LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

(Reference: Annual and financial reports 2007-08)

Members:

MRS V DUNNE (The Chair)
MS M PORTER (The Deputy Chair)
MS M HUNTER

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 18 FEBRUARY 2009

Secretary to the committee:
Mr H Finlay (Ph: 6205 0136)

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

Privilege statement

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Amended 21January 2009

The committee met at 9.03 am.

Appearances:

Corbell, Mr Simon, Attorney-General, Minister for the Environment, Climate Change and Water, Minister for Energy and Minister for Police and Emergency Services

Independent Competition and Regulatory Commission
Baxter, Mr Paul, Senior Commissioner

Human Rights Commission
Watchirs, Dr Helen, Human Rights and Discrimination Commissioner
Roy, Mr Alasdair, Children and Young People Commissioner

THE CHAIR: Good morning, ladies and gentlemen. Welcome to the first of the hearings into annual reports for the Standing Committee on Justice and Community Safety. Could people indicate that they have read the privilege statement which will appear at the beginning of the transcript, and that they assent to the conditions in the privilege statement.

Good morning, minister and Mr Baxter. We are looking at the Independent Competition and Regulatory Commission. Mr Baxter, could you very briefly, for the benefit especially of the newer members of the committee and the Assembly, give a brief exposition of what the ICRC does.

Mr Baxter: The commission is established under legislation in the ACT to act as an independent body determining pricing for monopoly services, primarily utility services these days. It also has a role in terms of issues relating to matters such as reviewing and assessing competitive neutrality complaints and examining a range of other issues that can arise in respect of competitive behaviour involving public monopolies or other matters that are referred to it from time to time by government or others.

THE CHAIR: For the financial year just completed, what would you say are the significant events that come within the ICRC's purview?

Mr Baxter: During the last 12 months, the significant issues for us have been the completion of the major review into water pricing, which sets the pricing for water for the next five years—water and wastewater services. There is also the transfer of certain activities to the Australian Energy Regulator, and in particular services relating to the distribution of electricity and gas within the ACT. Those matters now have been transferred to the AER.

THE CHAIR: On that point, Mr Baxter, as a result of that transfer, how much work has the ICRC lost?

Mr Baxter: They represented significant reviews and programs that we looked after over a period of time, so it did represent quite a major part of the work of the commission. At the same time, the commission has retained responsibility for setting retail prices for electricity for what is known as the transitional franchise tariff. That is

a tariff that applies for people who do not want to go to a competitive negotiated contract for their electricity. The commission retains water and wastewater services. The commission retains issues relating to some of the measurement and certification of the various gas abatement programs and so forth that are dealt with, and also provides a range of advice and oversight of matters relating to licensing and other regulatory issues arising out of the operation of electricity, gas and water issues, wastewater issues, in the ACT. So, yes, it is a significant part, but as a consequence, as to whether the overall activities of the commission staff, our budget et cetera, have declined or will decline, or will change over a period of time, it is still an ongoing function of the commission under law in the ACT.

THE CHAIR: It says on page 14 of the report that the transfer of the energy regulation has been slower than was anticipated. What are the causes of this slowness?

Mr Baxter: The issue is to do with the process that is occurring nationally. We are just part of that total process. So, as a consequence, we have not seen the transfer of issues relating to retail energy go across to the national regulator and we have not seen the licensing and associated codes and other matters go across to the national regulator at this time. Those matters are considered through the Ministerial Council on Energy, the COAG group. The processes for that to occur are ones that are still being debated in some instances; in others the legislation has taken some time to be agreed and introduced nationally. So that is what has taken the time.

THE CHAIR: So it is a slowness of the rollout of the policy as it was originally envisaged?

Mr Baxter: Yes, that is right.

Mr Corbell: The Australian Energy Regulator, who is the national regulator, has only just been established in the last couple of months, and they are starting to make their first price determinations in a number of the jurisdictions.

Mr Baxter: The first price determinations through the ACT and New South Wales are in draft form now and will be finalised in the next couple of months, and they will be the first ones.

THE CHAIR: So the national regulator will not be making "one size fits all" determinations; they will be looking at individual circumstances in individual jurisdictions and making determinations on that basis?

Mr Baxter: They do. The issue there is that, under the agreement for change to the regulatory arrangements, there was agreement that certain national standards and arrangements would be put in place so that there would be consistency across all jurisdictions. That was the purpose of the reform. As a consequence, they do apply certain standards. But they do look at individual jurisdictions and individual regulated entities and make decisions based upon their individual circumstances.

THE CHAIR: On the subject of particular circumstances in the ACT, we have legislated for a feed-in tariff and we are going to make some more changes next week

to implement the feed-in tariff—is that right, minister?

