LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON LEGAL AFFAIRS

(Reference: Annual and financial reports 2006-2007)

Members:

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

TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 1 NOVEMBER 2007

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

The committee met at 9:32 am.

Appearances:

Corbell, Mr Simon, Attorney-General, Minister for Police and Emergency Services, Acting Minister for Health and Acting Minister for Disability, Housing and Community Services

Department of Justice and Community Safety
- Leon, Ms Renee, Chief Executive Officer
- Goggs, Mr Stephen, Deputy Chief Executive
- Carter, Mr Robert, Deputy Chief Executive
- Joyce, Phillip, Executive Director, Strategic Planning and Support
- Child, Ms Helen, Courts Administer, ACT Law Courts and Tribunals Administration
- Refshauge, Mr Richard, Director of Public Prosecutions
- Caruana, Ms Jane, Acting Victims of Crime Coordinator, Victim Support ACT
- Garrison, Mr Peter, ACT Government Solicitor
- Jones, Mr Howard, Executive Director Corrections, ACT Corrective Services
- Rowling, Ms Helen, Manager, Projects and Facilities, ACT Corrective Services
- Phillips, Mr Brett, Executive Director, Office of Regulatory Services
- Durkin, Ms Mary, Acting Health Services Commissioner, Human Rights Commission
- Watchirs, Dr Helen, ACT Human Rights and Discrimination Commissioner, Human Rights Commission
- Phillips, Ms Anita, Public Advocate of the ACT
- Purvis, Ms Alison, Acting Electoral Commissioner, ACT Electoral Commission
- Taylor, Mr Andrew, Public Trustee for the ACT
- Gillespie, Mr Doug, Deputy Public Trustee, Public Trustee for the ACT
- Crockett, Mr Andrew, Chief Executive Officer, Legal Aid Commission of the ACT
- McMillan, Professor John, Ombudsman of the ACT
- Brent, Mr Ron, Deputy Ombudsman, Ombudsman of the ACT
- Holder, Ms Robyn, Victims of Crime Coordinator, Victims of Crime Support Program
- Green, Mr Phillip, Electoral Commissioner, ACT Electoral Commission

THE CHAIR: Welcome, minister and officials. I will not read the privileges statement because none of us likes it, but I have no doubt that you and your officials are aware of the obligations and privileges that apply to being here. Ms MacDonald is unable to be with us today. Minister, would you like to make an opening statement?

Mr Corbell: Good morning, Mr Chairman. I do not have an opening statement. I am happy to proceed to questions.

THE CHAIR: Minister, page 83 of the annual report talks about the average cost per day of detainees at the remand centre being $503, which is a 16 per cent rise over the target. Are you able to talk us through this? I know there are some statements in the

report about why that is the case, but clearly that is to do with fewer numbers. How are you going to keep those numbers down, going forward?

Mr Corbell: I will ask Mr Jones, the superintendent in Corrective Services, to provide you with some more detail in relation to those figures.

Mr Jones: The main reason for the difference in the cost per prisoner per day on remand is the numbers changing.

THE CHAIR: Could you repeat that?

Mr Jones: The number of prisoners.

THE CHAIR: So a lot of your costs have stayed fixed and we have seen the number of remandees go down.

Mr Jones: That is right.

THE CHAIR: What strategies do we have in place? Obviously we are going to see the opening of the Alexander Maconochie Centre sometime next year. We might turn to that. Are we still on track, minister, for that to open in the middle of next year?

Mr Corbell: The date of opening, in the middle of next year, is on track, and that is for the handover of the facility to Corrective Services for commissioning. That is when construction will be complete, and that is on track and on time. Corrective Services will then commission the facility and start accepting prisoners from the middle of next year onwards.

THE CHAIR: What is your estimate at this point as to the cost per prisoner, or remandee, per day in the new centre?

Mr Corbell: I do not have those figures to hand. We will have to take that on notice.

THE CHAIR: Dr Foskey?

DR FOSKEY: Good morning, minister and officials. I want to start by asking a question about freedom of information conclusive certificates, which is covered on page 25 of the JACS report. The description of the Freedom of Information Amendment Act contains no mention of the fact that it established yet another basis for the minister to issue a conclusive certificate; nor is it mentioned anywhere else in the annual report. Since these are highly contentious powers, and the federal Labor Party has promised to abolish all conclusive certificate provisions if it wins office this month—and I know that the legal profession, civil liberties groups and the media consider that the conclusive certificate provision was a major feature of the FOI Amendment Act—why isn't there some discussion, or even any mention, of the new conclusive certificate provisions in the annual report?

Mr Corbell: I do not think it is particularly noteworthy, Dr Foskey, that there is no mention of it in the annual report. These changes are not a secret; they were debated extensively in the Assembly earlier this term. I think that you were very effective in

drawing public attention to these provisions. I do not think that whether or not they are in the annual report is particularly noteworthy in and of itself.

DR FOSKEY: Given that there is a list of other provisions of that legislation, it does seem that the department or the preparer of this report did not want to draw attention to it.

Mr Corbell: I can assure you there is nothing sinister in relation to—

DR FOSKEY: Not sinister, no.

Mr Corbell: You are suggesting that it has been deliberately omitted, and I can assure you that that is not the case.

DR FOSKEY: I would like to know how many times conclusive certificates are issued in any reporting period and whether this information is collated and can be made available to MLAs and the public.

Mr Corbell: I can certainly provide you with that information in relation to FOI requests within my portfolio but you would need to direct that question to respective ministers in terms of other portfolios, simply because whilst the act is allocated to my portfolio for the purposes of administrative arrangements, it is exercised by a number of portfolios, not exclusively by me. I can certainly answer for my portfolio but you would need to direct that question to other ministers as well.

DR FOSKEY: Do you think it might be a good idea if the chief minister included that as a requirement in his annual report directions to all departments?

Mr Corbell: You are asking me for an opinion. I would not venture an opinion on what the Chief Minister should do.

DR FOSKEY: I thought you might have an opinion about it being routinely made available to people, given that freedom of information laws are a major means of people finding out what is going on, and also relate to accountability of the government.

Mr Corbell: We certainly do report on the exercise of the Freedom of Information Act. In the annual report, the number of requests made, and the number of disclosures made following requests, partial or full, are reported on annually. If the committee wanted to make a recommendation on other elements of the FOI Act, I am sure the government would give that serious consideration.

DR FOSKEY: Thanks. No doubt we will.

THE CHAIR: Minister, I will return to some corrections issues. With respect to the Soter X-ray body scanner which has been trialled, are you able to talk us through some of the results of that trial?

Mr Corbell: Mr Jones can give you a bit more detail, but before I hand over to him I will make a few comments. This trial has been underway for a period of time at the

Belconnen Remand Centre. It has been conducted in accordance with criteria and procedures laid down by the ACT Radiation Council, which is the regulatory body for the use of this type of equipment. So far it has been a voluntary scheme, in that remandees are given a choice as to whether they want to be searched in more conventional ways or whether they want to be searched using the Soter scanner. A number of staff have been trained in the use of that. Mr Jones can tell you about the volume of use and some other elements.

Mr Jones: The number of detainees volunteering varies. It is anything from 50 per cent down to as low as 20 per cent, depending on the remandee population at the time. The trial is still underway and I believe it is expected to be completed by the end of the year.

THE CHAIR: With respect to the alternatives that they are offered, in the ordinary course are they offered the alternative of the body scanner, a strip search or a pat-down search? What would be the ordinary way of checking for drugs and other contraband?

Mr Jones: Strip search.

THE CHAIR: So there is perhaps a strong incentive for remandees to choose the body scanner, I suppose.

Mr Corbell: The level of take-up of the body scanner has not been as high as I would have anticipated. That has been a matter of some surprise for Corrective Services as well. We would have thought people would have preferred the X-ray scanner to the physical strip search, but we are still seeing, as Mr Jones said, depending on the remandee population, somewhere between 50 per cent and 80 per cent of prisoners preferring the strip search.

THE CHAIR: Minister, depending on the results of the trial, is it your intention, if it is successful, to consider having it implemented for the opening of the new centre?

Mr Corbell: Depending on the results of the trial, yes.

THE CHAIR: What kind of cost are we looking at for this scanning device?

Mr Jones: I do not have that information with me.

Mr Corbell: We will take that question on notice.

DR FOSKEY: In relation to the Soter scanner, we had a briefing some time ago in which we discussed this. At the time, in response to an inquiry, I was told it would be impossible to receive a harmful dose of radiation from prolonged exposure to the machine. It was described as being equivalent to taking a flight on a commercial aeroplane. There is evidence that cabin crew are actually at risk of disease from the elevated levels of radiation they receive, so people who were routinely subjected, or chose to be subjected, to the X-ray scanner might have repeated exposure to radioactivity. I am wondering whether anyone has looked at what level of exposure, or how many times over a period of time that the machine was used, would constitute

an unacceptable health risk.

Mr Corbell: This is why we have sought the explicit approval, as we are required to do, from the ACT Radiation Council. They have provided us with their advice and requirements in terms of what they believe to be safe levels of exposure. There are certain protections in place. The Radiation Council has taken a highly cautious approach, as they should, in relation to this matter, and there are certain classifications of remandee who are not to be scanned. For example, women who may be pregnant are not to go through the machine at all. The total number of exposures is also specified, as I understand it. Mr Jones can perhaps provide further advice. That has all been provided by the ACT Radiation Council. If necessary, I would be happy to provide those conditions to you.

DR FOSKEY: That would be handy, yes, just to follow on from our briefing.

THE CHAIR: How many times in the past financial year would illicit drugs have been discovered in the remand centre or taken into the remand centre?

Mr Jones: I do not have the exact figures with me but there have been a number of occasions during this financial year when the passing of contraband has been observed by staff, particularly on visits. There have been times when the visitor or the detainee has been able to swallow the drugs or the contraband so that we have not been able to ascertain what type of drug or contraband it is.

THE CHAIR: Will you take that on notice—how many occasions?

Mr Jones: Yes, we can do that.

THE CHAIR: What is the response of the government agency in the circumstance where a remandee is found to have contraband on their person?

Mr Jones: There are a number of sanctions, including restriction of their contact visits. If the visitor is found to have passed it, we involve the AFP, and criminal prosecutions take place as well.

THE CHAIR: What about needles? How many needles would have been found in the remand centre in the last financial year?

Mr Jones: Again, I will take that on notice, but as recently as last weekend we found a needle.

THE CHAIR: So it is a reasonably regular occurrence?

Mr Jones: It happens more than several times a year, yes. I will take on notice the number of times.

THE CHAIR: Have there been any needle-stick injuries for either remandees or staff in that time?

Mr Jones: No.

THE CHAIR: In relation to the Alexander Maconochie Centre, on page 75 there is reference to the average number of sentenced prisoners that are accommodated in New South Wales. The figure for 2006-07 is 100.9 for males and 4.7 for females. Given the very small number of female ACT prisoners at this time, what will be the arrangements in terms of segregation?

Mr Jones: As of yesterday, our current number of sentenced females in New South Wales is six and our number of female remandees is eight. So we have a total of 14. The number of female remandees fluctuates from 1 to 12. If the number of remandees or sentenced prisoners is low, we will allow them to mix. The security conditions for female prisoners are quite different from those for sentenced males or remand males.

THE CHAIR: So there will be mixing between the sentenced and the remand females but not between male and female remandees and prisoners?

Mr Jones: That is correct.

Mr Corbell: There is a separate facility at the AMC for female prisoners—a dedicated separate building.

THE CHAIR: How large is that facility? How many is that capable of holding?

Mr Jones: Twenty-five.

DR FOSKEY: I am interested in the response of the government to the Human Rights Commission audit of the BRC and whether that has led to any considerations. Has the government prepared a response to that report?

Mr Corbell: I am currently considering the government's response to that report. I would hope to have that response finalised by the end of the year. Serious consideration is currently being given to all of the recommendations of the Human Rights Commission audit.

THE CHAIR: Have any changes been made in the interim as a result particularly of some of the things that can be changed within the existing centre? The Human Rights Commission report spoke about a culture of bullying. Is that something that is being addressed?

Mr Corbell: The comments around bullying were particularly unfortunate in that the Human Rights and Discrimination Commissioner was not able to identify any systemic issues around bullying but she did highlight that there were one or two instances that were brought to her attention. The government does not agree with the assertion that our corrections officers exist in a culture of bullying. In fact, we strongly disagree with that. Having met and talked with a large number of Corrective Services staff, it is very clear to me that they take great offence at that and that they are a very dedicated bunch of people who, quite frankly, work in what is at times a very difficult environment. Dealing and working with individuals who are in custody is always a potentially difficult environment. I think it was an unfair criticism to suggest there was a widespread culture. Certainly, there were one or two instances

that the Human Rights and Discrimination Commissioner's attention was drawn to, but I do not think that in any respect leads to a widespread culture. I think that conclusion was overblown.

In relation to the range of recommendations that the Human Rights and Discrimination Commissioner made, the government is giving serious consideration to those which can be acted upon immediately. A number of those are currently under consideration and are well advanced, in terms of what can be done to address those. There are some simple things, such as privacy in terms of shower arrangements. The Human Rights and Discrimination Commissioner identified the opportunity for translucent rather than fully transparent shower curtains as being one thing that should be given consideration to. That is obviously something which the government and I believe can be addressed in a relatively straightforward way, so consideration is being given to that. I have just been advised that it has actually now been done, so that is good.

Other measures, such as access to more facilities for activities and more opportunities for an activities officer, are currently being considered. That was another matter that was raised by the Human Rights and Discrimination Commissioner. With respect to remandees' clothing, ambiguity regarding the regulations and the operational elements—whether remandees should wear their own clothing or whether they should wear clothing issued by the centre—is also being addressed. A range of things are being acted on, but the government's response will outline those in full.

THE CHAIR: What is your personal view on that, or the view of Corrections? That, to me, seems to be an odd recommendation as well.

Mr Corbell: The human rights commissioner identified that there was a discrepancy between practice and the provisions of the then existing regulations. The operational practice was for remandees to be issued with standard clothing for their own safety and also for the management of security in the facility. The previous regulations indicated that remandees should wear their own clothing. That discrepancy was brought to my attention by the human rights commissioner in her report. I have subsequently made a new regulation clarifying that Corrective Services can and should issue remandees with standard issue centre clothing, not their own clothing.

DR FOSKEY: I refer to volume 1, page 79, output class 2. One of the accountability indicators is the reduced risk of the offender re-offending. How is that risk assessed and quantified? I am wondering how you determine that risk. How do you quantify that risk? It appears on page 105 in this smaller volume.

Ms Leon: The probation and parole unit uses the LSI inventory. It is a widely used inventory in community corrections which assesses a whole range of factors that determine the risk of the offender re-offending. We can provide you with more detail about it on notice, but it is a commonly used indicator across community corrections in Australia.

DR FOSKEY: I would like more detail. Does it include things like the percentage of ACT prisoners who are recidivists, who are being imprisoned for a second or more times?

Ms Leon: I think you are asking in that question about their actual recidivism rather than about the accountability indicators measure, which is an assessment of each individual at the completion of their program as to the risk factors for them re-offending. So the question you are asking is about—

DR FOSKEY: Okay, let's keep that separate then.

Ms Leon: the actual rate of recidivism, which is not one of the accountability indicators currently measured.

THE CHAIR: I am certainly interested in both.

DR FOSKEY: I am, too. I note that Mr Carter has joined us. He will probably be able to expand on that.

Mr Carter: I can tell you about the LSI. It is an instrument that was developed in Canada and has been adopted internationally as a system for assessing the predicted behaviours of offenders. It is based on the demographics of the individual, their first offence relative to their birth date, the number of offences they have committed, as well as other variables such as their community supports, their housing and their employment. All of these are well-established predictors in terms of risk for re-offending.

The system, as I said, is well accepted in Australia. Other similar techniques are used in different jurisdictions in Australia where the population of offenders is large enough to develop a population base against which you could measure the risk for a particular part of Australia. For instance, Western Australia has its own database for those purposes; Victoria is developing theirs; I am not aware of whether New South Wales has yet developed something. If they were to do so, it is something that we could perhaps look at because of our proximity to that population. But in terms of a standard approach, the LSI system is well used. It is called the level of supervision inventory.

DR FOSKEY: I am glad you said that. It is obvious that we are going to be talking about this for a moment. A lot of the indicators that you are suggesting are also indicators for students at risk of failing and dropping out of school.

Mr Carter: There is a strong correlation between those elements.

DR FOSKEY: It makes a very strong argument for restorative programs as early as possible. Has consideration been given to dealing with people who have come out of prison and making sure they have accommodation—all those other factors that might reduce those risks of re-offending?

Mr Carter: I refer to the through-care model that has been further refined for the AMC. That involves looking at the factors that pertain to re-offending and ensuring that those things show up. We can do that relatively well. However, there are always elements relating to the independence of an individual and their associates that one cannot control. With good supports on release, there is evidence in Australia that this

is a factor in reducing the re-offending rate, and certainly prolonging the time for an offender to come back into contact with the justice system.

THE CHAIR: Are you talking particularly there about things that happen post-release or is this both?

Mr Carter: The preparation can be started the minute community corrections people or probation and parole people come into contact with the individual at the time of preparing the pre-sentence report. They can commence working with that individual at that point and then impose sentencing. Whether that sentence is a community-based sentence or a custodial sentence, that support should continue. It involves working not only with the individual but also with employers and their families, and providing support for the person up to and after their release into the community.

Mr Corbell: These issues, I strongly believe, highlight one of the very important reasons why the government took the decision to establish the AMC. This is not some "can have" but not a "must have", as the opposition leader characterised it the other day. It is a "must have" if we are to address these issues around recidivists' behaviour. At the moment the New South Wales prisons do not provide us with the ability to manage and give support to ACT prisoners in any respect. That is a fundamental failing in the existing arrangement where prisoners are sent to New South Wales jails. They are released from New South Wales jails and, all too often, they end up back in contact with the criminal justice system too quickly.

The opportunities that exist at AMC involve transitional release. In particular, the transitional release facilities will provide us with the ability to place prisoners in a setting which is not that of the formal security of the jail itself but instead a transitional setting which allows them to start to develop the networks, the opportunities for work, the opportunities for resocialisation and so on outside the prison context, but nevertheless in a supported environment, prior to them going into other forms of supported accommodation within the community proper. The government is giving detailed consideration at the moment to how that program will be structured and how it will be funded so that when AMC is commissioned next year we have those options before us and those programs in place.

THE CHAIR: I am keen to explore, minister, the issues around recidivism a little further, but could Mr Carter first take a step back with this indicator we are looking at here. Are the 65 per cent and the 67.7 per cent that are indicated the reduced risk, so that there is a baseline figure of a risk of re-offending and this is the reduced risk? Am I reading that right?

Mr Carter: I cannot answer exactly on the statistics that are provided here because I do not have a direct involvement with this. I would have to take that on notice, but I believe that is what is being indicated.

Ms Leon: That is correct. That is the nature of the indicator. The probation and parole unit assesses the risk of re-offending and then assesses the offender at the completion of their time with community corrections. That measure indicates the number whose risk under that LSI has reduced over that time. So it is a good figure in order to say that, with the intervention of Corrective Services, we are able to reduce their assessed

risk of re-offending. Obviously, that is based on the assessed risk; that is not necessarily an exact predictor for each individual, but it is a pretty well-used and well-accepted inventory for predicting risk.

THE CHAIR: But it is not the quantum of the risk that we are measuring here; it is the number of people for whom the risk has been reduced as a result of the programs?

Ms Leon: That is correct.

DR FOSKEY: Page 80 of volume 1 lists quite a range of programs that are offered to try and reduce the risk of re-offending. I am wondering whether there is any deeper analysis of the implementation and impacts of those programs.

Ms Leon: In relation to programs of this nature, it is generally accepted that you need to run them for a period of at least three years before you can do an effective evaluation of their success over time. Some of these programs have not yet had the full three-year period in their current form. I would have to take on notice for you when the evaluations are scheduled, but they are scheduled for evaluation in the next year or two, and that would be the point at which we would be able to give a more detailed analysis of their outcomes.

DR FOSKEY: Are they generally supervised through JACS itself or through community organisations? Who are the providers of the programs?

Ms Leon: They are run by community corrections within ACT Corrective Services.

DR FOSKEY: Do you have any comment to make in particular on the cognitive self-change program? There were three forms of it during the year, but it is an interesting concept.

Ms Leon: It is. I cannot give you a comment in the sense of a formal evaluation because, as I said, that has not yet been undertaken. I understand from Corrective Services—and Bob may wish to say more about this in terms of the approach of corrective institutions nationally—that that approach of cognitive self-change is generally regarded to be a very useful approach and one that is most likely to be successful for particular offence types, in that people need to learn how to manage their own behaviour better in order to avoid repeating those offences. So it is considered to be a good program. I cannot give you the formal results of it yet, pending evaluation, but it is a well-accepted and, I think, a very good approach.

DR FOSKEY: That will continue when we have a new prison here?

Ms Leon: Yes.

THE CHAIR: Still on recidivism, you talk about it not being an accountability indicator. Minister, obviously one of the reasons for building the Alexander Maconochie Centre is so that we can assist in reducing recidivism.

Mr Corbell: Yes.

THE CHAIR: Will that now become an indicator? I know that in youth corrections they do have recidivism as an indicator. Going forward, what are some of the main changes as a result of the Alexander Maconochie Centre being built that will, in your opinion, reduce recidivism rates in the territory?

Mr Corbell: The first thing to say is that the actual level of recidivism at this time is difficult to measure because, as I understand it—and I am happy to stand corrected—the recidivist rate for the ACT prisoner population is not disaggregated from the New South Wales prisoner population. Ms Leon can provide you with some more detail on this in a moment. Therefore, it is difficult for us to determine the actual recidivism rate, because our prisoners are measured alongside the whole of the New South Wales prisoner population.

THE CHAIR: Is there a reason it is not able to be disaggregated?

Mr Corbell: I am not familiar with the details around that. What I can say is that the government does want to see a measure in place for AMC so that we can properly measure that issue in the context of our own prisoner population. Consideration is being given to how that will occur. I think Ms Leon or Mr Carter are keen to add to this, so I will turn to them.

Ms Leon: The question of how to measure recidivism is quite a complex one, and one that is under active discussion nationally amongst other justice departments. The reason is that different jurisdictions have different measures regarding whether one counts an offence as having occurred on the basis of the person being charged or on the basis of the person having been convicted. There is considerable opportunity for diversion from formal processes along that path. For example, if a person is charged but the matter is then diverted to some restorative process, the person will not necessarily appear in the statistics as having re-offended, because they may well enter into a diversionary process that means they are not formally convicted.

There is some considerable debate about the extent to which people in that category ought to be counted as having re-offended. If one, as a matter of conceptual decision, decides that they ought to be, there is the question of capturing them, because they do not go through the same statistical process as people who actually appear before the courts. So there is some conceptual complexity that we are working on. There is also an aspect of technological complexity about being able to capture and measure people on the one database. That is also being actively worked on. As you would know, the arrests and charges appear on a police database, but it is an AFP database, not an ACT database. So we are in discussions with the police about ensuring that there is an appropriate transfer of information but one which does not compromise the operational security and independence of the police database. It is certainly a matter that is under very active work, but the exact details of how the recidivism will be measured and tracked are being worked on at the moment.

THE CHAIR: How does New South Wales measure recidivism?

Ms Leon: New South Wales is engaged in the same body of work about trying to establish appropriate measures for recidivism. The matter is being discussed both in the Institute of Criminology and in the forum of justice CEOs.

THE CHAIR: Going back to the second part of my question, minister, what changes, as a result of the Alexander Maconochie Centre being built, in your opinion, will contribute to reducing recidivism in the ACT?

