LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON LEGAL AFFAIRS

(Reference: Annual and financial reports 2003-2004)

Members:

MR B STEFANIAK (The Chair)
MS K MACDONALD (The Deputy Chair)
DR D FOSKEY

TRANSCRIPT OF EVIDENCE

CANBERRA

FRIDAY, 11 FEBRUARY 2005

Secretary to the committee:
Ms R Jaffray (Ph: 6205 0199)

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 9.06 am.

Appearances:
Mr J Stanhope, Chief Minister, Attorney-General, Minister for 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
Mr Bruce Kelly, Courts Administrator, ACT Law Courts and Tribunals
Mr Brett Phillips, Executive Director, Policy and Regulatory Division
Mr Michael Ockwell, Registrar General, Registrar General's Office
Mr Peter Garrisson, Chief Solicitor, Government Solicitor's Office
Mrs Lana Junakovic, Director, Corporate Services
Mr Derek Jory, Director, Criminal Law and Justice Group
Department of Treasury
Mr Phil Hextell, Director, Accounting Branch
Chief Minister's Department
Mr Rob Gadsdon, Manager, Finance, Corporate Finance
Director of Public Prosecutions
Mr Richard Refshauge, Director
Office of the Community Advocate
Ms Heather McGregor, Community Advocate
Legal Aid Commission
Mr Chris Staniforth, Chief Executive Officer

THE CHAIR: I welcome everyone here to the inquiry of the Standing Committee on Legal Affairs into the 2003-2004 annual reports. We will start with the DPP, then the Legal Aid Commission, and then the Office of the Community Advocate. Hopefully we will finish all that and, if we have time, we will start with the first part of the JACS report, which is fair trading.

Mr Keady: It will be policy, which also includes fair trading.

THE CHAIR: I doubt that we will get to that, given that two of the three areas are reasonably big ones. The Chief Minister cannot stay beyond 10.30, but thank you for making yourselves available on 11 March, when we will finish the rest of JACS.

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.

We will begin with the DPP and Mr Refshauge. Thank you, Mr Refshauge, for a comprehensive report. The committee wrote to all relevant people who made reports, offering them the opportunity to highlight any particular concerns or issues relating to their reports. Mr Refshauge has provided, apart from his report, a letter, for which I and the committee thank you. You mentioned a number of things in your report, some of

which are mirrored in your letter. You indicate an increasing complexity in the criminal justice system and increasing pressures on prosecutors—having to master a number of things that simply did not exist 10 years ago—and that, of course, reform is adding to these pressures.

You note that in the reporting period you had some new acts to deal with—the Criminal Code, circle sentencing and the Human Rights Act. On page 2 you indicate that circle sentencing and the Human Rights Act also require new approaches and, indeed, the learning of a new jurisprudence, drawing on experience from some overseas countries that have a similar act. The Human Rights Act has been in force since 1 July 2004—admittedly, immediately after this reporting period—but how has that affected the work of the office and what steps have you taken in relation to that act and your role within it?

Mr Refshauge: The act, as you say, commenced on 1 July last year and although, as far as I am aware, there have been no challenges in terms of the act to seek a declaration of incompatibility of any legislation with the act, it is coming incrementally through comments made, particularly in the Supreme Court but also in the Magistrates Court, trying to see how processes and activities are consistent and construing approaches in a way that is intended to be consistent.

I suppose the most dramatic example was recently where we were prosecuting an assault against a young child and the issue arose as to whether that child should give evidence when the child had indicated that the child did not particularly want to give evidence. The judge used the right in relation to the family to suggest that to compel the child to give evidence would be inconsistent with the right of the family and therefore was constrained not to proceed in that way.

What it means is that within the office we have to be aware of the contents of the act and the jurisprudence of the act because, while the terms of the act—understandably because it is based on the International Covenant on Civil and Political Rights—are broad, the actual explication or articulation of the rights into activity within the legal system means that a jurisprudence has grown up in the various courts around the common law and the civil law world to give a context and put limits and proportionality to those rights, so that we need to understand where the right fits within our current processes. One would never say—indeed, the High Court has constantly said to the contrary—that the common law process of a trial is a fair trial. But the jurisprudence of the European Court of Human Rights, for example, has given some colour to some of the aspects of that, which is a little different from the common law and perhaps pushes the envelope or closes some of the loopholes. In that sense, we need to be aware of the difference between what were formerly understood as fair trial rights and what are now understood within the international jurisprudence as fair trial rights. So we have had to go through a learning experience and be ready to deal with those things that might not be obvious in the preparation of the case but which come up in the course of the case in a way that is sometimes a little unexpected.

THE CHAIR: Was the only case you have mentioned so far a reasonable sort of development, a predictable issue, or something that you were a bit surprised about?

Mr Refshauge: My view, which as everyone knows is robust and not necessarily shared by anyone else, is that it was a misunderstanding of the dynamics of that particular

circumstance but because, for technical reasons, we were probably not able to challenge that—although it was an acquittal ultimately by direction—there were difficulties in seeing how that particular decision could be challenged. There is some jurisprudence on rulings on evidence and so on in New South Wales about whether they can be challenged. It seems to me that the right in relation to families is an important right; but whether that right is properly to prevent prosecutions by preventing the compellability of witnesses is a different matter.

THE CHAIR: Apart from the Human Rights Act—that is the only case you have had so far which seems to have impacted—you mentioned the Criminal Code and in your report you mentioned circle sentencing, which I think you applaud as an initiative but you detail the time involved in that. What sorts of issues are there in relation to the Criminal Code in terms of the time that has demanded of your office?

Mr Refshauge: The Criminal Code is something that I strongly support. The code is a modern and effective reform of the criminal law in a consistent, uniform and overarching way. But it introduces new concepts—in particular chapter 2 relating to criminal responsibility—which common lawyers are not used to dealing with in the way in which they are explicated. A good example is self-induced intoxication. Self-induced intoxication is defined in the code and it is precluded from consideration when a physical element involving conduct is involved. "Physical element" is something that has not been part of the jurisprudence of the common law.

We used to talk about actus reus. Actus reus is not quite identical to the physical element in the code, so you first of all have to work your mind through that. Then you have to realise that there is conduct, circumstances and the result of conduct in "physical element" of the code. The intoxication relates only to conduct, not to circumstance or the result of conduct, so you then have to identify within an offence which part is conduct, which part is circumstance and which part is the result of conduct. Then you have to disapply any self-induced intoxication to conduct, then you have to apply self-induced intoxication to circumstance or result of conduct and get through to a result.

