within the office that sits side by side with victims, complainants and witnesses as they go through the criminal justice journey. It is a very difficult journey for anyone who is interacting, whether it is as a victim, as a witness or as an accused. It is a difficult process.

The Witness Assistance Service is there from within the office to support that person, often to act as a court support person. So when they are giving evidence, which is obviously a very difficult time in anyone's life, to ensure that the process, which will inevitably be difficult, but that it can, in any way that it can, be less difficult—that is the role of that service.

Currently, and when I started, there were three witness assistance service officers. We have received short-term funding to increase that. Last financial year, I think they supported over 400 victims and witnesses coming through the office. But we are dealing with about a bit over 4,500 victims and complainants each year. So obviously the number of victims and witnesses that my current service is able to support is only a small proportion.

Presently, and historically, the practice has been that those particular roles will provide support in sexual violence matters. There is obviously now a much better understanding of the interplay between sexual violence and family violence in the community. The historical position that, I think, both police and prosecution services took of putting them into two camps—we now have a much better understanding that that is no longer

necessarily the right way to look at that type of violence.

So what we have been attempting to do is to provide ad-hoc support to family violence complainants and victims, but we are simply not resourced to do that properly. So that is one area where there is a real gap. Unfortunately that work, as you would imagine, sitting with victims and witnesses through the criminal justice journey, is difficult work. It requires a level of resilience, and it requires simply—they are already carrying huge loads in those roles, simply asking them to carry even more unsustainable loads is not the solution because they need to be able to—first of all we need to create longevity in those roles, but we also need to make sure that they are supported to be able to support people during their time of need.

THE CHAIR: Their time of need.

Ms Engel: Yes.

THE CHAIR: I am really interested in that Nominal Informant scheme. What sort of reductions in, I guess, workload do you anticipate this will provide?

Ms Engel: So we are in the process of tracking that. I do not have that to hand at the moment, but it is certainly being proactively monitored. We have received very positive feedback from the courts about that scheme. We expect it to continue. The collaboration between myself and the Chief Police Officer on that scheme has been very positive. So the anecdotal information is that it is very positive. But as far as the data, it is still evolving.

THE CHAIR: Still evolving.

Ms Engel: Yes.

MR WERNER-GIBBINGS: The change in processes for applying the public interest test.

Ms Engel: Yes.

MR WERNER-GIBBINGS: When did they kick in?

Ms Engel: They kicked in effectively when I started as director, in May of last year.

MR WERNER-GIBBINGS: And from that, how many matters have been discontinued based on those changes?

Ms Engel: We do not keep stats on—we keep stats on which matters are discontinued. The underlying rationale, whether it is on a public interest basis or whether a decision is made that there was not a reasonable prospect of a conviction or whether it is a combination of the two—historically, the office has not tracked the underlying reason. We know there is a gap in the data.

MR WERNER-GIBBINGS: Yes.

Ms Engel: We do intend to start tracking that, moving forward.

MR WERNER-GIBBINGS: Okay.

Ms Engel: Historically, we have not tracked that.

MR WERNER-GIBBINGS: Right. Okay. Fair enough. I might come back to that.

Ms Engel: Sure.

MR WERNER-GIBBINGS: Next year perhaps.

Ms Engel: Sure.

MR WERNER-GIBBINGS: So what I think you have just done, you have just explained the rationale—is that a process? Do you have a document or something like that?

Ms Engel: So the process evolved, when I first started—

MR WERNER-GIBBINGS: Sorry, I mean, is the process of that rationale and/or the rationale documented? That is a better question.

Ms Engel: Yes. So the rationale is documented in the prosecution policy.

MR WERNER-GIBBINGS: Yes.

Ms Engel: It is not a policy that I have changed. The prosecution test in all jurisdictions is, are there reasonable prospects of conviction and is the prosecution in the public interest? The change has been that, since May of last year, we have taken a more proactive approach to looking at the second aspect of that test. That mainly affects the issues where it is a young person charged, for example, and it is potentially their first interaction with the criminal justice system, and potentially there has been quite some time from the time of the allegation to charge and no further allegations. It might be that, bearing in mind all of the relevant factors under the prosecution policy, that that is a matter that can come out of the criminal justice system, rather than progress to the criminal justice system. They are nuanced decisions. They involve weighing up a range of complex criteria.

Another area where it comes up a lot is the potential misidentification of the primary aggressor in family violence matters. Other times it might come up in trivial offending, where somebody otherwise has no prior interaction in the criminal justice system, or where a family violence victim, for example, has taken proactive steps to ensure their own safety and is making a request to come out of the criminal justice system.

