LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

(Reference: Annual and financial reports 2011-2012)

Members:

MR S DOSZPOT (Chair)
MR M GENTLEMAN (Deputy Chair)
MRS G JONES
MS Y BERRY

TRANSCRIPT OF EVIDENCE

CANBERRA

MONDAY, 25 MARCH 2013

Secretary to the committee:
Dr B Lloyd (Ph: 620 50137)

By authority of the Legislative Assembly for the Australian Capital Territory

APPEARANCES

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Amended 9 August 2011

The committee met at 2 pm.

Appearances:

Corbell, Mr Simon, Attorney-General, Minister for Police and Emergency Services, Minister for Workplace Safety and Industrial Relations and Minister for the Environment and Sustainable Development

Justice and Community Safety Directorate
White, Mr Jon, Director of Public Prosecutions
Crockett, Mr Andrew, Chief Executive Officer, Legal Aid Commission (ACT)
Purvis, Ms Alison, Courts Administrator, ACT Law Courts and Tribunal Administration
Phillips, Ms Anita, Public Advocate of the ACT
Taylor, Mr Andrew, Public Trustee for the ACT

ACT Policing
Quaedvlieg, Mr Roman, Chief Police Officer

THE CHAIR: Welcome to the third and final public hearing on annual reports for 2011-12 of the Standing Committee on Justice and Community Safety. This afternoon the committee will hear from the Attorney-General and his officers, ACT Policing, the Director of Public Prosecutions, the ACT Legal Aid Commission, the Law Courts and Tribunal, the Office of the Public Advocate and the Public Trustee for the ACT. We will take a break around 3.30 pm. The proceedings will be recorded and transcribed and proof transcripts will be sent to witnesses for comment. Questions taken on notice and questions on notice should be responded to by witnesses and sent to the committee within seven days of this hearing.

Good afternoon, minister and officers of ACT Policing. May I assume that you have all either read or are familiar with the privileges statement before you?

Mr Corbell: Yes, thank you, Mr Chairman.

THE CHAIR: You have appeared a few times. So if you are comfortable with that, we will push on, minister. Would you like to make a brief statement to the committee before we proceed with questions?

Mr Corbell: Thank you, Mr Chairman. Thank you, members of the committee. I do not propose to make any opening statement but, as always, I and my officials are happy to try and answer your questions.

THE CHAIR: Thank you. The first question I have is this. The ACT Policing annual report 2011-12 notes that there have been unprecedented decreases in the majority of crime types. But it also notes that community perceptions have not kept pace. Can you update the committee on this? What factors are involved in the differences between your figures and the community perceptions?

Mr Corbell: Thank you very much, Mr Chairman. This remains an area of concern for me as minister because, as you rightly note, there have been very significant

reductions in almost all crime types over the past couple of financial years now, most notably in the areas of property-related crimes, such as motor vehicle theft, break and enter, damage to public property and so on. This is down to some very effective targeted and ongoing work by ACT Policing in responding to requests from me as the responsible minister around areas of priority for Policing's activities in the territory. I want to place on the record my thanks for the very good work of the volume crime targeting team, who use an intelligence-based approach to drive down to a very significant degree motor vehicle theft and break and enter, in particular.

In terms of issues around perceptions of crime, there is no doubt that we continue to see perceptions of crime and perceptions of potentially being a victim of crime as higher than the national average based on national surveys. Of course, this does not correspond with the reality, which is that Canberra is an incredibly safe city to live in, with significant reductions in crime.

It is hard to ascertain all of the reasons behind that disconnect between the facts and the perception. The way to address it, in my view, is to continue to reinforce to the community what the reality is about crime in the city through factual representation of crime rates, through demonstrations as to how crime is trending, how crime types are trending over time. ACT Policing have done some significant work in this regard to better present and make available crime statistics on a much more updated basis to the Canberra community.

I might ask the Chief Police Officer if he is able to outline some of those measures which ACT Policing is adopting to try and better inform the community about the reality of crime, its incidence and level across the community, and how that does not always match perception.

Mr Quaedvlieg: I turn to your question first, Mr Doszpot. The fact that community perception of crime does not correlate to good operational results is not exclusive to the ACT. This phenomenon is one that police commissioners around the country have been discussing over the last couple of years. In fact, police commissioners internationally have been discussing the phenomenon that has been experienced across all our states and territories as well as in overseas jurisdictions where there has been a general decline in crime trends but there has been no commensurate decline in community perceptions of fear of crime.

There is work that is being undertaken in all jurisdictions and in collaborative police forums to try and identify what those factors are that underlie that deficiency. I do not think there is a clear answer on that at this point in time. One of the things that we are doing in the ACT to try and broach those perceptions of crime is a much greater focus and effort towards community engagement. The minister mentioned some things that we were doing in that space. They include the establishment of a crime status website. We were the first jurisdiction in Australia to introduce suburb-by-suburb reporting of crimes so constituents in those suburbs could see for themselves how crimes are trending from month to month across all crime types.

We have very active marketing and engagement machinery. We are putting a lot of investment into getting messages out through traditional mainstream media, through new media—social media, through Facebook and Twitter—and we have more latterly

put some programs into place for this calendar year which will see an increased community engagement and increased outreach to members of the community in terms of trying to allay their fears of crime.

THE CHAIR: Can I ask a question on your community engagement and the way you get the information across? Does that include the information that goes out to Neighbourhood Watch programs? If so, some of the information in that seems to be sort of watered down a little bit. Can you comment on that?

Mr Quaedvlieg: Yes. Entities such as Neighbourhood Watch are very important components of our engagement mechanisms. We would see that Neighbourhood Watch is a very important partner in that exercise. What we intend doing is—we have got a program in place which will be implemented in the next few months. We are going to go to an online space in terms of Neighbourhood Watch and other community consultative forums. We want to use the platform of Facebook to be doing that. We want to establish a Facebook site for each police station in the ACT where constituents that are within that particular police station's jurisdiction will have dedicated time slots where they can engage interpersonally and online with police officers that are in that station so we can start that reciprocal two-way engagement.

MRS JONES: A supplementary?

THE CHAIR: Yes, Mr Jones.

MRS JONES: Regarding community interaction, there may be some misunderstanding, but obviously one of the greatest expectations of the public is that if something is going on in their street and they make a phone call, they will get a response. What are the parameters around responding to incidents in the community? As I have gone around the community doorknocking and so on, I have had many experiences of people relating the things which I also have experienced, which is phone calls to ACT Policing from people who are afraid not being followed up with anything.

Mr Quaedvlieg: Sure. Let me put that into context. We receive about 100,000 calls per year from members of the public for assistance or responses to jobs. Obviously, resources are finite and we cannot attend every single one of those 100,000 calls. What we have is a categorisation model or prioritisation model, if you like, where calls are triaged in terms of their priority. Obviously, those calls which involve risk to life or property receive number one priority, and then they are categorised downwards down to the most routine matters.

About two years ago we realised that this very phenomenon that you talk about in terms of not being able to deal with every single call was something that was affecting our constituents. What we did was remodel our priority models where we created, for want of a better word, a routine call-type category. That category allows our staff in the comms centre to deal with a matter by dispatch and patrol, if necessary, to deal with the matter over the phone or to deal with the matter through appointment.

So if a constituent was calling and did not need an immediate police attendance, we could arrange for a police patrol to attend at a future time when it was a little bit

quieter. If the call came on a Friday evening and our patrols were all attending high priority jobs, we could agree with the caller that we could send a patrol on Monday or Tuesday the following week and resolve the matter then. That has worked pretty well. But the reality of it is that we cannot attend every single one of those 100,000 calls per year.

MRS JONES: One final supplementary to that: in the categorisation of incidents, what is the tipping point that somebody will get a response? For example, if someone who is a regularly in and out of Alexander Maconochie Centre type person who lives on the street is kicking a bag that is being held by an elderly person who lives up the street, is that not something that we would respond to?

Mr Quaedvlieg: That would be a priority one response, yes.

MRS JONES: Well, it was not.

Mr Quaedvlieg: If you give me the details, I am happy to make some investigation of that. But it is very difficult to ascertain that without the facts in front of me.

MRS JONES: Thank you.

MR GENTLEMAN: I want to go back to the original question, which was about perception. On page 13 of the report under "Perceptions" it says:

> The ACT also recorded above the national average of people who feel safe at home alone, both during the day and after dark. This is a promising result.

But have you looked at why those perceptions are different to some of the other KPIs you have looked at?

Mr Quaedvlieg: Mr Gentleman, we have looked at that. Again, I do not have a definitive answer as to why that is. The perceptions where we seem to persistently fall short, albeit by an incremental margin, are those volume-type offences that the minister mentioned in terms of thefts of motor vehicles and burglaries of residences.

I agree with the minister. I think that the general perception of the public is that Canberra is a relatively safe place to be out and about and I think that is what is being reflected in those particular perceptions.

Mr Corbell: With your indulgence, Mr Chairman, could I come back to the question Mrs Jones asked? It is perhaps worth reiterating ACT Policing's performance against the three response target time frames. There are priority 1, priority 2 and priority 3 incidents. We see Policing meeting or exceeding all of their targets in relation to priority 1, 2 and 3 time frames. This is a very good result for the community, because it means that Policing are able to respond in accordance with the three target response criteria.

For priority 1, obviously the most critical of incidents, the result times are 85.4 per cent within eight minutes, 95.8 per cent within 12 minutes. That is well and truly exceeding the targets as set out in the purchase agreement with the territory. For lower

level incidents, the target for priority 2 is 60 per cent within 20 minutes and 95 per cent within 30 minutes. The actual result times were 92.9 per cent within 20 minutes and 97.6 per cent within 30 minutes. You can see that for priority 1 and priority 2, Canberrans are getting excellent response results. Policing is exceeding the targets set by the government in the purchase agreement.

In relation to priority 3 incidents, which the Chief Police Officer was referring to, the criterion for priority 3 is where police attendance or attention is required no later than 48 hours after the call. That target is being met 99.8 per cent of the time. What that shows very clearly is that police respond. They respond according to priority, but they are well and truly meeting or exceeding the targets set by the government in the purchase arrangements.

MRS JONES: Just in relation to that—

THE CHAIR: Thank you, Mrs Jones. We will go to the first substantive question. Mr Gentleman.

MR GENTLEMAN: Thank you very much, chair. Minister, on page xiv, which is at the front of the report, in "Our highlights", it talks about the formation of a specialist response group. I understand that we have had response groups before. Can you tell us the difference between this formation and previous iterations of the SRG?

Mr Corbell: Yes. Previously there have been two specialist capabilities within the AFP overall to deal with critical incident response, if you like. This is the specialised response that you would expect in relation to siege, armed incidents and other critical incidents where specialist police response is needed. ACT Policing maintain their own capability, and AFP national also retain a capability for both national-scale matters and international deployment. Following close engagement with the territory, and also, obviously, internally, it was agreed to consolidate these two functions into a single group. It is important to stress that this consolidation has allowed for a greater range of capabilities to be brought to bear for the territory in terms of the specialist training, updating of skills and retraining that are needed to keep skills current to respond to the very wide range of complex scenarios that police can be expected to be asked to deal with. But it is still an arrangement whereby those officers from the SRG who are rotated through ACT Policing's functions remain under the control of the Chief Police Officer operationally for the period of time that they are here. And the SRG group, whilst its main headquarters are in Canberra and in the Majura valley, also retains a presence at Rae Street in Belconnen for day-to-day ACT operations. The CPO might like to expand on that.