When you stand back ultimately, it makes a huge amount of sense and it works, but you have to get your mind through it, and that is the mind that most of us bring to it, which comes with concepts such as offences of specific intent and offences of general intent, which are close to it but not the same. So it does involve quite a lot of work to work through, as most of us worked through and learned about actus reus and mens rea in law school. That took us time but we did it and we are now comfortable with it. So it will be, but it has to be done and it has to be worked through.

Again, the offences are defined slightly differently from in the common law or the Crimes Act, in many cases, and you have to be aware of how the defence is now defined and get up to speed about it. That involves learning. Good prosecutors understand and know through their experience and their learning what offences are about and they have an instinctive response. You cannot necessarily apply this now because we have a new regime. That is good. As I say, I support the code; indeed, I encouraged the implementation of the code in this jurisdiction and I think it has been a very good thing for the jurisdiction. But, like any new piece of legislation, particularly one that is so all-encompassing, it needs to be learned and it will take some time to work out all the ins and outs of it.

THE CHAIR: I have a series of questions, working through the report. I mentioned a few acts—Ms MacDonald wants to ask questions about one—and you have indicated that all these things impact on resourcing. Yours is a small office and you have provided details of the composition of the office. I understand that you are given some additional resources for such things as large inquests, the Eastman appeals and major matters like that that take a long time, but there is still an obvious impact on your office. How significant are all these new reforms, these new pressures, that you face in terms of resourcing the office, and what impact are they having? Can you suggest what you would like to see happen to address that, if it were possible?

Mr Refshauge: Like anyone, I would like a couple of million more dollars on the daily rate. Realistically, the office is managing to deal well with the current level of prosecution. The issues that I have raised in the annual report obviously put pressure on prosecutors. Where, I suppose, the pressure is most felt is in two areas. One is in terms of preparation because, while courts demand and expect—and are entitled to—that prosecutors and defence lawyers will be there and on time and will deliver, we can service all the courts. But it is shaving time off preparation and that runs the risk that we will not be ready for a case to be run as effectively and as well as it could be run.

We had a rather dramatic and distressing incident earlier this year where the process of preparation for a case had not been done as well as possible—that is a sad reflection on the office, but it is what happened—and we had to seek an adjournment of a significant fraud case in the Supreme Court. We got that adjournment, but at some cost. That was accompanied by criticism of the office by the Supreme Court—and it was a fair criticism of the office—but, looking back as carefully as I can, it was a criticism within our current resources; it would have been quite difficult to have rectified and resolved at the time.

The other area where pressure is exerted by this is when the inevitable crisis develops, when something unexpected happens. As I have said, we can deal with what we are expected to do and the general run, because most of the court processes are dealt with in lists and we can arrange our affairs so that there are prosecutors available for the lists. But, when extra things happen, it becomes a challenge. An example of that was, for instance, when an issue arose in the bushfire inquiry and inquest about the availability of some documents. It was necessary for me to spend some time preparing and then running a case before the Supreme Court to deal with that. That was unexpected and thus put back activities that I was previously doing and was fully occupied with doing. So it means that it is now more difficult to manage things that come up out of the ordinary and it puts challenges on the preparation. That is a difficulty and we are doing our best to manage it.

Prosecutors continue to work hard; they take work home occasionally, they work late hours and occasionally weekends. That is part of the job and you would expect that, but it is putting more pressure on. In my view, the position is getting to the stage where the office must be seen to be underresourced. If we are going to deliver with the appropriate preparation and be able to manage policy response and issues that arise unexpectedly from time to time, we will need to call on other resources or we just will not be able to do that. That happens from time to time, of course. We managed to secure additional resources for the Eastman inquiry and for the bushfire matter, so I am not saying that

those are not available, but those issues are of a major kind, a grosser kind, and the ordinary, less dramatic, matters need to be addressed also.

THE CHAIR: No doubt you take these issues up from time to time with both the attorney and the chief executive?

Mr Refshauge: Yes.

THE CHAIR: I note, gentlemen, that you are probably going through budget deliberations at present, but can you indicate to the committee whether those issues raised by the director will be part of the budget considerations for the department?

Mr Stanhope: They always are. Every part of the service, as you would understand, is involved in the budget process and, I have to say, not a single part of the ACT service has yet lodged a submission with me to suggest that they had too many resources. I have yet to receive a request from a single part of the ACT public service asking me to cut their budget. But I acknowledge the extraordinary circumstances that arise from time to time in the administration of justice and our laws.

The particular issues that Mr Refshauge raised about the bushfire inquest and the Eastman matter are long running and extraordinary. As I think you are aware, outside the formal annual budget process the government has just concluded deliberations on a second appropriation bill and there are significant additional resources, through a second appropriation bill, to be tabled next week by the Treasurer, for the DPP, the courts and the ACT Government Solicitor's Office in relation to both the bushfire inquest and the Eastman matter—some millions of dollars of additional resources for each of those matters.

MS MacDONALD: My question is to the Attorney-General. Mr Stefaniak raised the issue of the Human Rights Act a little earlier. Can you tell the committee whether the dire consequences that were predicted before the Human Rights Act came into play have actually come to pass?

Mr Stanhope: I must say that it was a leading question from the chair to the DPP in relation to the implications for his office of the introduction of the Human Rights Act. It is interesting to reflect on some of the predictions. The sky has not yet fallen in. With regard to some of the predictions by those who opposed the bill of rights—that there would be this outrageous transfer of power from the Assembly to the courts, in particular the Supreme Court—I think Mr Refshauge might like to comment on whether or not he has seen any evidence of the transfer of power automatically from the legislature to the judiciary. I have not noticed it.

I understand there are four cases of substance that have dealt with the Human Rights Act in the eight months since the introduction of the act. I do not think there has been an avalanche of applications. I do not believe our criminal class have run amok and danced in the street at the freedoms that will be granted to them as a result of the introduction of a bill of rights for the ACT. I certainly have not felt any diminution of my power or authority as an elected representative of the territory as a result of the introduction of a bill of rights for the ACT. I have to say that I have not seen any evidence for the transfer of power to the judiciary as a result of the introduction of a bill of rights in the

ACT. I have not seen the avalanche of applications from the so-called criminal class that I saw predicted prior to the introduction of the bill of rights. In fact, it has been a rather peaceful introduction. The extreme predictions of dire consequences are perhaps a lesson for the rest of Australia as well as for those who made the predictions here in the ACT that have been proven to be completely unfounded.

