



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON ESTIMATES

(Reference: Appropriation Bill 2005-2006)

Members:

MS K MACDONALD (The Chair)
DR D FOSKEY (The Deputy Chair)
MR R MULCAHY
MS M PORTER
MR Z SESELJA

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 1 JUNE 2005

Secretary to the committee:
Ms S Leyne (Ph: 6205 0490)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents relevant to this inquiry which have been authorised for publication by the committee may be obtained from the committee office of the Legislative Assembly (Ph: 6205 0127).

The committee met at 4.02 pm.

Appearances:

Mr J Stanhope, Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs

Chief Minister's Department

Mr Mike Harris, Chief Executive

Dr Maxine Cooper, Executive Director, Arts, Heritage and Environment

Mr John Heinemann, Finance Manager, Resource Management, Environment ACT

Mr Peter Liston, Acting Manager, Water Resources, Environment ACT

Dr David Shorthouse, Manager, Wildlife Research and Monitoring, Environment ACT

Mr Geoff Wells, Manager, Parks and Conservation Service, Environment ACT

Mr Rod Hillman, Public Affairs and Information, Environment ACT

Mr Bob Neil, Manager, Environment Protection, Environment ACT

Mr Bill Logan, Manager, Natural Resources and Legislation, Environment ACT

Office of the Commissioner for the Environment

Dr Rosemary Purdie, Commissioner

Dr Helen Sims, Manager

THE CHAIR: You should understand that these hearings are legal proceedings of the Legislative Assembly, protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means that you are protected from certain legal action, such as being sued for defamation, for what you say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter.

Officials, on coming to the table, please state your name and the capacity in which you are appearing and identify clearly any questions you are taking on notice. It is then your responsibility to check the transcript and respond to the questions. Responses to questions taken on notice are required within five full working days. The transcript will be emailed to the minister and the departmental contact officer for distribution to officials as soon as it is available. The proceedings are being broadcast to specified government offices and the media may be recording the proceedings and taking visual footage. I ask all officials and members to ensure that mobile phones are not used in this room.

Good afternoon, minister. This is a spill-over day and we will be dealing with Environment ACT until 5 o'clock and then we will have you before us as Attorney-General until 6 o'clock. I don't think there is a need for you to make an opening statement

Mr Stanhope: I have nothing to add at this stage, thank you, chair.

MR MULCAHY: Chief Minister, I refer you to BP4 at page 32 in relation to the figure of \$17.7 million for nature conservation and land management. No breakdown is shown.

Do you know how much of it is available for conducting hazard reduction burns?

Mr Stanhope: I'm sure Dr Cooper can assist you with that, Mr Mulcahy.

MR MULCAHY: I have a couple of related questions.

Mr Stanhope: Mr Wells will assist, Mr Mulcahy.

Mr Wells: Fuel reduction burns, on average, cost us about \$8,000 per burn; that is, the ones around the city that we are doing at the moment. They are quite expensive per hectare because of the intense resources that need to be put into them to ensure both human and asset safety and biological safety. If we do 10 burns, that's about \$80,000 in staff time and other resources.

MR MULCAHY: Mr Wells, how many have you conducted so far in 2004-05?

Mr Wells: We have conducted every single one that was in the bushfire operations plan, I believe about 10.

MR MULCAHY: In how many of those burns have you sought to involve the volunteer firefighting brigades? How many have they participated in?

Mr Wells: They have participated in all of the ones in which they have been able to participate, which would be the majority. They're invited to every burn. Through the Rural Fire Service, they're invited to participate and they have been very grateful to take up that opportunity. For example, on the most recent Black Mountain burn, they did the overnight mopping up, which relieved our staff of that particular duty, for which we were very grateful.

MR MULCAHY: Is the unavailability just because it doesn't suit their schedules or the unavailability of volunteers?

Mr Wells: Indeed, yes.

MR MULCAHY: Can you give us an idea of how many you plan to undertake in the next 12 months?

Mr Wells: That's still being worked out and has to be agreed with the Emergency Services Authority, which has the final say on the appropriateness or otherwise of the actions that we have in the bushfire operations plan. That won't be known for another few weeks.

MR MULCAHY: Is the implementation of Environment ACT's bushfire operations plan on schedule?

Mr Wells: Yes, it certainly is. The implementation of the first year of the two-year program is well on schedule. One of the things we are finding is that, as we go along, we need to modify it. There were some burns this year that we did not do because there had been very little vegetation growth and the fuel loads were not as high as had been predicted. In other instances we found areas where, because of leaf fall and increases in

litter because of the drought, it would be appropriate to do a burn. So we do need some flexibility, which we negotiate with the Emergency Services Authority on.

DR FOSKEY: I understand that in 2003, Environment ACT started work on a recreation strategy from which a discussion paper was prepared and circulated and that a number of groups, including the conservation council, provided comment. I note that there were a number of concerns raised; in particular that any proposed icon projects would need to be comprehensively evaluated for environmental damage during construction and maintenance as well as assessment of the impact on natural values as a result of increased visitation. Page 75 of budget paper 4, under the strategic highlights, states that the Department of Economic Development will be completing an ACT recreation strategy. I am very interested because it looks as though there has been a transfer from Environment ACT to the Department of Economic Development, so I have questions about the role of Environment ACT in the process, why the lead agency is the Department of Economic Development, not Environment ACT, and as to the advice and guidelines that Environment ACT will be providing to ensure that the program and activities don't negatively impact on nature conservation values.

Dr Cooper: My colleague Rod Hillman, who has been very much involved in those projects, will take that question.

Mr Hillman: An interim recreation strategy for the non-urban areas has been developed and has been posted on our web site. The recreation strategy referred to there is an all of ACT recreation strategy, so it's dealing with the urban areas and the non-urban. Environment ACT, through me, sits on the steering committee for the development of the ACT recreation strategy. It is sitting in sport and recreation to delivery the complete ACT recreation strategy.

DR FOSKEY: Could you spell out the role of Environment ACT?

Mr Hillman: The role of Environment ACT is to bring to the table the interim recreation strategy for the non-urban areas. That has been brought forward. It is also to sit on the steering committee and provide direction to ensure that the natural and cultural values of the estate are taken into account.

DR FOSKEY: Does this change in management or ownership, I suppose, of this project mean that it is being seen more as a way of generating funds in some way, rather than of providing perhaps more appropriate ways of opening these areas to the public?

Dr Cooper: If I may, there are several levels of planning that we need to look at. When you talk about appropriate ways, you still have for Namadgi, for instance, the Namadgi plan of management and, as you've been briefed in here before, we will have the new plan of management coming out soon. Those plans actually provide a broader framework within which the recreation strategy then sits.

DR FOSKEY: Along a similar line, page 417 of budget paper 4 indicates under the highlights that the Australian Capital Tourism Corporation will implement a product development program specifically targeting nature-based tourism in the development of the national institutions products. Again, I am wondering what the role of Environment ACT will be in the process.

Dr Cooper: Sorry, which point, Dr Foskey, please? Is it under the 2005-06 highlights?

DR FOSKEY: Yes.

Mr Harris: I think that the important point, Dr Foskey, is to remember that there has not been a change of ownership of Environment ACT's strategies, be they recreation or otherwise. We still own them, we still control them and we have input to the various strategies that other organisations might be putting together on the basis of protecting the values which are already expressed in our plans and which must and will be maintained in our plans. Part of that process is to ensure that when tourism plans, for example, are put together they do not impinge upon or impact upon the plans that we already have in place and are important for the preservation of environmental outcomes.

Dr Cooper: If I could just support Mr Harris there. For instance, we have one of their staff working in our area now so that they actually understand the basis on which the tourism can occur. We work closely with them and they fully respect the values that we are trying to protect.

DR FOSKEY: I return to the tree-top walk, which we visited the other day. Has the Namadgi board of management been consulted in regard to this decision about the tree-top walk?

Dr Cooper: At this stage, no, they have not been consulted because at this stage, as I said to the joint chairs when they contacted me the other day, it is essentially a good idea that we are exploring. It may ultimately be that the exact location will be one that we need to go to the board with, or it may not be. We are right at the very early stages of the concept and we need to work that through just a little bit more before we do go to the board.

Mr Stanhope: As I indicated the other day, Dr Foskey, at this stage Environment ACT has provided me with some preliminary advice on possible sites that have been explored and there is a range of issues in relation to them, as I mentioned, and the impact of the fire is certainly one of those. Suffice it to say, simply to add to the response which Dr Cooper has just given, that I indicated when this matter came up at our previous session that the two sites that had attracted my interest to the greater extent were essentially in the Murrumbidgee corridor, neither of which was in Namadgi. I think it goes to the point that Dr Cooper has just made. At this stage, and no decisions have been made, we are exploring possibilities and there is a range of issues around whether or how far we should proceed with this particular project.

I think it is a very good idea. It is something I am personally attracted to. I think it has enormous potential for attracting people to natural areas of the ACT, and I think that is a very good thing. But the two sites that were at the top of my initial or intuitive list were outside of Namadgi and, to the extent that we pursue other options or decide to continue with this project and to the extent that any decision we make potentially impacts on Namadgi, then, of course, the first of the stakeholder groups to be consulted or involved will be the Namadgi board. But we are not at that stage.