Mr Corbell: First of all, at a broad conceptual level, the ability for prisoners to remain in relatively better contact with their extended family and support networks is a noted element in effective rehabilitation. The fact that we have prisoners located in often geographically remote areas from the ACT means that the ability of prisoners' families and friends to maintain contact with them is enormously disrupted. That is a significant factor in how effective rehabilitation programs can be. So the issue of geographic location is significant, and the fact that the prison will be discretely within the ACT means that it will be much easier for families and other social networks to support and meet regularly with prisoners.

The second issue relates to the model that is being proposed at the AMC in terms of the delivery of the custodial service. There is a strong emphasis on normalisation of behaviours and of activity, to the extent possible within the prison setting. So the delivery of educational programs, the delivery of training programs, the delivery of psychological programs to support prisoners to change behaviours, where that is needed, will be much more extensive in AMC than it is in other prisons. Again, that is a significant factor. I have already mentioned the transitional release program and the facilities being built to provide for transitional release. They are another important factor, as well as the post-release support that will be provided to prisoners in the wider community, once they are released formally from custody. Those are all elements that the government believes will be very significant in assisting with prisoners' rehabilitation.

THE CHAIR: We have seen on the news, just today and yesterday, the issue of the release of a serial sex offender in Queensland and issues around the living arrangements post release. Will the ACT have the capacity to deal with such offenders in the way that Queensland now deals with them, on corrections property, but not in prison, because they have been released?

Mr Corbell: The issue of serious sex offenders and the risks associated with their release back into the community is one which the government treats very seriously. The previous attorney, Mr Stanhope, commissioned Professor David Biles to do a report into what the options for government were in terms of the management of these offenders post release. That report is currently before cabinet, and I am making recommendations to cabinet on what the options should be for ongoing supervision of those offenders, once they are released back into the community.

Professor Biles gave the government a range of options, which varied from the status quo to the other extreme—the option of further periods of imprisonment, subject to a review by the court, similar to models that exist in a number of other Australian jurisdictions—as well as what you would consider to be more in the middle range of options, such as strong controls around movement, where people can reside and so on. This links, of course, with the sex offenders register, which is a national register which we participate in, which allows us to know where serious sex offenders live, where they reside, what they do in terms of employment and so on. So the

government is giving further consideration to whether there need to be other options for the safe custody of these persons once they have finished their formal sentence. That is something which I would hope the government would be in a position to make an announcement on in the coming months.

THE CHAIR: I know there are a number of community organisations—Kairos comes to mind, along with others—that have a particular interest in prisons and working with prisoner populations. How will organisations like those be incorporated into the Alexander Maconochie Centre?

Mr Corbell: The most obvious organisations are Prisoners Aid, the Legal Aid Commission and possibly organisations such as Justice Action, although Justice Action seems to be a somewhat disparate group of people. The most obvious example that I can give you is Prisoners Aid. Prisoners Aid is a longstanding organisation here in the ACT. We have worked very closely with them throughout the development of the planning for the AMC. Prisoners Aid will play an important role in providing support and counselling. That is what they do: provide support to prisoners in terms of access to services, social networks and so on.

THE CHAIR: They do that on a voluntary basis?

Mr Corbell: They receive some level of funding, I think, from the ACT government, but they are volunteers who perform that service.

THE CHAIR: What levels are we talking about in terms of funding by the government?

Mr Jones: For Prisoners Aid?

THE CHAIR: Yes, and any other similar organisations.

Mr Jones: I think Prisoners Aid is the only organisation that Corrective Services contributes to. It is in the order of $20,000 a year.

Ms Leon: There has been an active program by the department of engagement with a wide range of NGOs who will be relevant to the ongoing support of prisoners. That includes organisations whose primary focus is not necessarily prisoners. For example, ACTCOSS has a strong interest in the needs of people from socially disadvantaged backgrounds, many of whom do come into contact with the criminal justice system. Corrective Services has engaged with a wide range of community organisations to seek their involvement and interest in assisting the work of the prison and the people on release from prison. I think there are in the vicinity of 15 to 20 NGOs who are actively engaged in working with Corrective Services to ensure that they can be involved in supporting prisoners while they are in prison and after their release.

THE CHAIR: I mentioned Kairos simply because they came to see me recently. Would that include an organisation like Kairos? Will they be coming into the Alexander Maconochie Centre?

Ms Leon: I do not have the detail of the names of all the organisations that have

expressed interest but I understand that between 15 and 20 have expressed interest and that Corrective Services is working with them to ascertain appropriate models for their involvement.

DR FOSKEY: Could I refer to the drug strategy on page 81. I think it is generally accepted that most prisoners, or certainly a large proportion, do have drug problems—sometimes along with mental health problems or sometimes with mental health problems alone—or are themselves the victims of childhood abuse, both physical and sexual. Indeed, in some states there is a dedicated drug court and a way of dealing with drug offenders in a separate stream. How can we ensure that people in the Alexander Maconochie Centre who are there primarily because they have a drug problem will be given the rehabilitation they need apart from just being imprisoned?

Mr Corbell: Significant consideration is being given to this matter. It does relate to the corrections health plan for the prison because the provision of therapeutic programs around drug use and encouraging people to cease that use very much involves a therapeutic program which would be delivered by health services. Mr Jones could probably give you a lot more information on how that is proposed to be arranged.

Mr Jones: Certainly, drug and alcohol education is a component of our current remand facilities, and that will be expanded when we move into the AMC next year. It consists of drug and alcohol education programs, drug awareness programs and alcohol and drug coping skills programs.

DR FOSKEY: How will you ensure that blood-borne diseases are not transferred in the prison?

Mr Corbell: The government has indicated what its position is in relation to this important matter. At this stage, it is not the government's intention to proceed with some form of needle exchange program, a needle or syringe program, in the prison. The reason is that we consider there are still unresolved issues around safety and security for both inmates and staff in the facility. What we have said is that we do not rule out the provision of an NSP at some future point.

We want to try and achieve two things before we need to make a further decision in relation to an NSP. First, we need to better understand the level of transmission of blood-borne diseases within the AMC environment. We do not know, except from drawing on experience in other custodial settings, what the exact level of transmission will be and we need to better ascertain that.

THE CHAIR: How will you ascertain that? At the moment there is no compulsory testing, I understand, for blood borne.

Mr Corbell: That is right.

THE CHAIR: Is there any chance of that changing?

Mr Corbell: I am personally of the view that it would be very helpful if we could test all prisoners on arrival and on departure from AMC to assist us in understanding what

the level of infection is.

DR FOSKEY: Are they given a medical check anyway?

Mr Corbell: Yes, but at this point we have not compelled prisoners to provide blood samples simply for the purposes of testing. Blood samples would be taken if the prisoner consented and if there was a medical need to do so. There are human rights considerations that need to be brought into play here, and issues around compulsion are difficult. Whilst I can see the real desirability at one level of having a broad level of knowledge about what the level of transmission and infection is, that needs to be balanced against human rights considerations and the privacy of those individuals. That is something to which further consideration will be given. Just to finalise my answer, at this point we are not proceeding with an NSP but we do not rule that out at some future point once we have a better understanding, one way or another, of the level of transmission and infection within AMC.

Ms Leon: In addition to being able to ascertain levels of transmission, we will be able to ascertain, with some degree of knowledge, levels of usage of drugs in the prison because prisoners will be subject to urinalysis. So it will be possible to ascertain where the drugs are getting into the prison and being used, and that will be an important factor in assessing whether there is a need for clean needles. We certainly are trying to make the prison, as much as possible, a drug-free environment because we strongly believe that assisting prisoners to cease using drugs will greatly assist in their rehabilitation.

DR FOSKEY: Just anecdotally, at one of the meetings that I convened about needle and syringe programs, one of the people in the audience who apparently had been in prison and apparently had been a drug user said that sheer boredom was part of the reason why people use drugs in prison. That perhaps has a broader application in the community as well. I am wondering whether that is going to be part of a strategy to keep the prison drug free. Also, urinalysis is compulsory but that is not a human rights issue whereas blood testing is. Could you explain that?

Mr Corbell: Urinalysis is a compliance method to detect whether there is the presence of contraband in the prison, whereas seeking to ascertain somebody's health status simply for the purposes of making a decision around policy is, I think, a little more complex. That would be my feeling, but it is a matter that needs to be explored further.

In relation to issues around boredom, it is fair to say that in those prison facilities interstate where prisoners are locked down for considerable periods of the day, in some of the maximum security facilities—Mr Jones will know this better than I—for a good part of a 24-hour period prisoners are locked in their cells. It is not surprising that boredom becomes a major issue. The design and operating philosophy of AMC are based on prisoners being active during daylight hours in a range of programs and activities. The physical design of the facility encourages prisoners to get out and do a range of activities, and the programs will be designed to facilitate that.

There is no doubt that extended periods of lockdown do create significant issues around boredom, and that is the experience we have at Belconnen Remand Centre.

That was confirmed by the human rights commissioner's comments in relation to the Belconnen Remand Centre. Because of the very constrained physical nature of the building, boredom is a big issue. Lack of activities, lack of ability to get to outdoor areas and so on are major factors. Anecdotally, the human rights commissioner said to me that the most common issue raised by remandees at Belconnen was that they were bored. That is, I think, overwhelmingly due to the physical design of that building.

THE CHAIR: Page 309 of the annual report talks about severe staff shortages at Belconnen Remand Centre. What is being done to address that, given that we are going to need more staff than we currently have once the new prison is open?

Mr Corbell: We did face some significant issues with staffing in the second half of the last calendar year and earlier this calendar year. That led to extended periods of lockdown of BRC because of a shortage of custodial officers available to be on duty. I am pleased to say that that situation has been rectified and we have not seen those extended periods of lockdown continuing to occur. There is a comprehensive recruitment program currently underway for AMC. We anticipate the recruitment of 75 additional custodial officers and an additional 25 to 30 non-custodial staff between now and mid next year.

We have started a national recruitment campaign for those officers and other staff. We have received approximately 250 telephone inquiries. We have also advertised in New Zealand and we have received about 50 inquiries from people in New Zealand. We have already recruited 20 new officers. They commenced training early in October this year, and we received about 100 applications for that training course. So the first training course accepted 20 and that is underway. We have been very pleased with the level of interest that has been shown to date in positions with Corrective Services, and that is very encouraging. There will be a further series of training courses in the coming months.

In addition, we are continuing our recruitment efforts with a roadshow going to parts of New South Wales, particularly around regional New South Wales. So far, Corrective Services have held information evenings in Yass, Young and Cootamundra. We have received 25 expressions of interest for the next recruitment course, which will be conducted in February, and further recruitment action is also proposed in Wagga Wagga later this month.

THE CHAIR: How many of the applicants for the correctional officer positions have previous experience in the field?

Mr Jones: I believe the current course, which started in October, has two officers on the course with previous experience.

THE CHAIR: Two out of the 20?

Mr Jones: Yes. In our second round of applications, which were reviewed this week, there are a number of people, particularly from New Zealand, who have applied to come across to the ACT.

THE CHAIR: Are you advertising in areas where there are currently prisons so that

you can tap into some of those staff?

Mr Jones: Yes, certainly. Wagga Wagga is quite close to Junee Correctional Centre.

THE CHAIR: Goulburn and other places such as that?

Mr Jones: We currently have staff that have worked in New South Wales, in Goulburn Correctional Centre, Junee and Mannus, and in other jurisdictions around the country.

DR FOSKEY: Can I ask about the Aboriginal and Torres Strait Islander reporting section. On page 176, there is a heading for the "ACT Aboriginal Justice Centre". Could you tell me how that is going?

Ms Leon: The Aboriginal Justice Centre is established as an independent organisation, so it has its own board. It has received establishment funding from the department but we do not run the centre. It is run by a board of elected community representatives and they have a contractual arrangement with us whereby they will need to report annually on their performance under the contract. While I can tell you in general terms about the nature of the centre, we do not administer it. It is a community organisation and it is run by its board.

DR FOSKEY: Are they able to come to you for logistics support?

Ms Leon: Absolutely.

DR FOSKEY: I believe I heard that their legal officer has left.

Ms Leon: Their CEO resigned about a month or six weeks ago. They are in the process of recruiting a new officer for that position. They are independent of us but we are available to give them such support and assistance as they request. But we are conscious of their independence as an Indigenous organisation and we do not seek to impose ourselves upon them if they do not require our assistance. Obviously, we are their funding body, so we engage with them as appropriate in terms of that funding, in that we are involved in setting their performance indicators and seeing that they report against those indicators. But we do not interfere in the day-to-day running of their business as long as they are expending the contract money appropriately.

DR FOSKEY: How long was the CEO actually in that position?

Ms Leon: I am advised it was about seven months.

THE CHAIR: I have a couple of questions around prisoner numbers, minister. The numbers most recently from the ABS have been tracking in the last six to 12 months around the high 100s in terms of total remandees and sentenced prisoners in New South Wales. In the past we have had projections going out which are clearly wrong now. Do we have forward projections now that have been updated and based on the fairly recent ABS statistics? If so, what are those projections for prisoner and remandee numbers in the ACT?

Mr Corbell: You are right to identify that prisoner numbers have been fluctuating. In 2005-06 there was an average of 123.4 ACT prisoners, to be precise, in custody. In 2006-07 there was an average of 105.6. These numbers clearly do fluctuate. In terms of projections, we have had this discussion before, and my advice to you would be the advice I have given you previously—that is, it is difficult to predict the number of prisoners going forward. At this point in time, the government is continuing to rely on the assessment that was undertaken by ACT Treasury when the decision was taken to commission the construction of the AMC.

THE CHAIR: But those figures are clearly wrong now, aren't they?

Mr Corbell: As was indicated at the time, and as the government has consistently indicated since then, these figures are subject to change, because it is extremely difficult to predict the number of people sentenced to custodial sentences at any point in time.

THE CHAIR: At this stage there are no plans to update the projections for prisoner numbers going forward?

Mr Corbell: At this point in time, my view would be that that would be unnecessary, simply because AMC is providing us with adequate capacity to accommodate the existing number of sentenced prisoners and remandees. Based on previous experience, even if we were to return to previous levels of prisoner numbers, which is just as likely as anything else, AMC would give us sufficient capacity to hold those prisoners.

THE CHAIR: Do you expect that, as a result of us having our own prison, we will see more Canberrans sentenced to custodial sentences than is currently the case?

Mr Corbell: No, I do not believe so. Certainly, this is a matter which is the subject of a lot of debate over coffee and lunch with judges, lawyers and others interested in the criminal justice system. Certainly, my view on this, having had discussions with a number of our judicial officers about this, is that they certainly do not see that as a factor at all in whether or not a custodial sentence is imposed. Their position is that, if a custodial sentence is warranted, it is warranted, regardless of where custody will be. So I do not believe there will be any significant change.

I would have to say that there may be some issues around the margins. It may be that, around the margins of whether or not a custodial sentence should be imposed, a judicial officer—and this is my own take on it, Mr Seselja; I am certainly not trying to reflect the view of judicial officers in any way—may say, "Look, if you're going to Junee, that may be a bit harsh, but if you're going to be here in the ACT, you are really on the margins as to whether or not a custodial sentence were to be imposed." That may be a factor. But I would have to say that that is really on the margins. The conclusion I have come to is that there will not be any change at all in sentencing.

THE CHAIR: I have a couple more questions on corrections and then I will certainly be done with this area and we might move on to some other things. Dr Foskey might have some more on corrections. If the numbers do stay low going forward, so that there is some spare capacity in the centre, are you going to explore the possibility of New South Wales prisoners being housed in the ACT prison?

Mr Corbell: The ACT will be open to requests from other jurisdictions to accept prisoners from other jurisdictions, in the same way that other jurisdictions are open to our requests to accept prisoners. But that will be done on a case-by-case basis, as it is now—on a prisoner-by-prisoner basis.

THE CHAIR: One of the issues that has been raised around the Alexander Maconochie Centre and the fact that the ACT corrections system will have just the one prison for all of our prisoners and remandees is gangs and the separation of gangs. In the circumstances where there was a large gang sentenced in the ACT, what capacity would there be, for security reasons, to split the members of those gangs in a meaningful way?

Mr Jones: We do not really have a problem at this stage with gangs in the ACT. However, the Alexander Maconochie Centre does have a number of options for placing people in different secure areas to separate them.

THE CHAIR: How many different areas? If we had a gang of 10, would there be the capacity to—

Mr Jones: It would also depend on the classification of the prisoners.

THE CHAIR: Let us say they were all sentenced.

Mr Jones: We have two maximum security cell blocks. We have four cottages and we have a management unit as well.

THE CHAIR: So you are confident that in those circumstances with large gangs there would be no problem in separating them?

Mr Jones: Yes.

MR STEFANIAK: With respect to page 245, what is happening with the adult forensic healthcare facility?

Mr Corbell: That is a matter for ACT Health. The forensic healthcare facility is a Health facility.

MR STEFANIAK: Do you know what is happening to it?

Mr Corbell: In general terms, I understand that ACT Health are progressing detailed planning for the provision of a forensic mental health facility on the campus of the Canberra Hospital. It is subject to the detailed planning associated with the rest of the mental health precinct at the Canberra Hospital. I assume that is what you are referring to—the forensic mental health facility?

MR STEFANIAK: Yes, that is right.

Mr Corbell: The Minister for Health would be able to give you more details.

MR STEFANIAK: On page 251, "Outcomes of inquiries into breach matters", there is an increase in parole orders cancelled. It has pretty well doubled from the previous year that you have reported on, from 17 to 36. What was the primary cause of cancellations of parole? Could you shed any light on why the number has increased quite significantly from the previous year?

Mr Corbell: I am advised that changes to the Crimes (Sentencing) Act have had a significant impact on this. Where someone is in breach of their parole, the Sentence Administration Board now has the ability to cancel that parole.

MR STEFANIAK: Good.

Mr Corbell: We are seeing that power exercised for breaches of parole.

MR STEFANIAK: Does that account for that increase there?

Mr Corbell: I am advised that is the case.

MR STEFANIAK: What has occurred as a result of the breach of parole? Have people gone back in? I recall one case in the paper where the court made another order.

Mr Corbell: The Sentence Administration Board has been given the power under the act to impose the original sentence in a custodial form. There is some disagreement, I note, from some members of the magistracy about this, but the Sentence Administration Board is not imposing a new sentence. We are dealing here particularly with issues around periodic detention, where someone fails to attend periodic detention, so the original sentence is simply imposed as a custodial sentence.

MR STEFANIAK: You are not going to get an argument from me on that, attorney.

Mr Corbell: I am surprised!

MR STEFANIAK: I just wanted an explanation as to the numbers.

Mr Corbell: I think we are talking about the same thing. Parole is slightly different but I am advised that the same provisions apply when someone breaches their conditions of parole.

MR STEFANIAK: I refer to page 252. I note that the DPP in their report had some concerns about this at the time. What proportion of the Sentence Administration Board's time is occupied by periodic detention matters?

Mr Corbell: I could not tell you that, Mr Stefaniak. I would have to take that on notice.

MR STEFANIAK: If someone takes it on notice, that is fine. I note, for example, the cross-references to the DPP because the director has said his staff regularly appear before that board, which deals with a wider range of matters than ever before. The board has a greater reliance on submissions made to it, and the limited right to

challenge those decisions results in more controversial interpretations of parts of the legislation. There seems to be a concern in relation to the time involved, so if somebody could find that out for me I would be grateful.

Mr Corbell: I think it is fair to say that the Assembly has supported these changes to how the Sentence Administration Board works. I can appreciate that it does involve some changes to practice for a number of players in the justice process, but the bottom line is that the Assembly has adopted these changes and they are actually doing what the Assembly intended them to do, which is to provide for more timely responses in instances where somebody breaches their parole or breaches the conditions of their periodic detention, and they need to be dealt with promptly.

MR STEFANIAK: I am interested in the time occupied. I hear what you say, attorney, and I think it is quite a positive step, if people are breaching these orders, for the original order to be invoked by the board. It sends a clear message and I think that is entirely appropriate and I am pleased to see that occur. There have been in the past some considerable problems in terms of breaches of periodic detention matters and perhaps with their not being so effectively handled. I am simply interested in the amount of time occupied in dealing with those matters. It may be that it is less time now than it used to be because of the changes.

Mr Corbell: We can find that out for you.

Ms Leon: I am happy to be able to advise that the concerns raised by the DPP about the time that it was taking have been addressed because now the government solicitor is appearing before the board on behalf of the department.

MR STEFANIAK: That is good.

Ms Leon: So the DPP has now been able to be spared from that additional time.

MR STEFANIAK: For how long has that been occurring?

Ms Leon: About three or four months.

MR STEFANIAK: So the DPP does not have to do that any more?

Ms Leon: That is right.

DR FOSKEY: Is there someone here from the Essential Services Consumer Commission, the ESCC?

Ms Leon: There is not, but I may be able to assist with some of the inquiries. If not, I will be happy to take them on notice for you, Dr Foskey.

DR FOSKEY: Thank you very much. The ESCC say in their report that they had to move at very short notice from Eclipse House, due to its being turned into a shared services centre. They were, at that time, moved to premises at 12 Moore Street, which it is indicated were unsuitable. I wonder where they are now. If they have not yet been located to permanent or semipermanent premises, what is the plan?

Ms Leon: As you would be aware, Dr Foskey, there were a considerable number of accommodation moves that occurred arising out of the previous year's budget, when the government decided that it was appropriate to reduce expenditure of public moneys by consolidating a number of territory leases and expecting agencies to occupy a more standard amount of floor space. As a result of that, leases that were due to expire in the previous financial year were allowed to expire, for the most part, and agencies therein were relocated, including the co-location of all of the services of the Shared Services Centre in the largest of those leases, which was in Eclipse House. The ESCC was moved to 12 Moore Street, where it still is.

We have given every support to the ESCC and the other parts of the organisation to ensure that they are adequately equipped and able to function within that space, including ensuring that they had appropriate facilities for the conduct of their hardship hearings and for being able to support their clients and conduct meetings with them in a private setting prior to those hearings. Although accommodation issues are always very difficult for agencies when they have to move, I think that we have provided as much support as we can to the ESCC to ensure that the facilities they have are adequate for their purposes.

DR FOSKEY: It does look as though the number of cases they need to attend to is not going down. In fact, I have heard anecdotally that since the introduction of the utilities tax there is more pressure on their clients, if they have new clients, and that their existing clients are finding it much harder to keep up with their back payments, with current bills being that much higher because of the utilities tax. I do not think you will be able to answer this but I am interested in an up-to-date response on the impact of that.

Mr Corbell: I think it is disingenuous to attribute any increase in hardship applications solely to the utilities tax because—

DR FOSKEY: I heard that from a representative of the ESCC.

Mr Corbell: The reason is that, when you look at the total average increase in electricity and other utilities bills—both electricity and water bills but particularly electricity bills—less than 30 per cent of the increase we have seen is because of the utilities tax. The overwhelming majority of the increase in electricity prices is not because of the utilities tax. Indeed, the ICRC made this very clear in its determination: the key reason for the increase in electricity costs and the overwhelming majority of that increase is because of the increased price of electricity due to water shortages affecting electricity producers. Whilst the utilities tax is a factor—no-one disputes that it is a factor, because it is an additional charge—it is not the major contributor to the increase in the cost of electricity, and it is disingenuous to suggest otherwise.

DR FOSKEY: I respond by saying that if you are on an income of less than $15,000 a year, and many people are on incomes that are less than that, any increase in those essential charges is felt very, very strongly.

Mr Corbell: I am not disagreeing with that, Dr Foskey.

DR FOSKEY: I am just indicating that—

Mr Corbell: All I am saying is that to attribute it solely to the utilities tax is not correct.

DR FOSKEY: No, I did not do that.

Mr Corbell: Well, you did not refer to any other factor.

THE CHAIR: It could also be said that at a time of rising prices you have slapped a utilities tax on people.

