



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**STANDING COMMITTEE ON JUSTICE
AND COMMUNITY SAFETY**

(Reference: [Annual and financial reports 2012-2013](#))

Members:

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

TRANSCRIPT OF EVIDENCE

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WEDNESDAY, 13 NOVEMBER 2013

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

By authority of the Legislative Assembly for the Australian Capital Territory

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

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Amended 20 May 2013

The committee met at 10.29 am.

Appearances:

Rattenbury, Mr Shane, Minister for Territory and Municipal Services, Minister for Corrections, Minister for Housing, Minister for Aboriginal and Torres Strait Islander Affairs and Minister for Ageing

Justice and Community Safety Directorate

Leigh, Ms Kathy, Director-General

Mitcherson, Mrs Bernadette, Executive Director, ACT Corrective Services

Field, Ms Julie, Executive Director, Legislation and Policy Branch

THE CHAIR: On behalf of the committee, I would like to extend a welcome to witnesses and to those in the public gallery. This is the second of four public hearings for the justice committee's inquiry into annual reports for 2012-13. Today we will hear from the Minister for Corrections and his officers; the Official Visitor; the Sentence Administration Board; and the ACT Electoral Commissioner.

I ask witnesses to familiarise themselves with the privilege statement. I presume you have been here often enough to understand that fully. Minister, would you like to start with an opening statement?

Mr Rattenbury: No; I am happy to go straight to questions, thanks.

THE CHAIR: In that case, my first question is this. Minister, on page 108 of the Justice and Community Safety Directorate's annual report for 2012-13, the report states that persons required to attend periodic detention are able to access alcohol and drug rehabilitation programs while in periodic detention. What programs are there available, and what is the success rate?

Mr Rattenbury: I will ask Mrs Mitcherson to speak to the details of that.

Mrs Mitcherson: In the PDC we have scaled down some of the programs because we have no control over the cohorts coming into custody in relation to whether they are all coming in with drink-driving. The myriad of offences is so broad that we have just scaled back and are relooking at that area. For example, we might have 40 turn up on a weekend and only a few of them might be alcohol and drug related offences; we could have some for sexual assault offending or assaults. You do not get the dynamic, so we are looking at other ways to provide services in that area.

The other issue with the PDC for us is that there is no supervision component. We are having discussions about supervision components for some categories of offenders which could require them to do some things during the week as well. Some of our clients in the PDC are there with a combination sentence. They may have done their head sentence full time in custody; it is not uncommon for someone to do, for example, six months custody and three months PDC, and even then it is possibly followed by a good behaviour bond. We are fortunate that they do start some courses in custody; we run the same courses in the community as well.

THE CHAIR: Can you reflect on the success rate of the course?

Mrs Mitcherson: That is a very broad question and what we have been looking at in our programs generally in relation to our risk assessment. The committee would be aware that we do a level of service inventory which measures risk for our clients. That actuarial tool has been developed for a couple of decades now and there is ongoing research around that across First World countries that use this. I might say that all other jurisdictions in the country use the same tool or a variation. What the research is telling us now is that if someone comes in on a first offence or is on a very low rate of reoffending, the literature says: "Don't put them in a group, because you don't want them with people who have more offending behaviours around them." For example, we know that if someone comes in on a drink-driving charge, for a first offence, 80 per cent will never offend again. The idea is that you cannot really do much for that person. If someone comes in on a second one, we are more likely to then say, "Okay, we need you to do a sober driver course or the readiness program."

So there is a lot of work being done. We are reviewing all our program content. I have just authorised our manager to review our sex offender program with an external person to make sure we are still on track for those kinds of things. I probably should talk a bit more about the fact that there is a difference between the criminogenic programs and some that are more about information, social skills and instructive things, that kind of stuff. That gives you a broad answer.

THE CHAIR: Yes.

Mrs Mitcherson: Being a small jurisdiction, we often depend on information from large jurisdictions in terms of evaluation. For example, the sober driver course has been evaluated a couple of times in New South Wales. They have got a big area. The success rate for that course is very high, and they are happy to share that evaluation with us. We certainly piggyback off the larger jurisdictions in relation to their research around programming.

THE CHAIR: And a final question: you mentioned that some of these programs can continue after they leave the confines of your area. Is there any contact with those people? Is there any onus on them to continue or it is purely at their discretion?

Mrs Mitcherson: Yes and no. If they have got a continuing order, and they may have started, for example, a program, that can become a condition of parole or something that the board might consider on release. Or with the through-care unit now, we actually offer that to clients coming out of custody who may not have an order. We are finding that the take-up is quite large, so then you can engage them in other things, with other organisations. So there are a number of ways that we can encourage people to actually partake in courses or activities and link them with organisations that might help keep them out of custody, so to speak.

THE CHAIR: Thank you.

MR GENTLEMAN: I have a supplementary to your question, chair.

THE CHAIR: Yes; certainly.

MR GENTLEMAN: You mentioned that on the DUI cases 80 per cent will not reoffend.

Mrs Mitcherson: Yes.

MR GENTLEMAN: How does that compare with other jurisdictions?

Mrs Mitcherson: That is research done across jurisdictions, not just in our jurisdiction. We look at that literature. If it is the first offence, particularly for the lower range, the person is usually embarrassed and really wanting to make amends. So what we are finding is that for a first offence, people do not usually offend again. Just being before the court can be quite embarrassing for many people. With those that go on and do it again—for a second offence—you would definitely want to make a referral to a sober driver course or something like that.

MR HANSON: Supplementary.

THE CHAIR: Yes.

MR HANSON: Do you have any statistics on recidivism more generally—not just drink-driving, but are you tracking recidivism rates and seeing how that is progressing?

Mrs Mitcherson: Recidivism is a really interesting question. At the moment, we do report in ROGS. The rules around that reporting structure, the ROGS rules, are agreed upon by all the jurisdictions, so there is a level of consensus around what we count and how we count it. But it is a very raw figure, and it is not always a good figure, particularly for small jurisdictions.