Mr Corbell: That is right.

THE CHAIR: How does that impact on your work and how will that impact on a national regulated pricing scheme?

Mr Baxter: There are two points. One is the flowthrough of the cost of that feed-in tariff arrangement, as it applies in other states where they have applied this program as well—in a slightly different form to us but similar arrangements—into the distribution charge. The distribution charge is set by the Australian Energy Regulator and it is a matter of how the Australian Energy Regulator treats that distribution charge and allows it to flow through into the distribution charges that then apply to individual consumers, be they industrial consumers, commercial consumers or household consumers in the jurisdictions concerned. So there is that aspect. The Australian Energy Regulator has not brought down its final decision on that matter yet, so we wait to see how they do that. I think they have indicated they will allow that cost to pass through to consumers, so there is that aspect.

The aspect from our position is one that relates primarily—and we have raised this publicly in an issues paper which we released last week—to the transitional franchise tariff. Under terms of reference issued to us by the government, we have to set that tariff prior to 1 July this year. That will be the tariff that will apply for 2009-10. As part of that, we have to consider to what extent we need to allow for any extra amounts to be passed through if there is a change in the distribution charges during the year. We do not know what the AER is going to do, and the government announced recently that they were again looking at some aspects of changing the scheme, lifting the cap on the size of the feed-in tariff arrangements. So we have to take into account and try to anticipate what might be the outcome of some of that process, both in terms of what government might ultimately decide to do, how the AER might ultimately decide to put it through, and in terms of whether that then means that in the transitional franchise tariff we have got to allow for some arrangement to try and pick up that extra cost, if there is an extra cost that flows through in the next 12 months.

These are all hypotheticals only to the extent that we do not know what the decisions will be from government and from the AER and how that will work. But in terms of undertaking the review and putting out an issues paper, it is one of the issues that we have got to address, and we will address it.

THE CHAIR: Minister, what steps do you need to take, wearing your other hat, as the energy minister, to ensure that there are not unforeseen circumstances? Between when the energy regulator makes its final determination about distribution costs and when the feed-in tariff is introduced, which will be sooner, what steps do you need to take to ensure that further down the track there are not unforeseen bumps in prices for the people who are on the transitional tariff?

Mr Corbell: That is a matter about which my officials and I will need to have further discussions with the ICRC, to work out how we do ensure that there are not any unexpected shocks. But I am confident that we can do that. The ICRC has a range of

mechanisms available to it to make provision and to take into account possible future changes to the tariff. So we will work closely with the ICRC to determine the most appropriate course of action to eliminate any undue or unforeseen shocks in relation to the price.

THE CHAIR: Does that have to be done before 1 March or can that be done in the period while the commissioner is determining—

Mr Corbell: In terms of the substantive detail around what changes to the feed-in tariff may mean in relation to the transitional franchise tariff, that will be something which will not be clear before 1 March. The government and I have said that we will use the process between March and the end of June to finalise our thinking on a range of issues to do with possible extension of the feed-in tariff to larger scale generation capacity. But the reason the government has chosen to take a two-stage approach is to have regard for the fact that I think we need to do more detailed modelling on impacts of potentially increasing the availability of the tariff, particularly on lower income households. We need to do more detailed work on that and what it may mean—and what it may mean for government as well in terms of concessions regimes. We also need to finalise at the same time the work that we are doing on the energy policy, so that the policy settings we put in place for the feed-in tariff align with broader energy policy objectives for the territory.

MS PORTER: On page xviii, it talks about three areas of water pricing, where there is a need to resolve some issues. It talks about the fact that this would be in line with some national work that is being done about that. Could you explain to us what that national work is and how we are communicating with our state and territory colleagues and also the commonwealth in regard to that and what impact that is having?

Mr Baxter: The discussion at the beginning of the annual report is a piece that I usually write to try and highlight a number of issues and open discussion on a number of matters. The purpose of it is to address some of the practical issues that need to be considered and which the commission has been quite public in talking about at various times, in terms of the need for a national approach to this rather than trying to do things jurisdiction by jurisdiction. We have been quite public about that.

What I was referring to here is work that is being currently coordinated by the National Water Commission. It relates to a series of pricing principles and would apply to domestic—as distinct from necessarily rural, but it could cover both—water pricing. That work involves representatives from each of the jurisdictions who participate in that particular matter, and the ACT has representatives on that committee, and the commission from time to time has been asked, as indeed have other regulators, to comment upon various aspects of that.

That work has reached a stage at the moment where some draft principles have been developed that generally the members of the NWC and so forth are reasonably comfortable with, but the next step will be to expose those a bit further and to invite people to consider just how they might operate and whether they can be taken up.