DR FOSKEY: It is a straw that broke the camel's back instance.

Mr Corbell: I do not disagree that it is an increase in the cost, and the government has been quite clear about that. But it is not correct to suggest that the significant increase that we are seeing in electricity prices is solely due, or even in a majority due, to the utilities tax.

DR FOSKEY: We are all aware that energy and water charges are very likely to rise. Most of us have accepted that. An awful lot of us can cover that, but quite a number of people cannot. I think it points to a need in policy, and the ESCC, of course, is very much part of the way the government assists people to deal with those accounts. To me, it is not a matter of attributing blame; it is a matter of pointing out a problem.

MR STEFANIAK: Going to page 17 of the report, how is the review of the department's strategic plan for 2005-07 progressing, and when will the next strategic plan be issued?

Ms Leon: Our plan is with a working group within the department at the moment. I hope that by the end of the year there will be a draft available for consultation with our major stakeholders to ensure that we have our plans about service delivery right. Obviously, the plan will be an evolving document because, while we will have generic plans about improving service and so on, essentially the department's strategic direction is determined by the government's policy decisions about what they ask us to do. So while there will be some work being done that incorporates the decisions that government has already made about its policy priorities for the department, we will align the strategic planning framework with the decisions that are made around budget by the government, and that will determine the priorities for the department each year.

MR STEFANIAK: On page 27, I note that you have not provided comparisons with the figures in the 2006-07 budget for strategic indicators. Why haven't you done that? If you had done so, it would have allowed anyone reading it to assess whether the targets were achieved.

Ms Leon: Could you repeat that?

MR STEFANIAK: Why haven't you provided comparisons with the figures in the 2006-07 budget for strategic indicators, given that this would allow us to assess

whether or not the targets were achieved? You have given strategic indicators in table 5 on page 27, but there is no comparison with the budget in order to make any assessment of whether the targets were achieved.

Ms Leon: I am not quite sure what you mean, Mr Stefaniak. The table I am looking at has the target for each year and what was achieved for each year, for 2004-05, 2005-06 and 2006-07.

MR STEFANIAK: You indicate that "the figures shown above do not equate to the figures represented in the 2006-07 budget papers". I do not think there is any further explanation about that.

Mr Corbell: Which figures are you referring to?

MR STEFANIAK: The strategic indicators of targets. You say they changed from calendar year to financial year figures and that they do not equate to the figures represented in the 2006-07 budget papers. I do not think you give any further explanation in relation to that.

Mr Corbell: As to why that occurred; is that your question?

MR STEFANIAK: Yes.

Ms Leon: You will see there is a note under the table that says that the methodology of reporting has changed from a calendar year to a financial year, so the figures are not directly comparable.

MR STEFANIAK: So you are saying it is impossible to make those comparable?

Ms Leon: The rationale for doing it is that we set the targets on a budget and financial year cycle, so it is appropriate to measure them on a budget and financial year cycle. I confess to not knowing why they were ever set on a calendar year cycle, since that pre-dates my arrival. But since we are funded on a financial year cycle, and therefore the efforts that we put into crime reduction and so on are largely determined by initiatives that tend to run on a budgetary cycle, we therefore try and measure the targets on the same cycle.

DR FOSKEY: I want to go back to the ESCC matter. I want to clarify some concerns I am representing. Of course, the utilities tax was a small amount compared to the 16.7 per cent franchise electricity price increase.

Mr Corbell: I think that was my point.

DR FOSKEY: Yes, and I am conceding your point. But I am also saying that it does not leave the government scot-free because you will remember when we were—

Mr Corbell: I accept that; I don't deny that.

DR FOSKEY: debating the legislation, I raised the fact that the ESCC submission was that the cost rise be introduced in two stages. That would have taken the heat off

the winter bills, and there would have been two prices rises, for 1 July to 31 December and the second one introduced on 1 January, and the government refused to do that. In a sense, there is still, I believe, concern to answer for.

Mr Corbell: What is your question?

DR FOSKEY: Apart from correcting the record and conceding the previous point to you, I am also asking that you concede to me the fact that the ACT government did not consider the advice of the spokespeople, the intermediaries, to whom the government has given the role of assisting low-income earners to pay their utilities debts. As they anticipated in their annual report, and as I have heard anecdotally, there would be a significant increase in new client numbers, and that has occurred.

Mr Corbell: The government did consider that advice. These are matters which are managed by the Treasurer; he is responsible for the administration of that charge. The government does provide significant payments in the form of a community service obligation, concessions and so on to recognise the difficulty that people on lower incomes face in paying their utilities bills. I think we have continued to increase that amount in consecutive budgets for the concession scheme that exists. We will continue to do that. The government does take the advice of the ESCC seriously but it does not mean that in all instances we agree with it.

MR STEFANIAK: I have several questions in relation to the courts. Some time ago, and I think it might have been at estimates, I asked some questions in relation to inquiries the courts undertook in relation to the park and ride issue in relation to alleged misuse of forms.

Ms Leon: The three-for-free.

MR STEFANIAK: Yes, the three-for-free, and concerns raised by some staff in relation to how that was handled. Has that matter now been resolved? If so, what was the outcome of the matter?

Ms Leon: There are two aspects to that. One is whether the staff are still concerned about the way in which the matter is being handled. I have not heard any concerns from staff in recent times, and I think that concern has considerably abated. I think there was some anxiety by staff about being interviewed.

MR STEFANIAK: There certainly was to start with. I have not heard anything for a couple of months.

Ms Leon: I can understand that staff might feel anxious in those circumstances—that those who may have been involved might be anxious if they were about to be detected and that those who were not involved might be anxious that being interviewed suggested that they were involved. I attempted to assure staff that all staff were being interviewed, so being interviewed does not indicate any particular degree of suspicion or otherwise, and there certainly have not been any concerns expressed by staff to me in recent times. In relation to the investigation, it is still on foot.

MR STEFANIAK: It is still on foot?

Ms Leon: It is.

MR STEFANIAK: Who is investigating it now? Is it the original investigators or is it a police matter?

Ms Leon: It is still with the department.

MR STEFANIAK: When are you expecting the matter to be concluded?

Ms Leon: I hope that it will be concluded by the end of the year but that does rather depend on the next stage of the investigation and what comes to light as a result of it.

MR STEFANIAK: Page 37 of the report deals with practice directions. What impact have the practice directions had on the ACT Magistrates Court?

Ms Leon: Do you mean the new listing arrangements?

MR STEFANIAK: Yes.

Ms Leon: I think it is probably too early to say in a formal sense what the impact has been because it has only been in operation for a few months. Anecdotally in my discussions with the listing magistrate, Magistrate Burns, he is very happy with how the trial is going, how the new directions are going. There is still a little bit of working out to do about the booking system. As you would be aware, the arrangements are that, where people are entering the court for their first mention on criminal matters, rather than everyone just being in one long queue there is a sorting process to sort out those who need an adjournment. That is dealt with by a deputy registrar so that it does not need to take up the time of the magistrate. The deputy registrar can adjourn the matter for up to three weeks and then those who are ready to plead are sorted into those who are going to plead guilty—and they are given a time that day to do so—and those who are going to plead not guilty, who are then adjourned for hearing before the magistrate who will hear the matter.

At this stage those lists are working quite well except that we are still working out exactly how long one needs to allocate to make sure that the lists run on time. Those kinds of teething problems I think are what we all expect to happen at the beginning and they are being workshopped fairly actively by the listing magistrate with the profession and the other key users of the court. So, although it is early days, we are feeling quite confident that it will be a more effective means for both practitioners and magistrates and of course the people themselves who appear in court to have their matters heard in an effective and efficient way.

MR STEFANIAK: In terms of the Supreme Court, we have had the tragic death of Terry Connolly and the recent retirement of Ken Crispin. How well is the replacement of those two judges progressing?

Mr Corbell: It is progressing very well, Mr Stefaniak.

MR STEFANIAK: When can we expect an announcement, or are you unable to say?

Mr Corbell: That will be subject to a decision of cabinet, which has not yet been taken. However, I am very keen to see an announcement made before the end of this year to allow those who are successful in appointment to take up their positions at the commencement of next year.

MR STEFANIAK: So you would expect to have both judges appointed by the end of this year?

Mr Corbell: Yes.

MR STEFANIAK: What is happening in the meantime with the Supreme Court lists? Obviously there would be part-heard matters, certainly in relation to Justice Connolly. There might be some, I suppose, in relation to Justice Crispin. What steps have been taken in that interim period before new judges are appointed?

Mr Corbell: There are no matters involving Justice Crispin. That transition was managed perfectly well. There were a number of obviously part-heard matters involving Justice Connolly. There are only a small number of those that are problematic. One of those is a detailed medical negligence case which was well advanced in hearings before Justice Connolly before his death. I am currently seeking advice from my department as to how the government can provide assistance to deal with the costs associated with that for at least one of the parties. So that is underway. I am advised by the chief justice that between now and the end of the year he and Justice Gray, along with some assistance from visiting judges from the Federal Court, are able to manage the workload of the court. I have not received any contrary advice from the chief justice in that regard.

I have indicated to the chief justice that should he require additional resources—for example, for the appointment of an acting judge—I am more than open to consider that. But I have said to the chief justice that I really do rely on his advice as to what the court requires, and to date he has not indicated to me that he believes the arrangements that he put in place, which are some additional work for him and Justice Gray and the assistance of visiting judges from the Federal Court, are insufficient.

MR STEFANIAK: So you are getting that assistance from the Federal Court?

Mr Corbell: Yes, the Federal Court—

MR STEFANIAK: The non-resident Supreme Court judge—

Mr Corbell: Yes, the non-resident Supreme Court judges have been very helpful.

MR STEFANIAK: Just one further thing as it flows from the courts: I noticed over the last couple of months both you and I have made comments about reform of the criminal law in relation to sexual assault victims. My mind was jogged on how that is progressing today by a report on a sexual assault before Justice Gray today. I will not comment on an aspect of that that did particularly concern me, but it did jog my mind about improvements to the law for victims of sexual assault. How is that progressing and when do you intend to have any legislative changes introduced to the Assembly?

Mr Corbell: That work is progressing very well. I am very pleased with the advice I am receiving from my department, which has convened a working group involving officials of my department, representatives of other entities, in particular the DPP and the police and other stakeholders. They are progressing work on policy options that the government can put forward for consideration by the broader community. I do not have a time frame on that yet but that work is well in train. I cannot tell you when I propose to release that but I certainly consider it a priority and I would like to see that occur either late this year or at the beginning of next year. In addition to that there are a significant number of non-legislative reforms that can be pursued and the government has recently agreed on a number of those.

MR STEFANIAK: Such as?

Mr Corbell: I am not yet in a position to announce it publicly, Mr Stefaniak, but what I can say is that there is a range of issues currently around the limitations of technology in the court, in terms of closed-circuit television and so on. There are limitations in terms of support to victims, through our victims of crime coordinator and so on, which also need to be addressed. They were also highlighted in the joint DPP-AFP report and I will be in a position shortly to make an announcement on some of those matters.

MR STEFANIAK: Given that a lot of the problems raised by the police and the DPP and given to government I think in March 2005, and also given that I think virtually every other state and the Northern Territory have introduced reforms to make the lot of victims simpler, why has it taken you so long to even get to this stage? Why wasn't action taken when the issues were raised in March 2005 by the police? It is now 2½ years since then; other states have acted and we have not. And I appreciate you were not the attorney in all that time.

Mr Corbell: Yes. That report was presented to Mr Stanhope when he was attorney. I am not privy to what occurred at that time but what I can say, Mr Stefaniak, is that since I have been attorney I have actively pursued this matter and I have been supported in that with the advice of the DPP, the police and my department. I asked my department—and Ms Leon took this role on—to convene a high-level working group to identify how the range of issues identified in that report could and should be implemented and I am now very confident that we have the issue in hand and we are addressing it proactively.

That is what I want to see because I consider issues around support for victims of sexual assault to be very significant issues for the criminal justice system and the victim support system, and I am determined to see reforms in that area. I am supported in that by my colleagues and I think you will see in the coming weeks a very important announcement around that, as well as further legislative reforms to follow.

MR STEFANIAK: So are you expediting all of those matters now? It does concern me that other states are very much in front of us when it comes to looking after victims—

Mr Corbell: Some are and some aren't, Mr Stefaniak. It is not fair to characterise the ACT as lagging behind everyone on this. But I accept that there are some areas of the criminal justice process which need to be improved. That was highlighted in the report. Since the report was drawn to my attention when I took on this portfolio I have asked that the work be expedited and that is now what is occurring.

MR STEFANIAK: My final question is on sexual assault reforms. Getting back to that case this morning, nothing surprises me, but I did note with some interest and some concern that the accused who was convicted of a reasonably nasty sexual assault received a suspended sentence. Have you asked the DPP or made any inquiries as to what the rationale for that is? I appreciate that it is not a matter for the DPP, but I would think that that would cause some concern in the community—that what appeared to be a not insignificant act received only a suspended sentence.

Mr Corbell: I do not think it is appropriate for me to comment on individual, specific cases, Mr Stefaniak, except to say that in these circumstances I have confidence in the DPP's judgement as to whether or not the matter should be pursued, and I would rely on the DPP's view in that regard.

MR STEFANIAK: But have you spoken to the DPP or do you intend—

Mr Corbell: It is not my practice to specifically raise matters with the DPP. The DPP, as an independent statutory officer, has, I am sure, given or is giving the issue appropriate attention and I rely on his advice in that regard.

DR FOSKEY: In relation to sexual assault convictions, I am just wondering if there is any attempt to track recidivism amongst perpetrators when those perpetrators are identified and convicted.

Ms Leon: There is national data on recidivism amongst sex offenders and I could provide that to you if you are interested. My recollection is that the recidivism rate is something in the vicinity of 15 per cent.

Mr Corbell: It is important to stress, though, Dr Foskey, that it does vary depending on the type of offending behaviour—if you like, with the subcategories. Sexual offenders overall cover a wide range of offending behaviour. There is more detailed work on and more detailed understanding of the likelihood of re-offending amongst different types of offending behaviour—whether it involves offences against adults, offences against children and so on. So there are many subcategories where there are varying rates of re-offending behaviour.

DR FOSKEY: While Mr Stefaniak was referring to what he felt was a lenient sentence, there is also concern about a very low rate of sexual assault convictions and I note in a response you gave, Mr Corbell, to the release of the pilot study on sexual assault that around one-third of cases resulted in conviction at all. Do you think this is a positive figure, minister and Ms Leon?

Mr Corbell: I am concerned that the level of successful prosecution is lower when it comes to sexual assault offences or sexual crimes than it is for other crimes and I think this highlights a couple of things. First of all, it highlights the difficult nature of

proving guilt with this offence. Frequently there are only two people involved and it essentially comes down to the word of one person against another. That makes it a difficult crime to prove, more difficult to prove.

That said, there are clearly a number of issues in the way we manage sexual assault matters in the courts where there is room for improvement. Some of those, as I indicated to Mr Stefaniak earlier, relate to how we simply assist victims of sexual assault to come forward and give evidence in a way which minimises the trauma and the difficulty associated with giving evidence about what is essentially an extremely intimate matter. So there are reforms available to us in that regard and those are matters which I am pursuing very actively at the moment and which I am hopeful will be subject to an announcement shortly.

In relation to legislative reform there are other things that can be done, such as the requirements for victims to give the same evidence on multiple occasions throughout the different parts of the court process, and on occasion in front of the alleged perpetrator. So there are reforms available to us there as well. Those are matters which are under very active consideration by the government at the moment but they do raise a number of complex issues that need to be worked through with all of the players in the criminal justice system.

To give you perhaps an example of that, whilst many would support the notion that it is unnecessary for a witness to give evidence, say, at committal as well as the evidence-in-chief during the trial itself, others would argue that that is unfair to the defendant and compromises the ability of the defendant to get a fair trial. So there are issues here which need to be examined in detail and which cannot proceed without an appropriate level of discussion amongst those involved as, for example, defence lawyers as well as those who are keen to see effective prosecution of these matters.

I am conscious of the differing views but I am convinced of the need to improve the way we assist victims of sexual assault and assist the criminal justice system to get a more reasonable level of conviction, and that is something which I will continue to champion.

DR FOSKEY: Is there thought about preventive programs, perhaps using the secondary school system, to strengthen girls' sense of their rights but also to educate boys about what consent means in a legal sense? Also, is there any place where, even when there is no conviction, there can be intervention with the accused perpetrator in terms of education or other programs?

Mr Corbell: There is a range of things open to us and a range of things the government is pursuing. One is the issue of the use of restorative justice for sexual crimes.

DR FOSKEY: That is problematic, I believe.

Mr Corbell: That is problematic—it is challenging—but it is an option that should be pursued with appropriate sensitivity, with appropriate protections for all of those involved.

You raised the issue of alternative means of resolving these matters, and restorative justice is an option that I think needs to be investigated. I have given a commitment to the stakeholders in relation to that matter, particularly non-government organisations involved in, say, the provision of shelter for women and support for women who are victims of domestic or sexual violence, that we will not proceed without close communication and consultation with them—and that is exactly what we are doing—but we do not rule out the availability of that option.

In relation to education in schools this highlights the importance that it is not just a justice portfolio issue; it is an issue in other elements of government service delivery as well. I am sure the education department does deliver a range of programs, particularly in secondary colleges, around these matters. I do not know what the specifics of those are, but I would be very surprised if there is not some level of information made available through youth services and so on to young people in, say, secondary colleges in particular but also in high schools. There are also national campaigns around violence against women, which serve to communicate messages with varying degrees of effectiveness, so it is a cross-sectoral issue, Dr Foskey.

DR FOSKEY: Indeed it is.

MR STEFANIAK: I note also in your annual report on page 42, table 10, the backlog indicator, which is always a bit of a concern, that the Magistrates Court does seem to be very much in line with the national standards. I note also that we do not have anything Australia-wide for 2006-07. But for the Supreme Court, firstly appeals and then non-appeals, there seems to be a very significant increase in the number of cases more than 12 months old, 26.3 per cent, for this reporting period; more than two years old, 13.2 per cent. In the case of matters that were not appeal cases 24.3 per cent of cases that were more than 12 months old and 3.3 per cent—perhaps not so startling—of cases more than two years old. But the total of cases of 12 months or more, 24.6 per cent, is considerably more than we had for previous years or indeed a national average, and a reasonably significant 4.8 per cent even for matters that were more than two years old.

I note it does not seem to be the same problem when you are looking at civil cases, but that seems to be a fairly stark statistic in relation to getting rid of criminal cases. There is an old adage that justice delayed is justice denied. What explanation do you have for that increase in the number of criminal cases that have not been dealt with in this reporting period in the Supreme Court?

Mr Corbell: I would have read that table, Mr Stefaniak, as indicating that in most instances the timeliness of the Supreme Court is better than the national average, so I am not quite sure what the concern is.

MR STEFANIAK: You do not have, unfortunately, the national average for 2006-07; all you have got is the ACT. But, for example, in previous years it was not too bad—appeals 12 months or more, 6.5 per cent and the following year, 2005-06, 13.5 per cent—but this reporting period 26.3 per cent. Similarly, with those matters more than two years old, it was very good but then it jumps from zero to 13.2. For non-appeal matters up to 12 months old it goes from 12.7 to 19.4 to 24.3. The figures for those more than two years old are not particularly stark but it is 1.3 to 2.4 to a 3.3.

So there seems to be an increase there—and certainly a significant increase in a couple of those areas—which is not really explained. We do not, unfortunately, as you explained, have the Australian averages, but just in terms of the court itself, looking at these figures for the two previous years, there does seem to be a significant increase there, certainly in relation to matters that are 12 months old or more.

Ms Leon: Mr Stefaniak, the court has not advised me of any particular factors that are impacting upon its workload in that regard, but it may well be that because the Supreme Court does have a fairly small absolute number of cases you only need a small number of cases to be particularly complex to have a dramatic impact on the statistics. It may well be that that is the explanation for the increase in the current reporting year.

MR STEFANIAK: That would be understandable for civil matters, but with criminal matters normally once the matter is down for hearing and is heard it might be a fairly lengthy trial but—

Ms Leon: For example, we have had one matter that has gone all the way through the appeal process up to the High Court and been sent back to the Supreme Court for re-hearing and that no doubt is now starting to impact on the old cases' statistics. If a matter does go through an appeal and if there then is a need for a retrial, the matter rapidly becomes an old case, not through any dilation on the part of the courts but simply because the matter has been complex and has gone through a number of stages.

MR STEFANIAK: That could be. Maybe you could just take that on board to find out. But when you look at the non-appeal cases, which I presume most cases in the Supreme Court are, you still have a rather stark increase there, certainly of cases 12 months old but not two years old. They go from 12.7 to 19.4 to 24.3, so there seems to be a rather worrying increase there. If you do not know, perhaps you could take that on notice and get back to me.

Ms Leon: I am happy to seek some information from the court as to whether there is any particular explanation for that.

MR STEFANIAK: It may simply be a series of complex cases—

Mr Corbell: Again, Mr Stefaniak, let me simply reiterate that the court has a relatively small case load in absolute terms and any delay in a matter can have an adverse impact overall on the statistics, disproportionately so.

MR STEFANIAK: But there is a trend there certainly in some instances which may not be explained by that, so perhaps you could just get an explanation, Ms Leon.

Ms Leon: The other thing I ought to say of course about criminal matters is that there has been research done in the reporting period by the Institute of Criminology that indicates that the great majority of delays in criminal matters are defendant initiated. They are often tactical choices by defendants that lead to matters becoming lengthier, rather than any issue of management by the court.

MR STEFANIAK: I suppose that is management by the judicial officers, but there

may well be, or may not be, a huge amount alleged that you can do, but it might point perhaps to some improvements in the law that may be made by—

Ms Leon: We are always very interested in those matters, Mr Stefaniak.

MR STEFANIAK: Certainly some further data would be appreciated.

DR FOSKEY: Can I just go back to my question before—it will not take you long—about the ESCC and their accommodation? I am not sure whether you confirmed for me, Ms Leon, whether the 12 Moore Street accommodation is now permanent, because it was initially temporary, and whether the problems identified by the ESCC of lack of privacy for phone conversations and personal meetings with hardship hearings and issues around the waiting room have been resolved, if it is to be permanent.

Ms Leon: In relation to whether their accommodation is permanent or temporary, their final accommodation has not yet been determined. In relation to the particular concerns they had about privacy of phone calls and so on, there is a broader issue about this that is not specific to the ESCC. It is about whether all officers ought to have an enclosed office or not.

There is a whole of government position on this to the effect that generally officers below the executive level will have a workstation rather than an enclosed office. It would have a considerable impact on the amount of space occupied by the public service if all staff were to have a separate, enclosed office. So the general practice is that staff below executive level have a workstation and that may be what the ESCC is referring to in terms of not having private, enclosed spaces for telephone calls.

The ESCC may therefore be able to hear each other speaking on the phone and that may be the issue that they are referring to. That is unlikely to change in their new accommodation because I do not think there has been any move towards suggesting that all staff in the public service ought to have an office in order to be able to conduct private phone calls. However, we have engaged with the ESCC in some detail about their need for places where people coming to the ESCC can have their matters heard in private and I understand that that has been achieved. I do not know if Mr Joyce can add any more on the accommodation front than that.

Mr Joyce: In our overall departmental strategy for accommodation, one of the issues that we have been faced with under the new guidelines is the provision of suitable places for people to go and have private conversations and so forth. In designing for new office accommodation we do ensure that we provide an area for people to go and have such discussions. At this point there is no firm understanding between my area and Property ACT about the quality or quantity of those particular facilities based on the number of staff. But we are in progression of discussing that issue with property to determine exactly what that ratio may be. From my understanding there is no real issue in terms of that space being available within the 12 Moore Street facility; we have sufficient room both throughout the building and in other buildings for staff to undertake that sort of consultation, should they need it.

