



**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

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

FRIDAY, 14 NOVEMBER 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 10.10 am.

Appearances:

ACT Inspector of Custodial Services

Costello, Mr Sean, Deputy Inspector of Custodial Services

Minty, Ms Rebecca, Inspector of Custodial Services

THE CHAIR: Good morning 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 Inspector of Custodial Services and the ACT Human Rights Commission.

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 events.

The 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 witnesses used the words, "I will take that question on notice." This will help the committee and the witnesses to confirm questions taken on notice from the transcript.

We welcome witnesses from the Inspector of Custodial Services. Please note, that as witnesses you are protected by parliamentary privilege and bound by its obligation. 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.

As we are not inviting opening statements, we will now proceed to questions. My first question is around resourcing. I note that you have indicated in your introduction to your annual report that lack of dedicated funding for each of the monitoring bodies to carry out business is hampering the effectiveness of your preventative work. Can you tell me what you would want to do if you had funding and your funding had been allowed?

Ms Minty: Thank you for the question. I think there is probably two parts to it. One, is our office as the Inspector of Custodial Services. So we operate under the Custodial Inspector Act, which is an act of the Assembly, and we focus on oversight of AMC and Bimberi. In that capacity we have not had an increase in staff pretty much since inception, because we initially had some funding, which was for supplies and services that we used on a staff member. So we have currently got 2.8 FTE for our office. So Sean, myself and one other staff member. We believe we need more resources but particularly, and I think it ties into the Jumbunna review into the over-representation of

Aboriginal and Torres Strait Islander people, to have an identified staff member would really add so much value to our work.

Already when we do reviews we engage an Aboriginal and Torres Strait Islander person because everything touches on the experiences of Aboriginal people and we need that expert advice. We need that lived experience to inform our reviews. So we currently do engage on a contract basis. But, and this was something that was picked up by the Jumbunna Review, having an expert staff member would not only help us with reviews, but would help inform everything we do. So, in terms of my office, I have identified a need for one identified staff member.

But I think you are referring in the annual report to the National Preventive Mechanism—

THE CHAIR: Yes.

Ms Minty:—which is under the Optional Protocol to the Convention Against Torture. So it is an international treaty that Australia signed up to and it puts an obligation on every state and territory to nominate monitoring bodies to do this preventive oversight.

Now in the ACT, the ACT is in someways doing well in that we have the legislation and the framework set up. But there are very limited resources, so we have one staff member that works with the ACT Ombudsman. That role is called the NPM Coordinator and has been in place for just over a year. It is really valuable for coordinating across the three bodies that make up the National Preventive Mechanism for the ACT. We have seen some great outputs in terms of having standard operating procedures and guidelines that have come together. That is really important from a governance perspective. But what we do not have, or each of the three bodies do not have, is the capacity for actually getting out and doing that preventive monitoring.

When I say preventive monitoring, it is about—sometimes it is about responding to things we hear. So risks that are identified. Sometimes it is about just visiting out of the blue, because sometimes it is the most vulnerable situations where people do not feel empowered to make complaints—so to have a staff member that can actually drop in unannounced on different places of detention. It is a very broad definition. So it does not just cover prison and youth detention, it covers mental health and it covers other places too.

I guess just to illustrate your point, the question you are asking, the NPM, the three of us, ACT Ombudsman, Human Rights Commission and my office, recently did an NPM visit to Bimberi. The reason we did that was because we had seen through the first half of the year numbers had been steadily increasing into the high 20s, which is a significant increase for the ACT. So we wanted to know what impact that was having on the treatment of children and young people, and the staff as well. So we did do an NPM visit. We are in the process of conducting an evaluation of that and identifying how resource intensive that was. It is going to be detracting from our other functions. So I think with the additional resourcing for the NPM we would be able to do more of the monitoring, which I think is important.

Mr Costello: Yes, it might be worth noting, just on the resourcing question, that the

visiting team for that visit comprised the heads of the jurisdictions themselves. So it was Rebecca, the Commonwealth ACT Ombudsman and also the President of the Human Rights Commission and the Children and Young People's Commissioner. So that just goes to the resourcing issue that it had to be the heads of jurisdictions themselves that were the visiting team.

THE CHAIR: Yes, which you could have sent someone and then used that time to do something. Have you put a budget submission, or you are proposing to put a budget submission, in the next round?

Ms Minty: My office has, for an identified Aboriginal and Torres Strait Islander staff member, yes.

THE CHAIR: For the next round?

Ms Minty: Yes.

MR EMERSON: I wanted to ask about the Healthy Centre Review of Bimberi government response. Recommendation 4, in that review, mentions establishing a dedicated Youth Justice Throughcare Program, which has been agreed in principle and in budget processes. In the 2023-24 budget the government provided CSD with \$200,000 for the purposes of developing a throughcare program for youth justice. A consultant was engaged during that financial year to do this work. You are nodding, so you were aware of that having happened?