Mr Refshauge might want to comment on whether or not the bill of rights has resulted in those consequences, particularly in relation to people coming before the courts, or those with whom he has some interface, and the impact in a real sense of the bill of rights.

MS MacDONALD: Mr Refshauge, do you wish to comment on that?

Mr Refshauge: I am sure the committee will forgive me if I do not answer the question with quite the same rhetorical flair. I assure the committee that the Human Rights Act has not been dramatic in its introduction in that sense, but it is quite pervasive, and I think that is a good thing. It makes us think about the values of the activities in which we are involved and it comes up not dramatically, as the attorney has said—there were probably four cases in which it has played a prominent role—but every bail application is likely to refer to the Human Rights Act. That means that it is always there. That is no bad thing. When you are dealing with bail, you are fundamentally interfering with the human rights of a citizen by determining whether their liberty should be deprived notwithstanding that they have not been found guilty of an offence. It is pervasive in that sense and it is necessary again in terms of a prosecutor to understand what that means in terms of the jurisprudence.

If one looks at the right as set out in the Human Rights Act, bail would be granted to everyone, yet that is not what the law says. It is not what the Human Rights Act says; it is the understanding of international tribunals such as the European Court of Human Rights, the House of Lords, which now administers a human rights act, and the Supreme Court of Canada, which administers a bill of rights embedded in Canada's constitution. It is not what the High Court in New Zealand says et cetera. So we need to understand those. It is becoming invasive.

The good value is that it makes people think about what they are doing in terms of the influence or impact it will have on the rights of citizens. But it does mean that you then have to understand what it means in terms of the day to day, not in terms of the grand result, and to date I do not think you could say that it has resulted in any transfer of powers from the Assembly to the Supreme Court. But, having said that, it has been only eight months. There has been no declaration of incompatibility, but we will have to see what happens. It is early days, but there is no indication—

MS MacDONALD: You have said that the act has been in force only eight months, and there has been an allusion to that by the chair. Is it just that the criminals out there are slow in picking up on their human rights and maybe they will suddenly realise that they have this Human Rights Act as a great loophole for them to get out of—

Mr Stanhope: As predicted—that you can drive a truck through it; that we will all be attacked in our beds because of the Human Rights Act.

Mr Refshauge: Personally, I have been a supporter of the Human Rights Act. I have

never seen the Human Rights Act as being a charter for criminals. Having said that, it has changed the dynamic, as I said, with bail. When the Human Rights Act influences, people who otherwise might not have got bail get bail. In a micro sense, the change of that dynamic is not going to make the sky fall down. Having half a dozen or 10 more people on bail than before is not going to bring civilisation as we know it to an end. Whether, though, those people who are granted bail as a result then go out and commit further offences is a matter for debate on a policy level.

There is no doubt that changes in the Bail Act have been very successful in addressing property crime. One or two people commit large numbers of property crime and the vast majority of the other people who are arrested for property crime commit a small number of property crimes. If the Human Rights Act were, by its appropriate influence on the decision making process in the court, to result in one of those more active thieves being released, then property crime might for that small amount escalate, and that obviously would not be a good thing.

There is no doubt that it is proper for courts, when they are dealing with issues that affect the rights of citizens, to be mindful and to be reminded of the way in which that works. After all, it would be extraordinary to think that the polities of our great common law neighbours like the United States, New Zealand, Canada and the UK have enacted charters for the freedom and depredations of criminals. That is just fantasy. The Human Rights Act is not going to be a charter for criminals, but it will change the balance. The change of the balance might be good or might be bad when the effects are known, but the effects will only be known long term. In the eight months that it has been in place I have not seen any effects that suggest that the Human Rights Act is a charter for criminals that has led to an increase in crime and has allowed the sky to fall in—says he, having moved into the rhetoric that he said he would not move into.

Having said that, at a day to day level—which is what I am concerned with, because I am operational—it raises challenges; it means that we have to address issues that it is proper for us to address but which we have not had to address before in those terms.

MS MacDONALD: Mr Refshauge, you say it raises challenges. Would you say that those challenges are any greater than the other challenges that are presented by changes in the law by the introduction of other acts?

Mr Refshauge: That is a very general question. In that sense, if you wanted to say all the challenges are there on one side, and the challenges raised by the Human Rights Act are on that side, and which are greater, no it is not. Having said that, though, much of our work is fairly repetitive. I mean, one drink-driving offence is similar to another drink-driving offence. It is a challenge, though, when you add the Human Rights Act into that and have to think is the Human Rights Act going to influence this case and, if so, how and what is my answer? So, that is the sense in which I say it is a challenge, because even I, perhaps, could prosecute a drink-driving case without spending half a day's preparation if it was a straightforward case, but if I had to think about whether there was a Human Rights Act element to it and what that was and how I would manage it, it would take me longer.

So it is the challenge in that sense. But, no, one of the things I have said—and I think I have said it here, and I have certainly said it to my prosecutors and publicly—is that

prosecutors need to think about what they are doing and how they achieve what they are doing and what the place that they have in our community is. Are they making a difference? The Human Rights Act is, if you like, a statutory ukase to ensure we do that, because it says you are interfering with people's rights, you need to understand how that interference will balance with the needs of the community, which, the Human Rights Act says, in a liberal democratic society, is entitled to weight in the balancing act, and to bring that to bear in your decision making. I think it is a good thing in that sense, but you need extra work in order to do that. That is a good thing, but if you do not have the time to do it, it is a challenge.

MS MacDONALD: The question I just asked was a very general question, as you say. You talked about the amount of time that the Human Rights Act adds. Do you believe that, over time, as prosecutors become more au fait with the Human Rights Act, the amount of time required to be spent on interpreting the Human Rights Act and how it applies to individual cases will increase?

Mr Refshauge: Absolutely. That is, if I may say so with respect, a very perceptive comment. That is clearly going to be the position as we become more attuned to it, and that has been the experience. I talk frequently with my colleagues in those other common law countries that I have talked about, and that has been their experience. Of course, you understand it needs addressing but then so does the evidence of a particular case need addressing, and it will become clearer as we understand how it operates and we become familiar with the cases. It will become clearer but it will always—and this is where I say the law is becoming more complex—add another dimension. You will always need to go back to that act in the same way that we always have to go back to the Evidence Act. You compare the Evidence Act 1971 with about 80 sections and we now have a commonwealth act with 135 sections. There is just more law that needs to be looked at. So it will always add a dimension but obviously there is a hump as we grow to understand the current act and how it operates and get up to speed with the jurisprudence and deal with that. But, absolutely, that is very true.