Some of the work we would like to do going forward is to actually think about things a bit differently—for example, if someone stays out of custody, what might have kept them out of custody. For example, with the through-care program, in which we started taking clients on 1 June, we currently have—I checked the data before I came across—67. Sixty-one have not gone into custody; six have gone back into custody. But in that 61, if I just use one client as an example—it might sound as though it does not mean much, but there is one client who has been out for three months and in his whole adult life he has never been out for more than three weeks before. So, going forward, we want to look at different ways of actually counting what a success might be.

Recidivism is also about stopping future victims. If this person has been out for three months instead of normally three weeks, that is a win. He might still go in for a short period, but we are seeing the foundations for him to stay out even longer.

MR HANSON: But in terms of the raw data, how is that comparative to other jurisdictions and how is it comparative to—I do not think you recorded how it was when prisoners were sent to New South Wales?

Mrs Mitcherson: No, we did not have the data that you asked about last time.

MR HANSON: But what is it recording? In terms of percentages and so on, how are we going in terms of those national trends for ROGS?

Mrs Mitcherson: In terms of recidivism data?

MR HANSON: Yes.

Mrs Mitcherson: Last year we were in the ROGS—I can get the comparison figures—we were about mid-range. This year we are reporting a much higher recidivism rate, which is 46 per cent.

MR HANSON: Why is that? Do you know?

Mrs Mitcherson: We have had a bit of a look at that. I think I have talked to the committee before about this. The ACT, in terms of imprisonment rate per hundred thousand, which is a sort of general counting figure, is the lowest in the country. Notwithstanding our recent increase, I think we will still be the lowest, because nationally we are seeing an increase. I think this financial year Victoria has gone up about 700. So this is a national phenomenon at the moment. But the ACT is still low, which means that when you do that measurement of risk, the ones that we are getting into custody are medium to high risk. That means their needs are much more complex when they are coming out so they are harder to manage in the community.

The other thing I would say is that for a small jurisdiction—when we got the higher figure this time around, we noted that the number of those coming out with supervision was about 15 per cent higher, I think, than it had been in the previous year. What the literature does tell us is that if someone is coming out with supervision, particularly in a small jurisdiction where everyone knows everyone, particularly in small circles around offending, they are more likely to be picked up by the police. They are more obvious so it is more likely that they are going to be picked up again if they are under supervision than in a big town like Sydney or Melbourne, where people coming out with supervision generally are not so visible and can manage to get through a supervision period without being caught for another offence.

MR HANSON: Sure. On page 115, there is talk about a report that has been done or reviewed by John Walker.

Mrs Mitcherson: Yes. I engaged John this year and last year just to review our figures to make sure they were correct. That is just a small piece of work. I want to work with him to understand what the drivers are for our imprisonment in the ACT so that we can better understand that going forward. It seems a corrections issue, because they are with us, but the fact is that there are a lot of other drivers that bring people into custody, and we want to understand that a bit better. So we are looking at a whole lot of statistical information; he will have a look at that and then we will come together and have some discussions about what might be influencing the numbers. For example—

MR HANSON: John is the same bloke that told you you needed to build a jail that was 414 strong, yes?

Mr Rattenbury: What is your point, Mr Hanson?

MR HANSON: I am asking if it is the same guy.

Mr Rattenbury: Yes; it is the same gentleman.

Mrs Mitcherson: Yes.

MR HANSON: All right. Last time you commissioned him to do a review, he said you needed to build a jail that was 414 strong. You have now re-engaged him to look at recidivism rates. Are you going to take his advice this time or not?

Mr Rattenbury: That is why we have commissioned Mr Walker, because we believe he has the expertise to provide us with information in this area.

MR HANSON: Sure, but the last time he provided you with that expertise the government chose to ignore it.

Mr Rattenbury: That is a statement, Mr Chair. I will let Mr Hanson make his statements.

MS BERRY: I have a supplementary, chair.

THE CHAIR: Yes.

MS BERRY: I notice from page 114 that the reoffending rate is used as a key indicator for success. This is what we have been talking about here. Whilst I think that is important, it does miss some of those positive stories. You touched on one of those. Is there data being collected that includes the rate of community or work force participation amongst ex-offenders?

Mrs Mitcherson: Workforce participation is interesting. Most of our offenders that are coming out of custody with the through-care unit—I have to say that the majority have never worked in their life, nor have they had adults around them who have been role models in that area. We do have some who work. They need a lot of support. We are providing that support ourselves and through other agencies. Sometimes just getting economic stability and making sure they are getting the right benefits can be the best start. For everyone in the through-care unit we are keeping data on who has got a job and who has not got a job. It is very basic. And certainly we are keeping information on, for example, how long someone is staying out of custody and how many episodes they had in custody beforehand with us. We are keeping a dashboard sort of database, and hopefully we will build on that over time.

But the ROGS counting rules for recidivism are much more suited to larger jurisdictions. You have to have rules for all jurisdictions, because that is the way it is. But I think there is a need to drill down further. Even in the larger jurisdictions, where resources are scarce, you want to make sure that you are focusing your programs in the area of priority need. We really want to focus our resources on those who have a medium to high risk of reoffending. That is probably most of our clients in custody,

but that is what all jurisdictions are looking at, because they are all short of resources. They are starting to drill down a bit further to see how many went through a particular program and whether it had an impact.

MRS JONES: I have a supplementary to that as well.

THE CHAIR: Certainly, Mrs Jones.

MRS JONES: Is parole being granted at a higher rate over the same period as the increased recidivism rate that we are seeing? Is it a direct correlation to parole, and is that being affected by the circumstances at the prison at all?

Mrs Mitcherson: I cannot give you a direct bit of data on that, but I can say to you that, for example, the six that have gone back in that were part of a through-care unit were for parole breaches. One has reoffended, and they have been charged. But I think it is dangerous to say that—it is important that we do breach when it is appropriate. Some of them are coming out who have been in custody a long time and are serious offenders; we have to take the conditions of their parole very seriously.

MRS JONES: Yes.