So we have taken a more nuanced approach rather than forcing every matter to proceed simply because the first aspect of the prosecution policy is met, the reasonable prospects. We have taken a more nuanced approach to the public interest. We have not changed that. That has always existed. It is just that we have been more proactive in looking at it.

Originally, all of those matters were coming to me to make sure that we were able to sort of recalibrate the approach the office was taking to public interest. That has now been able to be lowered down. So it is not just me looking at those matters. We invited Legal Aid and the Aboriginal Legal Service to take a more proactive approach to sending us representations where there was potentially an issue in relation to that public interest test.

MR WERNER-GIBBINGS: I understand. I have a similar question on early plea identification. Is there is a new process? If so, when did it kick in? And what is it?

Ms Engel: Yes, sure. So there is a new process. The process that I referred to, the efficiency measure that I referred to in the opening statement, relates specifically to criminal case conferencing. That process has existed for a long time. It is what the office does around that process that has changed.

So I believe it was last year—it may have been earlier this year, but my recollection was last year—we changed the process around criminal case conferencing by way of—it is the Crown prosecutors that are briefed to appear at those criminal case conferences. Before they go across to the criminal case conference they sit down with either myself or one of the two deputy directors and we look at the matter. We consult with any alleged victims, we discuss the matter with police and we look at whether there is a way to appropriately resolve the matter to bring it outside of a hearing or a trial.

That involves a plea of guilty. Often it involves, of course, acknowledgement by an accused in relation to offending, but it is a way to ensure earlier resolution of matters for victims. It is a way to create savings to the overall system and also a way to ensure, for appropriate matters, that an offender is being held accountable.

The process that we have now implemented means that when my staff are going across to the criminal case conferencing scheme, which is run by the courts, we are ready to go with potential plea offers, we make proactive plea offers, and that is a real shift in the way the office is operating, recognising that we have limited resources and that we need to find efficiencies where we can. None of that is to say that it is efficiency at any cost. We need to, of course, make sure, and consistent with the prosecution policy, that any plea offer that we are making ensures that there is adequate scope on sentencing and that it reflects the alleged criminality. We are mandated both under our policy and under the victims charter, which came in in 2021, I believe, in the ACT, to consult with any complainant and, of course, we will consult with police as well.

MR RATTENBURY: I want to come back to your observations around the public interest test and the revised approach to that. I am interested if any particular themes have emerged for you in that period. I accept that you are not getting specific data but has it identified issues in the justice system that warrant further consideration?

Ms Engel: I might—to do justice to that question, I will take that on notice. I think what it has identified is that it is in the best interest of everybody that interacts with the justice system for us to be looking at that test closely. Ideally, I would like my office to have the resources to be able to consider those sort of issues earlier.

Part of the issue is that public interest considerations are not always looked at until a matter has already been going through the system for some time. By that stage, as we all know, any interaction with the criminal justice system, especially, for example, for a young person that is charged, or any sort of delay for a victim, creates additional stress. So ideally, I would like to be able to have the resources to put in so my staff can consider that part of the prosecution test in every single matter in an early stage. We do not currently have the resources to do that. There are probably themes that have emerged, but I will take that on notice and I will speak to my two deputies. The three of us are the ones who consider those the most. So I will come back to you on that.

MR RATTENBURY: I know one of the elements from the annual report is police misconduct. Are you seeing many of those matters, and again, is that revealing any particular trends?

Ms Engel: The matters that we have seen are the matters, I think, that are already in the public domain. I know there were questions during estimates hearings earlier in the year around some of those matters.

I set up a process in consultation with the Chief Police Officer last year, I think it was, where if there is any allegation of police misconduct that either my staff notice on a file or by way of defence representations, they report that into the executive, to me and my two deputies. We report that to the police executive to make sure that it is not just being looked at by the particular police officers involved in that matter, to make sure that if there is an allegation that it is being brought to a senior level within police.

We then separately consider whether we review the matter and if the police misconduct is of such a nature that it may mean that the matter is no longer in the public interest to prosecute, that is something we consider. Obviously there will be some matters where, even if there are allegations of police misconduct, the offending is so serious that the public interest means that the matter still proceeds. Of course, if that misconduct is borne out, then that is something that is taken into account on sentencing of an offender, in the sense of potentially mitigating circumstance for an offender.

MR RATTENBURY: In that context of misconduct, we know that tends to go back to police. What role does the prosecution have then in considering whether there is a prosecution response to that misconduct?