THE CHAIR: Thank you, ministers and officials. We will break now for morning tea

and return at 11.50 am with the Public Advocate. The committee will consider whether or not we need to recall the minister for any of these matters, given that we have not finished, so we will be in touch.

Meeting adjourned from 11.35 to 11.56 am.

THE CHAIR: We will recommence. I welcome the Public Advocate. I will not repeat the privileges aspects. Are you aware of your obligations and privileges under parliamentary privilege?

Ms Phillips: Yes.

THE CHAIR: Is there anything that you would like to open with?

Ms Phillips: I do not think so. In presenting this annual report, I want to recognise the very hardworking, committed staff in the office. We are only a very small office. In most other states, the functions of public guardian, adult guardian, children's guardian and public advocate are separate and are run by separate offices. In the territory, because we are small, we have all of those functions. So while we do not have the numbers of clients to represent, we still have the very large range of functions that those combined roles give us. It is very much to the credit of the staff that we are able to achieve all of those functions.

DR FOSKEY: I have many questions, so I will be seeking a private meeting with you, because I do not think we have time to get through them all today. How are you going in terms of your premises—where you are located at the moment? Is that temporary or permanent? What comments do you have to make on your accommodation and its suitability?

Ms Phillips: We are staying where we have been for quite a while. It is satisfactory accommodation. The discussions about us moving were part of a general ACT government and department wide strategy that had to be implemented. Fortunately, we will be staying where we are, I believe, for the foreseeable future.

DR FOSKEY: I know that you lost at least one key person during the year—someone who would be very difficult to replace, I thought—and I notice that on page 10 you indicate that you have been unsuccessful yet again—I believe you have been calling for more resources for a while—in obtaining additional staffing resources, particularly in the guardianship area. Could you comment on the level of resources you receive in relation to the amount of work you have to do. What difficulties are you facing?

Ms Phillips: The comment on page 10 refers to last year's request for additional resources. I am ever optimistic that the government will see that the work we are doing requires additional resources. This is mostly because our work is demand driven by the complexity and number of referrals that we get from the community. Being a service delivery agency, which is what we are, we are unique; we are different from most government departments that deal with policy or with advice to the minister et cetera. We are hands-on service delivery. We are responsive to requests that come from the tribunal, the department of children and disability, and from Health. We are doing a lot of work in the area of mental health at the moment, particularly with older

persons' mental health. We do not have the luxury of being able to screen the demand that comes in, so we need to be able to go to government and request additional resources which reflect the increased demand.

DR FOSKEY: **W**hen you have greater demand but no more resources, how does your office handle that? You cannot turn people away, I take it?

Ms Phillips: No, we can't turn people away. We handle it just by extending the workload of the staff. As I said, I am very lucky to have very committed and hardworking staff who continue to cope under enormous pressures and with extreme responsibilities. They cope with it in a very positive and a very responsible manner.

DR FOSKEY: Who looks after the looker-afters?

Ms Phillips: Yes.

THE CHAIR: With extending the hours, given the limited resources, is this senior staff for whom overtime is not an issue, or are there overtime issues? How is that handled if the resources are limited?

Ms Phillips: No, I do not have the capacity—only in very rare circumstances—to pay for overtime. We just work the hours that we need to work and do what we have to do within a time frame that we can handle.

DR FOSKEY: I notice that the child death review team did not meet in the financial year before this, and it had not met the year before that. What falls by the wayside when the team does not meet and why doesn't it meet? What action can you take to ensure that it meets in this financial year?

Ms Phillips: As you are aware, until recently, the child death review team has been a function of the Department of Health, although the Public Advocate has been instrumental in ensuring that it does meet on a more regular basis than it had in the past, and reporting as such. There is now government action in moving the responsibility for the child death review team. I am hoping that that change will result in it meeting more regularly and providing more accurate reports. One of my senior staff, Trish Mackey, who is present today, attended the children's commissioners and guardians meeting last week. Child death reviews from all over Australia were on the agenda there. It is very important that we are part of those discussions to see trends or responses that are occurring in other jurisdictions, so that in the ACT we can be up to date with that as well.

DR FOSKEY: Who will take responsibility for the review team? You said it would be moved to another area.

Ms Phillips: As you can see on page 18, consideration was given to moving it to the Human Rights Commission. I am not across what is happening with that decision but it is a decision of government which will improve the accountability of that review team.

Ms Leon: I do not believe the matter has gone beyond consideration to the point of

decision on that issue, unless there has been a very recent decision of which I am unaware. As far as I am aware, consideration has been given within government, within the departments, to the appropriate location of the child death review team, but that is the stage that it is at.

DR FOSKEY: You mention a number of reports that are available on request, Ms Phillips—for instance, your monitoring of Quamby, and there are a couple of others. I did have a look at your website but I could not find them, so I am making a request for the reports that you produced during the year.

Ms Phillips: We have just updated our website. I hope people have noticed that it is more user friendly. These reports are now on the website, and they are available there. I have copies of them here and I am happy to get them to you.

DR FOSKEY: That is good. I did look last night and I did not know what pathway to take.

Ms Phillips: I will take that back immediately.

MR STEFANIAK: We have talked about a staff member leaving and the problems there. You mention on page 7 what a challenging year it has been, with increased demand and reduced resources. You compliment the professionalism of your staff, which is good, but you are concerned about how long they can continue to operate at this level. What is being done to reduce the workload faced by the office?

Ms Phillips: I am having discussions with senior management in JACS. As you are aware, although we are a statutory office and we stand alone, we are administratively responsible through JACS for resourcing and for all of the other administrative parts—for example, where we are located et cetera. I am having discussions with them at this stage.

MR STEFANIAK: When will you know whether you are successful?

Ms Phillips: I will know when I am told.

MR STEFANIAK: Minister, are you aware of this issue?

Mr Corbell: I am aware of this issue and I have discussed the matter on a number of occasions with Ms Phillips. I am aware of the pressures that her office is facing. The government, through my department, has initiated an examination and an audit of workload within the Public Advocate's office so that we can properly quantify where the pressures are. The government will make decisions on resourcing following that. Ms Leon might be able to add to that.

Ms Leon: No; that is the situation.

Mr Corbell: The government is treating seriously the issues that the Public Advocate is raising.

MR STEFANIAK: I turn to page 13. How compliant has the Office for Children,

Youth and Family Support been with reporting requirements under section 189A of the Children and Young People Act?

Ms Phillips: I am delighted to be able to report that in the two years that I have been the Public Advocate, compliance in relation to 189s, which were previously 162s, has been fantastic. Our relationship with the office is extremely positive. They see us as, I suppose, a critical friend—somebody who is there to ensure that the service delivery they give to children under their care and protection is at the highest level possible. Compliance in terms of 189 reports is very good. We have been working more during the last 12 months on the quality of the reporting as much as on making sure that they are in on time, and that is also improving. In particular, with our 267 reports, which are the annual review reports, we are very pleased with the improvement in those.

MR STEFANIAK: Have there been any significant areas of non-compliance? It does not sound like it for a 189.

Ms Phillips: No.

MR STEFANIAK: I do note that you have a problem in relation to section 75 of the act. Why is that so?

Ms Phillips: Section 75 reports are quite different. Often they are generated by magistrates in the court, who request involvement from the office. So it is an issue for them to respond to, and it is certainly an area in which we are working very much with the office, in relation to section 75s. I refer to the whole Children's Court relationship and the need for specialised services and programs for young people with particularly complex and challenging behaviour. That is the nature of section 75 reports. So it is not simply a matter of saying, "Why haven't you done the report?". Once they get the referral, it takes a long time to do the report because of the complexity of the nature of the request.

DR FOSKEY: Can I ask about young people with a mental illness. At the bottom of page 18 you say that you have continuing concerns regarding the ongoing and significant systemic issue of the lack of appropriate residential or in-patient care options for young people with a mental illness. Can you see any progress being made in relation to this and do you have any suggestions to make?

Ms Phillips: Certainly, government is taking this very seriously. The new psychiatric services unit will have an accommodation facility particularly for adolescents. It is a very complex problem because the best services in the country are probably available in Sydney. The difficulty of uprooting a young person from their home in Canberra and taking them to Sydney so that they will get the best treatment poses a real dilemma for families. So even though we are looking at having a facility here in the ACT, because of our size I would not anticipate that we would in any way be able to replicate the standard of facility that is available in Sydney, particularly for young people. From my experience, the trend nationally is that these people are coming to our attention at a much younger age. We are now talking about 11-year-olds with very complex care needs.

DR FOSKEY: In these cases, are you able to work with their families? What can we

do here in the ACT to provide a reasonable amount of care? Obviously it is a bigger issue for an 11-year-old to go up to Sydney than it is for a 16-year-old.

Ms Phillips: Yes. Both the mental health area and the office for children and youth are working collaboratively with families and young people to produce a range of programs that will assist them. In recent months we have had a number of 15 and 16-year-olds in the psychiatric services unit, which I do not think is appropriate. Younger children with a severe mental illness who need hospitalisation are usually accommodated in a special unit within the children's ward of the hospital. As I said, for long-term treatment and care, they normally would have to be under a psychiatrist in Sydney.

DR FOSKEY: Have you seen any outcomes of the treatment that we are able to give them? Have you seen some positive outcomes?

Ms Phillips: Yes, of course. It is because there is a united collaboration when young people like this are identified. All of the services come together to meet their needs. We have complex care programs that look at young people in particular, who have a variety of needs.

DR FOSKEY: Are these administered by ACT Health?

Ms Phillips: Yes, Health and OCYFS. Education is also heavily involved.

MR STEFANIAK: With respect to page 16, what impact has the lack of an appropriate facility had on the implementation of therapeutic protection orders?

Ms Phillips: The implementation of therapeutic protection orders is probably an issue that you would need to discuss in more detail with the responsible agency—that is, OCYFS. There is a need, as I have been saying, for programs to address the complex needs of young people. There is, however, a trend, internationally as well as nationally, to look at providing therapeutic treatment rather than a place. So I do not think that the lack of having an actual facility in the ACT is as big an issue as needing to look at how we deal with each of these young people in a holistic manner. It may be that they are subjected to a therapeutic protection order in a place that is not a facility.

As I said, you would need to discuss it with the department, but there has been some hold-up in implementing therapeutic protection orders because we do not have a place where these young people can be accommodated. There is some work going on towards having that accommodation in place, but I think there is also a wish to look at other kinds of ways of meeting their needs rather than just building more or providing a facility.

DR FOSKEY: Last year you expressed some concerns about the turnaround program. On page 17 you indicate that next year will be crucial for the turnaround program. Have you seen improvements in the last year? What kinds of improvements do you hope to see?

Ms Phillips: The turnaround program has been very successful for the young people

involved. Part of the problem is that it can only accommodate very few young people at a time. The comment we are making, from our point of view, is that we have not seen systemic changes in relation to the needs of young people. The sorts of things we are talking about are more programs for young people. So while individually the program has been able to achieve very positive changes for young people, there has not been a change in the programs and the system that we would have liked. We are hoping that this year those kinds of recommendations will flow through and programs and services that can help these young people will be implemented. That is the sort of thing we are talking about.

DR FOSKEY: Finally, do you work with the Children's Commissioner? Has that been helpful to you in your work?

Ms Phillips: Certainly. Because the Children's Commissioner has been appointed fairly recently, we are now working on an MOU so that we will more clearly identify our specific roles. We have a unique role in caring, for example, for young children who are subject to care and protection orders, whereas the commissioner's role is to care for, or to be responsive to, the needs of all children. We have a unique subset, I suppose, within her role, to care for children. Of course, we also have the function of children's guardian, which is a separate role.

THE CHAIR: Thank you very much, Ms Phillips. We will now call the Human Rights Commissioner and the Health Services Commissioner. Welcome, Dr Watchirs and Ms Durkin. Would either of you like to make any opening comments?

Dr Watchirs: I apologise for the absence of Linda Crebbin, the Commissioner for Children and Young People and Commissioner for Disability and Community Services. She is attending an interstate conference of children's commissioners.

Ms Durkin: I would just like to say that this was not my annual report. I have been in the job for only a couple of months, so apologies in advance if I need to take questions on notice rather than knowing the answer straight off.

THE CHAIR: Sure. Thank you very much.

DR FOSKEY: Page 5 sets out the commission's functions under the Human Rights Commission Act. Are there any specific functions that the office has not been able to undertake due to a lack of resources?

Dr Watchirs: Not that I can specifically point to. Certainly, you will be aware of the appended report of the human rights office. The accommodation situation, we believe, contributed to a halving of our complaints, but that seems to have stabilised again.

DR FOSKEY: That was due to it being difficult to access your office?

Dr Watchirs: Yes, and sharing joint meeting facilities and a joint entrance. But in September we moved to more permanent accommodation.

DR FOSKEY: You feel that those problems are overcome?

Dr Watchirs: I think there is an initial drop in complaints because people are yet to discover where we are, but, with our own purpose-built area, the complaints should come back, especially if we do more work on our profile.

Ms Durkin: My sense at this stage is that the resources are sufficient for handling the number of complaints that we have in undertaking some systemic work. If there is a spike in complaints for some reason, we would look at our other priorities, but I get a sense that the function is adequately resourced.

DR FOSKEY: That sounds very positive. On page 8, there is a mention of problems with data management. Is that a continuing problem, and what can be done to rectify it?

Dr Watchirs: We have had a successful budget bid for a new IT system. Linda Crebbin is in charge of that project for the commission. Work is underway with the procurement for that system. We are still operating under the former Health Services Commissioner's RAEMOC database, which is thoroughly unreliable and unsuitable for discrimination complaints. We have not been able to provide data to the national human rights agencies for that reason, but hopefully next year we will be back to our normal reporting detail.

THE CHAIR: Mr Stefaniak.

MR STEFANIAK: You have probably answered one of my questions. Going to page 11, how is the prison progressing in terms of provision for human rights?

Dr Watchirs: We continue to have meetings with the director of the prison project, John Paget; I think another one is coming up soon, before he leaves. The government's response to the audit is due later this month, but we have still been involved in meetings on general issues of human rights and specific issues as to the communication system in having new prisoners—the DVD, their induction into the new prison. I think there is some work already occurring in relation to accommodation for women at the Symonston temporary remand centre. There have been a number of initiatives to implement some of our recommendations, and we have been aware of those.

THE CHAIR: What about the issues around bullying that you identified?

Dr Watchirs: We have not been involved in any work in that at the moment. Under the racism strategy, we did targeted training of corrective services management and middle management, and that will continue. There is also an obligation that we do training of ACT police under the race strategy; that broadens to look at issues like bullying and general human rights. And under the terrorism extraordinary protection powers act there is an obligation for police officers to have human rights training. Dr Pene Mathew and another officer, Belinda Barnard, have commenced that training program.

THE CHAIR: Earlier on in the hearing we discussed your findings in relation to bullying and the minister said that in his opinion some of those findings were unfounded. Do you want to expand on why you felt they were reasonable?

Dr Watchirs: I think that if you subject any organisation to an investigation as to whether bullying occurs, you will find it. It is not unexpected in a prison environment—and is probably exacerbated by the terrible physical conditions of Belconnen Remand Centre for staff and the overcrowding of prisoners, particularly for women being bussed between the centres. Now that it is a focus of management, I expect there to be improvement. We have been asked by the minister to do a further audit after one year of the new centre's operation. We do not have resources to do that—it would mean that we would have to cut other projects out—so we will put in a bid for further resources to do ongoing work. With 300 expected longer-term detainees—compared to the 100 shorter-term people coming through, which is a much smaller audit—a bigger audit would be involved with the new centre.

MR STEFANIAK: I go to page 16. Why was the commission providing advice on the commonwealth's intervention in the Northern Territory rather than focusing its attention on issues within the ACT?

Dr Watchirs: Because technically we have responsibility for Wreck Bay in the ACT. There are certainly plans to roll out a territory initiative. We were warned by the federal Human Rights and Equal Opportunity Commission that this may be an issue for the ACT.

MR STEFANIAK: But Wreck Bay is not part of the Northern Territory. As you say, it is part of the ACT.

Dr Watchirs: It was more that there is territories power for this to happen at Wreck Bay, which the ACT has technical responsibility for. But I gather we are not funded to do that work.

Mr Corbell: No. The commonwealth has indicated—certainly in its legislative response, associated with the intervention in the Northern Territory—that those powers, particularly the exercise of powers under the territories power that the commonwealth has, would apply to the Wreck Bay community.

MR STEFANIAK: Yes, but there is no indication of any—

Mr Corbell: There were indications at the time from the commonwealth—including from the commonwealth minister, I understand—that he was contemplating the exercise of those powers in relation to Wreck Bay. In those circumstances I think that it was entirely appropriate that the commissioner provide the advice as requested by the Chief Minister.

MR STEFANIAK: I recall seeing a media release. It was from the Chief Minister but it did quote the commissioner in relation to very specifically the issues in relation to the Northern Territory. I do not know if it was by way of advice, but quite clearly it was highly critical of the commonwealth's approach. I just wondered whether that is appropriate for an ACT body—

Dr Watchirs: Can I clarify that I was in Alice Springs in the last two days—

MR STEFANIAK: It did not mention anything about Wreck Bay either.

Dr Watchirs: The Australian human rights agency—we have a regular round table on racism. The focus on Monday and Tuesday was the Northern Territory initiative and our expectation that it will be rolled out in other jurisdictions. We heard from the head of the national child protection program, which has been operating fairly successfully for a number of years, and we heard from indigenous people, who said that the impact of the intervention has been even worse than predicted in the advice.

MR STEFANIAK: However, surely there are huge problems there and surely the rights of, especially, little children would have to be given very significant emphasis—if not paramount emphasis. In other ACT acts we have that the rights of the child should be paramount.

Dr Watchirs: I agree that the rights of the child are paramount—but effectively paramount. My understanding from the briefing that we were given is that there have been no cases of child abuse brought to light by the extra personnel brought into the Northern Territory. This may change in the longer term.

MR STEFANIAK: It could be because they have actually stopped it because they are on the ground.

DR FOSKEY: It could be, but—

MR STEFANIAK: Isn't it dangerous intervening? It seemed—

DR FOSKEY: I am just wondering about doing this in this forum.

MR STEFANIAK: The media release—it was several months ago—seemed to be highly political; I just wonder if that is really appropriate.

DR FOSKEY: And you bringing it up could be highly political too.

Mr Corbell: Mr Stefaniak, if you want to, we can have a debate about the rights and wrongs of the commonwealth's extraordinary intervention in the Northern Territory, but I do not know whether this is the forum to do that

MR STEFANIAK: That is my very point. I do not think it is.

Mr Corbell: But at the end of the day, if I, the Chief Minister, any other minister or indeed any other member request advice from the Human Rights Commissioner on issues relating to the application of human rights law here, as they pertain to people affected by our jurisdiction or may pertain to people affected in this jurisdiction, the commissioner is obliged to do that. It is quite unwarranted for you to criticise the commissioner simply because she was doing her job and responding to a request for advice. What is the difficulty with that, Mr Stefaniak?

MR STEFANIAK: I cannot recall any government media releases on this, minister—please correct me if I am wrong—which refer to Wreck Bay. I would be delighted if you actually made reference to Wreck Bay and asked the commissioner her advice in

relation to that.

Mr Corbell: That is a matter for the Chief Minister.

MR STEFANIAK: This is the first time I have heard of Wreck Bay.

Mr Corbell: That is a matter for the Chief Minister, Mr Stefaniak. The Chief Minister issued a media statement. If you have a problem with his media statement, take it up with him; do not take it up with the commissioner, who was simply doing her job in providing—

MR STEFANIAK: He quotes the commissioner. You refer to Wreck Bay. Yes, it would be entirely appropriate for the commissioner to give advice in relation to Wreck Bay.

Mr Corbell: It is entirely appropriate for the commissioner to give advice in that context.

MR STEFANIAK: There is no mention of Wreck Bay.

Mr Corbell: How the Chief Minister presents that advice is a matter for the Chief Minister, but the issues around the advice were provided by the commissioner. These were, and still are, issues of considerable public interest and discussion, including amongst this community. It is entirely reasonable that the government draw on the resources available from the independent office of the commissioner in seeking advice as to what the human rights issues are, to inform the government's response on those matters.

Dr Watchirs: Can I also clarify that the Northern Territory commission and the federal commission agreed with my advice. They were fairly consistent.

Ms Leon: Mr Stefaniak, I would add that in the annual report the commissioner explicitly says that her advice was about the application of those measures if they were to be applied in the ACT. Although that may not have been translated into a ministerial press release, that certainly was the basis of the advice.

MR STEFANIAK: I do note that in the report, and I thank you for that. The ACT reference, now you have explained it, is obviously about the use of Wreck Bay specifically. Let me go to page 26. What concerns about continuity of care at the Canberra Hospital did the Health Services Commissioner have, and do you still have those concerns?

Ms Durkin: This related to a particular matter where the individual needed neurosurgery, needed the expertise of a vascular surgeon and needed palliative care. There were issues in relation to the transfer of information in relation to that individual. As a result of that complaint, the commissioner asked the Department of Health to provide advice on what sorts of matters were being undertaken to address those continuity of care issues. I recently received a report from the Department of Health and I have indicated that I will ask for another one in about six months time. All of the measures that they are putting in place appear to me at this stage to be

appropriate, but I consider that it is probably best to address questions about those sorts of details to the Department of Health.

MR STEFANIAK: Thanks for that. I turn to page 27. How well does the ACT health system compare with others in treating patients in a timely manner?

Ms Durkin: I am sorry, but I do not have that sort of detail in my head at this stage. As I said, I am fairly new to this. The Department of Health may have done that sort of analysis.

Mr Corbell: The Department of Health routinely reports on those measures, Mr Stefaniak, and the minister releases a quarterly report on performance against national benchmarks in terms of timeliness in the emergency department and other forms of medical procedures.

MR STEFANIAK: I am well aware of that, thanks. I just wondered whether the health complaints commissioner also has information relevant to your office—and indeed other offices—in terms of that.

Ms Durkin: We tend to look at health issues through the prism of the complaints that we receive. We will address the particular complaint and then we will look at systemic issues that arise out of that with the relevant department, agency, provider or whatever. At this stage I am certainly on a steep learning curve about the bigger picture in relation to health in the ACT.

DR FOSKEY: I want to ask something in relation to staffing, minister. Although Dr Watchirs gave quite an optimistic view of things, it does say in the report, at page 21, that there are not enough resources to provide the discrimination tribunal with full copies of complaint documents. I am interested in whether this compromises the tribunal's work and how many more staff would be needed to ensure that the work can be undertaken.

Mr Corbell: It is not a matter that, as far as I can recall, has been brought to my attention by the president of the tribunal. Without that advice, I must say that I am not really in a position to comment further. I would expect that if the tribunal was concerned about these matters, the president would draw them to my attention. As far as I can recall, he has not.

Dr Watchirs: Can I clarify that 12 months before we actually did this I foreshadowed that it would occur. I wrote to the president of the tribunal; in that letter I clarified that no other jurisdiction provides these documents. There is no statutory obligation for us to do it. The tribunal has been sent a copy of our decision. We warn the complainant and the respondent to keep copies of all the correspondence so that they have them ready to hand if they do go to the tribunal. We had a number of cases where the documents were over 700 pages. It really tied up our resources—for months on end, I would have to say.

DR FOSKEY: So there is no indication that this is a real problem that compromises those cases?

Mr Corbell: Not that I am aware of.

Dr Watchirs: I think it is probably too early to say, but we have not been—

DR FOSKEY: It is something to keep a watching brief on?

Dr Watchirs: Yes.

MR STEFANIAK: You mentioned that you anticipated moving into your permanent accommodation in late September 2007. Has that occurred yet?