Mr Stanhope: I think perhaps this is an issue to be raised with other witnesses from the department. The committee might wish to discuss issues around human rights and its application and not the DPP. Of the four cases that have some significance, I think it is appropriate for the Assembly and members and this committee to understand how the act is being applied, and it is important to understand that, as Mr Refshauge is saying, as case law develops. This is one of the great strengths of the bill of rights: it puts us in step with the rest of the world in understanding human rights and how they apply.

There is a significant judgment by Justice Crispin in relation to the effect of the Human Rights Act on the rights of children and how the rights of children are to be interpreted. I think of particular interest to you, Mr Chair, understanding some of your views, with great respect, and attitudes towards the Human Rights Act—and I trust you have done this—it would, I am sure be of interest to you to read the judgment of Chief Justice Higgins in relation to a matter of Helen Szuty v Brendan Smyth and the extent to which the application by Helen Szuty in defamation against Brendan Smyth was resolved by the Chief Justice with reference to the right to freedom of speech inherent in the Human Rights Act and the extent to which the said Brendan Smyth relied on his human right to freedom of speech in relation to his action for defamation.

It is, of course, one of the great ironies that one of the first four cases in the ACT to delve into the application of the ACT Human Rights Act, and the implications of legislating a bill of rights, was brought by the Leader of the Opposition—a trenchant opponent of humans right and the bill of rights. I just say this in passing. I do not wish to detain the committee on it, but you may wish to pursue later these issues.

THE CHAIR: I have read that judgment, Mr Stanhope. I must reread it to see whether it has the same slant that you mentioned. I do not think we need that one but I would like details of the four cases either you or Mr Refshauge referred to.

Mr Stanhope: I would be happy to table them, most certainly.

THE CHAIR: I think that would be helpful. I think we all know it is early days so we all wait with interest to see what happens.

Mr Stanhope: I await a press release from the opposition on the utility of the bill of rights in relation to defamation actions and the extent to which it has clarified the right to freedom of speech.

THE CHAIR: I am sure you do, Attorney. I have a couple of questions on another part of this report and then Dr Foskey had some. Mr Refshauge, you mentioned on page 5, in the last paragraph, "The environment in which prosecutors work continues to be a challenge." You mentioned a couple of things in relation to us vis-a-vis other jurisdictions. I will deal first with the last sentence, which is,

> The courts also continue to challenge with the very ready willingness to terminate trials because of perceived risks of jury contamination which otherwise would be resolved by robust directions of the trial judge.

Perhaps you can explain to the committee what you mean by that. There is a concern with trials. You mentioned one yourself, a resource problem, but the trial did not go ahead. In this reporting period and from 1 July to date, how many trials have been unable to proceed? How many have been aborted because of the problem you raise here?

Mr Refshauge: I do not have the numbers, but I can supply those for the reporting period and since.

THE CHAIR: Just from 1 July.

Mr Refshauge: Yes, all right. This is a question of balance, and I am unashamedly expressing my view, which other people may disagree with. My view is that the jury system, which is a bulwark of our constitutional addressing of criminal justice issues, is a very robust institution. I think the research shows that jurors are less affected and prejudiced by what judicial officers often see as material that ought to be kept from them. My understanding of what happens in other jurisdictions is that a robust approach is often taken by judges about, for instance, questions that are asked which result in inadmissible evidence being given, and juries being directed to ignore that evidence or not take it into account or deal with it in a particular way.

My perception—and no-one else may agree with me—is that our judges are somewhat

tender to the concerns of those issues in relation to juries and my perception is that they tend to discharge juries rather more quickly or easily when a robust direction, with what the High Court has indicated is the authority of the judge behind it, would result in the trial continuing and no miscarriage of justice. I am not a judge and therefore, obviously, my view has a different weight from those who ultimately have and are paid to have the responsibility to deal with that.

But I also have an obligation to the community to say that I think we need to recognise the strength and the capacity of our citizens to deal with those issues and for the jury to be able to deliberate and to deliberate notwithstanding that the material they get will not be what, in the arcane ether of pure theory, is seen as only limited to that which is admissible and to not cost the community when there is the capacity to continue the trial.

THE CHAIR: You mentioned that there was some High Court guidance on that. You mentioned that this is not so much of a problem in the other states. Do other states have any different legislation that would assist in this?

Mr Refshauge: Not that I am aware of. It is difficult to think of legislation because ultimately it is a discretion of the judge and the judge has to make a decision. Quite rightly—and I do not want to change this by any manner or means—the judge has the obligation to ensure that the trial is fair. It is the judge's impression, but different judges will see that differently and the only way in which we can develop and have a meaningful discussion about where that line should be drawn is by having that debate. I have raised that debate, and it is not a debate that, I regret to say, the Legislative Assembly with its enormous legislative power can resolve, because it will always come down to the decision in the particular case and the particular way it is run.

THE CHAIR: Do you have fairly regular meetings with judges, just talking about general issues of concern to both parties? That obviously would be an issue of concern to you and they would probably have issues with you on other things. Do you have any?

Mr Refshauge: No, I do not.

DR FOSKEY: Sticking with page 5, you made a comment about the need to progress a memorandum of understanding re the agencies involved in inquests and also on the lack of clarity in the legislative face of the relationship between the office of the DPP and the Coroner, and more general misunderstandings of the role of the DPP's office in the Coroner's inquests. Can you just expand on that please?

Mr Refshauge: Yes. Some years ago issues arose about the way in which the police and other agencies were interacting in the investigation of deaths, and particularly deaths in custody. You might recall there were a number of very significant inquests that were helpful in determining some policy in the community for those. As a result of that there was a meeting between the relevant agencies to set out a memorandum of understanding as to how the various agencies would interact in the investigation and then in the delivery of the inquest. We get difficulties when the police seek to investigate and employers—who may be government—have a duty of care to their employees. That memorandum of understanding was in draft form and unfortunately it seems to have fallen into a bit of a black hole and I was raising a flag to try to progress that. There have been some stirrings to move that on.

