



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON LEGAL AFFAIRS**

**(Reference: Annual and financial reports 2005-2006)**

**Members:**

**MR Z SESELJA (The Chair)**  
**MS K MacDONALD (The Deputy Chair)**  
**DR D FOSKEY**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**THURSDAY, 2 NOVEMBER 2006**

**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 that have been authorised for publication by the committee may be obtained from the committee office of the Legislative Assembly (Ph: 6205 0127).

## APPEARANCES

<b>Department of Justice and Community Safety .....</b>	<b>1</b>
<b>Essential Services Consumer Council.....</b>	<b>1</b>

## **The committee met at 9.31 am.**

### Appearances:

Corbell, Mr Simon, Attorney-General, Minister for Police and Emergency Services and Minister for Planning

#### Department of Justice and Community Safety

Leon, Ms Renee, Chief Executive  
Phillips, Mr Brett, Deputy Chief Executive  
Joyce, Mr Phillip, Acting Courts Administrator  
Ottrey, Ms Jeanne, Executive Officer, Corporate Services  
Phillips, Ms Anita, Public Advocate  
Clifford, Mr John, Acting Parliamentary Counsel, Parliamentary Counsel's Office  
Garrison, Mr Peter, Chief Solicitor, Government Solicitor's Office  
Brown, Mr Tony, Fair Trading Commissioner and Acting Executive Director, Office of Regulatory Services  
Krajina, Ms Danielle, Acting Registrar-General, Office of Regulatory Services  
Jory, Mr Derek, Director, Justice Planning and Procurement, Legal Policy Division and Acting Senior Director, Legal Policy Division,  
Ryan, Mr James, Executive Director, ACT Corrective Services  
Paget, Mr John, Director, Prison Project, ACT Corrective Services  
Watchirs, Dr Helen, Human Rights and Discrimination Commissioner  
Matcham, Mr Ray, Senior Assistant Ombudsman, ACT Ombudsman's Office  
Brown, Ms Vicki, Senior Assistant Ombudsman, ACT Ombudsman's Office  
Caruana, Ms Jane, Victims of Crime Coordinator

#### Essential Services Consumer Council

Sutherland, Mr Peter, Chairperson

**THE CHAIR:** Welcome, minister and officials. I commence by reading the statement. The committee has authorised the reporting, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the resolution agreed by the Assembly on 7 March 2002 concerning the broadcasting of Assembly and committee proceedings.

Before the committee commences taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee in evidence given before it. Parliamentary privilege means special rights and immunities attached to parliament, its members and others, necessary to the discharge of functions of the Assembly without obstruction and without fear of prosecution.

While the committee prefers to hear all evidence in public, if the committee accedes to such a request the committee will take evidence in camera and record that evidence. Should the committee take evidence in this manner, I remind the committee and those present that it is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly. I add that any decision regarding the

publication of in-camera evidence or confidential submissions will not be taken by the committee without prior reference to the person whose evidence the committee may consider publishing.

There are a few housekeeping matters which I need everyone in the room to observe. Witnesses need to speak directly into the microphones for Hansard to be able to hear and transcribe them accurately. Only one person should speak at a time. When witnesses come to the table or when they first speak, they need to state their name and the capacity in which they appear.

Minister, would you like to make an opening statement?

**Mr Corbell:** I am tempted to ask, Mr Chairman, whether you are the mystery MLA that has been referred to in the paper in the last couple of days, because you are the only one whose photo has not shown up.

**THE CHAIR:** I am a man of mystery but we won't be discussing such issues today.

**Mr Corbell:** You are, indeed; not quite Sherlock Holmes, though. I do not have any opening statement, but I and my officials are very happy to endeavour to answer any questions you or members have.

**DR FOSKEY:** On pages 4 and 5, you state that the government has achieved its targets of reduced rates of property crime; nonetheless the number of offences has increased. Looking at table 1 on page 5, if the government achieves a figure much better than the strategic indicator target in one year, why does it not put up its target for the next, and then that target could reflect past achievements and provide incentive to do better?

**Mr Corbell:** I will ask officials to elaborate on this, but can I indicate that the targets that are in place in relation to the crime reduction strategy, in particular property crime, are based on an analysis of the trends of property crime over a period of time and are an attempt to achieve a downward trend in those numbers. Whilst we have seen a better-than-target result, we know that there are trends in property crime that we need to take account of in determining a realistic reduction overall. That is the reason why those figures have been presented in that way. Maybe Ms Leon or Mr Jory can elaborate further.

**Ms Leon:** I entirely agree with what the minister says, but to elaborate a little: the matters that affect property crime are not only government policies and actions by law enforcement agencies but from time to time rises and falls that are caused by other events. It is unrealistic to set the targets having regard only to events that might be caused by those occasional blips in reporting. It is important to look at trends over time and maintain targets that are not only achievable but also sustainable, otherwise one runs the risk of setting targets that are unrealistic and unsustainable.

**DR FOSKEY:** What do you mean by “sustainable” in that context?

**Ms Leon:** We want to keep property crime trending downward, so we continue to trend it downward over time. That is the aim of the policies.

**Mr Corbell:** We know that in the ACT you can see occasional surges in property crime because of the relatively small number of people involved in property crime and the fact that, if someone who has recidivist tendencies comes back into the community, for whatever reason, and starts to commit crime again, you can see a surge in the number of crimes, but they are all being committed by the same person or people. It will often take police a period of time before they identify those people and take appropriate action against them. We see these surges which overall are quite small but which result in an increase for set periods of time. Our strategy is a downward trend over time. I am very pleased to say we have achieved that. Crime today in the property crime area is less than it was when we first came to office. That is a very significant achievement.

**DR FOSKEY:** In this case, you are achieving higher figures than your target, yet you are not changing your target. Obviously the target is set too low.

**Mr Corbell:** No, not at all. Ms Leon and I have just explained to you that the reasons for the targets that are in the strategy are based on an analysis of crime, that type of crime over an extended period of time, and that allows us to set targets which are both realistic and achievable but which are, nevertheless, demanding targets. These are not easy targets to achieve, but they are based on a proper analysis of the trends rather than simply setting targets on a quarter-by-quarter or year-by-year basis, which seems to be what you are suggesting, which is a very short-term way of thinking.

**DR FOSKEY:** Can I ask about the AFP purchasing agreement, or have you got other questions on this particular topic?

**THE CHAIR:** I do not have questions on this particular topic, but you are welcome to move to another area.

**Dr FOSKEY:** It is the same page. The Australian Federal Police purchasing agreement is basic to the way policing gets done in the ACT. Page 5 mentions a joint study into policing needs. That impacted on the latest purchasing agreement. However, from the study, the analysis that was made into how effectively ACT government funding is spent does not seem evident. I wonder whether you could advise us of the areas which have been identified as being capable of having efficiency savings made and whether these findings have been acted on.

**Mr Corbell:** These are difficult issues for the government, because we contract the AFP to provide a certain level of service. How they deliver that service and how they organise themselves internally is overwhelmingly a matter for the AFP. I am not in a position as minister, nor is my department, to direct the AFP to organise themselves or conduct their operations internally in terms of how they organise themselves. I am not in a position to do that.

I am in a position to ensure that they meet the targets set out in the policing agreement, and that is what we seek to achieve. Issues of internal efficiency and administration are matters for the Chief Police Officer and the AFP themselves. I do not have the direct capacity or responsibility for how they organise themselves internally and how they conduct their business.

**DR FOSKEY:** I will finish this here. I am sure others have questions on this. The study made a recommendation that a unit of about five staff be created inside JACS to better monitor reports provided by the AFP to the ACT government because it seems that at the moment there is no ACT government process to check their reports for compliance and ensure accountability or even develop costing models for their outputs. Your answer indicated that.

I know the last budget announced staff cuts. To me, this would seem like a critically important issue for a government that does not have its own dedicated police force. I am wondering whether the ACT government is taking any steps to create such a unit and, if not, how it plans to better monitor reports provided by the AFP.

**Ms Leon:** The way in which the department responds not only to policing issues but to the wide range of policy and operational issues for which we have responsibility is not necessarily to create separate units for each of those. We find it more effective and efficient to have a range of policy matters and operational matters being dealt with within the policy area of the department, and then staff of the department are able to respond on a priority basis, as needs for advice to government arise.

The department is equipped to respond to and analyse the reports provided by ACT Policing. We consider it a high priority to monitor and advise the government on the activities of the police, and we fulfil that function within the department.

**DR FOSKEY:** Can you give me some examples of where that has occurred, where there has been a response and how that has filtered through the department and ended up with the government? Is there an instance that you could give me?

**Ms Leon:** Those kinds of instances are occurring every day. I do not know whether it is really appropriate for me to go into the kind of advice that we give to government, but I can tell you that we have active relations and consultation with the police and that processes are in place by which issues that are raised by the police that go beyond purely operational matters and that have a policy impact are considered by the department and other subjective advice to the minister.

**Mr Corbell:** The best example is the formulating of the most recent agreement. The police put their position to government on that agreement. I was able to make a better assessment of what was reasonable to be in that agreement as a result of advice provided to me by my department, taking into account advice provided by the police. I can assure you that the government looks very closely at what we should be expecting of ACT Policing in terms of our purchase arrangements. The department assists me in analysing and taking into account not only factors that the police have brought to my attention but also factors that the department believes should be brought to my attention on the policing agreement. The process is still an evolving one but one which I have seen significant improvements in since I have been minister.

**DR FOSKEY:** Would you set up such a unit if it became obvious that the right information was not getting through? There have been staff cuts. It must be increasingly difficult to do so.

**Mr Corbell:** There is no doubt that a range of cost-cutting measures are being put in place across government. That puts pressures on all government agencies. The justice department is no different in that regard. But I am confident that we have a level of resourcing available to me to provide advice on issues on the ACT Policing agreement and the interaction between ACT Policing and the government.

**MR STEFANIAK:** In relation to the prison project, what is the level of overspend in the project? Was ACT Corrective Services aware it could not deliver the project within budget if it was of the same scale as originally planned?

**Mr Corbell:** There is no overspend in the project. The project is on budget.

**MR STEFANIAK:** The project itself is going to have about 300 prisoners, I understand, rather than the 374.

**Mr Corbell:** That is correct.

**MR STEFANIAK:** What buildings are not going to be built? In what ways are you scaling back the project from the original concept?

**Mr Corbell:** There are a range of elements of the project that will be reduced in scope. Before Mr Paget grabs a seat, perhaps I can elaborate that the government's intention has always been to not reduce the overall range of facilities that are available for a quality rehabilitative environment, but we have reduced the scale of some of those. It is not about reducing the quality, services or facilities that are needed, but it is about reducing the overall scale of those. Essentially, it means fewer beds. At the end of the day, that is what it means. Mr Paget can elaborate on that for you.

**Mr Paget:** We have made amendments to the capacity, as the minister has said, to bring it down from 374 to 300. We have done that by reducing the capacity of the transitional release centre from 60 to 15, which still represents about five per cent of the population, which is consistent with some other jurisdictions who operate at about four per cent in that area—the new South Australian program, for example. We have reduced the women's area by five beds. We have reduced five beds in the remand area. We have reduced, if I recall, about 20 in the sentenced area. It still gives us the capacity that the figures would indicate we would be comfortable with for the period that we are concerned with.

**THE CHAIR:** The figures—they are the 2001 figures, but they are still on the website—do not seem to be contradicted by any of the figures on the sites that we could find. They suggest that the prison, at 300, would be full in 10 or 12 years. You have got, obviously, revised figures. Where have they come from and when were they prepared? Where can we find those figures?

**Mr Corbell:** Those figures were prepared by ACT Treasury. They were prepared in 2003, if I recall correctly.

**Mr Paget:** Yes. There are two sets of figures on the website. As you are aware, we have put a lot of information out there that has worked well for community discussion. The ones you were referring to were Walker's projections. Walker had three

projections—what he called a base run and two separate scenarios. Under those scenarios, the capacity that he referred to would expire, on the base run, about 2010. The two scenarios would expire in 2008 and 2017. Walker’s work would presuppose the populations would be, now, 277, 292 and 294 when we know, in fact, the population at the moment is only about 70 on remand and 115 sentenced. In any case, we did not use the Walker projections at all when we went to cabinet. As the minister has said, we used Treasury projections.

**THE CHAIR:** Are those Treasury projections public?

**Mr Paget:** Yes. They are on the website. They are in the document there called “Proposals for future ACT correctional facilities”.

**MR STEFANIAK:** On something different: when are we expecting the coroner to report on the bushfire inquest?

**Mr Corbell:** At this stage, it is unclear when the coroner will report, but I would be surprised if it is this year. I anticipate it will be in the first quarter of next year.

**MR STEFANIAK:** On page 16, what is the progress on the implementation of the recommendations of the Auditor-General’s review of the courts administration?

**Mr Corbell:** Progress on that is quite good. The government has introduced a range of measures already to address that. I will get advice on that. We already have an implementation plan in place to address the range of issues raised by the Auditor-General’s investigation and to address other issues identified by the government and the department separately.

We already have a courts governance committee process in place. I meet regularly—in fact, it will be three times this year—with the Chief Justice, the Chief Magistrate, the President of the Court of Appeal, Ms Leon, and the courts administrator to discuss issues of joint interest on the administration of the courts. That is a very valuable forum for judicial officers to raise directly with me issues of concern or interest to them on the administration of the courts. That is a very effective mechanism which is still evolving but which will prove very worth while.

There is already a development of a memorandum of understanding between the courts and the department. That is in development, again, to clarify roles and responsibilities between the department, me and the judicial officers. There has also been a restructure of the registry, with the establishment of a minute manager position and new registry leadership team positions; the upgrading of a number of positions to more senior levels within the registry area to, again, improve management; creation of a client services unit, including a relief pool of more junior officers; some new quality assurance measures; some new management structures; and, in the Magistrates Court, Magistrate Burns has been appointed listing magistrate to help lead the courts and tribunals in reforms to their listing procedures.

That is quite a valuable range of measures. The government will also be proceeding shortly with some legislative reform to better clarify the relationship between the courts and the executive on division of responsibilities when it comes to the



administration of the courts.

**MR STEFANIAK:** How are those listing improvements going? It has been operating for a little while, has it not?

**Ms Leon:** The magistrates held a lengthy discussion amongst themselves about two months ago to develop the model for the listing. The work has been under way in the council of magistrates for a number of months prior to that formal discussion. There are stakeholder forums being conducted at the present time under the auspices of the listing magistrate to ensure that the systems introduced and the reforms made are ones that have the support of the key stakeholders in the justice system. I anticipate that they will be well received and that we will see a system that enables us to make better use of the time of the courts as well as have procedures in place that will be efficient and effective for the users of the courts.

**DR FOSKEY:** I return to page 24 where the antiterrorism laws are mentioned. Our version of the antiterrorism laws came into force this year. I put some questions on notice some time ago. In answer to those, the AFP confirmed what I had feared: they did not see any legal obstacle to detaining a person in the ACT while they were wearing their federal AFP hats or taking them out of the ACT and handing them over to any other state police force. Our concern was always that that might be the one with the least human rights compliant legislation.

You will be aware of my question and the AFP's response. I wonder whether any negotiations have taken place and any undertakings received that ACT citizens, particularly those under 18 years of age, won't be renditioned out of the ACT by our police force, wearing a different hat perhaps.

**Mr Corbell:** The AFP is entitled to exercise its federal jurisdiction if it believes it is warranted. The AFP has always made clear that, if they believe it is warranted and necessary, they can exercise their powers under federal law. There is nothing the ACT government can do about that.

**DR FOSKEY:** When we prepared that legislation, we knew that, did we?

**Mr Corbell:** That should be well understood by all members of this place. The AFP is also the police force of the commonwealth. If they choose to exercise their powers under federal law, in the context of a national investigation as opposed to an ACT Policing investigation, then that is a matter for the AFP. That is the consequence of the AFP having jurisdiction in the way they do.

**THE CHAIR:** On the next page, in relation to some of the legislation from the last financial year, you have made public comments about bringing back a different version of the Civil Unions Act, which has been repealed. What is the status of that? Is that in draft form at this point? What would be some of the key changes that are likely to be made in that process?

**Mr Corbell:** The Civil Unions Act was undemocratically overturned by the Howard government. I note the failure of the Liberal Party to defend the Assembly's rights to legislation in this regard.

**THE CHAIR:** Thank you for the speech.

**Mr Corbell:** The government is currently considering new legislation. I have already indicated publicly that that will be potentially monitored along the lines of the United Kingdom's civil partnerships legislation in a number of regards. The real difficulty the ACT has is that the commonwealth has never in any way given any substantive analysis to us of the detail behind their decision to overturn our legislation. All they have said is: "We don't like it; we think it is too much like marriage." They have never been able to give any substantive, detailed analysis of which clauses and which elements of the legislation they are unhappy with.

Lacking that guidance, we have had to take our best guess at those issues. They would seem to be, from all the comments of the commonwealth Attorney-General and others, that it is on language—how use of language such as "union" would appear to upset people's sensibilities on marriage, the use of "union" and "marriage" and that sort of language and the use of "celebrants" which obviously likens it, in some people's minds, to a marriage ceremony.

Those sorts of issues on language are the reason why we have sought to address it by proposing to use language in such a way that makes it very clear that it is not likened to marriage. It is not meant to be likened to marriage; it is not meant to provide for the same functions in a society as marriage does in a number of ways; it is designed to give equality before the law. That is what we are seeking to achieve. When the government has considered that legislation, I will certainly be tabling it in the Assembly. Everyone will be able to see the detail of it.