Dr Watchirs: Absolutely. Yes, thank you.

DR FOSKEY: I want to go to page 30. I do not know if you can answer this, because it relates to the Commissioner for Children and Young People. She talks about the future of her role. I was hoping that she would be here and could be more specific about the issues that she intended to investigate or focus on. Perhaps that can be taken on notice. But I also notice that she says that she would like to form an advisory group and/or groups. I am wondering how she might go about that and what kinds of people she would be looking to have represented—what people or organisations there would be on that advisory group or those advisory groups.

Dr Watchirs: I am afraid that we will have to take that on notice. We have only a very superficial knowledge of her plans in that area.

DR FOSKEY: This is a question for the Attorney-General. Page 49 of the report refers to the ACT government's response to the human rights act review and that the recommendations are yet to be implemented. Attorney-General, why are they yet to be implemented, and when can we expect to see some movement on this?

Mr Corbell: Those matters are currently being considered within government. I propose to receive cabinet endorsement for my recommendations shortly. Then we will be in a position to announce what our response will be and what steps will be taken in response to that review.

DR FOSKEY: And no more to be said?

Mr Corbell: Not ahead of cabinet's consideration.

DR FOSKEY: On page 87, dealing with the health services complaints commissioner, mention is made of the continuing need for regulatory framework for personal and direct carers. What has been the ACT government's response to this, and what needs to happen next?

Ms Durkin: This is a matter that the former commissioner raised in the annual report. I am not privy to what discussions he had in relation to this issue prior to leaving that position.

Mr Corbell: Dr Foskey, this was a matter that Mr Moss raised with me in my capacity as Attorney-General and also when I was Minister for Health some years ago

when the issue first arose. The government has asked the department and the commission to look further at this issue around vetting or checks for people working with vulnerable people in the community.

There is obviously the issue of adults working with children and to what extent adults are appropriately screened to ensure that people with certain criminal histories or other histories which make it inappropriate for them to be working with children do not work with children. I understand that some consideration has also been given to other types of vulnerable people, such as the elderly, people with disability and so on, and whether there should be a uniform checking process that applies to a wide range of individuals who work with a wide range of vulnerable people. Dr Watchirs might be able to provide a bit more on that. Can you do that or is it still at its formative stage?

Dr Watchirs: It is still at a formative stage but there have been calls, even beyond people working with children, for volunteers. I know national Sports Commission agencies have been calling for support for a national scheme. So there are a lot of people calling for this and I think it would be warranted to have some scheme. Perhaps the commission should consider doing some kind of detailed issues paper.

Mr Corbell: You may want to ask Katy Gallagher this question, Dr Foskey. She has more direct portfolio responsibilities that include children and people with a disability. Whilst the Chief Minister has responsibility for the Ageing portfolio, I know that Ms Gallagher takes a close interest in that area. I think it is most likely that the portfolio responsibility, in the first instance, will be within her area, although there will be some overlap with Justice.

DR FOSKEY: On page 9 it says that JACS provides some corporate support to the Human Rights Commission. I am interested in the nature of this support and whether the commission feels this is an adequate and appropriate arrangement. Would the commission prefer to be much more of a standalone affair and deal with those issues itself?

Dr Watchirs: I think we compare differently to the Commonwealth Human Rights and Equal Opportunity Commission, which have absolute control over their own budget. Probably the only area of tension has been accommodation, and that is not really the department's specific responsibility. All ACT agencies are subject to issues about lack of office space or lack of offices for staff. Basically, accommodation has been the main area of tension. In other areas it has been productive, and I do not think it has compromised our independence.

Ms Durkin: There are pluses and minuses with any model, but when you have a small agency, if you have to do all of that corporate work yourself, it can certainly divert attention from undertaking the real responsibilities of what you are meant to do. Having that support from a larger organisation seems to me to be a sensible way to go.

DR FOSKEY: What support is that?

Dr Watchirs: Things like staffing—

Ms Durkin: Finance, HR.

Dr Watchirs: With recruitment, we go through Shared Services but previously the department would help with contacting the *Canberra Times* to put ads in the newspaper—administrative type tasks.

DR FOSKEY: Human resources?

Dr Watchirs: Exactly. We do the technical part and they do the administrative part. It has worked quite well.

Ms Leon: The department provides all of the administrative support that an agency needs in order to survive. That includes arranging everything to do with accommodation, facilities, human resources, assistance to the Human Rights Commission in formulating its budget proposal, liaising with Treasury, reporting under the financial framework—the entire panoply of administrative work that has to be done to sustain an organisation.

I share the view of the Health Services Commissioner that for the commission to attempt to do all of that itself would require a significant amount of staffing. Also, it would find it difficult to sustain because you would only have half an HR person, a quarter of a finance person, a tenth of a library person and so on. It would be extremely difficult for an organisation the size of the commission to manage all of that itself and also to be able to attract and retain staff for such a small role. We endeavour to provide all of that for the agency and we do so under a memorandum of understanding that ensures that we have a clear understanding of the statutory independence of the commissioners and that decisions and support around the administrative side are taken in a proper framework of consultation and collaboration and do not impinge on the commissions' statutory independence.

DR FOSKEY: Does that slow down these things at all?

Ms Leon: The MOU?

DR FOSKEY: No, this arrangement: does it slow down the time it takes to complete these actions?

Ms Leon: Not in my experience, in the time that I have been there.

DR FOSKEY: That is unusual.

Dr Watchirs: There has been a delay in recruitment but that is because of the establishment of Shared Services; it is not because of the department.

THE CHAIR: If there are further questions, they can be placed on notice. Thank you for your time. We will now move on to the victims of crime support program. Welcome, Ms Caruana. Would you like to make an opening statement?

Ms Caruana: I am here on behalf of Robyn Holder, who is away at the moment.

MR STEFANIAK: I note that a fairly lengthy review has been completed. I am interested in your relationship with the Victims of Crime Assistance League. What is the status of that at present? What interaction does your organisation have with them and in what areas do you liaise with them, if at all?

Ms Caruana: As of 1 July, the victims services scheme and our office, the Victims of Crime Coordinator's Office, were integrated. So we are a new office that comes under Victim Support. The departmental contract with VOCAL, as I understand it, has changed. We still have an informal referral process. Where we can't assist victims, we will refer them to VOCAL.

MR STEFANIAK: And you are doing that?

Ms Caruana: Yes, that happens where appropriate, and with the consent of the client, of course.

MR STEFANIAK: How often would that have occurred in the 12-month reporting period? How many victims would you have referred to VOCAL and vice versa?

Ms Caruana: We do not capture that data. In the report there are two separate reports—one for counselling and one for the Victims of Crime Coordinator. We have not captured how many referrals we have made and how many referrals we have received. Often, people come to us and know they have been referred but cannot tell us where that referral has come from. I think in the victims services scheme there is a referral source.

MR STEFANIAK: Do you have a page number?

Ms Caruana: Page 31. There are two tables. The one on page 30 relates to how the client found out about the service and the other one relates to the referral source.

MR STEFANIAK: If you refer people to VOCAL, surely you would have some record of that, wouldn't you? I accept that people coming to you might not tell you where they are from but surely you would keep—

Ms Caruana: We would keep a notation if we have done that referral, certainly.

MR STEFANIAK: But you do not list that anywhere?

Ms Caruana: No. It is not collated.

MR STEFANIAK: I would be interested in finding out how many people you referred to VOCAL for this financial period. Could you please get that information.

Ms Caruana: Yes, I will.

Ms Leon: If that is available, Mr Stefaniak, I would not want to give the Victims of Crime Coordinator the task of going individually through every file and seeking to collate that information if it is not on any database. I think that would be a diversion of their resources away from their primary responsibility.

MR STEFANIAK: I think it is important, given the fact that the Victims of Crime Assistance League, who have been around for a long time and have done a very good job, had a number of concerns, certainly several years ago, in relation to the review, and the review has been completed now. One of those concerns was ensuring there was a good working relationship with the scheme. Obviously, as part of that, it is not unreasonable to ask how many people are referred to VOCAL, because that is part of the scheme, in that they provide a certain type of assistance which obviously some victims appreciate. I would think it is quite reasonable to expect that those sorts of stats are kept. I would hope they are available on a data system but—

Mr Corbell: If it is feasible, Mr Stefaniak, it will be provided.

MR STEFANIAK: I would certainly be interested, if it is not feasible, in ensuring that it occurs in future, for the next financial reporting period.

Mr Corbell: If it is not feasible, the committee can make a recommendation on that.

MR STEFANIAK: I would ask you to take that up, minister.

Mr Corbell: I will certainly take that on board.

MR STEFANIAK: I would certainly ask that that occur.

Mr Corbell: I will take that on board.

Ms Caruana: Certainly, we are reviewing our practices since we have become one office. We are looking at all of these things very closely.

THE CHAIR: Minister, pages 7 and 8 deal with independent statutory advocacy. At the bottom of page 7 it talks about what is needed for independence. On page 8 it expresses concern about the one-year appointment. It says:

> … over the reporting period, the VoCC has remained on a one year appointment. … This state of affairs does not reflect proper support for an independent statutory position.

Given that that is in the report, are you considering extending that and providing more independence to the agency?

Mr Corbell: I think I have advised this committee, in a letter to you, Mr Seselja, that I propose to appoint Ms Holder for three years. I think I am awaiting your advice.

THE CHAIR: My apologies if I have missed that.

Ms Leon: Certainly, Ms Holder is aware of the intention to make it a three-year appointment. The matter was only on a one-year basis because the review was on foot. The review may have reached conclusions that led to a completely different arrangement for the duties of that position. Once the review was concluded and the government had made decisions about the implementation of the review, the minister

made it clear to the incumbent in the position that he was perfectly happy to offer her a three-year appointment, subject to the usual processes for consultation.

DR FOSKEY: I note that the Domestic Violence Project Coordinator's appointment expired in May. What does that mean for the project?

Mr Corbell: I am advised that Ms Holder also holds that position. I have re-appointed her to that position. It is not held by a different person.

Ms Leon: The appointment process is going through together; it is the same appointment process. I am just getting some advice about the time frame.

Mr Corbell: So the ball is in your court, apparently.

Ms Leon: We may need to take this on notice because there is some complexity about the terms and conditions. I do not necessarily want to talk about those negotiations in a public arena. Perhaps we could provide you with some advice on notice as to the exact stage that is at.

DR FOSKEY: That would be fine. On page 5 of the annual report, under "Outlook for 2007-08", it states that it seeks law reform review. What are the shortcomings of the current act? Ms Caruana, I do not know if you are able to answer this but perhaps your office could let us know what reforms you would like to see of the current act, and expand on that statement.

Ms Caruana: I would be happy to take that on notice and provide an answer to the committee.

DR FOSKEY: On page 13 you raise concerns about the lack of police training and suggest that this might be an appropriate role for the office—as if you do not already have enough to do—to undertake. Do you have any further comments to make about that? What makes you believe that the police need further training? Do you think you have adequate resources to undertake it?

Ms Caruana: Currently, we provide some input into the family violence intervention program training. We had previously done some training with new recruits around victim awareness issues. We would like to re-introduce that part of our training for the new recruits. Resource-wise, we need to look, as part of our integration with victims services counselling, at what we can provide. Previously, we provided a morning with the victim liaison officers from the AFP on training for victims issues. We think it is an important role for new recruits, for all officers, to be aware of the issues for victims.

DR FOSKEY: At the moment, apart from what you have done, you do not believe that police are subjected to that kind of training?

Ms Caruana: I understand that the victim liaison officers from the AFP provide some training for the officers. I am not sure what that consists of.

Ms Leon: I can provide a little bit of information about that. Of course, we will have the police here tomorrow and they will be able to provide you with more detail. I am

advised that they have four victim liaison officers and that those victim liaison officers regularly address recruit classes, training programs for investigators, the AFP family violence training programs and the sexual assault and child abuse team training that is undertaken within the AFP. So the police provide a considerable amount of training for their own people on both the legislation around victims of crime and the appropriate care of and response to victims.

DR FOSKEY: On page 14 you talk about the responses by the Director of Public Prosecutions to victims of crime. The report seems to indicate that the outcomes of interaction between the prosecution and victims are improving, but there continue to be some problems, particularly with charge negotiations, and you recommend reform of the act. Could you give us a sense of the key areas of reform that are required and point us to some other jurisdictions that might have better legislative models that we could look at?

Ms Caruana: The reforms we would be looking at would involve having a stronger basis for keeping victims informed and to enable them to participate in the criminal justice system. Currently, the Victims of Crime Act allows for victims to be notified of prosecutions and for keeping them up to date with those prosecutions. But there is no comeback if people are not kept up to date and victims are not advised. They are the sorts of reforms we would be looking at.

DR FOSKEY: When Ms Holder is available and if you think there is more to add to that, particularly with respect to other states, other legislatures, which might have an approach that you think reflects your concerns, we would like to know.

Ms Caruana: Certainly.

THE CHAIR: Thank you very much, Ms Caruana. We will adjourn until 2 o'clock and we will then hear from the ACT Legal Aid Commission.

Meeting adjourned from 1.01 to 2.06 pm.

THE CHAIR: We will recommence.

Mr Corbell: Mr Chairman, before we proceed with the Legal Aid Commission, can I clarify an answer I gave to the committee in response to a question from Dr Foskey about the Domestic Violence Coordinator and the Victims of Crime Coordinator. I advised you that that appointment was with your committee for your consideration. I am advised that you have considered it and have indicated that you have no objection to the proposed appointment. So at this point the only matter outstanding is that the formal instrument of appointment is yet to be signed by the executive—

THE CHAIR: Is it the same issue with the three-year appointments as with the one-year appointment or is this a different one?

Mr Corbell: It is both. Dr Foskey asked about the Domestic Violence Coordinator and you asked about the three-year appointment of the Victims of Crime Coordinator. The government has proposed to appoint Robyn Holder to both of those positions, for her to hold those positions concurrently. You have, as a committee, offered no

comment in relation to that proposed appointment. At this point the only matter outstanding is that the formal instrument of appointment is just being finalised. Once that is finalised, the formal appointment will be made. That is just a clarification of the answer.

THE CHAIR: Thank you, minister, and just to clarify, as you did in your comments, we do not approve these things; we just comment or not.

Mr Corbell: I understand the subtlety.

THE CHAIR: I remind Mr Crockett and other officials of the privileges statement. I assume, Mr Crockett, that you are aware of your rights and obligations. Would you like to make an opening statement?

Mr Crockett: By way of an opening statement I mention to the committee that it has been a significant year of change and challenge at the Legal Aid Commission. We saw the departure late last year of Christopher Staniforth, who had been CEO for 18 years, and his long-serving deputy, Linda Crebbin, moved on in January 2007. As a result of those departures and some other changes, we have had a complete change of senior staff at the commission in the last six months or so. This has brought both positive and negative effects. On the positive side, it has brought some fresh eyes and new energy to the management of the organisation. On the negative side, we have lost about 50 years of cumulative knowledge of Legal Aid in the ACT with the departure of those two senior staff.

We have embarked on a fairly significant change program over the last few months, including the development of a strategic plan for the next five years. We have just started on that. The first stage of that planning process is to canvass the views of our stakeholders—the private profession, government and agencies that we work with—about some of the challenges facing Legal Aid over the next four to five years. Based on the information we get during this information gathering stage, we will start planning on how we are going to respond to some of the critical issues that will face us as deliverers of legal aid services in the territory in the future.

There has also been some reorganisation of the commission in terms of a new structure and a fresh look at the way services are provided. Some of the changes we have made are just starting to flow through now. So it has been a year of considerable change and challenge, and there is a lot more work to be done in the future.

THE CHAIR: Thank you, Mr Crockett. On page 2, the president's message states that over the next 12 months there will be renewed negotiations with the commonwealth regarding funding, and it goes on to say that there is a clear case for a substantial injection of funds. Have they progressed at all since this report was prepared—those negotiations with the commonwealth?

Mr Crockett: The negotiations have not started yet and the federal election has meant that now they will not start until March next year. The current agreement with the commonwealth does not expire until December next year, so there is quite a good lead time for the negotiations to be finalised. At this stage we have put in submissions to the commonwealth Attorney-General's Department for core funding from the

commonwealth for the next three years, which would be the life of the new agreement, plus some submissions for additional funding, particularly for providing services to Indigenous Australians in the region, and to expand our family dispute resolution service. I do not know at this stage whether those submissions are likely to bear fruit. They are certainly being looked at by departmental officers but we have had no indication of whether they are likely to be recommended to the incoming attorney or not.

DR FOSKEY: On page 16 you say that an expanded duty lawyer service will commence in August—or presumably has commenced—to provide advice to those who have not sought advice prior to their proceedings. Did the service commence on time? Could you outline whether it is doing the job that the commission would like it to do.

Mr Crockett: Yes, the service did commence on 1 August, which was when the Magistrates Court brought in the new criminal listing arrangements. The service differs from the one we were providing for many years prior to that in two ways. Firstly, we now have two duty lawyers at the court instead of one. One goes to the cells in the morning to see people in custody and the other is available at the court to see those appearing on bail or summons. The other change is that our duty lawyers are now doing simple pleas of guilty on the day in appropriate cases, whereas in the past even guilty pleas were generally adjourned so that a grant of assistance could be sought and then there was an appearance on a later occasion.

One of the objectives of the new listing arrangements is to improve the flowthrough of cases to try to ensure that more cases are completed at the initial hearing. I think it is still too early to say whether that and other objectives of the new procedures will be achieved. Certainly, from our perspective, it seems to be working quite well at the moment.

THE CHAIR: While we are looking at pages 16 and 17, in relation to the criminal law section you talk about six full-time lawyers, a part-time lawyer and three support staff. At the end of that section it talks about there being many years of experience in criminal cases amongst those staff. Are you able to outline for us, or perhaps take on notice, what are the relative criminal experiences of the lawyers in the criminal law area?

Mr Crockett: I would probably have to take that on notice. In terms of years, many of them have been with the commission for upwards of 10 years and practising exclusively in the criminal jurisdiction both in the Magistrates Court and in the Supreme Court during that period. So they are among the most experienced criminal lawyers in the ACT. I do not know that I can add to that without perhaps—

THE CHAIR: Going forward, are there many opportunities for you to attract lawyers with criminal law experience outside Legal Aid who come in with a substantial body of experience which they then use in working for Legal Aid?

Mr Crockett: We find it more difficult to attract lawyers of middling experience—four or five years experience. I am not quite sure why that is. We have no difficulty in attracting or retaining more senior practitioners. It is fairly easy to attract new

practitioners who have yet to gain any real experience. It is the middle-rung people—and I think this is a problem that most legal aid commissions and, indeed, private firms have as well. Maybe at around the four or five-year mark people want to think about a change in the way the practise, the areas they practise in, or perhaps get out of the law altogether. There is certainly an element of that. Generally speaking, we do not have a significant problem in attracting experienced staff at present.

DR FOSKEY: Have you seen any changes in the kinds of cases that you have needed to deal with over the last year? I am interested in how much of your work would be related to assisting people with appearances before the Residential Tenancies Tribunal, the AAT and other ACT tribunals, and the problems that you might encounter there.

Mr Crockett: I will answer the second part of the question first. We do not provide a great deal of assistance for people appearing before tribunals. There does not seem to be a high level of demand for that. One exception is the Mental Health Tribunal. We have a duty lawyer who is in attendance at each sitting of that tribunal. We have a certain number of applications for appearances before other tribunals but not a significant number. This is probably because some of the community legal centres in Canberra tend to specialise, for example, in tenancy tribunal work. We would tend, because we do not have particular expertise in that area, to refer clients to the Tenants Union if they present to us with that sort of problem.

In relation to changes in the case mix generally, I do not know that there has been much change discernible in the last 12 months, but if you go back a few years further than that, there certainly have been some trends. I think there has been an increase in the complexity of the cases we are handling. This is particularly true in the care and protection jurisdiction and in the family law jurisdiction. This is probably a reflection of societal change, more blended families and more issues concerning children where grandparents are becoming involved. Increasingly, we have multi-party disputes whereas before we might have been assisting one party. For example, in a care and protection application, we now often find ourselves representing both parents, having a separate representative for the child, and sometimes even representing grandparents or other close relatives as well. So there is a trend towards greater participation by immediate family in some of those proceedings.

The issue of complexity is broader than just care and protection. I think we are finding that in family law as well. As I say, I think it is a reflection of the complexity of life and people's financial and family arrangements. It becomes more and more difficult to unravel and resolve some of the problems that people now confront in society.

DR FOSKEY: On page 18 it says that the office plans to expand its civil law practice. What has led to that decision? Has that happened and how is it going?

Mr Crockett: We have seen a very significant decline in the civil law practice of all legal aid commissions over the last 10 years. This has been due principally to a decision by the commonwealth government in the mid-nineties to restrict commissions to spending commonwealth funds only on commonwealth law matters. Before that, the commonwealth provided 55 per cent of the funding of all legal aid commissions and it was up to the commissions to decide how that was spent.

When the commonwealth changed its policy in 1996, the effect on commissions was that there was, first of all, a hiatus in terms of uncertainty about funding, and that led to an immediate drop in the number of applications because people thought, "It's not worth putting an application in, there's a lack of money and we'll have it rejected." In a very real sense, our civil law practice has not recovered from that drop-off in knowledge and understanding of what commissions can do to assist in this area. All commissions have been trying to build up their civil practices since that time, without a lot of success.

The decline has continued right up to last year. What we are hoping to do now is to move into some areas that previously we had not been so active in. One of these areas is in elder law. There is probably significant unmet need amongst older Australians for assistance with a variety of problems for which they tend not to seek legal help, for one reason or another. There has recently been, as you might know, a report on ageing and the law by the House of Representatives Standing Committee on Legal and Constitutional Affairs, which made recommendations to the effect that there needs to be developed among lawyers generally greater expertise in dealing with the sort of problems that older people have.

We are also hoping to get out of the national legal aid survey, which is being conducted at the moment, some useful data about areas where there is unmet need in the community for legal help. We expect that quite a few of these areas will be in the civil law area and there may be some opportunities for us to step into that gap. At the moment there is very poor or little service provision.

THE CHAIR: What are some of the specific areas where older Canberrans might need the assistance of Legal Aid in the civil law area?

Mr Crockett: There are things like powers of attorney or substitute decision making. A lot of people obviously do manage their affairs quite well and go to lawyers to have powers of attorney or guardianship arrangements entered into. But there are also a lot of people who do not understand the importance of doing that—making wills, for example, as well. There is increasing evidence that some of the elderly are being abused, both physically and financially—often by close family members. A lot of this is still hidden. As the population ages, I think we will see some of these problems becoming more prominent.

There are issues with housing—arrangements made with families to lend money so that elderly people can manage better in their day-to-day living, and taking an interest in the house. There are the so-called reverse mortgages which are starting to hurt some older people. So there are some emerging areas with an increasing older population that I think will need to be addressed.

DR FOSKEY: Would you be conducting conversations perhaps with the Public Advocate about issues that she might have come across?

Mr Crockett: We do have discussions with the Public Advocate from time to time. I think their experience is similar to ours—that some of these problems are just starting to emerge. We will be working very closely with the advocate along the way. The Public Trustee has an interest in this area as well.

DR FOSKEY: On page 23 you mention that the youth law centre will be expanding its outreach legal advice and education services to young people in 2007-08. Where is the youth law centre located?

Mr Crockett: It is in Petrie Plaza, above the Medicare—

DR FOSKEY: Yes, that is where I thought it was but I did not know that it was connected to the—

Mr Crockett: Yes, it is run in partnership between us, Clayton Utz and the ANU Law School. We have started that outreach program to youth centres in Belconnen and Tuggeranong, as well as one other, I think. We are not getting a very high level of demand from young people for those outreach services. I think we are still looking for ways in which we can better penetrate the youth market, if you like, for legal advice and assistance. That is being looked at quite closely at the moment by us in conjunction with our partners.