Mr Quaedvlieg: Thank you, minister. In essence, the notion that there are two tactical units located in Canberra was a nonsense. There was a great degree of common sense in consolidating the two to realise economies of scale in terms of training and procurement; moreover, in terms of service to the ACT, it has been an absolute boon. That SRG unit consists of almost 200 highly trained, specialised police. At any given point in time, the ACT draws 56 of those people, and those 56 people are dedicated full time to ACT duties. The ACT is able to call upon the remainder of the broader SRG at any given time for a search capacity.

I should add that, whilst these police are highly tactically trained police, the ACT uses this mechanism for a whole range of other types of policing services that the ACT requires. For example, where bushwalkers are lost, where search and rescue is required, where crime scenes need to be contained or where search parties need to be sent out in broad geographic areas to find evidence, this arrangement with this broader tactical unit has been an absolute bonus.

THE CHAIR: Thank you. Ms Berry, have you got a substantive question?

MS BERRY: Yes, I do. My question goes around the suburban policing strategy which was pursued in the new suburbs of Belconnen in the mid-70s and its continuing use today. Can you tell us how this has evolved over time?

Mr Quaedvlieg: Yes, I can, and I am glad you asked that question; it is something that we have looked at over the last 12 months, to reinvigorate. The suburban policing strategy has been one that has had a number of platforms that ensure that our police officers are visible and engaged with the community. The old notion of police being out in patrol cars and inaccessible to the public is one that we try to break down.

The suburban policing strategy had a number of elements. If a particular location, like a shopping centre, school or community hall, was the subject of increased loutish behaviour, crime, graffiti or something of that nature, we would task our patrol cars to proactively patrol that particular location. That was the first part of the strategy. The second part of the strategy was where those locations needed a more intense effort by police; that was an engagement strategy where police actually got out of their cars and walked in and started engaging with people within the particular location—so talking about libraries and those sorts of things. The third element, which was even more intense, was to get police out of their cars, walking into community halls and businesses, and talking to the owners, workers and employees, so that they are actually engaging directly with members of the public.

In the last 12 months we have designed a crime prevention program which incorporates not just the suburban policing strategy but a range of other programs. The suburban policing strategy is going to be a crown jewel within that crime prevention program. It is going to be reinvigorated to include more proactive patrols both in car and on foot. And, as I mentioned earlier, we are hoping to complement that with online interaction with the community through the Facebook sites.

MS BERRY: A supplementary, if I may, chair?

THE CHAIR: Yes.

MS BERRY: Do you have any activities which seek to engage specifically with migrant and refugee communities?

Mr Quaedvlieg: Yes, we do. We have within our crime prevention program a number of specialist teams that engage with culturally and linguistically diverse communities. We have engagement with the Canberra multicultural forum; in fact, we are represented on that forum. And our crime prevention team has got a number of strategies in place that deal with particular segments of the community. I am happy to

provide you with a more formal briefing on specific components, if you wish, at some later point in time, but it is something that we take very seriously; we are putting a lot of time and effort into engaging with segments of the community which are multicultural.

MS BERRY: Thank you.

THE CHAIR: We had better push on. Mrs Jones, do you have a substantive question?

MRS JONES: Thank you, yes. It is related to but separate from previous questions. Minister, a few people living within our communities who live near people who are routinely violent and threatening live their lives with a low level of fear that—despite the very good reporting that you have mentioned, if the experience in the community does not reflect the numbers reported, are the figures inaccurate or are there a small number of cases in which the service simply is wildly below par, such as the case of the violent incident I referred to when police did not attend and never intended to attend?

Mr Corbell: As the Chief Police Officer has said, Mrs Jones, if you are able to provide better particulars of the circumstances you are alluding to, an accurate answer can be provided. I would suggest to you that the figures are not inaccurate. These are audited figures based on the volume of calls received by ACT Policing's call centre, which have to be triaged and allocated relative priority in accordance with set criteria.

It is inevitably the case that there will be some instances where people are dissatisfied with police response. In those circumstances—certainly whenever they are brought to my attention—I always endeavour to arrange for ACT Policing to speak to the people who are concerned and to outline the circumstances as to why their expectations were not met.

I can assure you that ACT Policing takes these matters very seriously, and the figures speak for themselves. Violent, threatening, critical or life-endangering incidents get the highest response. Our police are there within minutes of a call, and they are there to deal with the circumstances. Without knowing the exact particulars of the circumstance you mention, it is difficult for me to judge whether it is indeed of the nature that you suggest it was.

MRS JONES: Just as a supplementary to that—the person who made the complaint in that case also went down to Woden police station after the incident occurred, because they were dissatisfied with the outcome. They said that their reporting to the police officer on the ground was: "If you weren't able to come out, I would at least like it to be noted on this individual's record that such an incident occurred." The response the police gave was that they do not take those kinds of notes any more about people. Is that an uncommon response or is that a normal response?

Mr Corbell: What was meant by the term "record"?

MRS JONES: If someone has experienced a neighbour being violent towards another neighbour on their street, they have gone down to Woden police station because there

was no response on the day in a timely fashion, for whatever reason, and maybe it is one of the very small cases in which people are dissatisfied—they went down to Woden police station to try and rectify the situation that there was no record, perhaps, of what had gone on on their street that day, to help paint the picture of what that person next door's behaviour was. They were told by the police officer in Woden that notes are not kept about incidents like that—there is no such record. I do not know the details. I do not know the type of terminology that is used, but this is a real experience.

Mr Corbell: All I could say on that, and I am sure the Chief Police Office can assist as well, is that police record every complaint they receive.

MRS JONES: In the station?

Mr Corbell: Yes, absolutely.

MRS JONES: It was certainly not the case in this instance.

Mr Quaedvlieg: Without commenting in relation to this specific matter—I will take some facts on notice perhaps after this hearing and make some inquiries—let me say that if a call is made to the police by telephone or someone attends a police station, in most circumstances some details will be taken and recorded. However, judgements are made by police officers every day with interactions with members of the public, and there are always two sides, or three sides or four sides, to a story. If no notes were taken on a particular incident—and I am talking about this one—it may well have been the judgement of the police officer that no notes needed to be taken. I do not know about this particular case, and I am happy to make some inquiries, but what I can say quite categorically is that in 99 per cent of the cases some notes will be made. Occasionally no notes will be made, and that is a judgement that is up to the police on the front line.

THE CHAIR: Mr Seselja, a substantive question?

MR SESELJA: Yes, thank you. It is to the Chief Police Officer. I am interested in the random roadside drug testing and how that is progressing. It is certainly mentioned within the annual report. I think you talk about 812 random roadside drug tests being conducted. I think you are talking about going to 2,000 annually once the capability has matured. Are you able to talk us through what it is going to take for that capability to mature and how you expect us to progress to that target over the next couple of years?

Mr Quaedvlieg: I am very happy to talk to that. In the first year of its operation, our target was 750, which we obviously exceeded by a small margin. In that particular batch of tests that we conducted, we had 24 positive hits. Since then we have conducted some additional 1,500 tests, so we are currently up to 2,278 tests, for 45 positives, which is about one in 50, roughly. So we are well on target for the 2,000 mark for this financial year, and I do not see any reason why we will not be able to maintain that target in the future years.

MR SESELJA: Great. What is the feedback on the ground from officers in

conducting this? There was a concern that it would be too time consuming, and there were a number of concerns raised at the time that this was brought in. What has been the feedback from officers on the ground?

Mr Quaedvlieg: Those concerns manifested early whilst the capability was still immature and we were still rehearsing our scripts and our practices. But since then—as I say, we have knocked over about 2,200-odd tests—we have become very rehearsed and practised. We have got the practice down to about five or six minutes on the roadside. Motorists appear to be understanding and accepting, accommodating and very cooperative. I think it is going to be an important component of our road safety operations in the years to come.

MR GENTLEMAN: A supplementary, if I could, Mr Chair. The report says, on roadside drug testing, that there were several convictions during this reporting period and there were several others still before the court. Have those cases been dealt with?

Mr Quaedvlieg: They have.

MR GENTLEMAN: What was the result from those?

Mr Quaedvlieg: About half of the matters were convictions, and various sanctions imposed; the other half were no convictions recorded but sanctions imposed.

MR SESELJA: Just a final one from me: in the foreword, in addition to talking about the core policing function, you say that there were some high profile events, with escorting Queen Elizabeth II, President Barack Obama and the Dutch royals. What were the additional costs like to ACT Policing? Have they all been reimbursed by the commonwealth?

Mr Quaedvlieg: They have all been reimbursed. Traditionally we have a budget of about five per cent that comes from AFP national operations to deal with events of that nature. In the reporting year we are talking about, I think we went over that by about one or two per cent. I sought a reimbursement from AFP national operations; that was paid in full.

THE CHAIR: Minister, the ACT Policing annual report 2011-12 refers to new taser equipment and the obligation to care for the needs of the community and the obligation to care for the needs and safety of police members. I am quoting here:

> We've gone to considerable lengths during this reporting period to improve and maintain the safety of our men and women.
>
> Tasers were introduced to our frontline Sergeants in August 2011 and after a supplementary review, a decision was made to upgrade the Taser fleet to the X2 model which accommodates a video recording capability.

What directions are given to police on the proper use of tasers, including this new high-definition video recording capability?

Mr Corbell: Issues around the deployment of use of force are an operational matter for police and are governed by the relevant commissioner's orders. So I will defer to

Mr Quaedvlieg to assist you with that.

Mr Quaedvlieg: Thank you, minister. On considering the introduction of tasers into the ACT, we were very conscious of not just national experience but international experience around tasers and the general concerns of the public in relation to the use of those. When we decided to go ahead and introduce tasers to our front-line staff, we took a very conservative approach. We had put in a rigorous governance process to deal with those. We set a very high threshold, to answer your question directly, in relation to the use of taser, that taser is only to be used in circumstances where either the officers themselves or a person is in jeopardy of some harm.

On the use of each taser, we train our front-line sergeants, who are the only taser holders at this point in time. They undertake a training regimen which goes over and above that recommended by Taser. They are also then responsible for training their teams in terms of what they expect their team members to do when a taser is discharged.

On each use of the taser—and I make that point distinctly, because a use of a taser, we consider, is either drawing from the holster and aiming or discharging; so any of those three actions is a use of the taser—there is a requirement for the member who used that taser to fill in a use-of-force report, which is comprehensive. That report is then considered and reviewed by a taser review committee that examines not just that particular incident as to whether the use of the taser was justified in that circumstance but is also responsible for identifying trends that arise out of its taser review process.

Quite apart from those internal mechanisms, we also have a very healthy and robust relationship with the Ombudsman's office, which provides a degree of external scrutiny on our use of taser.

I should add that in the period that we have had tasers in place, we have used the taser on 45 occasions—that is, drawn from the holster and aimed or discharged. And of those 40 occasions since August 2011, we have discharged a taser only five times.

THE CHAIR: I presume that you are comfortable with the level of usage and the way the police are using the taser?

Mr Quaedvlieg: In fact, I am more than comfortable. I am very pleased with the self-discipline and restraint that my police have shown in the use of taser. The statistics speak for themselves in terms of five discharges since August 2011. I think that is testament to not just the system that we have in place to ensure rigorous transparency and accountability but also the discipline and restraint shown by our front-line sergeants in the use of those tasers.

Mr Corbell: From the government's perspective, I am very comfortable with the arrangement that is currently in place, for the reasons that the CPO has outlined, particularly in relation to the training regime. But more importantly, I think the decision to only make tasers available to more experienced officers, front-line sergeants in support of their general duties patrols, is the right call for the city. It strikes a balance between the accessibility and availability of taser should that be needed to help resolve an otherwise dangerous or threatening situation but, at the

same time, it does not create an environment where potentially it becomes an option which is too available and used more liberally than we would like.

So I think it strikes the right balance and helps police do their job, helps police deal with what can be, at times, very threatening and dangerous circumstances, particularly where there are groups of people larger than the police patrol that is seeking to resolve an incident. Those are the types of issues that we have to keep under review. But at this point in time, I am very comfortable with the high level of governance that is in place to regulate the use of tasers.

