



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

CANBERRA

FRIDAY, 11 MARCH 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 9.10 am

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

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 James Ryan, Director, Corrective Services

Mr John Paget, Manager, ACT Prisons Project

Department of Treasury

Mr Phil Hextell, Director, Accounting Branch

Chief Minister's Department

Mr Rob Gadsdon, Manager, Finance, Corporate Finance

Office of the Community Advocate

Ms Heather McGregor, Community Advocate

Legal Aid Commission

Mr Chris Staniforth, Chief Executive Officer

THE CHAIR: I thank the Chief Minister for coming. Ladies and gentlemen, welcome. I just need to read out for you the reminder for witnesses. These hearings are legal proceedings of the Assembly protected by parliamentary privilege. It gives you certain protections and also certain responsibilities. It means you are protected from certain legal actions, such as being sued for defamation, for what you say at this public hearing. It also means 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 deal with the Legal Aid Commission and Mr Staniforth first. Just going to the report, I note in Denis Farrar's report, at the top of the second page, he talks about the profession and he states that there are a number of legal practitioners who undertake legal aid work out of a feeling of "professional duty", which is great, and that lawyers should not have to underwrite the delivery of legal aid. He says:

No other professional group is required to finance a Government social policy objective out of their own pocket.

I note also in the report that there is a problem in that some solicitors will not do legal aid work. What percentage of the profession actually does legal aid work to assist the operations of your office?

Mr Staniforth: The answer is very hard to give in terms of an accurate percentage. There is a sizeable body of practitioners who will undertake a legal aid matter. There is a much smaller number of practitioners who would regularly take legal aid matters, and that number would be in the 30 to 40 range.

THE CHAIR: I note you are having some difficulties there and that remuneration, what you are able to pay, is still a problem. On page 18 of your report you mention:

Even with an imminent funding increase of \$10 per hour the Commission's rates of payment remain at an unattractive 50-60% of commercial rates.

How much are you able to pay the private profession at present on an hourly basis for the work they do if they take a legal aid brief?

Mr Staniforth: I mean to answer that question in two parts. There's the work we do under the agreement struck between the commonwealth and ACT governments. That work, which is mainly family law, is being conducted at the moment at about \$130 per hour. As we say in the annual report, that is about half of what can be obtained if any of us in this room were to seek the services of a legal practitioner.

In the territory matters, which are more criminal and childcare related and, perhaps importantly, domestic violence related, it is very hard to give you a good and reliable answer to that, because, as I think the chair would know from his days of practice, the pursuit of the criminal law on a privately paid basis is a very treacherous one.

THE CHAIR: Indeed.

Mr Staniforth: Practitioners tend to grab what they can while the client's still out and about.

THE CHAIR: I'm still owed money.

Mr Staniforth: There isn't really a benchmark, as there is in the family law, as to what is the going rate. But it would be better than in family law, and probably we're up around 60 to 70 per cent.

THE CHAIR: Right. I note that the family law rate certainly hasn't gone up much in 10 years.

Mr Staniforth: No. We're hopeful for a very, very small miracle; that, should the commonwealth finish up honouring its agreement for a new funding model, some funds will be provided on condition that we increase the rate to \$140 an hour.

THE CHAIR: Yes. On page 27 I note that you have started a roster, that, where there is a conflict for the in-house staff to appear, a roster of private firms has been introduced in relation to people held in custody on weekends and public holidays, in relation to family violence offences. How is that roster going? Are there any problems with it or are you finding ample people to actually fill the roster, provide the service?

Mr Staniforth: I think the commission has always said, and, indeed, I've tried to say in my attendances before these committees, that we are overwhelmed by the generosity of the professional approach that is given to the commission by local practitioners. We really do see them as friends not only of us but of the community generally. We've been swamped with goodwill in that work and we certainly don't have any troubles. It's

hardly millionaire-making work and it's all done in the early hours of Saturday morning, which isn't a really attractive time to be working.

DR FOSKEY: Hello and thank you for coming. In the section titled "Our Year In Review" on page 8, under the heading "Funding", it shows a substantial increase in funds from the Law Society's statutory interest account—a 40 per cent increase on last year and, according to your notes on the financial statements on page 34, 64 per cent higher than budget. I am not trying to suggest that legal aid is not worthy, but I am wondering: was that extra money a surprise or did you specifically apply for it? Was there any explanation given for why there was so much more this year?

Mr Staniforth: As you are aware, the responsibility for the administration of the statutory interest account is with the Law Society of the ACT and we do our best, in our conversations with the Law Society, to find out how much might be available. As to the present amount of money, you've got to understand that there's a big time lag in the time it takes for this money to become available, because it is interest on practitioners' accounts and that's longitudinally a substantial time after the money is in the account. I think we were all pleasantly surprised by the property upturn which happened three years ago and which led to an increased amount of SIA money. We did our best, to be quite blunt, to ask for as much as we possibly could, and we got what we asked for.

DR FOSKEY: Could I ask one more now and have another turn later?

THE CHAIR: Sure, yes, certainly.

DR FOSKEY: Thanks. I notice on page 16 in the list of clients that there is quite a substantial increase in women's applications for legal aid in the general rather than in the family or criminal categories. I am interested to know whether you see any underlying trends in that.

Mr Staniforth: Like everyone else, I think we are seeing and expecting a greater number of women applying for assistance in childcare matters which go to court. The effect that you've outlined shown on page 16 is basically from that area. There are also in those figures applicants for restraining orders that are not of a domestic violence nature; they also increased during the year.

DR FOSKEY: You said the first category you referred to was an increase in child—

Mr Staniforth: Matters brought under the children and young persons legislation—child welfare matters.

DR FOSKEY: Yes. Thank you.

MS MacDONALD: On page 13 and page 16 you refer to the decline in the legal assistance. Obviously you cannot take all cases—I understand that—but, as I am new to this committee and do not know how the process works, can you explain to me who determines and how is it determined whether or not a case is likely to be successful and whether it is taken up or not?

Mr Staniforth: The office considers applications for legal aid using not only the Legal

Aid Act but guidelines which are set by the Legal Aid Commission and imposed on the office which go to two main streams of eligibility. First, if you're an applicant you've got to pass a means test, which—I'll be quite honest—is pretty harsh. It's slightly sliding so that if you have children it gives you an acknowledgment of that and you can get into perhaps modest wage earning areas. There's then a second area, which we call merits, which is a mixture of the kind of matter that you want legal aid for: is it a civil claim, is it a probate matter, is it a child welfare matter? And, hidden under that, is the question, under section 28(3) of the Legal Aid Act: in the view of the office is it likely to terminate in a manner favourable to the person wanting legal aid? It is one of the most contentious parts of what we do, because you'd be shocked to hear that we don't think we're God and we can't tell whether something is going to—

MS MacDONALD: No, I know you're not a doctor; it's okay.

Mr Staniforth: So we don't know how something will turn out. What we try to do is to take a reasonableness test: does it look likely that it's going to do something reasonable for the client? It is an old but true saying that people will fight to the last of someone else's dollar if you let them, and we do have to limit people's appetite for litigation.

MS MacDONALD: I appreciate all of what you have said, but do you think that, especially with the means test, that needs to be reviewed at some point, as to how stringent it is?

Mr Staniforth: I would hate to imagine what the financial consequence of a review would be and, whichever government the territory has, I'd be in trepidation of coming to the attorney to ask for the consequential funding increase. It's a regulator of eligibility and so, sadly, it's set at providing as much legal aid as we can for as many people as we can within the funds we have.

DR FOSKEY: In the family law section on page 24 I note your comments that the Family Law Council and National Legal Aid Family Law Working Group took a lot of time in 2003 and that the childcare matters you dealt with in the courts are becoming increasingly complex. Are these things connected? Is family law in all its aspects becoming more demanding and requiring more support? Is this a national or a local trend?

Mr Staniforth: I vowed not to do a Mr Refshauge, so I won't talk for very long.

DR FOSKEY: Did you want me to go through those one by one?

Mr Staniforth: No, no, I've understood the question. I suppose I could say yes and yes. Yes, family law matters are becoming extraordinarily difficult and complicated. If you would allow me a personal observation about the background to that: we seem to have gone through a 10- to 15-year removal of service provision to families who are often vulnerable to dysfunctionality, if I can put it as nicely as that. And so those people come to a lawyer with a much greater level of vexation than certainly in the early days when I started to practise. Their problems are more intractable and more difficult. That's a horrible generalisation, but at the sharp end I'm absolutely convinced it's true.

We've gone through a wonderful and I think a very good period in our community when

people are able to acknowledge more the horrors of abuse inside families and so those matters are now raised, whereas I think 10 or 15 years ago they may not have been. We are finding, as we look at our history, that cases are at the sharp end longer, more difficult and of course costing more. I think your question, Dr Foskey, also tempted me down a line where I can't go. If you were asking me whether there is a connection in the sense of the federal divide between child welfare legislation, which is a state or territory responsibility, and the operations of the Family Court, all I could say is—and maybe I'm saying no more than how I tried to answer the first part of your question—there does seem to be a lot of welfare flavor to a lot of the Family Court's work which 15 years ago didn't seem to be there.

DR FOSKEY: That's interesting. On page 30 it says that the pilot First Stop youth legal program finished at the end of 2003 and that the service continued to be provided by Clayton Utz and the Youth Coalition. What is its status now, do you know? Is it viable and in demand? And does your community legal education program still link to it?

Mr Staniforth: Yes to the last question; its status at the moment is that it is now the pivotal point of the ANU law school's clinical education course. That's a course that was established last year by the ANU law school to do what I wish I'd had as a law student—actually give you some real experience. And so the ANU is now responsible for it financially and operationally. Clayton Utz and Legal Aid continue to provide legal resource and community legal education resource from Legal Aid. We think it has been highly successful. We're very comfortable with it being where it is. It fits there better and it's also giving real meaning to the pro bono push that I think we're all keen to promote. It's a very good example—in fact, I've used the example when I've talked to interstate colleagues—of a really good working model of what we can all do together without that constant demand on governments.

DR FOSKEY: I have just one question, back to financial figures. On page 34 generally it appears that legal aid's in a relatively strong position and I see that you're moving to pay private practitioners more. When will that happen?

Mr Staniforth: Well, we did stress the appearance of a relatively strong position. The desire to increase payments to practitioners is eternal. I'm always looking at that, to see whether I can do it or not, and the commission has considered its position in that regard, I think, at about four of the last 12 meetings. As I indicated earlier, should there be a new agreement between the ACT and commonwealth governments, there will be quarantined funding to increase family law rates by \$10 an hour. Isn't the diplomatic answer to say that on the territory side the matter is under active review? Isn't that what diplomats say at times like this? We continue to look at it and to try to do the very best we can.

DR FOSKEY: Thank you; that completes my questions.

MS MacDONALD: I did have some other series of questions, but I will let them go. But on page 10 there's a photo and I'm curious to know if any of the legal aid commissioners are actually considering suing the photographer.

Mr Stanhope: Is the photograph inherently defamatory, or is that a normal pose?

Mr Staniforth: Mr Ettingshausen knew about that in the New South Wales rugby

league.

Mr Stanhope: It's a very fetching photograph of Ms Kelly!

THE CHAIR: Yes.

Mr Stanhope: Mr Staniforth had something that disagreed with him for breakfast.

Mr Keady: In view of the reference to Ettingshausen, is there something extra we should be looking for?

THE CHAIR: Ms Kelly has been caught in an interesting pose there. Ms Kelly is blushing immensely, as is the director of legal aid. Thank you, Ms MacDonald, for that question.

MS MacDONALD: I wasn't going to point out any particular person.

Mr Stanhope: It's a very good photograph of the president.