It is a difficult issue. At one level, obviously, an inquest needs to operate quite freely and get at the truth—to pick up a current phrase that is around in the community—but obviously agencies have concerns about questions of liabilities. That is not just a knee-jerk reaction. We all know that statements that are made can be misconstrued and they can be ambiguous, particularly when they are made in the heat of the moment, at a time when people are affected by events that have happened, and liability can be identified when perhaps none exists, or liability can be suggested to be covered up where that was never the intention. So, it is a fine balance and that is what the memorandum of understanding was directed towards. As I say, it seems to have fallen into a black hole and it needs to be resurrected. If you like, that is a statement by me that I need to do something about that, as well as others. I am not saying that I am blame free in that. I have some capacity to drive it, and I will do that.

The other issue relates to the Coroners Act and the relationship between my office and the coronial process. Under the current Coroners Act, it is the coroner who appoints counsel assisting. That is done simply statutorily. In most inquests—I guess, 99 per cent of inquests, which are ones that have no special features and are unlikely to be particularly difficult—the arrangements in this territory are that a prosecutor from my office will become the counsel assisting. That is done by an understanding rather than a formality. When a high-profile inquest comes up there are real issues about the way in which accountability and management of that inquest can be affected. When the coroner appoints counsel assisting, I and my office obviously have a different relationship with that counsel than if it were a prosecutor who is employed by my office or an external counsel, for example, who was appointed by me to do that.

That leads to difficulties in the management of inquests sometimes, because there is no clear line of accountability and responsibility, and the usual processes where instructions are given and so on are less clear and less managed. So I think that is an issue that needs to be looked at. I do not have a strong view at this stage because I think there needs to be a debate and an exploration of policy, but I think there are good reasons why what I have described as the more usual circumstance, where my office manages that counsel assisting role, has some benefits and advantages, and I think that is one that would be worth exploring and clarifying, because it has been difficult.

To take an example, a major inquest might be conducted. Counsel will be appointed. Counsel will be paid through my office. I will provide management because that is the infrastructure that we put up. Then, when issues need to be resolved, I am asked to resolve them. I cannot resolve them because the person who is counsel assisting is not someone who has a relevant accountable relationship to me. I can make suggestions and I may or may not have some influence, but those suggestions can be no greater or lesser than those of anyone else in the community in those circumstances. It is just an issue of how to manage these processes. Management is becoming much more important in these kinds of issue, because a lot of money can be involved. Reputations can be at stake. Major operational and policy issues can be involved and a degree of management and clear lines of accountability and responsibility are important. That is an issue.

DR FOSKEY: Mr Refshauge, you comment on the same page on the need for better statistical collection. I wonder what the department is doing about improving that? Finally, so you can flow on to the next question with ease, do you have a comment on

being asked to report on areas not meaningful to your agency?

Mr Refshauge: The first one is not really one for me; it is one for Mr Keady. There is a whole range of things that annual reports have to contain, and some of that is just irrelevant to individual agencies. I think a more targeted approach would be more effective in the utilisation of personnel resources. Annual reports are extremely important, there is no doubt about that. It is important sometimes just to tick off things because you have addressed them but there are issues that are completely irrelevant to my agencies, and I am happy to supply the committee with some suggestions on that.

THE CHAIR: That would be very helpful.

DR FOSKEY: I would appreciate that.

THE CHAIR: Mr Keady, anything else on that?

DR FOSKEY: On the statistical collections?

Mr Keady: Perhaps I can make just a few general comments and then call on one of my officers who may be able to give you this information particular to sexual assault matters. The ACT, given its size, lacks the capacity that you see, for example, in New South Wales with the Bureau of Crime Statistics and Research, which has a history of some decades now and which is able to provide a regular and fairly valuable service to the community, not just in providing statistics but in its capacity to analyse and provide commentary and inject meaning into those statistics. It would be marvellous if we could do the same. At various times we looked at what it would take to establish that capacity. It is very expensive. So we are looking at a sort of cutdown version. We may be able to do more to provide meaningful information about activity in the criminal justice system and all facets of it.

The problem was also connected to the operating systems within agencies. So our ability to extract meaningful information from statistics is often related directly to the capacity of our IT systems, the software we use to support our business processes. A good example of that is in the courts, where the operating system that is used in the Magistrates Court is some 14 years old now, and is getting to the end of its useful life. In common with those kinds of legacy systems, there is great difficulty in extracting information from it. Therefore, the kind of modern demand that now exists for information of a quite detailed kind across all our criminal justice activities is difficult to meet. There is a lot of frustration about that, and that is understandable. So, we are looking, in a converging way, at a number of options to try to fill the gap. One is to improve our software. These are quite major investments we are talking about, things that take years to devise.

THE CHAIR: It has been an ongoing problem, though, has it not?

Mr Keady: It is. We are engaged in a project at the moment seeking to replace our support systems in both the Supreme Court and the Magistrates Court, but we are talking about an investment in the millions. The particular area of sexual assault is one that is attracting a lot of policy interest and there is a great demand for information, which we are not really able, effectively, to meet. I might call on Mr Derek Jory from the

department who can provide you with a bit more information about what we are doing to try to bridge that gap.

These will be stopgap measures until we are able, first of all, to completely renovate our operating systems, and we are hoping to do that in the next couple of years. We are hoping, through negotiation with bodies like the Australian Institute of Criminology, to acquire a service which not only will take the information we are able to give them but also provide that additional value which is really essential in this field, which is the commentary and analysis so people can find meaning in raw figures. But I just call on Mr Jory.

Mr Jory: Research into sexual assault has been undertaken on our behalf by the Australian Institute of Criminology and involves all of the criminal justice agencies. We have devised a minimum data set, which is very extensive despite the terminology that it is minimum. It is an extensive data set. All the data, starting from the moment an incident is reported to one of the criminal justice agencies, usually the police, is gathered. So, we are attempting to capture data about cases that may not reach the courts, but we will follow those cases right the way through. The sorts of questions we are wanting to ask and have answered are: what are the factors that allow a case to get to court? What are the factors that, perhaps, seem to be common to those cases that do not get to court? What happens to offenders through the criminal justice system? What happens in terms of recidivism rates? What happens in terms of those offenders who go into sexual offender programs, and so on?

I should say we have had great difficulty, as Tim Keady has outlined, in terms of the data systems, in matching different pieces of data. Different agencies have different business cases and they have, therefore, different definitions. The data does not always match—victims versus incidents; cases versus offenders; numbers of offenders and so on. Hence the need for a minimum data set which everybody has agreed upon. The outcome, we hope, is that we are going to get a much better picture, a real picture, of what is happening now. We did attempt to back capture data and found that that was almost impossible. So this research is, in a sense, going live. We will use cases from here on in and track those cases over the next couple of years.

DR FOSKEY: Thanks for that. That was really useful.

