

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE

(Reference: <u>Inquiry into the feasibility of establishing</u> <u>the position of officer of the parliament</u>)

Members:

MR S RATTENBURY (The Chair) MRS V DUNNE MS A BRESNAN MR J HARGREAVES

TRANSCRIPT OF EVIDENCE

CANBERRA

FRIDAY, 21 OCTOBER 2011

Secretary to the committee: Ms J Rafferty (Ph: 6205 0557)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

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Amended 9 August 2011

The committee met at 9.33 am.

DURKIN, MS MARY, Health Services Commissioner and the Disability and Community Services Commissioner, ACT Human Rights Commission.

ROY, MR ALASDAIR, Children and Young People Commissioner, ACT Human Rights Commission

WATCHIRS, DR HELEN, Human Rights and Discrimination Commissioner, ACT Human Rights Commission

THE CHAIR: Welcome to this intimate public hearing of the Standing Committee on Administration and Procedure inquiring into the feasibility of establishing the position of officer of the parliament. On behalf of the committee I would like to thank you for appearing this morning and taking the time to talk to us about this topic. I know you are all experienced at appearing before committees. Given your experience in appearing before committees, I will just check that you are familiar with the privileges card and understand the implications of the statement on it. Thank you. Before we proceed to questions and discussion, do any of you wish to make any opening remarks?

Ms Durkin: No.

THE CHAIR: Thank you for that. We will get straight into the questions then. The committee is well underway into its hearings. I have, of course, read your submission. If we were to recommend the establishment of the officer of the parliament, do you have any general views about how that might be created and administered and in any particular form? We are obviously considering a number of agencies that might fall into that scenario. I wonder whether you have any comments on how it might fit across those different agencies and the sort of model we might create.

Ms Durkin: As you will see from our submission, we have not formed a view on whether we should fit within an officer of the parliament if it were to be created. We have indicated that there would be some benefits and that in some respects we would fit within the officer of the parliament model but in other respects we would not necessarily.

I suppose one of the things that we would say is that if there were to be an additional arm of statutory agencies our main concern would be that there would be sufficient corporate support for us and that we would be appropriately funded and supported across all areas of IT, HR, finance and that sort of thing.

THE CHAIR: Yes, I did note that part of your submission. Again, I would ask whether you have formed a view yet on whether that would be in your own agency or whether a pooled mechanism might be appropriate. There is some suggestion that it could be pooled across those different groupings—the different roles.

Dr Watchirs: We do have the advantage of having read the transcript of two weeks ago, 7 October. I think some of the ideas there of the Electoral Commissioner about pooling resources for integrity agencies and the Ombudsman's idea of a fourth arm of government are attractive, but our bottom line is that we would like more financial independence, but support. The only way in a small jurisdiction like the ACT would

be some kind of pooling mechanism, in our view.

THE CHAIR: There are a number of models. I am not saying the committee has discussed it; I am just exploring it here. Do you have a view on whether that should be done through the parliament itself or separately?

Dr Watchirs: I do not think we have a strong view either way—

Ms Durkin: We have not got a view—

Dr Watchirs: in our discussions.

THE CHAIR: It would be on the practical end of the spectrum. I am just starting to think through some of these things as the issues emerge in the committee. I want to explore your relationship with the Assembly at the moment. It has been in the press this week. Again, in your submission I note that you do not report to a particular committee and that your relationship is through JACS. Do you have any commentary on how you have found that process and the advantages you see of having a more direct connection to the Assembly?

Dr Watchirs: We directly speak at annual report hearings where we are asked questions. That works well, although this year I gather it will not be in the presence of the minister. That has its up and down sides.

Ms Durkin: We actually appear ourselves, but then if there are questions on notice they go through the attorney, so it is not necessarily us responding to a question but the attorney responding on our behalf.

THE CHAIR: Mrs Dunne?

MRS DUNNE: The last point that Ms Durkin made is a point that is of concern to me. I apologise for being late; I took a phone call that took longer to conclude than I had anticipated. You raised the issue about questions on notice. Mr Hargreaves will agree—because Mr Hargreaves is on the justice committee with me—that it is a concern that we have had. We discovered that when we have put questions on notice they are not answered by the commission but by the department. Do you have any input at all into the answering of those questions?