DR FOSKEY: I am interested as to why a commitment has been made to this product

before the finalisation of the recreation study. In other words, why are we looking at one little component before we have got the whole overarching idea of what we want in a nature-based recreation study?

Dr Cooper: The overall recreation strategy is what it says: a strategy that tries to integrate and bring things together. Looking at a particular product like this will not detract from the overall strategy; so they are reiterative. We do this in plans of management all the time. We are updating the Namadgi plan of management, but in the meantime we are managing that land in a particular direction.

The two can easily coexist; so I do not see that we are in conflict here at all. As the minister said, we are at the extremely early stages of exploring that project. As to the principles, Mr Hillman was my key project person looking at options for the different sites. The principles in the recreation strategy—he has been involved in it for three years, I think—he well and truly knows. He comes with a strong ecotourism background that blends the nature-based considerations with the tourist experience. So he has it all in his head anyway.

DR FOSKEY: Just before I leave the topic, are there any other proposals or any proposals on the table for Namadgi that have not yet been considered by the board?

Dr Cooper: My understanding is no, but people do have good ideas all the time and those good ideas are often discussed before they're even brought to me. Any idea I have I would certainly have raised with the board, but there is none at the moment that I know of.

DR FOSKEY: I seem to remember many years ago taking a walk in Namadgi over a very interesting boardwalk over a swamp. I believe that swamp burned. Presumably the boardwalk burned as well. Am I on the right track here?

Dr Cooper: We would have to localise the area a bit. I've got two colleagues here who I'm sure could answer your question if you could help them out.

DR FOSKEY: That would be really helpful because, as you can see, I can't remember the name of the actual swamp, but I do know that it is the habitat of the corroboree frog.

Dr Cooper: A boardwalk over that? That's not my recollection.

DR FOSKEY: My recollection could be quite wrong. It was some time ago, but there was such a walk and I undertook that walk.

Dr Cooper: It goes before three of us in this room. My understanding, and I was up there just pre the fires, is it wasn't there then, if we're thinking of the same place. I am happy to answer that question for you later, if you like.

DR FOSKEY: Yes.

MR MULCAHY: Chair, given that our principal witness has disappeared, what is the procedure at this point? Should we suspend proceedings?

THE CHAIR: The secretary and I have just been discussing that. It is not the usual case to have questions without the minister being present.

MR MULCAHY: Should we take a five-minute pause?

THE CHAIR: Yes, it might be an idea to adjourn for a minute or so. Hopefully, it won't be for five minutes.

Short adjournment.

Mr Stanhope: I beg your pardon, chair. A serious incident is occurring at the Indonesian embassy and my attention is divided. A biological hazard has been identified at the embassy and we have a serious situation on our hands. I have other matters that I have to attend to in addition to these estimates, so I beg your pardon for my apparent lack of concentration.

THE CHAIR: We appreciate that you are very busy, minister.

Mr Stanhope: I should be right now. It should be fine now, but I'm afraid I have been distracted for the past 20 minutes.

THE CHAIR: If something comes up, just let me know and we will adjourn for a minute or two while you get it sorted out.

Mr Stanhope: It may be that there is not an issue but, just for the information of members, it's a matter that the Minister for Foreign Affairs has made a statement on in the federal parliament just now to confirm that it's an incident that is being taken seriously. The substance has not been identified. The substance potentially contains a biological agent, unlike other such incidents that we've had in the past, which have proven to be genuine hoaxes. This one may be but at this stage, unfortunately, the Australian Federal Police have been unable to dismiss it as harmless. So it's causing some serious anxiety.

THE CHAIR: I can understand your distraction, minister. Dr Foskey will return to the questions about identifying the swamp with the walk.

DR FOSKEY: I think we should leave that one. I will do some further investigating. If you missed it, Mr Stanhope, don't worry. It seems a little trivial to talk about the small purple pea; nonetheless, we are going to do that. An action plan has been developed to ensure, as far as possible, its identification, protection and survival, and that plan was due to be reviewed after three years, which would have been in 2000. My question is: has that action plan been updated, particularly since the 2003 sightings of the small purple pea in rural leases beside Caswell Drive and next to the GDE roadworks?

Mr Stanhope: Dr Shorthouse will respond to that, Dr Foskey.

Dr Shorthouse: The action plan for the small purple pea has been put into action plan 27, which covers yellow box-red gum woodlands. That action plan is part of a review of all our action plans that implements the government program to amalgamate single species plans with the broad ecosystem that they survive in. Therefore, the small

purple pea is included in action plan 27 on woodlands, and the information about the site at Caswell Drive is in the final plan, which was released last year.

DR FOSKEY: There is funding in the budget papers for review of the Nature Conservation Act. Will that review consider changing the role of the Conservator of Flora and Fauna from the role that you have as chief executive officer to that of an independent conservator, which was I believe the original intention? That is a specific question, but also I would like an update on the timetable and the scope of the review of the Nature Conservation Act.

Dr Cooper: Dr Foskey, we would like to add one more thing to Dr Shorthouse's answer, if we may, in relation to the last question, that is, that we have put conservators directions over that particular site to protect the small pea. As to the other issue that you have raised, the review of the Nature Conservation Act is something that we are planning to commence towards the end of the next financial year. We have other legislation ahead of us needing attention and one of the issues of that will be to look at the conservator's powers and how they are most appropriately located and also the mechanisms by which they are then promulgated and enforced.

DR FOSKEY: What do you mean by "the end of the next financial year"? Do you mean the 2005-06 one?

Dr Cooper: Yes, I do.

DR FOSKEY: My final question under this output is about the pest plants legislation and the register of invasive plants. Will it include all invasive plants and take a precautionary approach, such that plants that are known to be pests elsewhere and other potentially pesky plants are considered guilty until they are proven innocent?

Mr Stanhope: Mr Logan will respond to that. That was very much the subject of the debate that concluded just recently in the Assembly in relation to the new pest plants regime. I am sure that Mr Logan will be happy to add to that in relation to your specific question, but we did reveal very much through that new piece of legislation our approach and our philosophy in relation to protecting the territory. Mr Logan will be more than happy to respond directly to the question.

Mr Logan: The Pest Plants and Animals Act which was passed recently has provision for several classes of environmental weeds to be declared and there are different response measures according to whether they are not yet apparent in the territory but would pose a threat if they did occur here, whether they are well established in the territory and it is practicable to reduce their occurrence, or the more widely occurring weeds where an approach of containment of spread would be the most effective and practicable way.

These schedules will be declared and there is certainly scope for looking at plants that don't occur here yet but have been recognised as a potential threat to this part of the country, there is scope to incorporate nationally recognised weeds of significance which are a national threat and there is scope to recognise weeds that are already here and require particular attention to either contain their spread or move towards a reduced distribution.

DR FOSKEY: What resources have been allocated to ensure that these things occur in a timely and comprehensive manner?

Mr Logan: We are presently working on the subordinate regulations and instruments to support implementation of the act, which will have to be a maximum of six months, and that will allow schedules to be prepared and declared and authorisations to be delegated to officers for inspection and enforcement purposes. The control measures required or the management measures required will be a modification of our existing weed management programs, directed at priority areas, which would be guided by the declarations and the class of weed declared.

MS PORTER: The last dot point for 2.2 on page 32 mentions performing ecological surveys and monitoring progress. Could the committee have some information about the types of ecological surveys that are normally undertaken—I don't want the whole list, just the types—and their importance?

Mr Stanhope: Dr Shorthouse will be happy to fill you in on the ecological survey work that is undertaken.

Dr Shorthouse: We have a continuing program, which could be divided, into two or three parts. One is on vegetation, where in the last few years we have focused on woodlands and grasslands and currently we are focusing on river areas. The objective of that is not only to provide background information for the comprehensive action plans we've been putting out, but also to work towards a complete vegetation map of the ACT. We also have targeted threatened species surveys, particularly focusing on the most endangered species, such as the corroboree frog and the earless dragon, which is found in grasslands, and we work on a more cooperative basis with the Canberra Ornithologists Group, who have a wonderful array of experts on birds. We work with them to monitor birds.

THE CHAIR: I might mention that there were a couple of king parrots in my next door neighbour's yard the other day, which I was very impressed with.

Mr Harris: And in my backyard on the weekend.

MS PORTER: Is there a map of the wildlife corridors in the ACT?

Dr Shorthouse: We have addressed the corridor situation in a number of ways. In the woodland strategy, we have identified key woodland connectivity areas. At a more working level, we have used our maps of vegetation to help us work to integrate that and get information into the planning process and the development application process so that linkage issues can be addressed at that level. There isn't a formal corridor map for the ACT. I think that would be quite complex because you would need to look at various scales in a regional context and arrive at a really local context. To put that all on one map would be difficult, so we try to extract our data for the situation we require.

Dr Cooper: In terms of another program we administer, the NHT grants, we even look at that on rural properties as reinforcing some of those corridors. So we have the strategic plans, we work with ACTPLA on the planning issues with them and then we have

a program whereby we can enhance a particular area through working under the NHT arrangements that the ACT government has.