THE CHAIR: It is an excellent photograph of the president, Chief Minister, indeed.

Mr Stanhope: Everything else is irrelevant.

THE CHAIR: Everybody else might have cause for complaint. Thank you very much, Mr Staniforth, and anyone involved in legal aid. Thanks for your attendance.

Mr Staniforth: Thank you.

THE CHAIR: I'd like to start by thanking you, Ms McGregor, very much for your services over the last 12½ years and wishing you well in whatever future endeavours you undertake after 7 April.

Ms McGregor: Thank you. I appreciate that, Mr Stefaniak.

THE CHAIR: It's not an easy job you've had. On page 6 of the report, in the fourth paragraph, you say, "The OCA had, since January 2001, made numerous attempts to expose" et cetera—and you set out a chronology of your efforts at page 70. You state that you have been repeatedly assured, by four successive directors, that the failure was administrative only, and that reports were being responded to appropriately. You say that you "held misgivings about the performance of the care and protection system in the ACT, and that you had repeatedly made those concerns known to the people responsible, and through annual reports", as we well know. In terms of what has been happening since then, and in this reporting period, are you happy with the efforts the department is now making?

Ms McGregor: Absolutely. There have been very significant changes, as everyone would know, including structural changes. I think that what fills me with the greatest amount of confidence about the future of the care and protection system is the passion, if you like, held by the minister responsible and the head of the department. The leadership is there now to bring about the necessary reforms and changes in directions and culture.

It is there, it is strong, it is energetic, it is committed. Along with that, there's a new person who's been appointed to the head of the office. I think there's a long way to go but the journey has well begun, and it has begun in a way that I have a great deal of confidence about the future.

THE CHAIR: Do you still have any issues with access to information?

Ms McGregor: No. In fact, I can report to the committee that requests my office makes of the Office for Children, Youth and Family Support are being responded to 100 per cent of the time in a very timely manner.

THE CHAIR: On page 8 in your overview, in the top paragraph, there's a reference to individual resources not being available to the OCA, despite the significantly increased workload you have. Is that still the case? If so, what are the consequences? Are there any risks for children, youth and others who may be in care?

Ms McGregor: Yes. The OCA's base budget had been eroded over time. That has been corrected in the recent budget rounds, so the concerns I had when I wrote this have certainly been very significantly alleviated. The issue for the office is that the receipt of abuse in care reports went, in one year, from receiving no reports to close to 800. There will be about 800 abuse-in-care reports. We were shocked by the numbers we received in the first instance. We kept thinking it was a peak that would flatten out and decrease over time when things had settled down, but that hasn't happened.

As I said in my report, because of the concerns, that became public concerns, I took the decision to put a very strong focus on auditing those reports and monitoring not only the abuse-in-care reports but also the annual review reports, which also have been a concern of ours over the years. Because we've put a strong focus on that area, we really haven't been able to do much individual advocacy work and much of the other monitoring work that we've been doing in the past. I think that to do that was a well-focused decision. It won't be necessary to continue with such intensity into the future. It is about trying to manage our priorities the best way we can in focusing our work on what will have the most effect in working with the system to bring about the changes that are necessary.

THE CHAIR: On page 10, about halfway down, in the last paragraph before "systematic inattentiveness to care and protection issues", you note that despite the concerns about the role of the then relevant department, with the management of children in care, that department failed to act. You say further that this question remains unanswered despite the Vardon report. Is this concern still current? What action is needed to resolve the issues? Are there any risks because of this continuing issue?

Ms McGregor: The concern doesn't remain current. I always had a personal view, if you like, although it is unscientific in some respects. My view was that there just wasn't an attitude held in the care and protection system that the legislation was actually vital and paramount in terms of the carrying out of care and protection work. It was almost like care and protection work was over here and the law was over there.

That's a gross generalisation but, to make my point, I really think it was seen as not significant and not important. That's not how I ever saw it. I consider that the legislation is there for really important and paramount reasons. Since the minister has heralded and

led the changes that have been occurring, I've seen a change in attention to the detail of the legislation, and that it's filtering downwards into the system—as being there to lead the work, rather than to be subordinate to it. That's what I think was at the bottom of the whole of the inattention to the matters that I had been trying to raise for many years.

THE CHAIR: So the departments you deal with are making a much greater effort now to comply with the legislation; they are much more aware of the need to do so. Do they contact your office on a more regular basis now, and visa versa?

Ms McGregor: There's probably almost daily contact in one way or the other.

THE CHAIR: Good.

Ms McGregor: Not only that, I have been meeting on a very regular basis, with Sandra Lambert since she took over the departmental responsibility. Then there are very regular meetings between the head of that section in my office, Alasdair Roy, and the head of care and protection in the Office for Children, Youth and Family Support. We are making quite strenuous demands on the office, in our auditing of the 162 reports that we receive.

The way we manage this is that we triage them, if you like, and we make requests under the legislation for further information if we examine the report and have any concerns at all about the child or young person, or about the way that it's been responded to. We're doing that in a very rigorous way, and the details of that work will be produced in next year's annual report. There's a great deal of interaction going on between our office and the care and protection system. A lot of the interaction is on email, a lot of it is in response to our requests under the act, and a lot of it is in meetings.

MS MacDONALD: Thank you for coming along, and thank you for your years of service to the territory as well, Ms McGregor—and best of luck for the future.

Ms McGregor: Thank you, Ms MacDonald.

MS MacDONALD: I refer to page 14—the review of last year's outlook. You have achieved most of the things that you set out to do. There are a few that have been only partially achieved, which is understandable from looking at them. One which has not been achieved is the implementation of the interagency research database regarding children and young people with sexually harmful behaviours. Is that now developing on track?

Ms McGregor: It's really hard, and it remains a frustration. There has been the development of an interagency protocol. What we're dealing with here are a wide range of agencies, including community agencies as well as government agencies. It hasn't made a lot of progress. We've only been provided with material from a couple of agencies. It's something that we've been attempting to push along. The best work that's been done in this area is the stakeholders group. The responsibility for that lies with corrective services.

We've taken a bit of a step back because we're very pleased with the work that's going on in that key stakeholders group under the auspices of corrections. We'll be reporting

on this area again in this year's annual report, but it's very difficult to make demands on agencies that have huge demands being made on them. It's such a difficult area, as you'd appreciate. We're committed to it because we believe that we won't get the right sorts of services to act in preventative ways in this area unless we have good data to draw on. So it's something we'll be keeping an eye on.

DR FOSKEY: I want to thank you for the way the report is set out. It certainly makes it easier to see where your areas of concern are. I'm going to ask a question that reveals my ignorance. Could you explain to me how the systemic advocacy works and give me a bit of a comparison to the earlier way you worked, which I assume was more individual advocacy.

Ms McGregor: You'd be referring to my comments about how we moved in the children and young people section?

DR FOSKEY: Yes, please.

Ms McGregor: Prior to my making the decision that we were going to experiment with making that change, we spent a great deal of time in the children and young people section of my office, working with individual children and young people who we believed needed statutory advocacy to assist them. You would appreciate that, say, going to court with a young person or going to court on a care matter is a very time-consuming involvement.

In the scheme of things, if you want to just look at the cold hard facts of time put in and outcomes achieved, it's not very efficient. It's very useful. We received very highly desirable outcomes through our individual advocacy for individual children and young people. But with resource constraints I took the view that I wanted the office to experiment with doing things in a bit of a different way for a while. In particular, we were wanting to give exposure to our very grave concerns about the care and protection system. What we did was focus our attention on the one layer up, if you like, of concerns. So, instead of being involved on a side-by-side basis with individual children and young people, we did audits, investigations and reports that were more focused on the overall picture of concern.

DR FOSKEY: Did anyone pick up the role you left of the work with the individual children and young people?

Ms McGregor: We did the best we could to make referrals. But, no; it left a gap. We were criticised for that, and understandably. Some people became very concerned that the role that we had had in fact left a gap, and left some vulnerability. I imagine that what will happen in the future—but it won't be for me to determine this—will be that, now that the care and protection system is on track, we will return to doing more individual advocacy work.

DR FOSKEY: That's good.

Ms McGregor: Has that answered your question?

DR FOSKEY: It does. I think that you partially answered it earlier on too, in answer to

Mr Stefaniak's question. I just wanted to check whether it was a more cost-effective approach.

Ms McGregor: I believe so, because we now have commitment and energy being put into the area that wasn't there previously. So I feel very pleased with that outcome.

DR FOSKEY: Resource concerns, as with a number of other areas, are noted here. You state on page 8 that you had to make a difficult adjustment because you were receiving a number of reports; that you are a small agency; and you had a budget deficit because of increased staffing costs. That is how you began the year. I am just wondering, now you have faced that challenge, how you did it.

Ms McGregor: How we faced it?

DR FOSKEY: How you faced it and overcame it, or found that you couldn't.

Ms McGregor: It was partly dealt with by the way that I've just answered your previous question. We had to prioritise and target our resources in a very thoughtful way, and that meant there were things that we didn't do. I think that, at the end of the day, that's been a very sound judgment for the office to put into that. As I said, we were dealing with this influx of abuse-in-care reports that we hadn't had. I think everyone was shocked by the numbers, and we gave that our priority. We managed workloads; we put our heads down and did a lot of hard work—and our budget has now been topped up.

DR FOSKEY: Was staff morale able to be kept buoyant through that period?

Ms McGregor: I'm just really lucky to have committed and competent staff working in the office. We had a planning day where we sat around and said, "Okay, what are we going to do?" We made decisions and carried them through, and that reinvigorated people. Having a plan invigorated people in the office. It was also very gratifying to see that we were getting more responsiveness to what we were doing; we weren't just sitting in a vacuum; we were in fact causing a responsiveness like we hadn't experienced before. It's very rewarding to see that you're part of something that's bringing about important changes.

DR FOSKEY: That indicates that you have rather a team approach in your office.

Ms McGregor: Yes.

DR FOSKEY: Obviously that helps with relationships.

Mr Stanhope: Ms McGregor indicated earlier that the government has, through the second appropriation bill which is coming before the Assembly, sought to address the base funding issue. Ms McGregor responded to a question to that effect from the chairman a little while ago which was relevant to the question you just asked.

DR FOSKEY: Thanks. I was probably not paying enough attention at that moment.

MS MacDONALD: I think we might be speaking to the minister this afternoon. At midday, in fact, the PAC will be speaking to the minister about that particular

appropriation.

Mr Stanhope: Yes. It was just that Ms McGregor had indicated earlier to the chairman that that is before the Assembly now.

DR FOSKEY: I refer to page 10. I am not sure whether you are referring to our committee here—I was not on it then. It says, “The system failed in the following ways.” You were doing what I think is a really useful and excellent analysis as to how it could go on for so long, and I just wanted to check your first dot point. I guess that was the legal affairs committee.

MS MacDONALD: No.

DR FOSKEY: It was not us. I guess it is a lesson to all of us about the importance of our work in committees, in scrutinising reports.

Ms McGregor: Can I say in response to that that an enormous amount of work goes in to preparing annual reports, and it’s pretty gratifying to know that somebody reads them. I’ve always liked the process of scrutiny of annual reports because it forces somebody to read the reports. I thought it was a very serious systems failure that our report was not scrutinised that year.

DR FOSKEY: That reminds me of the ones that we have not had time to scrutinise this year. I hope nothing too serious is falling through the cracks. On page 11, you suggest that the reason your concerns were not responded to was because many people conceptualised the issue as trivial. I just think that is an interesting word because of how serious the problem, in fact, was. I wonder if you can conjecture—and I understand it will be conjecture—as to why people might have made this judgment.