Ms Minty: We spoke to the consultants, yes. We had an engagement with them. It was some really interesting ideas. We put forward some of our own thoughts, but we have not seen the output of that review.

MR EMERSON: Yes, so you have not received a copy of the report or anything to that effect?

Ms Minty: No.

MR EMERSON: I understand that is done?

Ms Minty: No. I think throughcare is, as you say—we identified it in the Healthy Centre Review, but it had been identified long before that as a real pressing need for the ACT. The Public Advocate and Children's Commissioner has also raised it consistently. I think it remains one of the biggest gaps in youth detention. I think there are plenty of things we are doing well in the ACT, but when we are looking at trying to avoid young people going back into custody, throughcare—and what we mean by that is as soon as young people come into custody, looking at what supports they need and connections to community, so that when they leave—and granted many are on remand and Bimberi may not know when they will be released—but it is about that forward looking and that connection to community. It is a high priority, certainly for the NPM and for my office, and I would say the other oversight bodies.

MR EMERSON: Are any of the programs that are being run in Bimberi connecting with the kids? You know, this is not like proper throughcare but kind of informal

throughcare of providing connections that will last beyond their detention?

Mr Costello: I think over the years that Bimberi has been open there have been a few attempts at that, more informal and ad hoc, by various organisations. The one we highlight in the report, I think it came up before the social justice policy committee discussion with the Chair of the Therapeutic Panel, is the flexible education model, which ACT education runs. That is a model, I think, for approximately 20 students in the community. You do not have to be involved in the youth justice system to be participating in that flexible education model for, I think, years nine and 10.

But what we saw at Bimberi was that if one of those students happened to find their way into Bimberi there was a lot of connection maintained with that program while they were in Bimberi. There is a youth worker employed by that program. They would visit the young person regularly and really focus on getting them back to Muliyan, the flexible education school, as quickly as possible after they left Bimberi. That was really in stark contrast to the delays we see for a lot of the young people who might be in more mainstream education settings, where there can be quite a delay in getting back into school. They may have been disconnected from school prior to their incarceration and then it is a delay getting back there.

So, in terms of what was happening on the ground, the closest thing to throughcare that we identified in the Healthy Centre Review was that flexible education model.

MR EMERSON: So you are not aware of any efforts to create contact with the flex-ed system for kids who were not already engaged with it, but are now detained?

Mr Costello: It is probably a question better put to the Education Directorate, but I think that it is probably a resource question in terms of whether that program has capacity to pick up new students while they are in Bimberi.

MR EMERSON: Yes, okay. I want to ask about the overuse of lockdowns. Is that still a problem? Is that an ongoing problem?

Ms Minty: I have concerns that—when you say overuse of lockdowns, I suppose my concern is that we are still seeing, for example, extended lunch lock-ins due to staffing pressures, and this has a flow-on effect as we identified in the NPM report. So for example, when we were there in May, we saw that medical appointments scheduled for the afternoon had to be cancelled because of the extended lock-ins. So the flow-on effect is access to health. The flow-on effect is access to afternoon education sessions. So I think it is still a concern.

I am yet to see, as well, the other aspect is—we have consistently raised concerns that centre-wide lock-ins occur whenever a code is called. Sometimes it is—there may be a very good reason for doing that, and a safety and security reason. But there may also be—we heard an example last year about a rolled ankle in the health block and that caused a centre-wide lock-in. Of course, staff have to do paperwork, but it should not come at the expense of young people accessing education, accessing health appointments, et cetera. So it is an ongoing matter that we continue to, I guess, have a watching brief on.

MR EMERSON: I imagine those are perceived by young people in the centre as kind of punishments, I suppose, but what I am hearing from you is this is happening because there are not sufficient staff. I mean, they are just having to do it because they do not have sufficient staff.

Ms Minty: Look, I think it is a combination and I think the Healthy Centre Review tries to really touch on this point about appetite for risk and how you respond to things. So I think with staffing, yes, there are pressures on staff and especially with higher numbers. There were people being called in for overtime and that has an impact on staff in the longer term. You do not want staff burnout, et cetera. But we did not hear from senior management that they were short staffed. They said, “We feel we have got plans in place in terms of staffing numbers.” So I think it is more than just staff numbers.

Mr Costello: I think the other side of that coin too is the transparency around data on how much time young people are spending out of their units and cells. That is a national problem. There has been calls repeatedly for that to be reported through RoGS, or other forms of national reporting, so we get a sense of comparison across the jurisdictions, and over time, as to how much time out of cells young people are spending in youth detention centres.

THE CHAIR: What response did you get from the government when you raised these issues? What response are you getting?

Ms Minty: I have to say lately, we have had a pretty receptive response. But I cannot not mention the delay in the Healthy Centre Review, and that was a nine-month period. So the Assembly has given us this direction, through our legislation, that we do these comprehensive reviews every three years. To me, nine months is just too long. Many of them need timely responses. It needs to be prioritised. So that was a concern.