THE CHAIR: I have a general question. I am curious about the reference on page 7 of BP3B to playground equipment safety inspection reports. Is that area remaining within nature conservation and land management?

Dr Cooper: That's all related to two playgrounds we have in the non-urban area. That's related to the Cotter and the Pine Island playgrounds. Just as you do in the urban area, in the non-urban areas we certainly have to make sure they're safe and that's what that is about.

THE CHAIR: I just read it and thought that that was an area that urban services looked after.

Dr Cooper: No. We're actually looking forward to another playground, which we will certainly monitor, that is, the one that the minister has already announced for Tidbinbilla later this year. So there will be those kinds of facilities out in the non-urban area.

THE CHAIR: There being no further questions on this area, we will move on to the Commissioner for the Environment.

DR FOSKEY: I note that the commissioner isn't here.

Dr Cooper: My understanding is that she was supposed to be here, or her representative, and we're not sure what has happened there.

THE CHAIR: We will adjourn for a few minutes to enable you to find out.

Meeting adjourned from 4.36 to 4.48 pm.

THE CHAIR: All right welcome back.

Mr Stanhope: Madam chair, for the information of the members of the Assembly I will just provide some information on ACT Emergency Services and ACT Policing. They have been, for some hours now, involved with the Indonesian embassy in relation to a suspicious envelope that was lodged at the Indonesian embassy. Preliminary testing of the contents of the envelope has resulted in the positive identification of a biological agent. Further testing is however required to determine the nature of the agent and that further testing will take as long as 24 hours. A full incident team of ACT Policing, fire brigade and ACT Ambulance is now determining an individual strategy for 27 individual members of the Indonesian embassy. ACT public health and ACT Health are in attendance to assist with issues of assessment and support.

The Indonesian embassy is locked down. The department of justice is liaising with the department of foreign affairs and the PSCC, following a request by the Commissioner, Emergency Services Authority for a DFAT presence. I understand that the head of the department of foreign affairs has been at the embassy now for some hours. An ACT recovery team deploying Red Cross volunteers is also in attendance. The matter is of course being treated as a potential criminal offence and is being investigated as such.

All steps that can be taken to identify and provide assistance to anybody who may have come into contact with the envelope or the substance are being pursued vigorously by ACT authorities. I have sought full assurances from all of my officials that everything that is required under our operating procedures and protocols is being done. I will keep members of the Assembly fully informed. We are all hopeful that these substances will prove to be harmless but at this stage it does represent a very serious incident.

THE CHAIR: Thank you for that information and update. Our thoughts and prayers, as applicable, are with the members of the embassy. Hopefully it will, as you say, turn out that the substance is not harmful. Dr Foskey.

DR FOSKEY: Welcome, Chief Minister, Dr Purdie and Dr Sims. The review of the Office of the Commissioner for the Environment proposed an increase in resources for the office and stated in quite strong words that the “current resourcing level is inadequate to enable it to fully meet its statutory responsibilities which could result in adverse environmental impacts.” This is a pretty strong comment. It was an independent review and it indicates that, without extra funding, the Commissioner for the Environment may not be able to meet its statutory obligations. Could the minister explain why the government made the decisions that it did in regard to the budget allocation and whether the allocation will remain at that level for the next four years?

Mr Stanhope: Thank you, Dr Foskey. The government made the decision it made in relation to the needs of the Commissioner for the Environment in the way that it made its decision in relation to each of the priorities that presented, and which it considered in this budget round, as it does in each budget. I am very aware of the report and its findings and of the government’s response, and also very sensitive to the very important role that the commissioner provides. I respect the office. I respect its independence. I respect its function and the work that it does. I think the Commissioner for the Environment is a fundamentally important independent check on the state of our environment and on policy decisions and operations that impact on the environment within the ACT, and support it fully.

In the question of funding, it is always difficult. There is a whole range of organisations and institutions and statutory offices that I would wish, in an ideal world, to provide additional funding to. In relation to the Office of the Commissioner for the Environment, I would be very open, as our budget position lifts from the stringency that we have imposed this year, to considering in the next budget round an increase in funding for the Commissioner for the Environment. I certainly do not disagree that the office is hard pressed. It is a matter that I have discussed directly with the commissioner and I accept her perspective and her representations.

The Commissioner for the Environment and her office were not included in the overall five per cent reduction in expenditure that the government has sought from agencies in the budget. Indeed, I believe it worked out, as it averaged out across the portfolio for Environment ACT, at 6.6 per cent so, effectively, the Commissioner for the Environment has achieved a 6.6 per cent buffer in her budget. Small comfort I am sure but other significant parts of Environment ACT have been required to find savings of 6.6 per cent. The commissioner has been excluded from that requirement and it is fair to say that the office of the commissioner is 6.6 per cent better off in this budget than many other areas

of Environment ACT.

MR SESELJA: Minister, given that both the Office of the Commissioner for the Environment and the ACT Office of Sustainability are concerned with sustainability, what exactly are the people of the ACT getting for the additional money given to the Office of the Commissioner for the Environment that could not be done by the Office of Sustainability?

Mr Stanhope: I think first and foremost that the commissioner—and I think it would be interesting for Dr Purdie to respond in relation to her statutory role and responsibilities—provides a statutorily independent voice in relation to issues that impact on the ACT environment. It is important to acknowledge that Dr Purdie is not subject to direction by the minister or by the government. She is independent and I respect her independence. Dr Purdie, through her statutory role, produces a state of the environment report, which is essentially the only truly independent assessment by a statutory independent officer at arms-length from the government, on the state of the environment within the ACT. That is, fundamentally, the most important distinction between the role of the commissioner and the Office of Sustainability.

It is true that in her report on the state of the environment Dr Purdie will report on the sustainability of different aspects of our activity in an environmental sense, and perhaps in a social and economic sense as well. That also is a function at another level that is exercised by the Office of Sustainability in relation to work that that office has done in determining our progress towards sustainability. There is not necessarily an overlap but there is mutuality in the roles pursued. I think the issue around the independence and the statutory responsibilities of the commissioner is the essential difference. The Office of Sustainability is a policy-making organ of the government and advises the government. Dr Purdie, through her statutory role, provides a slightly different role. But Dr Purdie might wish to comment on her role as she sees it, as expressed through her legislation.

Dr Purdie: Thank you, minister. I think the minister has hit the nail on the head that my office is independent and at arms-length from government. One of the issues raised during the review of my office was whether the Office of Sustainability should also be independent, because I think there's a perception within the community that reporting on government progress is possibly most credible if it is done by people at arms-length from government. So, the reporting on the condition of the environment is certainly something that's very highly valued by the community in that it is an independent process, independent of government.

The other thing the minister didn't mention was the other statutory function that I have of environmental ombudsman, which, again, can only be carried out by someone who is independent of government. Having made the comments in relation to state of the environment reporting, the minister is correct that our past state of environment reports, or the last two, have included an assessment of progress towards sustainability. One of the things that I'll be doing later this year or early next year, will be having more detailed discussions with the Office of Sustainability to try to make sure that their reporting on sustainability is building on the work that we are doing in state of the environment reporting so that if there is any duplication we can try to minimize and hopefully avoid that duplication.

Mr Stanhope: I might just say, just for the sake of completeness, Mr Seselja, at the heart of your question, I think there is an important issue and an issue in one sense which we haven't yet fully resolved within government or within the community and that is how best to advance issues around sustainability. As you're aware, the government has announced that it will pursue the development of sustainability legislation. That work will be progressed through the Office of Sustainability.

Issues of sustainability and our understanding of how to achieve sustainability, indeed, exactly what it is that we mean, are still the subject of debate and argument. I think, even here within the ACT administration, I'm quite prepared to admit that we are still pursuing answers and pursuing a way forward in relation to our sustainability agenda. I think that's reflected through the fact that we're seeking to develop sustainability legislation. I won't go on, other than to say that there are some questions in relation to sustainability and the sustainability agenda, how we achieve sustainability and how we measure our progress towards sustainability that we are still seeking answers to. But that's an interesting other debate, perhaps for another occasion.

MR SESELJA: A 2003 review, which I think Dr Foskey referred to, of the Office of Commissioner for the Environment pointed out that a commissioner working part-time six days a month in a non-reporting year and eight days a month in a reporting year can cause problems. I'll just quote from the report:

In recent times, the non-availability of the Commissioner due to other commitments has created some dysfunction to the operations of the OCE and adversely affected it's effectiveness.

Is that still the case or have those issues been resolved?

Dr Purdie: One of the first things that the minister agreed to my doing was to slightly increase my work level, so that I work two days a week consistently. I was very conscious of that recommendation in the review of the office. A couple of the recommendations in the review suggested that I do an independent review of our resources to give the minister more detailed advice. When I carried out that review, I found it very difficult to quantify just what the additional time needs were. So I basically recommended to the minister in my review that I very carefully monitor the amount of time that I put in over this 12-month period, and that of my staff, so that by the end of this year I will be in a much better position to go back and say that to do this sort of work it has taken me this amount of time. I can certainly say that at the moment that is over and above two days a week, but let's wait and see how it averages out over the whole year. I think we will then all be in a better position to see the real requirements for the Commissioner for the Environment to do the functions prescribed in our legislation.