Ms McGregor: I think there’s always a level of resentment about having to report to a watchdog when people are working hard. There’s this extra burden placed on them to report to someone, or to account to somebody. I think that resentment can build attitudes that it really doesn’t matter; we’re doing the work. “It really doesn’t matter” is a response to demands that I suppose I, as the watchdog, was making. I explain further in the report that people within the department believed that it was just a reporting issue. So it was like a piece of paperwork, if you like. It was just that, “Look, everything is fine, it’s just that we’re not writing it down” or, “We’re not making those reports to the Community Advocate.”

People in my office have always held the view that attention to those details is in fact a very solid reflection of the standards of practices. I believe those two things are very closely linked—that best practice is obvious when people get the reporting right and their attention is being paid to the legal requirements. We believe that our concerns were trivialised in the belief that the work was being done; it was just that the reporting wasn’t being done. In fact, the Vardon review revealed that that wasn’t the case. We had known it wasn’t the case, but we weren’t able to expose that.

THE CHAIR: I note that there are 22 pages of analysis of objectives and achievements—pages 23 to 45. The prevailing comment made by the office there is one of concern about outcomes and achievements. Is that a correct appreciation? What does

it imply? Are there more people with issues that need OCA expertise? Is it the case that the issues are more complex? Are the resources misdirected? Indeed are resources insufficient, in your view, in relation to those concerns you have listed from page 23? You've highlighted most of them in dove grey.

Ms McGregor: I'm sorry. Could you elaborate?

THE CHAIR: Basically, it seems that you have tried to encapsulate all of those highlighted areas. It seems that you have concerns about outcomes and achievements, whether systems are still being followed, whether there are in fact proper outcomes as a result of whatever action was taken, or not taken, during the reporting period. Are the concerns in those areas you have highlighted still valid at this time, or have improvements been made?

Ms McGregor: I'd have to go through them one at a time. Can I say that the highlighting was in response to a criticism that we received that we hadn't put bells and whistles on our annual report. The highlighting was an attempt to draw attention to matters we were concerned about.

THE CHAIR: It does that very effectively.

Ms McGregor: I can say that, in all of the areas where concerns are raised about the care and protection system, that is old news. We will be providing a very different report in that area this year. In particular, I'd like to mention that one of the grey highlighted areas refers to annual review reports. That's again an area that I held very serious concerns about. This is the annual review of children who are in care. In that area there's been quite outstanding improvement in the reviews being conducted. I am optimistic that the report in this year's annual report will say something quite different.

THE CHAIR: The section 267 ones?

Ms McGregor: The 267 reports. We're now receiving large numbers of those. I'm quite confident that that area in particular will show an enormous improvement.

THE CHAIR: That is good, because you were worried that some children and young people in the care of the chief executive were not being reviewed. But you're happy now that the necessary steps are being taken?

Ms McGregor: Yes. That was certainly the case prior to this reporting period. In this reporting period it's already very plain to me that those reviews are being conducted. In terms of the timing, there is a statutory timeframe for those reports and, even with regard to timeliness, there's an improvement in those as well.

THE CHAIR: What are the main concerns you have, as you are leaving this job? A lot has been done as a result of the Vardon review, and your next report will be very different. At this point in time, what are your main remaining concerns? What advice would you give to the committee, to the Assembly, and to your successor?

Ms McGregor: Are you asking me to focus on the care and protection area—or generally?

THE CHAIR: Generally, basically. Certainly please start with care and protection, but then any other areas you feel need attention.

Ms McGregor: Look, I think care and protection is on track. My concern would be that it stays on track, that staff retention and staff development is given the right amount of attention so that expertise develops and depth of experience is there, and so that all of the people who are dealing in this very fraught and difficult area are in fact people who are highly trained, competent, experienced, confident individuals. That's the challenge I see in that area.

THE CHAIR: Perhaps you could finish, and then my colleague would like to ask you some questions.

Ms McGregor: There are other concerns I have. There is some attention being paid to this—I'm just not sure where it's up to. Other concerns I have are in the area of substitute decision-making. We have a situation in the ACT where people have car accidents or come to Canberra and have a medical crisis of some kind that leaves them unable to make their own decisions. As the Community Advocate I have to intervene in those matters and make those decisions. Where this becomes frustrating, and in fact even feels wrong to me, is where the person who's had the crisis has taken the time to appoint an attorney or a substitute decision-maker prior to their loss of competence in another state or territory in Australia and the substitute decision-maker is not able to act because the person is in the ACT.

This is not unique to the ACT, let me hasten to say. I belong to a national group of my counterparts around Australia, and also guardianship tribunals and public trustees around Australia. This topic—the interstate recognition of powers of attorney—is an issue that's been on the agenda as long as I've been in this job. It's a very fraught area, as you would understand Mr Stefaniak, because the legislation is different in each state. The ability of people to empower someone to be a substitute decision-maker is quite different. In some states we have enduring guardians, in others we have enduring powers of attorney, et cetera.

For me, it's a very unfortunate outcome that I have to get involved in a family crisis in a hospital, say, where a person has appointed an attorney but because the accident has happened here, or the person has been brought to a Canberra hospital, that's not able to be used.

Mr Stanhope: If I could just interrupt, Ms McGregor, for the information of the committee and Mr Chair, that particular issue is part of ongoing law reform considerations.

THE CHAIR: I thought that was the case.

MR STANHOPE: Ongoing law reform considerations are in hand. It is expected, at this stage, that we will introduce amendments this year.

THE CHAIR: This year?

MR STANHOPE: Yes, later this year—to allow the recognition of interstate powers of attorney within the ACT.

Ms McGregor: I refer to end-of-life decision-making. One of the sad things for me about leaving this job is that I won't be involved in this. It is something I have a lot of interest in. On a fairly regular basis I still see decisions made at the end of life that are not in the best interests of the person whose life is at end. There has been some really innovative work done in other states of Australia, and it's about to start in the ACT.

I've been involved in some work that's been done in a program that will encourage people to document their end-of-life wishes and have those wishes upheld. This is a bit of a separate process to appointing a substitute decision-maker, but it's an extension of the same process. It would mean that medical interventions currently being made for the interests of family members or other people—or, in fact, the conscience of a medical practitioner—for reasons that aren't in the best interests of the person whose life is at end are made in a sort of cautious and conservative way.

In Victoria, in particular, there's a "respecting patient choices" program being developed. That's the program that I'm hoping will be implemented in the ACT. It is of great concern to me that I have to intervene in matters to uphold the dignity of the person whose life is at end and to stop unwanted, unnecessary and even unethical interventions. That's an area that I'm hoping some reform will occur in.

Another concern that is very fraught is the care and support of people in the criminal justice system who have mental illness and mental dysfunction who pose a danger to the community or themselves. Again, this is not easy to solve. It is much easier to close down institutions and put people in the community than it is to find humane and acceptable sets of arrangements for that group of people. These are our clients and we've done the best we can to individually advocate for reasonable outcomes for this group. It's expensive, it's fraught, it's often dangerous and it's an area that, again, people struggle with around Australia.

MS MacDONALD: Your role is not an easy one. I don't think it would be easy for anybody in the position, because of the work you have to do and the work the entire office has to do. Obviously it is neither a bed of roses nor a petunia patch—however you wish to describe it. But you've been in the position for 12 years, which is a very significant proportion of the time that we've had self-government. I'd be interested—and this doesn't really relate to the annual report—in your views on how things have changed and if they've improved over that time. You've just spoken about a number of the concerns you still have, but I'd be interested to hear if you think things have changed over time for the better in your 12 years of experience.

Ms McGregor: I think that one of the great challenges for the ACT is to maintain, and in some respects achieve, an expert public service. One of the struggles the ACT has gone through is that transfer from having its own public service along with its own government. It's vitally important that the public service in the ACT remains an attractive place for people to work in, and one that is able to attract competence and expertise, so that the jobs that need to be done get done well.

There have been some very positive changes. Certainly I think our community is less

tolerant of violence in the home. Having worked in that field in a past life, we now have reforms and laws. I think this jurisdiction can hold its head very high around achievements in that area. I think that, in responses to domestic violence, this jurisdiction leads Australia. I think there's a responsiveness in the ACT—that also brings about complexities, of course—because there's a much closer connection among everyone. I find that very different now from, say, 20 years ago when I worked in the commonwealth public sector. That close connection that everyone has has its pro and cons, but I think it offers potential for greater achievements in social justice terms—which, of course, is my area of interest.

MS MacDONALD: Thank you.

THE CHAIR: You mention on page 76 that, “The current policy regarding referral of matters to the police notes that”—and you state it. You say you are concerned that the wording is somewhat ambiguous, and you quite rightly say that child protection work is not the same as police work. You suggest the following:

A better model may be for Family Services to refer to the police all allegations that are proceeding to appraisal, and leave it to the police to determine if an offence has occurred or not. This model is consistent with that applied within the care and protection system itself—that is, people are encouraged to report suspicions of abuse and neglect to Family Services, not to determine for themselves...

Have any steps been taken to implement your suggestion there, which to me certainly seems to be a very sensible one?

Ms McGregor: There has been a step taken, but I should also admit that people don't agree with me about this. I had a concern—and I had a concern in examining briefs before a coronial inquest—that some care and protection workers were concerning themselves as to whether there was evidence that an offence had been committed, and acting according to that question, rather than asking, “Is this child safe?” That's where this comment comes from. There is one really important development. I don't know what the end of the story is—I would have to find out for you.

THE CHAIR: Please get back to us in writing on that.

Ms McGregor: Yes. There's now a central intake system in the Office for Children, Youth and Family Support, so all incoming matters come to a central intake service. That's a fantastic improvement. There was an arrangement that a member of SACAT—the Sexual Assault and Child Abuse Team—would be involved in that central intake process. I don't know where that's at right now. I did hear that the police were unable to resource that position any longer. It's a matter that we expressed concern about because we said, “Look, this is fantastic—having this person involved.” Then you don't get the roles mixed. The police can work out whether an offence has been committed and the care and protection workers can work out if the child is safe. That's how I think it should operate. I can't tell you what's happening right now, but I will find out and let you know.

THE CHAIR: Thank you very much.

DR FOSKEY: Firstly, will you contribute to the annual report for 2004-05?

Ms McGregor: No.

DR FOSKEY: Okay. That's not going to be easy! I'm sure various people in your office will. I'm looking forward to following up some of the areas of concern. Secondly, what are your thoughts about the role, importance of, and the ability for, people to act in a role like yours which, as you say, is an oversight role? How do you think the appointment of a commissioner for children will impact on your role? Again, I know these are just your thoughts, but I think they're valuable and I'd like to hear them.

Ms McGregor: How the commissioner's role will pan out is still subject to some decision-making, of course. I would hope that the role of the commissioner is a broad-ranging role that relates to all children and young people in the ACT. I would hope that the role of the public advocate is maintained as a role that can provide individual advocacy and statutory oversight to those children and young people who are in the care and protection system.

That would be a very compatible arrangement and the interaction would have the potential to provide better outcomes than occur at the moment. There's a clear distinction there and it gives a clear definition of the two. I would be concerned with any arrangement that diminished the statutory oversight provided to children and young people in the care and protection system. They're our most vulnerable group, and I think they're deserving of special attention. Was there another part to your question?

DR FOSKEY: The oversight role of the commissioner and the ability to maintain that—just the difficulties of that role in general.

Ms McGregor: Are you talking about my role?

DR FOSKEY: Yes—more as an example of that kind of role.

Ms McGregor: I think the most important attribute a person needs is to not have a need to be popular or liked, and to be strong and clear about who you're doing the job for. I've never ever thought that I was doing the job for anybody except my client group, and they're a silent group. Lots of other people around them have very loud and complaining voices. The key, I believe, is to stay absolutely clear about who you're there for. You're not there for members of the government, you're not there for members of the opposition, you're not there for the bureaucracy; you're there for the members of the client group. If the person stays focused on that and true to that and is not concerned about winning a popularity contest, then they've got a good chance of doing a reasonable job.