Mrs Mitcherson: We do also do a lot of work around trying to encourage staff. Sometimes with a breach we might only want a warning. It might be a warning because it might be a low level breach. But with something more significant, we would want to breach straight away. With parole, with our reports to the board, we are looking at that all the time and we are reviewing to make sure they are pertinent—to give the right information in terms of whether someone is completing programs, whether they have victim empathy, whether they are really showing the kind of effort in custody that you want to see for someone who is going before the parole board. And parole is a privilege, of course; it is not a given or right.

MRS JONES: But are the parole rates increasing at present? Or can you come back to the committee with that information?

Mrs Mitcherson: I will take that on notice and have a look at that.

MRS JONES: It would be good to see it over the last three years.

Mrs Mitcherson: Yes.

MRS JONES: As operations have gone on and as circumstances have changed in the prison—how that has affected parole would be good to see, thank you.

THE CHAIR: Mr Gentleman, your substantive question.

MR GENTLEMAN: Thank you, chair. Minister, I bring you to page 22 of the report. It shows an increase in referrals to the Galambany court. Can you tell us what effect this increase has had for the Indigenous community and its relationship with the criminal system?

Mr Rattenbury: Thank you, Mr Gentleman. That predominantly sits with the Attorney-General. Ms Leigh, do you have anything additional?

Ms Leigh: If you would like some information on that, I might ask Ms Field to come up and speak briefly about it. Of course, when the attorney appears later, that would be the time when we would expect to discuss this.

MR GENTLEMAN: Sure.

Ms Field: You asked about an increase in referrals to Galambany court?

MR GENTLEMAN: Yes.

Ms Field: We have been doing a lot of work to promote the Galambany court. There has been a community review of it. We are implementing new governance arrangements around it and we have got a new Galambany court magistrate. The increase in referrals is partly about recognition of the court, and a lot of it is about it being seen to be a worthwhile process for members of the Aboriginal and Torres Strait Islander community.

MR GENTLEMAN: Okay, thank you.

THE CHAIR: Mrs Jones, substantive question.

MRS JONES: Just going back to the situation in the AMC with the number of people that we have, on pages 106 and 237, human rights are dealt with. The report states that the philosophy underpinning the design and operation of the AMC focuses on detainee rehabilitation, detainee health and wellbeing as well as human rights. How do the current levels of overcrowding impact on the operation of the AMC in relation to the human rights objectives, and how do the current levels of overcrowding impact on the detainee rehabilitation in relation to human rights objectives?

Mr Rattenbury: I think the answer to that question, as I have explained in the Assembly before, is that the current population numbers at the AMC have put some pressure on the facility. At the same time, the management and staff have responded by increasing effort in a number of areas. I can say that detainees are still attending their programs. There has not been any impact in that regard. In terms of your question of both rehabilitation and health, I am not aware of any circumstances where the current population numbers have prevented people from attending a program. It has required adjustment around the transfer or the escorts of prisoners between areas and some additional effort on that front to ensure safety and security, but people are continuing to access their programs.

MRS JONES: Given that the human rights commissioner has stated that she would really like to be able to do an investigation into the human rights situation at the AMC as the numbers increase, is a human rights audit on the cards? Is it necessary for the AMC or would you like to see that occur? Are you trying to get some funding to allow that to occur through the human rights commissioner? At the moment she is only able to deal with the women, and that is obviously in the cottage facility. But the overcrowding seems to be predominantly in the bunk area.

Mr Rattenbury: Yes, as you have noted, the human rights commissioner is currently conducting an audit into the female detainee population. ACT Corrective Services has been very cooperative in that. It has actually taken quite a lot of effort to provide the data and all of the information that the human rights commissioner has sought. That report is not due till either later this year or early next year, so I am still awaiting that. I think that is quite important we get that one completed first.

In terms of the comments that the human rights commissioner made last week, I have noted those comments. I am quite open to the human rights commissioner conducting an audit. I should say, though, that the AMC is subject to a range of oversights. We have the Official Visitor, who reports me to quarterly. Detainees have access to the human rights commissioner for individual complaints. I should note at this point that human rights complaints have actually gone down. The data shows that in recent times individual complaints have gone down. They have access to the Ombudsman and a range of other oversight mechanisms.

So the AMC is receiving a high level of scrutiny. You may also be aware there have been a number of major reports over the last three or four years since the AMC opened. I particularly reference what is commonly known as the Hamburger report, which, if I recall correctly, had around 133 recommendations which the government committed to implementing and has essentially implemented.

MRS JONES: I just ask again, though, have you sought any support from the minister responsible or are you seeking funding to allow the human rights commissioner to do that work? I understand that complaints are down partly because the commissioner has been doing an education program in the prison. She said she has been putting up posters, explaining what her role is.

Mr Rattenbury: Yes.

MRS JONES: So that does not necessarily mean there are fewer issues. Obviously everyone is trying to do the best they can, but the question I am asking is: are you seeking to find out if there are any issues with human rights compliance or if there are issues on the horizon with human rights compliance as single rooms turn into bunk rooms?

Mr Rattenbury: You have made an interesting causal relationship there between the fact that the human rights commissioner has increased her level of education and the number of complaints has gone down.

MRS JONES: She has claimed that; I have not claimed that. That has been her explanation.

Mr Rattenbury: Well, that is interesting, and we can have that discussion. But I think it is better to have that with the human rights commissioner.

MRS JONES: Sure.

Mr Rattenbury: Your essential question is: are we going to have a human rights

audit of the AMC?

MRS JONES: For the men.

Mr Rattenbury: For the men, yes. The answer to the question you are asking is that I am happy for that to take place. It is the Attorney-General's responsibility to resource the Auditor-General.

MRS JONES: And have you had that conversation?

Mr Rattenbury: I have not had been able to speak to the Attorney-General since the human rights commissioner raised that point last week, in part because he is on leave at the moment.

MRS JONES: Okay.

Mr Rattenbury: I just have not had a chance to have the conversation.

MRS JONES: Are you intending to have that conversation?

Mr Rattenbury: Yes, I am.

MRS JONES: Excellent. And will you be able to report back in some form to the committee what the outcome of that conversation is or that intention?