**DR FOSKEY:** Page 11 states that the AFP and private security representatives have been meeting. Is there any written agreement between the two sectors, or is this an informal relationship? I'm particularly concerned about this because I receive complaints, especially from groups representing indigenous youth, about the way private security people in Civic, particularly in the Canberra Centre, have behaved towards indigenous youth, without provocation. Is there a legally binding code of practice for private security personnel and, if not, has the ACT government looked into developing one?

**Mr Corbell:** My understanding is that there is a code of practice, Dr Foskey, and private security officers are licensed. We have a licensing regime and that is enforced by the Office of Regulatory Services. Mr Brown can give you some more information about that. If you have specific complaints, I would urge you to report them so that they can be investigated.

**DR FOSKEY:** We did follow up.

**Mr Corbell:** We treat the behaviour of private security guards very seriously. Any inappropriate behaviour should be investigated and there are sanctions available. Mr Brown can elaborate further.

**Mr Brown:** We register security providers in the ACT under the Security Industry Act. We register both the masters—they are the employers of the security persons—

and the individual security operatives. The security employees are required to undertake appropriate training in relation to a range of things relevant to the particular type of activity that they might be involved in and they also undergo police character checks, which look at whether or not they've committed any disqualifying offence that would limit their capacity to be registered in any one of the areas of specialisation under the legislation.

There are also provisions in relation to their conduct and there are obligations under the legislation as to how they undertake their work, the requirement to wear identification and those sorts of matters. So, if there are complaints about the activities of security providers—either the master licensee or the employees—our office would investigate those and, where appropriate, take disciplinary action before the Consumer and Trader Tribunal.

**DR FOSKEY:** Are you able to take action where the behaviour of the security guards is more in the line of bullying-like behaviour, shall we say, which is not actually illegal but a bit discriminatory?

**Mr Brown:** It needs to be an offence under the legislation for our powers to come into play.

**DR FOSKEY:** It's difficult to enforce that then, isn't it?

**Mr Brown:** We would investigate the matter and satisfy ourselves about whether a breach of the act has occurred. If it has, we'll make a decision and appropriate compliance action might well be taken. That could be anything from verbal warnings, discussions with the security operative's employer and, ultimately, applications for cancellation of their right to be involved in that sector of the industry.

**Ms Leon:** I might also add that if the conduct complained of is said to be discriminatory in that the security guards are taking action differentially—for example, on the basis of the example that you gave, on the basis of race—there could well be action available to those people under the Discrimination Act to complain of discrimination.

**DR FOSKEY:** I think they would need a lot of support to do that.

**MS MacDONALD:** On the issue of private security companies, what role does the Office of Regulatory Services now play in monitoring training of security guards and the companies that provide that training?

**Mr Brown:** That's not our role particularly. Under the legislation there is a series of training obligations that employees have and they're the national core competencies related to security. We have regular discussions with the overarching body that gets involved in the security training in the ACT, as well as individual trainers, about what's occurring in the marketplace, but the provision of those services and compliance with their obligations as registered training organisations are a national issue.

**MS MacDONALD:** Yes, I know that but—

**Mr Brown:** So we don't focus on that aspect of it. We satisfy ourselves that—

**MS MacDONALD:** So when you talk about the overarching body who are you talking about?

**Mr Brown:** There's the local training—I can't just remember the acronym that it goes by—organisation that oversees—

**MS MacDONALD:** Training and adult education?

**Mr Brown:** No, not the government. There is another group that represents the interests of the trainers within the security industry, within the real estate profession—a number of those grouped together under one—

**MS MacDONALD:** You're not talking about the ITAB, are you, which doesn't exist anymore?

**Mr Brown:** No. We used to deal with that, but I know that it doesn't exist any more. We've continued our relations in that with another group. We also meet with individual trainers to satisfy ourselves about what's occurring in the marketplace concerning training of security people. We get information fed to us by employees about issues to do with the availability of training and what they think about the courses, so we think it's appropriate to pass that on directly to the principal training providers here. But we don't regulate their activity.

**MS MacDONALD:** So who makes up this organisation?

**Mr Brown:** As I said, we meet with most of the principal training providers—Chubb; there are other individual companies.

**MS MacDONALD:** Group 4?

**Mr Brown:** Yes, Group 4 and the other major training providers, Quest, and then there are some individuals who get involved in that as well in the security area. We meet with them on an as-required basis, but a couple of times a year generally, just to be across the sort of concerns that they have.

**MS MacDONALD:** And is there a mechanism for following up if there are complaints against the training that is provided?

**Mr Brown:** If we receive those sorts of complaints we take it up with the adult education area or with the commonwealth department that has provided the registered training authority approval.

**THE CHAIR:** I want to ask some questions around corrective services. Firstly, minister, page 37 of volume 1 of the report talks about the drug strategy being prepared. It has as its three aims supply reduction, demand reduction and harm reduction. What are some of the strategies being looked at with a view to achieving each of those aims and when are we likely to see this drug strategy completed?

**Mr Corbell:** I'm not going to announce a government policy on health services in the prison ahead of the government's consideration of that. As I've indicated in the Assembly previously, the corrections health plan for the prison is still under development within government, so I think it would be pre-emptive to outline those issues as they relate to the prison ahead of government's consideration of it. The policy has not yet been resolved.

**THE CHAIR:** So when will the drug strategy be completed?

**Mr Corbell:** It's not a drug strategy; it's a corrections health plan, which involves all elements of corrections health.

**THE CHAIR:** It says here in the annual report: "ACT Corrective Services is currently developing a Drug Strategy." Is that wrong?

**Mr Corbell:** I beg your pardon; that is also under development. Obviously, there is a clear relationship between a drug strategy and a corrections health plan. They're both under consideration. I would anticipate they'd be resolved, obviously, before the prison is commissioned in 2008.

**DR FOSKEY:** On the corrective services website there is something called the finalised drug strategy. I did ask you about this in the house and I'm not sure that you knew that it existed. I'm interested in how it's on the website without your apparently knowing that it existed or even perhaps approving of it. So to all intents and purposes there is a finalised drug strategy?

**Mr Corbell:** That strategy is for corrective services' current operations. Corrective services run facilities now at Symonston and Belconnen. That is the strategy that is informing and guides their work in the existing corrective establishments.

**DR FOSKEY:** It's good to know that, because no one in your office got back to us about that and we were quite assiduously following it up.

**Mr Corbell:** I apologise for that, Dr Foskey. I'm glad I've been able to answer your question.

**THE CHAIR:** On that, minister, you're still not ruling out a needle exchange for the Alexander Maconochie Centre?

**Mr Corbell:** I'm not going to speculate on what is in a corrections health plan ahead of government's consideration of it.

**THE CHAIR:** Okay. I wasn't here for this part of estimates but I understand that there was talk about mixing remandees and inmates. Is there any progress on that? For the new prison will there be mixing of remandees and inmates or sentenced prisoners?

**Mr Corbell:** This issue has been blown out of some proportion. I think Mr Ryan and Mr Paget when they were asked about this during estimates indicated that there may be in very limited circumstances situations where certain types of prisoners, both

remand and sentenced, would potentially come into contact with each other. This was particularly so in the area of women prisoners sentenced and remanded. I might ask Mr Ryan if he can just clarify or explain what was meant about this so that any misunderstanding from Mr Stefaniak and others can be resolved.

**Mr Ryan:** The general principle that we follow, as with other jurisdictions around the country, is to keep women and men separate with respect to their incarceration, and within that there's a further division of separating remandees from sentenced. There does come a time on occasions, though, and our prison is a case in point, where they have to be, because of economies of scale and the numbers concerned, within the same compound.

Within the new centre it is intended to keep men and women separate. It is also intended to keep remandees and sentenced prisoners separate. With respect to women, though, the numbers on occasion are so small that we think it simply won't make sense, for example, to exclude one individual female prisoner from attending a program being run for the others just because she is on remand, if she wants to. That sort of mixing, when it occurs, will be done on a basis of having assessed the risk and the need involved. Other prisons around the country face the same sort of problems and follow the same sorts of principles. Certainly, there's no question of any mixing with respect to accommodation, even in the way that occasionally we've had to do at Belconnen Remand Centre where they are within the same block although still separate with respect to accommodation. In the new centre, the accommodation will be totally separate.

**THE CHAIR:** Was there anything else in this area, Mr Stefaniak? You had some questions? I have more prison questions. I want to move to numbers in a moment.

**MR STEFANIAK:** I just have one in relation to numbers and that was the decline in remandees, on page 34. What's that due to? Is it due to changes in sentencing or any other factors?

**Mr Ryan:** Predicting prisoner numbers, remand or sentenced, is always difficult. We've used consultants in the past. Other jurisdictions have. I don't think even Nostradamus would get it right. It's a very difficult thing. I don't really know what has caused that change in numbers. But, for what it's worth, as at today, for example, we have 70 remandees. Earlier in the year it was down to 40-something. It fluctuates wildly and it's very difficult to predict. I don't think we'll ever predict it down to the last 10 per cent.

**MR STEFANIAK:** And the most we've ever had was about 90, wasn't it?

**Mr Ryan:** Yes, we had up to 99, I think.

**THE CHAIR:** Just on those numbers and going back to the discussion we had before about the reduced scale of the prison, I understand, and I think Mr Paget was saying before, that the updated figures were 2003 figures; is that correct?

**Mr Ryan:** That's correct.

**THE CHAIR:** I'm just trying to get a handle on them. In the 2004-2005 annual report hearings when this same issue came up, the Attorney-General at the time was adamant that, because of, as you've identified, the difficulty in predicting numbers and the sudden spikes, 374 was still very appropriate. What has changed in the last financial year, apart from the financial realities, that would now make 300 appropriate? Was 374 ever necessary, or has something changed since the last annual report hearings that would suddenly make 300 an acceptable amount for the next 40 years or so?

**Mr Corbell:** Nothing has changed. The figures that we are using today are 2003 figures, and obviously nothing has changed between now and then. It has always been the government's preference to have 374 beds and that's what the former attorney would have said to you. But we have seen an increase in the construction costs of the prison, quite significantly given the very inflated construction sector in the territory at the moment, and the government's other commitment has been to ensure that the prison is delivered on budget, so that has meant a reduction in the scale of the facility but in a way that still meets our medium-term needs.

**THE CHAIR:** If you're comfortable now that the needs will be met for 40 years and given that nothing's changed, wasn't it just an extravagance to be pushing for 374 beds in the first place?

**Mr Corbell:** No, it's sensible long-term planning.

**DR FOSKEY:** I want to ask a little more about the health plan. How are corrective services working with health to develop the prison health plan and other areas where there is mutual overlap?

**Mr Corbell:** Corrective services meet regularly with the department of health and their discussions inform the development of the corrections health plan. The corrections health plan is ultimately the responsibility of my colleague Katy Gallagher to bring forward to cabinet, but it's informed by an ongoing dialogue between health and corrective services and the prison project.

**DR FOSKEY:** What happens when there's a conflict between what's seen as security in a prison and the provision of health services? Are there some guidelines or principles to decide where the weight should fall?

**Mr Corbell:** These issues are worked through on a case-by-case basis, and where there is ultimately a difference of opinion between two policy areas that is resolved by government, as is the case in any circumstance where there's a difference of opinion between policy areas within government. That's why you have a cabinet process—to resolve those.

**DR FOSKEY:** Finally on that: a number of community organisations have identified services that they could provide to the prison population, and possibly this would be a cost-saving measure for government, but it's difficult for them to provide them in their current operating budgets. Has the ACT government taken steps to identify these particular services or thought about providing the funding to community organisations to provide them, and, if this has occurred, is the cost of these services included in the \$20 million a year estimated running costs of the prison?

**Mr Paget:** Dr Foskey, I think you asked the same question last year or at the estimates earlier on.

**DR FOSKEY:** You have such an excellent memory, Mr Paget; I commend it.

**Mr Paget:** We've only just completed the programs planned, which is on the website, and when we start to recruit our key program staff next year the aspect of which community agencies are available to deliver some services will be explored with those agencies. There are some 77 separate groups with whom we are engaged and have been engaged since 2003, some of whom are service providers. I can't tell you at the moment who will deliver what, but one such example is the provision of vocational education and training through Auswide, a company based, I think, at Merimbula. I can't tell you at what stage who will provide what, but that will be done, certainly in the 2007 calendar year.

**DR FOSKEY:** When are we expecting the prison to be up and running?

**Mr Paget:** May 2008.

**DR FOSKEY:** Right, so there's a lot of work to do next year by the sounds of it.

**Mr Paget:** There is. You raised the issue of the drug and alcohol plan. We have over 100—nearly 200—policies and procedures that have still got to be written for this place. We've written about 60, but you're right: there's a lot of work to be done.

**Ms Leon:** I think it's worth adding at that point, Dr Foskey, that, although there's a lot of work to be done over the period of time before the commissioning of the prison, a considerable amount of work has been done and the prison project has been dealing very actively with all of these issues in planning for the opening of the prison. The annual report details quite considerable efforts that are being taken, and have been taken over the past year, including the establishment and active operation of a wide range of working groups, to deal with the range of aspects that will need to be sorted not only with community groups but within government for the opening of the prison. I'm confident that the work that's being done has placed us in good stead to complete the planning for all of the programs and other matters well before the prison opens.

**DR FOSKEY:** On page 37 there's a list of other non-prison offender intervention programs. I was wondering if there are any statistics that you could provide to show us the effectiveness of those programs?

**Mr Corbell:** We'll take that on notice, Dr Foskey, and see what information is available for you.

**DR FOSKEY:** Okay. I'd be very interested in that, thank you.

**MR STEFANIAK:** On page 34, what work are ACT Corrective Services doing with Tasmanian Corrections over the offender management database? I think the cost is \$82,500. There is also reference on page 82.



**Mr Ryan:** The JOIST database was the one that we bought from Tasmania, together with youth justice. It's up and running in all parts of the organisation. They will have it running in the programs area by the end of this month, we expect. It's maintained on the basis of collaboration with Tasmania and together we identify areas of the database that need to be given further attention and funding.

The corrective services component of the purchase was \$75,000—it was a very cheap database—and, since we bought it, we've spent annually, I think, something less than \$30,000 a year to maintain it. We expect to continue to do that in the coming year. We also expect that the database will be developed such that it will see us through and well into the establishment of the new centre.

**THE CHAIR:** Minister, in relation to recurrent costs for the prison, I think around the time of the budget you were talking about around \$20 million per annum in recurrent expenditure. Are you able to give us an update on that? Has that changed with the revised scope of the prison?

**Mr Ryan:** No, the operating costs remain the same. The forecasts are such that on present planning we'll deliver the operations for that cost—certainly not in excess of it.

**THE CHAIR:** What does that amount to approximately, and—you might need to take this on notice—in cost per prisoner per day?

**Mr Ryan:** I can't give you a cost per prisoner per day, but another way of putting it is that the amounts that we currently spend on remand and sentenced prisoners in New South Wales, at today's rates, will be approximately the same, if not slightly less.

**THE CHAIR:** You say you can't; are those figures just not available or you just don't have them to hand?

**Mr Ryan:** Those figures are available. For example, today we have a figure for the cost of sentenced prisoners in New South Wales, which has recently gone up by an average of seven per cent, we have a cost of remandees in the ACT, which is a huge cost because of the lack of economies of scale, and then there's an overall figure. What the overall figure is I can't give you off the top of my head, but when we put together all of those figures and project what we'll do with those remand and sentenced prisoners in the new facility the figure will not be exceeded.

**THE CHAIR:** So we do have an estimate then somewhere of approximate costs per day?

**Mr Ryan:** Yes, I can give you a breakdown of all of those.

**THE CHAIR:** That would be good, thank you. I want to turn to an area we had some discussion on, I believe, in estimates in relation to where our prisoners have come from. In a previous submission to the grants commission it was put out that 45 per cent of prisoners serving sentences in the ACT were from New South Wales. Subsequently, minister, you've disputed those and said it's 15 per cent. Has there been a change in methodology? What was the mistake that led to 45 per cent being

identified as being from New South Wales and what has changed?

**Mr Corbell:** I think you need to ask Treasury that; they were their figures. They produced a submission to the grants commission.

**THE CHAIR:** But you're using those figures, so you must have an understanding

**Mr Corbell:** No, I'm not using those figures. We have a database of where our prisoners come from and I've provided those previously to you in answers to questions on notice.

**THE CHAIR:** But the submission to the grants commission was incorrect—that 45 per cent was incorrect?

**Mr Corbell:** I think it would be fair to say that that submission was not as detailed an analysis as I've subsequently been able to provide to you.

**THE CHAIR:** Sorry; what do you mean by that? What has changed in detail that has changed those figures?

**Mr Corbell:** I don't know exactly what basis was used to determine those figures that were in the grants commission submission; what I do know is that corrective services know exactly where each of our prisoners resided prior to them being sentenced or remanded, and I've given those figures to you. The figures are, as you say, around 15 per cent from outside the ACT.

**THE CHAIR:** And that incorrect submission was subsequently corrected with the relevant people?

**Mr Corbell:** I don't know; I'm not responsible for submissions to the grants commission.

**MR STEFANIAK:** Are we dealing with matters in volume 2 as well as volume 1?

**THE CHAIR:** We're dealing with the entire spectrum.

**MR STEFANIAK:** In volume 2, on page 5, why did the accounting for the new prison site increase revenue by \$3 million?