DR FOSKEY: Thank you very much for that. Can I just say that I think you have provided a good example of that for other people conducting such roles in the community. I say thank you, because I don't think it could have been easy.

Ms McGregor: No, it hasn't been. Thank you, Dr Foskey.

THE CHAIR: Thank you very much, Ms McGregor. Again, thank you for your services to the territory. I think all of us in the committee wish you the very best of luck in whatever you do.

Ms McGregor: Thank you.

THE CHAIR: Thanks for your appearance here today.

Mr Stanhope: Just before we break, Mr Chair, let me add my personal thanks and the thanks of the government to Ms McGregor. This will be Ms McGregor's last appearance before a committee of the Assembly, at least in her current role. I'd like to place this on the record formally, which I've already done through a public announcement, recognising Ms McGregor's decision to resign before seeking perhaps another path in life, whatever it may be. Perhaps that will involve some continuing relationship with the ACT government. I would certainly welcome that.

I'd like to place on the record my personal appreciation and the appreciation of the government. As Chief Minister I'd also like to extend the appreciation of the people of Canberra to you, Heather, for the exemplary way in which you have, during your term as Community Advocate, conducted yourself and carried out your duties and responsibilities. I endorse all the sentiments that have been expressed about your professionalism, your vigour and your energy, and the fact that you are rigorously apolitical and objective.

I acknowledge, as others have, that the position you have filled—and filled in, I think, such an exemplary way—is one of the more difficult tasks within public life in the ACT. We all acknowledge that. It's an invaluable but incredibly difficult, trying, fraught role that you've fulfilled. We all acknowledge the absolutely exemplary way in which you've done it.

Ms McGregor: Thank you.

THE CHAIR: Thank you, Attorney, and thank you, Heather.

Meeting adjourned from 10.18 to 10.35 am.

THE CHAIR: Okay. We'll start again with Corrective Services. Gentlemen, welcome back. My first question in relation to this relates to the ACT prison. I'm aware from a brief for the incoming government dated October 2004 that it estimated that the 40-year cost of sending prisoners to New South Wales plus managing our remand facilities is around \$856 million. It then went on to say that, while the estimated 40-year cost of building and operating an ACT prison is \$339 million, the cost of continuing the current arrangements is conservatively estimated at \$500 million more than building a new facility. I was just curious about that and I'd like an explanation. Obviously you estimate the cost of building the prison at \$110 million, and that would then leave \$240 million to run it over 40 years. I wonder how that is so, because that would be an operating cost of—correct me if I'm wrong—\$6 million a year. I would think that the cost of operating an establishment which has about 200 staff would be more in the range of \$20 million, which would mean that would be \$800 million, plus the cost of building it. Can someone advise me how you came up with a figure that says we'll save \$500 million and only spend effectively \$6 million a year on the actual operating costs of the prison?

Mr Stanhope: Thank you, chair. This was an incoming government brief to you, was it?

THE CHAIR: It's an incoming government brief that I understand was obtained under FOI.

Mr Stanhope: Yes. I think it was prepared in the eventuality that you were successful.

THE CHAIR: Even so.

Mr Stanhope: I'm just clarifying what it was because, as you're aware, I'm not aware of the document.

THE CHAIR: I can show you the document.

MS MacDONALD: Are you going to make that available for all of the committee?

Mr Stanhope: That's not the point. I'm just saying that I'm not aware of the document. I'll ask Mr Ryan to—

THE CHAIR: I'm happy to make the document available to everyone.

Mr Stanhope: I haven't seen that document and I haven't seen those computations in that particular form.

THE CHAIR: I can certainly have it photocopied.

Mr Stanhope: Yes, I think it might be useful. But I'm just making that point that I don't believe an incoming government brief was prepared for the government as such; it was prepared in the eventuality that the then opposition won the election. It was essentially prepared for you, Mr Stefaniak, that particular brief, but in another circumstance.

THE CHAIR: Right. Even so, it's a strange figure, Chief Minister.

Mr Stanhope: I'm more than happy to ask Mr Ryan whether he can respond to your question.

THE CHAIR: Yes. I think Mr Ryan's name is on it, so we will get copies of that so that all of you gentlemen can have it, and my two colleagues can have one too. Mr Ryan, you'd probably be fairly aware of it, having written it?

Mr Ryan: I would like to take the question on notice, please. I would be unable to answer the detail of that on the run. Certainly some of the figures that you've mentioned ring true. If your calculation is that the operation that falls out of that—the operational costs—is \$6 million per year, that's not correct, and your suggestion that it's closer to \$20 million is correct. The figures you've mentioned for the capital cost: that's the one that still stands.

THE CHAIR: Yes, thank you for that. Perhaps we can go on to the capital costs then, while you're waiting for that document. That is \$110 million, and thank you, Chief Minister, for answering another question I had on notice to indicate that the 2004-2005 budget included \$110 million for the prison project, which is scheduled to be expended over the next three years. I understand that was first flagged in the budget in the year 2003 at \$110 million.

Mr Ryan: Yes.

THE CHAIR: And the first time I think I heard that figure was in 2001, which was a figure given to the then government. My question there is: firstly, in terms of your figure of \$110 million, which was the 2003 figure reiterated now, is the prison a smaller complex than was envisaged by the previous government in 2001?

Mr Ryan: The prison is smaller than the first one that was envisaged. We eventually arrived at a size of 374 beds. That was based on projections that came out of Treasury, not from Corrections. But the capital cost to build it is as at April 2003 prices.

THE CHAIR: In that case, given that \$110 million is due to be expended over the next three years, isn't that going to leave you short? I understand that even over the last four years constructions prices have risen by 40 per cent, which is what the local master builders tell me.

Mr Ryan: Well, we'll only spend what the government gives us, and at this stage the escalation factor that would apply to building has not been cranked in.

THE CHAIR: Would it be true to say that, if that 40 per cent is right, you might be looking, when you finish it, at something more like maybe \$150 million to \$160 million?

Mr Ryan: It is hard to say. The escalation in the last two years, I understand, has been seven per cent plus. You could therefore argue that the building costs, if we did everything exactly the same and without going to the market to see what the competitive price is, would have gone up 15 to 20 per cent. But we don't know that yet. And at this stage we don't have any more money than \$110 million until such time as it's escalated.

THE CHAIR: Right. We might just come back to the Chief Minister on that then. You

and my colleagues have now got this document. Let me just show you that, if we take out the \$110 million from the \$339 million, that leaves us with \$239 million over 20 years, which on my estimate would be \$6 million a year and—

Mr Keady: An officer of corrective services who is not here today prepared this note. It was prepared as part of an extended incoming government brief. The figures that are quoted there would probably be pulled from consultant reports that date back some time. In order to answer your questions, I think we need to go back and check these figures against the figures in those reports. These figures don't come, for example, from the annual report, which we are here to discuss today. If you have questions, I would ask that we take them on notice so that we can go and cross-reference them.

THE CHAIR: I would certainly like that done, because it just seems an amazing typo, if it is wrong. Quite clearly, gentlemen, you would agree that you would spend a lot more than \$239 million over the next 40 years.

Mr Keady: Yes, that makes sense, I agree. But the difficulty is that you have produced a document which, certainly in recent times, I am not familiar with, and you asked a question about the validity of the figures, which we will have to go away and research.

THE CHAIR: You can take that question on notice, and we would certainly appreciate a response as soon as possible as to how on earth those figures were arrived at. If it is an error, we would like to know how those figures were arrived at, because it seems to be blatantly impossible and probably, inadvertently, misleading. Certainly, it is a totally incorrect figure. It actually stipulates a \$500 million saving by having our prison, which just seems to defy—

Mr Keady: There may well be an arithmetical problem in the figures; I don't know because we have not checked them. I will just pick up on your comment about the figures being misleading. I mean, this document was not prepared for the Assembly. It was not prepared for any purpose other than an internal purpose, and you acquired it under FOI. Whether it is right or wrong is one thing, but I hesitate to accept the description of it, even if wrong, as misleading. There was no intention—

THE CHAIR: No. I am not necessarily suggesting there is. I think you certainly can say, though, that it is going to cost a lot more to run it than \$240 million over 40 years.

Mr Keady: All the anticipated operational costs of the new facility are in the public domain because, as I said, they were examined in a consultant's report, which has been released publicly. Once we get the opportunity to do so, these figures can be readily checked against those reports.

THE CHAIR: Thanks. I note, Chief Minister, that Mr Ryan has indicated—I think fairly accurately—that building costs will rise. He has \$110 million. They are 2003 figures. He can only spend as much as the government gives him. You have indicated you are scheduled to spend that \$110 million over the next three years. What is the government proposing to do in relation to any shortfall?

Mr Stanhope: As I think Mr Ryan has indicated, the government has always been quite explicit that that was a March-April 2003 costing. We have always been explicit about

that in any communication that we have made around the ACT prison and its costs. We have always indicated that it was costed at \$110 million, as at the time that Cabinet made the decision to proceed with the project. As with all capital works projects, we accept there will be an escalation as a response to movements in price—not just CPI, but also other movements. And, of course, in relation to the construction industry there have been significant movements over the last two years.

I understand that Corrections ACT is currently negotiating with ACT Treasury in relation to an escalator that might be applied to the prison project in order to allow us to refine what the final costs might be. So, at this stage, the question is hypothetical. What I will do, and what the government will do, is await advice from Corrections ACT, which is awaiting advice from Treasury on an appropriate and acceptable escalation to the \$110 million already appropriated. We have always expected that there will be some escalation in that cost, as there is with every other capital works project that the ACT government approves from time to time. But, I am not just going to say, “Well the accepted escalator in relation to construction costs is so many dollars a year and therefore the project will now cost that.”

We will look again at our overall capital works capacity and budget in the context of advice from Corrections and the Department of Justice around what additional funds might be required, and we will make a decision then. But we have always expected and always said that the costing was as at March-April 2003. Obviously, there will be an increase in that but I do not know how much it will be. It is fair to say that we are probably looking at a figure that is within our capacity to pay, and that there will be no change.

These are decisions that will be made sooner rather than later. In fact, as you are aware, Mr Chair, and it is probably relevant to the question you ask, it is timely for the government to make a decision. I am able to announce today that Corrections ACT, and I have only just been advised of this as I sit here with Mr Ryan, has today formalised the engagement of design consultants for the ACT prison. It will be a joint venture between Codd Stenders and May and Russell who, today, have signed a contract with the ACT government to design the prison.

This is a major further step in the establishment of the prison. It is a \$7.5 million contract to design the prison. Of course, in the negotiations between Corrections and the design consultants, there will need to be some decision around the extent of the budget and the escalator measure that will be applied. It is \$110 million plus GST so it is actually a figure of \$130 million. So we say \$110 million but, when one takes into account GST, it is in fact a \$113 million project.

THE CHAIR: Is that 113 or 130?

Mr Stanhope: I don't quite know how it works, but the decision that was taken by cabinet was a prison construction cost of \$110 million but there was some account taken of GST. In fact, the government, at the time cabinet took the decision, acknowledged a construction cost of \$110 million but there is, I believe, a \$3 million GST component on top of that. At this stage, cabinet is aware of a cost of \$113 million plus cabinet acknowledged and accepted that there would be an agreed additional capital cost, as a result of escalation between the time of the cabinet decision and the commencement of

construction. At this stage, we simply do not know what that is. As long as it is reasonable and can be justified, it will be accepted. It will be some millions of dollars.