THE CHAIR: Thank you, minister. Mr Gentleman, a substantive question.

MR GENTLEMAN: Minister, in the report there is discussion on the combined road safety operations, and there is a new team, the road safety operations team, formed from the previous RAPID team and the roadside drug testing team. Have you been able to roll out any more RAPID cameras to that fleet? And after you get a chance to answer that, have you thought about stationary placements of RAPID cameras, perhaps at service stations or similar places?

Mr Quaedvlieg: Thank you for that question. Yes, we combined the road safety capabilities, for a couple of reasons. One is that we did not want to start mounting a number of discrete traffic operations in the context of having random roadside drug testing capability, having a RAPID capability and running them discretely. We thought there was much more value in bringing them together under a single team, having people cross-train. So that is what we did. We created the RSOT, the road safety operations team. They will go out on patrol and are multiskilled and are able to conduct RAPID duties for the entirety of the shift, but they can also either do mobile intercepts and do random roadside drug tests or set up stations on the side of the road to do those tests.

In terms of your question on static rapid cameras, we do that now. Our entire traffic fleet has got the RAPID capability mounted on it. We have also rolled out the RAPID kits to station cars, patrol cars. So patrols have an option of actually placing that bit of kit on their cars before they go out for their shift. And at any time during the shift—and the traffic team in particular does this—they will take up stationary positions at high-volume locations, such as service stations or arterial roads, and they will maintain static points to ensure they get greater coverage.

I should add that since the introduction of RAPID we have scanned in excess of four million vehicles.

MR GENTLEMAN: Thank you.

THE CHAIR: Time has run out for us, unfortunately. I am sure there will be a lot of questions from the committee coming on notice to you. We would like to thank you for appearing today and we look forward to receiving your responses that you have taken on board already and the ones to the questions on notice that will be provided. So thank you for joining us here today.

Mr Quaedvlieg: Thank you, chair. I am very happy to take those questions, and

particularly I look forward to the facts coming from Mrs Jones. Thank you.

THE CHAIR: I welcome the Director of Public Prosecutions, Mr Jon White, to the hearing. May I assume that you have read or you are familiar with the privileges statement that is before you?

Mr White: Yes, thank you, Mr Chairman.

THE CHAIR: Do you wish to make a brief opening statement before we proceed to committee questions?

Mr White: No, thank you, Mr Chairman. I think everything is covered in sufficient detail in my overview in the annual report.

THE CHAIR: In that case, my first question is: in the overview of the DPP annual report 2012 you refer to continuing delays which still plague the Supreme Court. You go on to discuss trial listing, the new docket system and exchanges of material in criminal matters. In your view, would these changes be likely to be sufficient to resolve the long-running problems of untimely court decisions, or is it likely that further resources will be needed to achieve that objective?

Mr White: I think there is no one answer to the issue of delay. Certainly the suggestions we have made about the exchange of material and the more timely exchange of material are a factor. More prosaic changes can be made to listing procedures and so on and so forth. No one or other solution is likely to be a complete solution. But we have put forward a range of suggestions in various committees and so on that we have been part of that have been discussing this problem for a number of years now.

THE CHAIR: What are some of these suggestions?

Mr White: For example, there would be merit, in our view, taking the issues that I have particularly highlighted in the annual report, for there to be rules regarding the exchange of material and information between the Crown and defence during the listing process of the trial. To use a concrete example, the ACT is the only jurisdiction in Australia where there is no provision for the service on the Crown of expert reports prior to a trial. Obviously the late service of those reports can delay or defeat justice in a particular instance. It may be that that material, if it were in the possession of the Crown, would lead the Crown to have a different view on matters or it may be that the possession of that material by the Crown would enable it to meet without delay, without adjournment, issues that are raised. So that is one example where the exchange of material before trials could be very useful.

THE CHAIR: And have these suggestions been taken up?

Mr White: That particular suggestion I have advanced both with the rules committee of the Supreme Court and also the government. I am hopeful that that will receive some due consideration.

THE CHAIR: Mr Gentleman, substantive question.

MR GENTLEMAN: Thank you, chair. Minister, the first part of the overview discusses how the year was dominated by the intensity of the blitz. I have heard this term a number of times, but it is my first time on the committee, so can you tell us what occurred with the blitz and what were the outcomes?

Mr Corbell: Thank you very much, Mr Gentleman. The blitz was part of the government's response to assisting the court to put in place new reforms around case management. There was a two-pronged response to reform. The first was changes to court procedure and listing practice in particular, with the introduction of a docket system. To prepare for the commencement of the docket system, it was necessary to provide the court with some additional resources to be able to deal with and get on top of a backlog of cases that had arisen in preparation for the implementation of the docket. As part of that, the government appointed two acting judges to the court to assist the court both in the civil and in the criminal jurisdictions.

As a result of that we saw some very significant results—115 civil matters were dealt with over the two six-week periods of the blitz. Of those 115, 85 settled, 25 were completed with decisions reserved, two were completed with extempore judgments and the remaining matters were vacated or adjourned. The 115 matters that were dealt with were anticipated to take 396 court days—more than a year's worth of the court's activity. In fact, they only took 86 court days. So this shows that the way you manage cases, particularly in the civil jurisdiction, means you can deal with many more cases and use less court time. This is the point government continues to assert and which is important—that is, the court can continue that, perhaps not at the rate of the blitz, but, nevertheless, at an improved rate through better case management.

In relation to criminal matters, 99 matters listed, 24 were completed with a verdict or a decision reserved, 50 saw a plea of guilty, 13 were discontinued by the DPP and 10 were vacated. Again, the estimated court days scheduled to hear those matters was expected to be 303 court days. Instead, only 51 court days were used. So, once again, this highlights that better active management of cases and a determination to get matters to proceed to hearing rather than to find reasons to delay them leads to more timely judgements, more timely hearing of matters and improvements to the workload and time available to the court.

So from the government's perspective, the blitz was a significant success but, more importantly, it highlights that better use of the court's time is possible through improved listing practices and better and more active case management.

THE CHAIR: Ms Berry, substantive question.

MS BERRY: The table on page 21 suggests that over 500 family violence cases were commenced and that fewer than 20 were discontinued. Were these discontinued by the victims?

Mr White: It is our decision whether or not to discontinue a matter. We take the views of the victim into account. Family violence, of course, is a particularly difficult area of prosecutions, and we often get the phenomenon of victims asking us not to proceed with the matter. Very typically, at the risk of possibly stereotyping the type of

proceedings, it is frequently the case that the police will be called to a dispute, they will take statements that evening, they will take photographs and so on, they might take statements from neighbours, and the next day the alleged victim of the matter will be at the police door asking them to withdraw the matter.

Under the family violence intervention protocol in the ACT, there is not an automatic withdrawal of such matters. We will, of course, always consider withdrawing a matter if there is insufficient evidence, but if we believe there is sufficient evidence, then we are inclined to go ahead with those matters. So the very low rate of discontinued matters in family violence is really testament to the way in which our family violence intervention works in the ACT.

Mr Corbell: Generally speaking, Ms Berry, the approach adopted in the ACT is a pro-prosecution, pro-charge policy on the part of both the DPP and police. This reflects the fact, as Mr White outlines, that often victims of family violence can be placed under significant pressure emotionally and with threats of further violence or financial retaliation if they proceed with a complaint. Recognising the need to break the cycle of violence, both the prosecution and the police take very seriously it is in the best interests long term of the victim to discontinue a prosecution. As Mr White says, overwhelmingly discontinuation will really only occur in instances where there is not sufficient evidence to sustain the charge.

THE CHAIR: Mrs Jones.

MRS JONES: In relation to a line of discussion earlier about the delays in the courts, was I correct in understanding that the delays can be substantially improved by a less sloppy administration of documents? Is the solution about basic administrative changes, or is there a lack of staffing?

Mr White: I really do not think it would be right to describe it as sloppiness in relation to administrative documents. It is simply the situation at the moment where there is no impetus on defence to disclose anything about the conduct of the matter prior to trial. One is not expecting, of course, that defence would disclose to the prosecution what their defence was. But it might be reasonable for them to disclose which witnesses were required, for example, because if it was possible to cut down the witness list, that would mean fewer subpoenas to be produced and served, shorter periods of time set aside for the hearing of the matter and so on and so forth. So it is not so much sloppiness in administration; it is a tightening in the way in which the issues in the trial are identified.

Mr Corbell: In relation to the matter that Mr White was alluding to earlier—the pre-trial disclosure of certain expert evidence—this matter was raised with the court as part of an examination of possible reforms last year. It is important to acknowledge that this type of reform is progressed through changes to the court's rules, which are made by the court, not by the government. On this occasion the advice I received from the Chief Justice was that he was not inclined to support changes to the court's rules in relation to this matter.

MRS JONES: Just as a supplementary, what was his reasoning for not wanting to change the administrative arrangements to make things faster?

Mr Corbell: I would not characterise it that way. There were a range of reforms raised as possibilities with the court, a significant number of which were within the control of the court insofar as the court sets its own rules through the rules committee, and this was not one that the court chose to progress.

MRS JONES: So are we just stuck with the situation as is, with the occasional blitz?

Mr Corbell: No, I would not characterise it that way. The court has available to it a broad range of powers to direct parties to expedite hearings and to be ready to have matters go to trial. And that is what active case management is all about; that is what a docket system is all about. However, it fundamentally comes down to the willingness of the court to embrace such changes and to implement them. I have to say that the Chief Justice has shown that he has considerable willingness to do so on a range of matters, but we are yet to see the full realisation of that, recognising that the docket system is still in its infancy and has only commenced for this court year.

THE CHAIR: Mr Seselja.

MR SESELJA: Mr White, going back to Mr Doszpot's questions around the delays in the Supreme Court, I am interested in your views as to whether or not additional resources such as an additional Supreme Court judge would assist the Supreme Court to get through more work and alleviate some of these delays?

Mr White: I do not have a position on the fifth judge. Obviously I am aware that that is a matter of controversy and discussion within the legal community and the wider community. From my point of view, that is a matter for government. But I have outlined in my report the consequences of delays in the system, and that is what I am concerned about.

MR SESELJA: So you do not have a view at all as to whether or not an additional Supreme Court judge would make a positive improvement?

Mr White: I do not think it is appropriate for me to express a view on that. I do say that there is no one solution to the problem, as I have tried to outline today and as I tried to outline in my report. There are likely to be a number of solutions that will be necessary, including what I might call cultural changes within the court and within the legal community as to how matters are approached.

THE CHAIR: Minister, the director's overview in the annual report indicates disappointment that the sexual assault reform bill lapsed at the end of the last Assembly. Is there a view that this will be introduced?

Mr Corbell: That bill has been reintroduced, Mr Doszpot.

THE CHAIR: Mr Gentleman.

MR GENTLEMAN: Minister, in the highlights column of the report, there is a discussion on the implementation of a new professional development package for paralegals and consolidation of the restructure of the paralegal area. Can you tell us a

bit about this package and how this restructure can assist the courts?

Mr White: Perhaps I could; I might have a more detailed knowledge of that.

Mr Corbell: Yes.

Mr White: We have highlighted that the work performed by paralegals is clearly very important to the efficient running of the office and potentially can contribute to efficient running of litigation. So we determined that we would institute professional development for paralegals to either get cert III or IV TAFE training or other training to supplement their administrative and legal skills.

The body of paralegals really falls into two categories. They are often law students who are working through their last couple of years of university; such people are almost trainee lawyers and can be used in that capacity, for example to instruct in simple trials and to prepare simple litigation. The other group of paralegals are more traditional public servants who are honing their administrative skills in the paralegal area. We try to give emphasis to that in the reporting period, to emphasise the contribution that the paralegal body could make to the more efficient conduct of litigation.