**Mr Corbell:** Which point are you referring to there, Mr Stefaniak?

**MR STEFANIAK:** Under the heading "Components of Own Source Revenue" it states:

The Figure 3: Components of Own Source Revenue indicates the components of actual revenue for 2005-06. The total revenue was \$10.8 million, which comprised gains of \$3.0 million ...

**Ms Leon:** I'm advised that that relates to the valuation of the land, so from acquiring the land we then have what's counted in the accounting system as revenue because of

the value of the land.

**MR STEFANIAK:** On page 11 of volume 1, what did the review of the victim services scheme by a reference group aim to achieve? When will the government respond to its recommendations? That one also seems to have been going for quite some time.

**Mr Corbell:** That is currently before government for its consideration and is subject to a cabinet process.

**MR STEFANIAK:** I take it that VOCAL were spoken to. At about this time last year, there were big concerns that they had not even been spoken to.

**Mr Corbell:** There have been extensive discussions with all of the stakeholders, including VOCAL, as a result of that review. I have been advised as to the detail of that. That is currently in a cabinet process to prepare a government response. It is still anticipated that it will be dealt with this financial year.

**MS MacDONALD:** I refer to the Crimes (Sentencing) Act, which is referred to on page 6. I am aware, or it is my understanding, that home detention has been done away with. Is that correct?

**Ms Leon:** That is correct.

**MS MacDONALD:** You talk on page 6 about trying to find the most appropriate sentence for offenders, et cetera, dealing with their background and taking all that into account. With the home sentencing option not being around, has that had an impact in terms of the availability of options? What is that impact?

**Mr Ryan:** When the home detention scheme was introduced it was not widely used. It is correct to say that it reduces options, obviously. We are now one of the few jurisdictions that do not do it.

In due course, the use of the technology is something that corrective services will revisit in respect of not just options for home detention, but for use with prisoners on day release work release. If we think it is worth while, we will be putting forward an option for funding for that in due course. At present home detention and its absence is not really something we can measure in respect of how it affects offenders in the ACT at all. The numbers were always very few, often less than five.

**MS MacDONALD:** You talk about the technology. I have never been incarcerated and hopefully never will be. With those things like ankle bracelets, are there changes being made to the technology? Is that what you are implying?

**Mr Ryan:** Yes. The technology has advanced since we stopped using home detention in the ACT. We have now, though, a background in the use of the option. If ever we were to reintroduce it, we could reintroduce it very quickly. The technology has now changed such that it uses satellite technology rather than the previous technology, which required that the offender report to or be close to a device that was positioned in their home or their workplace. It is quite different from the RFID technology that

we intend to use in the prison.

**MS MacDONALD:** What does that stand for?

**Mr Ryan:** Radio frequency identification technology. We intend to use that in the prison. That is technology that requires that, once again, the offenders have to wear a bracelet of some kind, but the detection of their location is picked up by a number of sensors that are deployed throughout the centre.

**MS MacDONALD:** I do not know if this applies to you, Mr Ryan. With the Crimes (Sentencing) Act, can somebody elaborate on the changes or improvements, hopefully, that has made and how that is being implemented?

**Mr Ryan:** It has proven to be in part difficult for us to introduce. But that was only a matter of the parties involved getting across the detail of the legislation. For me, as a correctional administrator, it has not had any discernible effect at all on the operations.

**DR FOSKEY:** I would like to ask some questions about the Essential Services Consumer Council. There is quite a substantial annexed report. The report shows that the number of hardship applications has risen dramatically from year to year. The report starts at page 100 and on page 105 makes that statement. Perhaps due to the council's increased workload, the number of people not meeting their conditions has risen. Has the ACT government increased its level of support to this council to assist with its increased workload?

**Mr Sutherland:** The hardship workload has been increasing and funding has been increasing commensurate with that rise since the council commenced in 2001. The funding is not ACT government funding, it is funding from the utilities under a levy system.

**DR FOSKEY:** From ActewAGL—from the providers in each case?

**Mr Sutherland:** The levy is determined by the ICRC, the commission. It is based on a formula approved by the commission. That is based essentially on the number of applications or the number of hardship cases or complaints. ActewAGL is by far the largest contributor. ACTEW Corporation also makes quite a large contribution and Energy Australia makes a fairly small contribution.

**DR FOSKEY:** On page 110 it says that the special circumstances discharge is likely to increase in 2006-07 due to, among other things, the introduction of welfare-to-work. As yet in this financial year, have you seen any flow-through from that policy that you are aware of or that you could isolate?

**Mr Sutherland:** We are closely monitoring the impact of welfare-to-work. The answer is simply that there is no impact whatsoever yet because the new participation breach system is not really operating yet. We have had no cases. The current breach system is operating, namely where people lose their Newstart allowance, and we see that. That is a constant factor in the work. The new arrangements which will affect parents and disability pensioners simply have had no impact yet. The major impact on our hardship workload that we have identified recently is the very cold weather in

April and May.

**DR FOSKEY:** Some of your case studies indicate the special circumstances that can apply. One of the things you pointed out was the ducted gas heating issue. There was a systemic problem in new tenants' use of ducted gas heating in ACT Housing properties as tenants found out about the high costs when they got their bills. Has there been any action since you met with DHCS in May to discuss it? Has there been some useful follow-up and any diminution of the problem?

**Mr Sutherland:** In the report, we reported on our meeting with DHCS. We reached a number of agreements at that meeting. I am not aware of what action DHCS has taken on the various things that were discussed with them.

I do not think we have had too many ducted gas heating cases come through in the last few months, even though it was peak wintertime. But it is not simply a problem with DHCS. It is also a significant problem in private tenancies, because often the systems that are installed in private tenancies are the bottom of the market and therefore quite inefficient.

**DR FOSKEY:** Did you identify as an issue the ability to isolate rooms?

**Mr Sutherland:** That can be a problem. The other problem is that one of the really large cost drivers in ducted gas heating, I understand, is the temperature settings. Sometimes you cannot even vary those, or they are preset.

**DR FOSKEY:** Finally from your report—and I am sure there is a lot more we could talk about—on page 120 there are concerns expressed about the introduction of the electricity prepayment meter system code, and the ICRC has been ordered to consult with your council about the social impact. I am interested in whether these consultations have concluded and whether there has been an outcome.

**Mr Sutherland:** The Chief Minister asked, or I think directed, the ICRC to consult with the council after an issues paper or a draft report was issued. Trish Walsh, another member of the council, and I had a series of meetings with the commission about that. Significant progress was made on addressing some of the issues we were really worried about.

I have to say that there are members of the council who simply stand in outright opposition to the use of prepaid meters in the territory. There are other members of the council, including me, who think that, provided the regulative framework is adequate, it is not too great a risk to see what happens. If problems start emerging, then it will need regulatory response at that point. I am relatively happy with the final form of the code, although we will have to see.

The primary intention the council had for the code was to prevent them ever being installed in low-income households, because that is where problems are. If they are installed in medium or high-income households, they can then become a budgeting tool, a convenience tool or time-of-day tool—those sorts of things. In a low-income household the way it is used is to disconnect when you cannot afford it. That is what the council objects to. Hopefully it will become financially unviable for a supplier to

have prepaid meters in that type of household where they are constantly disconnecting.

**DR FOSKEY:** But we will not know. You say “hopefully”.

**Mr Sutherland:** We will have to see it in practice, because the code has been approved. It was approved, I think, a month ago. It is fairly unlikely that there will be a rush into the market. The only likely entry will be Aurora Energy from Tasmania. I do not think they have current plans, because they are implementing in South Australia. I think they will want to roll out there before they come here.

**THE CHAIR:** Minister, in relation to the comparison with the original budget, on page 4 of volume 2, it talks about an increase in expenditure, including \$1.3 million for legal counsel due to the coronial inquest into the 2003 bushfires. I am trying to get a handle on what that figure means. Was \$1.3 million in total spent in the financial year on counsel for this purpose, or is that an increase of \$1.3 million on the previous year or on the budget? Are you able to talk us through that figure?

**Mr Garrison:** The increase in legal expenses has, in fact, been across the board, relating principally to counsels’ fees, medical experts, investigation fees and the like. The increase in expenses is, in fact, reflective of the change in the payment structure in relation to those legal expenses.

What previously happened was that a number of those expenses were met directly by departments. With the introduction of the ACT Insurance Authority and the increasing take-up of the authority of the management of claims, the payment of those expenses now goes through the territorial account. It is then reimbursed by the insurance authority to us and then a reimbursement is made to the territorial account. In fact, the payment was a little over \$1.1 million that was reimbursed to the account. So the figures do not reflect that reimbursement.

**THE CHAIR:** In net terms it was \$200,000. The \$1.1 million you are talking about is overall legal expenses, is it?

**Mr Garrison:** It is overall legal expenses.

**THE CHAIR:** On this specific one of “legal counsel, \$1.3 million,” is that a figure of \$1.3 million in total spent on the coronial this year, or is that a \$1.3 million increase in legal counsel expenses in the financial year for the coronial?

**Mr Garrison:** No. That is not the total cost of legal counsel. I would need to take on notice to provide you with the actual increase in costs. As you may be aware, the funding of the coronial inquest is not met through budget appropriations; it is funded through the ACT insurance arrangements. So there is, in fact, no net cost to the territory. They are reimbursed on a regular basis using the same mechanism—that is, meeting of the expense then reimbursement by the ACT Insurance Authority. So although it is an expense to the accounts there is, in fact, no net cost.

**THE CHAIR:** Could you then on notice find out for us what that figure represents, what the total spend, reimbursed or otherwise, was in the last financial year on the coronial inquest and the legal counsel for the coronial inquest, and whether that

represents an increase or a decrease from the previous year?

**Mr Garrison:** Certainly.

**DR FOSKEY:** I would like to ask some questions about the Mental Health Tribunal—pages 140 to 141. I am interested to notice the increase in the number of applications and approvals for involuntary administration of electroconvulsive therapy. I was wondering if it is possible to let us know why this is and whether it has any connection to the legislation that was passed last year regarding the procedures for proposing such action.

**Mr Corbell:** I would need to take that on notice. I can try and get some information for you on that.

**DR FOSKEY:** Thank you very much. In relation to remandees in this case with mental health problems, page 144 notes that the Official Visitor writes that she does not consider it appropriate for persons with serious mental health issues to be detained at the Belconnen Remand Centre and that one detainee with mental health issues was still there after 21 months. I would be interested in the government's response to this statement and to this situation.

**Mr Corbell:** This is an issue of ongoing concern for the government as well. We seek, wherever possible, to avoid people with serious mental illness needing to spend extended periods of time in the Belconnen Remand Centre. We do that in a variety of ways.

There is the option for those people who need a significant level of care to be detained in facilities in New South Wales. I know from my previous role as Minister for Health that Mental Health ACT take extensive and ongoing steps to try and secure accommodation in forensic facilities in New South Wales for people with serious mental illness who are captured in the criminal justice system.

The government has also taken steps to provide for secure detention at Brian Hennessey House for particular types of clients. Those facilities are in place. I am unaware as to how extensively they have been used. That would have only taken place since the change in portfolio responsibilities earlier this year.

The other issue I should draw attention to is that the government, in its planning for the prison, has recognised the need for certain facilities within the prison health complex, as well as the need to establish a secure, dedicated facility at the Canberra Hospital. That planning work is ongoing, as I understand it, within the Health portfolio.

We have a framework in place that recognises that a range of settings needs to be provided. At the moment, though, I would have to say that our progress towards that is incremental and that there are some instances where people with mental illness are detained for extended periods of time in the remand centre. Mr Ryan may be more familiar with the circumstances around those sorts of instances. I will ask him to elaborate a bit further.

**Mr Ryan:** There is not much I can add, except to point out that there is a detainee there now, who has been there a day or two over two years, who falls into this category. There have been a number of others in the past too.

We recognise, though, that there are facilities yet to be developed for secure mental health requirements for those on remand. We work through that with health. When the new facility opens, there will be a greater capacity for us to handle those people but, once again, it is only ideally on a short-term basis. We look forward to the opening of the new forensic mental health facility in due course.

**DR FOSKEY:** Given that the Official Visitor says that something like 25 to 30 per cent of all detainees held there have a mental illness, I expect this will also go through to the prison population. She made two recommendations. Of course, she had a couple of good things to say as well—and I want to acknowledge that. She believes that drug and alcohol program provision has improved. I definitely want to give credit where it is due.

She recommended that remandees would be benefited by organised recreational activities on a permanent basis within the centre. She identified the lack of a full-time long-term recreation officer as a problem there. She also recommended an increase in the pro rata unemployment rate paid to detainees of \$2.50 a day, or \$12.50 per five-day week. I wonder whether there is any chance of those two recommendations being implemented.

**Mr Ryan:** Taking the last one first, that has been acknowledged and the rate has been increased since the beginning of this financial year.

**DR FOSKEY:** I want to offer my apologies to Mr Potts.

**Mr Ryan:** Yes. As far as the first one is concerned, we are still bedevilled by the lack of appropriate facilities for certainly anything outdoors in the Belconnen Remand Centre or in the Symonston temporary remand centre. The problem often is moving detainees from where they are in those centres to where they can do something; that is tedious. It requires going through areas where there are prisoners that they cannot mix with, to facilities that are very inadequate anyway. We do our best, but it is still not ideal. When the new centre opens, though, the facilities will be vastly improved. I do not think we will see much of an improvement in that regard until then.

**Ms Leon:** Dr Foskey, before we leave the area immediately before this, where you asked about the increase in applications for electroconvulsive therapy in the Mental Health Tribunal, I thought I should indicate that this portfolio probably is not the right one to assist you with that question. The tribunal responds to the applications, but the applications are generated out of the Health portfolio. So it might be more fruitful to ask officers of Health as to the drivers behind that increase in applications.

**DR FOSKEY:** I do not know if Mr Corbell will let me ask this. I am giving you a way out, Mr Corbell. Last year Mr Hargreaves—

**MR CHAIR:** Do not give him a way out. Just hit him with it.



**DR FOSKEY:** No. I am too nice.

**Mr Corbell:** I am not like Mr Hargreaves.

**DR FOSKEY:** I know you are not—and I have appreciated that this morning. It relates to page 29 of the Ombudsman's report, but it is about the AFP complaints system. That is why I believe it is appropriate to ask it here. I am very pleased to see that the recommendations from the Fisher review have been acted on. I understand that JACS was part of the Fisher review implementation group. I was wondering if I could be advised as to what JACS's input was to the process and if they have any concerns about the changes.

**Mr Corbell:** I will ask Brett Phillips, who is deputy chief executive, to provide you with some information on this. He represented the department through that process.

**Mr Phillips:** We have had involvement, and hence consultation, through the Attorney-General's Department from the commonwealth and also through the AFP and the commonwealth Ombudsman. A couple of staff members have been involved and were provided with copies of the Fisher review quite some time ago. It must have been two years ago. It was quite outstanding for a while.

We have had some extensive consultation with the Ombudsman. We have been invited to two functions where the Ombudsman has portrayed what they are going to do and how the new system works. We are quite satisfied that we have been informed of what the commonwealth has intended to implement as a result of the Fisher review and our views were sought. As I said, it is some time ago. It has taken a while for it to be implemented at commonwealth level.

**Meeting adjourned from 10.59 to 11.19 am.**

**THE CHAIR:** Mr Garrison, you had something to clarify for us.

**Mr Garrison:** In regard to my earlier answer to your query about the \$1.3 million for legal counsel, I am advised that is a group figure for the whole department. It would include, for example, expenses over which my office has no control—expenses that have been incurred by the courts, the DPP and the like. I understand from officers in the department that they will break down that figure to provide an answer to your query, but I thought I would clarify that is in fact what that figure represents.

**THE CHAIR:** That would be great, as long as it provides that comparison that I was after and where it sits. Is it an increase or is it a total? That would be very helpful. Thank you very much.

**Mr Corbell:** We are done with the bulk of the JACS portfolio and we are onto the statutory offices.

**THE CHAIR:** Yes, we will move to the statutory offices now. I will commence. The annual report for the Public Advocate, at page 6, talks about the new legislation coming into force on 1 March 2006. Are you able to tell us how that new legislation has been going since it came into effect?

**Mr Corbell:** It might be more appropriate that I ask Ms Phillips to do that. She is familiar with what it means day-to-day; so I might ask the Public Advocate herself.

**Ms Phillips:** The elements of the Public Advocate Act are not, in principle, very, very different from the community advocate act, but it allows us to assert a public and therefore a statutory role as opposed to the plethora of community advocates that there are in the community who advocate for people with disabilities, for people who are aged, for a whole range of people. The Public Advocate Act really acknowledges that we have a statutory role. Included in that act is our role as legal guardian, which is the most important legal and statutory responsibility that we hold. In terms of the changes, there is a focus on our monitoring and encouraging the development of and finding out where there are gaps in services for the particular group of clients for whom we are responsible.

**THE CHAIR:** In relation to that legal guardianship role, are you able to clarify for me that, under the new act, it is still the case that those people who are incapacitated or otherwise do not have a power of attorney are represented by the Public Advocate? Is that the case?