Ms Durkin: We generally see drafts.

Dr Watchirs: If they are about the commission we will contribute our view of the situation. But we have not been unhappy with—

MRS DUNNE: I suppose that is the next question: have you been unhappy with what has been put forward to the committee, whether it be the JACS committee or an estimates committee, in response to questions on notice?

Ms Durkin: Not to date, that I can recall.

Dr Watchirs: No specific instance. At the annual report hearing there was a question

about our funding. It is always in our annual reports. The minister was able to answer that, but we were not asked. He compared us to the Ombudsman and the DPP and everyone having to wear the efficiency dividend, but what we did not get the opportunity to say was that we have not had any funding increases. It is basically a decrease year by year.

MR HARGREAVES: I have a follow on, Chair. It strikes me that one of the issues facing us is the relationship of the parliament and the integrity commissioners. Going to the point that Mrs Dunne raised, the conversation between the commissioners and the parliament through the committee system has, historically, been through the relative minister-and, in your case, it just happens to be through the Attorney-General, through JACS. Administratively, you have got two issues as far as I can see. One is the administrative issues, like how you get your corporate support and funding and all of that, and the other is how you are actually represented to the parliament. That has been like any other department—through the minister at the time.

If the position of officer of the parliament is created, what then would be the relationship between the commissioners and the parliament if there is no minister to be in the middle? Would it be a relationship through the Speaker or directly with the committee? What would be your view on that?

Ms Durkin: Again, we have not reached a firm view on that. We would have to look at what models are proposed and then consider whether we have any problems or issues with those models.

MR HARGREAVES: I guess what I am struggling with in my head is that I am a big believer in the Speaker being the minister for the Assembly precinct and all of the things that go with it. If such a position was going to be created, I believe that it would be, as the Clerk's position is, subordinate to the minister—that is, the Speaker. When it comes, for example, to resource bidding and applications for additional funding, the way that happens is a minister takes a case to budget cabinet. We know that the Speaker is the only person who actually goes to budget cabinet who is not in that cabinet and advocates for funding. I was just wondering whether or not that is a model that you would see being in place. If you want to have a bit of a think about it and can think of something really bright, would you let us know? If not, we will not hear from you again.

MS BRESNAN: Just following on from that, one of the suggestions made in one of the submissions was around looking at the New Zealand model and how the integrity agencies report to a particular committee-like the Auditor-General going to the public accounts committee. I appreciate your thinking through those ideas and whether, perhaps, in terms of the budget, a similar process could be followed. In view of the size of the ACT, establishing a standing committee may not be the way to go, but it might be some way of dealing with that.

Dr Watchirs: There may be a case for an integrity committee and we would fit in with that model. The Auditor-General is the most obvious of the models.

Mr Roy: With respect to what you said, Mr Hargreaves, there is another thing that impacts on our reporting. Because of the range of functions that we have within the

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commission, even though we do administratively report through the Attorney-General, I, for example, would have a greater relationship with Minister Burch, responsible for children and young people, with education et cetera, and Commissioner Durkin similarly would have more of a relationship through the health minister. Even though we do sit underneath one minister, it is—

MR HARGREAVES: In the context of that idea of saying that the officers—it is plural now in the hypothetical model—would relate to the parliament through a specific committee created for the purpose, and presumably a standing committee, do we see that the size of the Assembly might impact somewhat negatively on that in the sense that we have got about six or seven committees, depending on which titling you want to give the scrutiny committee, but we have only got 11 people to choose from to get this committee? Would putting another one in place be such a crash-hot idea or would you think that, given that it is a parliamentary relationship, the officers of the parliament could perhaps report to the administration and procedure committee, which is chaired by the Speaker and which is represented by all three sectors of the parliament?

Ms Durkin: I think there is a distinction between who you might report to and how your funding is achieved. I certainly see an advantage in having a minister to champion you for your funding purposes, but I certainly see that there are advantages in reporting independently to the parliament.