Interestingly enough, the draft principles are very much in line with what we have

done here in the ACT. We have tended to lead the way, together with New South Wales, in terms of how one might regulate water distribution charging and how that might be done. As a result, other states have tended to follow what we have done. That is the consensus that seems to be coming in terms of what the national approach might be. What I was trying to say in this paper was very much a matter of saying that, if we are going to do something nationally, let's agree that it takes time; let's set up the necessary regulatory matters. As we have seen with the energy issues that we talked about before, it takes time—years—to get these things in place. And then let's operationalise them. Again, it takes time, as the minister has indicated, having regard to the work that the AER has been doing on electricity distribution in the ACT.

MS HUNTER: You have discussed the block tariff as one that delivers basic water services to low-income families, but you acknowledge that it is a blunt instrument. Are you familiar with other methods of water pricing that might be more equitable or that might address the needs of low-income families more effectively?

Mr Baxter: We discussed this matter at some length in the report, and in the lead-up reports; there were several discussion papers that we produced in the lead-up to the decision on the current five-year water price path. The difficulty that we have, and indeed the difficulty that one has with any utility regulation in terms of retail price, is that you are conscious that you are dealing, and particularly with water, with a necessity. At the same time the pricing of it needs to recover efficient and prudent costs of the service provider. So where a necessity is there, how do you ensure that people get sufficient to link those necessary requirements to live day by day?

Various options that people have put forward at various times include a theoretical—and I don't want to overplay the word "theoretical"—and standard economic approach, which is to price water at a long-run average price, and everybody pays the same rate, to provide maybe some possible free allocation. We used to do that in the ACT years ago, but a free allocation initially; to provide a certain amount of water to every household and then allow them to trade amongst themselves, which is one option that was put forward as being promoted strongly by certain interests here in the ACT, or to use some form of block tariff and have multiple steps. We happen to have the one step, as it were. So these are the options that are there.

The difficulty that you have got in any of the options is that you can never tell what are the circumstances of an individual household. This is the fundamental problem that we face, and regulators face everywhere. We are unable to determine, on the basis even of levels of consumption, whether or not the household is in need financially, has a large number of children or not, and so forth. There are all those sorts of issues. So it does become a blunt instrument. We have tried to put in place arrangements here which give a clear pricing signal beyond a certain level of water use, which is the average water use in households in the ACT, so that people who are thinking of spending more money to water gardens and outside playing areas recognise there is a cost and consider their consumption in that regard. But we are also conscious, in doing that, it may well be that that person who is using more just happens to have a larger family and may well be in financial difficulties. So targeted government support for those sorts of people is a much better way of ensuring that they are helped to deal with those costs that they have to face.

MS HUNTER: I want to clarify the water abstraction charge. The government now collects this charge. It is not used for any specific environment purposes. It does go back into government revenue?

Mr Corbell: Yes, it does.

MS HUNTER: I suppose what I am trying to get at is that this is a tax or charge, effectively, put on by the government. How can we move that to looking at some of those externalities, particularly around the environment?

Mr Corbell: The water abstraction charge reflects the overall costs that the government incurs on behalf of the community in managing the water resource and the catchment. It does not attempt to recover all of the costs. The government would spend much more money through its land managers on managing the resource and has, as a total, spent much more money on managing the resource than it has obtained through the water abstraction charge. But the purpose of the water abstraction charge is to seek to recover some of that cost. It is not directly hypothecated, but it does seek to ameliorate some of the costs that the government, and therefore the community, bear in managing the water resource and the catchment.

MS PORTER: At page 10 of the report, it talks about three licence exemptions that were granted, two with regard to water and one to do with electricity. Why did we grant exemptions in these cases and what effect did it have on the overall community, if any?

Mr Baxter: Under legislation that was introduced in the ACT, anybody taking water from the system, from the rivers and so forth, needs to be licensed. That is a requirement that exists. But the commission has power to grant exemptions in certain circumstances. In the two instances that I identified here, they relate to taking of water for provision of some external water needs where Actew was not able to deliver water, down in the Tharwa area. We had to look very carefully at that because we needed to attach some conditions to those exemptions to ensure that the water was available for all, not just for the persons identified in the report, and that it was for community purposes. Also, it was recognised that it was not for personal consumptive purposes; it was for outdoor use, because the water has not been treated. The water in these particular instances was used for things such as the flushing of toilets at a local school, the provision of water to the fire stand, to fill the fire tanks and so forth, and the provision of some water for outdoor use around the village.