THE CHAIR: Thank you, Dr Purdie.

Appearances:

Mr J Stanhope, Chief Minister, Attorney-General, Minister for the Environment and Minister for Arts, Heritage and Indigenous Affairs

Department of Justice and Community Safety

Mr Tim Keady, Chief Executive Officer

Ms Elizabeth Kelly, Deputy Chief Executive Officer

Mr Brett Phillips, Executive Director, Policy and Regulatory Division

Ms Diane Spooner, Senior Director, Policy and Regulatory Division

Mrs Lana Junakovic, Executive Director, Corporate Services

Mr Peter Garrisson, Chief Solicitor, Government Solicitor's Office

Mr Bruce Kelly, Courts Administrator, Law Courts and Tribunals

Mr John Leahy, Parliamentary Counsel, Parliamentary Counsel's Office

Mr Richard Refshauge, Director of Public Prosecutions

Mr James Ryan, Executive Director, Corrective Services

Dr Helen Watchirs, Discrimination Commissioner

Mr Derek Jory, Director, Justice Planning and Programs

Mr Michael Ockwell, Registrar-General

Mr Tony Brown, Director, Office of Fair Trading, and Registrar of Liquor Licences, XFilm Licences, and Brothels and Escort Agencies

Community and Health Services Complaints Commissioner

Mr Philip Moss, Commissioner

ACT Electoral Commission

Mr Phillip Green, Electoral Commissioner

Department of Treasury

Mr Phil Hextell, Director, Accounting Branch

Mr Karl Phillips, Financial Controller, Corporate Finance

THE CHAIR: We will now move to the Attorney-General's Department. We are starting with output class 1, justice services. We are up 1.7, electoral services.

MS PORTER: I don't think we have done 1.6, protection of rights.

THE CHAIR: Hopefully, they are here. What page is it?

MS PORTER: Page 339.

THE CHAIR: Mr Keady, did we notify you about protection of rights and who was to be here today? I was asked the question the other day and it may very well be my fault because I was asked about what was left to do and I do recall it. I went off a piece of paper sitting in my folder.

Mr Keady: We did check. The agencies here this evening include corrective services, fair trading, the electoral commission and the registrar-general.

MS PORTER: Chair, I have a question about corrective services. Is that being done here?

THE CHAIR: No, that is later.

MS PORTER: I had one about victims support.

MR MULCAHY: My questions relate to the victims services scheme and your contract with VOCAL. Is that something you are willing to take questions on?

Mr Keady: Yes, we can.

THE CHAIR: Just before you ask the questions, I would like to apologise to the committee and to the departmental officials because I was asked a couple of days ago whom we had left to go. If we cannot get answers for them, I am sure the minister will take them on notice.

Mr Keady: We can certainly take them on notice. We did endeavour to ensure that we have today the people you wanted to question.

MR MULCAHY: Can you indicate to the committee how much the contract is worth that JACS has with ACT Health and VOCAL?

Mr Brett Phillips: The contract JACS has is with ACT Health. Under the victims services scheme and the victims of crime regulations, the service provider for the victims services scheme is ACT Health. JACS has funding for that of around \$1.1 million. It provides that funding to ACT Health. I understand ACT Health have an agreement with VOCAL in relation to the volunteer services that are required under the victims services regulations, and there are contracts between those two parties.

MR MULCAHY: Can you tell us how much of the funding for the victims services scheme is spent on administration, and if there has been any change in the proportion of funding spent on administration over the past three years?

Mr Brett Phillips: I would have to take that on notice.

MR MULCAHY: Okay. Are you aware that JACS has made only two referrals to VOCAL, or to the service, over the past year; and that victims are consequently missing out on the services provided? There have been only two referrals to health, I guess, to which this obviously refers.

Mr Brett Phillips: JACS has no operation of the victims services scheme. It funds health to do that.

MR STEFANIAK: I think he means that the scheme would have referred only two people to VOCAL over the past year.

Mr Brett Phillips: I have no knowledge of that.

MR MULCAHY: Of whether there have been any referrals or not?

Mr Brett Phillips: No. I mean I have no knowledge of the interaction between health and VOCAL. That's the responsibility of health under the victims of crime regulations.

MR MULCAHY: Who refers the victims to health?

Mr Brett Phillips: The victims services scheme is run by ACT Health. The victims come through the referral system and are assessed by ACT Health.

MR MULCAHY: Right, but who's referring the victims to ACT Health to be reviewed?

Mr Brett Phillips: How do you mean? To the scheme?

MR MULCAHY: Yes.

Mr Brett Phillips: There are application forms to get into the scheme provided to ACT Health. There are a number of people who refer to ACT Health.

MR MULCAHY: You've no knowledge of how many they are referring?

Mr Brett Phillips: I've no knowledge in relation to your question of how many victims ACT Health have referred to VOCAL.

MR STEFANIAK: Could you find out?

Mr Brett Phillips: I can attempt to find out for you.

MR MULCAHY: Could you tell us when the next contract will be entered into and what form it will take with health? You said you've got a \$1.1 million contract with health, didn't you?

Mr Brett Phillips: We have a memorandum of understanding in relation to the provision of services between JACS and ACT Health. All of the funding we give to health is to enable health to perform their function under the regulations. We're currently in a position where we are looking at governance issues surrounding the victims services scheme. The current MOU between the parties expires on 30 June this year.

MR MULCAHY: You'll be renegotiating something similar?

Mr Brett Phillips: We'll be renegotiating.

MR STEFANIAK: What sorts of areas are you looking at on the governance issues?

Mr Brett Phillips: Methods of entry into the scheme. We've issued surveys to a number of people who are victims under the scheme; we have interviewed the service providers, ACT Health and VOCAL in relation to the scheme, just to see how it's operating.

MS PORTER: In relation to victims of crime, have there been any innovations such as the application of restorative justice practices?

Mr Stanhope: In what context?

MS PORTER: I believe there's some work being done now in conferences and things

with victims of crime. Has that already started?

Mr Brett Phillips: I think you asked that question last time we were here. There have been five conferences held under restorative justice.

MS PORTER: I was wondering about victims of crime in that regard.

Mr Brett Phillips: I think 16 victims of crime have attended the conferences to date.

MS PORTER: That was the question I was slowly getting to.

Mr Stanhope: It's through a different route, I guess.

MS PORTER: It's through a different route, isn't it, from the one we were just talking about?

Mr Stanhope: Yes, absolutely; but it is I think relevant to the issue in relation to our need to respond vigorously at all times to the needs of people who have been the victims of a crime or criminal acts. We can do that in many ways. One way is, of course, through the victims assistance scheme and certainly through our support for VOCAL; and certainly in acknowledging, through restorative justice programs, the role and the rights of victims to be involved in our responses to criminals and criminality. It's an extension, and I think a very good one, of our commitment to victims rather than just that single response through the victims advice service.

Mr Keady: The victims scheme is intended to be a process for victims to seek assistance on their own initiative, whereas restorative justice is very much a process to deal with offending behaviour. Victims can have a role in that, but there are quite different focuses. There are some common elements but it's important to understand that one is about offending behaviour and the other is about assisting victims.

MR STEFANIAK: You have mentioned the scheme you fund through health, and also VOCAL. Why has the funding for VOCAL remained largely static, despite the fact that it is the only genuine 24-hour crisis response service for victims?

Mr Brett Phillips: Again, I'm not a party to the agreement between VOCAL and health—and ACT Health funds VOCAL. My understanding is that VOCAL received a significant increase in funding, certainly over the last six months, in relation to the services it provides. I understand that VOCAL receives somewhere in the vicinity \$140,000 to \$150,000 a year from ACT Health and that it has been significantly increased.

MR STEFANIAK: I think it has gone up from about \$100,000 to \$144,000, but was static for quite some time. For example, there is an increasing proportion of the victims services budget taken up by private providers. That went up from \$173,000 to \$414,000 between 2001-02 and 2003-04. Can you explain that?

Mr Brett Phillips: My understanding is that the scheme only started in those initial years. It's an incremental scheme that has, in fact, peaked over the last 12 months. The initial funding provided to it seemed to be completely over and above what the actual

cost of the scheme was at its inception.

MR STEFANIAK: Could you provide the latest figures in dollar amounts and the proportionate amounts of funding going to VOCAL and private providers of services for the current financial year—2004-05.

Mr Brett Phillips: Sorry. The split between them?

MR STEFANIAK: I would like the latest figures in dollars.

Mr Brett Phillips: The latest figures that health pays to private providers, as opposed to VOCAL?

MR STEFANIAK: Yes; the amount of money going to VOCAL and also the amount of money going to private providers of services.

Mr Brett Phillips: I will have to take that on notice.

MR STEFANIAK: That's fine.

Mr Stanhope: Mr Stefaniak, I think it needs to be said, if you're seeking to draw some comparisons, that there is a significant variation in what would be asked of a private provider under the victims assistance scheme and the role VOCAL performs, and performs very valuably for the community. Whilst Mr Phillips can answer the bald question you asked, there is a qualitative issue in relation to the work done by the victims scheme and the valuable work done by VOCAL.