THE CHAIR: I notice in the figures regarding the kind of matters that are handled in the youth law centre that tenancy matters have gone up quite significantly from 2005-06 to 2006-07.

Mr Crockett: Yes.

THE CHAIR: Are you aware of the breakdown of the type of tenancy issues that are coming before that centre?

Mr Crockett: I do not. The statistics they are keeping at the moment are fairly basic. I would need to make further inquiries to ascertain why this increase in tenancy issues is occurring and what sort of matters they are presenting with.

THE CHAIR: If you could get some sort of breakdown of that I would be quite interested.

DR FOSKEY: With respect to some of the committees that you are involved in, particularly the prisoners advice committee, is that about how you will deliver legal advice to prisoners in the new prison? No doubt that is reported. Have you been involved in that, Mr Crockett?

Mr Crockett: We have been involved in discussions with Corrective Services about setting up the service. It is a matter that is still being considered.

DR FOSKEY: Was there a report in July 2007?

Mr Crockett: The audit by the—

DR FOSKEY: It says that the prisoners advice committee is due to report in July 2007.

Mr Crockett: That is a report made to the commission by the committee. That report

went to the commission and the commission accepted in principle that we should be providing that sort of service, if it is possible. That is being further examined at the moment.

DR FOSKEY: So it would be your wish to have a presence at the prison?

Mr Crockett: Certainly. At the moment we provide a service to the Belconnen Remand Centre, so this service would be an extension of that. It would deal with the range of legal problems that sentenced prisoners experience.

Mr Corbell: The government is giving detailed consideration to that. Obviously, there are a range of programs that will need to be funded concurrent with the commissioning of AMC in the middle of next year, and next year's budget is the context in which those decisions will be able to be taken.

THE CHAIR: Thank you very much, Mr Crockett, for your time.

Mr Crockett: Thank you.

THE CHAIR: We will now move on to the ACT Electoral Commission. Welcome, Ms Purvis. Would you like to make an opening statement?

Ms Purvis: No, thank you.

THE CHAIR: All right. We will launch straight in to questions.

DR FOSKEY: On page 6 you talk about the resource constraints that your office faces—this is the same question as last year and on the same page—compared to counterparts in other states and territories. What do you think this means in regard to the work that you may not be able to do but that your counterparts in other states and territories can?

Ms Purvis: The ACT Electoral Commission is a special case in lots of ways. Because we are a small jurisdiction with a small geographic area we do not face some of the challenges of the other electoral commissions. Our counterparts in the Northern Territory, for example, have remote polling issues that we do not face here. I would say that we still run the full range of functions that the electoral commissions do across the country. We do those to the best of our ability with a small staff and provide the services that we need to do under the act.

DR FOSKEY: On page 16 the report talks about the review of the Electoral Act in relation to the 2004 election and the amendments that Mr Corbell has proposed to the Electoral Act in light of this review. Some of those recommendations in the election review were not adopted in the government's proposed amendments. Would you like to comment on the impact of those omissions on the commission's work?

Ms Purvis: The main one I think you are referring to would be the 100-metre rule for the how-to-vote card ban. The commission recommended that perhaps that ban, that exclusion zone, should be shortened and should come into line with the commonwealth exclusion zone of six metres. The commission made that

recommendation on the basis that many of the complaints that we had on election day last time in 2004 were on the basis that people were handing out how-to-vote cards within the 100 metres. It was from all parties, complaining about each other. The commission's view was that if that was the case and parties were of the view that they should be able to hand out how-to-vote cards within that 100 metres, perhaps that exclusion zone should be reviewed. The government took the view that that was not what they wanted to do and that is where it stands.

THE CHAIR: What was the reason for that, minister?

Mr Corbell: The reason for that, Mr Seselja, was that the government took the view that, whilst there has been some complaint—mostly from political parties against each other—around the application of that rule and where the 100 metres starts and finishes, the broader community is actually quite supportive of the existing 100-metre exclusion zone. We took the view that on balance a significant number of people in the community, probably the majority of residents, had now got used to the fact that there were not how-to-vote cards handed out in close proximity to polling booths on the days that there were ACT elections and that there was a high level of community support for that practice to continue. Certainly anecdotally many expressed the view that they are relieved that when they approach a polling booth they are not confronted by the sheer number of party volunteers and others lining the advances to the booth in the same way as occurs in the federal election.

There is a contrary view to that. I know some people in the community say that they would prefer to have guidance on how they should vote to support a particular party or individual and they want that available at the booth on polling day. The government took the view that on balance the existing practice was reasonable, was accepted and endorsed by the community and that if there were compliance issues associated with the enforcement of the 100-metre rule the commission would need to work with parties to give greater guidance on how that rule was to be enforced and how it was to be respected by candidates.

DR FOSKEY: Mr Corbell, I note that when we were going to debate the amendments at the last sitting you decided to postpone that debate in order to have a conversation with other members.

Mr Corbell: Yes.

DR FOSKEY: I am therefore just assuming that that will occur before we debate the legislation.

Mr Corbell: I was approached by Mr Stefaniak on behalf of the opposition and he indicated to me that the opposition's preference was for the legislation not to be debated at the last sittings. I indicated to him I was happy to delay the debate to allow for the opposition's views to be discussed. Certainly that invitation is open to you as well if there are issues the Greens wish to raise with me.

DR FOSKEY: You would be aware that we proposed quite a number of amendments.

Mr Corbell: I am very happy to meet with you and discuss those matters.

DR FOSKEY: That would be good, and it would seem to me the matter we have just been discussing is something that might benefit from airing between the three parties too. Given that we have not yet debated this legislation, Ms Purvis, is it likely that the proposed changes will be implemented before the 2008 ACT election?

Ms Purvis: Certainly. As soon as the legislation is passed we would hope to implement any change that is within that legislation in time for the election next year.

DR FOSKEY: Okay. On pages 16 and 17 you mention the proposed use of electronic vote scanning and also the use of electronic rolls. For a start, do you feel that there is now in the community acceptance of these electronic techniques and the computer-based voting? Do you still have a community advisory committee, and what are they saying and doing? And how are you going regarding the use of electronic vote scanning?

Ms Purvis: The electronic voting and counting is, I believe, quite well accepted within our community. The lead-up to the federal election has been interesting this time. They are introducing, for the first time, electronic voting for sight-impaired people, but only for sight-impaired people, which is different from our approach which allows anybody to use the electronic voting system who happens to visit a polling place where we have them.

The acceptance, I believe, is growing. We are certainly increasing the numbers that we are taking. In 2001 we took about 16,000 votes. In 2004 we took about 28,000 votes. So there is an increasing number of people using the system and certainly the feedback that we get about the system is very positive. From our point of view as a commission it is very positive for us because it means that we get fewer mistakes on ballot papers. The electronic ballot papers do not have the same sort of duplication or missing numbers—mistakes that we see on paper ballots. The informal rate has gone down very much. It was about four per cent on paper; it is less than one per cent on the electronic voting system. So there are lots and lots of positives from using that system. The changes of the—

THE CHAIR: Can I just stop you there for a second? How does an informal vote happen in an electronic vote? I would have thought the system would not allow a vote to go through.

Ms Purvis: No, because we have compulsory voting the electronic voting system allows for an informal vote.

THE CHAIR: So you can choose "none of the above" or something or—

Ms Purvis: You just choose no candidates and continue and it will record an informal vote. People do choose to use that on the system.

The community reference group is still continuing. It is made up of representatives of parties, MLAs and community groups that have particular interest in the electronic system, such as Vision Australia, the proportional representation society and the disability groups. They last met in October last year and they reviewed the proposals

that we had made after the last election to improve the system and gave their in principle support to us moving towards a scanning solution for the paper ballots to replace what we have at the moment. At the moment we take all 190,000-odd ballot papers and data enter the information from them. That is done by two data entry operators and then a supervisor checks to make sure that their entries match. So it is a hugely labour-intensive process.

We went to industry last year and asked whether there was an intelligent scanning proposal or program that could be used to intelligently scan those ballot papers rather than data entry them and they believed there was. We went to tender and we have just let that tender to a company called Secure Vote and they are building us a system at the moment to scan ACT ballot papers. We will be testing that system extensively and, if we are satisfied that it meets the criteria of being absolutely accurate and if the reference group are happy with it—we will involve them in the testing—we will look at using it at the election in October next year.

DR FOSKEY: Is that used in other jurisdictions, will it have to be invented from scratch or is it particular to Hare-Clark systems? Sorry, I do ask a lot of questions at once.

Ms Purvis: We are certainly the first jurisdiction to look at it for a parliamentary election. It has been used in private elections, such as NRMA and those sorts of things, before. We notice that Victoria have just advertised a tender for the same scanning system for their local government elections that come up just after ours in November next year. So it is a way that electoral commissions are moving. It is a way that we hope will ensure that we are being clever about the way we count elections.

DR FOSKEY: And where is Secure Vote based?

Ms Purvis: They are based in Sydney but they will be bringing the system here to Canberra for the election. Of course we are mindful of scrutineers and scrutineers being present and able to observe all the processes of the election, so they will be bringing the system here, assuming that we get through the testing stages and are happy with the system. So scrutineers will be involved in the process.

DR FOSKEY: Will there be an opportunity to train scrutineers beforehand rather than just being—

Ms Purvis: Yes, certainly. We have done that in the past with scrutineers for the electronic voting system and we would be moving to do that again.

THE CHAIR: And would it be possible under the proposed system that you are looking at for scrutineers to have a meaningful role if they are all scanned?

Ms Purvis: Certainly. It would be very similar to the data entry role that scrutineers have at the moment. The papers would be scanned, there would be an image of each paper brought up on a screen as it was scanned and then if there was any paper where the program was not sure what the numbers were—or there was a missing number or a duplicate number or it was informal or any of those business rules that we are placing on it—it will throw that to a supervisor and the supervisor will have to make a

decision on what the number is; often you cannot see the difference between a one and a seven. Scrutineers will be able to watch that process and have input into that process. The other change Dr Foskey asked about was the hand-held electronic electoral rolls?

DR FOSKEY: They are the PDAs.

Ms Purvis: Yes. We are working with the other states and territories on this project. In the most recently held Victorian and New South Wales elections they used them as look-up rolls. They loaded the whole roll for the state on those PDAs and they had them in polling places so that if a person's name was difficult or they were having trouble finding them on the paper rolls they could use the electronic version to find that person.

In Tasmania they went the next step and used them as mark-off rolls, so that when they found a person they ticked their name off and that was their record that that person had voted. They used it in the upper house there for, I think, two divisions. So we will be moving to the next step with those partners to have a program that will enable us to mark off people in the ACT and the PDA will hold the whole roll. Again, we have to go through an extensive testing process and be satisfied that that system works and will meet our needs.

THE CHAIR: Going back to the scanning of ballot papers, are the main anticipated improvements in relation to speed of counting and accuracy? Are those two things the main drivers of the change?

Ms Purvis: I think the main driver for us is that data entry causes us some problems because data entry is a dying art and there are not so many data entry operators around these days, particularly good ones. In big centres like Melbourne and Sydney you can still get hold of data entry operators because of the backpacking market and people coming from overseas, but here in Canberra there is not as much call for data entry any more. The big agencies are scanning more and more, so we were finding it difficult at the last election to find skilled data entry operators. So that was one of the drivers to move us towards a scanning solution. Certainly the other one is that the developments in information technology that go along with scanning have made huge improvements in the last couple of years and we think that it is viable now.

THE CHAIR: And you would expect that, if this goes ahead, we would see a shortening of that period from election day to when the election is declared?

Ms Purvis: We would hope so. We cannot be definitive on that until we have been through the testing phase. It will depend on how many ballot papers are thrown to operators, to the supervisors, to check their accuracy. If a lot of people's handwriting is very hard to discern, it may take just as long. If many people have made an error on their ballot paper, again that slows down the process. We want it to be accurate. That is where we are heading and we would hope that we would do it in the same or less time than we have done it in the past. But it is very hard to say just yet whether we will be able to meet a faster time line. Again we have to wait for postal votes on the Friday following our election, so we cannot come to a result before the Friday following our election anyway. So we would hope to be close to that time with

scanning.

DR FOSKEY: Do you ever see a time when the technology might allow people to sit at home, get on the internet and vote once? Do you ever see that as a possibility with the technology?

Ms Purvis: I think it may come, but just now certainly it is not a possibility and that is because of the security of the net—the difficulty of ensuring that the person at the other end of the vote is the person that you think and that they only vote once. So there are still some issues around the security of the internet that I would like to see tightened before we move towards parliamentary elections on the internet. That said, the federal government are doing a trial this time around of defence force personnel using the internet to vote in some of the locations overseas.

DR FOSKEY: Okay, and will the report of the results of that trial be made available to you people?

Ms Purvis: I hope so.

DR FOSKEY: That is interesting. I have to say that I think election days have their own social place in our lives. Since we met last year the electoral boundaries have been redistributed. There have been a few changes. People who have previously voted in Brindabella might now be voting in Molonglo.

THE CHAIR: It is the other way around.

DR FOSKEY: So it is, of course. Farrer has moved from Molonglo into Brindabella. Could you please give us a description of the consultation process, including indications of where people wanted perhaps more dramatic change?

Ms Purvis: Certainly. The redistribution report is now out. I hope you have been able to get a copy.

DR FOSKEY: We have got it here.

Ms Purvis: The process was a long one. It started with the redistribution committee meeting and proposing some boundary changes. In that original proposal they proposed moving one suburb from Gungahlin into Molonglo, and Farrer into Brindabella, and called for submissions from the public on what they thought of that proposal. Submissions were received about that proposal and at that point the augmented electoral commission comes together—that is the redistribution committee plus the electoral commission, the two commissioners from the commission—and they have a look at the objections to the original proposal and form a judgement on those objections.

They held public hearings at that point to hear the community's views on that original proposal and then they proposed a changed proposal which was not to move the suburb out of Gungahlin but to maintain the Farrer change. I think at that point they called for objections again—I am a little bit rusty; I was not involved in the process this time around—and again the people from the community put forward their views

on that amended proposal. The augmented commission then considered those objections and decided that they would not hold further hearings and that they would announce their proposal as it stood. They did not believe that the objections raised anything new, anything that had not been included in the original objections.

THE CHAIR: I have read through parts of the report and—you might be able to help me—I struggled to follow the logic of the decision not to go with Palmerston moving as it was originally proposed, given that Molonglo is already a reasonable amount bigger than the other two in terms of per member and given that Molonglo is the area of Canberra that is significantly growing. I was trying to follow the rationale. You might help by explaining this: by not going with Palmerston this time is it not more likely that we will simply have to see another amendment happen ahead of the 2012 election—given we know Molonglo is growing, moving the two suburbs now and then perhaps avoiding the need to redistribute before 2012?

Ms Purvis: Yes, it may be the case. The issue was that the act requires that the quotas fall within plus or minus five per cent, and by moving just one of the suburbs they met that criterion.

THE CHAIR: So would Palmerston moving have brought it outside the five per cent?

Ms Purvis: No, it would still be within five per cent but by just making a minimal change they could also get it within the five per cent, so my understanding is that they went with the minimal change because it still met the criterion that is in the act.

DR FOSKEY: Did you have any submissions from perhaps town centres and their surrounding suburbs indicating that they believed they should be a stand-alone electorate? I believe that the Gungahlin Community Council was planning to put in such a submission.

Mr Corbell: My understanding of the Gungahlin Community Council's position and their submissions to the augmented commission was that they had maintained the view for some time that they believed the district of Gungahlin should be comprised within a single electorate. They do not care whether they are a part of Molonglo or Ginninderra, but they believe all of the suburbs of Gungahlin should be retained within a single electorate rather than split between two electorates. I understand that that is their continuing position.

I know that the Woden Valley Community Council also made a similar submission once it was proposed to further divide the Woden Valley suburbs between Brindabella and Molonglo. They maintain a similar position that there is more community of interest between Curtin and Chifley than there is between Chifley and Kambah. This highlights the difficulty that the commission faces in trying to ensure that the weight of a vote is maintained reasonably consistently across the electorate whilst at the same time trying to respect communities of interest.

THE CHAIR: Another one of the models looked at—I am not sure which of the models it was—a split down Northbourne Avenue, so the western side of Northbourne would be with Ginninderra. It said something about O'Connor and Bruce not having

the same communities of interest. That was another one I was not quite following as to the difference—O'Connor, Aranda and Bruce being very close together, how there is less community of interest there than there is between O'Connor and, say, Ainslie or Watson.

DR FOSKEY: Or O'Connor and Palmerston.

THE CHAIR: Indeed.

Ms Purvis: My understanding is that when the redistribution committee were looking at it they were mindful that they would keep the boundaries as close as possible to the existing boundaries. The proposal that you are talking about, Mr Seselja, meant quite a radical shift from the existing boundaries.

THE CHAIR: This was the one that incorporated all of Gungahlin into one, was it?

Ms Purvis: Yes, and any model that was tried that incorporated Gungahlin in one would mean a major change to boundaries and so I understand that the committee did not move that way.

DR FOSKEY: Is there a time frame for the notifiable instrument and subsequent implementation, minister?

Mr Corbell: Of what?

DR FOSKEY: Of the new electoral boundaries; is that is what is required—a notifiable instrument?

Ms Purvis: Yes, it has been notified.

Mr Corbell: The commission does that. I don't do that.

Ms Purvis: Yes, it has been notified. The dates are in the front of the report. The two last stages of the redistribution committee's process are that there is a notification of the boundaries and the report is tabled in the Assembly. I am just trying to find those dates.

Mr Corbell: The executive does not make that regulation or make that instrument, I should say.

Ms Purvis: It was notified on 10 September 2007.

DR FOSKEY: Although it is not mentioned in the report, have the commonwealth electoral changes had an impact on the workings of the commission?

Ms Purvis: They have to an extent in that the forms have changed. The form that people now fill out has different criteria and a witness is no longer required. So certainly we are no longer witnessing forms as once we used to. The requirements are that either a person has a drivers licence or some documentary ID of some sort that a person on a list on the form sights and can sign the form to say that they have seen it.

The third option is a person that has known somebody for a period of time—two people can sign the form to say that that is the person that they are.

There has been a change to the type of work in our office. The types of inquiries we are getting about that form have changed: what does it mean to be one of these people that can sign a form? We get inquiries from those people when they are asked to sign somebody's form. We get inquiries from people who have documentation and are looking for a person of that nature. But generally it has been going quite smoothly and certainly the forms have been flowing in, particularly with the Australian Electoral Commission's publicity before the federal election.

THE CHAIR: As there are no other questions, thank you, Ms Purvis.

Meeting adjourned from 2.57 to 3.27 pm.

THE CHAIR: Welcome, Professor McMillan. I am sure you are aware of the various privileges and other things in relation to appearing before a committee. Do you want to make any opening statement?

Prof McMillan: The only opening statement I wish to make is to say that the last year for the ACT Ombudsman has been similar to former years. We get close to 1,000 complaints a year, almost evenly divided between ACT government agencies and police.

We have very good working relationships with government agencies and police. Over the past year, we have been able to put a lot more emphasis on working with agencies to build up their own internal complaint handling capacity. That has been important for the successful and efficient functioning of the office. We have also had a similar experience with police—doing a major investigation into the ACT watch-house, on a joint basis. I mention those as examples of a working relationship with agencies that is successful, yet at the same time the office has managed to keep sufficient independence and, I think, maintain credibility in respect of the public. That has been borne out by surveys we have done generally around Australia.

The only other thing to mention by way of introductory statement is that, as committee members would know, the ACT Ombudsman function is one function discharged within the office of the Commonwealth Ombudsman. It is one of the few areas where there still is that linkage between the ACT and the commonwealth. This is one area where I think it works very well. It has advantages both ways. For the ACT Ombudsman function, it means that it draws from an office with a larger capacity, tradition, resources and experience. For the Commonwealth Ombudsman function, it means that it is given experience in handling issues such as housing, corrections and planning that it would not otherwise have.

THE CHAIR: Thank you. Dr Foskey.

DR FOSKEY: On pages 17 and 18, you refer to a number of cases where the AFP appears to have taken very little action over a period of some months. Do you have any thoughts about why there has been this apparent lack of interest?

Prof McMillan: I am just picking up the matters on pages 17 and 18. We recognise that the Australian Federal Police organisation has grown substantially in recent years, and it has a whole range of new responsibilities. Sometimes, you do get issues where choices are made about where to allocate attention and priority. Sometimes we are aware, in relation to complaints to police by members of the public—complaints requiring police to exercise their law enforcement functions—that that is where that vexed issue of investigation discretion comes into play. They have to decide where to place their investigation resources. We acknowledge that hard choices sometimes have to be made. They can lead to complaints. Generally speaking, we are comfortable with the idea of an external oversight agency like ours being able to go into those issues to see whether the right choice has been made.

That is a general answer on that issue, Dr Foskey.

DR FOSKEY: On page 18, you talk about a small number of cases that remain open after two years. Is there any evidence that the AFP is in the process of finalising those complaints, and is there anything that the ACT government could do to ensure that they are prioritised?

Prof McMillan: No. We work closely with the ACT police—with AFP, at the moment—on that backlog of complaints. Indeed, we have a weekly meeting with them to see how the matters are progressing. I think they are focused on the fact that there are delays. We are working to put on pressure for those delays to be addressed. I am advised that, on those matters relating to conciliations, we were advised last week that they have only about 12 left to complete. So since the tabling of this report, there has been some advance on that issue.

DR FOSKEY: A whole legal affairs committee inquiry was spurred by one such case—the capsicum spraying of two young people.

Prof McMillan: Yes.

DR FOSKEY: Is that resolved now?

Mr Corbell: Yes, it is.

DR FOSKEY: That was an indication of the impact on the people involved. It is not just about inconvenience to ACT Policing or anyone else; it also affects other people. What happens when there is a disagreement between the ombudsman's office and ACT Policing about the level of seriousness of a complaint or whether it is substantiated? How does that get resolved? There is no reporting on whether such disputes occur.

Prof McMillan: The answer varies according to whether it came under the former complaints act or whether it is under the present Ombudsman Act.

Just to put that in context, until the end of December this year all complaints were handled under the complaints act, which required that complaints, whether to the ombudsman or to the AFP, were to be notified to the ombudsman. Complaints would firstly be investigated by the internal investigation division or, later, professional

standards, and the matter would come to the ombudsman's office as a report to look at. If the ombudsman's office felt that the investigation was inadequate, we would send it back with suggestions about further investigation needed.

If, at the end of the day, there was a sharp disagreement, the ombudsman's office could do its own investigation. There were also some special procedures, particularly relating to complaints against members of the professional standards division, where the ombudsman could propose a joint investigation with police and, if there was disagreement, refer the matter to the minister, who could initiate an investigation as well.

That was the old system. We still have about 100 complaints under that system that we are working through, and we hope to complete those. The new system is that complaints against police are now handled by the ombudsman under the Ombudsman Act, modified by some provisions in the Australian Federal Police Act. The principle is that in the first instance all matters are investigated by the AFP. If a person is dissatisfied, they can complain to the ombudsman, and the ombudsman can decide how to handle it—to do an investigation or whatever. The modification is that there is a four-level categorisation of matters—levels 1, 2, 3 and 4. Level 3 matters, called "serious misconduct", have to be referred to the ombudsman's office; the ombudsman's office can decide whether to investigate those initially or whether they go back to the AFP. With the 150 or so matters that have been referred since January, we have referred them back to the AFP. Level 4 is corruption; that goes to a new body, the Australian Commission for Law Enforcement Integrity.

MR STEFANIAK: While we are dealing with complaints against police—let me give congratulations on your law enforcement team going out with police—

Prof McMillan: Yes.