In relation to the electricity one, it was an instance—and we have had some other instances in the past—where there are entities, and the classic example is a caravan park which on-sells electricity to long-term residents of the caravan park. In that sense they are a service provider but the way it works, with appropriate conditions, allows us to give an exemption for licensing purposes. It is the same sort of thing here. But it is an issue that we have to look at very carefully in the context of emerging issues across the nation relating to greater competition in the supply of water and wastewater services. Already, we have on the table certain access proposals in New South Wales, which we are all now referring to, and Victoria is undertaking some review of their own access arrangements for water distribution and wastewater distribution transmission systems, to allow other people to get access to those, particularly for

water mining or the delivery of other forms of water or water from other places, such as desal plants, into the system to be delivered out to consumers.

THE CHAIR: On the subject of wastewater, in your pricing determination last year, Mr Baxter, the ICRC made a range of statements about the possible use of treating wastewater and putting it back into the drinking system. You made comments about the cost. Would you like to briefly outline the ICRC's concerns about the cost and those issues? Under what circumstances would you foresee the ICRC going back and reviewing its decision?

Mr Baxter: The decision we made related to a five-year price path. It was part of one considering future anticipated major capital works or indeed operating costs, where that becomes relevant. But in this particular instance it was future major capital works. Those capital works related in this particular instance to a range of programs. The ones that we have put through and included in the price path were the expansion of the Cotter Dam and the Angle Crossing to Googong pipeline. But there were two projects which were identified by Actew in their proposal which were called stage 2 projects. One related to the lower bend of the Molonglo treatment works, to convert that water into potable water and put it back up into the Cotter system, and the other was to buy up licences on the Murrumbidgee and transfer water up into Tantangara.

At the time of the review last year, decisions had not been firmly taken on those particular matters one way or the other. The government, in consultation with Actew, had not made firm decisions; nor were they in a position to advise or confirm what the prices and costs were. So the process that we would normally go through, which would be to look a the prudency, effectiveness and efficiency of those projects, could not be undertaken. We were not about to approve any number that was maybe floating around at that time as being part of the cost that would then flow through to consumers in the ACT without going through that normal process that we would go through.

We said that before we would consider these we would expect what we would regard as being a normal cost effectiveness, cost-benefit analysis to be undertaken of these projects—the one you are referring to is the water reuse one—that would demonstrate clearly that this was the most efficient way of delivering the additional water or the water security that was being claimed. That is a standard approach that we apply to any of the projects. In that process, recognising that the government may make a decision some time during the five years on that particular matter and it might then come forward, we built into the price path a trigger event which would allow us to consider that and, if it was demonstrated that this was the most efficient and cost-effective way of delivering that greater efficiency and water security, we would then allow that to pass through into prices. But until then, we were not going to include it. So we made it quite clear what the standard arrangements are, but we wanted to make it quite clear in the report so that there could be no doubt in people's minds. Sometimes people get a bit confused and after a couple of years they come back and say, "You said this was a good idea." We have not said that; we have not said one way or the other. We have just said that it has got to be tested.

THE CHAIR: We will have to conclude. I am sure that members have other questions. If you can put those on notice within five working days, we are asking

agencies to turn those around in two weeks.

Mr Baxter: We would be happy to do that.

THE CHAIR: Thank you, Mr Baxter, and minister.

Meeting adjourned from 9.32 am to 12.31 pm.

THE CHAIR: The committee is inquiring into the annual report of the ACT human rights commissioner. Welcome, commissioner and minister. I point out the privilege statement to the commissioner and staff and ask you whether you are familiar with it and you understand the privilege implications of the statement.

Dr Watchirs: Yes.

THE CHAIR: Do you want to make an opening statement, minister?

Mr Corbell: No, thank you.

THE CHAIR: Do you have questions, Ms Hunter?

MS HUNTER: I want to go to pages 5 and 6. You mention in the annual report that some measures were not progressed as a result of budgetary constraints. I was wondering if you could talk to this and tell the committee what the implications are of not being able to perform this work.

Dr Watchirs: I am trying to find the exact line.

MS HUNTER: It is on page 6, the second paragraph:

> … lack of progress on some of the measures has been due to resourcing and budgetary constraints throughout the year.

Dr Watchirs: In relation to complaint handling, we have not come up with a uniform procedure for handling complaints. It is still dependent on the commissioner who is responsible for that. But we are continuing to work on having that. We have our own manual for the discrimination team and the other teams. Alasdair, the Children and Young People Commissioner, may wish to speak as well.

On compliance, we did look at the psychiatric services unit, but not within the term of this annual report. It started in August 2008. And on policy and law reform, the Discrimination Act amendments have been a continuing concern. We have done things in the past, looking at reviews of exceptions and the issue of racial vilification or harassment. That work continued to be done. There is always more work we want to do, but we are just limited by resources.