MR GENTLEMAN: In those studies, if the paralegals are upgrading from, say, cert III to cert IV, have you looked at the national workforce development funding available for upskilling of those tasks?

Mr White: I am not aware of that in detail—I am sure that my corporate area would have had consideration of that—but I am aware that all of the training that was slated for the reporting period was successfully completed, and that was a great effort by a number of people, obviously, within the organisation.

THE CHAIR: Thank you. Ms Berry.

MS BERRY: I have a supplementary, if I may, chair?

THE CHAIR: Yes, certainly.

MS BERRY: I was wondering from a policy perspective whether there was a preference to train up staff who were studying towards law degrees to eventually fill the position of prosecutors or whether you were focused on dedicated support staff.

Mr White: We have found that the best approach is a mix of both. We have had a number of paralegals who have gone on to be prosecutors and have performed admirably in those roles, but that is not the only path that we want to recruit entry-level prosecutors from. We are interested in recruiting prosecutors who, for example, have had a couple of years experience in private practice or other government practice—often as magistrates' associates or judges' associates and so on. We do not want to tie ourselves too closely into a model where we recruit to a great degree from the paralegal pool. However, we are certainly amenable to that in the appropriate case. Clearly, people who have learnt the job as paralegals have already learnt a lot of the skills needed to be a successful prosecutor.

THE CHAIR: Thank you. Now you have a substantive question, Ms Berry.

MS BERRY: Yes, I do have one. Regarding the introduction of the ACTSmart Office program, on page 8 of the annual report, can you describe it?

Mr White: This is a territory-wide initiative that our office has signed up to involving such things as greater use of recyclable technology and practices in relation to energy reduction and so on.

MS BERRY: I guess I was just asking the question around it being a court and the use of paper.

Mr Corbell: The ACTSmart Office program—forgive me this indulgence wearing my other hat—is designed to assist government agencies as well as private companies to improve recycling in the office environment. The focus is overwhelmingly on recycling of resources through the establishment of a dedicated bin system that allows people to recycle and separate into separate streams paper, cardboard and other material. It is designed to reduce costs and offices' waste bills through reducing the amount of waste that needs to be returned to landfill. It has been enthusiastically taken up across ACT government and more widely, and I am delighted the DPP is on board.

Mr White: Can I supplement one area, Mr Chairman? In relation to the paperless office, that is a particular focus of ours. We have reached an agreement with the AFP that they will transmit documentation to us electronically. There will not be a necessity, for example, for briefs to be printed out and then brought over. We are hoping to use this more widely, including with correspondence with defence lawyers and also with courts. Ultimately, the courtroom of the future will be a paperless court. That technology, frankly, is already here, and we are very interested in pursuing those sorts of initiatives. Another is specifically in relation to photographs. Previously the Australian Federal Police would provide us with printed copies of photographs. Now they provide us with the photographs in digital form. We propose that they will be presented to courts, juries and so on on tablet devices and the like to avoid the printing out of those documents.

MR GENTLEMAN: Have you looked at the security around those electronic operations, especially with tablet devices?

Mr White: Yes, we have. It will be necessary to ensure that any tablet that is used is a stand-alone tablet with, for example, no internet access and so forth, and that the tablets will be retained and wiped after each use. We have put together a protocol around that, and we are hoping to start trialling it in the near future.

THE CHAIR: Thank you, Mr White. Mrs Jones.

MRS JONES: Thank you. I have a substantive question. The report states on page 27 that there were 170 parking matters completed in the reporting period. Is this consistent with previous years?

Mr White: Yes, it is. That figure has—

MRS JONES: It is in that same league?

Mr White: Yes.

MRS JONES: Thank you.

THE CHAIR: Mr White, in hearings in previous years you have commented on the role of poorly prepared briefs from police in unsuccessful prosecutions. Can you update the committee on the quality of briefs of evidence prepared by police?

Mr White: Yes. We have a very close and dynamic relationship with the police. I think I can say that the quality of briefs is very good at the moment. We sometimes do ask for additional material to be gathered, but we appreciate that sometimes it is easier for prosecutors sitting back who are not subject to the pressures that operational police are to see little holes and so on in briefs. But generally I would have to say that the quality of briefs is very good. There has been a new protocol in terms of the way in which the police transmit briefs to us. There has been a devolution of the checking of briefs. It used to go through central judicial operations. That does not happen anymore. I have to say that I had some misgivings about that when I heard about it, but it has proved to be very successful. So there is more regional handling and dealing with briefs, which are then transmitted straight to our office.

THE CHAIR: Was there discussion between you, your office and the police as to how they could improve their process?

Mr White: Yes. We have engaged in a number of discussions. And, of course, we raise matters with them on a day-to-day basis. I have to say that the relationship with the AFP is excellent, both at senior levels and as a working relationship with my prosecutors.

THE CHAIR: Thank you. Mr Gentleman, a substantive question.

MR GENTLEMAN: Thank you. Minister, on page 25 of the report there is a discussion on the confiscation of criminal assets. Can you tell us how this act is working and whether it is helping eliminate crime or having an effect on crime in the ACT?

Mr White: Yes. It is a very important tool in the arsenal of prosecutors, and indeed law enforcement, to deny criminals the fruits of their criminal endeavours. Of course, the Confiscation of Criminal Assets Act works not just in circumstances where convictions are obtained; it can work even where, for one reason or another, a conviction is not obtained. It is a very important incentive in the overall mix of responses to criminals for them to realise that they are liable to have their assets confiscated. So it is a very important aspect of our work.

We have tried to up the ante in terms of identifying matters that are appropriate for action to be taken. We are partly dependent on the crimes that come to light from time to time. But I am aware, for example, that in the reporting period and subsequently there have been a number of allegations of what we call grow houses—in other words,

houses which are dedicated to the growing of cannabis—which have been the subject of restraining orders under the COCA Act.

MR GENTLEMAN: If there is no criminal conviction, how are you able to prove that there are assets there that you can remove?

Mr White: It is set out in the act. It is essentially on the balance of probabilities in certain circumstances. I have to say that that is not a very usual outcome. Generally the confiscation of the asset follows upon conviction. The normal process is that an asset will be restrained once charges are laid and then, once a conviction is obtained, the assets will be forfeited to the territory. But there are more extreme measures that are available in certain circumstances.

THE CHAIR: I have a supplementary on Mr Gentleman's question. Is there a figure for the amount of asset confiscation that has occurred over the last 12 months and periods before that?

Mr White: Yes; it is set out on page 26 of the report. In the financial year, the value of the forfeited property was $549,000-odd.

THE CHAIR: Is that up or down on previous years?

Mr White: I believe that is up from the previous year, although that figure has been broadly consistent, I think, for a few years. The value of the restrained property is over $1.2 million. That is also set out in the report. That would involve—obviously the big ticket items are usually houses that make up that figure.

THE CHAIR: We have run out of time. Thank you very much for your attendance here this afternoon. Mr White, the committee will forward a copy of the transcript of the hearing to you for comment. We look forward to receiving responses to anything you have taken on board. I believe there may be some other questions following as well.

We now welcome the Chief Executive Officer of the ACT Legal Aid Commission, Mr Andrew Crockett. Mr Crockett, I welcome you to this hearing of our committee. Could I ask if you have read or are familiar with the privilege statement that is before you?

Mr Crockett: Yes.

THE CHAIR: Do you wish to make a brief opening statement prior to us asking questions?

Mr Crockett: No, thank you.

THE CHAIR: The Legal Aid Commission's annual report 2012 highlights budgetary constraints. In particular, it notes that costs are rising in line with the rate of inflation but the commission's funding is not. What do you think the solution to this problem is?

Mr Crockett: I think the solution is probably twofold. We do find that the average cost of cases assigned to private practitioners is increasing about seven per cent per annum. That has been fairly consistent over the last six years. There are a number of reasons for that. One of the reasons is not that we have increased fees substantially during that time. So it is more to do with the length that cases are running, the complexity of matters, the fact that increasingly we find that expert reports are expected by the courts. This is the same whether it is a criminal matter, a sentencing issue or a family law matter where the care of children is at stake and the court wants guidance from a child expert.

Other contributing factors to these cost increases are changes to the law which can sometimes add steps in the litigation process and changes in court procedures which sometimes result in additional court events which legal aid then, of course, has to pay for the representatives to attend.

Part of it is perhaps streamlining and simplification to the extent that is possible. The other part of the equation, obviously, is funding itself. I guess that the situation in the ACT is no different to legal aid anywhere else in the world. There is an underfunded situation. I think probably we are less—we are not so badly off as other Australian jurisdictions, particularly Victoria at the moment. But, certainly, we could do with additional funding.

THE CHAIR: In terms of the budgetary requirements, what sort of impact do the number of cases that you are handling have on that? How much are the numbers increasing?

Mr Crockett: This year we have taken a greater proportion of cases in house. In pure numbers it has been a slight decrease, because there has been so far this year an eight per cent drop in the number of grants of assistance. That has been due to budgetary reasons. Last year the number of grants was slightly down on 2010-11. But this year, as I say, there has been an eight per cent fall and we would expect a further fall next year.

Our policy is to take as many of the cases in house as we can, given that at the moment we have got a fixed cost given our legal practice establishment. So the idea is to make maximum use of the capacity of the in-house practice to handle cases. We cannot take all cases in by any means. Sometimes we are prevented from taking a case in because of conflict of interest.

We find that conflicts arise most commonly in family law matters, but also in crime and family matters where there has been domestic violence or other family issues resulting in criminal charges. A good many cases have to be referred to private practitioners anyway because of conflict.

THE CHAIR: What percentage do you handle in house?

Mr Crockett: Last year it was 47 per cent in house and 53 per cent assigned to the private profession. The prior year, there was a slightly higher proportion going to the private profession.

MRS JONES: I have a supplementary on that.

THE CHAIR: Yes, Mrs Jones.

MRS JONES: Given the nature of the funding being a bit more stretched over time, has the ACT commission received additional commonwealth funding? If not, why not?

Mr Crockett: Under the national partnership agreement, which came into operation in July 2010, the ACT, in common with the Northern Territory, received no additional money. There was additional commonwealth money put into legal aid at that time. Most of it went to the larger states. This has been obviously a bone of contention for the ACT ever since.

We have received some small amounts at the end of each financial year of a non-recurrent nature. When I say "small amounts", $100,000, $200,000 here and there if there has been some money left in the commonwealth Attorney-General's Department budget. Each year we put in a submission asking for more money. But in terms of base funding, if you like, there has been no increase under the national partnership agreement. That is running for four years until July next year. It is only indexed by something under two per cent. So in real terms that funding is losing value.

Mr Corbell: From my perspective, the arrangements under the national partnership agreement are unfair for small jurisdictions, including the ACT. I am on the public record on a number of occasions saying that. The only small comfort that the territory can take from the outcome of the national partnership agreement is that if the commonwealth had applied its criteria rigorously for the new formula that it has established for determining the share of legal aid funding across the states and territories, we would have seen a reduction in the total amount of funding available to legal aid from the commonwealth.

As a result of representations I made, as well as representations from the other small jurisdictions, the commonwealth did not put in place arrangements so there was no net reduction in commonwealth funding, but there was no growth either. So it was a double-edged sword in that respect and a source of disappointment for me that we were not able to secure an increase in funding.

MRS JONES: Is there a point at which, because of the nature of the funding, there will be an intersection between our low funding and the slow increase nationally perhaps?