Mr Rattenbury: I do not believe so, not in the time frame the committee is reporting in.

MRS JONES: We will follow it up through other means.

Mr Rattenbury: Yes, that is fine. It is obviously a matter for budget processes and the like. I am just not sure what the time frame on that will be.

MRS JONES: So he is not around, so you have not had that conversation yet?

Mr Rattenbury: No. I mean, he was here for part of last week. I just did not see him.

THE CHAIR: A supplementary, Ms Berry.

MS BERRY Some of the reasons people cited for having the need for a correctional facility in the ACT was keeping families together. But having read about the conditions in the Goulburn jail, I was wondering whether you could offer a perspective on the other benefits of the AMC's approach to detention, and have any of you ever been out to Goulburn and can you make a direct comparison?

Mr Rattenbury: I personally have not been to Goulburn.

Mrs Mitcherson: I have.

Mr Rattenbury: Yes, I am sure my colleagues have, so I might ask them to comment.

Mrs Mitcherson: Thank you for the question. Look, I have been to Goulburn jail as part of an area I looked after in my previous job. I have probably been in most jails in New South Wales bar a couple. Goulburn jail is a maximum security jail, and within that jail there is what is known as a super max, so it is a jail within a jail. There is also a low security part of that jail which is often not talked about. It is minimum security, where they do work release when people come out. So it has some similar things and programs, as do all the jails. But it caters for, in the maximum part, even separate to the high security wing, some quite intractable clients. The less intractable ones would possibly go to other areas. Certainly, there are a lot of local people, so they try and move people around, even in New South Wales, to be close to where families are. But I think, also you would have families travelling from Sydney to visit people in Goulburn or other parts of the state. So, in terms of the AMC, it is certainly much less arduous for people to visit. Although, having said that, we have clients in custody who have come from other parts of New South Wales, particularly in bush areas. We sometimes have families travelling for a few hours to have a visit.

But, certainly, the recent report that SHINE for Kids produced with Australian Catholic University—and Mark Bartlett, our program manager, was on the program overseeing that research—indicated that mothers and children who were interviewed felt that the visitors area was much more friendly for families. And we try and have that environment where children are not too exposed to a surrounding that might be considered a bit harsh. We certainly have a childcare worker there through SHINE for Kids three days a week. In the school holidays we have programs for parents and children. SHINE is an organisation that is very good at getting corporate funding, and they have just got some funding from the Commonwealth Bank, I believe, for a transport program to help parents with access visits for children where there are issues with parents who are not together and they need transport access.

I think we do our best to try and make it as friendly as possible for families in terms of the equipment we purchase in having a play area and barbecue packs available to make it a bit more family orientated.

MS BERRY: Have you had feedback from the clients' families on how the SHINE for Kids program is going and the visiting area and how that is working?

Mrs Mitcherson: They do love it. I mean, I worked with SHINE for Kids in the '90s when I first joined corrections, so I have known the organisation for a long time and I invited them to join us in the ACT a couple of years ago. A lot of our clients who have been in New South Wales actually were aware of SHINE activities. The feedback is very positive. And we always get good feedback from SHINE staff about our staff as well—both custodial and non-custodial staff. I think it is an important part of our programming and suite of services.

MR HANSON: I have a supplementary: is the jail human rights compliant?

Mr Rattenbury: What sort of measure are you looking for on that, Mr Hanson?

MR HANSON: Well, I recall that the human rights commissioner did an audit of the Belconnen Remand Centre in—

Mrs Mitcherson: 2007.

MR HANSON: and deemed that it was not human rights compliant. The principle underpinning the AMC is human rights compliance, and, so, the verbiage used was that this would be a human rights compliant jail. So I am asking the question: is it human rights compliant?

Mr Rattenbury: I think the answer to your question is twofold: the first is that there is a strong commitment from ACT corrections to have a human rights compliant jail. That plays out in the day-to-day operation of the facility—there is a strong management commitment, a strong government commitment and a strong staff commitment to having a human rights compliant jail.

As to the second part of your question, with the human rights commissioner currently looking at the situation for our female detainees, I think we will get some good external measure of that in the next few months when the human rights commissioner reports.

MR HANSON: In your view, minister, having been the minister for a little while, is the jail human rights compliant?

Mr Rattenbury: I think the jail strives to be human rights compliant. I think it goes a long—

MR HANSON: It may strive, but I am sure all jails strive to. I am asking: is it?

Mr Rattenbury: Yes, I was finishing the sentence, but we will get there. I think the jail goes a long way to achieving that. I think the comments Mrs Mitcherson just made about the family visits, for example, is illustrative of that. I think the commitment to minimal use of force within the facility reflects very well on that commitment to human rights. That said, I am sure there are areas where there is always room for improvement. I have no doubt about that. There will be times when incidents will happen where we will reflect on those and perhaps look at better ways to do them. I do not think it will ever be perfectly human rights compliant in that broad sense. Expectations will change.

I am going to clarify this now, because, having just uttered those words, I am sure they are going to be thrown back at me at some point. But circumstances will change, expectations will change. There will be different views on exactly what human rights compliance is. So I think there is probably not a definitive answer to that question.

THE CHAIR: Ms Berry, a substantive question.

MS BERRY: There is a community organisation in my neighbourhood that has benefitted from the assistance of people undertaking community service orders. Can you elaborate on the kind of work that people undertake when participating in those community services orders?

Mrs Mitcherson: Thank you for the question. They do a range of activities. We often

get letters from members of the community or organisations thanking us for the work. Some of our clients are more suited to working individually, so we would probably have over 40-odd organisations that we provide community service clients to—a range of non-government agencies or charities. We also do home help and we take referrals for home help. So it might be someone who wants to maintain themselves in their own home but the garden has just got over the top of them, so we will do some cleaning around there. We do a lot of work in regeneration around Tidbinbilla and those sorts of areas. So it is quite varied. We have some go out in groups because they need a little bit more supervision and are more suited to a group activity. Very much along the lines of labouring and clean-up work. Individual work for organisations and charities and for individuals to assess them as well.