MS BRESNAN: You have raised in your submission the issues around the budget the parliamentary oversight and going through JACS—and also the issues around the appointment of the commissioners and that their employment can be terminated. Do you think that in relation to those issues around independence, particularly around appointments, and also budgetary issues there is another way to achieve that other than through officers of the parliament? Is that something you have given thought to, particularly around the issues of budget allocation and appointments?

Ms Durkin: In terms of appointments, I do not think in discussions we have come to any firm views about who should be responsible for appointing us. It has traditionally been the government of the day. In relation to terminations, the only point we made was that there could be stronger protections, once you are appointed, for your independence by having the parliament involved in termination issues.

MS BRESNAN: On the budgetary issues, because essentially you have to go through JACS, you said you do see some advantages in having a minister advocating for you. That is one of the issues that have been raised in the other submissions—that is, budgetary independence. Is it an issue for you having to go through that process where you are relying on a minister to go in and advocate for you and going through another department's budgetary process?

Dr Watchirs: I think we tend to get our budget bids knocked back early because we are competing with other elements of the JACS portfolio. To be honest, law and order funding has been successful I think in every budget, and we have not. I do not think we even get to the Treasury stage of having a proper analysis.

Mr Roy: I also think that because of the range of functions, like I mentioned before,

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that has an impact as well. I think the budget issues are considered from a JACS perspective—I suppose that is a way of putting it—whereas often our budget submissions come from a children and young people perspective, a health perspective, a disability perspective or an older persons perspective, and they can get lost.

Dr Watchirs: On the other hand, a lot of the human rights issues would be around the JACS portfolio, particularly corrections, but that has not helped.

MR HARGREAVES: I notice in the past—if my memory serves me correctly—that the commissioners have not had too much trouble actually getting the message out into the public arena that there has been a resource difficulty, through either the annual report hearings or budget estimates hearings et cetera. Am I right in thinking that that is really not an issue for you? It is about how it actually happens. It is not a case of you being stymied from expressing that at all? So the way in which we do things in the ACT is actually working?

Dr Watchirs: Absolutely, yes; we have not been stymied in terms of our relationship.

MR HARGREAVES: So you do not feel any need at all to go and run off a couple of questions and hand them over to somebody.

Dr Watchirs: Never.

MR HARGREAVES: A shake of the head means no; thank you. You were expecting that, Mr Chair, weren't you?

THE CHAIR: It took you at least 17 minutes, Mr Hargreaves. I am disappointed.

MR HARGREAVES: Mr Chair, Paul Keating said, "I'm going to do you and I'm going to do you slowly."

Ms Durkin: We certainly feel extremely able to be independent in stating our views about our budget position. I think part of the issue for us, though, as Alasdair said, is that, when we have got so many different functions, different departments understand a lot better what we do. Because I engage so much with Health, they get it really well as to what I do and what my role is. It is the same with children and young people and it is the same with disability.

MR HARGREAVES: Can I put the same question that I put to one of the other witnesses earlier, Mr Chair, in relation to that. We understand, of course, as Dr Watchirs has said, that you have got to do the competition with the other law and order elements of JACS. Of course, if it is sexy they get the money and if it is not sexy they do not get the money. One of the alternatives was to take it out altogether and put it into a non-policy department, as it were—have it under the Treasury department, for example. How do you feel about that? Did I see a grimace there, Dr Watchirs?

Ms Durkin: Treasury might not necessarily be the department you would first pick.

MR HARGREAVES: That was indeed a grimace.

Ms Durkin: Something like Chief Minister's would probably have more of an advantage in that there is no obvious connection like us with Health and DHCS compared to JACS.

MR HARGREAVES: I was actually thinking of the word "competition", which is what you were saying. I think, Dr Watchirs, you said that you get knocked back early in the process. That, presumably, is because you are competing with other elements in the JACS portfolio. If you were in another one, such as Chief Minister's, which would be a good call, that competition would not necessarily apply, would it, because you would not be competing with somebody's perception of "like"?

Dr Watchirs: That is correct.