Mr Corbell: The formula is quite complex and I would not pretend to recall it all today. It is, nevertheless, an unsatisfactory arrangement because it does not take proper account of the demands of small legal aid commissions like ours and the demands of some other smaller jurisdictions that the Northern Territory and Tasmania in particular face. Even a state like South Australia is disadvantaged under these arrangements. So these are matters that I will raise with the commonwealth attorney when the opportunity arises, particularly as we head up to renegotiation of the agreement, starting next year.

THE CHAIR: Mr Gentleman, a substantive question.

MR GENTLEMAN: Minister, a little while ago there was a discussion about partnerships and page 19 of the report talks about partnerships with private lawyers. It says the commission assigned 1,213 new legally assisted cases. Then underneath that paragraph it talks about advice services from private lawyers that the commission lawyers cannot do sometimes due to a conflict of interest. Can you tell us what those conflicts of interest would be?

Mr Crockett: It has usually been where the other party to the dispute—whether it is a family matter, a criminal matter or a civil case—has been to us previously, either about that matter or about some other related matter. The rules of professional practice say that in that situation you have got a conflict and cannot act for the person who has come to you second, as it were. In those cases we are obliged under the rules of conduct, which are binding on our lawyers, of course, to assign those to a private lawyer. I should add, though, that this is not a major expense. It is not one of our big areas of expenditure.

Mr Corbell: In relation to the budget pressures faced by the commission, as attorney I am deeply conscious of them. I am endeavouring at all times to try and improve the budget circumstances of the commission, recognising that this needs to be done in the context of what is a very difficult budgetary environment more generally for the government. But it is worth reiterating that the government has been able to provide assistance in relation to a number of initiatives.

First of all, the government has provided over $1 million—I think $1.7 million over four years—to the commission to provide for its legal help desk service, which provides a telephone-based inquiry and help service for people needing some guidance and assistance with more basic and routine legal queries. I understand that that service is doing a very good job in providing a level of outreach and support to clients that was not previously available.

In relation to the workloads the commission is facing, particularly those which are more expensive and, therefore, more protracted matters, such as long-running criminal trials, matters where there are potentially many witnesses or the need for expert evidence—for example, in relation to serious criminal matters such as charges around murder, manslaughter and so on—the government has provided additional support to the commission in terms of its expensive cases allocation. Whilst that amount has been modest—$200,000—it has, nevertheless, assisted the commission to try and ameliorate some of the impact of these more difficult and more complex matters.

It is, of course, also worth noting that the commission continues to represent or provide assistance for the representation of Mr Eastman in relation to his inquiry that is currently underway into his conviction. That assistance is overall, not just for the commission but for other parts of the justice system as well, and it is now running into the millions of dollars.

MS BERRY: On page 38 of the report mention is made of a legal aid management information system that is being developed. Can you describe what this system would do?

Mr Crockett: This will be a system which integrates all the existing information systems. At the moment we have a finance system which is, in effect, stand-alone. We have a database based on official files, which is a commercial product owned by LexusNexus. We have a fairly basic case management system which is also based on visual files. Our records management system is almost entirely manual at the moment. The objective of the legal aid management information system, as we call it, is to integrate all of these into one system so all our information holdings of whatever nature will be accessible from the one system and each part will talk to the other part. We hope to achieve quite significant efficiency gains as a result of that. I think that that is probably the most important project we will be undertaking in an infrastructure sense over the next couple of years.

THE CHAIR: I have a supplementary on that. What sort of interface with the various modules that you have mentioned occurs with, say, the Attorney-General's department? Is there compatibility of information systems?

Mr Crockett: No, there are generally no direct linkages with other parts of government. Partly, this is because of our role which is, obviously, to provide assistance to people, over half of whom are in dispute with government in one of its forms—whether they are charged with criminal offences, they have got a dispute with Centrelink or it is a care and protection matter. So there is a need, obviously, for the integrity of our systems to be maintained and the perception when people give us information of a private nature that that information cannot be shared with other parties, particularly if they are in dispute with other parts of government.

Having said that, there are arrangements with the DPP, for example, whereby we do get access to information about people who have been brought into custody, listing matters and so on. I think there is scope for increasing that sort of exchange of information, which would help all of us in terms of improving efficiency. But, otherwise, no, our systems are stand-alone.

THE CHAIR: I guess my question on this should be directed to the minister. From an ongoing point of view, how much emphasis is there on the communication capacity of our information systems in just about all the departments, authorities or agencies that come under your auspices?

Mr Corbell: As Mr Crockett says, I think there are good reasons why certain data holdings and information are not shared because of the need to protect the interests of those who are perhaps facing charges brought, for example, by the DPP. But there is certainly scope for improvements in certain sharing of data that is held across the criminal justice system, particularly in terms of issues such as, for example, sentencing trends and sentencing decisions and having that freely and consistently available across justice stakeholders.

That is something which the government is currently addressing through funding for a new sentencing database. That provides for a consolidated holding that will be available to all justice stakeholders—prosecution, defence, including legal aid, police, my department—on sentencing trends and what decisions are being made by the courts around sentencing.

Equally, there is a significant investment being made—just over $9 million worth of investment being made—in a new case management database for the courts. That will provide for a more effective management of case information by judicial officers, but then also having that information able to be readily retrieved and available to other parties as appropriate, or subsets of it as appropriate. So we are certainly very focused on the need to improve the way information is managed and shared within the justice system overall. Those two projects I mentioned are two ways in which we are trying to do that.

THE CHAIR: I imagine that the fact that the records management is, I think you said, almost entirely manual at this point should be of some concern to you, minister?

Mr Corbell: It is, and this is not uncommon, unfortunately, in a number of parts of the justice system. But it is right now being improved. The new case management database for the courts is a very important upgrade to capability which will put our courts on a contemporary basis in the way they manage material and documents that come to them. Equally, the improvements that are being made to legal aid's database arrangements will also improve that. I think there are a range of steps being taken and significant investment by government is being made in this area.

THE CHAIR: Thank you, minister. Ms Berry, did you have a supplementary?

MS BERRY: I did have a quick one. When do you think the system is going to be delivered, and is it being developed internally or is it being contracted out?

Mr Crockett: The project time frame is about two years at this stage. So we still have just under two years to go. It is being handled internally but with contractors who will be brought in who are specialists in the use of the particular software we are using, which is open source software. One reason we have chosen this is that it does not carry with it annual licence fees, which will reduce the maintenance cost and also enable us to configure the system and reconfigure it as time goes by without having to rely on outside experts.

THE CHAIR: Mrs Jones, a substantive question.

MRS JONES: In regard to the current research findings, at page 2 of the report, it states:

> … there has been a dearth of previous research into the measurement of legal assistance outcomes.

What, if any, changes have been made to how the commission does its work as a result of those findings?

Mr Crockett: We have had three snapshot surveys now. So we have covered all the areas of the commission which provide services directly to the public. Those surveys have turned up not only information about what we are doing well but also some areas where we can improve. As a result, we are looking at those areas. It is often a matter of additional staff training where there has been a lapse in service delivery. So our

aim is—and hopefully we can budget for this next year—to increase the amount of skills training for staff.

Yes, we are finding it extremely useful running these surveys periodically, to show us not only what we are doing well but also where we can improve. It is a process of continuous improvement.

MRS JONES: And just as a supplementary, the $34,400 cost to deliver the current research findings—what proportion of your annual budget was that, and was that good value for money?

Mr Crockett: It was excellent value for money. Our annual budget is about $12 million, so it is a relatively small amount. We would spend that amount on, in many cases, grants of legal assistance. It is not, in the great space of things, a significant amount. But it was good value for money. We got the work done by Dr Curran at community rates. We did not pay a full consulting fee, if you like—commercial rate.

Mr Corbell: It is also worth highlighting that the Curran report was part of a series of reports done across the country looking at the performance of legal aid services in every state and territory. I am very supportive of the decision of the commission to be engaged in what was a national project which looked at the state of legal aid services and their reach and delivery at a national level and then on a state-by-state basis. We got value for money in terms of both a national analysis and an analysis of our own particular circumstances.

THE CHAIR: My question, Mr Crockett, is somewhat related. On page 4 of the annual report it states:

> … Australia's mixed system of legal assistance service delivery is acknowledged to be amongst the most cost-effective in the world …

It goes on to say:

> … while the delivery system is fundamentally sound, the funding arrangements and the accountability requirements … are seriously flawed.

Can you expand on these observations?

Mr Crockett: Yes. I guess the main flaw at the moment is what has been sometimes called the commonwealth-state divide, which was something that the commonwealth government introduced in the mid-1990s, where it said, "Henceforth you can only use commonwealth money for cases involving commonwealth law." Previously, commonwealth and state or territory money came into the commission's budget and it could be used as the commissions saw fit according to the priorities as they saw them. This divide created all sorts of reporting issues, complexity. It often meant that you ran out of commonwealth money. So you had to cut back on grants in family law matters, for example.

Under the national partnership agreement, that divide has been eased to some extent.

We can use commonwealth money now for territory law matters where there is what the commonwealth calls a connected commonwealth law matter. For example, if it is a care and protection issue or a domestic violence issue, which are matters of territory law, if the circumstances of the parties are such that they could, if they wished, also take action under the Family Law Act, that is a sufficient connection for us, if we need to use some commonwealth money for that case, to do so. So that is part of the issue.

The other part is the complexity of the reporting arrangements. We report not only to the territory, of course, through the annual report and other standard reporting mechanisms but we have another set of reports we have to provide to the commonwealth. And what we find particularly with the small permissions is that this takes up an inordinate amount of staff time. I guess a large proportion of my time each year is spent just making sure that we are meeting reporting standards.

So there is a plea, I think, in the present report which you are referring to, for simplification and streamlining of reporting and, ideally, having one set of reports to satisfy both territory and commonwealth requirements that do not take a heap of staff time and effort to prepare each year.

THE CHAIR: I apologise; we have run a little over time. Thank you very much for coming, Mr Crockett. We appreciate your input. The committee will forward to you a transcript of proceedings here, and we look forward to receiving any responses to any questions that may come to you in the course of time.

We will enjoy a brief break, but we will extend that break to 3.50. It was supposed to be until 3.45, but we will extend the break to 3.50 when we resume. Thank you.

Meeting suspended from 3.33 to 3.52 pm.

THE CHAIR: We shall reconvene the third and final public hearing for the annual reports for 2011-12 of the Standing Committee on Justice and Community Safety. We will be hearing from three areas—law courts and tribunal, the Office of the Public Advocate and the Public Trustee for the ACT. I would like to welcome Ms Alison Purvis, courts administrator, courts and tribunal, Justice and Community Safety. Thank you very much for coming to us. May I assume that you have either read or are familiar with the privileges statement? You have appeared enough times.

Ms Purvis: Yes.

THE CHAIR: Thank you. Do you wish to make a statement before we proceed to committee questions?

Ms Purvis: No, I do not.

THE CHAIR: My first question to you is: in previous years the committee has asked about the ICT case management system. Can you tell the committee about the age of the present system, preparations for the new system and the steps that will need to be taken to implement the new system? What efficiencies do you anticipate from the new system?

Ms Purvis: The old system we have is colloquially known as MAX but in fact it is made up of three systems—one for the Supreme Court, one for the Magistrates Court and one for the Coroner's Court. It was built sometime between 1990 and 1993 in those various places, so we are heading on to 20 years old.

The government has funded a new case management system. We have been funded to the tune of $9.5 million over the next four years. Work for that started last year when we were granted some money to do a feasibility study and we started to look at what case management systems were available for courts. We looked at what was available off the shelf, what other jurisdictions already had and what we could leverage off. We have also been doing a lot of work around what our requirements for any system would be before we move to actually purchase or enter into an agreement.