Mr Brett Phillips: We are talking about professional psychiatrists and psychologists.

Mr Stanhope: That is my point. The private providers we're talking about are, in some instances, practising psychologists, or perhaps even psychiatrists. They're being funded on the basis of the professional support they provide, whereas VOCAL provides a very different form of support and service through the victims assistance scheme. I have no issue with the question you have asked; it's quite a valid question, but I draw your attention to the qualitatively different role the two play.

MR STEFANIAK: This might be something you can answer, attorney. Will there be any change to the policy of permitting access to victim services only to victims who have been affected by crimes committed in the ACT but not outside the ACT?

Mr Stanhope: I haven't given any consideration to changing the rules that apply to eligibility. I don't believe I have received any representations, and I haven't been briefed. I'm not clear why we would extend an ACT service in relation to victims of crime to people who are victims of crime across the border. I honestly have great sympathy towards non-ACT residents who are subject to non-ACT specific crimes.

MR STEFANIAK: I think it relates to ACT residents who are victims of crime across the border.

Mr Stanhope: I'd have to take some advice on the specificity of the guidelines. If it

were a question of providing support for a non-jurisdictional crime to a non-resident, then it's probably quite clear cut.

MR STEFANIAK: There is no argument there.

Mr Stanhope: Our victims support unit has, for instance, had contact with the parents of the Chinese national who was allegedly murdered in Belconnen in recent times, who are residents of China. We are providing at least moral support and perhaps some information in relation to processes and procedures. I'm happy to take the specific question on notice.

Mr Keady: If an ACT resident were a victim of a violent crime in New South Wales, for example, that person would be entitled to assistance under the New South Wales scheme and there would therefore be eligibility for assistance under both schemes. I think the New South Wales eligibility criteria relate only to offences committed within New South Wales, as does our scheme. If you had people potentially eligible for assistance under multiple schemes, we might have a degree of confusion and double dipping.

MR STEFANIAK: Fair enough. Attorney, you might not know the answer to this either, and I am happy for you to take it on notice. I am concerned when I hear that only two people have been referred by the victim support service to VOCAL in a 12-month period. I would like some details as to what that was about. Why were there only two? It seems an incredibly small number.

Mr Stanhope: I will have to take that on notice. I think I will have to refer that question to the department of health because those are issues for the administration of that department. I am more than happy to seek a response to that.

MR STEFANIAK: What exactly is the role of the victims of crime coordinator? I understand that, on occasions, the victims of crime coordinator provides victim support services. Is that correct?

Mr Keady: Her role is a statutory one so I guess, in a broad sense, she does what she is required to do under the statute. She acts as a point of primary contact for many people who are victims of crime; and she provides assistance and advice about what people's options are and where they can go for assistance, She is certainly a significant point of referral to the victims scheme. I don't think she attempts to offer a counselling service in the way the scheme does, but she does deal directly with primary victims, explaining their rights and entitlements, and providing support and assistance of various kinds.

MR SESELJA: The committee heard—I think it was yesterday—that the operations at Quamby are breaching the Human Rights Act, specifically subsection 19 (2) of that act. Are you concerned about that? If so, as attorney, what are you doing about it?

Mr Stanhope: It is a matter of concern. It is an issue that I think we need to look at on a number of levels. Certainly it is a matter of concern that in any of our activities we breach, or potentially breach, the human rights of any person. This is a wonderful example of why we needed a bill of rights and why I supported a bill of rights. Mr Seselja, as a non-member of the Assembly at the time of the debate—and Mr Mulcahy falls into this boat as well—you would be aware of the irony that the most

trenchant critics of the bill of rights, namely the Liberal Party, now see the beautiful, wonderful utility that the Human Rights Act provides in keeping a government and a community accountable.

I must say that at one level I am concerned but at the other level I applaud. I am quite generous about this; I am not being smart about it. Your question, and the comments Mr Stefaniak has made in recent days and in others, confirms for me the rightness of the decision to pass the Human Rights Act. I think it is important that governments—including my government—are held accountable on this most important line; namely, our commitment to human rights, and there is now a measure.

The situation in relation to the co-location of convicted and non-convicted people has, of course, been with us from time immemorial, to the extent that previous systems allowed it for remand purposes. It has certainly been a feature of Quamby and a feature of the Belconnen Remand Centre since each of those institutions was established. In the ACT we have always housed these people in the one facility, in breach of our obligations not to contain convicted people and people held in remand within the same facility, because we simply don't have a prison, and we don't have dual facilities. It's a test for us. There are, of course, a number of responses, and we're responding to those.

You would be aware, as would Mr Stefaniak, that the same breach occurs at the Belconnen Remand Centre every day. I use the example of David Eastman, which was a court ordered breach. The court ordered us to bring David Eastman to the ACT and to house him at the Belconnen Remand Centre, in breach of the Human Rights Act. We did that in the pursuit of a range of Mr Eastman's human rights in relation to the matter he is pursuing, but there was a trade-off there, in that we breached the rights of all the non-convicted remandees at the Belconnen Remand Centre, who had to endure a convicted felon in their midst.

I am concerned about it and we will move in our determination to develop and construct a new Quamby. We have committed \$40 million to that to address this issue, just as with the construction of the Alexander Maconochie Centre. We will overcome this breach of our obligations at the Belconnen Remand Centre, in so far as we regularly at the Belconnen Remand Centre—and we always have—house in the one institution convicted felons alongside remandees. I accept the right of remandees who have not been convicted of an offence not to be housed with criminals. We have struggled as a small jurisdiction but we're now overcoming the disability in relation to both Quamby and the Belconnen Remand Centre.

MR SESELJA: So a breach of the law is acceptable but only for a certain period of time. Is there a particular period of time at which the breach of the law becomes no longer acceptable?

Mr Stanhope: I don't believe a breach of the law is ever acceptable. In relation to this particular issue and the example you use, there has to be a balancing of our responsibilities—namely not to breach the human rights of people we are directed by the court to detain. Of course all of the people at Quamby and the Belconnen Remand Centre are only there on the basis of a decision of a judicial officer according to the law. They have been detained according to the law, but in their detention there is an unavoidable breaching of a right not to be detained in the company of a convicted person. Because of

our size and the nature of our facilities—and these are, of course, facilities we inherited from your party when in government—we do breach that particular right.

It isn't acceptable, that is why we took the decision in the first place. That is one of the reasons that have led us to take the decision to build a prison and a new juvenile detention facility. I would like to repeat the point I made, which I didn't make lightly. I congratulate you on your willingness to utilise the Human Rights Act as an accountability measure. I heartily welcome the fact that there is now acceptance from your side of politics that the Human Rights Act has a valuable and vital role to play in allowing us to measure our commitment to human rights and at least to have this conversation.

It was wonderful to open the *Canberra Times* this morning to see an article, albeit negative, in relation to the state of our facilities. The Liberal Party was there, trumpeting human rights and holding this government accountable, through the Human Rights Act, to an observance of the human rights of us all. It is a turning point for the Liberal Party and for this jurisdiction, as the jurisdiction that led Australia into a new enlightened era of a rights culture, a recognition of human rights and what they are. I think it's wonderful that there is now this understanding within the Liberal Party and within the community that to lock up a person who has not been convicted with a person who has been convicted involves an infringement of rights. Congratulations!

MR SESELJA: It seems that you are treating the Human Rights Act more as a guideline and not as something that needs to be complied with. Are there other laws that you feel are good for highlighting government inaction that you don't have to comply with?

Mr Stanhope: We inherited the Belconnen Remand Centre from you, as it is, after seven years of government, just as we inherited Quamby from you.

MR SESELJA: You brought in the Human Rights Act and you knew then that you would be in breach of it. Why do you continue to breach it?

Mr Stanhope: The law did not change with the introduction of the Human Rights Act for us; we introduced into the law of the ACT quite specifically our obligations under the International Covenant on Civil and Political Rights. They were there previously and they have been there for decades.

MR SESELJA: But they were not incorporated into domestic law.

Mr Stanhope: It would be relevant to understand the source of this obligation. Ms Spooner could assist with that more directly than I.

THE CHAIR: Just before Ms Spooner answers the question, attorney, Dr Foskey has a question on this area.

MR SESELJA: I still have one question. There have been a couple of very long answers. I have asked only two questions.

THE CHAIR: I appreciate that. I ask the attorney that he keep his answers fairly short. We are going to run out of time and we still have to get through a few other output

classes.

Mr Stanhope: Let us be sensible about this. The essential purpose of the Human Rights Act, as I think each of you well understands, is to ensure at a number of levels that we develop a rights culture. I think that is its most important function. At a separate level it is—as you are illustrating here today; I hope you are aware of the irony of this conversation as the arch opponents of the Human Rights Act—

MR SESELJA: We have heard about the irony, Chief Minister; I just want to hear an answer to the question.

Mr Stanhope: I hope you are aware of the irony. It amuses me intensely just of course—

MR SESELJA: That you are not complying with your own act?