**Ms Phillips:** The Public Advocate Act does not change the Guardianship and Management of Property Act. It still allows us to be appointed, as it says in the act, guardian of last resort. That means where the person has incapacity and has nobody else who is suitable to be appointed. A lot of the applications that come before the tribunal are for family members to become guardians, particularly for an aged relative. There are increasing numbers of aged people and others in the community who either do not have family or do not have suitable people who are prepared to take on the somewhat onerous role of being a guardian.

**THE CHAIR:** If it is the case that there are family members who are willing and able to do the job, ordinarily that would happen regardless of whether there is a power of attorney in place?

**Ms Phillips:** The power of attorney allows, if all parts of the power of attorney—that is, the financial, the lifestyle and the medical parts—are completed, the person to make some decisions on behalf of the person. But a power of attorney must be signed while the protected person is competent; that is, it has to be signed some years ago. Unfortunately, despite all of our community education programs, not a lot of people think in advance to complete a power of attorney. Therefore, a lot of people become incompetent and do not have a power of attorney previously signed. So they need to be protected under a guardianship.

**THE CHAIR:** But that would ordinarily be done through a competent and willing family member, if possible? You would come in as last resort, if not?

**Ms Phillips:** Absolutely, yes.

**MS MacDONALD:** On page 23, you talk about—and you have mentioned it in passing—the increase in the guardian of last resort. That is a significant increase that we are looking at, going from 67 in 2003-04 to 109 in this last reporting year. You

said there are an increasing number of aged people. Is that the only reason? What reasons do you give for the increased number?

**Ms Phillips:** It is a combination of fairly complex demographics that are occurring, in the ACT particularly. Everybody knows that the cohort of people who are over 65 or over 60 at this stage is increasing in the ACT from a fairly low base. We did not have a lot of older people; we did not have the same number of older people in our community here as were in other communities. We are very soon going to have probably more people, percentage wise, in that older cohort. That is one of the contributing factors.

The other is the numbers of people who become incapacitated because of other reasons, particularly those surviving brain accidents. Car accident victims who may have died previously are now surviving. People suffering aneurysms and brain tumours are surviving but often are no longer competent to make decisions for themselves. In our statistics, we had approximately 30 new cases referred to us as guardian of last resort which, by national standards, would be a caseload for an additional person, which we did not have. In that number of approximately 30, a little bit less than half were in fact under 60.

**MS MacDONALD:** Thank you for that. On the issue of power of attorney that you were talking about before, what do you think is the awareness on power of attorney? Given that we are facing a large increase in numbers of people over the age of 60 and 65 from a relatively low base, do we need to have some campaign about power of attorney? I appreciate that there are a lot of people who think it will never happen to them or do not want to face the fact that they might be incapacitated. Do you think that is a way that we need to go?

**Ms Phillips:** Certainly. We are always rolling out our power of attorney community education talk to any group in the community that approaches us, but it is included in the whole-of-government policy and strategy for ageing. One of the components of that is to increase people's understanding of what could happen to them should they lose capacity. That is to be applauded and supported. To have a campaign that would increase people's awareness of it would be very, very good. Of course we would need some resources to be able to meet it because it does need to be rolled out and we need to talk to people. We are all doing it all the time. I have been doing a range recently. Everybody that comes to the meetings wants to fill out the forms and complete them.

**THE CHAIR:** Going back to my questions earlier on that process, is there, in your opinion, a general awareness in the community that it is not the next of kin automatically that would have the power to make decisions on people's behalf, or is that something that also needs more community engagement?

**Ms Phillips:** There is a little bit of a complication here in that there are two issues that you are alluding to. One is that nobody can make decisions on anybody's behalf without a document such as a power of attorney having been signed. In a lot of other jurisdictions that only refers to financial and property. In the ACT there are three components of an enduring power of attorney: the financial; lifestyle, where you are going to live if you do not become competent any more; and medical.

The additional complication is that in the ACT we do not have enabling legislation that allows a next of kin to make a decision for somebody who becomes incompetent, maybe as a result of an accident—someone falls off a ladder at home and is unconscious. The next of kin cannot make those decisions. That is why we have this additional role in the ACT as Public Advocate; that is, to be emergency guardian.

I or my staff are called in on a daily basis. Yesterday we had three situations where we had to be called in as emergency guardian because we do not have that legislation in the ACT at the moment. We are working towards developing that.

**THE CHAIR:** Legislation that would allow next of kin. Most people would have the impression that next of kin would have that role.

**Ms Phillips:** Yes, and they do in every other jurisdiction in Australia.

**THE CHAIR:** That is probably why they have that impression.

**Ms Phillips:** Yes, and particularly for New South Wales residents, one of the groups I have been talking with recently. They can be appointed by the doctor to have the authority of what is called a “responsible person” if they are taken to, say, Moruya Hospital, but by the time they come to the ACT they cannot do that and I have to be called in. That is something that we are working on.

**Mr Corbell:** This is an issue that I was quite surprised to learn of when the issue was raised with me by Ms Phillips.

**THE CHAIR:** As was I, on becoming a member.

**Mr Corbell:** I can advise the committee that the government is working on this issue and will be proposing legislative change to address this issue.

**THE CHAIR:** I commend you on that.

**MS MacDONALD:** In relation to that, would you believe that there is a perception amongst the medical community that next of kin would actually have that say?

**Ms Phillips:** No, particularly at the hospitals, which is where it is relevant. GPs and people in the community may not be aware, but certainly the people we work with in ICU, in neurosurgery and in the geriatric wards are very, very aware they cannot do anything. They cannot perform a medical procedure that requires a signature; that is, informed consent. If you have to have a general anaesthetic, if you were competent, the medical practitioner would explain to you the risks involved. You would sign to say, “I accept the risks. I understand what is happening.” If you are not competent to do that, then I need to be called in. The medical practitioners are very, very conscious of that and are calling us all the time to do that.

Can I just say, for clarification, that this does not apply to life-saving or life-sustaining procedures. They can be done automatically and are done because it is an emergency and the doctor has to do that. This is for events, procedures or things that have to be done while this person is still incompetent. They might have had a major stroke; they

have come out of the stroke but are still not competent to make a decision as to whether they then have future surgery to prevent future strokes.

**DR FOSKEY:** I move on to resources. On page 7, you note that budgetary constraints have led to a reduction in staffing and that this might lead to a reduced level of service. I wonder if you could put a bit more meat on those bones and explain the level of budgetary constraints that impact on staffing and the run-on impact on service provision.

**Ms Phillips:** As with other agencies and departments, we accepted that there was a need to tighten our belt and look at how more efficiently we could run our agency. That resulted in our reducing our staffing number by one. However, I had been undertaking a more strategic analysis of the workload of the Public Advocate over time. Through that, I came to a recommendation in the area of guardianship. As I said, it was because of the increased demand, separate from the budgetary considerations. Looking at and analysing the figures, they show that we have not had an increase in staffing for over 10 years.

The numbers and the complexity in guardianship are increasing to such an extent that we really need to have additional staff there to be able to continue to do the work that we do. It is not just supporting and advocating; it is dealing with a lot of people, a lot of inquiries about incompetence that never get to be guardians or come to the Guardianship Tribunal; and it is also about providing investigations on reports of abuse and investigations that need to go to the tribunal to inform them when making decisions about guardianship.

**DR FOSKEY:** You also talk about increasing demand and decreasing services. Have there been any trade-offs such as taking longer to get around to or deal with cases or knocking back cases simply because you do not have the resources to take them on?

**Ms Phillips:** We would never knock back cases, but certainly we have had to reduce our investigative role, which is causing some concern to the tribunal in that the tribunal believe that they do not have the information they need to make adequate decisions. We are also looking at not visiting all of our guardian-of-last resort clients as regularly as we do.

Unfortunately, all of our work in the guardianship area is demand driven. If someone rings up and says, "This person is in need of placement in a nursing home," if it is an elderly woman who has been previously living quite competently on her own and who is now starting to wander the street and not care for herself and live in squalor, we cannot say, "We haven't got the resources to do it." We have to address that. We have reduced the service in some areas, where we can, but predominantly it really has resulted in increased pressure on the existing staff.

**DR FOSKEY:** You feel, by the sounds of it, that you are still fulfilling the functions required of you but at the personal expense of staff members?

**Ms Phillips:** I feel a professional responsibility to undertake our statutory obligations, yes.

**DR FOSKEY:** I have got more questions, but I will wait my turn.

**THE CHAIR:** Page 14 of the report talks about visits to adults with a mental illness, mental dysfunction, detained in the Belconnen Remand Centre. I note that there were 74 people whom you interviewed, as opposed to 53 in the previous year. Presumably that is because there were more people with mental health issues who were in the Belconnen Remand Centre. I understand you talked to them about concerns they have and the like—things like access to medical treatment, access to services, safety issues, issues of neglect. Were there any common themes that came through from those interviews? Were there common complaints that you dealt with most often?

**Ms Phillips:** I cannot say that there is anything unique in our group of people. There has just been a review released from Queensland which suggests that maybe as high as 75 per cent of people in the criminal justice system in fact have a mental illness, a mental dysfunction or an intellectual disability. The very fact of the high numbers of people who really cannot make proper decisions for themselves is the issue.

That then impacts on them. They cannot instruct adequate legal representation sometimes. Sometimes they are obviously in need of psychiatric treatment and need to be removed out of the justice system to receive that. Sometimes it means that in the legal system they are not fit to plead. Sometimes their mental health condition is primary over their criminal activities, but that is not true for all of the inmates. But the issue is that, increasingly, the number of people in our criminal justice system who have got mental health, dysfunctional or intellectual disabilities are going to need increasing resources to deal with those.

**DR FOSKEY:** On page 10, it states that your office monitored and audited the Office for Children, Youth and Family Support on a number of matters. Did you reach a satisfactory outcome after that work?

**Ms Phillips:** Yes. We have reported on that in a little bit more detail later in the report, from page 18 on. Yes, we have to say that the years of work that the Community Advocate previously has put in in working with the OCYFS is starting to bear very good outcomes. We are happy with what is happening in that respect.

**DR FOSKEY:** I know that there has been a tendency, due to the Vardon report, to focus on making sure children are safe, and that sometimes that involves removal of children. Do you think that there are times when the department might be overzealous in that and that the conditions may have been falsely judged in some cases of the level of risk the child is at?

Obviously I have constituents talking to me. I am expressing this in a very general way, and that is the way it should be. I am interested. It looks as though there could be a tendency to err on the side of perhaps too much caution at times. Then parents might have great difficulties trying to seek redress from the system. Do you get those cases too?

**Ms Phillips:** No, we do not because the area of monitoring what we are doing is when children are already in care and the service that is provided to them. Monitoring how they are cared for once the territory has taken over as parent is our primary area. That

is what the section 162s and now the section 189s are looking at. They are predominantly looking at: once a child comes in to care, are they being adequately cared for?

However, some of your concerns are addressed in another initiative that we have been taking, and that is to increase the quality of the annual reporting on children. Each child is required to have an annual report under section 267 of the act. We have just recently worked with the office in developing a much better format for their reporting. Part of that reporting looks at their relationship with their family—whether they are visiting back with their family, whether that family relationship is being supported and developed. They are looking at that as a possibility.

Of course there will be children who will never, never be able to go back to live with their parents. But we are looking at: was it just a one-off situation that contributed to the child coming into care and should we be looking at that child maintaining that very positive relationship with their natural parents?

**DR FOSKEY:** What if that child is taken interstate? Do you still have some level of—

**Ms Phillips:** No, we do not have any control over children in any way. Our role is to keep the services honest, to paraphrase the term. Those services are the services that are provided in the ACT.

**DR FOSKEY:** In relation to this, on page 21, it states that you made a request to the chief executive of DHCS for a survey to be conducted of the Vardon report reference groups to measure progress and efficiency but that request was denied. I am interested in why your office made the request and whether you had any concerns about the progress those groups were making and the grounds on which the request was denied.

**Ms Phillips:** We had some concerns. We were concerned, I suppose, that there had been some time passed since the Vardon report, which was a very significant and important report, and were feeling that the committees were not meeting as often as maybe they should or maybe they had achieved what they set out to achieve. So we thought that it might have been timely to look at and review it with each of the committees, to say to them, “Are we still achieving what we did? Have we already achieved?” Some of them had. Some of them had already achieved the outcomes for which they had been developed.

The chief executive, as is her right, said that she did not think that that was the way to go and that she had another way of dealing with reviewing the progress in respect to the achievements of the Vardon recommendations.

**DR FOSKEY:** Are you in a position to ask for reporting on the way that the department is dealing with that issue?

**Ms Phillips:** Yes, and we have. We are on several of the committees so we know what is happening with some of them. But we have asked for updates on each of them, yes.

**DR FOSKEY:** One final question, and I will put the rest on notice. You can look forward to that. On page 18, you state your concern about the continued placement of young people in adult inpatient mental health facilities and their lack of residential and inpatient care options. I wondered whether you could expand on that and advise whether you believe the construction of a step-up, step-down facility accommodating up to five young people will do something to ameliorate this situation.

**Ms Phillips:** To answer the second part: certainly, any additional resources to assist young people with mental illness would be appropriate. But the majority of those young people who needed to receive inpatient care were severely unwell. The ACT is a small jurisdiction; it is never, in my opinion, going to have, nor should it, all of the resources to meet all of the needs of a small population.

These children, in the main, are best served by being treated with the excellent services that are provided in Sydney. It is disruptive to families—I accept that—but that is part of the general spending of the health dollar. The facilities in Sydney are brilliant facilities that cater for this group of children. There are very few of them, but we pointed out that, when they come into care and need to be cared, often we have tried to accommodate them within the adolescent medical section of the hospital so that they are in a single room there and are with their peers. It is rare that they have to be accommodated, but young people of 16 and 17 are more likely to have to go into the adult psychiatric hospital in the acute phase of their illness.

**THE CHAIR:** We will have to finish up there. Thank you very much, Ms Phillips.

**Ms Phillips:** Thank you, Zed.

**THE CHAIR:** We now move on to the Human Rights Office. Welcome, Dr Watchirs. When you answer a question, I ask you to state your name and title, for the record. In the annual report, at page 12, you raise concerns over the office's budget. You say:

I am concerned that the reduction in the ... Budget ... will be further exacerbated by the impact of the Functional Review ....

You go onto say:

Not only will the new Commission's budget be reduced by \$400,000 ... but I expect that further savings will need to be made across the portfolio. Additional functions cannot be absorbed within existing funding of the Human Rights Commission, and any further reduction in funding will undermine our capacity to carry out our statutory mandates.

Are you able to expand a little on which part of this statutory mandate you think is likely to suffer?

**Dr Watchirs:** As you would probably be aware, the Human Rights Commission legislation started yesterday and we co-located three weeks ago with the Office of the Health Complaints Commissioner. The third commissioner has not been appointed. I'm more optimistic than I was when I wrote this report in that there have been savings, just by that co-location, in rent and use of equipment such as having two



photocopiers, and there are other ways that I think we can save money. If there are further reductions, I do expect there will be a reduction in the services that we provide. Currently, we meet our obligations in timely conciliation. That may change with fewer resources in that we wouldn't be able to make those dates.

**THE CHAIR:** So that's where it's most likely to suffer?

**Dr Watchirs:** Yes. This report was written when we had a statutory obligation to finish investigations within 60 days. We don't have that function any more. It's more an administrative standard and that is the same for both commissioners and the third commissioner when they come on board.

**THE CHAIR:** So now that that's no longer a statutory requirement, is it likely that you'll meet that administrative standard? Is that going to be the same, 60 days, and do you expect to meet it or is it likely that that will also suffer with the lessening of resources?

**Dr Watchirs:** I did point out in this annual report that there were several cases where we did not meet that statutory obligation. There was a reason in every case. One, the respondent could not be located until the day our decision was due; they'd changed employment and were not in the phone book. Another case involving 800 pages of documents that had to be copied to each party meant a huge amount of resources, not only in us copying them but in the parties responding to that, and we felt that under our obligations of natural justice we had to extend that time period. So for complex cases, yes, we will probably not meet that standard and in quick cases we'll meet it much more quickly and I assume it will average out to be timely.

**DR FOSKEY:** When do you expect the commission with its full complement of commissioners to be up and running, relocated and ready to go?

**Mr Corbell:** As Dr Watchirs has indicated, the relocation has occurred. The government is undertaking a recruitment process for the two extra commissioner positions and I'm advised that should be completed with a recommendation to government by the end of the year.

**Ms Leon:** If I can just add to that: the commission has the existing two commissioners co-located in office accommodation, as Dr Watchirs said, a few weeks ago. That accommodation is temporary accommodation while their permanent headquarters are being refurbished and fitted out; the permanent headquarters will be moved into in early 2007.

**DR FOSKEY:** I understand, or please correct me if I'm wrong, that the commission is going to be in the premises of what's currently the public advocate's location?

**Ms Leon:** No, the current arrangements will have the public advocate remaining in her existing location in the Human Rights Commission, on a different floor.

**DR FOSKEY:** Okay. I was just concerned about the public advocate but I know I should have addressed that earlier on. Will the Human Rights Commission have the capacity to undertake self-referred inquiries into systemic problems you become

aware of in the new environment?

**Dr Watchirs:** My expectation is that it will continue. We did an audit of Quamby, which was self-initiated, and we've already undertaken the Belconnen Remand Centre and other correctional facilities in the ACT. In addition, I've undertaken a few own-motion discrimination cases and I think increasingly we will be doing joint work. The Belconnen Remand Centre audit is in conjunction with the health complaints commissioner. Quamby I'd like to revisit with the new children's commissioner.