When we did the NPM visit in May, that was sort of eight months after this big report had been delivered, we saw many of the same issues. That was of concern. And in fact, the first recommendation from the NPM report was that the government respond in a timely way. We do now have that government response. And I think some—I am very pleased to see recommendations accepted, particularly around the model of care. I think it is a great opportunity for the ACT to look at how we do youth detention.

The government response identifies as well that part of that will be looking at good practice models. The Spanish model, for example, really focuses on a therapeutic approach. I think we have got a lot we can look to and learn from. I think that is really positive. In a national climate where youth justice is going to a more punitive approach, which I do not think leads to a safer community, I think it is really positive how the government has responded to the Healthy Centre Review.

MR EMERSON: What would have been do you think a timely response? Nine months is too long, obviously.

Ms Minty: Yes, I think four.

MR EMERSON: Yes.

Ms Minty: I mean, four to five months is probably—for a comprehensive review. We also do critical incident reviews which are smaller. I know other independent officers of the Assembly and the auditor's office have a mandated four months.

MR EMERSON: We get four months for committee. Is it not, committee reports get a four-month response? Petitions get a three-month response.

Ms Minty: And also, I should say as well, I can accept if the government does not accept my recommendations, that is fine. But I think having a timely process so that—because we build momentum when we go out, because we talk a lot to staff, we talk to young people. So I think keeping that momentum going is important.

MR EMERSON: I think we have had—sorry. I really think in committees we sometimes have frustrations because we have asked a lot of questions in the intervening period and been told we have to await the government's response as well. So it slows everything down a little bit.

THE CHAIR: My question is around parliamentary privilege and admissibility in court. Can you give us an update on these since the Supreme Court's interim ruling that parliamentary privilege attaches to the inspector's report, which affects the admissibility of your evidence in court matters? Particularly, please talk us through your work with the ACT Coroners Court and the ACT Corrective Services board?

Ms Minty: Yes, thank you for that question. So since the annual report was tabled in the Assembly, the Supreme Court decision in the matter of Williams was handed down. That matter was where Acting Justice McWilliam had given an interim indication that my reports are subject to parliamentary privilege. That was certainly confirmed in the written judgement, making it very clear on the face of this judgement that any report I do, that is tabled in the Assembly, has privilege attached to it. As I have identified in the annual report, that creates a challenging situation because, as you know, all deaths in custody are considered by the coroner. So it means that parliamentary privilege attaches to the reports, therefore they cannot be considered.

THE CHAIR: Yes.

Ms Minty: I have attempted to—I mean, I do not think this tension was anticipated when this critical incident review of deaths in custody was included in the legislation. I have had productive, you know, useful conversations with both the coroner and with Corrective Services and JACS. I guess, from where I sit, I think the legislation—my legislation makes it clear the Assembly sees some sort of role for my office, as an independent statutory body, specifically focusing on corrections, to do this sort of review and reflective practice. The coroner also has a very important longstanding role.

The way forward, at the moment, is that I have done what I have called a preliminary assessment of one death in custody. The reason I have done that—so basically that is a desktop review—is because I think it is important for a timely review. The coroner process is very in-depth and, for that reason, it can be quite prolonged. The idea of a preliminary assessment is to look initially after a death and look at any immediate issues that need to be identified. So I have done that review which I have provided to the coroner for the coroner to consider.

I think there needs to be some legislative amendment because the process must be clearly set out in legislation. If we go down that path of these preliminary assessments then I think it needs to be reflected in legislation.

Mr Costello: It might be worth noting, as another way of trying to tackle this issue, we are also participating in a different coronial inquest at the moment as an interested party, just to assist the coroner in that respect as well.

THE CHAIR: Right. So then you are not producing a report—but then you are assisting—

Mr Costello: Yes.

THE CHAIR: Right. That is smart. What conversations have you had with the minister, or potentially with the Attorney-General or her office, around legislative amendments or change?

Ms Minty: I think they are certainly aware that it is on the agenda and we are in discussion with JACS, yes, active discussions.

MR EMERSON: I want to ask about timing, so back to Bimberi. It has been put to me that the timing of recreational activities or team sport lines up with the timing of visits from family members. Are you aware of that? And if that is accurate?

Ms Minty: Not specifically. I could not comment on sort of that level of granularity. But if it is the case, I would hope there would be some flexibility in ensuring young people can attend both. They are both very, very, important.

MR EMERSON: Yes.

Ms Minty: Unfortunately, when we visit, too often young people are in their units. Partly that is—there is a risk assessment done every morning as to who can mix, et cetera, but I think the centre should be small enough to have flexibility around that. I think visits have such a key role.

MR EMERSON: Yes, I have heard stories of young people kind of, I suppose, rejecting visits because they want to go play a sport. Maybe I can ask JACS about it. Because I could also understand it is a good time for sport if you are not going to get a visit, right? While other people are getting a visit, but yes.

Ms Minty: Yes. I mean there are centres around the country that can allow visits—I mean, we visited one where it is seven days a week, in New South Wales.

MR EMERSON: Nice. Yes, okay.