MRS DUNNE: And, conversely, if the Speaker, for instance, were advocating for budgets for officers of the parliament you would be more likely to get clear air because the portfolio of things that you are advocating for would be somewhat limited. The risk you have is that you do not get past stage 1 in JACS. When you put in your budget bids the risk is that yours fall off right at the beginning.

THE CHAIR: I want to ask about the perception of independence. I am sure Mr Hargreaves will agree with me on this one. The perception, of course, is important. Do you think that would be enhanced if you were classified as an officer of the parliament in a symbolism sense or does it feel somewhat academic? Perhaps I can assist. We have to make a decision about whether or not to move to a new structure. Do you think it would enhance either your sense of or the perception of your independence?

Dr Watchirs: Reading the transcript from two weeks ago, other office holders have said that they felt it could be more politicised by being directly in a relationship with the parliament. Given the public fallout with the federal Ombudsman, I am a little nervous and would want very strict boundaries around our role and the relationship. It is not to say that is impossible, but I think that would be a—

THE CHAIR: What do you think those boundaries would need to be? Can you just give us a feel for it?

Dr Watchirs: Just how briefings occur. At the moment we brief people who request us—the Greens, the opposition, the government—and we have not had a problem with that. I am not sure whether the other commissioners have a view.

Ms Durkin: In our legislation at the moment we are set up to be independent and impartial. We certainly very much strive to be that. There is one provision where the minister can direct us to undertake an inquiry, which was used in the Bimberi inquiry. If he became an officer of the parliament I would probably feel less comfortable with having a provision like that, where you could be directed by the parliament to do another inquiry, another inquiry and another inquiry that might be political and to which resources might not be attached.

Dr Watchirs: By the same token, the Bimberi inquiry was requested by the Assembly,

so the mechanism-

THE CHAIR: It is an interesting observation you are making, though. How is the Assembly possibly directing you—just to draw out the point you were making—more political than the minister directing you?

Ms Durkin: I suppose if the Assembly were directing it might be that the commission would be directed to do things that were more for a political purpose rather than something that we would say would be our priority for our resources and something on which we wanted to do an inquiry.

MS BRESNAN: I know it is a hard question to answer, but what sorts of things would you see would need to be in place to stop that sort of thing occurring? I appreciate your point, but it could also occur if it were based with the minister. The minister could have an agenda, and there is still that executive control of you as well. What sorts of things would you see would need to be in place?

Dr Watchirs: But we have only had one direction in our life.

MS BRESNAN: I know. It has not happened, but there is always potential for it to occur. It is the same with the parliament. It may not happen, but there is potential for it to occur. What sorts of things, or guidelines, do you think would need to be in place to prevent that from happening?

Ms Durkin: At the moment we have a commission-initiated power where we can undertake inquiries where we identify that there are issues from a number of complaints or themes that are coming up through the community to us. I suppose if you are going to be truly independent and impartial that decision should be the commission's decision rather than someone else's decision, in my view.

Dr Watchirs: By the same token, we do not have the money to actually do them.

Ms Durkin: There is that.

Dr Watchirs: Bimberi will receive funds from the department.

MRS DUNNE: You said there has only been one direction. That was the Bimberi inquiry?

Dr Watchirs: Yes, from the minister.

MR HARGREAVES: I think there is a provision in the Auditor-General Act, and I think the committee recommended that we beef it up a bit, which says that the Auditor-General cannot be directed by anybody to do anything. Would you see such a provision being in the sorts of guidelines that Ms Bresnan was just talking about?

Ms Durkin: Again, we have not discussed it, but my personal view is that it would be preferable to have a provision like that.

Dr Watchirs: It would be what we currently have now. You would just drop off that

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the Attorney-General can direct.

THE CHAIR: I probably should know the answer to this. Only the attorney can direct. The Assembly asked for the—

MRS DUNNE: attorney to direct.

THE CHAIR: I see.

Ms Durkin: Equally, the Assembly could have asked the commission and the commission could have done it as a commission-initiated inquiry.

MS BRESNAN: I guess the Assembly could still do the same thing. They could move a motion asking the commissioners to consider whatever item—

MR HARGREAVES: But that would be an "ask the commission to do" as opposed to "direct the commission".

MS BRESNAN: That is right. You would be asking the commission.