THE CHAIR: When will you know what the escalator is?

Mr Stanhope: I have not been involved in those conversations. Mr Ryan has so I will ask Mr Ryan to respond.

Mr Ryan: The discussions with Treasury have been going on for a while. We have no result as to how that will be approached. The first component of the cost of the facility, namely the design cost, just announced as \$7.5 million, is something that we will have to face up to paying very shortly.

I might add that the \$7.5 million is part of a total in excess of \$9 million for professional fees, and it is the major component of it. It certainly does not look as if that component has escalated by 15 or 20 per cent. The actual building cost is way below \$110 million. But by the time you take out fees and charges for this and that it is closer to \$90 million. I can give you a more accurate figure than that, with a breakdown as to where they all go.

THE CHAIR: Yes, if you could provide that to the committee that would be good.

Mr Ryan: To answer your question more directly: the formula for escalation has yet to be agreed.

THE CHAIR: And you do not have any time line as to when that is likely?

Mr Ryan: No, and it could be that Treasury will decide to deal with it piecemeal. In other words, look at what the escalation would be for the next component through until the end of this year and then for the first part of the building component.

THE CHAIR: Okay. Chief Minister, given that the cost is going to rise—we do not know by how much—is the government committed to ensuring the prison, as planned, will continue or are you leaving open the option to cut it back? I mean, you announced the prison project in 2001, and the current one is an impressive project.

Mr Stanhope: At this stage, I have no expectation that the prison project, as currently contemplated, will change in any significant way. But there is always a “but” with every decision government makes. If Mr Ryan comes to me in a couple of months’ time and says that he has just spoken to Treasury, or somebody, and the cost of the prison has now gone through the roof, the government will of course pause and have a think. But I do not expect that to happen.

We have appropriated \$110 million. We factored in that there would be an escalator applied to that. Mr Ryan has just indicated that in that figure of \$110 million there was a notional budgeting of around \$9 million for consultancies, the major portion of which was design. The ACT government has this morning, through Corrections ACT, signed a contract with Codd Stenders, and May and Russell, which is, as Mr Ryan just advised us, essentially within the anticipated budgeted limit for consultancies—so far so good. To that extent, I remain confident that we will build a prison fairly consistent with the

current concept. That is our determination.

MS MacDONALD: Mr Ryan, can you inform the committee of the progress and planning that has been going on for the work force that will be required to staff the prison?

Mr Ryan: The work force plan is a key part of the planning for the new facility. We commenced that activity last year. Together with a consultant, we produced a work force plan, which we accept will have to be revisited, probably again this year and perhaps once more before the facility is commissioned. It indicates to us what the likely shortfall will be and what the problems will be with recruitment and training. We have some sort of a handle on that—although, the last time we did it was in the second-half of last calendar year. As I said, it will be progressively updated.

The sorts of things we need to address are the levels—at present we do not have them or certainly not the numbers that we would need—and the additional skills. When we match that to the likely wastage we expect between now and mid-2007, we come up with the shortfall in the numbers, and we will recruit to that. In general terms, our numbers now are 200 to 210. Sometimes it has been as high as 230, depending on the number of casuals we have. Future requirements will take us in excess of that by about 100, but it will not be a simple matter of recruiting another 100, because of the wastage involved. We expect that in the time frame we have between now and mid-2007, we will be recruiting and training 160 to 170 people. That is as I know it from last year, and that is the best plan we have right now.

MS MacDONALD: What consultation has gone on with the community about the construction of the prison?

Mr Ryan: The community consultation effort started as far back as the Year 2000. It intensified around 2003 and has been ongoing since. There is a communication plan available on the prison project web site. That will tell you the things that we have done and what we intend to do from here on in. There has been consultation with 50 different groups around the ACT, with a variety of interests. In addition to that, we have consulted widely across Australia and internationally with those that we regard as expert in the field, and that process is ongoing. Every other week, we become aware of still more groups and individuals that need to be consulted. We are aware of that and the process will continue. We are pretty confident that the degree of consultation that has ensued thus far has been of a high order. That is all I would like to say about that.

MS MacDONALD: People, generally, are not very positive about the notion of building a jail. But, once they have a jail in place, they accept it. It provides jobs and they get used to the jail being there. I grew up in Sydney not that far from Long Bay jail and it never worried me. Most criminals who escape a jail do not want to hang around the jail; they want to get away as fast as possible.

Mr Ryan: That's true.

MS MacDONALD: Obviously, there would be a bit of negative reaction when you do consult with some groups but, with the consultation that you have been doing, have people calmed down once they find out about the operation of the jail? I understand that

you are proposing a fairly high-tech system with the jail.

Mr Ryan: The community reaction has calmed down, not that it ever was much. Most of the reaction to the site at Hume came from across the border, because of where it is located. Very few people came forward with questions and objections during the process, which included a preliminary assessment process, and that has been completed and done fully.

MS MacDONALD: Jerrabomberra is located uphill from the jail and, personally, I think they would take a car down the Monaro Highway in the opposite direction.

DR FOSKEY: I would like to take us away from the jail for a bit. We might all return there one day. I am sorry I could not resist that! I could not find the disaggregated employment figures for Corrective Services in the report. Perhaps you can guide me to it. Is it difficult to pull out figures for the numbers of people working in your programs or am I not looking in the right place?

Mr Ryan: No, it is a fair comment. Those figures do not appear there. Our section of the report concentrates more on the figures that relate to our clients, the detainees. The figures for the people working in the organisation have not been supplied and we can do that for you, if you wish.

DR FOSKEY: I am interested in that, and perhaps your future reports could do it. A lot of annual reports do give that information and it is useful. Here I am talking—if it is not too hard—about gender and, say, indigenous people working in indigenous programs and so on. In relation to table 30 on page 80, can you explain the big drop in the number of hours of community work performed by detainees on periodic detention orders? Does that bear any relation to the figure on page 82—second column, second paragraph—of 175 community service orders? I would be interested in knowing how that 175 compares with earlier years. Can you explain that pretty big drop from 18,000 to nearly 6,000?

Mr Ryan: Yes, it is a big drop. It is not the first time that the question has been asked. Essentially, we are required to supervise those orders, as they are given to us by the court. Table 30 relates to hours of community work performed by detainees on periodic detention. Whilst overall the community work has reduced, because of the number that are sent to community service orders, it has reduced in periodic detention because we have them doing other things.

The attempt recently has been to get them working not just in the community but also at addressing their offending behaviour. That has been a gap in our approach to periodic detention in earlier years. We think, if we have them for two days at the weekend, they should spend some time doing courses or programs that address their offending behaviour, in addition to doing work in the community.

THE CHAIR: It is a big drop, though. It is about a 70 per cent decrease.

Mr Ryan: That is right. In previous years, we had nothing or next to nothing with respect to programs to address offending behaviour. Now we do have programs for things like cognitive skills and drug and alcohol. For a while we had a program running with TAFE, which has been discontinued recently, but we intend to start it again. We

believe that addressing offending behaviour and preparing these people to reintegrate with the community is as equally important—or perhaps more important—as the community service work that they do.

THE CHAIR: Is that done on weekends?

Mr Ryan: Done on weekends.

THE CHAIR: Is it done at the centre?

Mr Ryan: It is done at the centre, including on one of the evenings.

DR FOSKEY: My next question refers to some of those programs that you have briefly outlined on pages 82 to 83, and there a couple more references later on. I am interested in the evaluation of those programs. I understand some of them are quite new, but perhaps in this year's annual report you might be able to give us a sense of where they work and where changes might need to be made.

Mr Ryan: Yes, we can certainly address that in the coming report. The need to evaluate these programs is something we are well aware of and we are addressing it. Resources are always a problem but we have taken the line more recently that we will never again introduce a program without having some provision to evaluate it.

DR FOSKEY: Yes, because how else do you know it works? On page 82, in the section headed "Home detention", it says, "31 assessments of suitability for serving a sentence by way of home detention were completed." I am interested in the procedures for deciding who is suitable for home detention. Who makes the decision about that and are there any advantages to ACT taxpayers and to the offenders themselves?

Mr Ryan: The decision is made by the court but ACT Corrective Services are required to provide a report with respect to suitability. The suitability addresses things such as the type of offence that has been committed. There are exclusions from home detention for certain offences including murder, serious assault, armed robbery, sex offences, serious drug offences, stalking, and domestic violence offences against people with whom they intend to reside or have a relationship with.

As you can imagine that cuts out a fairly large slice of our offender group. Nevertheless, it gives us a better chance of success in the home detention program. For us, the uptake of home detention has been a bit disappointing—in that, our capacity for up to 10 at any one time has never been reached. It is usually 50 per cent or less than our capacity.

There has been some advantage to those offenders who have been able to get a home detention order and some advantage to the community with respect costs. The cost is not much different to a cost on remand, and home detention is available for remandees as well, but the mere fact that they are kept out of a NSW prison is a big advantage, both in terms of costs and rehabilitation, because we regard them going to prison on a sentence as the absolute last resort.

DR FOSKEY: Yes, I am interested in the comprehensive evaluation, which, as indicated, is occurring so I will wait for that. Page 84, second column, second dot point,

refers to a review—involving the case officer at the Belconnen and Symonston remand centres—of the new policy and procedure manual. I am wondering how that is going.

Mr Ryan: That is not complete. It is a work in progress. We are endeavouring to put in place a quality management system that is accredited to ISO standards and that part of the process—namely, documenting who does what in the organisation—is nearing completion and that in turn will have some effect on the policy manual.

DR FOSKEY: Okay.

Mr Ryan: But to answer your question: not complete, still in progress.

THE CHAIR: I think you mentioned to either Dr Foskey or Ms MacDonald that your staff numbers were 210 to 230, including some casuals. Then you mentioned a figure of 100, which seemed to be on top of that—

Mr Ryan: No.

THE CHAIR: But not all of those would be employed. Is 230 the top figure or might that increase to some more staff? I was unclear as to your answer.

Mr Ryan: No that would be closer to the top figure. The difference in the figures that perhaps I have put rather confusingly is between what we have now, total staff, and what we need in the future.

THE CHAIR: Right.

Mr Ryan: Doing that sum does not tell the full story. The real issue is to find out how many we lose on the way.

THE CHAIR: Sure.

Mr Ryan: And that's what increases it.

THE CHAIR: So basically that 210 to 230 is what you anticipate to be on deck—

Mr Ryan: Yes.

THE CHAIR: To run the prison.

Mr Ryan: No, sorry, to run the whole organisation, which is in excess of 300.

THE CHAIR: So in excess of 300 to run the prisons, and that includes casuals.

Mr Ryan: Yes.

THE CHAIR: Would you have any idea at this stage of how many would be full-time and how many would be casual?

Mr Ryan: No.

THE CHAIR: Okay. Thanks for that.

MS MacDONALD: On page 82, you refer to the Triple R program for youth exhibiting inappropriate sexual behaviour.

Mr Ryan: I hope you're not going to ask me what Triple R means.

MS MacDONALD: No, I wasn't going to—

DR FOSKEY: Isn't it reading, writing and arithmetic?

Mr Ryan: No.

MS MacDONALD: It is very concerning that young people are exhibiting these behaviours—potential offenders of the future, quite obviously. I am curious to know how the program runs. I am assuming that it is some sort of therapy as such. I am happy for you to take it on notice.

Mr Ryan: I can give you some information about it now. It was perhaps the first program that we put in place. We put it in place before the adult program. The program is based, where possible, on group work. But, given the small number of juveniles, that is not always possible. The idea is to talk them through—in an open-ended way, with respect to the type of program—their problems. As to the success rate, we do not yet have enough data on which to base any assertions. But we will within, say, three or four years have something that is more meaningful. Our approach to that program and our adult sex offenders program is regarded as valid. We have had it validated by those that we regard as the leaders in the field from North America. We took the decision some years ago to use an approach that was not taken in other parts of Australia, which has since been vindicated. We are very proud of the sex offender programs and we think that it is one of our strong points, as far as the programs are concerned. The only worry is that it rests upon a very small number of officers that we would not like to lose.