The feasibility study led us to another jurisdiction in Australia that has a very good case management system that suits our needs. It covers off on Supreme Court, Magistrates Court and tribunal and does civil and criminal matters. It looked like it might be a good fit. Since then we have been doing some gap analysis, having a look at that system more closely, what our system requires and what they have. That gap analysis has been very successful in showing that courts are courts and mostly we do the same sort of business. The next step in that is to enter into an agreement of some sort with the other jurisdiction to see if we can come to an arrangement with them to leverage off their system and use it in our courts and tribunal here in the ACT.

THE CHAIR: In terms of the actual acquisition of it, what sort of budget is in place for that?

Mr Corbell: $9½ million is appropriated for the new system over a four-year period.

THE CHAIR: Thank you. Mr Gentleman.

MR GENTLEMAN: Thanks, chair. Minister, I refer to page 29 of the JACS report. About halfway down the page it mentions the Supreme Court Act 1933 was amended to ensure that judge-alone elections continue to be permitted only before the identity of the trial judge is known. Can you tell us why that amendment was needed and what has been the effect after the change?

Mr Corbell: That change was driven by the government's view that it was desirable to see more matters heard in trial by jury. The establishment of the legislative change in the early 1990s that provided for judge-alone trial gave significant discretion to the defendant to elect for judge-alone trial basically in pretty much any matter that was listed in the Supreme Court. This mirrored provisions in other jurisdictions that existed at the time. I think our provision was modelled on the South Australian approach, if I recall correctly.

What occurred, though, in the ACT following the implementation of that change was quite different from the practice that had evolved in other jurisdictions. In most other jurisdictions judge-alone trial was the exception rather than the norm and was usually only elected for on the part of the defendant in quite a small percentage of cases. In the ACT we had the highest rate of election of any state or territory. I think it was

approaching about a third, if I recall correctly, of all criminal trials. This was quite a high level of election.

From the government's perspective, it really undermined the policy rationale, which was first and foremost that judge-alone should be available but should only be available in circumstances where there were particular difficulties that could make a jury trial impractical, such as highly complex or very detailed expert testimony or evidence or, indeed, in circumstances where the jury may not be able to bring an impartial mind to the matter because of the serious and grievous nature of the offence. You could imagine hypothetically a highly charged, particularly violent crime that had attracted notoriety throughout the community prior to trial.

Those were the types of circumstances where judge-alone was envisaged being used. That was not the case. Judge-alone was used in a much broader range of matters. So the government took the position that in relation to the most serious of offences—offences such as murder—the defendant should not have the choice to elect for judge-alone but, instead, should have their case heard and determined by a jury of their peers. That is the purpose of the reform which has been put in place and which the Assembly agreed to a couple of years ago now. That change certainly has seen a decrease in the rate of election and obviously has meant that election is not possible for the offences that are now specified in the act.

THE CHAIR: Ms Berry.

MS BERRY: Thank you, chair. My question is with regard to the Forensic Medical Centre in Phillip. I am interested in what a high standard facility looks like.

Mr Corbell: We could give you a tour! It is an interesting place to visit. The new forensic medical facility is designed to provide an up-to-date, modern, safe and ergonomic work environment for the people who use the facility in terms of the people who work there as well as providing a more professional and more compassionate environment for family who have to deal with the obviously very confronting and difficult need to visit the centre, in most instances, to identify or view the body of a loved one.

The previous Forensic Medical Centre at Kingston was grossly out of date in terms of its technical performance, air circulation systems and the capacity of the centre to hold a certain number of bodies both for short-term and long-term storage. There is a need to store certain bodies for a long period of time if they are unidentified or if they are potentially caught up in some complex criminal investigation. There was a need for more state-of-the-art equipment to assist our pathologists and forensic teams to do their job. All of that is now accommodated in the new facility at Phillip. It meets the relevant national standards for accreditation by the forensic institute of Australia, I think it is.

Ms Purvis: Yes, the pathologists institute.

Mr Corbell: Yes, the pathologists institute of Australia. It meets the relevant national standards, which is important particularly in terms of forensic analysis that is done for the purposes of criminal trials—that is, ensuring there is no cross-contamination of

evidence and so on. That needs to be managed very carefully in the Forensic Medical Centre. It also has the capacity to accommodate a surge. So in the event of a mass casualty event such as, for example, a large transport-related crash—maybe a bus or, heaven forbid, a plane—where there could potentially be a large number of fatalities there has to be the capacity to manage a surge in demand for storage in those circumstances. The new facility gives us all of that. Certainly, none of that was available at the previous Kingston site.

MS BERRY: And a supplementary is: is it used by the region as well or is it just an ACT facility?

Mr Corbell: I think it does have some regional use.

Ms Purvis: Yes.

Mr Corbell: Ms Purvis will be able to assist with that.

Ms Purvis: Yes, it does. We have an arrangement with the New South Wales coroner to provide a service for them for cases from very local regions, Queanbeyan, some from the South Coast, but mostly Queanbeyan and Cooma—those sorts of places. They can come to us. We do that on a cost-recovery basis.

MR GENTLEMAN: A supplementary question, Mr Chairman.

THE CHAIR: Yes.

MR GENTLEMAN: Minister, you mentioned that this facility can deal with a bus crash or something along those lines. Do you actually do scenarios? Do you do training at the facility for those possible events?

Mr Corbell: I should clarify: the facility has the capacity to accommodate a surge. In terms of the spaces that are available, it can accommodate a surge in terms of storage and so on that may be needed. As to the type of training, obviously a mass casualty event is anticipated and provision is made with our emergency services, with the ambulance service in particular, and with our hospitals. The Forensic Medical Centre is part of that overall planning that is undertaken by ACT Health and by our emergency services. I think the territory has a mass casualty disaster plan that deals with those types of scenarios.

Ms Purvis: We work very closely with the police and their disaster victim identification team. We have regular exercises where they bring their teams to the centre and learn about what to do—hopefully it will not happen, but if it did—and how the centre would work within that.

THE CHAIR: Mrs Jones.

MRS JONES: Thank you. On page 284 of book 1 the report states that approximately one-third of applications made to ACAT were resolved in mediation. Do you have any analysis on this resolution rate? Is it an increase or a decrease over previous years?

Mr Corbell: I would probably have to take that on notice, Mrs Jones, in terms of how that compares with previous years.

MRS JONES: Just as a supplementary to that, there are 19 matters that have been open for more than nine months. The majority of these extensions are granted for matters involving ACTPLA. Is this number of extensions also consistent with past years or is that a bit of a spike?

Mr Corbell: Again, I would need to take that on notice, I think. I will do that. But it is probably worth highlighting the clearance indicator rate for the ACAT, which is 110 per cent. This result indicates that there were 10 per cent more matters finalised than were lodged during the 2011-12 year. There has been a 4.5 per cent increase in finalisations compared to the previous year, yet there has also been a 15 per cent increase in lodgements. We continue to see a positive clearance rate on the part of the ACAT—that is, they are settling or finalising more matters than they are receiving, so it is a very positive indicator on a year-by-year basis. In terms of the question you ask, I would have to seek some further advice.

MR SESELJA: In ACAT, one of the selling points of having tribunals as opposed to courts is access to justice. It is meant to be easier for people and there is meant to be less use of lawyers. Is there anywhere where statistics are held—I could not see them easily in the report—as to how many cases before ACAT actually involve legal representation for the individuals and those that do not and also the type of legal representation? Is there anywhere where those statistics are held?

Mr Corbell: I would have to take that on notice to see whether or not that information can be obtained from the tribunal. I think the answer would have to be cognisant of the fact that in different parts of the ACAT jurisdiction there would be different circumstances. In many of the essential services elements of the ACAT, for example, my understanding is that basically there is not legal representation as a matter of course for hearings of the ACAT when it is exercising that part of its jurisdiction. But obviously that would be different from, say, issues involving planning disputes where more often than not there is legal representation. It does vary according to the different parts of the jurisdiction. I will take the question on notice, Mr Seselja, and see if any substantive data can be provided.

MR SESELJA: Thank you. It would be useful, because we are hearing anecdotally—you talk about the planning area—that there is more and more use of senior counsel in those kinds of disputes. Often ACTPLA will be represented by senior counsel. That seems to undermine the idea of it being for speedy resolution with the ability for people to get there without having to incur significant costs, because if the government is engaging counsel on a regular basis, anyone taking the government on is going to be at a severe disadvantage if they do not have serious legal representation.

Mr Corbell: It is worth stressing that a large number of matters in the planning jurisdiction are resolved through mediation without the need to go to formal hearing. That is a very important part of the ACAT's work as well: it provides an opportunity for informal dispute resolution before matters go to formal hearing. Obviously if a matter does proceed to formal hearing it is often high stakes in terms of the value of

the projects in question. Developers, in particular, will seek to protect their interests. I think the real nub of your question, though, Mr Seselja, is whether or not the government can actually prohibit legal representation in those circumstances. I think it would be very difficult to mount an argument to justify some sort of statutory bar on legal representation in an ACAT matter.

THE CHAIR: Is that your substantive question?

MR SESELJA: Yes.

THE CHAIR: Ms Purvis, can you update the committee on progress on the sentencing database referenced in the report?

Ms Purvis: We are funded for $2.2 million over the next four years for the establishment of the ACT database. The sentencing of criminals is a complex task, as you can imagine, requiring a judicial officer to balance the competing principles of individualised justice and consistency, taking into account multiple sentencing factors. Sentencing data supports the judiciary, practitioners and prosecutors with information that helps them in their role. The sentencing database will also enable improved capacity for law reform to provide evidence-based information for policy areas. The $2.2 million has been allocated over four years, as I said, and it includes the ongoing maintenance of the database. It is envisaged that it will be operational in a rudimentary fashion by the middle of this year.

THE CHAIR: Just on the four-year period, is this a licensing fee or a total acquisition cost?

Ms Purvis: It is the total cost.

THE CHAIR: So there are no licensing fees on an ongoing basis?

Ms Purvis: There will be, yes. The arrangement we are entering into is with the New South Wales Judicial Commission. They have a database that they have been working on for something close to 20 years, and they have improved it over that time. They also provided a licence to Queensland and to the commonwealth for their sentencing information. So we are coming in on a well tried and well used—

THE CHAIR: I understand that. I am trying to understand what the licensing fees will consist of?

Ms Purvis: I have not got that information in front of me. There is a licensing fee, an annual fee, that we will need to pay, and that is included in the budget.

THE CHAIR: And that will include updates and upgrades to the system?

Ms Purvis: Absolutely.

THE CHAIR: If you could take that on notice and give it to us, please. Has the system been implemented or is there an implementation date?

Ms Purvis: No. As I said, by the end of this financial year we are expecting to have a rudimentary system. The work that we have been doing to date has been—as I explained to you, we have a very old case management system. We need to take data from that case management system and provide it directly to the Judicial Commission so that they can load it into the database and provide meaningful information back to us. We have had to do some groundwork getting Max up to speed to be able to export that data to the New South Wales Judicial Commission and provide that to them in a format that they can use. The work we have been doing is the programming to allow that data to be extracted and provided.

THE CHAIR: Is there any trialling of that, and how is that going?

Ms Purvis: So far, it is very early days. We have provided them with some Magistrates Court data to start with, to see how that loads and looks. As I said, it is early days, but we are very hopeful that we will get a good product.

THE CHAIR: Thank you. Mr Gentleman.

MR GENTLEMAN: Thank you, chair. Minister, if I could bring you to page 30, there is a discussion there on the Galambany court. I have not heard of this court before; I wonder if you can tell us how it operates. It also refers to some funding for panel members going to the court. Can you tell us what you expect the outcomes of that funding to be?