MS BERRY: How are your clients kept safe and how are the community organisations that you support kept safe as far as healthy and safety is concerned.

Mrs Mitcherson: We certainly do assessments of the areas we are going to do work on. So, for example, if we get a referral for a home help, there are certain things we can and cannot do. For example, we do not do high tree lopping. We only sort of lop low limbs. So there are certain parameters that we will take referrals for, and that is managed. Staff will go out and do a site assessment as well. We do training around occ health and safety. People have to work with certain gear for doing certain jobs. Some NGOs or charities will not want an offender who might be harder to manage, so we might put them into a crew.

MS BERRY: Is the insurance taken out by the government or the AMC or is it taken out by the community service organisation?

Mrs Mitcherson: That is a good question. I might have to take that on notice.

MS BERRY: Okay. Is there an emphasis on the work that we are doing on building skills for those people so that—

Mrs Mitcherson: It is more repatriation to the community for the offence. I would not necessarily call it building skills. Having said that, some of them have never worked before. So they do get a sense of satisfaction, particularly if it is an organisation that is really quite dire or an elderly person who is really grateful. It does provide a sense of satisfaction. I am not going to pretend to you that some of our clients do not need a bit of chasing up and a bit of encouragement. That is the reason they are getting an order—because they have got pretty chaotic lives, many of them. So it is more repatriation to the community for the offence as opposed to a skills base.

MS BERRY: One final question: you said there were over 40 organisations that participate. How many individuals?

Mrs Mitcherson: I think it would be close to 250, 300? Three hundred, give or take. It goes up and down all the time.

THE CHAIR: Mr Hanson, a substantive question?

MR HANSON: Minister, could you advise where we are at in terms of addressing the

pressures from overcrowding? You were having a number of round tables. You floated a couple of ideas. I note that there is some money in the budget for progressing further accommodation. Can you update us on where you are at with that?

Mr Rattenbury: Yes, in summary I think there are three parts to the answer to your question. One is the immediate needs, and I have spoken to some of those in response to Mrs Jones's question around just dealing with the current population. I can inform the committee that the head count today is 329; so it has dipped a little bit, which has eased some of the pressure. So there is that sort of immediate response issue.

I have convened the first of the stakeholder round tables, which was attended by key government justice stakeholders in the ACT—ACT Policing, legal aid, the Director of Public Prosecutions, the heads of a number of key government directorates in this area. That raised a number of suggestions. Justice and Community Safety are now looking at the viability of those. I am happy to go into more detail on that.

MR HANSON: Yes.

Mr Rattenbury: The third area is the expansion, which will take a couple of years to come on stream. In broad terms, that is the three ways in which the current pressures are being dealt with.

MR HANSON: Can you go to some of the detail of some of the ideas that have been floated? I did hear one about community release. That one made the media.

Mr Rattenbury: Yes.

MR HANSON: Using tracking bracelets; and also in respect of that third stage, where are we at in terms of forward design?

Mr Rattenbury: Yes. In terms of the round table, there were a number of issues flagged for further consideration. That included things like increasing capacity. There was a lot of discussion about actually the steps to be taken prior to that so that people did not end up in jail. There was a lot of discussion with the Community Services Directorate and the Office of Children, Youth and Family Support about things we can do to actually prevent people ending up in jail in the first place. Certainly alternative sentencing options such as home detention and electronic surveillance options were canvassed, as were things like intensive community orders—a range of those alternative sentencing options.

As I think I was quoted in the paper as saying—I will be clear here—those things may not prove to be suitable. Certainly, Mrs Mitcherson has talked about the nature of the clients we have who tend to be in the medium to high risk category. There are question marks around whether the options such as electronic bracelets, for example, would be suitable for that cohort of detainees. So at this stage my position has been to be open to all of the ideas that were raised but to give no commitment to implementing any of them until there is further research on the suitability and the viability of them for the ACT.

MR HANSON: And then the third stage, which was the accommodation?

Mr Rattenbury: Yes, in terms of the steps for the expansion, that has recently gone to tender. Those tenders close in a couple of weeks. Basically, we are at a point where the government has provided \$3 million in the budget for the final sketch plan of a 30-cell fast-tracked special care facility and a further 56-cell cell block expanded capacity.

MR HANSON: In respect of that first one, when do you anticipate that that would come online?

Mr Rattenbury: I do not have a definitive time frame at this point. The tender process is out at the moment. The intent is to do that as quickly as possible and then essentially a sequential process of doing that one and then doing the next one.

MR HANSON: If you extrapolated the increase in prisoners out of the current trend, you run out of space pretty quickly, I would imagine. So it is a matter of trying to build before—

Mr Rattenbury: Which extrapolation is that?

MR HANSON: There has been a recent increase in the number of prisoners.

Mr Rattenbury: Yes.

MR HANSON: If that were to continue, I would imagine, based on the comments you have made previously, that there is a risk of running out of accommodation. I assume that what you are trying to do from what you have just said is build a sort of first stage of the accommodation to meet the emerging need and then build something down the track for future capacity. Is that—

Mr Rattenbury: I guess that in terms of planning for the future, which essentially is how I understand the question, as part of the design process there will be continued updating of prisoner capacity projections to validate those design decisions. That will be an important part of that. The facilities are being designed with greater flexibility to allow for a range of scenarios. So the cell block which I referred to will be done in, essentially, a hub and spoke design. One of the key pressures at the AMC is, of course, separation and different classifications. So it seeks to maximise the flexibility of facilities so that as cohorts change we are able to cope with that.

The intent is to continue to monitor those numbers. The other thing I would add is that the cell block will be done in what is sort of called a modular way, such that the design will be there and if a further module is needed, a further module can be built without needing to go back to the design phase.

THE CHAIR: Supplementary, Mrs Jones.

MRS JONES: Yes, as a supplementary to that, you mentioned people not ending up in prison as obviously a preferred option.

Mr Rattenbury: Yes.

MRS JONES: One of the issues that we have been canvassing with the Minister for Women is the closure of the Women's Information and Referral Centre, which was a non-custodial option for judges to use as an opportunity for women to do some courses or something instead of going down the custodial path. Do you have any information about that? Are you concerned about that? Have you thought about that or raised it with the minister?