Ms Minty: So I think—

MR EMERSON: Maybe it is expanding those hours, rather than—

Ms Minty: Yes. I think that one of the benefits of having a small jurisdiction, with a small number of young people detained, is we can be a bit more—we can be flexible.

MR EMERSON: Yes. Yes. It might be something to look into. I am not sure. Are you aware of any FASD screening that is happening at Bimberi or the AMC?

Mr Costello: Not specifically. It is something I recall us looking to. I think, this is my best recollection from the review, is that it is more on an ad hoc basis, rather than done on a systemic basis.

Ms Minty: Yes, I think you are right.

Mr Costello: It might happen, but not in a routine systemic way.

Ms Minty: I think FASD screening is a really important thing to have in youth detention, and adult detention, because it is—time in custody is an opportunity to identify any supports required and assist. I think we have seen good practice in the past in terms of the principal practitioner role and referrals to an allied—there was an allied health pilot that ran for a while and it was favourably assessed. So that is slightly different to a specific screening for FASD, but having allied occupational therapists, other allied health, coming in and basically wrapping around supports to young people while they are in custody and trying to continue that once they are released.

MR EMERSON: Have you seen any progress, or is there any openness to a needle and syringe program at the AMC?

Ms Minty: Have I seen any progress? No. I think AMC, or the ACT Corrective Services, recently released its drug strategy, which specifically says something along the lines of that it is not being considered at this point.

I believe, for harm minimisation, that there should be a needle and syringe program in the jail because I think there is an evidence base behind it. I think we are also seeing a massive decline in Hep C infections in the community but in jails there are still re-infections from Hep C. I think the risks posed to staff can be managed. I think there are already risks for staff because we know there are dirty needles out there. We know, and staff are aware as well, that in certain units, that dirty needles are being used. And of course they are being hidden in cells. When there is a cell search, that poses a risk to staff. So I think it is really important that we have a very calm evidence-based discussion about NSP. I think the time is right now to reconsider.

MR EMERSON: Yes. I mean, there seems to be no evidence of drug use decreasing in the prison.

Ms Minty: No. I think drugs remain a pressing problem in the AMC. I think the big focus needs to be on a structured day because it is going to be part of the solution. Of course it is not—you have to stop drugs coming in, yes. But drugs will come in. I think when we go to units and see people standing around during the day, not busy, I think it creates an environment where drug seeking or seeking to alleviate boredom, et cetera. So there will be many aspects to moving forward and minimising harm caused by drugs, but productive activities is a key part of it.

THE CHAIR: We have time just to squeeze in one more question, if that is all right?

Ms Minty: Yes.

THE CHAIR: I am particularly interested in the ACT Inspection Standards for Adult Correctional Services, particularly clause 87.25, which states:

Health staff can communicate to prison management if a detained person's physical or mental health has been, or will be, injuriously affected by continued imprisonment, or any condition of imprisonment.

I am particularly concerned that apart from this clause there is no reference to any obligation for health providers to provide a health risk assessment. I just wanted to get your understanding of how health risks are managed at the AMC?

Ms Minty: I think the intent of that is really around detained people being able to communicate with health providers about mental health concerns. I think then it is a matter for the health provider to conduct risk assessments. I think there is also, if custodial officers are aware of mental health concerns for detained people, there is an information flow where they can make referrals, at risk referrals, to custodial mental health. There is a widely understood, in my view, widely understood process. It may be worth asking corrections as well or Justice Health. But certainly I see that as—it is sort of part of the same process, like referring to Justice Health, them making the risk assessment. Does that sort of answer your question?

Mr Costello: I was just going to add to that. The other component perhaps to where you are coming from is, there is an accepted process, and it is in the policies and procedures at AMC, that if someone is segregated, after a certain period of time a multidisciplinary team is convened and health is part of that team that advises the impact on that person's health of the ongoing segregation, but that is also about the person's physical and mental health as a result of segregation, for example.

THE CHAIR: Thank you. My question was generally around communication of the health risk and whether you are confident that that is happening from the person who is incarcerated to the relevant authorities? If you are confident that that communication is happening, that there is that transfer of the information, then yes, that answers my question.

Ms Minty: I would say, there are certainly the policies and procedures in place. I have not specifically looked at how they are playing out in practice. So I would not say—

THE CHAIR: You are confident.

Ms Minty: I have confidence it is fully effective, but certainly the processes are there.

Mr Costello: I think the Health Services Commissioner and the Human Rights Commission might have more visibility about how that communication flows.

THE CHAIR: Excellent. Thank you. I think that brings us to time. On behalf of the

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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 of *Hansard*. The committee will now suspend proceedings. Thank you very much.

Hearing suspended from 10.39 am to 2.02 pm

Appearances:

ACT Human Rights Commission

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

Mathew, Dr Penelope, 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 Privacy Commissioner

THE CHAIR: We welcome witnesses from the ACT Human Rights Commission.

Ms Griffiths-Cook: I acknowledge the privilege statement.