THE CHAIR: Order! Attorney, maybe Ms Spooner should answer the question.

Mr Stanhope: I was seeking to confirm that the source of the obligation within the Human Rights Act was the ICCPR, something to which Australia acceded I think decades ago. This is not some newfound obligation suddenly imposed on the people of the ACT. I acknowledge that it is a matter for regret. As we go along, I have no doubt that, in relation to our operations, we will uncover through these processes a range of areas in which we potentially do not comply with the human rights set out in the Human Rights Act. I do not think that is exceptionable. It is not unexpected; it is what we always expected. But of course the true importance of the Human Rights Act is that we—as a government, as an administration and as a people—come to better understand what—

MR MULCAHY: That was not his question though.

Mr Stanhope: No, it is. I can give an answer: yes, it is regrettable; it is not unexpected or unexceptional.

MR STEFANIAK: Can I have Ms Spooner say so?

Mr Stanhope: We have always understood that.

MR MULCAHY: You still have not answered his question.

Mr Stanhope: Yes I have.

THE CHAIR: Mr Mulcahy and Mr Stefaniak.

Mr Stanhope: We understand it. We regret it. We always expected it. In fact, we always knew that it was a breach of this obligation. We are working, at significant cost, to ensure that this issue in relation to the housing of convicted criminals with remandees will be addressed, as it should be.

MR SESELJA: Will you apply the same standard of leniency that you apply to your own government to ordinary ACT citizens attempting to comply with the law, whether it be the Human Rights Act or any other piece of legislation?

Mr Stanhope: This is really quite a simple nonsense. Give me an example of a law that you are thinking of. This is not a criminal code. The Human Rights Act does not contain penalties. We are not offending against a law.

MR SESELJA: So it is not real; it is just platitudes. This has been the criticism.

THE CHAIR: Order! Order!

Mr Stanhope: Oh, Mr Seselja, you—

THE CHAIR: Attorney and Mr Seselja. I will not put up with debate across the table any more. You are both churning up time. There will be screams at the end when we have run out of time. I am not prepared to put up with it any more.

Mr Stanhope: I will not be screaming, Madam Chair.

MR SESELJA: I will not be screaming either, Madam Chair.

Mr Stanhope: Mr Seselja, let me answer your question. It has always been unacceptable—it was the case when the Liberal Party was in government—to house convicted felons with remandees. During your time in government, you were breaching the human rights of remandees when you were housing them with convicted felons.

MR SESELJA: Which legislation did we breach?

Mr Stanhope: Human rights are not determined by a piece of legislation, Mr Seselja; they exist and they have been codified through the International Covenant on Civil and Political Rights.

THE CHAIR: Order!

Mr Stanhope: I am responding to the question. It has to be answered. They have been codified and introduced into the law of the ACT as a description of the rights that pertain and have been identified in the ACT.

THE CHAIR: Can I just say, Attorney-General—

Mr Stanhope: This is a right, and it is being breached.

THE CHAIR: All right—

Mr Stanhope: And we hold ourselves accountable in the public domain for that.

MR SESELJA: I have one final question, thank you, chair.

Mr Stanhope: But at least we now know what rights are being breached—unlike you in your determination simply to avoid the existence of rights.

MR SESELJA: Can I now ask my question, chair? Will you call him to order? Will I go

ahead and ask my question? The committee also heard that Ms Gallagher had breached section 76(1) of the Education Act. As Attorney-General, are you going to ensure that Ms Gallagher starts complying with the law?

Mr Stanhope: The fact that you suggest that Ms Gallagher broke a law is offensive.

MR SESELJA: She admitted it.

MR MULCAHY: She said she did it.

THE CHAIR: Order! Order! Mr Mulcahy and Mr Seselja.

Mr Stanhope: I will not accept your word for that. Essentially, the question is offensive. I expect of my ministers and my officials the same level of compliance with the law I expect of you.

MR SESELJA: Thank you. We look forward to seeing that.

DR FOSKEY: To change the subject completely, over the past two years the ACT government has made legislative changes relating to gay and lesbian, bisexual, transgender and intersex people. Has the government allocated any funding to education and awareness programs, especially in schools and amongst medical practitioners?

Mr Stanhope: I will take that on notice. I am not aware that we have, Dr Foskey. I need to take some advice. I do not know whether anybody here can assist me with that. I am not aware that we have. I am advised that we have not.

DR FOSKEY: Due to the time constraints, I will put the rest of my questions on this output on notice.

THE CHAIR: We need to move on to “Electoral services”.

MR MULCAHY: One question.

THE CHAIR: No. I ask that you place it on notice, Mr Mulcahy.

MR MULCAHY: I have had only one on this output. It is very relevant to what the Chief Minister just said. It will take one question. I am sure he will be happy to give us a concise answer.

THE CHAIR: No. I would like to move onto “Electoral services”.

MR MULCAHY: You must not protect ministers, chair; we have to get the information out for the benefit of the taxpayer.

Mr Stanhope: I am happy to take it.

THE CHAIR: You can place it on notice.

MR MULCAHY: The Chief Minister said that he is happy to take it. This is denying me

my right to ask questions. It makes a mockery of the estimates. I have not had one question on this output, and I have just one question that follows on from what we just heard. My question is this: if you do in fact confirm that—we are advising you that your minister confirmed that she had breached the act in relation to section 76—will you be taking any action?

Mr Stanhope: I am not even aware of what section 76 is. I am not aware of what the minister said. But what I do know is that Katy Gallagher is the best minister for education that the ACT has ever been blessed with. I support her fully and will continue to do so. I trust her absolutely, implicitly. To the extent that there is some issue that you claim has been raised, I am more than happy to discuss it with Ms Gallagher. Let me advise that she is the best minister for education that we have ever had. She is a minister of enormous integrity and talent. She will be around this place for an awfully long time, long past perhaps the presence of many in this room. I support her absolutely and fully in everything she does.

THE CHAIR: Thank you, Attorney. We will move on to “Electoral services”. Electronic voting was started in 2001, and it was widely utilised in the 2004 election. Are you planning on expanding this for future elections? Can you tell us whether any savings can be made by the utilisation of electronic voting?

Mr Green: Yes, we did expand the use of electronic voting in 2004. In 2004 we took over 28,000 electronic votes. In 2001 we took about 16,500 electronic votes, which we were very pleased with. The commission is currently in the final stages of preparing its report on the electronic voting system. It will be presented to the minister and tabled in the Assembly hopefully within the next few weeks. The commission is actually to have a meeting tomorrow, where we are going to discuss the final draft. We are examining in that report ways in which we can expand the use of electronic voting at the next election.

The issue with the system that we currently have is the cost of the hardware. Providing hardware in polling places is a relatively expensive way of issuing votes compared to giving people pieces of paper. There are offset costs in providing electronic voting because every electronic vote that we capture is a piece of paper that we do not have to count on election night and then data enter after election day. What we would like to achieve is a system where we have a very cost-effective hardware system of delivering the electronic voting system. You might know that at the Tuggeranong prepoll voting centre we trialled a prototype of an electronic voting tablet-type computer. We are hoping that something will emerge in the next few years that will be a cost-effective form of hardware that we can use for providing electronic voting.

Other jurisdictions are looking at the ACT model, and another way of hopefully getting cost-effective hardware developed is if other jurisdictions pick up on it and there actually develops a larger market for producing that kind of specialist hardware. The Victorian electoral commission is currently looking at piloting a system very similar to ours at their next election. I know that Thailand and South Korea are also looking at providing electronic voting in polling places in very large numbers. So it is possible that somewhere in the world there will emerge some form of hardware that we will be able to use to extend to a larger number of people, but the report that we are preparing will be looking at those issues in quite a lot of detail.

THE CHAIR: Obviously, it is expensive to get the hardware in the first place, but in the long run there may be cost savings to be made. But all of that means nothing if at the end of the day the electoral system is compromised in its integrity. My question goes to the cost of making sure that the integrity of the voting system is ensured.

Mr Green: Yes. Of course, the electoral commission is extremely concerned to ensure that the integrity of the system is not at all compromised by using electronic voting and counting. Again, our report goes into that in quite a lot of detail. The way the system is designed, it has a large number of safety devices and integrity devices built into it which are designed to ensure that the system is able to verify quite clearly that what goes into the system is what comes out of the system.

One of the ways we do that is by using a software code that's published on the internet for all to see, so it's a very transparent system. If an electronic voting election were taken to court, we would be able to produce in court a complete electronic audit trail of all the votes cast and all of the software that manipulates those votes as they're cast. We actually feel that the security integrity of the electronic voting system is probably better than the security integrity you'll find with using paper ballots. Of course, the other thing to be aware of with the electronic voting system is that, while hardware costs more, there are intangible benefits to using the electronic voting system; it has a lot of advantages over paper. The electronic voting system makes sure that people number their ballots correctly. It makes sure that people can't accidentally cast an informal ballot. The system will warn you if you are about to cast an informal ballot.

THE CHAIR: But what if they want to?