Ms Engel: I see. So the way that would usually work, this is based on my experience here but also in other jurisdictions, is the police—the professional standards will review that. They often, with those type of matters, will come to the DPP for advice and so we will review the brief prior to charge and provide advice to that specific unit within police.

MR RATTENBURY: Okay. So it predominantly still sits with police to make that initial decision about the disciplinary consequences of that misconduct?

Ms Engel: Predominantly, yes.

MR RATTENBURY: Then you come in at what would be considered the normal point in a prosecution process.

Ms Engel: Yes, certainly. If there were matters, for example, and I am only speaking to the hypothetical, but we have a close working relationship with the police and if there were matters of concern to me or to my staff that, in our view, warranted prosecution, I am confident we would be having those robust conversations with police. But that is simply speaking in the hypothetical.

MR RATTENBURY: I was interested in the case study you provided in your annual report of *Police v EN* (a pseudonym), in which:

The defendant, a veteran police officer, was charged with contravening a family violence order by sending voluminous messages to the victim, his ex-wife, including threatening to report her to police and to involve a former colleague.

That matter played out and the defendant was found guilty after a contested hearing. How many family violence matters did your office prosecute in the reporting period in which a police officer was the defendant?

Ms Engel: I will have to take that question on notice. I do not have that figure to hand. I know the figure of how many family violence matters were received overall last year, which was around 935, but precisely the number of matters where it was a police officer charged, I will take that on notice.

MR RATTENBURY: If that is relatively easily extractable, I would appreciate that. I am then interested in the transparency around what happens after a police officer has been prosecuted and presumably found guilty. Again, do you have oversight of what happens then, or does that go back into the police disciplinary process?

Ms Engel: Once the prosecution process is finished, that is where our role will end. We may have some idea of what is likely to happen because often as a part of the sentencing process the implications for someone who is being sentenced will come out during that process. So for example, if a police officer has been convicted of a certain type of offending and they are going to lose their job, that is a relevant factor that will come out during the sentencing process. So through the sentencing process we might become aware of it, but we do not really have any involvement after that.

MR RATTENBURY: But does that then affect the—the prosecutor obviously puts a view to the court on the appropriate sentence. Does that consequence affect the construct of what the prosecutor would put to the court?

Ms Engel: I am not sure that I understand the question.

MR RATTENBURY: If you are aware, for example, the officer might lose their job, does that then shape the view you would express to the court on the appropriate sentence range? I thought that was what you were sort of alluding to. I am just trying to—

Ms Engel: No, sorry. Perhaps I have not been clear enough. What I am saying is that we would usually during the sentencing process, because through the subjective material that is provided by the defence lawyer usually, we would know what the consequences had been for that particular officer as far as their employment was concerned. Yes, it is a potentially—there would usually be a submission made by a

defence lawyer as to extra-curial punishment and that is what I mean. We would know about it, but we would not then be involved in the follow-up.

THE CHAIR: When you talked about the case conferencing, where do you see that resource sitting? Is it with the solicitor or with the paralegals? I think your evidence was that you do not have resources to do that earlier on in the process?

Ms Engel: Yes.

THE CHAIR: Yes, where would you see the resources sitting?

Ms Engel: So that would be sitting within the criminal practice, but—and this is part of—it would sit within the criminal practice, but we would also need resources at a certain level of experience to be able to identify matters that can resolve. It will not be a surprise to you, the ability to look at a file and to say, “Well, this is an appropriate resolution from looking at it,” and then to have the necessary consultation with complainants and speaking to the police about those things requires a level of skill and experience. So it would sit within the criminal practice, but not at a junior level.

THE CHAIR: Okay. All right, so it would not sit at all with the paralegals, for example?

Ms Engel: No, I would not expect so. No.

THE CHAIR: To do that initial identification, it would have to be a solicitor who would do that?

Ms Engel: Yes. In my experience, to be able to identify those matters that can resolve appropriately requires some level of experience and sound judgment that, whilst our paralegal stream is very good, they just do not have that experience yet.

THE CHAIR: Yes. All right, thank you—which is why you need those resources.

Ms Engel: That is right.

THE CHAIR: Yes. Thank you very much. On behalf of the committee, I would like to thank our witnesses who have assisted the committee through their experience and knowledge. We also would like to thank broadcasting and Hansard for their support. If a member wishes to ask questions on notice, please upload them to the parliamentary portal as soon as possible. No later than five business days from today. This meeting is now adjourned.

The committee adjourned at 5.05 pm.