MS MacDONALD: Have those officers had specialised training?

Mr Ryan: Yes, they are psychologists and they have had additional training and experience in the sex offender field.

MS MacDONALD: Is there a move to train more people in this field, in case there is a loss?

Mr Ryan: In a limited way. Indeed, in some areas, the only way people can be trained is by being alongside those people who, on a daily basis, are delivering these programs.

MS MacDONALD: Thank you.

DR FOSKEY: I would like to refer to last year's report from the community service and social equity committee titled *Forgotten victims of crime: families of offenders and their silent sentence*. I would like your response to where some of their recommendations fit in with your work now or in the plan, presumably, for the prison? With respect to some of

the committee's recommendations, have you got a policy framework for services for families of people in custody? Has that been developed?

Mr Ryan: We are well aware of the report that you refer to and we will use it to build on, particularly when our sentence prisoners come back. Our ability to do that and our policy for dealing with families of those on remand in the ACT is pretty sketchy. It consists of the use of the welfare officers we have at Belconnen, and they also service the Symonston Remand Centre.

We think we need to include the issues raised in that report in our through-care program, which we are developing for the new facility. As I said, it is something that is, for us, more important for those families that have people who are serving sentences. At present, we feel we are doing as well as we can for those on remand but keep in mind that the requirement is a bit different, in that they move through fairly quickly. We think there may also be some scope, when we develop the plans for those who are sentenced, to look at a cohort that we do have now—namely those on community based orders. But we need to be careful about not exceeding our brief and getting into the business of assisting families beyond what is our authority and responsibility.

DR FOSKEY: Yes. I guess that will require working with other government services.

Mr Ryan: Yes.

DR FOSKEY: There were a number of other recommendations including appointing a children's officer within ACT Corrective Services to promote the needs of children and people in custody, and adequate public transport to the new ACT prison. Again, that requires working with other departments in government but I am just wondering—rather than taking you through all the recommendations that are listed here—whether there is a process where you can identify the kinds of links that need to be made with other departments.

Mr Ryan: Yes, there is, and we've already given a response to that particular report. You mentioned two issues. Concerning the first one about the appointment of a person to look after the issues involving children in custody, at this stage our assessment is that we would see not that as necessary, given the numbers we expect to be in custody, and that we would be able to get that advice and support from another department. As far as the transport issue is concerned, that is very much under consideration and planned for. We will need to have a bus service to the facility and it will need to be regular enough to service the visiting hours and so forth.

Mr Keady: Dr Foskey, the report you are talking about will be the subject of a formal government response to the Assembly. The Chief Minister's Department is coordinating the response because a number of departments have to contribute to the response. That will be tabled in the Assembly by the government some time in the near future.

DR FOSKEY: That's excellent. That means all my questions will be answered then. One of the questions refers to community input, which Karin raised before, and, specifically, the community advisory group. It is just that these things should be happening now in the design phase. Isn't that a good way to go about community involvement in the project?

Mr Ryan: At this stage, we would not see the need to form a community group to advise us on how to design a prison. The community involvement, or opportunity to comment, was in the preliminary assessment process. We have watched the way this has developed in other jurisdictions. We believe we have a design team now which is able to tap into any issues that they think would involve or worry the community about the design. In due course, when the prison is commissioned, there may well be an opportunity to set up a community group of some kind to visit periodically—once every six months or once every year—to get a separate community opinion on how the place is being run. That is done in many places and it is something that we will be looking at.

DR FOSKEY: Good, thank you.

Mr Stanhope: Just on community consultations, and this may be on the web site, Corrections ACT has a list of the organisations from within Canberra and around Australia and, indeed, internationally, that have been consulted. That consultation has gone to issues around design. It is not fair to say that Corrections have not listened deeply to the full range of views that have been expressed. In relation to the imprisonment of women within the ACT, there have been detailed discussions with ACTCOSS, with the Ministerial Advisory Council on Women, with representative groups for women prisoners—Women Inside, I think the organisation is called—and with a number of other people from within the ACT community, including women from the ACT who have served as prisoners within the NSW system and who, of course, have a particular insight.

The level of consultation has gone to the extent of seeking out and asking both serving women and women who have been released from periods of conviction about the design of facilities for women. So informed decisions have taken place. I think there has been extensive consultation and viewing of every prison in Australia. I think it is fair to say—and Mr Ryan could advise on this in the context of consultation around women—that it is recognised by people not just working within corrections but also who have a deep interest in our prison system, in corrections and punishment and in the theory of punishment, that there are a couple of women's correction centres in Australia, if I just restrict myself to talking about the incarceration of women, that are regarded as current best practice.

It is our intention to take from what is regarded as the best and improve it. I am quite confident in our concepts—in our commitment to human rights and a healthy prison quite genuinely constructed around a commitment to rehabilitation. We are committed to a prison that, when completed, will be the best prison in Australia, in terms of a progressive human rights, healthy prison ethos. The consultation has been very significant. I think it is a very interesting subject, and I think we need to talk more about it, but that's the approach that has been adopted.

DR FOSKEY: Thanks for that.

Mr Ryan: Certainly the design team that was announced today will be visiting prisons around the country, together with our officers, so that we can show them what we think we want. We have already told them but we will show them on the ground. For example, later this month or in early April, we will visit the new women's prison in New South

Wales, Dillwynia. That prison is probably about the best around. Another thing you should be aware of is that we do not plan to put women in cells, unless they are behaving so badly that we have no option. Generally, they will be living in a residential situation—whether they are sentenced or on remand, and we think we can manage that. Now that is a first, and it just gives you some idea as to where we are heading. It does not mean that all the women's groups around the place are entirely happy with everything we do. Most of them would argue that women should not be in prison at all but, given that that is not our decision, our approach will be to make the best of it.

Mr Stanhope: This is an interesting concept and I think it is appropriate that there be a community debate around it. Corrections has consulted broadly, and has sought out every group or organisation or individual that we are aware of that has an interest in the future of imprisonment in the ACT or corrections or punishment or issues around justice, to ensure that our decisions are informed. There does need to be some community education and some community debate and discussion around the nature of the prison that we propose to build. I believe, as Mr Ryan has just said, that this will be the first women's prison or component of a prison in which there will not be a single cell designated as accommodation. It is anticipated that no woman sentenced to imprisonment in the ACT will serve that term of imprisonment in a cell. They will serve their term of imprisonment in a house. In some cases, it may be a house that is not even behind a fence.

But there are some challenges to some members of the community in terms of traditional understanding of what imprisonment should involve, and we are, to some extent, challenging some community understanding of the notion of imprisonment—to the extent that no women will be accommodated in cells. In relation to some aspects of the pre-release arrangements, it is very much part and parcel of our commitment to rehabilitation that 60 beds will not be located inside a fence.

THE CHAIR: Sixty?

Mr Stanhope: Sixty.

THE CHAIR: I think you have got 25 beds for women in the prison, and obviously some of those will be behind a fence. What are the 60 beds that will not be behind a fence? Are you following the example of another prison? I understand that that aspect might concern people in the community.

Mr Ryan: No, we are perhaps doing something that is a bit different in that in every jurisdiction there is an opportunity for day release/work release for low security prisoners who, by definition, do not have to be behind a secure fence. But those opportunities are fairly few compared to what we intend to do. As soon as a person is assessed as being low security, we will put them into a situation where they are outside of the secure compound. They will be in another compound that will have a fence but it will be, say, a cyclone fence—nothing that would stop anyone out who is determined to get—and the reason it that by then they are trusted enough to go on day release into the community for work or education. Indeed, at weekends, if their behaviour and progress is good enough they will be released to go home. That already happens in other jurisdictions but on a small scale.

DR FOSKEY: I think my opening comment—which was a bit facetious, about us all going to prison—is really important, because it does sound as though it is going to push the envelope in terms of how we understand such things. If that is to be evaluated by all kinds of people, working in all kinds of areas, including academics, we can see how it works, and if it works, and it can be a model that is spread.

Mr Ryan: You are most welcome. There is always a bed!

THE CHAIR: On that note, I think we will thank the corrections people and move to the ACT law courts.

DR FOSKEY: Most of my questions concern the Coroner's Court. Families and friends of people who are subject to coroner's inquiries find the length of inquiries, sometimes extending to years, very distressing. The inquest into Bob Beatty's tragic death in the Canberra Hospital psych ward in April 2001 took till December 2003 before the summary of findings was issued. As of mid-February, the complete findings are still outstanding. This seems to me to be unacceptable. In order to avoid situations like this, where there is no closure for the people who loved the deceased person, would a dedicated coroner help?

Mr Kelly: There are two competing interests that really need to be balanced in all coronial matters. The first is, quite legitimately, the concern of families and loved ones for speedy closure and for a clear articulation of the reasons why they have lost someone. The second competing interest is one imposed by the act, and that is that a coroner must turn his or her mind to some of the more systemic issues that might be present in the circumstances. Both are important and, certainly from my view, the systemic issues are where real value is added by the coronial jurisdiction, so that it is more about building fences at the top of the cliff than having the ambulance at the bottom. The delay in the matter you referred to was extensive, but it was a broad-ranging inquest and it was one of a number, in terms of institutional care, that were put together by the Chief Coroner in an attempt to really identify those systemic issues.

While the summary of the findings was formally delivered in 2003, I think, for the death in 2001, and that is a long time, it was a complicated process. The formal report is close to issuing. It runs, as I understand it, to something in the order of 800 pages, so there has been a fair degree of work to be done in terms of collating the formal report. Those are all matters, of course, within the proper ambit of the judicial officer. Courts administration provides the support that is required by that judicial officer to perform the task prescribed by the legislation.

I move to your specific question: would that be assisted by a dedicated coroner? If that were to be the case, it would probably make the ACT unique in Australia.

THE CHAIR: There is one in Western Australia, isn't there?

Mr Kelly: Almost every coronial system actually works under the umbrella of the Magistrates Court. The dedicated coroners also from time to time fulfil other functions. I think myself that it is important. There is great value that should not be jettisoned in having a broad range of people who have detailed knowledge about these jurisdictions.

In the past I have seen some over-reliance on individuals. They go on leave or find other things to do with their lives. Sometimes a gap can be created. From the perspective of courts administration, we could service either system, of course, and it really is a matter for government to weigh the pros and cons about those sorts of proposals. If government's decision is for a dedicated coroner, we will stand ready to support them. Whether that would actually affect the time taken in a very complicated and important inquiry such as the Beatty inquiry, I could not speculate, to be honest with you.

At the moment the demand for coroners in terms of time is probably just about the equivalent of one judicial officer at any one time across the year. When it gets over that threshold, if you only had one, perhaps that would raise some challenges in terms of resource allocation between all the other jurisdictions available and required to be exercised by magistrates on a day-to-day basis.

Mr Stanhope: I endorse what Mr Kelly has said. There are separation of powers issues, which Mr Kelly touched on in terms of his responsibilities as administrator, as opposed to the responsibility of judicial officers, and I think we need to be mindful of that in questions to Mr Kelly.

I agree once again with the sentiments that Mr Kelly has expressed in relation to whether or not there might be an opportunity, not necessarily for a separate Coroner's Court—and I am not sure that Dr Foskey was suggesting that—for perhaps a designated appointment of a particular magistrate as coroner in the way that we appoint a Children's Court magistrates. That, of course, is also done within the overall ambit of the Magistrates Court structure.