MR HARGREAVES: He could write back and say to the Assembly: "No, I don't want to do that. I haven't got the money." But you cannot do that if you get a direction.

Dr Watchirs: Currently section 16 of the Human Rights Commission Act says:

The commission is not subject to the direction of anyone else in relation to the exercise of a function under this Act or a related Act, subject to section 17.

Section 17 is the attorney's power. So we keep 16 and just get rid of 17.

MR HARGREAVES: So just the removal of that other one would give you the protections that you are looking for?

MRS DUNNE: I am trying to think of the circumstances in which the commission would write back to the Assembly and say, "Thanks, but no thanks."

MR HARGREAVES: We have a very brave set of commissioners, Mrs Dunne.

MS BRESNAN: We do indeed.

MR HARGREAVES: Let me say they have proven their bravery on more than one occasion in the past.

MS BRESNAN: Absolutely.

MRS DUNNE: I can see that you could come back and say: "Help! We don't have enough funds to do that." It is an interesting question. I do not know exactly what my view is on the question. Ms Durkin, I think it was you that said—I may be verballing somebody—that in a sense a reference from the Assembly may be construed as more

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political than a reference from an individual minister. The reference from the Assembly on Bimberi was essentially a unanimous reference and could hardly be construed as political. It was not something that was dreamt up overnight; there was a sort of mounting case. I think it would be incumbent on everyone to do any sort of reference in a thoughtful way. It seems to me that the Assembly is the voice of the people. So if the people say, "We would like an inquiry about topic X or topic Y," it would be difficult for the commission then to say, "Well, that's not our priority."

MR HARGREAVES: Almost along the same line—and maybe you can address it is that if the Assembly were to say to you, "Would you do this inquiry, please?" and you would have to say, "Yes, okay, because you asked for it," then you have not got the resources to do it. The Assembly per se cannot come up with extra cash to do it, whereas a minister giving direction would then get advice back from the commission saying, "We're happy to accept your direction, minister, but we need additional funds to do it." A minister is in a position, as a member of cabinet, to come up with the extra money to do it through the Treasurer's advance or whatever. Do you see that might be an issue? You might receive a commission from the Assembly to do X, Y and Z, but there is no opportunity, no avenue, to get money to actually do it.

Mr Roy: If additional funds were not provided to undertake the Bimberi review it would have been near impossible.

MR HARGREAVES: So your advice back to the Assembly would be, "Sorry about this, but we can't. It's not a case that we don't want to. It's just the case that we can't."

Mr Roy: There is also provision in our act that we decide how we undertake an inquiry, how we undertake the consideration. We may form a different view as to how we do it.

MR HARGREAVES: You would be saying then that your view on that was totally independent of the parliament, because of that provision we were talking about before. Just because the Assembly said you have got to do it does not mean you are necessarily going to have to do it.

Mr Roy: There might be competing requirements. As Dr Watchirs said, if, for example, the Legislative Assembly or the minister directed us to undertake an inquiry we would have to do that. However, there is another provision in our act that says that we decide how, and we would do that through a commission-initiated consideration. There is another provision in our act which says that we decide how we undertake considerations. We might do it in a different way than intended by the Assembly.

Dr Watchirs: Ironically, the commission initiated ones are in relation to complaints. In the Human Rights Act there are no complaints. So it is quite a different set of powers to do an audit, say, of detention centres.

MRS DUNNE: Can I go back to the issue of resourcing. Going back to the only practical example that we have, with the Bimberi inquiry you were resourced. My recollection, from reading some of the documents, is that you did not get what you asked for. What proportion of what you asked for did you get for the inquiry? Was the

inquiry constrained by a lack of resources?

Mr Roy: No would be the short answer. I do not think it was the case that we asked and we were not given. Where did you see that?

MRS DUNNE: I thought I saw some documents where the original bid was—I cannot remember the figures now—X and you got about two-thirds of X.

Mr Roy: No.

THE CHAIR: Members, we are coming towards the end of the time we had allocated. Do people have final questions that they wanted to pose to the commissioners? Is there anything else you would like to add at the end of this conversation? I feel it has been a fairly flowing conversation which I think has been very helpful. Is there anything that we have not drawn out that you feel you particularly wanted to say to the committee—or that the conversations have brought up—which would be good to finish on?