Dr Mathew: I have read and understood the privilege statement.

Ms Rowe: I too, have read and understand the privilege statement. And online—

Ms Toohey: I have read and understood 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, as 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. My question is around the right to housing. What impacts do you anticipate the housing as a human right bill will have on your workload?

Dr Mathew: Well, I am sure Karen Toohey will receive some more complaints with a different angle and she might want to talk to that. From our perspective, we are gearing up for its entry into force on 1 January 2027. We will be preparing a fact sheet for both the community and public servants, obviously. It would be good to do some education around what that right means and that is where I think we suffer from continually constrained resources.

So the Human Rights Commissioner has at her disposal a whole 2.5 FTE, amounting to three people, who do a fantastic job. They are a small but mighty team. But the reality is that with every new right that comes on we want to do education around it. Of course, we are not complaining. The commission has long advocated for the addition of the right to housing, along with other socio-economic rights. But that is a constraint that we will need to do some work around. Obviously, there might also be cases in which we seek to intervene in litigation involving this new right to housing as well.

But, Karen, do you want to say a little bit more? You already get complaints that touch on housing matters, obviously.

Ms Toohey: Yes. So we already get a reasonable number of complaints to do with housing in the ACT. They come in under discrimination law, from an accommodation perspective, accommodation status. We are also getting some in the right to a healthy

environment space. We have a trickle of those coming through. We expect some of the right to housing matters will sit alongside those existing complaints. So we will wait and see what the numbers look like. But as I said, we already have a reasonable number of matters coming through to do with housing and we have a very good working relationship with them in trying to resolve those complaints.

THE CHAIR: I know you get a series of complaints, but what are the big ones that you get in terms of housing?

Ms Toohey: So in housing, there is a range of them. Often they are to do with maintenance issues, which might be affecting things like mould or the condition of particular rooms, which is having an impact on people's health. Sometimes it is about reasonable adjustments. So adjustments to the property to accommodate people's disabilities, things like heating and cooling, ramps, those sorts of things. We have recently had some in the right to a healthy right environment space to do with water quality which we have resolved. So there is a range of various—but certainly in the disability space, that would be the largest cohort of complaints that we get.

THE CHAIR: Thank you for that. I do not know if you heard the housing minister yesterday, sorry, on Monday, indicate that she is deregistering the ACT from the SDA program. I just wanted to get your views on that, noting that you probably had complaints from clients who would, I guess, be seeking modifications to their house and could not get it. Did you get complaints or have you had issues with people who are seeking modifications and were not able to get them?

Ms Toohey: Yes. So I cannot comment explicitly on the SDA program because that has been subject to a completely separate process. We do get complaints in that space. And as I said, some of those matters in particular will come to us through Official Visitors about the condition of the property, the maintenance of the property. We have had some, for example, to do with driveway access and things like that for people with mobility impairments. So it is an area where we do get complaints but it is certainly not the largest component of complaints that we get in the public housing space.

THE CHAIR: Did you say you do not get complaints specifically on modifications? Sorry, I probably got that wrong.

Ms Toohey: No, we do get complaints in that space, but not so much to do with houses that were notionally part of the SDA program.

THE CHAIR: Okay.

Ms Toohey: So we certainly work with the Official Visitors, as I said, on some of those matters, trying to resolve the condition issues with some of those properties, but the modification matters that we get often tend to be in mainstream public housing, rather than the SDA program.

THE CHAIR: Right, okay. For my own benefit and for my own understanding, what would a resolution look like for a housing complaint?

Ms Toohey: Yes, so sometimes, as you will be aware, there are a very large number of

properties. There is the relationship with Programmed. Some of our resolution process is about trying to ensure that that process is working properly and is working within the published timelines. Sometimes, as you know, people struggle to get attention on their particular issues. Some of those will be around securing the property. Some of those will be around, as I said, things like mould reparations or heating or cooling. So there is a whole range of issues.

Our role really is to try and get attention on the matter and make sure it is being dealt with in an appropriate timeframe, and also that our colleagues in housing and Programmed are paying attention to their obligations around things like the positive duty to provide reasonable adjustments. So let's not put the person in a queue. You have particular obligations with respect to modifications, or changes, or improvements to a property when it involves a person with a protected attribute under the act.

THE CHAIR: On average, how long does it take for a matter to resolve?

Ms Toohey: Look, in all honesty, they can be really quick. As I said, we have a very responsive relationship with our colleagues in housing. Some of them will take longer if the maintenance is more significant. Sometimes that will also mean a property transfer rather than modifications to a property. So for example, if someone has acquired a disability and they need a property that is accessible, then obviously it might take a bit more work trying to find the property that is appropriate for that person. But I would have to say, some matters we resolve very, very, quickly, and again, just acknowledging the good working relationship that we have with our colleagues in housing.

THE CHAIR: It probably is in your annual report somewhere, but do you collect data on how long it takes, on average, for those sort of matters to resolve? Do you collect that on complaints and how long it takes to resolve?