I must say it is an issue that I have given some thought to and it is one of the issues that I would expect to be pursued in a review of courts and tribunals, which the government will be pursuing during this term of government, in a context, as Mr Kelly has just said, where the coronial jurisdiction is currently consuming the time essentially of one of the magistrates of the Magistrates Court. The responsibilities of the Children's Court are consuming—I do not know the time there, Mr Kelly, but I think it might be less than one magistrate, is it?

Mr Kelly: That would be correct.

Mr Stanhope: But the point I make is that we have got one and a half and one and two-thirds magistrates performing the role and function of Coroner and Children's Court magistrate. I think it is possible that we could contemplate, through the review that we will undertake, a circumstance such as that which exists in relation to the Children's Court at the moment. That is that a designated magistrate is appointed the Children's Court magistrate from time to time. One of the issues we could give consideration to would be to appoint a magistrate as a dedicated Coroner.

THE CHAIR: Have you had any discussions with the magistrates yet about that?

Mr Stanhope: No, and at this stage the review into the courts and tribunals will need to be funded. It may be that, in the context of the current budgetary situation, we will not be funding that this year. But it is a commitment that I have made and it may be that it is a review that we will not be pursuing for another year. We will be reviewing the operation

of all courts and tribunals in the ACT. One of the issues that will, of course, be picked up in that, just as every other issue will be considered, is the issue of the Coroner's Court and its place within the scheme of things.

DR FOSKEY: I have finished my questions on the law courts.

Mr Stanhope: I might say just to complete my comments, that I have some sympathy for the essential point that Dr Foskey has put. There should, I believe, be some consideration as to whether or not a dedicated magistrate as Coroner might assist the court in addressing the issue of delay. I wonder whether or not a dedicated Coroner might actually have overcome the particular issue that Dr Foskey raised, and it is something I am open to considering.

THE CHAIR: Just on the ACT law courts then—thanks, Dr Foskey—on page 25, under the heading “Key Achievements”, the report states: “Achieve better financial controls to deliver budget outcomes to the department, the government and the community”. It states further: “ACT Law Courts and Tribunal’s final budget result was \$932,000 over-budget as at 30 June 2004. Following significant restructuring of the department’s budget, a strategy is in place to reduce expenditure in 2004-05 by five per cent to achieve a balanced budget.” What was the reason for the over-budget result and what action has actually been taken to remedy that outcome to achieve that five per cent reduction?

Mr Kelly: Mr Chair, I wish there was a simple answer to your question. Again, I do not wish to do a Refshauge, but there is certainly—

THE CHAIR: Poor old Richard! His name has been mentioned a few times today.

Mr Kelly: Certainly it is a complex issue in terms of where the budget pressures lie in the courts. There is a mixture and there has for some time been some structural weaknesses in the way the budget has been built, and those are the things we have been trying to address.

One of the highlights, in terms of quantum, is that 46 per cent of the total salaries bill for ACT Law Courts and Tribunals is actually consumed by judicial officers and their personal support staff. It is not usual, I think, for a relatively small agency to have something in the order of 15 chief executives in terms of pay level, and that is certainly the case for us. In addition to that, there are 22 individual staff members who support those judicial officers and statutory officers. Those, if you like, are a large slice of almost protected, constitutionally protected expenditure that we need to meet. I have spoken before to this committee and at estimates committee hearings of the effect of an escalation that is applied to general salaries across the public sector of, say, 1.6 per cent and a Remuneration Tribunal decision of five per cent and what that does over time and the effect it has in operating.

Those are the sorts of issues that we have been addressing. We have been working, to use the Attorney’s phrase last year, assiduously to contain cost. We have started this financial year with a comprehensive plan, in terms of budget strategy, to deliver a balanced budget this year. All those actions have been implemented. All the things that we said we would do, we have done and, I would say, with varying degrees of success.

THE CHAIR: What sorts of things have you done?

Mr Kelly: We had a vigorous program to identify positions that we could hold open for long periods. I think in the end there were about 13 positions that were identified for those purposes, and they varied from not filling those positions at all to, for instance, people coming back part time from maternity leave, not filling the gap that might be created on their fifth day, those sorts of things. We have also been extremely careful in terms of recurrent expenditure, non-salary, and that is having an effect on the organisation, without a doubt. To a large degree we are having success in delivering that value for money that we have committed to.

Those are the realities of public sector life. It is not something that I suspect is received with universal acclaim across the organisation, but in the end we have to ask ourselves the hard questions about why are we here and what can we deliver with the resources that are available to us in the most effective and efficient way for the community.

THE CHAIR: That particular blowout, was that caused by an increase in the cost of moving central office of JACS to where it is now?

Mr Kelly: As I understand it, that matter has been dealt with by way of questions upon notice and I think the answer was no because that was capital funds, as opposed to recurrent.

THE CHAIR: Right. Okay.

Mr Stanhope: Perhaps Mr Keady could respond to that question.

THE CHAIR: Yes, certainly.

Mr Keady: Well, the answer is no.

THE CHAIR: The answer is no. Well, there you go.

Mr Keady: The courts' budget difficulties have been with us for a little while and they are being addressed, as Mr Kelly said, vigorously at the moment. There is probably not a single cause and we are doing a lot of work to try and derive some sense in what an absolutely base budget is. Mr Kelly, as he started to explain to you, has undertaken a review of all the expenditures in the court with a view to economising and remaining within budget.

THE CHAIR: Thank you. Mr Kelly, you could always ask the judicial officers to have a pay freeze for three years. That might help. Good luck with your efforts there.

Mr Kelly: Thank you.

THE CHAIR: I have just a couple more questions. On page 26, the report mentions a feasibility study to relocate the forensic centre from the Kingston Foreshore. Are there any issues with the progress of this project, particularly given the rate of progress with the redevelopment of that Kingston site?

Mr Kelly: No, I do not see any great difficulty in that project. It seems to be progressing and hopefully will be considered shortly.

Mr Stanhope: Sorry, Mr Kelly. Mr Stefaniak, this morgue at Kingston will, of course, need to be relocated. It is the subject of a budget bid. It is a matter that is currently before the cabinet, along with many other items. I think we all acknowledge that, in the context of the Kingston Foreshore redevelopment, the forensic centre, more familiarly known as the morgue, will require a new location. At this stage I understand ACTPLA are engaged in identifying an alternative site. I believe a site in Philip is being considered, which is more convenient and closer to the hospital. As I say, cabinet will be considering a bid for funding to construct a new morgue or forensic facility.

THE CHAIR: Morgue is fine, I think.

Mr Stanhope: I must say I personally think “forensic facility” is an unnecessary sort of euphemism if it is a morgue.

THE CHAIR: Exactly. It could mean anything. Page 30 deals with performance statistics. What the reason for the increase of listed matters in the Court of Appeal from 75 to 258 during the year?

Mr Kelly: The number of issues raised there. The Court of Appeal has been somewhat busy across that and the ensuing period. Firstly, there is the introduction at the commencement of this reporting period of the full jurisdiction of the Court of Appeal. So moving just from severity and quantum to a full merits appeal basis. We have certainly seen a big increase in terms of sittings of the Supreme Court, the Court of Appeal within the Supreme Court. That, I think, was always anticipated when the Court of Appeal was established, that there would be a lead-in period and up we would go.

Whether it is people being more litigious or not, I do not know. I cannot really give an answer to that. Certainly, the nature of some of the matters before the Court of Appeal, both criminal and civil, does require fairly intensive case management.

THE CHAIR: Yes.

Mr Kelly: So that does mean that you need to keep the parties up to the line, keep them toeing the line in terms of progress of the case. On occasion that requires the matter to come before the court to resolve the particular non-compliance with timelines and things like that.

THE CHAIR: Sure.

Mr Kelly: I think you will see that across both courts. An increasing number of times, cases have been brought back to court. That is about case management, active case management. I would like to think, and hopefully there will be some more data around this in the next little while, that those sorts of active case management strategies are actually delivering decreases in delay and backlog in our courts.

THE CHAIR: Is there an indication that that is so, because I know a number of practitioners regularly complain to me that there are problems with the case management

system and it has been somewhat disappointing that it has not done what everyone hoped it would do when it was introduced many years ago?

Mr Kelly: I think, as a general theoretical proposition, case management has proved its worth. Some of the statistics which we are now seeing, particularly our national benchmarking, although it is only early days—we are only up to year two, really, of the new KPIs—indicate to me that, contrary to perhaps what people would think, the more times you list a matter, the more likely it is to be resolved more quickly.

THE CHAIR: Yes.

Mr Kelly: That is intuitive, I guess, that there is some of that stuff in there. The pattern should be much clearer in reports as at 30 June this year. For instance, I think a good example, which is within this report and reports that followed, data that followed it, was the large number of civil cases in the Magistrates Court that were older than the standard, far more than we would have been comfortable with.

When you look at the corresponding attendance index, it is terribly low. I am working now with the Australian Bureau of Statistics, through the Productivity Commission, to see whether that is a true correlation or a random event. When you scan across the other states and territories, those that have an attendance index almost invariably have high backlog numbers. That is the old debate, I guess, about court-controlled litigation, as opposed to waiting for the parties to get ready to come to court.

Theoretically, we would say that parties should only come to court when they are ready to proceed to trial. That would be the ideal position, but for tactical and other reasons, and sometimes quite legitimate reasons, such as stabilisation of injuries and those sorts of things, there is some delay built in to the system. Making sure that the courts are on top of individual case management is critical to the long-term success of a courts organisation.

I am pleased to say that the ACT courts are responding, in my view magnificently, to those sorts of challenges. We produced some new KPI reports and just yesterday presented them to the magistrates. Immediately they wanted to know about those cases that were outside the standard and we are able now to identify them, give them lists and they will be actioned, those cases. That is a quantum shift from the way we used to measure performance, that is, by how long it took to finalise a case. We are now far more concerned about how long people are actually waiting in the lists.

THE CHAIR: Any more questions?

DR FOSKEY: No.

THE CHAIR: Just one from me. Chief Minister, you mentioned, in relation to the current coronial inquiry, that we have insurance and that a significant proportion, about 70 per cent, of the legal costs incurred by government were covered. Does that policy relate to other matters, general matters the government might have before ACT courts and tribunals?

Mr Stanhope: I honestly do not know, Mr Chair. I would have to take advice on the

arrangements in relation to insurance. I simply do not know. I am happy to take any specific question on notice, Mr Chair, but I would need some specific detail.

THE CHAIR: Yes, if you could.

Mr Keady: It is really an issue more for the Treasurer and the Treasury.

THE CHAIR: Fine.

Mr Keady: In fact, it relates to ACTIA's role as the government's insurer and the insurance arrangements it makes for the range of the territory's liabilities. My understanding is that the current insurance arrangements which we are claiming under is under a general policy of insurance that covers the broad range of risks that we insure against. That is managed through ACTIA, part of the Treasurer's portfolio.

THE CHAIR: Right. I wonder whether we could have a copy of the policy or at least the relevant parts that relate to the justice system?

Mr Keady: Mr Chairman, we do not have them.

Mr Stanhope: If you ask the question of me, though, Mr Stefaniak, I will be happy to pass it to the Treasurer.

THE CHAIR: If you could do that, Attorney, that would be great. Thank you very much, gentlemen. The next one is the Parliamentary Counsel's Office. My colleague Ms MacDonald has a committee hearing starting at midday.

MS MacDONALD: So does Dr Foskey.

THE CHAIR: So does Dr Foskey. I think we will try to finish within the next five minutes.

Mr Keady: Mr Chair, we do not have a representative here from the Parliamentary Counsel's Office. We were under the impression that they were not required.