Mr Roy: I only have little to add to what Helen said, but the Health Services Commissioner is also tasked with receiving complaints about services for older people. We attempted to engage with that sector but did not progress it as much as we would have liked, so that is another thing to add.

THE CHAIR: What do you see as the impediments to progress, Mr Roy?

Mr Roy: Resources to some extent. We did look at the definition of services for older people. It is very broad. In theory, it could be, with all respect, a macrame class provided for older people at the Hughes community centre, for example, all the way through to residential services for older people. Obviously there is a limited capacity to engage with every single service for older people so it is a matter of targeting our resources appropriately to make sure that we are getting the right message to the right people at the right time.

MS PORTER: On page 12, under output 1.5, it says that there is a 21 per cent variance in the original target percentage of clients who considered the complaints process to be fair, accessible and understandable. The notes state:

> These conservative targets were set when the Commission was established in November 2006. They have been increased for the 2008-09 year.

Could you please elaborate on the reasons behind the increase in the satisfaction and the target that is set for the 2008-09 year.

Dr Watchirs: There is one issue about that in that the old human rights office did not do evaluations of complaints except for educational services.

MS PORTER: Around educational services?

Dr Watchirs: When we did training sessions we would get people to do evaluations. For discrimination complaints, we started only when we formed the commission and there was a bit of uncertainty about how high we should go. Seventy per cent was a national standard for service provision. In terms of our time standards, we fell below that. That is probably a more realistic target. I think we could go from 70 to 80 per cent. That is my understanding.

MS PORTER: So the satisfaction rate was 85 per cent instead of 70 per cent. For the next time frame, have you gone back to the 70 or have you decided to go with the 85 per cent?

Dr Watchirs: I do not think it is 85 per cent, but I will take that on notice. I think it is 80 but I would like to check.

MS PORTER: Somewhere in between the two.

Mr Roy: I think it is 80.

THE CHAIR: In relation to the health services complaints area, it says on page 16 that, as a result of complaints, there are ongoing discussions between ACT Health and, to a lesser extent, Calvary Health Care. There are issues there that relate to treatment, cleanliness, infection control and discharge planning. What processes have you gone through to address these issues and are you seeing an improvement in these issues?

Mr Roy: The main forum for discussion would be regular meetings which we have established with ACT Health at a high level, an executive level. They now occur quarterly. The structure of those meetings is now such that we can have very open and robust discussions about the complaints we receive and the issues of concern that we have. We have found ACT Health to be very responsive to issues that we raise. With any individual complaint that we get, ACT Health responds in an increasingly timely and appropriate manner. We have done a lot of work with ACT Health to improve the quality of responses from the department and the timeliness of responses from the department. That work seems to be bearing fruit.

THE CHAIR: When did you start that process of high-level meetings?

Mr Roy: I was in the health services team for a year, so I cannot comment on what was happening before that. I believe that the meetings were reasonably regular. It would have been at the beginning of 2008. I could get back to you with an exact date, but it was round about then.

THE CHAIR: You have said that there has been a better performance in terms of responding to complaints, but have you seen a decline in complaints?

Mr Roy: Overall we have seen a decline in complaints, yes, but I would like to stress that that is not just in the ACT: it appears to be something which has happened to health complaints commissioners around Australia. Also, ACT Health itself is receiving declining complaints.

THE CHAIR: Does that mean that we are getting better?

Mr Roy: I would like to think so, yes.

MS HUNTER: What happens if service providers do not respond to your recommendations? At the time of writing this report there were seven health providers who had not responded. What do you do in that circumstance?

Mr Roy: Could you point to the pages? Page 21?

MS HUNTER: Pages 13 and 22.

Mr Roy: The process of making recommendations in the health area is that we would make a formal recommendation pursuant to the act. If we do that we need to give them a period of time to respond to that recommendation. They are obliged to let us know. We maintain a database of recommendations and we also follow up within six months in writing to say, "What have you done?" As noted in the annual report, overwhelmingly most agencies do respond positively and if they have not responded it tends to be honestly because it has slipped off the agenda more than any sort of belligerence on the part of the service provider. If there is a bit of tension we will just go back and discuss the matter again with them and review it. There are times when we would review a recommendation and find that it was probably no longer necessary because other steps have been put into place to make that particular recommendation redundant, but overall the response is quite positive.

MS HUNTER: I believe there are some prisoners at BRC who are taking action under the Human Rights Act. I was just wondering about the connection to the Human Rights Commission. Do you get involved in these cases? Is there some role that you would play?