THE CHAIR: I note the time. There is no way in the world we are going to get to JACS generally, so any officials who are here just for JACS are certainly free to go. Mr Refshauge, there are a couple of things. I will ask three questions in one because of the time. You also mention on page 5 some problems to do with the environment that prosecutors work in. You say:

> … we once led Australia in technological changes to assist vulnerable witnesses, we have now fallen well behind and not kept at all up-to-date with technology or procedures in this important area.

That is the first. Over the page, at page 6, you say:

> Similarly, whilst the Territory was amongst the earliest Australian jurisdictions to recognise and make provisions for the rights of victims, we have not expanded the resources in this Office to keep pace with the demand and now lag substantially

> behind most other jurisdictions. This will provide a prosecutorial and management challenge in the coming year.

What particularly is the problem there and what needs to be done?

My next question relates to a statement on page 13 about case highlights. You talk about the difference between the ACT and every other jurisdiction in Australia in relation to the proof required for murder and the issue in relation to constructive murder which arises everywhere else except here and what you feel is actually needed there.

I am sorry that there are three questions there, but I do not have the time.

Mr Refshauge: I will try to be brief. It is not one of my strong suits, I know. In relation to technology: we were the first jurisdiction to have remote transmission of evidence for children. Indeed, the Australian Law Reform Commission used us as a pilot study and did a project on it. That technology in the courts, as a harbinger, is now pretty out of date. The process, and the legislative underpinning for that process, now is probably behind, certainly, Western Australia, New South Wales and Queensland. I am not absolutely certain about Victoria and South Australia. We were the first. We sat a bit on our laurels—and that's over at least a 15-year period; it's not recent—and not much has been done. I think the time is now right to do it.

As you are aware, I have had some money that the government generously gave me and the Australian Federal Police to look at the investigation and prosecution of sexual assault offences. That report is due out shortly. It will identify issues, particularly in that area, but will relate to these issues that can be the subject of public discussion and debate. That needs to be addressed.

In relation to victims: again, our Victims of Crime Coordinator was one of the first in Australia. I gained a witness assistant in my office really through the family violence intervention program. I have one now. Last year New South Wales doubled their number of witness assistants from 16 to 32. Even Victoria now has, per head of population of criminals, more witness assistants than I do. It is a matter of resources. I do not say that is a priority that overtakes all other governmental priorities, but it is an issue that needs, I think, to be addressed. We do not have enough capacity to deal with that.

In relation to murder: I think it is well known that we have, in contradistinction to every other state and territory in Australia, a limited definition of murder. Murder means the intentional killing or the killing of a human being with reckless indifference to human life. In most other states and territories, that is expanded; for instance, felony murder and constructive murder, where someone intends to inflict grievous bodily harm and death results, then that can be held to be murder in other jurisdictions. Again, it is not, as I say, a one-way situation. Why I raise it is because people say, "Why weren't they convicted of murder? Why were they only convicted of manslaughter?" I suppose, because we are a small community and people read the *Australian*, the *Sydney Morning Herald*, the *Age*, the *Daily Telegraph* and so on, their understanding of what murder is is perhaps different from the narrow technical understanding here. People need to understand that.

Having said that, it is fair to say that the Model Criminal Code Officers Committee, although they have not yet finished their report on fatal offences against the person, have

a discussion paper and in that discussion paper recommended that the model criminal code should have that narrow definition of murder as we have it in our jurisdiction. So there are obviously good policy reasons why it should be so. But it means that we are different and, when the community talks about murder, in this jurisdiction they are talking about something a bit different from other jurisdictions.

THE CHAIR: I might be wrong here, but we used to have something like felony murder.

Mr Refshauge: Yes, we did, and it was amended. We got back to what some might regard as the purest form.

THE CHAIR: All the other states have it. I have one further point on that. I note that you had to do a large number more murders than you normally did—one or two a year. I think you said it was now seven. How many of those actually resulted, for this financial year, 1 July 2004 to date, in a conviction for murder and how many others had convictions for manslaughter entered?

Mr Refshauge: I can talk off the top of my head. Obviously, Hillier is the most recent one. King is difficult because it was a special hearing, although it resulted in a finding that he had committed the acts that constitute murder. I will take that on notice, if I may, and come back to you.

THE CHAIR: I think it is more cases where anywhere else it would be murder but here it is classed as manslaughter.

Mr Refshauge: That is more complicated. If I may seek the committee's indulgence: I do not think it is proper for me to speculate on whether a jury would have come out with a murder conviction in another state using different legislation. What I can tell you is how many convictions for murder and how many convictions for manslaughter there were.

THE CHAIR: That would be helpful. I note in the legal aid report, which hopefully we will get to before 10.30, they actually represented about three or four people. It indicated what the result was. I just wonder whether you can give us definite stats for the whole lot. Legal aid would not be in every case.

In relation to those three points: the question is for the attorney or Mr Keady or both. The first issue is in relation to the taking of evidence, where we seem to have fallen behind. The second issue is in relation to victims. I suppose that is a staffing issue. Thirdly, there is the issue in relation to felony murder. What, if anything, does the department or the government intend doing about those three issues?

Mr Keady: I recall a discussion with the DPP about felony murder. There was some research undertaken about the change in the law that occurred here and some comparative work with other jurisdictions. As I said, I cannot recall the details. I do remember, however, that the situation is a little bit more varied perhaps than has been conveyed. I know that felony murder does not exist, for example, in the UK. There was some work done to try to ascertain whether we would follow suit.

All I can say, I think at the moment, Mr Chair, is that there was some discussion about it but I do not think it went anywhere particularly. Mr Refshauge had a view that the law here needs alteration. If the absence of a felony murder option here were a problem, we would consider it.

THE CHAIR: It is something that the government is looking at too, attorney?

Mr Stanhope: I will take advice on it, Mr Chair. I note the views of the DPP in relation to the issue. I think it is relevant, though, to consider whether or not there are alternative options that might have been utilised in relation to particular facts of the case that generated the discussion. Similarly, I do need to take advice on the effect of the code changes in relation to a whole range of offences in relation to issues such as felony murder and the debate between murder and manslaughter.

I am not one of those, as you know, Mr Chair, who rush into law reform for law reform's sake. I am not one of those who believe simply because a conviction for manslaughter was achieved in a circumstance where some would have regarded a conviction for murder more appropriate, that that necessarily is the case.

THE CHAIR: However, you are aware that every other state apparently has these provisions and the ACT is the only state without it.