Ms Toohey: Yes. We have some KPIs around how long our simple complaints take, which is less than 70 days, and how long our more complex matters take, which is, overall, under 250 days. We are only this year starting to report publicly on conciliation processes because we might conciliate a matter through emails and shuttled conversations or it might be through a formal conciliation process. So we are now just trying to collate that data a bit more coherently.

MR WERNER-GIBBINGS: Page 15, in the annual report, it is in two columns. Down at the bottom of the first column, the potential incompatibility of section 9D of the Bail Act, presumption against bail, and that could—arguments have been made that it should be declared incompatible. If it is declared in this case, it is the second time.

Dr Mathew: Yes.

MR WERNER-GIBBINGS: Presumably you have been doing a fair bit of thinking about what that means. Is the Human Rights Commission involved in the bail review?

Dr Mathew: We have made a submission and it is publicly available, yes.

MR WERNER-GIBBINGS: Right, okay.

Dr Mathew: But one of the things—and I think we might have noted this at estimates as I seem to remember talking about this last time—

MR WERNER-GIBBINGS: So, I was not there.

Dr Mathew: No, no, for a different committee. One of the things we raised was that the issue of the bail presumptions was not really part of that inquiry. It was not being looked at actively at that stage. It was said that people could make submissions. Of course, we naturally did make submissions because we do want to see those presumptions against bail looked at.

We have had a long-standing declaration of incompatibility and it is up to the Legislative Assembly to decide what to do. Our argument would always be, we should do away with those and rely on normal criteria around bails, supplemented by things like the suggestions we have made around disability, around Aboriginal background being taken into account, and so on.

MR WERNER-GIBBINGS: This is more of a philosophical question. Would the Herbert case be found incompatible—I mean, I guess, or not. How would that impact the Human Rights Commission's—actually, you probably just answered in terms of, you have a long-standing position. So whether or not the Supreme Court finds that incompatible, that will not impact where the HRC's position is?

Dr Mathew: Yes.

MR WERNER-GIBBINGS: That is true, but it might certainly be more—if it was found to be incompatible it would add weight to the position of the HRC?

Dr Mathew: I think so.

MR WERNER-GIBBINGS: Yes.

Dr Mathew: It would be much more difficult if we get a decision that says it is perfectly compatible.

MR WERNER-GIBBINGS: Yes.

Dr Mathew: And we have different, but similar, provisions in the Bail Act, one being—

MR WERNER-GIBBINGS: Plus, you say. As I say, if I know it is fine and everything is fine—

Dr Mathew: Yes, that would be a very different situation, yes. But it is important to have clarity on this. It is in our system, a dialogue system, the Legislative Assembly can decide. We do not promote this. We do not want to see us having incompatible laws on the books. But it is important to actually have a response. And many, not just the Human Rights Commission, but the legal profession as well, have pointed out that there are other criteria in the Bail Act that the judiciary must consider and the issue is, are they getting sufficient evidence to make those important decisions properly. I know you

have had a bit to say on that in the past too, from a victim's perspective, Margie.

Ms Rowe: Yes. The Victims of Crime Commissioner put in a separate submission on the bail review. The focus of which was the need for evidence and the fact that bail decisions and how bail criteria are applied is not very transparent because they are quickly made decisions, they are not recorded, you track them through media more than anything else, and that there is a lack of data and therefore we do not have an evidence base on which really even to start the review. And that probably would be the starting point. The other part of that, in our submission, was the need for an evidence-based approach, particularly in family and domestic violence matters, so that the court does have in front of it appropriate evidence that goes to their ability to assess the risk.

MR WERNER-GIBBINGS: With the incompatibility—and sorry, I did not watch your estimates appearance—

Dr Mathew: That is perfectly—

MR WERNER-GIBBINGS: And I have not yet read—

Dr Mathew: You probably had many other things to do.

MR WERNER-GIBBINGS: I have not yet read the submission. But are there any other jurisdictions in Australia with this incompatibility, or a similar incompatibility, is extant? Or is this unique to the ACT because we have the HR act?

Dr Mathew: There are presumptions against bail in other jurisdictions.

MR WERNER-GIBBINGS: Yes, I know that. But are there Human Rights Acts that those presumptions clash against?

Dr Mathew: Yes. There may well be situations of clash in Victoria and Queensland. As we know, however, in both of those jurisdictions there has been a preparedness to introduce legislation that is incompatible, to override their acts. I do not know, I would have to look at when their bail acts were enacted, and when the presumptions, if there are any, came into force, to consider whether they have actually looked at those issues. But we, of course, would not want to see the ACT going down that path. The point of having a Human Rights Act is to adhere to the rights.

The critical issue here is judges already must decide whether there are risks to the community, an offender might abscond, those sorts of issues. The question is, what sort of evidence are they getting to make those very important decisions, rather than just having blanket presumptions, which also apply to children. Children need special consideration in the criminal justice system. And it adds to a situation where Bimberi has very high numbers.