Dr Watchirs: I am not aware of any current actions under the Human Rights Act but I am aware of a proceeding for unlawful imprisonment that we intervened in, purely so that the court would make an informed decision with an argument on both sides and not just the individual's lawyers. We appear as advocates for the act. That was in relation to the question of compensation under the Human Rights Act.

MS HUNTER: So that is only a small part of your work at the moment? Does it take up a considerable amount of time?

Dr Watchirs: We did issue guidelines for intervention in this period and that took a small amount of time. We have had more interventions probably than in earlier periods. One of them related to a case in the Administrative Appeals Tribunal—Raytheon, a defence industry exemption to the race discrimination provisions of the Discrimination Act. The big difference has been from March last year. There is a stronger notification provision under section 34 of the Human Rights Act to the human rights commissioner, so we are becoming much more aware of cases that are coming through. We have intervened earlier, probably one or two a year, it seems.

MS HUNTER: And I guess there has been that change outside this annual report period, obviously the change from 1 January, and how that might have some resource implications for the Human Rights Commission.

Dr Watchirs: Certainly in relation to interventions, yes. Training has been the other huge difference in terms of demand from not only public authorities within government but also contracted-out services. We have been doing work with ACTOSS and a number of other community groups so service providers know what their human rights obligations are now.

MS PORTER: On page 18 the second paragraph talks about legislative amendments that may be pursued in the coming year in relation to complaint information. Could you talk a little about those amendments?

Mr Roy: I am just trying to find the exact reference.

MS PORTER: It is in the second paragraph on page 18.

Mr Roy: That refers to, under the current Human Rights Commission Act and the Health Professionals Act, the inability of the human rights commissioner to provide detailed information to the health professional boards unless we form the view that a health professional may have breached a standard practice. The health professional boards, on the other hand, are obliged to provide all the information to the commission about a complaint that they receive regarding a health professional.

It is not a major stumbling block. We meet routinely with the health professionals

boards and we put in place mechanisms to ensure that, as far as possible, we share as much information as we can about complaints that have been received. We are looking at the possibility of amending legislation to make it clearer that we can give health professional boards details of all complaints that we receive regarding health professionals.

THE CHAIR: One of the things that you have talked about goes back to page 9 concerning the procurement of a case management system. It was a little unclear. Is the newly purchased case management system up and operating?

Mr Roy: No.

THE CHAIR: It was commissioned in 2006-07; is that right?

Mr Roy: Yes.

THE CHAIR: What is the time frame for purchase, acquisition, implementation and operation?

Mr Roy: We are hoping it will be operational certainly by the end of the year. We have recently had some more discussion with InTACT who are overseeing the development of the system. So late September, early October but, as you know, these sorts of things do take time. You have got to make sure that it is spot-on before it is implemented.

THE CHAIR: What is it that you hope to achieve by the operation? What is—

Mr Roy: What will it do?

THE CHAIR: Yes, what will it do? Thank you.

Mr Roy: The current system which we use, RAEMOC, was designed primarily to manage health complaints. The Human Rights Commission obviously now takes complaints and has a broader range of statutory functions. The new system will enable us to not only record details about the different types of complaints we receive but also, it being a business management system rather than just a complaints management system, it will include details of all the other functions we are going to take—for example, community education, policy advice et cetera.

Dr Watchirs: It is a huge old database and very unstable. That is why we have got the money to get a new one, but it has been a very long process.

THE CHAIR: It seems to have been a very long process. You are not able to purchase an off-the-shelf product so you are developing—

Mr Roy: We went to tender and that tender process was unsuccessful, which is one of the reasons it has been particularly slow. We were hoping to find an appropriate tenderer but it just was not there.

THE CHAIR: So how much money was allocated for this project?

Mr Roy: I would have to get back with the exact figures, but I believe in the first year, to actually design and implement it, it was $240,000, plus there is an ongoing application software licence. It was $170,000 for the software licence and infrastructure licence; vendor support, data transfer and training, $52,500. The bottom line for 2007-08 was $250,000 and then $67,000, $68,000 and $70,000 over the next three years.

THE CHAIR: That is being rolled over.

Mr Roy: Yes.

THE CHAIR: You could not buy off-the-shelf software. Do you have enough money now? Can you develop the bespoke software within that budget?

Mr Roy: InTACT have assured us that they can, so we are certainly hoping that InTACT meet that commitment.

THE CHAIR: What comeback do you have if they cannot?

Mr Roy: I would expect that if it is something we just cannot meet within budget resources then we will obviously have discussions with the relevant parties to see whether additional funds can be forthcoming, but we are hoping that is not necessary.