Mr Green: If they want to, they are able to. The Electoral Act actually requires the system to provide that as an option, so that is certainly there. It provides voting instructions in multiple languages. It provides an audio component so that people who are blind are able to vote using the electronic voting system in secret. At the counting end, it means that all the electronic votes cast by the voters are counted exactly as the voter intended, whereas with people who use handwriting to write their numbers on ballot papers, often the handwriting is not too good and we are really not sure what it is that they are trying to do. So there are many intangible benefits to using electronic voting and counting.

THE CHAIR: Having been a scrutineer under the Hare-Clarke system in the 1998 election, I can certainly appreciate that.

MR MULCAHY: I have got three questions, just quickly. Firstly, during the count in 2004—obviously I couldn't go into the counting area—scrutineers indicated to me that you had some 30 people doing this sort of work, and obviously it extended out over some weeks as we waited for the tailenders, effectively, to be determined. Have you given thought to increasing the resources so that the community can get an earlier outcome of the full slate of candidates elected, maybe doubling the number of people you have there and getting us an answer within a week rather than letting it drag out so long, notwithstanding the technological improvements that obviously you are making?

Mr Green: Firstly, the count took, I think, 11 days after polling day to be completed and the record of the ACT was, I think, 10 days in 1995 when it was all done by hand. The

longest time, obviously, was the two months that it took with the modified d'Hondt system. I was in charge of the counting then and I would never want to go back to those days.

There reaches a point when you are computerising something where, if you throw too many resources at it, you can actually introduce problems. We had 30 operators over two shifts, so we had 60 operators every day, plus another 10 supervisors per shift working on the system. If you throw too many people at it you start to lose your quality control, so that we have to be cautious about putting too many resources into the process. We have strategies by which to make it faster election after election and we are hoping to make it faster next election. One of the options that we are looking at very seriously for next time, rather than using data entry operators to enter all the preferences into the computer system, is the feasibility of using a scanning system. That is probably the best way in which we can get a much faster outcome.

The other point that I would make is that, while it took 11 days to completely finalise the election count, the fact that we've used electronic voting and the fact that we do progressive distributions of preferences after each day's counting, which is something we had never been able to do until we introduced electronic counting, means that we get a much earlier indication of the likely outcome of the election result. One thing we mention in our report is that the electronic votes that were counted on election night were predicting that 17 candidates would be elected. In fact, it got 16 of those right.

MR SESELJA: I was the wrong one, I believe, commissioner.

Mr Green: Yes, Mr Seselja was the wrong one.

MR MULCAHY: What is your time frame for next time? What is your objective for getting the count finished?

Mr Green: The way the Electoral Act is structured, we cannot finalise the election count until the Friday after polling day because we have to wait five or six days for postal votes to come back. So the very earliest that we could finalise an election count would be the Saturday after polling day. It is and always has been our aim to try to get as close to that Saturday after polling day as we can to finish the election. If we were to use a scanning system, I believe we would come quite close to achieving that. It is something that we will aim for, but it is not really something that I can predict at this stage.

MR MULCAHY: My second question is: there was widespread damage, vandalism and theft of signs throughout the campaign for some candidates, two of them being at this table. Probably, Mr Seselja and I were the most frequent users of signs in Molonglo. You do not seem to have adequate powers under the act to deal with that and the police seem not to be keen. Have you looked in your review of the act at, firstly, whether you might strengthen your powers to deal with offenders in this regard, because it subverts the democratic process? The second issue is the distance from polling booths. I am one who thinks that you ought to move them further away, because you would have a gaggle of geese, effectively, if everyone were handing out cards. Where are you on that issue, which you mentioned on polling declaration day?

Mr Stanhope: Were these signs legally erected?

MR MULCAHY: Yes.

Mr Stanhope: Not held and none on public places or public land?

MR MULCAHY: No, within that set of guides. There were about 140 stolen in my instance, and I do not know how many of Mr Seselja's, but I am talking about the broader issue, if you are going to review the act.

Mr Green: First, in terms of reviewing the act, after every election, now that we have electronic voting and counting, we do two reports; one into specifically the electronic voting system, and that is the report that is almost done. We are also doing another report on the rest of the Electoral Act and that is a few months away still. We are still working on that.

MR MULCAHY: Just to respond to something the Chief Minister said, I was aware of a couple of items on Adelaide Avenue, just so I am not misleading the committee, but in the broad they were all in legal areas as far as we know.

Mr Stanhope: So some of them were illegal! You were breaking the law, were you not?

MR MULCAHY: We found out later, yes, Chief Minister.

Mr Stanhope: What, you found out later you were breaking the law!

THE CHAIR: Guys, let's not do this, please!

Mr Stanhope: I think we had a discussion about members breaking the law, Mr Mulcahy.

THE CHAIR: No, we are not having a discussion about it tonight.

Mr Stanhope: Perhaps in the spirit of your attitude—

MR STEFANIAK: Do it over a cup of tea, Jon.

Mr Stanhope: Mr Stefaniak, the last question I had from Mr Mulcahy was about pursuing the administration of the law in relation to breaches. Mr Mulcahy just admitted he broke the law in the election campaign. I wonder what standard he wants applied to him in relation to this.

THE CHAIR: Come on, this is not being helpful, guys! Have you asked your final question, Mr Mulcahy?

MR MULCAHY: I asked whether he was making a report on that issue and where he was up to with the issue of polling booth card distribution.

Mr Green: To take the first issue of damage or theft of election signs: you are right, the Electoral Act does not really go into that in terms of creating an offence of damaging or stealing election signs. That is something that would be dealt with, presumably, under

the criminal law, which obviously I am not an expert on. The other issue, even if you were to make that sort of thing an offence, would be how you would actually enforce it. Obviously, on election day the electoral commission is responsible for running elections; we do not really have the resources to go around and find people who are stealing signs. That would be a matter for the enforcement authorities. It is not easy to reach a reasonable answer as to how you actually go around and catch these people

The second question was about the 100-metre ban on canvassing at polling places. What we found at the 2004 election was a much greater number of people standing at the 100 metres and handing out material. I wonder whether that was because a week before, at the federal election, people were standing six metres away and handing them out and thought they would try it again at the next election, because at earlier elections we tended to find that no-one was handing out anything anywhere near polling places, at 100 metres or not. So, whether that was just a function of the federal election or whether that might be a function of future elections, it is hard to say. The electoral commission takes the view that it is a matter for the Assembly to decide whether to have a ban on canvassing at 100 metres or to change that to make it less or longer.

MR MULCAHY: You said you were going to make a recommendation, I thought, or something like that at the declaration of the poll.

Mr Green: We will certainly be looking at that as an issue and perhaps putting a few options in our review. I do not think we feel very strongly about whether to keep it or to remove it. It does strike me, just as a personal view, that if people are handing them out at the 100-metre limit, the ban, which was really to try to discourage people handing them out at all, maybe is not having the effect it was originally intended to have. So, in that context, I think it is worth looking at it and the Assembly might like to look at the issues and see whether it wants to change the law.

DR FOSKEY: The commission's annual report for 2003-04 says that the commission intends to address the issues raised by the compliance audit and other matters relating to disclosure of donations and expenditure in its report on the operation of the Electoral Act after the most recent election. Could you please give me an outline of the sorts of issues that were raised by the compliance audit and how they are being dealt with?

Mr Green: If my memory serves, the compliance audit that you are talking about is an audit that we did of disclosure of donations made by third parties to political parties. The way the Electoral Act is structured is that we, effectively, mirror the commonwealth's disclosure scheme and that says that if you are making a donation of \$1,500 or more to a political party as a third party you are required to put in a disclosure return, if that is over a financial year, whereas political parties are not required to take account of individual donations of less than \$1,500 in determining whether they need to disclose the identity of their donors.

That means that there are some donors, if they are individual donations of less than \$1,500, who do not have to be disclosed by political parties and who nevertheless have to give us a donors' return as a third party donor. The compliance audit that we conducted involved going into the larger political parties and looking at their books to see whether there were any donors who should have given us returns and had not. We did find quite a number of donors in that category and we wrote to them and got them to put in

donation returns. They are available on the electoral commission's web site.

What we are intending to do in the review of the Electoral Act is to look at the wider funding and disclosure scheme, looking at the issues raised by the compliance audit but also at the whole rationale for the scheme that we have, particularly in view of the discussion currently going on in the media, where the federal minister responsible for electoral matters is talking about putting the disclosure threshold up to \$5,000. I think the ACT is going to have to think carefully about whether to simply continue to mirror the federal scheme or whether the ACT wants to break the nexus with the scheme and have a separate scheme, perhaps retaining the \$1,500 threshold or something else. The fact that the federal government is quite likely to move in that direction is effectively going to force the ACT to address that issue.

DR FOSKEY: Can I just add that in my question I also asked about the expenditure disclosures.

Mr Green: The particular compliance audit was not focusing on expenditure; it was focusing on the disclosure of donations by third parties. I am not aware of our finding any discrepancies on the expenditure side.

THE CHAIR: We have to move on. It is 6 o'clock and I understand that the Attorney-General can stay for an extra five to 10 minutes. That brings us to regulatory services.

MR MULCAHY: Does this include fair trading?

THE CHAIR: Yes.