Mr Rattenbury: I have never understood the Women's Information and Referral Centre to be a non-custodial option for the courts.

MRS JONES: Right.

Mr Rattenbury: I am happy to be corrected on that or to seek further comment, but there are sort of blank looks around the table—

MRS JONES: It is interesting, because that is information I have had from the community. Whether that was not true or not, I am not sure. But I would be very interested to know. If women were being asked to attend courses on relationships or negotiation or better outcomes, and that is being taken away, then I am really concerned that we are losing non-custodial options. So can someone come back with that information?

Mr Rattenbury: I do not think we can in the sense that the operation of the Women's Information and Referral Centre—let me clarify that.

MRS JONES: Yes.

Mr Rattenbury: Firstly, my understanding—you should talk with Minister Burch more about this—is that it is a changed model. I understand the minister's argument is that those services are being provided in a different way in the community.

MRS JONES: The minister said to us—she has basically clarified that she does not have a plan for the delivery of those services yet.

Mr Rattenbury: Right.

MRS JONES: She may in the future, but I am still concerned about the interim.

Mr Rattenbury: I cannot comment further on that. You have obviously had a detailed conversation with the minister. What I will check and come back to the committee on notice with is whether that is being used as any part of the corrections system.

MRS JONES: And perhaps the whole suite of non-custodial options for women, because I would be very interested in what they are. Do I need to put that question to another minister?

Mrs Mitcherson: I am not sure if I can absolutely answer your question. But sometimes when someone is charged and they get a court date, often they will engage

in or become involved in a program. The court will consider that when they go before the court. The court may, for example—I think there was something in the paper today about someone who was given an opportunity because they got a job and they were doing a course. It may be not so much a formal diversion program but it may be something that their defence might have put up. The defence might say, “My client is engaged in a program.” I am talking about men and women.

MRS JONES: Yes.

Ms Mitcherson: Sometimes the court will take that into consideration for a sentence to see how they are going. So maybe that might be what you are talking about. I do not know if that is what you talking about.

MRS JONES: Okay; I will keep digging. Thank you.

MR HANSON: Further on the capacities—

THE CHAIR: Supplementary, Mr Hanson, is it?

MR HANSON: Yes, thank you, Mr Chair. The Walker report said that the capacity just in 2009 would need to be 414, I think it was. Rengain Consulting was saying that the capacity now needs to be up around 480. Even the Treasury advice was showing that the capacity needed to be 374. That is what the original plan for the jail was. I know we have been through this exercise before, minister, but have you, as a result of my previous questions, investigated why it is that we just built this jail too small? Based on all the advice, do we understand why?

Mr Rattenbury: Yes, Mr Hanson, you have just cited a series of numbers. I would be interested in the exact source of them. For example, are you referring to the Walker 2001 scenario or the Walker 2003 scenario? That would be helpful if you could clarify that.

MR HANSON: Sure, I suppose whichever report you look at, all the advice—

Mr Rattenbury: You just cited some numbers; so it would be useful to know where they have come from.

MR HANSON: Sure. I can get you that specifically if you just bear with me. In the 2002 predictions, I think we had 374 in total.

Mr Rattenbury: For which year was the 374 prediction?

MR HANSON: Over the end of 20 years, I think. It was the 414.

Mr Rattenbury: I want to clarify it so that we can have an accurate conversation.

MR HANSON: Sure. Look, I have got all these figures, and you have seen them—

Mr Rattenbury: And you spread them around freely, but what are we actually talking about.

MR HANSON: What I am talking about is the fact that you had a number of reports. This government received a number of reports that made it very clear that the capacity of the jail would need to be significant more than the 300 that was actually provided. I am asking you if you have investigated that issue to inquire as to why the jail was opened with only 300 and, as has proved to be the case, was manifestly inadequate.

Mr Rattenbury: As you know, Mr Hanson, there were a number of models that the government contemplated prior to its decision to build the AMC. Some of those actually indicated numbers less than 300. You have seen the Treasury figures which indicate that they had substantially lower projections than the figures you have—

MR HANSON: But the capacity was always required to be more because, as has been articulated to this committee numerous times, you need much more capacity than the actual prisoner numbers. So the prisoner numbers might have been slightly below 300, but the capacity was always required. This is the frustration I have: when we talk about capacity, all of a sudden people started saying, “It is not about prisoner numbers; it is about operational capacity. You need many more beds than the number of prisoners.” We went through this a number of times.

Mr Rattenbury: Yes.

MR HANSON: But when we say, “You had advice that showed that,” we use prisoner numbers rather than capacity requirements. When I look at all of the evidence from the various reports, it is very clear that the capacity required was always going to be in excess of 300.

Mr Rattenbury: I guess we have the ability to sit here all day and cite different sets of numbers at each other. The bottom line is that history has shown we have the detainee population that we have. It is high. We are under pressure, and I have taken a decision since I have become minister to seek cabinet support for an increase in capacity, because we clearly need it.

MR HANSON: All right.

THE CHAIR: Mr Hanson, if you have any further questions on that, can they be put in written format to the minister?

MR HANSON: Sure.

THE CHAIR: I will now go on to substantive questions and I defer my question to Mrs Jones.

MRS JONES: In relation to parole, I have got a table here—I do not know what the process is—that I am happy to show to you. It shows that over the last three annual reports from the Sentence Administration Board there is an overall increase in the numbers of paroles cancelled and that there is quite a significant increase, particularly in 2012-13, of matters concerning parole breaches and management. In particular, the number of parole breaches and management goes from a number in 2010-11 of between 50 and 100—it must be around 70—up to over 300. I wonder whether you

would be able to explain why there has been such a change in the data concerning occurrences to do with parole.

Mr Rattenbury: Sure. What is the source of that data?

MRS JONES: The Sentence Administration Board annual report data.

Mr Rattenbury: Thanks.