MS HUNTER: I want to go to page 10 of your annual report where you talk about the Discrimination Act and that it has been in place for a couple of decades, that there have been a lot of changes out there in the world and that it is time to get it in alignment with the Human Rights Act in particular and work there. Is this review of the legislation being supported? Is it going ahead? I know it has been suggested in this report, but has anything happened since then? It sounds like a good idea for legislation to get it up to date and to be in alignment with your Human Rights Act.

Dr Watchirs: We certainly have written to the attorney, particularly with the new Law Reform Council. That may be something he would want to discuss.

Mr Corbell: It is a matter that the government has under consideration. If I recall correctly, Dr Watchirs has raised with me some technical issues associated with the operation of the Discrimination Act which would not require a full-blown rewrite of the act. To that extent I have asked my department to discuss those with her and to identify the most suitable way of progressing them. I think in her advice to me Dr Watchirs suggested that these matters could be dealt with through a JACS bill or a statute law amendment bill even.

The advice I have from my department at this stage is that they are significantly more significant than would normally be considered for that type of approach and, therefore, we need to identify the most suitable mechanism for bringing them forward. As I understand it, those discussions are ongoing. I am sympathetic to those and I am waiting for some more advice from my department as to the best way of progressing the matter.

In relation to a broader review of the Discrimination Act, I have not taken any decision about requesting a review at this stage. My department is currently in the process of finalising its legislative work program for the next couple of years, because there are a number of large reviews of legislation anticipated as part of election commitments and so on and we need to prioritise the overall workload. That is something which is being finalised at this stage.

THE CHAIR: What are the more routine things that you might put in a JACS bill or a piece of legislation like that?

Mr Corbell: As I say, I am advised that the proposals—and Dr Watchirs can comment further on them—really do not fall into the criteria that would normally go into a statute law amendment bill or a JACS bill. They are more substantive than that. Dr Watchirs can talk a little bit more about the actual policy matters.

Dr Watchirs: There are a number of recommendations. ACTOSS wants socioeconomic status to be included. I think that is happening in Victoria in a different way. On spent conviction, the Australian Human Rights Commission is talking about the relevant criminal conviction. Similarly, on transexuality, the new terminology is more gender identity. On union membership, we have the very old definition that does not include participation in union activities, and this was highlighted by a complaint to us. They are at the lower level. As to the big-picture ones, we already had the issues paper under the Facing up to Racism strategy. We talked about racial vilification tests being very strong and perhaps going to the commonwealth model of having racially offensive behaviour. The UK model is one of racial harassment and it is much easier to meet the threshold tests than on racial vilification, which is very difficult; there are very few successful cases in the ACT.

The other one is in relation to a positive duty to promote equality. That is the UK model and now, with the UN Convention on the Rights of People with Disabilities, it is something that Australian practice will have to lift in all jurisdictions. The harmonisation of antidiscrimination laws is something that the Standing Committee of Attorneys-General is looking at but it does not mean that we cannot be one of the first jurisdictions to bring up the level.

Mr Corbell: I have some further advice, Ms Hunter. Ms Leon advises me that there are a couple of matters that could potentially be dealt with through a JACS bill and those are the ones Dr Watchirs has mentioned around the definition of union membership and discrimination in that regard, the definitions around spent conviction and also the inclusion of physical appearance as a protected attribute. But the other matters concerning additional protections around racial harassment and religious vilification and the statutory positive duty to prevent discrimination and promote equality are more substantive matters that would need to be dealt with through a substantive bill, an amending bill to the act, rather than just a JACS or a statute bill.

MS HUNTER: It might also require consultation?

Mr Corbell: Absolutely. That is why we would adopt a more substantial bill.

THE CHAIR: I fully understand. Dr Watchirs, can you explain the issues on spent

conviction?

Mr Corbell: I did flag that I would have to leave. If the committee would excuse me.

THE CHAIR: Yes. Thank you, minister.

Dr Watchirs: I think "spent conviction" is seen as old fashioned terminology; other jurisdictions are using "relevant criminal conviction" just to make clear what is relevant. You would not include a serious offence of violence or sexual assault. It is only minor matters and whether they are relevant to the purpose of checks. The checking in respect of children is, of course, relevant. I think "relevant" is more important than "spent".

MS HUNTER: The minister mentioned protected attribute. I was wondering about the consequences of not including homelessness as a protected attribute. What arguments are raised against doing this?

Dr Watchirs: I think socioeconomic status would include that and we preferred a more umbrella definition in the act itself and would use homelessness as an example.

MS PORTER: It would be included under that?

Dr Watchirs: That was our recommendation. I know in Victoria their review wanted something specific called "homelessness" rather than "social status".