Dr Watchirs: I think other officers were asked about the proportion of their funds. We have got the specific figure. It is \$200,000 of the \$3 million which is corporate support at the moment.

Mr Roy: It is slightly higher.

THE CHAIR: Could you just clarify that?

Dr Watchirs: We noticed that other officers have been asked how much we pay JACS for the corporate functions and it is over \$200,000.

Mr Roy: I believe it is around \$300,000, but I can check that figure.

THE CHAIR: Out of a total budget of?

Mr Roy: 2.93.

MRS DUNNE: So it is 10 per cent.

Mr Roy: Yes.

MRS DUNNE: That does not absolve you of doing anything corporate. So in addition to the premium that you pay JACS what do you estimate you spend on top of that in terms of doing administrative and corporate type things?

Mr Roy: It would be difficult to estimate. We have a full-time officer manager who would spend a significant proportion of their time on corporate functions. I say in my annual report that it is 35 per cent. Sometimes it is higher and sometimes it is lower. I can spend a significant amount of my time doing corporate activities, which obviously would be a cost to that.

THE CHAIR: What sort of support do you get for that contribution to JACS or that

levy to JACS? What does that provide for you?

Mr Roy: We get significant support from the finance area, from recruitment, from HR—staffing issues—and from IT et cetera. There is certainly a benefit to it. If we were to be independent and manage all corporate functions internally there would be a significant increase in the resources required to do that because we would have to do it all ourselves.

THE CHAIR: Do you think that would be an increase above that figure—that it would be more than you pay to JACS as the contribution?

Mr Roy: I could not answer that accurately; I do not know.

Dr Watchirs: I would be surprised.

Mr Roy: I would be surprised.

Ms Durkin: One of the benefits we have found in the last couple of years of being in JACS is that the JACS director-general has introduced a maternity leave pool that you can pool down from. In previous years when we had a number of people off on maternity leave we just had to cop it. It really hurt in terms of our budget to not be able to backfill for people. That is one of the advantages. If we were totally independent and did not have that sort of pool to draw down from it would again present us with real problems.

MS BRESNAN: Are you saying that that pooling of resources, if it were to be integrity agencies, would be beneficial in that respect?

Dr Watchirs: It would need to be commensurate with the current system. We drew the attention of JACS to our problem and then that was seen as something that could apply across the portfolio. That has been to everyone's benefit.

MRS DUNNE: Could I just go back to the point that you made, Alasdair, about devoting 35 per cent of your time to corporate functions. Is that because there are not other resources to do it? Is all of that work necessarily work that should be done at your level or is it being done at your level because there is no-one else to do it?

Mr Roy: A bit of both. We have tried different models. Initially when the commission was formed we divvied up the corporate functions between the three commissioners, but that became very difficult to manage. We needed one central point, I suppose, to oversee it, so it was me. I do that. That is not to say that I sit there doing it myself, but I would supervise the admin team and that would involve the front office staff, the corporate manager, the IT people and—

MRS DUNNE: How big is your admin team?

Mr Roy: It depends what you mean by "admin team". We have one office manage, we have one community education officer, who sits within the admin team, and we have two front desk people.

Ms Durkin: Previously, before Alasdair became the Children and Young People Commissioner, Linda Crebbin had been the Children and Young People Commissioner and Disability and Community Services Commissioner. Each of us wore two hats and basically did some corporate work. I took on the role of Disability and Community Services Commissioner, so Alasdair is now wearing one commissioner hat, plus doing the corporate work. It has certainly freed up Helen and I from a lot of corporate—

Mr Roy: Thanks, guys!

THE CHAIR: As there are no further burning questions, we will wrap up. Thank you very much for your time today. We appreciate your coming in and speaking with us. It will help our considerations and our understanding of how the system currently works. As you will, I am sure, appreciate, a proof transcript, when it is available, will be forwarded to you to provide an opportunity to check the transcript and suggest any corrections.

The committee adjourned at 10.06 am.