**THE CHAIR:** You make some mention of Quamby on page 8 of the report and I think again on page 10 of the audit. Are you satisfied now that the response is where it should be in terms of the audit that you've conducted?

**Dr Watchirs:** I think there was some urgent work done, such as the building of the new demountables and engaging a cook to cook onsite and to train children. The cage has not been taken down and the standing orders are still not finalised. We haven't seen the behaviour management document yet. We have been involved in drafts of legislation on issues such as searching. So I think there is some way to go to full implementation. Certainly we only did a fairly superficial re-look after 12 months of the audit, but in the next financial year we will do a much more comprehensive one with the new commissioner.

**THE CHAIR:** Moving on to the proposed new youth detention facility: I assume you're being consulted in its development, but also are you satisfied that based on current plans and the current design for the facility that the Human Rights Act will be able to be complied with at the new facility?

**Dr Watchirs:** As the report says, I am a member of the governance group that has met on a few occasions. Certainly the documentation appears good. I'm satisfied that it is possible to be human rights compliant. The ensuing difficulty is the small number of children in detention. Although you can separate remandees and children under sentence, technically it may be not in their best interests, which is the ultimate test under the rights of the child convention, if one child has to be kept in isolation. So there may be occasions where you wouldn't want to accommodate them together but of course you'd want them in programs together and you may need to mix age groups. It is not against human rights to mix age groups; it's more a kind of a protection in terms of commonsense. You wouldn't mix the 17-years-olds with a 13-year-old, especially if the older child had a number of convictions beforehand compared to the new inductee. So there will be continuing tensions because of our small population, I think.

**Mr Corbell:** I'd hope that this is a similar discussion to that we had around the prison as well—the nature of the ACT as a small jurisdiction with often a very small number of certain types of people in detention.

**DR FOSKEY:** Yes, and sometimes age isn't the most relevant factor. In relation to your work in the prison's human rights working group, I was wondering if you have given any advice or plan to give any advice in regard to prisoner access to a needle and syringe program to reduce blood-borne diseases contaminating the prison?

**Dr Watchirs:** We are certainly considering the issue and I have spoken with the minister about this issue in our audit. Under human rights terms, of course there should be equity in what a person experiences in terms of health treatment in prison and treatment outside in the community. Of course it can never be absolutely equal and there is a provision in the act for proportionate restrictions to be made. My philosophy is definitely that there should be some access to clean needles and syringes, whether that's done by providing cleaning equipment or new needles, or probably more practical would be a safe injecting room. But that would be a matter to be negotiated with the medical staff and correctional staff. So it's a very difficult issue, we are taking it into account in our audit and we will be doing more community consultations on it, but it's like one small part of a very large audit.

**DR FOSKEY:** Are there other key concerns that you are considering in that audit that you'd like to bring to our attention?

**Dr Watchirs:** Probably the primary concern, a prime consideration, which you've already heard about this morning, is people with mental illness, and imprisonment of fine defaulters compared to other jurisdictions.

**DR FOSKEY:** What do you mean by "compared to other jurisdictions"?

**Dr Watchirs:** Other jurisdictions only have community service to pay back fines.

**DR FOSKEY:** Yes. I think we've raised this concern. So you were suggesting that we need to look for other ways of dealing with them?

**Dr Watchirs:** Yes, and conditions of detention. Belconnen Remand Centre, I don't think any would argue, is not really fit for human habitation above a certain number of people and—

**DR FOSKEY:** What would that number be do you think?

**Dr Watchirs:** I'm afraid I'll have to look at the Australian standards on that, but certainly I've never met anyone who wasn't disturbed after seeing the conditions of detention. Particularly people who are mentally ill are very, very—

**DR FOSKEY:** So you think it doesn't have a rehabilitative impact at all under the current regime there?

**Dr Watchirs:** The focus of the audit is a benchmark for what current conditions are and that they not be built into the new Alexander Maconochie Centre. So it's a forward-looking audit so that anything that is currently happening will not happen in the new system. So it's partly about building a human rights culture in the staff—that was certainly the approach we took with Quamby, and being youth workers that was something that was taken up fairly quickly. With corrections I think it's a longer-term project. We've certainly done training; ACT Corrections have been very open to us coming in and feeding in to the quite comprehensive training system they have for their staff.

**DR FOSKEY:** Good. On pages 21 to 23 of the report you provide a number of case

studies where you keep the complainants anonymous, yet on pages 24 and 25 under the heading “Decisions of the ACT Discrimination Tribunal” you name two people. I’m interested as to why there has been a different approach to the identification of individuals.

**Dr Watchirs:** We have secrecy provisions in relation to the cases we handle, but once they go to the tribunal that is an open process. In fact, in human rights terms court and tribunal hearings should be open as a general rule. It would only be in exceptional circumstances where you would suppress the name. I am aware of a couple of other cases where names have been suppressed. A person with a mental illness condition would be a good ground and a person with HIV might be another ground. In these two cases I’m not aware that an application was made to the tribunal to suppress their names, so we’ve merely reflected what happens in the tribunal. Of course there will be a greater power under the new legislation to name and shame respondents and we’re yet to look at that very carefully before we would exercise that power.

**THE CHAIR:** On page 12 of the report it says that the ACT government has agreed to a proposal from your office that the Discrimination Act be comprehensively reviewed, and you’ve said that the review will consider issues including compatibility with the Human Rights Act. What are some of those other issues that you have concerns about?

**Dr Watchirs:** Racial vilification is probably the prime issue we’ve looked at and to the extent we thought it was important and to implement the facing up to racism strategy we actually issued an issues paper rather than waiting for the department to do a general discussion paper on the act as a whole. We also included religious vilification because that has been covered in Victoria. It has not gone well in Victoria. There have been a number of cases—I think Catch the Fire ministry. It has been very fraught and certainly the submissions we got back from the community were uniformly negative; people did not want religious vilification included.

There was some support for changing our racial vilification test. It’s very high; it’s much higher than the commonwealth. We have a requirement to “incite” racial vilification. I would favour getting rid of that incitement issue and possibly even looking at, instead of the term “vilification”, using the UK term “harassment”. We already have quite good case law here in relation to sexual harassment, and that may be a stronger force in providing protection against racism.

**THE CHAIR:** Just explain for me the term “racial harassment”. How has that been understood by the courts?

**Dr Watchirs:** It’s a lower threshold. It would be someone being subjected to harassment in the terms of words said to them that they do not agree with or welcome. We know what constitutes sexual harassment and it’s quite similar to that, the tests.

**THE CHAIR:** As there are no further questions, thank you very much, Dr Watchirs. We might just take a two-minute break before we move on to the Legal Aid Commission.

**Short adjournment.**

**THE CHAIR:** We'll recommence with the Legal Aid Commission—Mr Staniforth and the minister.

**DR FOSKEY:** Mr Staniforth, I understand this is the last time we're going to have the pleasure of your company in this capacity.

**MS MacDONALD:** I don't think you should be allowed to leave.

**Mr Staniforth:** Yes, can I take this opportunity to say that I had no part in the drafting of the president's report, which is the first few pages of the commission's report, so any reference to me in that are the words of the president, not mine.

**Ms Leon:** I would just like to take this opportunity, on behalf of the department, to thank Mr Staniforth for his lengthy and very sterling contribution and the really excellent contribution he's made to the provision of legal aid not only in the territory but nationally. He'll certainly be missed and we wish him very well in the next, no doubt exciting, phase of his life.

**Mr Staniforth:** Please can I go home?

**DR FOSKEY:** Being called the guru of legal aid certainly is very—

**MS MacDONALD:** It's a high note to finish on.

**DR FOSKEY:** I'd like to try your yoga, assuming that's what gurus do. I notice on page 4 that you're talking about tendering out a broad section of the Legal Aid Commission's work and that at the moment that is in child representation in family courts, the Federal Magistrates Court and children's courts. Are there other areas that you think might be suitable for tendering out? How will the commission monitor the efficacy of this particular process, and are you satisfied that adequate oversight of the quality of representation can be maintained for tendered services, and what procedures are in place to ensure that?

**Mr Staniforth:** Can I pick at the word you used on the third of your points and perhaps try to promote that to the first point. You expressed—may I say, very respectfully—a very proper concern about quality. This idea was born of a concern to ensure both intuitively and objectively that child representation work in the territory was being conducted in the highest possible quality range. I should make clear, however, that it isn't correct to say that a major part of the commission's work is being tendered out, in the sense that we are shifting work from one part of commission functionality to another. This is work that was always being done by private practitioners and almost always because the commission, in a small jurisdiction like ours, has enormous examples of conflicts of interest where one of its practitioners has acted for someone and so can't act for other parties to proceedings involving children. So, where that situation occurs, the commission has no ethical option at all but to ensure that the work is done through private practitioners.

The tendering model was used to build in—guarantees might be too hard a word—expectations that quality would be one of the issues that those who were successful in

the tender would be maintaining, would be alert to and would be able to demonstrate. So, for example, the documents governing the process require that those who have successfully tendered maintain a level of expertise in this area beyond the normal. That can be demonstrated through their attendance at advanced professional courses and the like. It's also hoped that by ensuring that bulk work is given to each of the successful tenderers their expertise will grow. It's not hoped; it's obviously expected that that would happen. So the quality drive was what this was effectively all about.

The monitoring will be done, as the commission monitors all of its work, through a range of processes, ranging from overview through the documentation provided by the practitioners through to the kind of peer review processes that happen, particularly in a small legal profession like the ACT's. There is an agreed mechanism for a review of the process after 12 months.

**DR FOSKEY:** You say on page 6 that there's a decline in senior practitioners. Could you please indicate the areas that are experiencing losses of experienced lawyers?

**Mr Staniforth:** The commission's main areas of activity, as I think the committee would be well aware, are family law and crime. Those areas are the ones to which that comment refers. The commission is very sensitive to the fact that its hourly rates simply aren't attractive to very seasoned legal practitioners. There is no secret that commercial rates in this and every other Australian jurisdiction for practitioners are considerably higher than the published commission scales. That's one of the reasons why that page also refers to the maintenance of goodwill between the commission and private practitioners. That's absolutely vital for the ongoing health of the legal aid program, and to date I think the commission would say, if I could be bold enough to speak for it, that that level of goodwill has been very high. But at the end of the day a legal practitioner's bank manager doesn't give money pro bono. Rents have to be paid, staff paid and there is a tension. That tension is being seen in what I think has been elsewhere in other Australian jurisdictions called the "juniorisation" of private practitioners doing legal aid work.

**DR FOSKEY:** So do you believe that this might put the defendant at a disadvantage vis-a-vis the DPP and the police at the other side?

**Mr Staniforth:** No. It isn't so much a question of disadvantage as, I suppose, two issues. First, there's the efficiency question: a well-experienced practitioner can do in half an hour what it takes a younger person two or three hours to do. Every legal practitioner with whom the commission deals we think provides a level of service that of course comes from five years of training plus legal workshop or similar experience. So there isn't a detriment question; that would be being too pessimistic. As to whether a legally-assisted person has access to the very best that Canberra has to offer, that is a question.

**DR FOSKEY:** That's where money is always an advantage, is it not?

**Mr Staniforth:** Absolutely.

**DR FOSKEY:** I notice that in duty lawyer attendances, referred to on page 7 but also on page 21, the outcome for 2005-06 is well below target, around 20 per cent. Why

was that?

**Mr Staniforth:** Basically, changes in process. The courts, as I assume you're aware from other witnesses before you, change their processes regularly, trying to increase efficiencies and look to different ways of doing things. We ourselves change our processes. For example, where we think that a matter that might be a duty lawyer matter requires a bit more attention because of some change to the law, we will make that a grant of legal aid. The targets are set, of course, before we know what systemic changes are going to happen and so in a way that figure has been historically a reflection of more change in process than in any sense a drop in levels of service delivery.

**Ms Leon:** I do also note, Dr Foskey, that, although it's lower than the target, it is still greater than the number of attendances in the previous financial year. So the performance hasn't been dropping. Perhaps the target, as Chris says, was set at a time when the climate inevitably wasn't entirely known.

**DR FOSKEY:** Just as a supplementary to that: did this result in anyone appearing unrepresented on criminal charges? Do you know of anybody that appeared unrepresented on criminal charges?

**Mr Staniforth:** Many people do. Yes.

**DR FOSKEY:** But were they people that might have been to the commission seeking assistance and then—

**Mr Staniforth:** I'm unaware of anyone at all who was not represented by a duty lawyer despite having asked to be. Many people appear, for a whole range of reasons, unrepresented. We think that's not a healthy state of being, but people choose to do it and we can't conscript ourselves into their service. No, the commission would immediately confess that its duty lawyer service is available to all who seek it and I'm certainly unaware of anyone who has declined it.

**MS MacDONALD:** Note 10 on page 59 of the report lists \$231,537 in 2006 and \$66,430 in 2005 as "bad debts written off". That seems a very large increase. Then note 14 on page 61 states:

Client contributions are levied at the time of granting aid. These contributions can be reassessed when the case is finalised. If clients are unable to pay immediately they are given the opportunity to pay by instalments.

I think that is only right and fair. It then states:

No interest is charged on outstanding debts.

Undoubtedly you have a number of people whom you represent who are not necessarily inclined to pay their bills.

**Mr Staniforth:** Sadly, that is the truth.

**MS MacDONALD:** How do you deal with that in a way that I suppose represents their legal interest but also tries to represent the interests of legal aid in terms of recovering debts when they can afford to repay them but choose to spend their money elsewhere?

**Mr Staniforth:** Can I start by going back to your opening comment about page 61. Just when you think you've understood an auditor they suggest a different treatment of something and so you tend to follow wiser advice and follow what your auditor suggests. This year we discussed at enormous length with our auditors the very matter you have raised. This issue arises when we adopt—and we have adopted—a policy of granting legal aid always with a contribution. This comes from a perception, which, I'll have to be honest, I had and have maintained, that if you offer a good service to someone for nothing they will value it at nothing; if you suggest that they contribute as best they might to the delivery of a service they value it. That's, sadly, not always true but in large part that's truer than if we'd done nothing about it. So what we do is impose a contribution and if we can recover it in a proper and prudent manner we recover it.

Many, many times, as you've indicated, that doesn't happen and we waive the contribution; we write it off. But we can write it off in one of two ways. We can simply write it off as a bad debt and/or we can leave it waiting for any future application for legal aid and it can be fixed to that new application. So if you got legal aid in January and you had to pay \$90 and then you sought legal aid again in July you could be asked to pay \$180. I'm not an auditor or an accountant but I understand that this creates a very grey area around contingent creditors: is the person a real creditor or aren't they? Previous treatments of that question varied this year, and in fairness we think that the present advice we're getting is the better advice—that you've really got to be a little bit brutally honest and say that this is money that you're not going to get. So we did follow that advice. That is now what you see.

The next part of your question as I heard it was: how do we go about getting the money? I've got to be honest: we are firm about it; we do pursue people. We've quite regularly sued people for their money. We formed the view that you should value legal services. They're not cheap; you should be a little bit grateful for what you've got. The legal practitioners are doing it at a heavily discounted rate so you're getting a good service for less than those of us who would have to pay privately. We feel there's a moral high ground that says you should be pushed to pay. Obviously, in the client group we have there are going to be many, many examples of people who simply can't, so we have to make judgment calls about when have we gone far enough in pursuing them.

**MS MacDONALD:** Thank you for that answer; I appreciate it.

**THE CHAIR:** On page 5 we've noted, Mr Staniforth, that you'll be leaving. Linda Crebbin, the assistant CEO: is she also leaving? Sorry; I may have misread that.

**Mr Staniforth:** Not that she's aware of, no.

**THE CHAIR:** Okay, sorry—my apologies for that. In relation to your replacement, it says here that in the next month there was hope that a replacement could be named.



Has that occurred?

**Mr Staniforth:** Yes, that's happened.

**THE CHAIR:** So who is the replacement?

**Mr Staniforth:** Mr Andrew Crockett. He was until today an academic at Monash University, but he had in the early nineties been the managing director of what was then the Legal Aid Commission of Victoria and is now Victoria Legal Aid; he'd had approximately 6½ to seven years in that position.

**THE CHAIR:** Very good.

**MR STEFANIAK:** On page 18: what has been the impact of the changes to family law, and what impact have they had on the workload of the Legal Aid Office?

**Mr Staniforth:** As I hope this report makes clear, we were writing this at a time when we—and, I hope you think, fairly—didn't know precisely how the courts, the Family Court and the Federal Magistrates Court, would react to the legislative changes that were introduced this calendar year. I have to be honest and say that there is still some uncertainty about how the changes are going to impact. As we're all aware, the Family Relationship Centre for the ACT has opened in the Woden Plaza and is now offering shopfront assistance to, I understand, very many Canberrans seeking informal resolution of their relationship disputes.

The legal aid market, sadly, was never focused on the sensible and the rational, and we are finding—these are early indications—that our demand has changed; that the kind of cases we have which, if I could be so bold as to say, are the hard-end cases featuring a whole lot of socioeconomic issues are still there, and, sadly, these are cases where it's unlikely that people are going to be able to resolve their difficulties quite as easily as perhaps some others might.