MS HUNTER: What are the arguments raised against having this in place?

Dr Watchirs: Socioeconomic status should cover homelessness and then you would make sure that was included as an example in the act, to make it clear that it is within a broad definition. I do not oppose having "homelessness" but "socioeconomic status" would still cover it. If it is an educative thing, then possibly you could put it in the act. Having an example, in my view, would be enough.

MS PORTER: In regard to the point you just made about education, I note that on page 13, under the Health Complaints Commissioner, under promotional activities, you state that the broader community and consumer groups will be high priorities in 2008-09. Could you give some examples of how this would be achieved? It is talking about promotional activities.

Mr Roy: Could you point out which paragraph?

MS PORTER: It is the second last paragraph, the last sentence.

THE CHAIR: That is the promotion of the Health Complaints Commissioner's role.

Mr Roy: As outlined in the report, it talks about outreach activities focused on all service providers and professional bodies. I am not sure what else we can add to that, except to say that we need to get the message of who we are out to as many people as possible. Complaint numbers are slightly down. That is a national trend as well, and in some ways it may have something to do with the health complaints area being

amalgamated with human rights. There is some badging and promotional work mentioned there. That is progressing quite well.

Dr Watchirs: We do have a community engagement strategy, since this annual report.

MS PORTER: You have a community engagement strategy in place now, since this report? Is that what you are saying?

Dr Watchirs: Yes.

MS PORTER: It would be quite useful if we could have a copy of that strategy.

Dr Watchirs: It covers issues like website development.

MS PORTER: Are you talking about increasing the visibility of it or improving the useability of it?

Dr Watchirs: I think the useability and the user friendliness would be the focus.

MS HUNTER: I go to page 42. This is probably for Mr Roy. It deals with the scope of a children's commissioner. It talks of the expectations of the role, on the one hand, and the statutory functions, on the other, and states that this needs to be closely examined. How do you think you will resolve those issues that are raised in the annual report about the disparity between public expectations and your statutory role?

Mr Roy: To a large extent, probably a lot of it goes down to how you interpret the functions. As with many statutory functions, there are many ways of interpreting them. Certainly the core business of the commission is receiving complaints. Section 14 of the act also talks about improvements in the provision of services. "Improvement in the provision of services for children and young people" gives us a reasonably broad scope. In terms of resolving the disparity, as you say, my strategy certainly would be to give greater thought to it, engage with the sector and consult with children and young people about it, and identify any particular problems out there.

MS HUNTER: I want to clarify with the chair that we are talking about the last financial year. My understanding is that we can—

THE CHAIR: You can look prospectively as well.

MS HUNTER: Is it possible, within the scope of this, to get some estimate of where the Children and Young People Commissioner is up to? Linda Crebbin was the former Children and Young People Commissioner and Disability and Community Services Commissioner. On her departure, there were changes made. Mr Roy, you are here as the Children and Young People Commissioner at the moment. I believe that disability and community services are sitting within the Health Complaints Commission at this time.

Mr Roy: Correct.

MS HUNTER: Is someone able to answer this: where is that headed and why are

those functions split at this time?

Mr Roy: The functions were split initially as we were down a commissioner. However, in late December, early January, when I was temporarily appointed to the position for six months, as you know, Mary took on the role of disability commissioner. My position was advertised in the press two weeks ago. Applications close this week. I understand that they want to move on it quickly; so I think there will be a resolution one way or another there reasonably soon.

With respect to the placement of the disability functions, the decision was made to place disability under the Health Services Commissioner, not in any way to badge the two together but to divide administrative responsibilities within the commission. Traditionally, each commissioner had broad responsibility for corporate areas. I have now taken on responsibility for all of the corporate functions of the commission, which frees up Mary to have the time and resources to deal with disability. Placing disability within the area of the commission which receives the largest number of complaints also enables the disability adviser to come up to speed.

Dr Watchirs: And a number of health complaints are made by people with disabilities.

MS HUNTER: This is the model from now on? There will be a Children and Young People Commissioner and a Disability and Community Services Commissioner under the Health Complaints Commissioner?

Dr Watchirs: That was before the Human Rights Commission existed—traditionally disability complaints.

MS HUNTER: Where will community services fit?

Dr Watchirs: There has not been a decision on that yet.

MS HUNTER: I was wanting to be sure we had those commissioners and those functions would be carried out.

THE CHAIR: We will have to pull up stumps. If members have other questions, could they get them to the secretariat within five working days. I ask the commission to get them back to us within two working weeks. That would be great. Thank you very much for your time. We will meet again.

The committee adjourned at 1.02 pm.