MR STEFANIAK: I think that is absolutely essential—and understanding the pressures they are under. My question is this. There are always a reasonable number of complaints against police. They investigate them and you investigate them. And, of course, you have complaints against other agencies. From the complaints, you would get a fair understanding as to what had some legs, what did not and what was probably totally spurious in relation to any agency that people are complaining against. I am interested in whether you could tell us what percentage of complaints against police, say in this reporting period, you would describe as having no substance—in other words, probably spurious complaints—compared with the percentage of complaints against other government agencies which would fall into the same category: spurious, with no real legs and no real grounding to them?

Prof McMillan: Yes. Can I preface my answer by saying that in the early days of the ombudsman's office there was very much a focus on the outcome—whether the complaint was upheld wholly or partly or not. In recent times we have tended to move away from that. We still do make findings of administrative deficiency and do make formal findings that there has been fault. But we have tended to concentrate more on getting a practical outcome—a remedy, a solution that is satisfactory to the complainant. In a sense, we have moved along that path with the AFP over the years.

Most of the issues about which people complain go to workplace resolution. The idea is that the complainant is contacted and sometimes a meeting—a discussion—is held between them and the police officer just to reach some common understanding about what had happened and see if the issue can be resolved in an informal way. Most matters are successfully resolved by conciliation and discussion through that workplace resolution process.

Last year, as the report indicates, in only six cases was the complaint issue itself substantiated at a formal level. That is not to say that there were not other issues beyond those six in which there was some substance to the complaint.

MR STEFANIAK: Yes, but I am talking about where there is no substance.

Prof McMillan: It is probably a similar result for police and other areas, although there is a slight difference in the factors that have given rise to the complaint. With other government agencies, issues commonly spring from either the complexity of the program being administered by a government agency, and a person's misunderstanding about advice they have been given or what is happening, so they need a better explanation of the process, or because there has been delay in planning, allocation of a housing list or whatever. With police, because it is very much face-to-face contact, the complaints are often about rudeness, incivility and so on. That can make it difficult to compare, although in terms of problem areas I think the results are probably similar in police and other areas of government.

MR STEFANIAK: I would not expect you to have kept a table of it, but from your experience—your mind's eye impression of it is important—I wondered if there was a significant difference. I would imagine that you would notice that. If it is much the same, that is probably easier in a way.

Prof McMillan: Yes.

MR STEFANIAK: It may not occur now, but when I was in practice people would feel that they had to make a complaint against police if they were raising certain allegations in court. Indeed, that was sometimes almost encouraged by some comments from the bench. That could skew things a bit. I just wondered whether times had changed. I was particularly interested to compare police with other agencies. If it is much of a muchness, that is interesting.

Prof McMillan: No. You would have to say that, with some of the complaints against police, if the complaint relates to use of force and wrongful use of, say, a capsicum spray or conduct bordering on assault in the watch-house or something, that obviously has a different dimension to it from a complaint that "I've been forgotten in the housing list". It may be an example of somebody making a wrong decision but it has a dimension to it.

MR STEFANIAK: So you had only six substantiated complaints out of over 400?

Prof McMillan: Yes.

MR STEFANIAK: That is very good.

THE CHAIR: How many overall findings of administrative deficiency were there?

Prof McMillan: Against government agencies?

THE CHAIR: Against both police and government agencies?

Prof McMillan: I can find out and let the committee know. Let me say that the figures have been very low in the last year or so, because in the ombudsman's office at commonwealth and ACT level we moved to a new system about how we record administrative deficiency. In the past there was a little more discretion across the office with staff recording it and there was no coherent policy. We now have a coherent policy where there are 16 different categories of administrative deficiency and we have a coherent process where all matters have to be signed off at senior executive service level. That extra rigour has led to a sharp drop in the number of findings of administrative deficiency that can easily be misread as a dramatic improvement in the quality of administration. As our policy and new procedure are bedding down, the number of findings is increasing, so we will get more realistic figures in the next year. But we will certainly take the question on notice and notify the committee of the exact numbers.

THE CHAIR: Thank you. On page 2 you talk about Housing ACT and corrective services being the agencies most complained about.

Prof McMillan: Yes.

THE CHAIR: What are some of the most serious complaints you have dealt with in either of those areas?

Prof McMillan: I can think of one in ACT Housing, for example. It was the subject of a special report that is published on the website. It was about a rental rebate calculation where somebody was denied a rebate when some money had come into their—yes, that is right; and it is also the subject of a case study shown on page 11 of the report. That was a good example of a serious complaint that Housing ACT accepted illustrated some other systemic issues about how well guided the staff were in terms of making rental rebate decisions.

I am told that one of the other big topics of complaint in relation to ACT Housing were complaints by tenants about the failure of ACT Housing to deal with the bad behaviour of other tenants. That is a serious but routine kind of complaint that is a regular part of the business of ACT Housing, and they deal with it.

In terms of corrections, one of the common topics of complaint from the Belconnen Remand Centre stems simply from the discipline and the procedures. For example, there are rules about visitation and withdrawal of visitation privileges. If somebody's privileges are withdrawn, that can lead to a complaint. In one instance our focus was on the clarity of the procedures and whether natural justice had been properly followed with all parties to the process. In some of the other cases there has been a lockdown of people in the centre for a particular reason—staffing or incidents. That can lead to complaints about the withdrawal of that sort of amenity that is otherwise

there.

They are not alarming complaints, in a sense; they are the kinds of complaints that you would expect to receive and that are handled regularly by corrections, by ACT Housing and, equally, by us.

MR STEFANIAK: What was the outcome of the internal reviews—the changes to work practices and complaints handling which are referred to on page 3?

Prof McMillan: I will just remind myself.

MR STEFANIAK: I will say it again: what was the outcome of the internal reviews of the changes to work practices and complaints handling?

Prof McMillan: I am just trying to pick up the spot on the page. Just to make sure that I am focused on the right part, which part is that?

THE CHAIR: It refers to "new work practices" under "Highlights" at the top of page 3.

Prof McMillan: I see, yes.

MR STEFANIAK: It says: "Last year we introduced new work practices … These changes have now been fully implemented, and we are undertaking a review to determine," et cetera.

Prof McMillan: Sorry, I am still trying to pick it up.

MR STEFANIAK: It is the second paragraph, under "Highlights".

Prof McMillan: I'm sorry; I was looking at the wrong paragraph. I am now focused on it. It is important there to take the picture of the total office of the commonwealth and the state ombudsman functions together. In the commonwealth ombudsman function we receive about 33,000 approaches a year. There was an increase of 18 per cent last year—many of them out of jurisdiction, but approaches nevertheless. And then in the ACT we have about 1,000. They all come in through the same public contact team and are allocated to offices—in the ACT instance, in Canberra.

The introduction of the public contact team and the new case management system is a major change in the office. There is necessarily a bedding-down period, but our analysis internally and objectively is that it has all been working excellently. For example, we had an independent report from Ernst and Young, doing what we called a post-implementation review—reviewing the whole thing. Equally, earlier this year we did a survey of agencies—commonwealth and state—to see what they thought of the ombudsman's office and how it was going. The response was about 90 per cent satisfaction with the relationship with the ombudsman's office and the discharge of its function.

There are issues. We have just had a two-day meeting of all the national managers from around the office to discuss further challenges in improving our complaint

receipt and handling practices, but the changes have been a big success, in our view.

MR STEFANIAK: Thank you. Let me turn to page 7. I have just one more question unless someone else wants a go. Why has there been such a significant increase in the level of complaints about the ACT Department of Education and Training? In the bottom paragraph in the right-hand column, I see that complaints against education and training increased from 11 in the previous year to 31.

Prof McMillan: I will see if there is any further information, but my guess is that that is one of those variations that you can get from year to year. It is really only if you look at a three or four-year span and see it increasing by a similar proportion each year that you can say that there is a significant trend. Otherwise—

MR STEFANIAK: There must be a particular reason for that. That is a big increase.

Prof McMillan: There is further elaboration in the detailed breakdown of the statistics on page 29. That shows that a number of those—about 10 of them—were out of jurisdiction. And you will see that we categorise complaints as 1, 2, 3 or 4. Level 1 or 2 matters are handled by our public contact team. They are sometimes the initial inquiry or referral to another place. Most of the complaints fell within the category 1 and 2 levels. That does not reflect any serious series: only a couple have gone up to the category 3 or category 4 level.

MR STEFANIAK: I note that there are no remedies for those complaints. Indeed, that applies to several other areas too.

Prof McMillan: Yes. That means that the issue has been resolved without the need for a formal finding of administrative deficiency against the agency or a proposal that it apologise, provide administrative compensation or whatever.

MR STEFANIAK: So there has been no remedy but it has just drifted off and nothing has happened?

Prof McMillan: Yes. Hopefully with everybody satisfied.

MR STEFANIAK: It has not been pursued.

Prof McMillan: Yes—resolved to everybody's satisfaction, hopefully.

MR STEFANIAK: You have a policy explanation. I am just amazed that you have 109 remedies and 501 total complaints on that appendix. If you have a look at page 29, you will see that you have a total—this is for everything—of 501 complaints and then for your remedies you have 109.

Prof McMillan: Yes. The three most common remedies we provide are—

MR STEFANIAK: Which do not get recorded here, I take it.

Prof McMillan: No. They are expediting a matter where it has been delayed, getting a better explanation of a matter, or getting an agency to apologise. Getting an agency

to expedite a matter does not necessarily mean that there has been an administrative deficiency.

MR STEFANIAK: No.

Prof McMillan: It does not necessarily mean that there has been unreasonable delay—or, equally, getting a better explanation. It may simply be because somebody is unaware of what stage a matter has reached in the bureaucratic—

MR STEFANIAK: I appreciate that, and you have that there. But basically 80 per cent of your complaints do not seem to have a remedy of any sort.

Prof McMillan: Yes, that is right.

MR STEFANIAK: Are they still ongoing?

Prof McMillan: No. For most of those—about 70 per cent of complaints—we advise the person to go back to the agency because they have not first gone through the agency's complaint handling procedures. That accounts for a lot of those.

MR STEFANIAK: That would explain it.

Prof McMillan: With some of the others, it is resolved without the need to—

MR STEFANIAK: I would suggest that it would be sensible to have that as a remedy. It looks rather strange when 80 per cent are not resolved. If there could be a note just by way of explanation, saying—

Prof McMillan: Certainly, yes—practical outcome.

MR STEFANIAK: Saying that 70 per cent were referred back to the agency. That would at least tell you something.

Prof McMillan: We will take that on board.

MR STEFANIAK: Thanks.

DR FOSKEY: On page 15 of the annual report it is revealed that by 29 December there were 314 complaints received under the old complaints act. There were only 353 complaints received in the entire previous year, so that is 90 per cent of the previous year's total received in only six months. Incidentally, there was no mention or explanation of that in ACT Policing's annual report. Can you explain why there was approximately a 90 per cent increase in complaints lodged under the old act?

Prof McMillan: It is a change that certainly prompts a question. We analysed the complaints that came in to see if there was any special reason for that increase, and we could not find any special reason. The explanation was simply to do with the subject matter of the complaint itself. There was nothing that stood out as a systemic problem. For example, you look to see whether it relates to a particular police station or whether it relates to one area of policing or the administration of one particular law—

say, an intoxicated person law. But there were no explanations of that kind that stood out.

DR FOSKEY: Did you ask in your regular meetings with ACT Policing?

Prof McMillan: Yes, I think that was regularly asked about. One of the other explanations we asked about in the regular meetings we had was whether that reflected a backlog—whether there was a built-up pool of cases that were referred in that period. We were advised that that was not an explanation, although it is possible that there may be an element of that there.

DR FOSKEY: So in this instance are you confident that complaints are being accurately reported under the new system, given that this radical increase in complaint numbers seems to have been largely lost in the statistics produced under the new system?

Prof McMillan: Under the new arrangements for oversight of policing, we are in a much better position to answer those questions on an empirical basis. Under the new system, a chief role of the ombudsman's office, and a chief role under the new title of "Law Enforcement Ombudsman", is to do a periodic analysis—at least once a year—of AFP complaint handling. We have completed our first report, and the draft is with the AFP. For the first time, that has enabled us to do that detailed analysis of when matters were received by the AFP, how they were handled, when they were allocated, what they were—and what matters were referred to the ombudsman's office as category 3 matters. When we report to the committee next year, we will be in a position to give a much more precise answer to that. That is a valuable part of the new role—that we are not left with those questions in our mind.

DR FOSKEY: I have one final question. ACT Policing's annual report says that there were no reported substantiated complaints issues relating to people injured in custody in 2006-07, but elsewhere it has been reported that a member was charged with assault occasioning actual bodily harm for an occurrence in October 2006 at the city watch-house. I understand that at least one other officer is likely to face disciplinary or criminal charges in connection with this type of behaviour. Are you satisfied with the transparency of the police reporting system when these kinds of events are not reported as substantiated complaints?

Prof McMillan: I will just check whether we have that particular. I am advised that the category "substantiated" refers to the complaints that have been resolved within the AFP. If a matter is referred to the court, it does not show up in that statistical category. In a sense, the court proceedings are by themselves—a separate process for analysing police behaviour or conduct during the year.

MR STEFANIAK: I have just one more question. I turn to page 11. What problems have been identified at the Office of Children, Youth and Family Services and what is being done to resolve them?

Prof McMillan: I will get advice on that, Mr Stefaniak. I can give a better answer on that on notice. I will take it on notice.

MR STEFANIAK: Thank you.

Prof McMillan: The only two matters we have referred to there on page 11 are at the end of the first column in one matter; there is reference to one matter and to another. Delay in failure to follow up seems to have been a common theme there. I will check back on our statistics or cases in the office to see if I can give a more substantial answer to that.

MR STEFANIAK: Thank you very much for that.

THE CHAIR: I have a question before we finish. You can probably take this one on notice. Are you able to tell us this, on notice? A constituent of mine raised an issue in relation to a complaint against a number of government agencies in Reid. His name is Mark Power. I was wondering if you are able to give us, on notice, the outcome of that investigation.

Prof McMillan: Yes. I will take that on notice and give the committee the outcome.

THE CHAIR: We will now turn to the Director of Public Prosecutions. Welcome, Mr Refshauge. Would you like to make an opening statement before we move to questions?

Mr Refshauge: No.

MR STEFANIAK: Last year you expressed concerns in relation to some comments made by several members of the judiciary. In relation to prosecutions, you were going to have meetings with them to try to sort that out.

Mr Refshauge: Yes.

MR STEFANIAK: I am interested in whether those issues have been addressed, whether you have had fruitful discussions or whether there are still any ongoing issues there.

Mr Refshauge: As a result of my comments in the annual report, my deputy and I had a meeting with the Supreme Court judges. We had a full and frank exchange about issues and we have agreed to meet regularly—when I say "regularly", not absolutely perfectly regularly but approximately every three months or so—and we raise issues and address those. Relations between the office and the court have significantly improved.

MR STEFANIAK: My next question is in relation to the fact that, unfortunately—in one instance through tragic circumstances—we are two judges down. The attorney today, in answer to another question, said that it seems that the court is managing reasonably well, and will until probably the end of the year, when hopefully there will be some good news. Have those circumstances had any effect on your ability to put matters before Supreme Court trials? Have you had to reschedule matters as a result of Ken Crispin's retirement and Terry Connolly's tragic death?

Mr Refshauge: One trial has had to be deferred but, in general terms, we seem to be

able to prosecute for the trials as they come and as they are ready. A number of visiting judges have been brought in. That might become more problematic as the end of the year comes, when all courts tend to need their full complement of judges. To date, I am only aware of one trial that has had to be adjourned and rescheduled.

MR STEFANIAK: I raised a subsidiary issue with the attorney earlier, in relation to a sexual assault matter that was decided yesterday. I will mention it to you because I heard about another matter that was decided today and which caused me some concern. The sexual assault matter yesterday involved, I think, a 31-year-old who was convicted of sexually assaulting a girl who was then 14 or 15 and he received a nine-month suspended sentence, with 22 months of good behavior. I heard today on the 1 o'clock news that a woman was given a suspended sentence for holding up two women at an automatic teller with a syringe. She took mobile phones and money from both of them. She was sentenced today. The reason for the hold-up was that she wanted a hit of ice. Again, it did not involve a custodial sentence.

I suppose you could ask what on earth you have to do to be jailed by the Supreme Court here. It does raise the issue of what your policy is in relation to looking at appeals against, say, inadequate sentence and, indeed, appeals generally in issues where you think the Supreme Court may well have got it wrong and you have to appeal to the court of appeal.

Mr Refshauge: I have not been backward in taking appeals against sentence, but there are restrictions. There are both practical and ethical restrictions on that, so one has to be careful. Prima facie, what you say seems to suggest that those are very lenient sentences that would be ripe for appeal. They run the kind of first-blush test—

MR STEFANIAK: Certainly in the first case involving sexual assault.

Mr Refshauge: The difficulty is that one has to look at the full circumstances. Although I think we get relatively good reportage in the *Canberra Times* and we have good journalists there on the whole, and we cooperate with them to the extent we can, they do not always give the full picture. I would have to look at the circumstances. There may be issues of delay and there may be particular circumstances. I have to say that at first blush they appear to be lenient sentences. In general terms I look at not every sentence but most sentences and consider whether there should be an appeal. So we do look at the sentences. I encourage my staff, even in the Magistrates Court, to consider whether the sentence—or the conviction, where we have an opportunity to review the conviction—is appropriate and to consider that.

As you would know, there are some constraints on appeals against sentence. There is the so-called principle of double jeopardy, whereby an appellate court will recognise that the accused person, the prisoner, is facing sentence again on the appeal, where there is a Crown appeal, and therefore will moderate—there are various formulations—and bring the sentence to the lower end of the range at least. That can then bring in the other factor whereby, if there is going to be a small change in the sentence, that amounts to tinkering, and appellate courts will not tinker. So there are constraints on appeals against sentence. Where I think the sentence is lenient, we might nevertheless not appeal because of those two constraints.

MR STEFANIAK: Surely, double jeopardy does not just come into the sentence. There is no question that it is part of the same process.

Mr Refshauge: It is called double jeopardy. I do not think it is double jeopardy.

MR STEFANIAK: I have never heard of it here, let alone in any other jurisdiction.

Mr Refshauge: You have not been a prosecutor for a long time, Mr Stefaniak. It is quite common. I can give you a list of cases where the courts describe it as a form of double jeopardy, not just in this jurisdiction but in all jurisdictions—Tasmania, New South Wales, Victoria. They use the phrase to mean that the accused person, the subject of a Crown appeal against sentence, is facing a resentence, a further sentence, and that principle means that the court should give at least a less severe sentence than they would the first time around.

MR STEFANIAK: Is there a High Court decision on that?

Mr Refshauge: Probably. I do not want you to cross-examine me on that one and I cannot think of it off the top of my head. Certainly, there are intermediate appellate court decisions on that widely throughout Australia, and there probably will be a High Court decision. If you are really interested, I can probably hunt one out for you.

Mr Corbell: Mr Stefaniak, the Standing Committee of Attorneys General commissioned quite a detailed paper on this issue when COAG requested that a range of options be considered around the reform of double jeopardy. Some of those were quite significant reforms which the ACT did not support. For example, with respect to issues around fresh and compelling new evidence, we did not support the changes to the principle of double jeopardy and its application in the courts. But there were others where I subsequently indicated, as you know, my support for reform of other elements of law. I refer in particular to the matter that Mr Refshauge raises around Crown appeals against sentence and also appeals against acquittal by judge alone, or by a judge directing juries to acquit.

MR STEFANIAK: Where the judge makes—

Mr Corbell: Where the judge makes an error in law, or would appear to have made an error in law. Those matters were also addressed in the paper which SCAG officers developed. It is recognised that some courts do view those issues that Mr Refshauge refers to as infringements of the principle of double jeopardy. That is why I believe that the law should be clarified to say that this is not a matter of double jeopardy. Direction should be given to the courts on that matter. That is why I have indicated that I believe reform is warranted in that area. Nevertheless it is a subject that is debated in the context of double jeopardy.

MR STEFANIAK: I am delighted, attorney, that you are saying you have recognised the difference and that you have actually recognised the need for law reform. I want to ask you—and this is something the director has raised on a number of occasions—about Crown appeals where a court allegedly gets it wrong on a matter of law and the Crown is precluded from appealing. What are you doing about that? You have recognised the problem; what steps are you taking to change the law? When can we

see some legislation to remedy these problems?

Mr Corbell: I have asked my department to prepare options for government in relation to this matter so that I can put a number of proposals to stakeholders. My approach generally in this regard is to go out and consult with the legal profession and at the very least with our courts and with other officers such as the DPP before proceeding with legislation. That is how I intend to approach this matter as well.

MR STEFANIAK: The issue has been around for probably over a decade in some instances, but certainly it has been highlighted for six, seven or eight years. There has already been significant consultation.

Mr Corbell: If I propose significant legislative change it is my view that I should engage with stakeholders who have an interest in that change. This is, for some people, a contentious issue.

MR STEFANIAK: It probably is for victims.

Mr Corbell: It is for defendants as well, I am sure.

MR STEFANIAK: I am sure it is; if you can get off it is preferable to not getting off.

Mr Corbell: So in the interests of informed decision making my view is that I go out and engage, and I will do that in the coming months.

MR STEFANIAK: At least you are starting a process, and I commend you for that.

In terms of double jeopardy, attorney, you rightly differentiate what Mr Refshauge has talked about. If anyone suggested double jeopardy 20 years ago, they would have been laughed out of court. But in terms of actual double jeopardy, where compelling evidence comes to light maybe years after someone has been acquitted, for very serious offences, my understanding is that New South Wales is already moving down the track of introducing legislation where someone has allegedly committed a murder or for something carrying a penalty of 20 or 25 years or more.

I saw a report about some reforms which Premier Beattie had initiated in Queensland; they have passed into law. Similarly, in New South Wales there is now a legislative exception to the old rule of double jeopardy so that in serious cases fresh, compelling evidence can lead to a retrial. That is a real breach of the old double jeopardy law. Is it your position that you are opposed to that and you do not intend taking the ACT down the path followed by other Labor jurisdictions or is that something you are looking at as well?

Mr Corbell: I do not want to give you ideas, Mr Stefaniak—

MR STEFANIAK: You are not, necessarily.

Mr Corbell: It sounds like you already have one. No, the government does not support reform in that area. The issues around fresh and compelling evidence are complex. There are some threshold issues: to what sorts of offences do you apply the

rule, or the exception to the rule, and what is meant by "fresh and compelling"? These matters have been explored by SCAG. At this stage the ACT remains unconvinced about the need for that reform when you weigh it against the importance of the double jeopardy principle. We take the view at an in-principle level that the double jeopardy concept is an essential one for the fair administration of justice and it should not be modified or tampered with lightly. At this stage we remain unconvinced about the need for law reform in the area that you mentioned.

MR STEFANIAK: Director, obviously the main problems are the issues you raised in terms of where the court gets it wrong during a case and the inability of the Crown to have a higher court appeal an error by a judge. But in terms of actual double jeopardy as most human beings understand it—that is, fresh evidence down the track after someone is acquitted—have we had incidences in the ACT where that has ever been an issue? In other words, has fresh evidence come to light years after an event, which would in other states bring a prosecution in a very serious matter, such as occurs in New South Wales?

Mr Refshauge: Not that I can recall. I don't think we have had anything—

MR STEFANIAK: It is not a terribly practical issue.

DR FOSKEY: On pages 3 and 16 of the report you talk about circle sentencing. On page 3 you also talk about restorative justice. You state that you have been supportive of culturally specific justice programs such as circle sentencing and restorative justice programs. Presumably this is on the basis of reduced recidivism rates and greater recognition of the needs of victims. I am interested in why you are supportive of them and also in whether you think there are long-term cost savings just in purely financial terms.