**MR STEFANIAK:** Right. On page 19, what was the reason for the upsurge in the domestic violence cases?

**Mr Staniforth:** That was demand.

**MR STEFANIAK:** How significant has been the increase in general protection work?

**Mr Staniforth:** Substantial.

**MR STEFANIAK:** Again demand?

**Mr Staniforth:** Yes. As I'm sure you'd remember from your prosecutor days, there was a theory, which isn't popular any more, that to employ two more police officers meant that the judicial system copped a demand of tenfold. It does seem that that applies to family services staff: if you have more investigators you do seem to get more cases coming to court, and I think other areas of the system are showing that there has been an enormous increase in workload in this area.

**MR STEFANIAK:** And, finally, when do you cease work?

**Mr Staniforth:** On 30 November at 5.00 pm.

**MR STEFANIAK:** Are you actually going off into retirement from the Public Service?

**Mr Staniforth:** You never retire, do you? No, I'm off to do something else, Mr Stefaniak.

**MR STEFANIAK:** Might I put on the record, Mr Chair and members of the committee, my appreciation for the work that the director has done as head of legal aid, and before that in various other capacities of legal aid. I've personally known the director since he started, which must have been in the very early eighties. We appeared against each other on many occasions in the court, and obviously since the time he's been director I've continued my association with him. I've always found him to be a thoroughly professional operative, and an ornament—a pretty big ornament actually—to the profession. He's done a wonderful job as head of the Legal Aid Office, and I offer my thanks and also my best wishes to Chris Staniforth in whatever he does in the future.

**THE CHAIR:** Thanks, Mr Stefaniak. Are there any other questions?

**DR FOSKEY:** Yes, but it's hard to follow that one as you wipe the tears from your eyes.

**Mr Staniforth:** I'm squirming badly now.

**DR FOSKEY:** You have some very positive comments to make on page 22 about the restorative justice approach—positive but brief. You say: “The extension of those principles into the adult arena is warmly anticipated.” Would you like to expand on the commission's role in restorative justice programs and whether there's a resource implication there—whether they require more resources, less resources—and is there any other comment that you would like to make?

**Mr Staniforth:** The commission's involvement has been twofold. We would hope that our staff have been helpful in the development of the ACT model. Certainly the work of Linda Crebbin, the Assistant Executive Officer, should be acknowledged in terms of setting the cultural and thematic issues that are so important for this kind of work. Again, I'm being bold to try to speak for the commission but it suits the commission's cultural approach to the law, in the sense that restorative justice offers a good effective but economical solution to a series of legal issues. It's a process that the legal profession generally has warmly welcomed, I think for those two reasons: the outcomes do stick, do look good, and they're done in a way that avoids some of the costly elements of the more traditional legal process.

We do say that we would support its extension to adults; the principles, we would say, that make restorative justice work don't stop when you're 18 and can effectively apply to any age. Whether it will have resource implications for the commission

longer term: I think we'd have to seek to come back and talk to you again in the years to come about that. Clearly, from within its own framework, it isn't going to affect that side of the commission's work involved in substantial criminal matters, because they won't be going through this process. As I think the committee is aware, that is the major focus of the commission's work in criminal law. It deals effectively with the more substantial matters. So I couldn't offer to be bringing you a dividend in a few years time to say that we have saved some money, but we strongly support the principles.

**DR FOSKEY:** I have one final question also relating to a comment on page 22 where you discuss the new sentencing legislation. You suggest that while you welcome the introduction of the new package there are some specific issues regarding rights of review that the office believes will need to be addressed, and I was wondering if you could expand on what specific issues these may be.

**Mr Staniforth:** We acknowledge as a legal practice that this was a massive re-do of the way we do criminal law, and, having said that, that there will be the occasional teething problem. You can't do such a big change in the structure of a legal system without having a few little issues. One that springs to mind, which I think we've approached the department on—and, if we haven't, it's my fault—is that a person who is on parole but convicted of an offence said to have occurred prior to him or her going to jail automatically has to be reduced back into custody once they're convicted of that prior offence. That seems unfair once they have done their time. Does that example make sense? There are a few little technical hitches there. They're certainly matters that we would love to and are talking to the department about, and we'd hope that together, mutually, we'll work through this in the coming year to iron it all out.

**DR FOSKEY:** So you're finding the department quite cooperative in these discussions?

**Mr Staniforth:** As always.

**DR FOSKEY:** Excellent.

**THE CHAIR:** As there are no further questions, thank you.

**MS MacDONALD:** I'd like to reiterate what Mr Stefaniak said and thank Mr Staniforth for his many years of service to legal aid in the ACT. It is sad to see you go. Please don't cry, though, at this.

**Mr Staniforth:** This is so punishing!

**MS MacDONALD:** I know, but, hopefully, we'll see you around the traps anyway.

**THE CHAIR:** Thank you and we'll adjourn now until 2.00pm.

**Meeting adjourned from 12.36 am to 2.01 pm.**

**THE CHAIR:** Welcome back. I have a couple of questions to start with. I was looking through the client profile you deal with, on page 29. There seems to be a

change in the figures from last year. I am trying to compare it in relation to young people who are victims of crime. It has 15 per cent under 10, 19 per cent between 10 and 17, and 14 per cent between 18 and 25. I think that previously 40 per cent of clients were aged under 20. I was wondering if there is any way, maybe on notice, we can get the figures for under 20s, as to whether they have gone up or down in the last year.

**Mr Corbell:** If I may, I would indicate that Robyn Holder, who is the victims of crime coordinator, has a longstanding commitment interstate and is unable to be present today. Jane Caruana from her office is filling in. She will endeavour to answer questions, but there may be some we need to take on notice.

**THE CHAIR:** Thank you.

**Ms Caruana:** Those figures are in relation to the victims services scheme, the counselling and support service here in the ACT, which is a separate organisation. I can certainly take back to them the request that they provide statistics in the future.

**THE CHAIR:** I am trying to get an idea of where that sits.

**Ms Caruana:** The report is made up of four different agencies that come under the victim support program—our office, the victim support services, the police victim liaison office and the Magistrates Court victims of crime financial assistance scheme. There are four different reports contained in the victim support program.

**THE CHAIR:** We are examining all of those here today. I understand it might be difficult for you to answer some of those questions.

**Ms Caruana:** Yes. There might be some things.

**THE CHAIR:** We will keep that in mind. If there are questions you cannot answer, please take them on notice. I have some others in relation to that same page. Maybe you need to take them on notice as well. Thirty per cent of clients are male. That is a slight increase, but still the overwhelming number are female. Obviously that is a concern. Is that mainly in the area of assault, or is that across the board in relation to victims of crime?

**Ms Caruana:** I will take that on notice.

**THE CHAIR:** Thank you. I also noticed issues around the referrals. Once again, it is VSS. Looking at the last two years of data in relation to where the referrals have come from, I was interested to note that last year only four per cent were from the police, but this year it is 14 per cent. I think I am comparing like figures with like. I apologise if I am not. That is on page 30 of this year's report. I am trying to figure it out.

Firstly, it seems a relatively low number anyway coming from police. I would have thought a much higher number would be coming from police. At the same time, it seems to be a significant improvement from last year. The minister might be able to answer this; I am not sure. Is that as a result of closer work with the police? Is there a reason why there has been a change in that figure? Is there a reason why it still seems

relatively low?

**Mr Jory:** The victims services scheme is not a crisis scheme. Most of the people who go to the victims services scheme are not going there immediately after a crime. Its purpose is really, at this point in time, long-term counselling. From that point of view, it is not likely that referral from police in the immediate aftermath of a crime being reported to them is the option that would be taken. By the same token, police are now also working with the organisation SupportLink. SupportLink and police are working closer together in terms of the sorts of referrals that would be more appropriate to the victims services scheme or to some other scheme—for example, VOCAL. That probably accounts for the increase in police referrals.

**THE CHAIR:** Are you able to talk a little bit on the nature of that ongoing counselling service? For what kind of period would we be talking where someone may have had a serious crime committed against them?

**Mr Jory:** It depends on the nature of the offence and also on how people are coping. In the first instance, the number of hours that people can receive free counselling for property crime is restricted.

**THE CHAIR:** What is that restriction?

**Mr Jory:** That is two hours. Beyond that, there are an extra six hours that people might get. Those decisions are made within the victims services scheme. Then, if there is a recognised need, it can increase to 20 hours.

**THE CHAIR:** That is for any crime, if it is deemed suitable?

**Mr Jory:** Personal crime.

**THE CHAIR:** For property crime, it will be always limited to two hours.

**Mr Jory:** Yes.

**THE CHAIR:** I do not have it in front of me, but I read somewhere that the injuries we are talking of here are psychological in the main. I think it is around 90 per cent. Obviously a lot of the offences we are talking about are assaults, but that is not the role of the scheme. It is more looking at the psychological harm that can come from crime.

**Mr Jory:** Yes, most of the services are therapeutic. They are mainly in the counselling area. There are some—a small number—of massage or physiotherapy type services, but they would be in the minority.

**MR STEFANIAK:** How is the relationship going with the Victims of Crime Assistance League at present? I know it has been a rather rocky one in the last few years. Before lunch, the attorney indicated that there was extensive consultation in relation to a series of recommendations before government. There was concern at the last hearings that there were problems there. Have they been rectified?

**Mr Jory:** It is certainly a topic that has been looked at in the victims services scheme review. The report on the review has been provided to the minister.

**Mr Corbell:** There are differences of view on a range of issues with VOCAL, but that is not surprising. Like any non-government advocacy body, we do not always agree with everything they argue for or believe in—most obviously their views about the prison that they expressed recently. We continue to seek to engage with VOCAL. We certainly make sure that they are involved when it comes to work around reviewing legislation or the victim support scheme, the victims services scheme or whatever else there may be in terms of areas where they have an interest and are very clearly a stakeholder.

**MR STEFANIAK:** How many clients would they have seen during this reporting period?

**Mr Corbell:** Local?

**MR STEFANIAK:** Yes.

**Mr Corbell:** We may need to take that on notice.

**MR STEFANIAK:** Do you have any way of identifying how those clients got to them?

**Ms Leon:** On page 37 you will find some statistics concerning the referral rates to VOCAL. VSS advises that all clients coming in at intake are advised of the services that are available through VOCAL as a partner in the VSS scheme. Some of course are referred to VSS from VOCAL in the first place. All clients are informed of it. Some take a referral; others indicate that they will get in contact with VOCAL themselves; and others say that that is not their need and that they do not seek to have further dealings with VOCAL. The statistics for those are set out in the report.

**Mr Corbell:** Seventy-seven per cent of all newly registered clients declined referral to VOCAL.

**Ms Leon:** The report also indicates on the next page the nature of the activities and services VOCAL has provided. There is considerable detail about the clients they have seen and what they have done for them.

**MR STEFANIAK:** What contact is there between the officers of VOCAL and the program? What sort of contact do you have with them?

**Ms Leon:** I should say that the VSS itself is delivered by officers of the department of health.

**MR STEFANIAK:** So there is no contact.

**Ms Leon:** It falls within the justice portfolio, but we have contracted health to provide the service. There is a memorandum of understanding that forms the basis of that arrangement, but it means that the day-to-day dealings with VOCAL are with officers

who are in the health portfolio.

**DR FOSKEY:** I notice that on page 22 you mention in the last sentence that there was no government response to report No 8 of the Standing Committee on Legal Affairs on the Victims of Crime (Financial Assistance) Amendment Bill. I am interested in how that is travelling. Usually there is a requirement to report on committee reports. Anyway, you can tell me.

**Mr Corbell:** I need to take some advice on that. I was not aware there was a government response outstanding in that regard. I will seek some advice and give an answer to you.

**DR FOSKEY:** Thank you.

**Mr Corbell:** I am advised that that report was completed before the last election, and the government has not pursued a response to that report.

**DR FOSKEY:** And will not?

**Mr Corbell:** There is no intention to, no.

**THE CHAIR:** We will now move on to the Electoral Commissioner. Welcome, Mr Green.

**DR FOSKEY:** On page 6 of your report you talk about resource constraints that your office faces compared to counterparts in other states and territories. Is this having any impact on work that you cannot do that your counterparts can?

**Mr Green:** My commission undertakes the full range of functions required under the Electoral Act. I do not believe there are any functions that we are not capable of fulfilling. But the fact that it is an office of me with five other staff places a very high workload on our staff. We all multitask; we all have multiple responsibilities; we have part of a person doing a job that in another commission would be done by a section of people. The workload is very high, but we do the job because the job has to be done.

**DR FOSKEY:** So, despite the comparatively low resources in relation to other states, you are perfectly happy—or you are able to do the job.

**Ms Leon:** This is not dissimilar to a number of other areas that have been before the committee this morning where, by nature of the small size of the jurisdiction, many of the offices that service particular functions within our jurisdiction are, of necessity, also small. That presents particular challenges in a small jurisdiction as to how to deliver an essential service, albeit to a relatively small population. There is a certain minimum amount of staffing that one needs in order to deliver a service.

While the electoral commission on a per capita basis is comparable to other jurisdictions, it is of course challenged to operate in a small office where even something such as a staff member going on leave effectively means that 25 per cent of the staff are gone. That is the issue we are very conscious of. Within the constraints of that, the Electoral Commissioner and his staff perform very well.

**DR FOSKEY:** Do I understand that around election times you are able to take on more staff?

**Mr Green:** Yes, at election time. We obviously have an increased budget in an election year. We employ something like 800 people during the election period itself. Most of those are polling staff, but we also employ people in the office as managers. They are often people with electoral experience, either from other electoral authorities or people who have been working in the electoral field for long periods of time. But it ultimately falls on the six of us to manage that whole process during the election.

**DR FOSKEY:** I notice that on page 9 you mention looking at the redistribution of electoral boundaries. This is at the ACT level with the ACT election, I take it. What process will be followed in making those decisions?

**Mr Green:** There is a long and detailed process for the redistribution set out in the Electoral Act. The process we follow is very similar to the process that is followed for commonwealth electoral redistributions. The first process is the appointment of a redistribution committee. The redistribution committee's first task is to call for suggestions and comments from the public.

There is a four-week suggestions period. That is followed by a two-week comment on the suggestions period. After that six-week period is concluded, the redistribution committee makes a proposed set of boundaries which are then open for public objection for another month. Then there is a further round of objections—sorry. Then the augmented electoral commission, the full three-person commission and the redistribution committee together hear the objections to the redistribution proposal, if there are any.

If the redistribution committee or augmented commission makes a proposal that is significantly different from the first proposal, then there is another round of public objections possible. It is quite a long-drawn-out process. The redistribution process was due to commence two years before the date of the next election. That period started around about 16 October this year.

We were hoping to call for suggestions and comments this financial year and have that over before Christmas. As I understand it, the appointments of the two part-time members of the commission ran out on 8 October and they have not been reappointed.

At the moment, I am the only member of the commission. We need at least two members of the commission to appoint a redistribution committee. I am waiting for the other two part-time commission member positions to be filled before we can start the redistribution process.

**Mr Corbell:** The government has put that process in train. The issue is that I need to consult with other members of the Assembly before making that appointment. I have written to you, Dr Foskey, and to the Leader of the Opposition, as I am obliged to under the act, seeking your comments on the reappointment of those members.

**DR FOSKEY:** Yes, it is in process.



**Mr Corbell:** I am currently waiting to hear back from you.

**DR FOSKEY:** Me? I will hand-deliver it.

**Mr Corbell:** And Mr Stefaniak. That is where we are at.

**DR FOSKEY:** I am interested in the process. Obviously, the demographic data is gathered. You do not expect the public to provide that. You will gather some data and make proposals. Will there be some kind of draft in the first instance?

**Mr Green:** What we always do, and what we will do for this redistribution, is publish a set of projected enrolment statistics by suburb as at the time of the next election. One of the main criteria for drawing the boundaries in the ACT is endeavouring to ensure that the enrolments in the three electorates are within plus or minus five per cent of the quota at the time of the next election. We need to work out what we think the enrolment will be at the time of the next election.

We have contracted the Australian Bureau of Statistics to make some population projections. As soon as we start the redistribution process, we will be making those available for people to use when they are making their suggestions. We do not put out a proposal first. The first thing we do is invite members of the public, including, obviously, political parties and MLAs, to make submissions to the redistribution committee.

**DR FOSKEY:** Are the final decisions then made by the government?

**Mr Green:** No.

**DR FOSKEY:** Or by the commission?

**Mr Green:** The final determination of boundaries is made by the augmented electoral commission, which is the full three-person commission plus the other three members of the committee. They are: from the ACT Planning and Land Authority, Neil Savery; the Commissioner for Surveys, currently Frank Blanchfield; and another member appointed by the electoral commission. That member has not been appointed yet.

**DR FOSKEY:** We can expect that around the end of next year or earlier.

**Mr Green:** As to the latest possible date we can call for submissions this year, the close of that period before Christmas is next Thursday. It appears from what the minister has just said that we are not going to be able to do that. I would not be happy calling for public submissions in the January holiday period. That probably means we will have to start the process around February.

**DR FOSKEY:** That means you must really want to know what people think.

**Mr Green:** Of course we do.

**DR FOSKEY:** Excellent.

**MS MacDONALD:** On page 9 you make a comment about continuing to work with the Australian Electoral Commission and also renegotiating the joint roll cost with the commission. In light of the commonwealth changes to the electoral laws which take effect on 11 December, will there be any implications for Elections ACT? How will Elections ACT handle the different processes that are involved with electoral enrolments? Obviously we have a fixed-date election unless there is a federal election called for the same day, but that is not likely.