Mr Corbell: Yes, Mr Gentleman. The Galambany circle sentencing court is an alternative to more conventional sentencing in the Magistrates Court. It provides for the involvement of Indigenous representatives in making assessments about suitable sentencing options for Indigenous persons who are convicted of certain crimes. It is designed to provide for engagement with the broader Indigenous community around how the courts impose sanctions on people who have been found guilty of a crime. And it is designed to improve the understanding of the person who is convicted of the consequences of their crime and the impact on the broader Indigenous community as well as having sanctions that are culturally appropriate to the circumstances of the offender.

The Galambany circle sentencing court was established as part of the Magistrates Court. The training for panel members was designed to support those other members of the Indigenous community who sit on the court with the magistrate. There is a circle sentencing magistrate, a dedicated circle sentencing magistrate. He or she will have with them a number of Indigenous persons, often people who are drawn from what are broadly considered to be the elders of the local Indigenous community, who provide guidance and assessment as to what the sentencing process should be and what type of penalty is appropriate for the Indigenous person. It is really designed to provide for that more culturally appropriate response to dealing with the consequences of criminal offending on the part of an Indigenous person.

THE CHAIR: We are running five minutes behind schedule, so if anyone has a shortish question—

MS BERRY: I do not have a shortish question.

MRS JONES: No; I would find it hard.

THE CHAIR: Mr Seselja.

Mr Corbell: Mr Doszpot, just before we conclude here, can I add further to an answer I gave earlier in this session. Mr Gentleman asked me about judge-alone trials. I indicated that the ACT's election rate for judge-alone prior to the reforms was around 30 per cent. In fact, I am told that for the four-year period ending 30 June 2008 it was actually 56 per cent. The next closest jurisdiction was South Australia, at 15 per cent.

THE CHAIR: Ms Purvis, thank you for joining the committee this afternoon. We look forward to hearing back from you on the questions that you have taken on notice.

I now welcome Ms Anita Phillips, the Public Advocate for the ACT. I presume you are familiar with the privilege statement that is before you and that you are comfortable with it?

Ms Phillips: Yes, I am aware of the privileges.

THE CHAIR: Would you like to make an opening statement prior to questions being asked by the committee?

Ms Phillips: I will make a quick statement about what I see as our core business—that is, dealing with guardianship for people who do not have decision-making capacity. The number of Canberrans who require decision-making substitutes or supportive decision makers is increasing exponentially. We have close on 18,000 Canberrans over the age of 75 years at the moment, and it is anticipated that that will increase to about 22,000 in the next five years. Of those, about 6,000 people, because of dementia, brain injury or strokes, will require someone else to make decisions for them.

At the Public Advocate we are working with government to try to increase the take-up of enduring powers of attorney so that people will make that decision as to who might make decisions for them if they lose capacity before they lose capacity. In fact, we have conducted education campaigns and distributed booklets in relation to that. However, if we continue to go at the rate we are going—that is, the number of people coming before the ACAT and having formally appointed guardians—the numbers for the Public Advocate will just be untenable because, as guardian of last resort, we are the only people who can care for people who have nobody else to care for them.

THE CHAIR: Thank you, Ms Phillips. My first question touches on some of the matters you have already explained. In your report you detail resource constraints that make it difficult for your office to provide the service it is designed to deliver, as we have just heard. Could you expand on the pressures that are faced by your office and inform us of how other jurisdictions where similar challenges are in place address these issues?

Ms Phillips: Certainly. The stresses are both qualitative and quantitative. The number of guardianship applications, as I have said, particularly for guardians of last resort is

increasing. Guardian of last resort is for people who have nobody who is either willing or suitable to be their guardian. In a very mobile community such as the ACT, we find a lot of particularly elderly people whose families have moved and who live somewhere else and they do not have anybody to be their guardian. So the proportion of people for whom the ACT Public Advocate is appointed as guardian is significantly high compared with other jurisdictions. And the problem is that we have no control over that. Once the ACAT decides that this person has no-one else to be their guardian, we are it. It is not a case of us being able to just take the first few reports or the first few actions; we have to take on board every single person who is referred to us as guardian.

I am not impressed with some of the approaches taken by some of the other jurisdictions. In meeting with my fellow public advocates recently, I became aware that in some jurisdictions people are actually dying before they get to see their guardian of last resort. So they go through the process of going to the ACAT, the Public Advocate is appointed as their guardian, they go on a waiting list and are not seen sometimes before they actually pass away.

We see everybody who is referred to us as guardian within two days—I think? Two days? Two weeks, in fact. But if, in fact, it is an emergency and something where we appreciate that action must be taken sooner, we would do that sooner. We have a standard that we do that.

The other part of the equation is the intense, increasing complexity of the nature of people for whom we are guardian—many people with complex and challenging behaviours, many people with complex family, social and all kinds of arrangements, and increasing numbers of people for whom we are appointed as what is called litigation guardian, which is for people with extremely complex and sensitive civil cases as well as criminal cases. As you would appreciate, someone who has nobody to be their guardian who has committed a very serious offence and who potentially might be unable to plead because of a mental illness in the meantime requires or deserves to have somebody as their guardian ensuring that their rights are protected. So that is the role we take on as well.

THE CHAIR: I have a supplementary and then I will go to Mrs Jones. You have mentioned that as advocates of last resort you are critical of some of the other jurisdictions where people actually died. We have had no such cases at this point, I presume. But how far are we from that sort of situation occurring?

Ms Phillips: So far as I am aware, the majority of those situations are where there are particularly elderly people in hospital awaiting a guardian to be appointed to arrange a nursing home placement or a residential care arrangement, and we have not had that situation. We do have people pass away; in fact, two people for whom I am guardian passed away this weekend, but we were already guardian being involved in their lives and supporting them.

THE CHAIR: We have obviously heard about your concerns, and my question is: how are your concerns addressed before we have this ultimate problem that you have referred to?

Ms Phillips: As I said, we case manage and we prioritise the guardianship clients so that if it were somebody in hospital awaiting a nursing home placement, we may not see that as high a priority as somebody who was homeless and who needed our intervention more quickly. It is possible that the elderly person in hospital might pass away before they go into a nursing home. That has not happened, and the way we address that at the moment is that the four guardians I have just have massive case loads and work harder.

THE CHAIR: Mr Gentleman.

MRS JONES: A supplementary?

THE CHAIR: Sorry, a supplementary, Mrs Jones.

MRS JONES: Please help me to understand: can guardianship work effectively from a distance, from interstate? Are their video-link-type opportunities, and have we ever looked into supporting family members to travel to Canberra to deal with these sorts of issues? Or is that just outside your ambit?

Ms Phillips: No. We have not used it as such, although we do phone link-ups quite often. So if there are family members outside the jurisdiction who want to either be involved or who want to be appointed as guardian, as can happen—you do not have to be living here to be someone's guardian—the ACAT makes every effort to contact that person and to allow them to be guardian. We have them from all over Australia, and we have had some international people.

We have not used the video link as such in that situation. It is used in the courts, and we are trying at this stage to establish a video link to use with young people from Bimberi so that they do not have to come in to attend the court but can, in fact, be present in the court via a video link from Bimberi. We believe that is a very good way of doing it rather than disrupting them, bringing them in, having them sit in the court cells all day and then returning home to Bimberi. So we are using video links quite innovatively where we can.

MRS JONES: Is that something that you would like to roll out further for other people?

Ms Phillips: Yes, I think so. We do not have it for Bimberi yet. It is about having the technology to be able to do it. It is a reasonably rare situation where we get an interstate family, but, you are right, we should try to do whatever we can to accommodate them to be part of the hearing.

THE CHAIR: Mr Gentleman, first substantive question.

MR GENTLEMAN: Ms Phillips, good to see you again. Page 5 of your report says there is a 58 per cent increase from the previous year in the number of young people hospitalised voluntarily with a mental health condition. Have you been able to understand why that increase is so large? I know it affects the work you do and the amount of effort that needs to be put in.

Ms Phillips: No, we really do not know why there is a significant increase in the community in the number of young people suffering from a mental illness. As you probably are aware, we do not have a facility in the ACT for young people with a mental illness. One is to be built, but at the moment the alternatives for young people are that they be accommodated within the adolescent facility in the acute general hospital. Sometimes they have to be specialled; sometimes they are in a single room on their own. Increasingly, too, young people of 17 are admitted to the adult mental health facility, the new facility, and neither of those options are appropriate. In fact, many young people with chronic mental illness are transferred to hospitals in Sydney which can more appropriately treat them. But it removes them from contacts and the support of their families. It is a very vexed issue to make a decision as to which way to go. But it puts pressure on the hospital and pressure on the system that the numbers of young people are increasing.

THE CHAIR: Ms Berry.

MS BERRY: I have a question about the organisational restructure. Can you give us a quick rundown on why you decided to do this restructure?

Ms Phillips: It is still in the process of being put into place. The Public Advocate Act 2005 really advanced the issue of individual advocacy that the Public Advocate in the ACT undertakes. I am advocate for people with a condition that means they could be at risk of abuse, exploitation or neglect. Since the act was introduced and I became Public Advocate, I have established three areas of concern, one of which is mental health. We deal with about 1,000 referrals annually because the mental health act says that if a particular situation occurs, the Public Advocate has to be notified—for example, seclusion or a detention order. We also deal with people with complex disabilities, and these are people particularly with challenging and difficult behaviours sometimes and disabilities. Finally, we deal with children and young people, and we are the only jurisdiction in Australia where the Public Advocate has responsibility for children and young people. So they are our advocacy areas.

I felt it was really important to separate those out from our statutory guardianship responsibilities, as I have talked about previously. The guardianship role is quite different because it is ongoing; we can be guardian for somebody for life once they turn 18. It is a much more involved and one-on-one role. So is individual advocacy, but it is about one-off issues, so where somebody with a complex disability, for example, might be placed under an order or something that reduces their human rights and detains them, they need advocacy from somebody from our office to ensure their rights are protected. They are the kinds of things that the advocacy team does, which is separate from that of guardianship.

MS BERRY: Is it the guardianship side that uses up the most resources?

Ms Phillips: No; really, they both do. I only have 13½ staff. Without me I have 12½. I have six or seven staff on the guardianship side and the rest on advocacy. But it means for advocacy that I do not have one person who is responsible for all of the children and young people advocacy, one person who is responsible for all the mental health advocacy. I have four people who are responsible for the guardianship. I have additional administrative staff and one person who is full time on the advice line, on

the telephones and taking inquiries. But both teams are pressured in terms of the workload they carry. But I guess this is part of the complexity of our community that we have to have a resource such as the Public Advocate to protect people's rights. We protect those people who cannot access or do not know how to access the Human Rights Commission because they do not have the capacity intellectually to understand that or to know that.

THE CHAIR: I will ask a supplementary on that. How many people are you underfunded by? There is a best case, but what is the very minimum you think you should have?

Ms Phillips: It is very difficult to be able to establish that. I have put in budget bids from time to time for additional staff. In terms of guardianship, the standard nationally is that guardians should only have 30 to 35 cases. All of my guardians have over 50, so if we have got 250 guardianship clients and you divide that by 35, that is about how many I need.

THE CHAIR: You have said it quite a number of ways, and without trying to put words in your mouth, if the average is 35 and you have people doing 50 cases, that is quite a workload. So where do you go from here? You have a minister sitting next to you. We could probably ask him about the underfunding in that particular area.

Ms Phillips: One of the things that I spoke about at the beginning is that we have to look perhaps at different ways of doing it. One of the ways, as I have said, is if we can encourage the community, for example, to take out enduring powers of attorney while they have capacity—everyone in this room should have completed an enduring power of attorney—so that if then they become incapacitated it is not incumbent on the ACAT to appoint a guardian and to appoint me as last resort because those decisions have already been made. There is also increasing interest internationally in having supported decision makers. We have got to look, I think, at a range of ways that we tackle this almost tsunami of potential incapacity in elderly people in the ACT because of the nature of our population ageing.