Mr Stanhope: Yes. I am also aware that other states have provisions in relation to a range of things to do with the criminal law with which I disagree trenchantly and will continue to disagree trenchantly.

THE CHAIR: Murder and even manslaughter are certainly some of the most serious issues in the criminal law, are they not?

Mr Stanhope: They certainly are. But that does not mean that everybody else has got it right and we have got it wrong. I will say this bluntly—and I make the comment in relation to changes in the law that are being pursued by my Labor Party colleagues in other states: I disagree with them absolutely in relation to some of the directions that some of my colleagues are taking in relation to the administration of the law and, in particular, the criminal law. I think they are wrong. I have a view about these issues and I will maintain my view. These are very difficult and always emotive and emotional issues and it is very easy to get carried along by a mob mentality in relation to fundamental principles of law, including the criminal law. At times we need to just pause and resist the temptation.

THE CHAIR: Surely, though, it is also very important to look at what other states are doing, especially if a vast majority of states have a similar law, given that crime knows no boundaries.

Mr Stanhope: Absolutely. But there are some philosophical issues that we simply should not walk away from. We walk away from them at our risk and peril. I see it happening everywhere.

THE CHAIR: I am sure we could argue those till the cows came home, but unfortunately we do not have time.

Mr Keady: Mr Refshauge raised the issue about a report on facilities for witnesses in sexual offences cases. As Mr Refshauge said, there is a report imminent, coming from him and other agencies involved in investigating and prosecuting offences of this kind. We will be waiting on that report and its recommendations before we decide what further steps we need to take in this area.

It is true that, if one looks around the country, there is a sort of a leapfrog effect in this area. People and various states from time to time adopt a new way of approaching it. That slowly spreads around. It probably is the case that we have fallen behind. But the report that we expect to receive, no doubt, will look at the developments elsewhere and our particular circumstances. I expect to see recommendations about what we ought to be doing in this area, both in terms of the nature of the technology we employ and the procedural laws that we use.

THE CHAIR: When can we expect that to happen? We want some timeframe.

Mr Keady: Mr Refshauge has indicated that it will be available to the government fairly soon.

Mr Refshauge: It will be presented to me and I hope then to present it to the government by March or in March

Can I just say in relation to the debate on murder: that is an important debate. No doubt it will occur when the Criminal Code, which I understand will be addressing issues of offences against the person, is debated, probably this year. I do not have a strong view one way or the other. The point of the comment in my report is that my office gets criticised, sometimes very trenchantly, for its record. "We never get a conviction for murder," is a frequent comment made to me. People need to understand why that is. I do not have a strong view about changing it one way or the other, as I pointed out. Obviously, it went into the ether.

The MCCO committee, which is a very high-level national committee, in its discussion paper, said that the states should follow the ACT. That may be so, but one needs to understand the environment. Just because the other states have something does not necessarily mean that we should follow; it does not necessarily mean the debate needs to be had. What is important and what I want the committee to understand is that the performance of my office is attacked because we are seen as not being able successfully to prosecute. The fact is that we do successfully prosecute and we get, for the most part, the correct result on the law available.

But the community does not necessarily understand that and the community needs to be educated so that when they criticise my office unfairly they are not backed up by those who understand and who have the capacity to allow the community to understand what the community is doing. If the community wants something different, then it should not have two standards and criticise my office for doing what the law requires it to do.

THE CHAIR: That is exactly why I think you need to highlight some of these things. I think that is something that the Assembly and the government need to look at in terms of what the Assembly should do and can do to assist your office in its proper role. I think

everyone here realises it is a difficult job, as is indeed the role of the next group that, hopefully, we will get to as well.

Mr Refshauge, I note the time. I will talk to my committee colleagues. We may have to recall you. I hope to do at least legal aid now. We can recall you. We can put questions on notice.

MS MacDONALD: We have 10 minutes left. In fairness to legal aid, to the committee and to Mr Refshauge, I would rather not have a disjointed process; I would actually rather finish the DPP today.

THE CHAIR: I think that is sensible. I note the director of legal aid nodding his head. He is quite comfortable about leaving now and coming back later. The attorney has to go at 10.30.

Mr Stanhope: I must say that I do feel that there are many issues that should yet be taken up with the Director of Public Prosecutions. You have not yet asked Mr Refshauge whether he is at all swayed by your continuing commitment to the death penalty and whether we might have a discussion on that.

THE CHAIR: That is not exactly relevant to this, I shouldn't think. If we just stuck to the report we might get somewhere. I thank the other officials for attending. I am sorry we did not get to you. We are back at 9.00 am on 11 March. We will start then with legal aid and the Community Advocate.

DR FOSKEY: If we cannot get through my questions in the time left, I would ask for a written response. That is understood. In the section on work levels and case management hearings, pages 16 to 20, you explain how the work of the DPP is increasingly complex and time consuming; yet—and this is pleasing to hear—you seem to be saying that you are getting through even more work. I am interested in how that result has been achieved and whether the case management process or other systems improvements are saving everyone time, allowing you to do the more complicated work. Are there large areas where processes can still be accelerated or simplified?

Mr Refshauge: As I indicated, much of the work in the office is done in court lists. In the Magistrates Court, for example, there are a number of lists. There is what is called the A list into which all matters first arise and in which there are a number of pleas of guilty so that the matter is resolved then and there or is put over for a short adjournment and resolved in that way. There is a family violence list, which deals with matters in a similar way. There is the Children's Court list and so on.

An increase in work does not necessarily mean additional court time. Obviously it does at one level. The list goes on in the same way. While there is an increase in work, it can be managed within the same list sometimes, and that deals with that.

Secondly, as I indicated, one of the things that we have had to shave off is preparation time. We have less preparation time now than we used to have. One of the difficulties in public sector law practice is that you do not have a paying client for each matter at the end of the day who can moderate the amount of time that you spend on a case. So it is not always easy to actually sensibly identify how much time should be spent on a case.

But, obviously, where a case is badly prepared, you can understand that and you know that not enough time has been spent on preparation. It is easy to identify when matters are underprepared.

One of the ways in which we have managed the flow through of more cases is for people to do less work per case. As they become more expert—and I am very pleased to say we have had a better retention rate amongst our staff than we have had in the past—they can do more work and do it more efficiently and expeditiously. Staff, I think, are working more hours. Again, if you work more hours, you can get through more work. So I think a combination of these things means that although our resources have not increased greatly in that area we are able to get through more work.