Mr Refshauge: You are right: my support for them is because they have been shown in general terms—we have not yet had an evaluation of the ACT processes—in other jurisdictions to reduce recidivism and have a better outcome, and also to involve the victim in a respectful and genuine way in the process. In traditional court proceedings the victim is not involved in the process other than as a witness, and now in the ACT and in some other jurisdictions they are able to submit a victim impact statement on sentencing. It seems to me that those are really good reasons for having an alternative process if it is effective in that way.

As to whether they would be cost effective, it is not really an area in which I would hold myself out as an expert, but in general terms, hopefully, in the longer term there will be no need to arrest someone again because they will not be a recidivist. There will be no need to put them in jail because there will be other means of resolving the criminality in that way. It is more intensive in some ways. For instance, a sentence hearing in the circle court will take an afternoon, whereas in the Magistrates Court most sentences would take a maximum of half an hour or less. So more time is taken. In the circle court, the magistrate is there; my prosecutor is also there. My prosecutor will be involved in the preparation of the case, assessing it and so on. Victim support will also be needed to ensure that the victim is making an informed consent to participate in the process. In a sense, there will be extra cost in some parts of the system but in other parts there will be savings. Some of those savings will be in the

long term rather than the short term.

That is not intended to be a confusing answer but it is a complex answer. I think ultimately it will save the system and the community.

DR FOSKEY: I am wondering if you would ever need to document those sorts of arguments, especially with the experience we have had now over a period of time in using this process, in order to perhaps get some more resources directed towards it.

Mr Refshauge: I am always keen on that.

Ms Leon: Dr Foskey, we are intending to evaluate the circle sentencing program over the coming year. That will give us some useful data about its outcomes. Also, one has to bear in mind that the ACT is a very small jurisdiction. The number of offenders that have been through the circle sentencing program is still, in absolute terms, quite small. So one needs to be cautious about the extent to which, over a fairly short period of time and over a fairly low number of offenders, one is going to be able to draw really compelling conclusions.

It also does tie in to our discussion this morning about the complexity of measuring recidivism in any event. You need a reasonably long time frame in which to measure recidivism, because there can be a range of reasons for someone not yet being convicted two years after their last offence—whether they are in the jurisdiction, whether they have matters that are still before the courts but they have not actually been convicted or whether they have gone through some diversionary process and have not turned up in the stats. So it is quite a complex business to measure recidivism outcomes. They are all matters that we take a very keen interest in and will look at over time, but we may not be able to deliver really clear statistics after two or three years of operation of the program.

DR FOSKEY: Nonetheless, the statistics that you produce will be relevant to the ACT.

Ms Leon: Definitely.

DR FOSKEY: That is probably the salient point. Again, I believe I commented on this last year, but there seems to be a continuing trend of increasing numbers of prosecuted family violence matters this year.

Mr Refshauge: Yes.

DR FOSKEY: As occurred last year, and so on. Now that it has established itself as a trend, do you have any comments to make about that? Is there an increasing incidence of family violence or is it that your officers are prosecuting a greater proportion of the reported incidents?

Mr Refshauge: I am afraid I really do not have a good handle on that. I am just not in a position to be able to say whether the community is experiencing more family violence. That is really something for a sociologist or an anthropologist to answer.

DR FOSKEY: What about a domestic violence service?

Mr Refshauge: The Domestic Violence Crisis Service might well do so. We can say that we are prosecuting more domestic violence. I can say to you that we are not being more stringent; we are not putting in place different assessment processes regarding what we prosecute and what we do not prosecute. It may be that the police are getting better evidence, although they have been pretty good at that in the last 10 years since the program has been going and in enabling us to prosecute—for instance, in cases where there is an unwilling victim, even though we have the evidence to do that. In general terms, we are approaching that program in the same way that we have always approached it.

Until about five years ago, we were quite convinced that the program was effective because we were prosecuting cases that we would not otherwise have prosecuted; we had better evidence and we had a better relationship with the witnesses and the victims. I do not know that that is now the answer. It may be that there are some sociological factors in the community that are leading to a greater incidence of domestic violence. It may also be that people are now more willing to involve the authorities in domestic disputes. There was a tendency not to do so, because people—some women—felt that it was not a matter for the community. Some women, unfortunately, as I am sure you would understand, actually thought that they deserved it because they had aggravated the violent offender, and we still get some vestiges of that.

I think the experience of our program shows, and some work that the Domestic Violence Crisis Service do in surveys on victims shows, that even where it is a pretty rough experience, victims are becoming more willing to engage in the criminal justice system than they were before. It may be that there is not an increasing incidence; there is just an increasing willingness to use the criminal justice system to hold the offender accountable.

THE CHAIR: Mr Refshauge, looking at some of the tables, one that caught my eye as being an odd one appears on page 37, relating to traffic matters. There is a significant drop in the number of parking offences charged and proved. I am interested in two aspects of that. One is your thoughts on why there is such a big drop in charges when I understand that revenue is going up at the same time. The other is that the rate of "proven" against "charges" is very low compared to other traffic offences. Are you able to talk us through why that might be the case?

Mr Refshauge: Sure. I do not have a real answer about the issue of parking offences. My memory might not be quite correct; I am sure the minister or Ms Leon will correct me if I am wrong. There was a transfer of parking inspectors to the Office of Regulatory Services and that may have caused some disruption to the process of pinning notices on cars.

THE CHAIR: The numbers charged, okay.

Mr Refshauge: The answer regarding the high rate of charges, low rate approved, is that many people engage in what I regard as brinksmanship. They get the parking fine; they don't pay it. The day before the case comes before the court, they pay it and

then the parking offence goes away. So we actually do not prosecute very many parking offences. We get the prosecution but we can't record it; we say, "It's been paid and therefore, under the rules, we can't prosecute it."

THE CHAIR: It's not good for your stats.

Mr Refshauge: It's not good for the stats, you are absolutely right, but it is good for the revenue.

THE CHAIR: So if we were to discount those ones that do not go to prosecution, the rate would be significantly higher, in your opinion?

Mr Refshauge: The vast majority of parking offences end up either in the payment of the parking infringement notice or in a conviction.

MR STEFANIAK: On page 41 there is a table relating to Supreme Court matters. There is an interesting figure here relating to trial dispositions. Congratulations; you seem to have slightly more guilty verdicts than not guiltys in the 12 listed here. But you have a very big number in the next category, "Other". It was 15 in the year before and it is up to 29. Given that you had 12 guilty or not guilty verdicts, you had 29 others. What is that about?

Mr Refshauge: I have to confess that I read the report on the plane coming back from Melbourne this afternoon. When I got to page 41, I thought, "I hope someone doesn't ask me that question." I can't answer the question. If you are really interested, I can take it on notice.

MR STEFANIAK: It is just such a big figure compared with—

Mr Refshauge: I suspect that that will include aborted trials—although I do not think we had a lot in that year—and cases where there has been a disposition through the mental health system. But I agree that 29 is quite a big number.

MR STEFANIAK: Could you get us an answer on that?

Mr Refshauge: I can get you some information on it.

MR STEFANIAK: The other thing you may recall, in the other stats which we dealt with this morning, is that there was a fairly significant figure—about 24 per cent, I think—for matters in the Supreme Court that were still on the books after 12 months. It was not too bad after two years, but there seemed to be a slight increase from about 15 to 19 to 24, over the three-year period culminating in this year, for criminal matters that were still there for between 12 months and 24 months. Are you able to shed any light on why that is so? It was suggested that often it has a lot to do with the defence doing something, but 24 per cent seems to be a pretty high number. Can you shed any light on that?

Mr Refshauge: I don't have specific statistics but we do know that people generally—not just Mr Eastman and Mr Hillier but general defendants—prefer the Belconnen Remand Centre to the New South Wales prison system and so there is a

trend of delaying and taking interlocutory points and so on. We have had some strange situations where pleas of not guilty have been entered, trial dates have been set, pleas of guilty have been entered, they have then been withdrawn, we have had to set another trial date, then there has been an appeal, then we have gone back to a trial and then a plea of guilty has been entered ultimately. There are two cases in that category, for instance, where that whole palaver took something like two or three years.

THE CHAIR: Was the person in custody or—

Mr Refshauge: One case was in custody and another case had periods of custody and periods on bail.

MR STEFANIAK: Is there anything that needs fixing up in the legislature in relation to that? What do other states do in similar situations or—

Mr Refshauge: It is one of those things where I am not sure that there is a real systemic problem as opposed to an episodic problem, and because we are a small jurisdiction you only need two people to do that and your stats go way out. You could say, as Scotland does, "You will complete your trial within six months." Our problem would be that we would be putting more nolles in than anywhere else. You just cannot do that. So I think the sledgehammer of legislative intervention is probably not helpful on that.

MR STEFANIAK: If it is not appropriate, it is not appropriate, if it is not a particular systemic problem.

Mr Refshauge: I don't think so.

MR STEFANIAK: At least they are in custody for over 12 months in some instances.

Mr Refshauge: I really think it will get better with the opening of the Alexander Maconochie Centre because people will want to go—no, not want to go there, but be less—

MR STEFANIAK: They might. They might like it so much they might want to—

Mr Corbell: I am quite happy to offer you an opportunity, Mr Stefaniak, if you feel it is that comfortable.

THE CHAIR: Mr Refshauge, I was just looking through these different tables of the different types of offences. If someone were to breach our planning laws where would those kinds of offences be prosecuted? Is that other property offences broadly?

Mr Refshauge: No, that would be in table 9, municipal prosecutions.

THE CHAIR: There was a specific matter, and I raised this with the ombudsman before, around Mark Power and the prosecution, which I do not think went ahead. Are you able to tell us why in the end that prosecution wasn't proceeded with?

Mr Refshauge: That was a very complex prosecution and the legislation under which he was charged was relatively new legislation with terms that were susceptible to interpretation. After carefully considering the matter I formed the view that we had no reasonable prospects of securing a conviction and therefore terminated the prosecution.

THE CHAIR: How often would you have referrals or charges of that nature around people's extensions—I am not sure of the exact nature of the charges—or not complying with building approvals or the like? Are they common sort of charges?

Mr Refshauge: What he was actually charged with was failing to comply with a notice that required him to do or not do certain building works. There were issues about the manner of service and the effect of the notice and its relationship to some of the planning laws. It was a very complex matter and one of the issues involved there was around the issuing of a—I might have the terminology wrong, it is a long time since I have done any conveyancing—certificate of fitness for occupancy of use; whether that had the effect of nullifying any of the breaches or the ability of the planning authorities to rely on the breaches. I think we formed the view that he clearly had breached the planning regulations and decisions that had been made—there was a clear breach—but because of the issue of the certificate of fitness for occupancy and use that then meant that the breaches were, as it were, overtaken by that and could not be relied on in the prosecution.

THE CHAIR: Sorry, just going back to that question: how often would you see cases such as those types of offences?

Mr Refshauge: That is the only prosecution I recall seeing in the office but I do not see all those prosecutions by any manner of means. That became a bit of a cause celebre for a whole range of reasons and that is why I was so involved. I did a lot of research into the case itself. But I do not recall our office seeing any others and I do not think there are any listed in table 9 that I recall seeing. We do not have a lot of those. That may partly be because it is a relatively new act and we may get more in due course, but to date we have not had many, if any.

DR FOSKEY: We have not had to use our anti-terror laws here yet.

MR STEFANIAK: I don't think we can—sorry.

DR FOSKEY: I was just wondering if you could make a comment on this: as I understand it during the Haneef case the AFP provided a novel interpretation of the legislation that gives it 24 hours to detain and question a terror suspect, as giving it power to detain a person without charge for an indeterminate number of days as long as the actual questioning of the suspect only added up to 24 hours. Are there any similar questioning powers under ACT legislation where a similar interpretation could be applied? Indeed, the Law Council of Australia has suggested that the federal government should review the laws to include a cap on the time that people can be detained without charge.

Mr Refshauge: I have not had occasion to read those laws for a long time. As you might recall, I did provide some advice to the then attorney—it was the Chief Minister,

I think—when they were first provided. I read them soon after. I have not had occasion to read them since then. We did in the territory make some significant changes to some of those processes and the way in which they were to be operating but I cannot answer off the top of my head as to whether or not—

DR FOSKEY: So that could be an anomalous oversight, something that would probably lead me to have a look at our legislation and check whether that might be possible. Does anyone else have any—

Mr Refshauge: I would have to do a comparison of the two.

Mr Corbell: I would have to take some advice on that, Dr Foskey.

DR FOSKEY: Okay. On page 43 you say that you are actively considering some non-salaried measures to attract and retain staff. I assume this indicates that there is a problem attracting and retaining staff. I am just interested to know—given that this seems to me the only thing that is left to us unless we increase our wages and conditions above the federal government's—what measures you are considering in this range of things?

Mr Refshauge: We already have in our enterprise agreement provisions in relation to shut-down leave over the Christmas period; we are looking at ways in which we can maximise the use of that. The opportunities for things like continuing education, attendance at conferences and so on can be regarded usefully. Indeed that in itself is a bit of a two-edged sword. There is a view around that we train them up to be excellent prosecutors and then they go to the commonwealth, but not just the commonwealth; Western Australia is looking for another 42 prosecutors and elsewhere they are snaffling them up like a Hoover going over a carpet. Those are the kind of things—some kind of opportunity for professional advancement, additional opportunities for leave, flexible working arrangements, ability to work at home, greater access to part-time work. Traditionally, a prosecutor has to appear in court and therefore has got to be on tap during the working day, or at least the court day. With greater need for preparation and research and with greater access now to online research materials, there is some opportunity for greater flexibility in working arrangements, and so it is that kind of stuff that we are looking at.

DR FOSKEY: Have you observed any success with this approach?

Mr Refshauge: No. I am very grateful that we have managed to secure on a contract the former Director of Public Prosecutions of the Solomon Islands as a senior prosecutor, and that has improved our prosecution power quite successfully.

MR STEFANIAK: Who's that?

Mr Refshauge: John Cauchi. He has joined us on a contract at the moment. Recent advertisements for recruitment have attracted a couple of interstate applicants, so we are improving a bit, but whether that is just that we are a wonderful office or whether it is the possibility of flexible working arrangements I am not yet sure.

DR FOSKEY: It could be they have heard what a great boss there is.

Mr Refshauge: Well, they will soon be disabused of that, won't they?

DR FOSKEY: On page 27 it indicates that none of the 19 charges were proved in the case of acts endangering life and health. Do you know why that might be zero of 19?

Mr Refshauge: I cannot tell you off the top of my head. The likelihood, given that the majority of them are in the Magistrates Court, is that they were probably backup charges to other charges that might have been successfully prosecuted.

MR STEFANIAK: It is common across all courts, so you probably cannot just blame the court, because it is every court here—

Mr Refshauge: That's right, yes.

DR FOSKEY: On page 28, referring to sex offences upon children, only two out of 18 charges were proven in the Magistrates Court. Are there any particular problems with cases like this—that they are difficult to prove or is there any other reason why—

Mr Refshauge: There is an explanation in the text elsewhere, but can I just explain. In the Magistrates Court "proved" only means those where there was a conviction recorded or a finding of guilt in the Magistrates Court. But where there is a committal to the Supreme Court, it will not be shown as proved, so you have got to take the number of charges with an understanding that some of those—offences against children would be a classic example—would then be committed to the Supreme Court. Some of those would be the seven in the line below and there would be others that would be working their way through the system. So it would not be that we have only succeeded in securing a conviction in two out of 18. The vast majority of those, I would expect, would have been committed to the Supreme Court.

DR FOSKEY: Are they then reflected in the numbers in the Supreme Court?

Mr Refshauge: Some of them will be but because of the timing. The 18 will be in 2006-07 but some of those will appear in the Supreme Court in 2007-08, possibly 2008-09 if we are not as speedy as we should be.

MR STEFANIAK: Would that apply to the sex offences upon adults, and child pornography, where you have not dissimilar sort of figures?

Mr Refshauge: Yes.

THE CHAIR: Are there any brief final questions?

MR STEFANIAK: I have one final one, which might have been more applicable this morning, but to both you and the attorney. I note that Lex Lasry, who has certainly graced our court in various places with his appearance, has been made a judge in Victoria and that it is for 10 years. I know this is more to the attorney than the director, but are there any plans to sort of appoint judges for a set period of time? There has been the odd precedent here, but I just noticed with Mr Lasry's case that he was appointed for 10 years.

Mr Refshauge: No, there isn't.

MR STEFANIAK: I just wonder whether that is becoming more common across Australia and whether the ACT—

Mr Refshauge: No, I had not actually noticed that, Mr Stefaniak. I am sure there is provision for that but no, the government does not intend to adopt that course.

THE CHAIR: All right. Thank you very much, Mr Refshauge, for your time.

We will now move on to the Public Trustee. Welcome, Mr Taylor. Would you like to make an opening statement? Otherwise we will throw it open to questions.

Mr Taylor: I have no real opening statement.

DR FOSKEY: I have only got a couple of questions and they are related to money. On page 15 the report states that the Public Trustee currently has $169 million worth of funds under its management. You will be aware of my interest in socially responsible investment, so I am interested to know where that money is, who manages it and do you have any idea where it is invested?

Mr Taylor: I am aware of the review that was conducted. My office was included in that review and was reported as part of that review, but you will appreciate that we are in a different situation to most in that we are not generally investing government moneys. So I guess the issue is somewhat more remote if we are investing moneys on behalf of a non-government client; we are compelled as trustee to do the very best that we can for that client, irrespective of other considerations; that is a trust requirement.

However, the funds that we have under management are distributed through four asset sector common funds. All of those funds are established by the Public Trustee on advice from independent asset markets consultants, a public trustee investment advisory board and an internal investment funds manager. Those funds are a cash fund in which we hold moneys that are considered perhaps to be parked, or for persons of immediate cash need. When I say "parked" I mean awaiting decisions about where they should be invested, their moneys.

We have a listed property fund and we have an Australian equities fund and we are considering adding an international equities fund on the advice of Russell Investment. A review of the Public Trustee's investment arrangements was conducted three weeks ago. I received a report on that yesterday and will present that to the board in two weeks time, but the likelihood is that the structure will remain much the same, with the addition of an international equities fund and, through a cooperative arrangement with ACT Treasury, we may be able to utilise the same fund manager that the ACT Treasury is utilising, at the same rate for our clients that they are paying.

DR FOSKEY: Does that mean that some of the funds may find their way into socially responsible investments? Is that what you are indicating, if Treasury really does its thing on that?

Mr Taylor: Yes. It will be totally independent from Treasury.

DR FOSKEY: All right. But you might use their adviser?

Mr Taylor: We will merely use their contractual arrangement—piggyback on their arrangement, if you like, yes. There is some government money under management, for example. Well, it may be regarded as government money or not. The moneys that are in the residential rental bonds trust account really belong to the tenant; money is provided by the tenant on a bond and is held by government as a stakeholder, so it really is owned by the tenant unless something happens in the interim that requires it to be paid or relinquished to the landlord. So we are investing that money on behalf of the stakeholder. Those investments generally might fall within arrangements that we have with organisations like Suncorp and AllianceBernstein, which are a little bit separate. So, for example, I do not believe that any of that money would find its way into Australian equities, or in the future in international equities, where that risk that you mentioned might arise.

DR FOSKEY: Risk?

Mr Taylor: Risk of investment in unethical or securities.

DR FOSKEY: Is it possible for you to provide a breakdown of the actual places and the amount of funds invested?

Mr Taylor: Yes.

DR FOSKEY: That would be good.

Mr Taylor: It is possible. I will certainly do that. The breakdown of those things is not my forte, but it can be done, most certainly, yes.

DR FOSKEY: It might be of interest. The other issue is that it says on pages 16 and 17 that you are anticipating future expansion of the need for the Public Trustee. I assume that is based on the ageing of the population and assumedly we get closer to death as we age, so there will be greater revenue. I am interested to hear your thoughts about the future fee structure and the level of revenue being generated for the government. Obviously, when someone chooses the Public Trustee they should pay market rates, but, in the event that a person dies intestate with only modest assets, in those situations the Public Trustee should essentially be operating as a not-for-profit organisation, charging on cost-recovery basis only. Is that what happens?

Mr Taylor: Yes. In answer to your first question about growth, we expect significant growth to come in the levels that an ageing population brings. For example, as reflected in the table there, the incidence of dementia will increase dramatically because people are living longer. That will bring an increase in what we call our community service obligations. The Public Trustee receives an amount of $403,000 a year in revenue, which is the bulk of revenue that we receive. I should mention that our organisation is a $3 million-plus expenditure organisation, so we are only receiving $403,000 to fund some 470 financial management clients who may or may not have the capacity to pay. If they do pay, they pay a very reduced rate under the

guardianship and management of property, fees determined not our determination.

As much as the Attorney-General determines the fees that apply to my office, the law has also provided me with the capacity to waive wholly or partially the fees. A common criticism of our office is that our fees are high, but it is the only way, short of having a service-based fee, that you can set fees—to set a higher fee and then allow a reduction depending upon the amount of work involved. I should say that for most people who die leaving beneficiaries the fee is always adjusted. It may be adjusted for many, many reasons, including hardship, or it may be adjusted for reasons of amount of work done et cetera.

In terms of revenue, our annual report shows a real adjusted amount of surplus of around $400,000, of which half must be given to ACT Treasury and the rest kept in reserve as we are a trustee. The reason why our revenue was as high as it was this year, some almost $500,000 more than last year, was that we had signed an arrangement with the commonwealth that they would pay us $527,000 to move from our premises where we were—in other words, providing them with access to the rest of the building that they were already occupying. We took advantage of that at the time of the functional review and it effectively paid for our accommodation. So the figure shown in the annual report for an injection of $527,000 is balanced by the cost of providing alternative accommodation and fitting that out at ActewAGL House. That in itself obviated the need for government to find $700,000 to $900,000 to relocate the Public Trustee at the end of its lease.

An aim of mine in my term as the Public Trustee is to achieve financial self-sufficiency for the Public Trustee—in other words, we give back to the government what they give us in terms of funding. At the moment the funding received from government is about $603,000 a year. If we were to achieve self-sufficiency we would pay the justice department an amount of money for services it provides to my office, in addition to 50 per cent of the surplus. So that would mean that we would need to earn $1.2 million in surplus to give the government a $603,000, $600,000 dividend, which would make us neutral. We have not achieved that figure yet.

MR STEFANIAK: Are you administering any missing person estates at present? I was recently involved in passing some legislation in relation to that. I am just interested if that is a particular issue at present in the ACT and whether you are administering any.

Mr Taylor: No, we haven't any. There are always beneficiaries that we cannot find, that take a long, long time to find, and some of those are on our books for a little while, but not in respect of missing persons. It is not something that in my time there I have ever heard of. I was party to the review of the act; it basically allows for a broader range of persons to be able to make application—

MR STEFANIAK: That's right, that's true, including you. But you have not had any cases as yet?

Mr Taylor: No.

MR STEFANIAK: Just one other thing on page 13: how likely is it that a joint Australian public trustee manual will be prepared?

Mr Taylor: If I look at the last couple of years I would say it is becoming less likely. There is a very good model for this in WA which uses a software product that I cannot afford to buy, and I thought, "If I could hang around until they're ready to get this thing done it would be a wonderful thing," but there are some major concessions you have got to make to a common public trustee manual—the concessions relating to differences in the way your laws work and the way you operate—but as a group, as a forum of public trustees, we have agreed to give this another year to see how that goes. We already had a manual; it is not in as useable a form as it could be. What I am talking about is that we would like to have something interactive on a desktop that people can access rather than pulling a two-inch-thick booklet off a bookshelf.

THE CHAIR: As there are no further questions, thank you very much, Mr Taylor, and thank you, minister.

Mr Taylor: Thank you.

The committee adjourned at 4.59 pm.