THE CHAIR: That is fine. Who is next? Who else have we got?

Mr Keady: We are in your hands as to whom you would like to ask a question of.

THE CHAIR: Fair trading. We have seen fair trading, so I think we can start them at least. My Deputy Chair, Karin MacDonald, has a number of questions she wishes to ask.

MS MacDONALD: Good morning. Pages 20 and 21 of the report deal with the activities of the Enforcement and Litigation Unit last year. Can you inform the committee of the way the unit operates, what it does and the success it has had since it was established?

Mr Phillips: The enforcement unit has been established over the last couple of years because we saw in the office a bit of a missing link in the way that we conducted our

affairs. We wanted to be able to have a unit that linked the advice and complaints with compliance, with inspections, and with ultimately assisting in relation to the enforcement activities we undertook. So what we did was to engage a unit. We currently have three officers working in there: two lawyers and someone who's in the process of becoming legally qualified. They provide assistance to all facets of the Office of Fair Trading. They provide advice in relation to the preparation of forms by our client registration services. They provide advice in relation to inspections in relation to what needs to occur. They assist me in the preparation of warnings for the public, in preparing guidelines that I have to prepare. And more recently we've prepared a set of enforcement policy guidelines which have been placed on our web site. They've been worked through by the enforcement unit. Ultimately, they act as counsel assisting for the Liquor Licensing Board, and they also do the basic day-to-day mill and grist in the Consumer and Trader Tribunal on my behalf in relation to decision making.

THE CHAIR: I just note, looking at page 195, that a matter was referred to the Consumer and Trading Tribunal under part 14 of the Agents Act, which has been dealt with. But you then say that no new matters came before the tribunal in 2003-2004. Are there any implications of that for the utilisation of staff in the tribunal? I find it strange that there were no new matters during the reporting period.

Mr Phillips: It is interesting because the Consumer and Trader Tribunal was established in October 2003, so it was very much in its infancy in the last year. The staff and the operating staff reconvened themselves as in a central services consumer council, so in that regard they have this quite significant workload on the other side of what they do. There was considerably more than one application over the last 12 months in the—

THE CHAIR: So there are certainly matters there now?

Mr Phillips: Yes, there is.

THE CHAIR: And so you'd attribute that last reporting period to the fact that you didn't start until October 2003.

Mr Phillips: October 2003, yes.

THE CHAIR: Okay. Thanks. Dr Foskey?

DR FOSKEY: I have no questions about this area of the report.

THE CHAIR: Any questions about fair trading?

DR FOSKEY: No, none at all.

THE CHAIR: Ms MacDonald?

MS MacDONALD: I'll forgo.

DR FOSKEY: I have questions on the human rights circle sentencing.

THE CHAIR: Okay. Thank you, Mr Brown and Mr Phillips. If members do have any

further questions we will place them on notice and send them to you.

Mr Keady: Mr Chairman, could I just intervene in respect of Dr Foskey's indication that she had a question of human rights. We don't have representatives of the office here because, again, it was indicated that there weren't going to be questions of them.

DR FOSKEY: Yes, that's right; we did indicate that—

Mr Keady: If there is a question, can I ask if we could take it on notice.

DR FOSKEY: It's one the Chief Minister could probably answer.

THE CHAIR: Fair enough. Well, ask it, Dr Foskey.

DR FOSKEY: It's actually about the human rights compatibility statements, which are your department's duty, but certainly I believe that Mr Stanhope could respond to this.

Mr Stanhope: I think Ms Kelly could. Mr Phillips?

DR FOSKEY: But, if it is not—

Mr Phillips: Yes. I'll reconvene as somebody else.

Mr Stanhope: Okay. Thank you, Dr Foskey.

DR FOSKEY: I've asked this question in the scrutiny of bills committee as well. The compatibility statements that we get at present for each piece of legislation that comes before the Assembly are simply a statement that that legislation is compatible. I'm just wondering if it's possible for at least the scrutiny of bills committee, or some section—me anyway, who wants to know—to get the analysis that goes on behind that statement. Sometimes there are complex rights matters involved and I would really appreciate hearing the thinking that goes on. At the moment I feel that it's good to know they're compatible, but much more is required.

Mr Stanhope: I'll take advice on that, Dr Foskey. I understand the point you make. I'll take advice from Mr Phillips perhaps and Ms Kelly on it, but I would have expected that debate or analysis to be provided through the scrutiny of bills process when the bill is scrutinised in terms of civil rights or human rights or implications.

DR FOSKEY: There's certainly an analysis by our legal adviser.

Mr Stanhope: Yes. And there certainly is, too, by the department. I understand the thrust of your question and sympathise with it, but perhaps Ms Kelly or Mr Phillips could respond.

Ms Kelly: It's a matter that we're keenly aware of and it's actually Mr Phillips who administers the area that drafts the statements, but I retain a continuing role in relation to the area. It's one that we're keenly aware of. We did aspire to do what New Zealand does. I'm not sure whether you're aware of what occurs in New Zealand, where an advice is provided on a public web site—a web site to support a statement. We have a

different system here. In New Zealand, they only provide an advice where there is an incompatibility and they only provide a statement in those circumstances. We provide advice on all bills.

We have a unit of three people who work on the whole range of human rights issues, not just the compatibility statements, so we have taken on a greater workload than New Zealand, and New Zealand had many more resources than we have. We simply at this stage don't have the resources to prepare an advice that's suitable for publishing in a public venue for every bill that comes before the house. That's not to say that we don't go through the process in relation to every bill, but for us to present a publishable advice is something that we don't have the resources to do at the current time; but it is something that we aspire to, most certainly.

DR FOSKEY: Perhaps a more limited, less sort of polished analysis to feed into the scrutiny of bills process—I am just putting that before you.

Ms Kelly: If you have a look at the New Zealand ones, they're seldom more than two pages. Unfortunately, what sits behind those two pages is a massive amount of work and we have to be very focused in the area that we choose to use our time.

DR FOSKEY: Secondly, while you're here, the DPP mentioned that human rights law is a fairly new component of the legal system worldwide. Do we have or are we increasing our human rights law expertise in JACS and in the ACT courts?

Mr Keady: Perhaps I could answer that, at least in a preliminary way. The answer is yes, because as not only the new legislative framework takes hold but as the principles that it establishes become more frequently used and referred to in the courts in ordinary litigation, as well as within the processes of government, knowledge expands. JACS, through its various agencies and the human rights area, the Government Solicitor's Office, the policy area, has a central role in leading and assisting with that. So, whilst we're still at the early stages, we've come a long way very quickly and the growth in knowledge and understanding I think will continue to grow—and I should say rather exponentially rather than arithmetically.

DR FOSKEY: What sort of mechanisms do you have in place or training programs to ensure that that takes place?

Ms Kelly: Our training focus for the first year of the act focused very much on the policy development process and so we feel confident that we have provided fairly detailed training in order to identify issues, and that's really probably the level that you can get to—just identification of issues so that you know when to stick your hand up and seek help. We feel that we've provided that to all of the policy development staff across government. The area that we seek to work on in future is to impact upon service delivery and the administrative decision makers. That's the area that we're hoping to focus on, in conjunction with the human rights commissioner, in the next year or so.

DR FOSKEY: Thanks.

Mr Stanhope: But there is an active education, broadly speaking, program.

Ms Kelly: Yes, at this stage focused on that layer of policy development staff, which is a critical layer to impact upon and certainly was our first priority. We conducted a series of workshops and those workshops are ongoing and the human rights commissioner similarly is involved in that. We have published a set of guidelines, which was a major, major project for us. New Zealand took 10 years to do it and we've done it in the first year of our act.

DR FOSKEY: And is that just recently completed?

Ms Kelly: Just recently available, and they're guidelines for policy makers about how to develop policy that's consistent with the Human Rights Act, so that's obviously a very important tool for use across government to educate people about how to work within the act.

DR FOSKEY: Is that available to us, is it on the web site or just a hard copy thing?

Ms Kelly: I believe that it's on the web site but I'll have to check that. It's something we can make available.

Mr Phillips: There are two documents: one has been completed and I understand one is either still at the publisher or has just returned. One is a plain English guide, which was prepared by our office and launched in conjunction with the Human Rights Office. We're currently in the process of developing and finalising a human rights web site, which will be linked to the JACS web site, so it's intended that all of those documents will be accessible on a particular web site that's been established for the purpose.

DR FOSKEY: I have another question. I might have to ask for an answer on notice, Mr Stefaniak.

THE CHAIR: That is fair enough, yes.

DR FOSKEY: I know it is past 12. It is about circle sentencing and I think that is a really important and innovative initiative with young indigenous offenders. We have generally heard positive comments about the process, with the rider that it is time consuming, and I assume that means expensive as well. Can you comment on how long circle sentencing takes and if there is any way of knowing if we save time and money downstream through changed behaviour and less recidivism? Is that one to take on notice?

THE CHAIR: Or is it too early to tell?

Mr Stanhope: Mr Phillips can give a response to that.

Mr Phillips: Dr Foskey, thank you for the question. The anecdotal evidence is that it takes about four times longer to conduct a circle than it does to conduct a normal guilty plea prosecution in the Magistrates Court.

THE CHAIR: Do we know if it's effective?

Mr Phillips: We have had an initial six months trial. We are in the process of evaluating those issues, calling for the relevant stakeholder comments in relation to those issues and just looking at all of those issues surrounding length of time, costs—

THE CHAIR: Has it been effective yet or is it too early to tell?

Mr Phillips: Again, the anecdotal evidence is that it has been quite good, but again that will be dealt with in the evaluation. What we're looking at is the number of cases that we've heard and the number of people that actually come back through the system after. It's probably a bit too early to say.

Mr Stanhope: That's the same feedback that I've received in relation to circle sentencing; the anecdotal evidence is that it is a very, very productive process. But it is time consuming and from discussions I've had with some of the community representatives or elders that are part of the circle panel I think they have been taken by surprise, to some degree, in terms of the commitment of their time to the process. So it's not just in terms of the overall time involved in the process and the thoroughness of the process for those perhaps most directly involved; for members of the circle it's also the case. So there are some issues around its resourcing and its servicing. But I believe it's the sort of initiative that we must continue to pursue in the ACT. I'm very keen on the evaluation, but I remain committed to new and innovative ways of dealing with indigenous justice issues, particularly if they work.

THE CHAIR: I don't know if you can indicate now to the committee or take it on notice—or whether again it's a bit early—how much it has cost to date and how much you would envisage it costing on an annual basis. You may not be able to answer that.

Mr Phillips: I can answer that, because I know the amount of money I'm paying for the position in the court. So I can say that it costs me a full-time AS06 position in the Magistrates Court as an aboriginal liaison officer who gets in there and does all the management of the circle from go to whoa. So that will be over the course of a year about \$80,000-odd with the oncosts.

THE CHAIR: The other costs would be police salaries, other people who—

Mr Phillips: That's right. But I can't tell you how much the prosecution costs, the corrections cost or the victims of crime coordinator or the other people.

THE CHAIR: Fine. But that's already taken into account in the evaluation if it's—

Mr Phillips: That'll be taken into account in the evaluation, yes.

THE CHAIR: Okay. Ladies and gentlemen, thank you. In terms of where we go from here for the remainder of areas that haven't been dealt with, my committee and I will meet and we'll see if we can put as much as possible on notice. I appreciate the difficulties of scheduling meetings, and the attorney's time is limited of course.

Mr Stanhope: I'm always happy to assist, though, Mr Chair.

THE CHAIR: Thank you. We'll see what we can do and see if we need to have people

back for, hopefully, not a terribly long finalisation of this lot of annual reports. Thank you for your attendance.

The committee adjourned at 12.09 pm.