Mr Corbell: If I could just add to that.

THE CHAIR: Sure. You are going to want to appoint more people? Is that what you are going to say?

Mr Corbell: The government is always conscious of demands that statutory oversight agencies like the Public Advocate are seeking to respond to. Clearly, the budget environment is a very difficult one and there are resource constraints on all parts of government, including the very good work that is done by the Public Advocate and her office.

The government is looking closely at how we can improve the capacity of our rights oversight agencies, to describe them that way, because there are a range of functions which are performed by a range of agencies, some of which, to some degree but not exclusively, overlap—for example, between the Human Rights Commission and the Public Advocate in some areas, and between the Public Trustee and the Public Advocate in other areas. This level of overlap is, in a resource-constrained

environment, unnecessary and, indeed, wasteful of resources, given the resources that are available. These are the types of questions that, as minister, I am inclined to pursue further, to try to have perhaps an overall better level of resourcing for our oversight agencies through greater clarity around where responsibilities begin and end.

Equally, there is preventive action that can be taken such as that which Ms Phillips mentions: if people have an enduring power of attorney, there will not be a need for her and her office to act in as many circumstances. As such, it would be a relatively easy thing for most of us to do but I would venture most of us probably do not do it, because none of us—and I think it is human nature—wants to consider the prospect of being incapacitated in that way and what it might mean.

THE CHAIR: Thank you, minister. We are running eight minutes behind schedule. Any further questions at this point? Ms Phillips, thank you very much for joining us. You will be sent a transcript of what has taken place here and if there are any other questions that have not been asked, I am sure they will be sent to you as well.

I now call the Public Trustee for the ACT, Mr Andrew Taylor. Good afternoon and welcome to the third and final hearing of the annual reports 2011-2012 by the Standing Committee on Justice and Community Safety. You have the honour of being the last organisation appearing before us. Welcome. I presume that you are either familiar with or have read the privileges statement that is before you.

Mr Taylor: Yes.

THE CHAIR: Thank you. Do you wish to make a brief opening statement prior to questions from the committee?

Mr Taylor: No.

THE CHAIR: My first question is: in your annual report 2011-12 you talk about delivering on community service obligations, CSOs, while earning sufficient return to fund outgoings. You also talk about the need for the Public Trustee to access money from the public purse if the cost burden on the CSOs is to be widely distributed. What do you think is the best balance between revenue from earnings and revenue from the public purse?

Mr Taylor: I am pretty keen to keep the balance as it is. The question was asked at hearings last year—which I have quoted there in my retrospective on page 7—whether the Public Trustee would see a need to continually receive community service obligation funding indexed from year to year. The suggestion was that perhaps we might forgo that and continue to develop the commercial aspects of the business to the extent that we may not need CSO funding.

The idea of CSO funding, I understand, is that it follows a direct funding model where the whole of the community has some responsibility for putting in place the Office of the Public Trustee, not just those people who might be the users. So as much as the CSO funding was established originally around a formula that exists now, it has never been changed. There are different models in every state as to how community service

obligations should be funded.

We have actively pursued a number of areas that we feel the Public Trustee can develop along commercial lines, and have been reasonably successful in doing that, to the extent that we have never gone back in the last eight years for review of the quantum of the CSO funding. But, having said that, we feel that it should be there. What happens, then, is that if we declare a surplus at the end of the year, the arrangement we have with the ACT Treasurer is that we return 50 per cent of that to government. So it is a swings and roundabouts kind of approach, I guess. In a good year, what we receive in CSO funding we would return to the government as a surplus.

THE CHAIR: Can you quantify that a little? You are saying that over eight years you have maintained the same—

Mr Taylor: With indexation.

THE CHAIR: With indexation?

Mr Taylor: Yes. But we have developed—

THE CHAIR: Without indexation, what sort of additional income do you need to generate to cover that?

Mr Taylor: If I understand your question, we receive about, I think from memory, $700,000 in terms of CSO funding. It would cost us about three times that to fund community service obligations. So if you would like to put it that way, the commercial side of our business, which is essentially funded asset management, subsidises the cost, the residual cost.

THE CHAIR: Mr Gentleman.

MR GENTLEMAN: Mr Taylor, on page 4 of your report there is a discussion on wills. It mentions there that wills are "an important contributor to, and indicator of, potential future estate business".

Mr Taylor: Sorry, can you say that again?

MR GENTLEMAN: On page 4, it says that wills are an indicator of potential future estate business. Can you explain how that works?

Mr Taylor: Yes. We write in the order of 750 wills a year. We can only write a will where we are named as the executor. However, other people write wills and name us as the executor as well. People move overseas and do not tell us that they have moved overseas. They make other wills without telling us that they have made other wills. So there are a whole range of things that happen between the time a person writes a will and the time a person dies and we become executor.

I would say that whilst we may have 12,000 wills in a will bank, as we call it, that we wrote, that would not be an accurate indicator of the number of wills that we would be

called on to be executor for. They are a reasonable indicator but not an accurate indicator.

I guess, for us, though, the task that remains is to ensure (a) that each member of the community has an up-to-date will and enduring power of attorney and (b) that they make it with us. We are actively out there in the community ensuring that that happens.

THE CHAIR: Ms Berry.

MS BERRY: I have a question about staff and about the training you provide. I got distracted when I saw "Hot heads and cranky people training". I was impressed when reading about your learning and development section on page 71 by the breadth of training opportunities made available to your staff. What percentage of staff took up the training opportunities in the reporting period?

Mr Taylor: I would say 100 per cent of Public Trustee staff are at some stage or another undertaking some training.

MS BERRY: You make reference to learning via on-the-job experience. Is this done in a structured way, and how are staff able to access development opportunities assessed?

Mr Taylor: We are not part of the Justice and Community Safety Directorate training levy. However, we are offered some training through JACS training. For example, I did a course earlier last week which was executive training, and that was paid for by the JACS levy. Because a significant amount of our staff are involved in what we might call industry activities—financial, accounting, legal, fund management—we have always accessed training pertinent to those needs through the University of Western Sydney. More recently, that has been taken over by an arrangement that we have with an industry umbrella group called the Financial Services Council. They provide training in preparing wills, preparing enduring powers of attorney, managing estates, managing trusts and so forth. Every year there is a percentage of those people attending those, and we pay directly the cost of those.

We also have, by arrangement with the ACT Government Solicitor, three legal practitioners, two of which are practising and need continuing legal education, which we provide. We also have the same arrangement for two accountants. And we have two others who are undertaking CPA training as well. We have two people employed in fund and investment management, and they are both undertaking continuous training.

But let me just make one small extra point. We have established a group called the continuous improvement group, which is a group of non-managerial staff who look at ways and means that the office can be improved and present to me any ideas that they come up with as a group. And I challenge them to address those. One of those was a device they called "training wheels". The idea was to leverage internal training. So we might have had a person in the office who was an expert on superannuation. They would have a training session for all staff, or whoever wanted to attend, in working hours, around superannuation. We generally have one training session a fortnight. We

are also bringing in outsiders to do that. That is relatively cost neutral to do.

MRS JONES: A supplementary. Is there a particular amount of training going on around the fact that it states in the report on page 9 that there are many senior staff in the organisation reaching close to—

Mr Taylor: Sorry, I am having difficulty hearing.

MRS JONES: Sorry. In the report, on page 9, it says that there are a number of senior staff who are nearing retirement. Is this training, your training and your view of training, also associated with change management over the next period?

Mr Taylor: Yes. A major focus around that has been continuing with the Public Trustee practice manual. It has been an ongoing process, obviously with a continuing focus on what we do. The idea is to make knowledge a workplace asset rather than a personal asset, so it is an ongoing task. You could probably say that it is 80 per cent complete, but it is a mammoth task. We have already lost some of those experienced staff. We have got a reasonably good succession plan in place with people in key positions already acting and training in those senior positions as need arises. So yes.

THE CHAIR: Okay. Substantive question, Mrs Jones?

MRS JONES: Yes, thank you. Page ix of the chief executive's report states that other strategic initiatives during the past year include fund initiatives in GreaterGood. Can you please provide an update and explanation of the work of GreaterGood?

Mr Taylor: Yes. GreaterGood was established by the Public Trustee in 2003. Its reason for existence was to provide people in the community with an opportunity to be able to express charitable and philanthropic aims. After the bushfires, we acted as the trustee for the recovery appeal, and it gave us a belief that we could establish such a fund and that we had all the inputs needed in an organisation to be able to run a fund like that, a foundation like that, at no extra cost to the organisation.

The other pressing imperative in developing that foundation was that, in sitting down and having a will conversation with a client, we are often asked whether we could advise them on how they might make provision for a charity in their will, or we might ask the question ourselves. We do not recommend charities, but people often ask for a more tax effective way or a more certain way, with a lot of discussion that you see in the media these days around the middleman taking a bigger slice of the charitable pie.

So we have enabled people to set up funds. We have got 65 funds under GreaterGood at the moment, typically people who have made their wills and set up memorial funds under those wills. We ended the last financial year with about $9.6 or $9.7 million. I think today it is $11½ million. We are running the JACS Directorate workplace giving scheme, which would be approaching about $95,000. That has been running for about three years. These are endowment funds. The funds keep accumulating and we just distribute the interest.

Let me give a few other statistics. We are in our 10th year this year. We have distributed $2 million into charity in the ACT community, and we are generally

putting out about $400,000 a year. So ultimately, if the maths works out the way it should, we will distribute a hell of a lot more in the community than people have donated into that fund.

THE CHAIR: I have a supplementary on Mrs Jones's question. There is another organisation called GreaterGood in Canberra—is that correct? Looking after the homeless?

Mr Taylor: Not that I know of. No. I was not aware.

THE CHAIR: No?

Mr Taylor: There are other "Greater Good" groups in Australia, I think.

THE CHAIR: No; in Canberra specifically.

Mr Taylor: I was not really aware. It has not become a problem if there is.

THE CHAIR: My final question to you, Mr Taylor, is this, and I think this will probably see us out for the afternoon: the major challenges that you identify in your report are misunderstandings in the community about the work of the Public Trustee and the products you offer. Can you update the committee on how you are faring in your work to achieve a better understanding of your work in the community?

Mr Taylor: When I first took on the position of Public Trustee, the head of the Law Society at the time asked me out and said to me, "Why do you compete with the Law Society?" I said that I did not believe that we did. He said, "Well, you're writing wills." I said, "Yes, but we are only writing wills where we are the executor, and we understand you don't want to be executor."

In the next several years it was evident that there was a prevalent view in the community, particularly the legal sector, that the Public Trustee was competing. There was, I think, a strong misunderstanding about what we did and how we actually work beneficially with the legal profession in what we do. That has been addressed quite well in the last three to four years. We have a board of the Capital Region Community Foundation, GreaterGood. We invited the executive director of the Law Society to be a member of that board, through which he has been able to promote the Capital Region Community Foundation into his member offices, which was specifically what we wanted him to do. And he himself has already set up a Law Society foundation under GreaterGood. We now feel, through that, that the relationship we have got and the understanding people have in that sense are significantly better.

Also, I think that the Public Trustee as a term is not a fridge magnet kind of thing. It is an unfortunate name to have in an organisation, because it does not suggest to anybody what we do, and "trustee" is a very broad term. What we did when we rebranded was design a logo that included the words "Wills, estates, powers of attorney, trusts". They appear now on everything we do in publicly developing the organisation.

THE CHAIR: Any supplementaries? No. Mr Taylor, thank you very much for

joining us this afternoon. You will receive a full transcript of what has taken place here. There may be some other questions that may be forwarded to you, and we would appreciate something back on them.

Minister, thanks to you and your departmental officers for joining us and for the conduct of this hearing.

The committee adjourned at 4.59 pm.