We are looking at ways in which to manage more efficiently and we are able to do that to some extent. The case management hearing system has been effective in that, although I have to say that it needs a bit of review and a bit of improvement now. I am pleased to say that the Magistrates Court, through the Auditor-General review, is looking at those issues, which will address some of that.

In the Supreme Court we are getting a better flow through because we are getting a significant number of pleas of guilty after the date for trial has been set. That means that you do not have to run trials. But, again, there is a bit of a catch-22 there because good investigation and good preparation will lead the accused to realise that the case against them is strong or overwhelming and that is why they plead guilty. They have the incentive that a plea of guilty, particularly at an earlier stage, is a sentencing discount entitlement and that encourages them to plead guilty to some extent, although they leave it often later and later. That is an advantage.

There are improvements. The Supreme Court has now enacted criminal rules of court that help the management of those cases, and it assists. Of course there are new things that we need to look at. The Supreme Court has a criminal law committee, of which I am a member, which looks at those things from time to time. It helps to change. Those are the kinds of things that are happening. There are more that could happen.

The other issue, I have to say, is that if you are going to think of those things you need to have time to think. People are very critical about time to think. Judges have been criticised because of the holidays that they have. They need time to think; they need time to keep up to date with the law. Public servants like myself need time to think so that we can ensure that new processes, improved procedures, are put in place; that policies are thoughtful, are reflected on and so on. In a time when efficiency dividends mean that you simply do not have the resources that you once had, what goes out the window is that opportunity to be reflective, to be policy driven, to be thoughtful, to actually have the opportunity to improve the system rather than just keep the current system grinding over day by day, which we manage to do.

DR FOSKEY: My next question refers to the Coroners Court, page 23. You report that, in regard to the five deaths of people in psychiatric care, the full findings were, at that time, within the next few months of the report's publication. Have those full findings been presented now?

Mr Refshauge: Yes, they have.

DR FOSKEY: How can I access those?

Mr Refshauge: I can arrange for a copy of those findings to be provided to you.

DR FOSKEY: Thank you very much. I am very much aware of the distress that prolonged inquiries cause to families and friends. I was wondering whether there was any way that such proceedings could be accelerated. What are the limiting factors of such processes?

Mr Refshauge: It is difficult to be general. One of the things that can create difficulty, although I do not see a way to change it—and I am not recommending change—is that when evidence of the commission of an offence is disclosed in an inquest the coroner puts the inquest on suspension until that offence is dealt with. And that is proper because a coroner has very wide investigative powers and can force people to give answers even though the answers might incriminate them. That would interfere with the proper rights that an offender might have in running a criminal case. That is a difficulty, and I think it is an unsolvable difficulty; it is just one of those things we have to deal with.

One of the other problems is that, because inquests do not have pleadings and do not have a mechanism for actually managing and corralling the issues that will arise, they can range more widely and issues arise in the course of the inquest that lead sometimes to more investigation having to be required. For instance, there was a recent inquest—and I do not want to comment on the detail of it—where evidence was given by one witness which completely contradicted the evidence of another witness. It came completely out of left field and raised a very serious issue. Clearly, it had to be put on hold while that was investigated. It has become quite complex. That can be another source of difficulty. The courts just have to find time. Sometimes an inquest runs over time and it has to be adjourned and cannot be continuously heard.

I understand and absolutely agree with you that that can be very distressing. We do try, to the best of our ability, to avoid those kinds of problems that unfortunately sometimes arise.

DR FOSKEY: This will be a very quick question. How well has the process of appointing coroners on the basis of a rotating roster of magistrates served us?

Mr Refshauge: That is really a question that I do not think it would be fair for me to answer. I think it is inappropriate for me to answer that, if I may be excused from doing so.

Mr Stanhope: I think I can respond to the extent that I believe there is a range of issues in relation to the ACT's courts and tribunals that it is appropriate that we review. I have spoken over the last year about the desirability of undertaking a look at, a review of, our tribunals and, indeed, our courts. I think you would recall that I have indicated that the government is committed to a review of our court and tribunal structure.

One of the things I have had in my mind, in the context of that, is the issue, for instance, of the arrangements in relation to the Children's Court and the Coroners Court, noting the presence of Magistrate Cavanagh in the ACT to conduct the review of the Eastman

matter. Mr Cavanagh is the Northern Territory coroner. The Northern Territory has a different arrangement in relation to the structure of their court. They have a separate coroners court, with a designated coroner. It is the only work that Mr Cavanagh does, in addition to the work that he is now doing for us in relation to the Eastman matter.

The point you raise, I think, is a point that we need to look at. The context of the structure of the Magistrates Court is that we have a rotating Children's Court magistrate, we have rotating coroner magistrates. The Assembly in recent years has debated a couple of times the desirability, for instance, of a separate Children's Court magistrate. We did trial that. We then amended the legislation. We now have essentially a rotating Children's Court magistrate. I do believe that we, the government and the Assembly, should look at both those issues and, indeed, all issues in relation to the structure of our courts. I propose that this issue of a rotating coroner and rotating Children's Court magistrate be pursued.

DR FOSKEY: Thank you for that.

THE CHAIR: I think you can take these on notice, in view of the time.

Mr Stanhope: I do need to go. I have people waiting for me.

THE CHAIR: The questions from me, which you can take on notice, relate to the statistics. They should be fairly easy to account for. There seems to be a significant number of matters not proved. At page 33, you have: common assault, 930 charges, 458 not proved. There might be a logical explanation.

Mr Refshauge: They are often back-up charges.

THE CHAIR: Stalking is another. Ten charges for the period, with two proved. Again, could you indicate what is the position there? I do not know whether the figure in relation to computer-related offences is a typo, but there were 284 laid—all but one in the Magistrates Court; the other being in the Children's Court—with two proven.

Mr Refshauge: We're not flash on computer offences.

THE CHAIR: There might be some logical explanation.

Mr Refshauge: It's a very complex area.

THE CHAIR: There do seem to be some interesting discrepancies there. We hear from time to time significant criticism in relation to case management, ranging from "It's a waste of time" to "It's more trouble than it's worth". Are there any ways you could suggest that would improve the operation of the courts and the administration of justice? Obviously I do not think anyone would query that. If you could just address that issue as well.

Mr Refshauge: If you write to me, I will answer.

THE CHAIR: If you could take those questions on board. At page 47, could you give an indication of how often you and the attorney would actually meet?

Mr Stanhope: We are very happy to answer all those questions.

The committee adjourned at 10.37 am.