As we know, when we went in to do the visit as part of the National Preventive Mechanism, this has all sorts of impacts. You have more children and young people in Bimberi than you really need to and that affects the operations. It meant, for example, because they did not want to have particular cohorts mixing, that young people were going up to the school less often. They have a right to education. It is compulsory. It is

very important to their rehabilitation. So there are all those sorts of knock-on effects.

The same is true of the adult system as well. We know that the AMC is pretty, nearly full, up to capacity, yes.

THE CHAIR: I just had one question. It is around education offered at the AMC. I wondered whether you receive complaints about the appropriateness of those offerings?

Dr Mathew: We would probably need to refer to my colleague, Karen Toohey. I can say, from just walking around, visiting as the Human Rights Commissioner, it is quite evident that there is not enough offered regularly to people within the AMC. But as to particular complaints, I think Karen is probably the best placed to comment.

Ms Toohey: Yes, we do get complaints about the education offerings at the AMC; the frequency of them, who is eligible for them and how often they offer the same sort of programs when they are not offered because there are insufficient numbers or the numbers are in remand rather than sentenced detainees. That can sometimes affect people's parole. We also do get concerns raised with us about access to external education and how that is managed. So there is a range of issues that are brought to our attention in that space.

THE CHAIR: What work, if any, are you doing in that space to address those issues with the government?

Ms Toohey: So, I work through the complaint mechanism—that is working directly with corrections around what is available, what are the barriers for people participating in education and what are the things that we can do from a policy and procedure perspective to improve that. Both the Human Rights Commissioner and I, and the Public Advocate, sit on an oversight committee which has been raising, for a number of years, access to education offerings and programs at the AMC. So it has been, I would suggest, a persistent theme. I do not think colleagues are exaggerating in that space.

So it does come up through the complaint mechanism from detainees. As I said, we try and work in a systemic way with corrections to try and resolve some of those things. But it has also been raised by the Inspector of Correctional Services in their Healthy Prison Review, and again through the oversight bodies.

Dr Mathew: I think the importance of a structured day, which involves education offerings, but also work and other programs, has been emphasised time and time again. We understand that there are some constraints in the fact that it is one prison in the ACT and everybody is in there, whether it is men, women, remand, sentenced. But we do have a right to work and we do have a right to education and they are guaranteed on a non-discriminatory basis. People in detention need that and I think society will be better off if we are able to provide them with it.

THE CHAIR: Absolutely. I have heard several concerned people who have been in custody say, well, the appropriateness of the courses offered. For example, this is probably not word-for-word, but they went in there having had some kind of education and then they were offered a course to make coffee. Meanwhile they have been to CIT

previously and they had the capacity to be able to do more. So it is an issue that hopefully we can resolve.

I have a question around victim concerns. On page 70, victims' rights concerns are outlined. The concerns raised in 2024-2025 amounted to 325. This is in contrast to the previous periods, which were 124, 88 and 101. This is quite a substantial and significant increase. I wanted to understand what that trend reflects. What is driving that?

Ms Rowe: Thank you, Chair. I will answer that because it is in the victims of crime area.

THE CHAIR: Crime, yes.

Ms Rowe: I have to say, when we tallied this up, we were a little surprised ourselves. But I think it relates to three things, noting that predominantly the complaints relate to ACT Policing. I should just say, Victim Support has a really collaborative relationship with ACT Policing. We work with them on many, many, programs.

I think that it may not reflect an increase in complaints against police, but it does reflect an increase in complaints being raised. I think the three things that have influenced that are, we ourselves have become much better at educating our staff about what are the charter rights and what are charter concerns and how to raise them. And that coincided with the review of the charter. We had staff put an email footer on in all their communications with our clients in relation to the charter review. So I think that victims were more ready to raise things and our staff were more ready to ask about, "What has your experience been with police? What has your experience been with the justice system?" So I think that really fed into it.

I think the other part of it is that Victim Support has taken on quite a number of new programs, we have the Sexual Assault (Police) Review, we have the Sexual Violence Legal Service, and the registers came over in 2022, but we have been building those. So we have just got a higher and higher number of victims. And all of those new areas are feeding into the charter complaints against police. So you can imagine that there are quite a number arising out of the Sexual Assault (Police) Review, because these are people who tried to engage with police, for example, and that was not successful, and it is now being reviewed. So I think it is those three factors.

The second highest amount was 63 complaints against the DPP. Again, we have a very good working relationship with the DPP. I think that again is a product of us inquiring more comprehensively about people's experiences.

THE CHAIR: What sort of complaints? Like, an example of complaints against the DPP?

Ms Rowe: The predominant complaint is about not being treated respectfully.

THE CHAIR: Right.

Ms Rowe: I appreciate that is sort of quite generalised. In relation to police, it usually relates to not feeling heard, feeling like they are dissuaded from reporting, feeling like

they are dismissed, brushed off. There is a different category for not being advised of—police are required to inform victims of progress every six weeks. That usually happens. That is a separate category. So it sometimes can relate to lack of communication or lack of timely communication. I think the sort of picture the clients present with is that they have raised a matter, they have gone into the station and raised a matter with police—I presume the front counter might have been busy—and they have not been dealt with in a way that they think is appropriate for what has happened to them.