**Mr Green:** Yes. The federal changes to the enrolment provisions impact on the ACT to the extent that the way the Electoral Act is structured—and the Assembly would have to amend the Electoral Act to stop this happening—we would automatically pick up changes to the federal enrolment criteria. The commonwealth has made big changes. At the present time and in the past, to get on the electoral roll people have to fill in a form and have that form witnessed by another person who is eligible to be on the electoral roll.

Under the changes that are going to come in, not necessarily in December—as I understand it, it might take longer than that—the commonwealth has introduced a three-tier system of applying to be on the electoral roll. The first tier is for people who have a drivers licence. All they have to do to get on the electoral roll is to fill in an electoral enrolment form and put their drivers licence number and sign it. It does not need to be witnessed.

The second tier is that if someone does not have a drivers licence they have to produce an identity document from a list of specified identity documents and show that to a person who is a qualified witness from a list of persons who are qualified witnesses.

Those details about the documents and who can be a witness have to be specified by commonwealth regulations. The regulations have not been made yet. If someone does not have a drivers licence and does not have an identity document, then the third tier is that they have to find two people who are on the commonwealth electoral roll to witness their enrolment.

Those changes will automatically apply to the ACT unless the ACT were to enact something different. As I understand it, they have to come into force between now and some time in January next year.

The advice I have consistently provided on this matter is that it would be very confusing to our electors if we were to have different enrolment criteria from the commonwealth. We could, for example, amend the Electoral Act so that we retain the current system, where people could simply have someone else witness their enrolment form.

That would result in there effectively being people on the commonwealth roll for one address and on the ACT roll for another address, or not on one of the rolls at all. I do not think that would be a good outcome for the voters. I think it would cause a great deal of confusion. The approach that I am suggesting be taken is that we adopt those changes of the commonwealth in the ACT and try to make them work as best as we

possibly can, through public education programs and so forth.

The other change that the commonwealth have made to the enrolment process is to close the electoral roll for federal elections on the day of the issue of writ for new enrolments and for people moving from one electoral division to another. People who are moving within an electoral division have three days after the issue of writ to update their enrolment details, which I think is probably going to confuse people. That does not apply to ACT elections because we have fixed terms and our close of rolls is provided for in our Electoral Act. That has not been affected.

What concerns me about that process is that, typically in that current arrangement under the Commonwealth Electoral Act, people have a week between the issue of writ and the close of rolls in which to update their enrolment. Typically hundreds of thousands of people take advantage of that week to update their enrolment or to enrol for the very first time. Because the commonwealth is cutting that period short, there will no doubt be some people who will miss out who would otherwise have corrected their enrolment. The fact that our election is a year after the commonwealth election will mean, quite possibly, that our roll will not be in as good a shape as it might have been if people were correctly enrolled after the commonwealth election.

**Mr Corbell:** There is no doubt in my mind, based on the advice I have received from the electoral commission, that the moves being made by the commonwealth will result in disenfranchisement of people unnecessarily and unfairly for the reasons the commissioner has outlined. I have accepted the commissioner's advice, though, in relation to the enrolment procedures.

To maintain our own scheme would mean that, effectively, people would potentially have to fill out two forms—one for the commonwealth roll and one for the ACT roll—because the identification requirements are different. I think it is desirable to maintain a single system where you enrol to vote using the AEC form. That works for both rolls. That is preferential. I think it is confusing to have two different lots of requirements. And in this instance it is administratively difficult, despite the downsides.

The other issues relating to commonwealth electoral law reform are around donations and financial disclosure. I am considering the advice from the commissioner on these matters. We have to date maintained the nexus with the commonwealth on financial disclosure matters. Given that the commonwealth has changed financial disclosure requirements in such a way as to lift, or you would have to say lower, the bar in terms of what you can donate before you have to disclose it, I will be proposing legislation to the Assembly to break the nexus to ensure that the ACT maintains a more rigorous financial disclosure regime than the commonwealth is introducing.

**MS MacDONALD:** I want to ask a question supplementary to that. That was a very detailed answer from both Mr Green and the attorney, and I appreciate that. Those are very serious implications which I had not fully considered. There was a time when we had our own electoral enrolment form and I do not think that it worked very well at all. As I recall, there were two forms. You could fill out the AEC one, but there was another one you could fill out as well—that is my recollection—about 10 years ago.

**Mr Green:** We have always had a joint enrolment scheme with the commonwealth ever since we have had self-government and we have always had joint enrolment forms, but we have had different enrolment forms for different purposes. At one point the ACT had a form that my commission had instigated which was an electoral enrolment form for both the commonwealth and the ACT but was also updating drivers licence and various other ACT agency forms, but it was a joint form with the commonwealth.

**Ms MacDONALD:** Okay. That is another issue, though. Because of the raising of the bar in terms of what you are required to produce if you do not have a drivers licence—having a husband without a drivers licence, that would apply in my case if we were to move address—will the vetting of those additional requirements place an additional burden on your staff?

**Mr Green:** Under the joint role arrangement we have with the commonwealth, the Australian Electoral Commission processes all the electoral enrolment forms. So it won't affect my staff; it will be something that will affect the AEC.

**THE CHAIR:** I have a couple of questions about the review of the Electoral Act, which is covered on pages 13, 14 and 15. Commissioner, I want to get your rationale for a couple of the recommendations. One is in relation to changing the 100-metre ban back to the six-metre ban that applies at commonwealth elections. The other one is in relation to section 300 of the Electoral Act, which deals with defamation of candidates. Would you take us through why the electoral commission has come to those conclusions?

**Mr Green:** I will just remind myself what is in the review document, if you will bear with me for a moment. Our discussion and our recommendation that the 100-metre ban be altered were predicated on the kinds of political campaigning practices that were apparent to us at the 2004 election, where it seemed to us that all of the main political players were trying not to break the law, but to put how-to-vote cards out into the political arena and get them in the hands of voters by, for example, standing just outside the 100 metres and really pushing the boundaries on where the 100-metre point was.

It was my feeling, or the commission's feeling, that if all of the political players were of the view that how-to-vote cards should be handed out, then placing an artificial 100-metre ban wasn't really having the desired policy outcome of the 100-metre ban, which in my view is, effectively, to remove how-to-vote cards from the vicinity of the polling places, because the rationale for our system in the ACT, with our Robson rotation of candidates' names, is really empowering voters to vote for candidates in the order of their choice rather than a recommended choice put forward by a political party.

So I am not necessarily or the commission isn't necessarily saying that we think the 100-metre ban is not a good idea, but, in the context of the parties trying to get around the 100-metre ban using all sorts of different ways of doing it, what we would like the Assembly to do is to think about whether we really want a 100-metre ban or we want how-to-vote cards, because the two really aren't that compatible.

**THE CHAIR:** I think the issue for candidates in relation to the 100-metre rule is perhaps more around advertising than around how-to-vote cards, so to speak, with, as you say, Robson rotation making formal how-to-vote cards—vote here, then there and then there—very difficult. I think a lot of the individual candidates, not so much parties, would have taken the view that advertising as close to the 100 metres as they could would have been in their interests.

In relation to the second one, section 300 of the Electoral Act, what is the rationale there? I would have understood that the historical basis for having such a provision would be that there is perhaps much more temptation for candidates to be defamed, because of the very nature of elections, and that is why a special place is given. I am interested to hear what is the reasoning behind removing that.

**Mr Green:** Yes. I will say my piece and then I might put this one over to the department. My understanding of defamation law is that it is being reviewed Australia-wide and consolidated into another piece of legislation which I cannot recall at the moment, so really my recommendation was aimed at removing an effectively redundant defamation provision and consolidating it in the general defamation provisions.

**Mr Corbell:** There is now model defamation law which the ACT and all other jurisdictions have agreed to. It is meant to provide for a consistent framework for defamation across the country and it would seem somewhat archaic to have the particular provision of defamation in electoral law when it can and should be dealt with through civil law provisions.

**THE CHAIR:** In relation to those recommendations, minister, when does the government expect to be in a position to respond? Where are you at with that? Are you looking to respond at some time in this financial year?

**Mr Corbell:** There have been a number of issues that I have sought to get some further advice from the commission on, and we had that discussion quite recently, along with issues around the other matters that Ms MacDonald raised, around the enrolment procedures and also changes to the financial disclosure requirements. So, given all of those issues, I would anticipate the government will deal with those issues and its response to the commission's review this financial year.

**THE CHAIR:** With a view, I assume, to legislative change prior to the next election, if there is to be any legislative change.

**Mr Corbell:** Leaving aside the enrolment and the financial disclosure issues, certainly the latter of those will require legislative change, but the other issues that are raised in the review, if there are factors that the government agrees to that do require legislative change, we would be proposing legislative change. But I don't want to pre-empt our response to the review. It has not been considered by the government as a whole at this point.

**THE CHAIR:** I move on to electronic voting. I know it is mentioned on page 15 of the report, but are you able, commissioner, to bring us up to date just for my benefit? It seemed to go reasonably successfully at the last election. Could you talk me through

the percentages of ballots that were cast electronically and how you would be looking to increase that in future elections?

**Mr Green:** In the 2004 election we took just over 28,000 electronic votes, which was about 13 per cent of all the votes taken at the election. We thought it was very successful. It has got lots of advantages for voters, candidates and the electoral commission. It is a system that is accessible by people who have difficulty voting on paper in particular. I might point out as an aside that the Victorian electoral commission are about to implement their own electronic voting system at the Victorian election just coming up, where they are going to be using a system very similar to ours for access by blind people. That is one of the features of our system also. I am very pleased that they have taken up a model that is very similar to ours. The commonwealth's Joint Standing Committee on Electoral Matters has also recommended that a similar system be adopted for federal elections. So I am very pleased that the ACT is being seen as a model for other jurisdictions to pick up our processes.

**DR FOSKEY:** Does that mean that the commonwealth electoral commission will fund the resources to provide electronic access to electronic voting in the ACT?

**Mr Green:** Not for ACT elections; for federal elections.

**DR FOSKEY:** So they will move it in and move it out.

**Mr Green:** My understanding of what the joint standing committee has proposed, and I am not sure how far it has progressed in terms of government agreement, is that they are proposing something similar to what the Victorians are doing, which is to provide electronic voting essentially for people who can't vote on paper without assistance. So it is really for people with sight impairment and they would be doing it in a small number of locations in each district, rather than every polling place.

In terms of what we are planning for 2008, we have looked at the way we did it last time, which was to put electronic voting in the four prepoll voting centres and at four other ordinary polling places on election day. As discussed in our report on the electronic voting system, we are of the view that putting electronic voting in polling places just for the one day is not very cost effective. It is a very complex thing to set up and just doing it for one day is not, in our view, worth it until and unless we can arrive at a situation where we have some very cheap and very portable electronic voting equipment, which we still have not been able to source.

So what we are hoping to do in 2008 is to expand the number of prepoll voting centres that we have. We think it is now time to put a prepoll voting centre in Gungahlin. I understand that the commonwealth is thinking of having a prepoll centre in Gungahlin at the next federal election, which will be next year. We are also looking at whether we can have a sixth prepoll voting centre location somewhere south of the lake. We would like to provide electronic voting in those centres. At the moment, the question of funding the electronic voting centres is a discussion we are having with the government, so we are not sure at this point just to what extent we will be able to provide electronic voting.

**DR FOSKEY:** I note from the highlights that a member of the commission, perhaps the commissioner himself, observed a pilot of electronic voting at the Buenos Aires city elections in Argentina. Why that one?

**Mr Green:** They invited us to go and observe at their election and they did that because we are becoming known around the world as being an example of world's best practice for conducting electronic voting and electronic counting. Particularly the aspect of our system that uses open-source software is something that is very attractive to people around the world as a means of having a transparent electronic voting system. The people in Buenos Aires were trialling several different forms of electronic voting. It wasn't a live voting exercise. They had their voters come in and vote using normal processes and then on the way out they invited them to try out several different methods of voting, including electronic voting, and having various different kinds of scanning systems happen. Because we are also looking at scanning ballot papers in the ACT, it was something that I considered was well worth going and looking at.

**DR FOSKEY:** I have noticed that in the outlook you talk about the feasibility of using electronic scanning for counting paper ballots, as distinct from electronic voting. What is the likelihood that that will be the case?

**Mr Green:** I am very hopeful that we will be able to implement that for the 2008 election. We are looking at replacing the data entry of paper ballots with an electronic scanning system. We are hopeful that that can be done from within existing resources, because it is quite expensive to hire a room full of data entry operators for the two weeks or so that it takes to data enter ballot papers. We feel from what we can discern from looking at the industry that we can come up with a scanning system that would be at least as accurate as manual data entry, if not more accurate, after we go through a rigorous error correction process. We are hoping we can achieve something that is more accurate, that is faster and that is more user-friendly for scrutineers as well as our staff.

An issue that we have with data entry as we have done it at past elections is that it is becoming harder and harder to get skilled data entry operators. It is simply not a profession that is very common these days because lots and lots of processes that used to be data entry are now scanned—things like census forms, tax returns and so on. What we found at the 2004 election was that, while we were able to hire enough casuals to do what we needed to be done, they were not skilled at data entry, so it was going a lot slower and with more errors than we would have liked if we had had people who were more skilled at the process. So we are investigating scanning.

We have gone out to industry with requests for proposals from industry. We had a meeting of the reference group that we have set up for electronic voting and counting—last week, I think—at which this was put to the reference group and the members of the reference group were very supportive of the commission moving to replacing data entry with scanning. So the next step will be going out to industry with a tender and seeing what industry comes back with.

**DR FOSKEY:** See how much it is, whether it is cost effective.

**Mr Corbell:** From a government perspective, regardless of what method is used, I would be concerned to ensure that the commission was doing everything possible to maintain the accuracy of the data and of each elector's vote. I know that the commissioner would share that, for that is of paramount importance. I know that some people have raised concerns about the accuracy of some data entry. Because of the sheer volume, errors can happen in data entry. I know that there is a checking process in place currently. I think that in shifting to alternative technology the issue is to ensure that it is actually about improving the accuracy of the data and ensuring that electors' votes are fully taken account of. That is certainly an issue I pay close attention to.

**DR FOSKEY:** Everyone thinks of Florida when they think about these things. I see that you will be moving to new accommodation. Could you enlighten us a little more about what is happening there?

**Mr Green:** We were temporarily located at 14 Moore Street for the last two years or so; I am not sure of the exact dates. The lease on that accommodation ran out in October and we are currently temporarily located at level 2 on 12 Moore Street. We are not in our own discrete accommodation. We are in an open plan area with parts of the Department of Justice and Community Safety. We do not think that that is satisfactory and we are hoping that we will be moved somewhere permanently as soon as possible.

**Ms Leon:** Dr Foskey, perhaps I can put this in the larger context as well. As you would be aware, a number of government leases will be expiring over the course of the present year and the government made a decision in the recent budget to consolidate our lease holdings and ensure that ACT public sector employees are accommodated in a smaller footprint across public sector accommodation so that, whilst imposing a level of restraint on financial expenditure generally, we impose a similar level of restraint on our expenditure on rent. So the ACT public sector as a whole is undergoing a process of consolidating within its existing holdings and allowing a number of leases to expire. The lease on 14 Moore Street was one of those, and various elements of the department that were in 14 Moore Street are being relocated as part of that overall consolidation.

It has meant, as I am sure you would appreciate from the scale of the activity and the number of agencies not only in this department but in other departments that are needing to be reaccommodated, that there is inevitably some need for temporary accommodation while people are moved out of one place and into another and the permanent location for them is being fitted out while it is vacant. That is the position that the electoral commission, as well as a number of other parts of the portfolio, are in. The current location of the electoral commission is on level 2 of 12 Moore Street and the commission will be relocated to its permanent accommodation early in the new year.

**DR FOSKEY:** As yet unknown.

**Mr Green:** It has not been decided yet, no.

**Ms Leon:** I think the accommodation plans are quite close to finalisation, but it



certainly will be a central location and convenient access to members of the public.

**DR FOSKEY:** I have one final question. I am just wondering if the review of the Electoral Act would cover it. You have talked about defamation of candidates. It is in relation to the Tasmanian election. You would be aware that there was some misleading information produced by the Exclusive Brethren with regard to the Greens. Obviously, I have an interest in this. We all know that things happen just before elections, material gets published. I am wondering whether that comes under defamation or whether the review of the Electoral Act could somehow set up a mechanism so that, instead of just making a complaint which is acted on after the election, there is something that can be done prior to the election.

**Mr Green:** There are several issues in that question.

**DR FOSKEY:** Yes. I am very much a layperson.

**Mr Green:** The way electoral advertising is regulated is, in a sense, quite restricted in that the Electoral Act requires electoral advertisements to be correctly authorised by the person responsible for authorising material. Electoral advertisements are not allowed to mislead or deceive an elector in relation to the casting of the elector's vote, which has been very narrowly interpreted by courts to mean that you can't say, for example, "Vote 1 for the Greens by putting a 1 next to Jon Stanhope's name." That would be illegal. But what isn't illegal is something that might arguably be untrue, misleading or deceptive in relation to a statement about the policies, beliefs or personal character of a political opponent.