MR MULCAHY: I want to declare a possible conflict on liquor licensing matters relating to fair trading. So I will not participate in the questioning or that part of any report.

MS PORTER: Under 1.8, at page 340, there is reference to the provision of registration services by the Registrar-General. Minister, during these hearings, we have heard about the difficulties that some small not-for-profit groups and some not so small ones have in the area of governance. It was actually raised by one of the government witnesses at some stage in talking about the fact that some of the not-for-profit groups have trouble with their governance, a difficulty obviously that can lead sometimes to late reporting or inaccurate reporting and groups exposing themselves to risk. Do you have any information about the level of these kinds of incidences? Are there programs being conducted or supported by the ACT government to assist the not-for-profit groups to meet their obligations under the act?

Mr Stanhope: I will ask Mr Ockwell to respond to that.

Mr Ockwell: Part of my function is the administration of the Associations Incorporation Act. That act relates to the area that you are referring to. The style of administration that my office first adopts in relation to not-for-profit organisations has regard to the very nature of those organisations. We tend to adopt a more supportive—indeed at times less heavily regulated—role in relation to those types of organisations, respecting the fact that

they are often small organisations with limited funds, and run by people who are doing so in their own time and so on.

One of the reflections of that—in terms of my main interest in incorporated associations, that is, their compliance with the act as far as maintenance of the public record is concerned—is that we adopt a reasonably lenient attitude to such things as the furnishing of annual returns. We will wait three years before beginning any action towards bringing that association to account or, indeed, cancelling that association.

In terms of providing other forms of support, education and so on, our office—while we do not have any definite and specific programs—is always available to provide advice and assistance to incorporated associations, which we do on a daily basis. I could refer to a number of cases at the moment where associations are having difficulty complying with those requirements of the act. Through assistance and support, and sometimes more specific guidance, we help them through those passages.

MR STEFANIAK: Since 2002 how many categories of new licences have been imposed on the business community; that is, new licences that are the responsibility of the Office of Fair Trading to administer?

Mr Brown: I think the answer to that is two. In 2003 the Security Industry Act was introduced. This act was the licensing regime for security employers and employees. To a significant extent that was simply taking over the previous licensing regime that we had through the codes of practice under the Fair Trading Act dealing with security. So there is a new licensing regime, as opposed to the old codes of practice approach. The second as a group are the real estate sales people. The new 2003 Agents Act introduced registration obligations for people involved in real estate sales activity, as well as for people involved in property management.

MR STEFANIAK: I turn to the liquor industry and liquor licensing. It is a significant industry here; it employs many people. What processes do you have in place to ensure you have feedback from the industry? Some places have an advisory board that advises the department and government, and some other states too I understand. What processes, if any, do you have to ensure that you get feedback from the industry?

Mr Brown: We meet on a regular basis with the two representative industry associations: the Australian Hotels Association and Clubs ACT. We maintain a very active enforcement program, both during normal working hours and after hours. This enables us to engage with licensees directly about issues relating to the control and conduct of their premises, and their concerns about the regulation as it is being applied to them. We also maintain regular contact with the industry through our education programs and newsletters. We engage in some education specifically of categories of licenses, if that is required.

MR STEFANIAK: What appropriate checking do you do to ensure licensees are obeying the law?

Mr Brown: As I said, we run compliance programs both during regular working hours as well as after hours. These involve our inspecting licensed premises. Our after-hours program is largely intelligence based; that is, we respond to either complaints or

concerns that are brought to our attention or to issues raised with us by the police and other bodies about the particular activities of licensees. Of course, on a regular basis, we go to the more popular licensed premises where experience tells us that we are more likely to find breaches of the legislation issues that need addressing.

MR STEFANIAK: Can you give me the figures on just how many establishments in this current financial year to date that have been dealt with, prosecuted, fined or whatever? How many individual patrons have been dealt with as a result of your activities?

Mr Brown: I would have to take that on notice, Mr Stefaniak.

MR STEFANIAK: Please, take that on notice.

Mr Brown: Individuals as well as licensed premises?

MR STEFANIAK: Yes.

THE CHAIR: Mr Stefaniak, I just point out that it is 10 past six.

MR STEFANIAK: I appreciate that. One more question and then I will put the rest of mine on notice, Madam Chair.

THE CHAIR: We will not be able to do “Corrective services”; I am sorry.

MR STEFANIAK: I have some questions that I will put through Mr Mulcahy or Mr Seselja. Do you have a preference?

THE CHAIR: You can put them on notice in writing through the committee secretary. There is a form.

MR STEFANIAK: I will give an example. The Waldorf Hotel has had trouble with a nightspot that opened up several years ago, I understand. I think you know the premises. They have had to refund people’s money because they could not get any sleep. They are about 20 metres away from the nightspot. A couple of Waldorf patrons have told the people to shut it up and they have had bottles thrown at them. I understand the police have been called a few times. You are well aware of it. But, as of about a month ago, it still seemed to be an ongoing problem. What sort of steps are you taking in relation to that particular problem?

On a more general note, I imagine you sometimes get similar problems. What steps can you take? Is the law sufficient to enable you to take steps to overcome those sorts of problems so that law-abiding establishments and people are protected?

THE CHAIR: Mr Brown, before you answer that question, I caution you and Mr Stefaniak not to name any organisations.

MR STEFANIAK: No; that is fine.

Mr Brown: What I can talk about in response to the first part of the question are things

on the public record. The licensing board's hearings are public matters; they are not closed. The results of matters that have been dealt with before the board in relation to the premises you mentioned are publicly known already. So, to that extent, I do not think I am constrained.

THE CHAIR: Yes, but it is the policy of this committee to take questions and answers to questions in the broad and not to name particular individuals or establishments.

Mr Brown: Then I am probably not in a position to answer the first part of Mr Stefaniak's question.

MR STEFANIAK: Could he do that in writing?

Mr Stanhope: Mr Stefaniak asked a question about a specific organisation or outlet. Mr Brown has information in relation to that. I would hate the committee to think that Mr Brown is not prepared to answer the question. He is. We will respond to the committee's requirements. But Mr Brown has an answer; he is in a position to provide information to the committee. If you prefer, he can do that in writing. I would not wish the committee to think that Mr Brown is not prepared to answer the question; he is more than happy to answer it.

THE CHAIR: I certainly have not taken it that way and I do not believe Mr Stefaniak has.

MR STEFANIAK: No, I am not taking it that way.

THE CHAIR: It is more in terms of my warning that we prefer it answered in the broad. Maybe it would be better if you were to answer it in writing.

MR SESELJA: Is there now a new policy on organisations? I remember that we agreed on individuals, but I did not know that the committee had mentioned anything about organisations.

THE CHAIR: Mr Seselja, come to order please and let me finish. Mr Brown might prefer to answer that question and keep it as much in the broad as possible.

Mr Brown: Maybe I can answer it this way—

Mr Stanhope: I would prefer that Mr Brown be blunt so that nobody is misled. I think action is about to be taken in relation to this particular organisation. Mr Brown needs to be free to answer the question within the constraints of this place. I think they are about to appear before the board. Mr Brown, perhaps you just respond.

Mr Brown: The premises in question were previously dealt with by the licensing board in 2003 in respect of the control and conduct of their outside area, which was alleged at that time to be causing the sorts of problems that you referred to. As a result of the board's action, the licensee relinquished his outside area. To some extent, the complaints raised by the Waldorf diminished for a period. Some short while ago they had patrons complaining to them again about the alleged conduct of persons associated with the premises. We commenced further investigations at that point. They have been recently

completed.

As the attorney has said, the licensee has been served with papers to appear before the board in relation to allegations concerning the causing of loss of amenity to persons who reside in the neighbourhood. That is a technical term used under the legislation in respect of the way in which the board will examine the matter or inquire into it.

That matter is shortly to come before the board for mention—next Monday in fact—in the first instance so that the process can be set for the way in which that will be heard. Affidavit evidence has been taken from the complainants associated with the Waldorf and from Waldorf management to assist that process. As well, there has been evidence from other sources. That is as far as I can take it.

You asked the more broadly based question about whether the law is sufficient to enable us to deal with those types of matters. Generally we have been very successful in dealing with those sorts of concerns. There are other premises located closer to traditional residential areas and where redevelopment of suburban shopping centres has seen either restaurants or bar/cafe type premises go into those places. From time to time tension emerges between the operation of the premises and the quiet enjoyment of the neighbourhood by the residents.

In the main, the licensing jurisdiction has been able to address those issues, mostly through its powers of direction to require the licensee to do certain things that will ameliorate the concerns of the residents. Sometimes those processes can take some time to work their way through the system. There is the investigation, the complaint and sometimes dealing with the matter before the board gets an initial series of directions, which may not at the end of the day resolve the community's concerns. The matter will then come back to the board for further consideration and further direction to ultimately address the matter. On balance, our history has been that, where the matters are properly put before the jurisdiction, at the end of the day we are able to address them.

THE CHAIR: Thank you Mr Brown. Thank you Attorney and officials for your attendance. My apologies that we did not get to “Corrective services” or questions.

The committee adjourned at 6.17 pm.