In relation to the DPP, it has been the failure to advise of the outcome of bail is, one of them, and failure to advise of sentencing outcomes. But given the number of prosecutions, I think that is a relatively low number in relation to the DPP.

THE CHAIR: How many of these complaints were dismissed and how many were actioned?

Ms Rowe: 231 were resolved. We define resolved as the victim of crime is satisfied with the outcome, or they no longer wish to proceed, or the matter is referred to another agency. That left 94 unresolved and we are still working through those.

THE CHAIR: Okay.

Ms Rowe: Sometimes, victims of crime sometimes do not—they raise the concern with us, and we log it as a concern—but they do not necessarily want us to take it up with the agency because they are worried that it might prejudice the investigation or delay the investigation and they would rather keep on good terms. So we might have concerns that are unresolved because, while they have been raised, the victim of crime says, “I do not want you to take it any further.”

THE CHAIR: Thank you. We had evidence from the DPP yesterday that the witness assistance program officers, within the DPP has not grown at all, I think, in the time since I was there. I know that there used to be victims of crime, sorry, witness assistance, within the AFP as well.

Ms Rowe: Yes.

THE CHAIR: What interaction, if any, do you have with the office and how do you go about supporting those victims that perhaps you manage?

Ms Rowe: Yes. We have a lot of interaction with the Witness Assistance Service. We work really closely with them. We provide support to victims, sometimes before they go to police and through the whole process. So we might be supporting victims of crime who want us to continue that support when the matter goes to court. Sometimes with the witness assistance, particularly if the victim of crime has particular needs or particular disabilities, because that will be—one of our more qualified staff will support them.

There are so many prosecutions, particularly in the family and domestic violence space where people benefit from and require support, that between our two organisations we cannot cover them all. Victim Support also runs a volunteer program where we have court support volunteers. So we work really collaboratively with the Witness Assistance

Service. We meet regularly with them to ensure that we are not duplicating our support and also to prioritise cases and ensure there are no gaps in support.

THE CHAIR: So generally you would say that most of victims, if not all, are supported either through your office or—

Ms Rowe: Yes. It is one of the things that we prioritise. For all victims, I think court is the pointy end of their experience. So we really prioritise, even if we are stretched resource wise elsewhere, that there is support provided there. Victim Support plays a coordinating role. For sexual assault victim-survivors we have the wraparound programs, so we make sure that between the Witness Assistance Service, ourselves and the Canberra Rape Crisis Centre, somebody is supporting the victim and the appropriate person is supporting.

THE CHAIR: Is it your view that you will continue to see an increase in the numbers?

Ms Rowe: Yes. I think family violence and sexual violence are tracking upwards. In some ways that is not a bad thing, because I think the reporting of them is tracking upwards, and that has been as a result, I think, of the Sexual Assault (Police) Review, affirmative consent. I think there has been some really quite positive messaging to victim-survivors of sexual violence that they can report and they can be supported. So I think we are going to see that increasing. I think what we have seen is property crime and things like that are dropping but that does not impact us because we do not really work in that area.

THE CHAIR: Is there any movement on the victims of crime compensation scheme? Is that under review?

Ms Rowe: The financial assistance scheme.

THE CHAIR: Assistance, yes.

Ms Rowe: Yes, it is, I think, it is likely to be under review. As you would know, we have some really significant delays in paying recognition payments.

THE CHAIR: Yes.

Ms Rowe: And that has arisen as a result of the huge increase in applications for immediate need payments. Under our act we have to prioritise those payments because they are usually for, as the term suggests—people need them for home security or they need to relocate. So they are often in crisis and need that immediate need payment for their safety and that is absorbing just about all of the assessing resources that we have to keep up with those.

So the ACT Auditor-General has slated a review of the scheme for 2026-27. Initially that was a review of the scheme and we suggested to the Auditor-General that we would prefer it be broadened to look at whether this scheme was the appropriate scheme to be operating in the family and domestic space because we are not a crisis service and there are other payments to survivors who are fleeing domestic violence or who need security. I think from our point of view, a centralisation of those payments and a one-stop shop

for that would be useful.

So at the very least, I hope the Auditor-General will have a look at it from that perspective because it is essentially turning our financial assistance scheme almost into a crisis payment scheme. We do not really have the resources for that and it is coming at the expense of the recognition payments.

THE CHAIR: You do not get any of the Safer Families Levy?

Ms Rowe: Not for the financial assistance scheme, no. We do for our Family Violence Safety Action Program, which is our high-risk program.

THE CHAIR: Right. 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, I would like to thank our witnesses who have assisted the committee through their experience and knowledge. We also 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, and no later than five business days from today. This meeting is now adjourned.

The committee adjourned at 2.35 pm