Mrs Mitcherson: It is difficult in one way to comment because things go before the board and the board makes a decision that is independent. Certainly, I am working with community corrections to make sure that we are absolutely meeting minimum standards and being rigorous around our work in that regard. It is hard to make a comment on why numbers go up and down at different times.

MRS JONES: But by such a vast number?

Mrs Mitcherson: Without drilling down into that, it is really hard to understand. I guess I would take it back to our clients within custody, the medium to high risk. Part of their being in custody now may be having a jail in town, and maybe they are not managing non-parole because they are such a high risk. We would hope that the probation and parole unit may be able to help support and manage some of the people that we were talking about. If I use the example of that young man before that I was talking about—and he is only one of many in the same situation—who went in before three weeks, it is likely that he went in because he had a significant breach or committed another offence.

MRS JONES: I guess what I am trying to find out is: has there been a significant change in the way that people on parole are treated, or has there been just a simple change in the number of people having problems while on parole? Has the board changed its method or is there just a huge increase in the number of issues out in the community occurring because of people on parole? I do not know if the minister has a view.

Mrs Mitcherson: It is hard to be definitive about what the answer is. Mr Maloney may have some thoughts on that. Certainly, I have a strong view that parole reports should provide the Sentence Administration Board with advice about who is before them. It is hard to make a comment about why it might have gone up.

MRS JONES: So nobody really knows why we have gone from 50-something matters concerning parole breaches and management up to over 300?

Mr Rattenbury: No, we do not have a specific answer for you. I am happy to take it on notice and get some more information. From my mind, the legislation that covers parole is very clear. The primary principle that the Parole Board need to take into account is the public interest—essentially, public safety. They have a series of criteria which they then take into account to deliver that.

At this stage I am comfortable with the way that legislation is set out. There has, of course, been the inquiry in Victoria into the operation of the parole system in Victoria.

The ACT is looking closely at that. It is primarily the Attorney-General's area, but obviously we have taken a significant interest in it. We will be looking closely at the recommendations that arise from that report and any applicability to the ACT.

THE CHAIR: A substantive question, Mr Gentleman.

MR GENTLEMAN: Thank you, chair. Minister, if I could bring you to page 112 of the report. There is some discussion there about detainee education services and Auswide college. Can you just advise the committee what the participation rates have been for detainees in some of the outcomes?

Mr Rattenbury: Certainly. What I can say is that the staff from Auswide whom I have met with are incredibly passionate and very enthusiastic about working with the detainees. We have an overall participation rate of 78.2 per cent of the eligible total detainee population. I think that is quite a high rate of enrolment. Not everybody, unfortunately, chooses to engage in the opportunities that are presented to them. That is obviously a source of frustration in some regards in that it would be great to see everybody involved but, of those that do, some of our detainees are getting quite a few qualifications in the time that they are in custody, which obviously better equips them when they come out.

The staff from Auswide are incredibly committed. They are doing a range of things that go above and beyond the call of duty in some ways. Recently I was at an exhibition of detainee artworks at the newly refurbished Tuggeranong Arts Centre. The team from Auswide, in partnership with corrections staff, have really put in a lot of personal time to create that opportunity for detainees and to give them the chance to both put their art on public display and on sale. Having seen the reaction from some of the detainees or former detainees to having their artwork sold, it is just an incredible fillip. You see there the additional effort that they have put in making a difference to people.

MR GENTLEMAN: I understand there was at least one university graduate in the program.

Mrs Mitcherson: I am not sure whether he has graduated. I think we have got about half a dozen people enrolled in distance university education. Most of our clients have low levels of literacy and numeracy, but we also need to cater for those who come into custody with a high level of education. We have got a couple doing masters and things like that, just through distance. There are about half a dozen in that category. We do not restrict education for remandees ever, and we find the participation rate is quite high.

They are a very passionate group. They try and make the courses varied and try to get people interested. All of the courses, even if it is an art course, have a literacy and numeracy component built into the education. Even if you think art is just art, it is also about "you have got a canvass this size; let's work out mathematically how much paint we would need to pour out for a canvass this size". They try and embed literacy and numeracy in all of the courses we offer. If we just did straight numeracy—which we do do—it would not be very interesting. You cannot engage someone unless you do it married with something else to make it a little bit more interesting. The

participation rate is high and they are a very passionate group of staff. We are very lucky.

MR GENTLEMAN: Have you seen any evidence from the participation in education programs like this on recidivism?

Mrs Mitcherson: It is very hard to say that one particular thing might make an impact on a person's life, but I think it is really important to note that even for someone sitting in a group and concentrating for a couple of hours, they might never have had that much concentration or been able to sit in a group for that long. It is also about the social aspect and having some structure. If they have a good engagement with their instructor that might encourage them to go and do something else or get involved with whatever the case manager suggests. I think that having a suite of things—both passive and active recreation, criminogenic, information, social—helps to build how people feel about themselves. They might feel more empowered to go and do something else.

I think it is easy to say, "Art is just art," but it is a way of expression. The art that was on display was not just paintings; it was also written art. There were a lot of poems written up and done in beautiful writing and laminated. I noticed one of those had actually sold when I was there on the opening night. There was some music. We had a CD produced, and that was playing in the background as well. It is all different forms of art.

THE CHAIR: A supplementary, Ms Berry.

MS BERRY: Thank you, chair. On the same page of the report, there was an award given to Jason Russell. It mentioned that he championed the introduction of the ACT Corrective Services operational skills training program. What is that?

Mrs Mitcherson: He did. After I joined the ACT in 2011, the middle of the year, we made some decisions about reviewing our operational skills package, which is around use of force and how we manage those incidents. We changed it quite considerably. We looked at best practice and we made sure that we had good information both in terms of what we were teaching and also engaging de-escalation and communication.

That is a big change for an organisation, and he really did champion that. He is an excellent officer. He took it on board. When you have got officers of influence, they are the ones that become your agents of change when you are looking to move a culture or develop a workforce. He did an outstanding job, as did the other recipient of the award last year, Lynne Fowler, in terms of her commitment to through care. It was absolutely outstanding. I would say both of those officers go beyond what is just required from what one would expect from nine to five. They put a lot of personal effort and passion into it, and they deserve to be acknowledged for that.