There have been attempts over the years in various jurisdictions at regulating what is colloquially known as truth in political advertising. South Australia does currently have some legislation that does prohibit—I don't know the words—something like false and misleading electoral advertisements. The commonwealth and the ACT have not regulated truth in political advertising. I am of the view that it is very difficult, if not impossible, for someone in an electoral commission position to make any sort of ruling about whether a political advertisement is true, misleading or deceptive, given that much of political advertising is about promises of what may or may not happen in the future.

**THE CHAIR:** I think it is often about skerricks of truth, commissioner.

**DR FOSKEY:** Have you completed your response, Mr Green?

**THE CHAIR:** Sorry. I did not realise I had interrupted you. My apologies.

**Mr Green:** It could probably end there if you think I have answered your question.

**Mr Corbell:** I think it is fair to say it is difficult for the commissioner or commission, during an election campaign, to be asked to rule on whether or not advertisements are honest and truthful or, in the reverse, misleading and dishonest. I think the important thing is that you have the authorisation, with a clearly identified individual taking responsibility for those comments so that, if they are judged to be unfair or, indeed, defamatory, there is a person against whom you can take action. The issue that you

raise about its having, nevertheless, affected the electors' perception of a party or a candidate during an election is a very difficult one. I don't know whether it is fair to put electoral commission staff in the position of making judgments about the honesty or otherwise of political advertising.

**DR FOSKEY:** I think that in the Tasmanian case the authorisation was a little suss.

**Mr Corbell:** Yes, it was, as I understand it.

**DR FOSKEY:** I am just wondering whether the electoral commission does check authorisations routinely, because that is obviously one mechanism.

**Mr Corbell:** Yes, it does.

**Mr Green:** Yes, we do. One of the biggest sources of complaints during the election period is about authorisation or lack of authorisation of electoral matter, one side complaining about the other side. Of course, in the ACT we have got lots of different sides. Another point that I would make about the whole issue of regulating truth in political advertising is that, if you make something illegal, then it has got to go to the courts and it is up to the courts to determine, and that is not something that is going to be possible during an election campaign, given how short an election campaign is, particularly if something is not published until the day before polling day. The best that you could do in that context would be to seek an injunction and prevent further dissemination of material. But I take the view that the question of how true a political advertisement is, is really a matter for judgment for the electors themselves, rather than for courts to make, and that the process of political advertising is really putting something for the people themselves to judge through the ballot box.

**THE CHAIR:** Thank you, Commissioner Green. We will stop for afternoon tea now and be back at about 3.20 pm with the Ombudsman.

**Meeting adjourned from 2.55 to 3.17 pm.**

**THE CHAIR:** I would normally read out a very long statement, but I summarise it for you. You understand that these proceedings are privileged and everything that goes with that. The proceedings are being recorded and broadcast. That is all. Thank you for being here this afternoon.

There are a few questions. I will commence. I noticed the annual report—and I do not have the page in front of me—talks about 512 approaches and complaints that the Ombudsman dealt with in the last financial year. Is there any analysis done of how that compares with other jurisdictions in a pro rata sense? Are we a high or a low-complaining jurisdiction, as far as what the Ombudsman handles is concerned?

**Mr Matcham:** I am responsible for the states and the territories. I can answer that anecdotally. I obviously need to check stats, but my recollection is that ACT complaints and approaches per head of population are higher than the national average.

**THE CHAIR:** Is there a reason for that? Are we more aware? Are we bigger

complainers? Do we have worse government administration? Any of the three?

**Mr Matcham:** There is no official research on the topic. The discussions that I have had with the ACT team hypothesise that it could be because we have a highly educated population in ACT and a high proportion of people within the public service who understand how the system of complaint can operate in their favour. In the ACT, the final thing is that they are relatively in close proximity to the service. There is no necessary connection between those. They do not necessarily come in physically, but perhaps they feel connected and able to complain.

**THE CHAIR:** I notice, in relation to specific complaints, page 15 deals with ACT Policing. It seems there has been a significant decrease in complaints against police in the past financial year. Obviously that is a positive. There is some discussion of why that might be the case. It talks about focus on customer service issues. Is it possible to expand on that? What are the police doing better that means that people have fewer complaints against them? Obviously, we all welcome that.

**Ms Brown:** I have responsibility for overlooking the AFP in terms of its ACT community policing function. We have not specifically conducted an analysis as to why there has been a decrease in the numbers of complaints, but it is readily apparent that there has been. I cannot really comment much further. I am happy to ensure that we conduct further analysis on that issue, but I am unable to provide you with any further assistance as to why that might have occurred.

**Ms Leon:** We will be appearing tomorrow with the Chief Police Officer, who might be able to fill us in on the more proactive work that the police have been doing to ensure that they have got their staff not generating complaints.

**DR FOSKEY:** From examining the Ombudsman's report and the ACT Policing report side by side and comparing them, I see that probably hours of analysis are needed to work out the exact numbers of complaints and those that have been satisfactorily resolved. I will be exploring that tomorrow with ACT Policing. I explored it last year, too, but I did not gain a lot of satisfaction from that.

I comment that it is good to see that the recommendations from the Fisher review have been acted on. One of those recommendations was that the Ombudsman have oversight of internal complaints within ACT Policing. I understand that the number of internal allegations far outweighs the number of substantiated public complaints, but it is only the public complaints that are independently overseen. Do the changes to the complaints system provide the Ombudsman with oversight of internal complaints? If not, why not?

**Ms Brown:** Under the new legislative regime, the Ombudsman will have, when it commences, jurisdiction to oversight those internal allegations.

**DR FOSKEY:** What is the Ombudsman's opinion of that—happily in accord with the decision to do that?

**Ms Brown:** Yes, we are, because it enables us to look more comprehensively at conduct/cultural issues within the AFP.

**DR FOSKEY:** As yet unable to comment?

**Ms Brown:** We are unable to comment as to how that jurisdiction will unfold, given that we have not previously and to date had jurisdiction to look into those matters.

**THE CHAIR:** On page 12, it talks about timely response by agencies. The point is made that it is a continuing challenge for some agencies to respond to complaints from individuals. Many complaints are exacerbated by agency delay in responding to the issues raised by a person. Are there any agencies that are particularly bad at doing that? Obviously, there are some agencies you deal with a lot, but would there be some that have systemic problems which lead to these delays?

**Mr Matcham:** I am not sure there is any one particular agency or group of agencies that are slower. Slowness in responding is one of the problems that the office has to manage on an ongoing basis, whether it is with the commonwealth or with ACT agencies. We have run sessions for agency heads; we spend times, in terms of outreach, explaining how we work and explaining that delay is really the enemy of getting things sorted out.

I can say that, in general, the response from those sections is usually productive. When agencies understand our role and what we are trying to do, they respond positively. You get from time to time an agency that might have perhaps the wrong idea about how they should be responding, but when the role is explained and clarified they come to the party. It is not a unique problem within the ACT. I would be hesitant to suggest that any one agency is worse than the others.

**THE CHAIR:** Clearly it is an ongoing problem and perhaps needs more information. You have listed it here. You go on to say that many complaints took longer than necessary to finalise and required substantially more effort. Obviously it is a concern for your resources if agencies are not coming to the party.

**Mr Matcham:** Indeed. We have had a couple of presentation sessions to ACT people since the report was compiled even, so it is part of the ongoing process. You sometimes have to remind agencies that we are not the enemy; we are really here to try to improve government processes.

**THE CHAIR:** On those agencies, on the next page, page 13, headed “Falling through the cracks”, you draw attention to a lack of coordination between ACTPLA and ActewAGL that led to a complainant incurring substantial costs. You say that the delay in obtaining legal advice by one of the agencies means that it is still not resolved. Are you able to update us on that? Has that been resolved? It is likely to be resolved soon?

**Mr Matcham:** I cannot answer on that specific issue.

**THE CHAIR:** Will you take it on notice for us?

**Mr Matcham:** I am aware in general terms of that particular complaint but not the detailed specifics. But my recollection is that the ACT legislation is being

reconsidered with a view to improving some of the internal processes within the agencies—in this case, planning and ACTPLA. My recollection is that we were consulted about the changes to the legislation. Paul Coleman, the head of the ACT team, has made a response. That is my recollection.

**MS MacDONALD:** I do not have any questions, but I put on the record my thanks for the briefing that was recently organised by the Ombudsman's Office. It was very informative. I know that quite a few members, both of this parliament and the federal parliament, attended, as well as their staff. I commend the office on having organised that.

**DR FOSKEY:** I have a list of questions. Firstly, page 4 mentions the Ombudsman's input into the ACT prison project. Could you please give me a brief summary of what your recommendations included?

**Mr Matcham:** Again, it would probably be better if Paul Coleman was to answer this but, as the head of the ACT team, I know that our office had some input into the initial planning of the Belconnen Remand Centre. There has been ongoing contact with Helen Watchirs of the Human Rights Commission. There was a forum conducted some months ago, which we attended—most of the ACT team attended—to workshop through issues which related to human rights in the prison system generally. That is probably as far as I can take the answer in this present situation.

**DR FOSKEY:** Also on page 4, it is mentioned that the Ombudsman had input into the new Public Interest Disclosure Bill. I wonder whether you are able to advise me of your recommendations on that.

**Mr Matcham:** Off the top of my head, I am not confident I could do that usefully. But I could take that on notice perhaps.

**DR FOSKEY:** Thank you. On page 5, under “Analysis of performance”, at the end of the first paragraph, it states that in 2005-06 the ACT government paid \$439,646 for the purpose of the Ombudsman Act and \$494,286 for the Complaints (AFP) Act. I am interested to know why the Ombudsman receives more for AFP complaints than for the Ombudsman's function, especially given fewer complaints are received under the Complaints (AFP) Act.

**Mr Matcham:** The answer is that figures were developed some years ago. They have been increased annually in accordance with the consumer price index, as the memorandum of understanding between our office and the ACT government has gone along. The precise dollar figures are probably based more on historical fact than current fact. In fact, negotiations continue about the amount we should be paid. It is our opinion that we are slightly undercharging. There has been ongoing dialogue about that.

**DR FOSKEY:** With the ACT government?

**Mr Matcham:** With the ACT government.

**DR FOSKEY:** Page 9 says that there have been a number of complaints regarding

ACT Housing about maintenance waiting lists and tenants behaviour. I am interested in knowing how most of these complaints are resolved and the outcomes.

**Mr Matcham:** I would not be able to give you a detailed breakdown of that. Housing is a very difficult area. Again, I need to take that on notice.

**DR FOSKEY:** I would appreciate that if you could. That would be good. On page 18, you highlight your concerns about the AFP's lack of preparedness in dealing with a person with an impairment. I was wondering whether you could explain that concern in a little more detail. It is in that list "Use of force".

**Ms Brown:** We were highlighting our concerns in relation to whether or not officers in the AFP are sufficiently well trained to deal with people with disabilities, whether or not there may be options for further training or raising of awareness with AFP officers in terms of their ability to pick up quickly whether or not a particular person that they are handling has a particular disability.

**DR FOSKEY:** Would that include identifying and dealing with people with a mental illness?

**Ms Brown:** Yes.

**THE CHAIR:** On page 11, you list some of the complaint themes across agencies during the year. A number of them are listed. One is confidentiality of communications. All we have in relation to that is one case study. I wonder whether you are able to give me not specific examples but broadly some of the complaints and the nature of the complaints against agencies where they have not perhaps been seen to treat communications confidentially.

**Mr Matcham:** Yes, I can respond to that. I have detailed knowledge of that. There was one situation involving Belconnen Remand Centre. A difficult prisoner was being held. He rang to complain to one of our investigators. There is what is supposed to be a secure phone line so they can telephone lawyers, other advisers and complaint agencies such as ours. He complained in the course of his telephone conversation that he was being victimised, harassed and so on.

At the end of the conversation, a voice interjected in the conversation between him and my investigator. I know this because I was not far away when this occurred. The intruder to the conversation said something like—this is offensive: "You're just a whining c---," or some words to that effect. This, as far as the prisoner was concerned, was proof positive that the prison officers were eavesdropping on what were supposed to be confidential communications.

We took that as a pretty serious issue. It is fair to say that the Belconnen Remand Centre also took it pretty seriously. They responded in a very timely fashion. What transpired, and we were ultimately satisfied, was that the telephone system in Belconnen is so defective, so aged and unreliable that not only were the conversations between the prisoners and our office being overheard by others but conversations between prison officers and others outside the prison—their private conversations—were also capable of being overheard by prisoners. It turned out, from our

investigation, that the eavesdropper was, in fact, another prisoner who took the opportunity to let the complainant know what he thought of him.

It was one of those investigations that could have had extremely serious implications as far as we were concerned in terms of confidentiality. But when we looked into it, we could see that the Belconnen staff management had acted promptly. As soon as they became aware of the problem, they had acted promptly to remedy it. There was certainly no intention on their part to transgress. In fact, it was in their interests, as it turned out, to remedy the situation because they were as much put out by the fact that their conversations were being overheard as the prisoners were. That is the reference.

**THE CHAIR:** It might be somewhere in the back here. I have not looked in detail at some of these tables, I admit. But in relation to some of these complaint themes, either here in your report or somewhere else, do you have records of your receiving 100 complaints about corrective services, for instance, the broad categories of the complaints and then the outcomes of those complaints? Do you keep records to that extent? Where can we get access to those figures on each agency?

**Mr Matcham:** I am not sure that we produce those records. There is another problem. Mid-year, literally, in December-January, we went from one complaint handling electronic system to another one. Half the complaints, which are old ones, are now on the old system and so on. The extracting of that data is probably possible in the current combined year, but I expect it to be considerably easier in future years with the new system. The short answer is that I am not sure. Again, I could take that on notice if that is something that you wanted to follow up.

**THE CHAIR:** If it is available I would be interested. I would be interested in all agencies, but particularly I would be interested in the ACT Planning and Land Authority which is specifically mentioned there as having a reduction in complaints, but 37 nonetheless. I would like to see the nature of those complaints and how they were resolved. If it is possible to do it for all the agencies, then I would request that as well.

**DR FOSKEY:** On page 18, you highlight again your concerns about management of young people in custody in the City watch-house and the issue of minors being detained without notification of their parents. On page 19, you state concerns that at times the AFP does not meet the young people act when dealing with children or young people. First of all, I am interested in the manner by which the Ombudsman found that the AFP had not met the young people act. What instances keep leading you to that conclusion?

**Ms Brown:** If you are wanting further details in relation to those matters, I would need to take that on notice. I cannot elaborate further than what is presented in the report at page 19.

**DR FOSKEY:** We would really appreciate that. It is concerning, given the territory's very hard work in dealing with improving the way that it acts as custodian for young people. I am interested in why you feel the need to conduct an own-motion investigation. You have already answered that. More generally, how serious do your concerns have to be for you to conduct an investigation of this sort? Do you have

similar complaints arising over time or a degree of seriousness of a smaller number of complaints?

**Ms Brown:** In relation to both of those triggers that you have mentioned, we would generally decide that it is appropriate to conduct an own-motion investigation—if, as you say, there have been a number of similar complaints. For example, on page 18, we have referred to questions about the AFP’s use of intoxicated persons shelters and shelters under the relevant piece of legislation. In fact, we have commenced an own-motion investigation into that. That is an example of where a number of complaints have led us to decide to conduct an own-motion investigation. Obviously, if there is a complex or particularly sensitive complaint or issue that comes to our attention, even though there may not be a number of similar issues that have arisen in other complaints, we may well decide to conduct an own-motion investigation.

As you say, there is complexity and sensitivity and the number of complaints on that particular issue that we have received. Those are factors that we would take into account in our decision.

**DR FOSKEY:** Would the results of such investigation be a public document?

**Ms Brown:** Generally, yes. If we are deciding to make that report public, obviously we would de-identify personal information or personal details in our report.

**DR FOSKEY:** In relation to that matter you raised in terms of the AFP’s actions in regard to the intoxicated people’s act continuing to be a concern, what exactly are the concerns that are troubling you regarding the AFP management of such situations?

**Ms Brown:** As I said, that is a matter which we have recently commenced an investigation into. We have questions about whether there is sufficient awareness within the AFP of that piece of legislation, whether there is an awareness of how that piece of legislation may be used and an awareness of the existence of the sobering-up shelters available. Our initial question is about awareness and the AFP’s use of those shelters.

**THE CHAIR:** On page 9, it talks about complaints received. There has been an increase in approaches and complaints about ActewAGL, but you say that the main complaints are about electricity, which are referred to the Essential Services Consumer Council. Are you able to take me through the complaints about ActewAGL which fall within your purview? Would overcharging complaints come within your purview or is that referred? How does it work?

**Mr Matcham:** I am sorry, I simply have not got that information available, again. By way of explanation, Paul Coleman was to have been here. He is the head of the team. He would know that. In the storm at lunchtime a tree fell on his house, or power lines or something. I regret that I cannot answer your questions as fully as I would like.

**THE CHAIR:** Are you able to take on notice that question? I am particularly interested in the overcharging component because I have had a number of people approach me with complaints about ActewAGL, some of which I have taken up on their behalf and had outcomes. I still do not think the way that they handle complaints



is satisfactory. I would like to get more detail on how complaints against ActewAGL are handled and the nature of some of those complaints.

**Mr Matcham:** Certainly.

**THE CHAIR:** Thank you. If there are no other questions, we thank you very much for your time.

**Ms Leon:** Thank you.

**Mr Matcham:** Thank you.

**The committee adjourned at 3.45 pm.**