MR GENTLEMAN: That is quite a big reduction, isn't it, 26 per cent?

Mrs Mitcherson: Yes.

MS BERRY: What are you doing to retain staff like Jason and get other people into

the centre?

Mrs Mitcherson: Our attrition rate, compared to correctional centres, is not too bad. I would not say it is high at all. We probably also attract and have more women than many jurisdictions, in the custodial area particularly. I do not think it is that high. I think the problem with one jail is that there are not very many places you can go to in terms of career advancement, because people do not leave. If you are in a bigger jurisdiction, you do get opportunities to move around and go up the ladder a bit more. That is a challenge for us, but we do like to support staff to do different things within the organisation. We support them with different training where it is possible.

I want people to feel good about their work. That is not to say that the work is not at times hard and difficult, but I want people, whether they are custodial or probation and parole officers, or just the admin workers, to feel good about what we are doing, to be happy when they come to work and to feel good about the space they are in and enjoy the people they are working with. I think it is a combination of things, but it is a challenge because we always compete with the commonwealth as well in terms of recruitment.

THE CHAIR: Substantive question, Mrs Jones.

MRS JONES: I will defer my question to Mr Hanson.

MR HANSON: Yes, tough job for the staff out there.

Mrs Mitcherson: They do a fine job. They really do.

MR HANSON: Yes, absolutely. Very tough conditions and they do a great job. Needles and syringes, where are we at with that?

Mr Rattenbury: The NSP program is currently in a process of consultation with staff seeking to develop an operationally effective model. That is the short answer.

MR HANSON: I have heard that sort of narrative for a while now. At what point is this either going to happen or is the government going to shelve it? It seems that this is something that is lingering. I know it is the cause of some concern and stress for a number of staff. If there is a model being considered, what is that model?

Mr Rattenbury: I am probably not in a position to go into the very specific details of the model, but I can tell you, Mr Hanson, that a committee that has been formed, a joint directorate consultative committee, which is comprised of parties within the enterprise agreement. This is also relevant to Health Directorate enterprise agreements. That committee first met in September 2012, as you probably know. The CPSU, the Health Services Union, the Australian Salaried Medical Officers Federation and the Australian Nursing Federation were all represented at that process. That group continues to discuss a draft model to support the implementation of NSP.

MR HANSON: Right, because the Moore report came up with three models, and there was a view about those, and the reaction was that none of those were quite workable. So I am just trying to understand where we are at in terms of a model. A

number of models have been presented to us. The government is saying it is still committed to pursuing this. What models remain on the table? Is it one that has come out of the Moore report or is it a new model? Can you provide some detail on that?

Mr Rattenbury: I do not think I can answer that, Mr Hanson, as to whether one of the three Moore models is the current model in terms of being that specific. A draft model was put to staff on 3 June this year. That is a one-to-one model. That was the essence of it. That is still in consultation with staff to give feedback and to work through some of the obviously important operational issues embedded in that kind of program.

MRS JONES: As a supplementary to that, what is a one-to-one model?

Mrs Mitcherson: Broadly speaking, the model presented was that a detainee had to have a functioning needle and syringe—whatever form that took—to take for an appointment with a medical officer.

MRS JONES: Something they have in the jail on them at the time and then they take it to a medical officer? So it is freely available, or they somehow have got hold of it in the prison?

Mrs Mitcherson: They somehow have gotten them. If I might just say, when you say “they somehow have got hold of it”, when I say “functioning”, they can be made out of all sorts of things.

MRS JONES: So they take whatever equipment that they have been using to inject to a medical officer and use it there. Is there any particular incentive for them to use that in the presence of the medical officer, or do they then take it back out into the facility with them?

Mrs Mitcherson: The model is that they take it back with them into the facility.

MRS JONES: So they go back out into the facility with this equipment that they have either created or somehow got a hold of?

Mr Rattenbury: No, they are given a clean syringe.

MRS JONES: So they swap it over for a clean one?

Mr Rattenbury: Correct.

MRS JONES: And they take the clean one back out with them into the prison environment?

Mr Rattenbury: Yes.

MRS JONES: Which they then would use and then presumably either dispose of or reuse or hand over to someone else to use or whatever? There is no control over that?

Mr Rattenbury: You are positing a series of scenarios.

MRS JONES: I am asking some questions.

Mr Rattenbury: Yes. Well, yes, that is the model. That is a harm minimisation model that acknowledges that detainees will manufacture or somehow get their hands on a form of interjecting equipment, and the model accepts that that is the case and seeks to provide clean equipment to prevent the spread of diseases of blood-borne viruses.

THE CHAIR: A supplementary, Ms Berry.

MS BERRY: Why is it important to include the staff in those conversations about the needle and syringe program?

Mr Rattenbury: It is critically important, and that is where a lot of the time has gone—in trying to work with staff. There are two issues: one is that the model is considered effective and operational and can actually be implemented. The second is to seek staff support. As Mr Hanson remarked earlier, it is a tough environment and there is a strong desire to work with staff in a collaborative way to deliver something we think will benefit both staff and detainees. If we have a lower level of blood-borne viruses in the prison, that is better for everybody's safety involved.

THE CHAIR: A supplementary, Mrs Jones.

MRS JONES: So, if a prisoner is issued with a clean syringe and is then taking it back out into the prison to use, obviously people can see a small benefit to that being not a home-made kit, But if it is just a replacement for a previous dirty needle with a clean one, if that person is then going on a regular basis to exchange needles, how is this improving their end scenario? I know the Chief Minister has talked about collapsed veins, but I believe a regular user might get collapsed veins anyway. So apart from the home-made versus the factory-made, what are the benefits and why would the government be involved in a proposal which was putting equipment back into the mainstream of the prison which could also be used between prisoners?

Mr Rattenbury: In broad terms, there are two advantages of such an approach: one is maximising the cleanliness of equipment that people are using to prevent the spread of blood-borne viruses. The second benefit is that when people come to see medical staff to receive equipment, it provides a point at which the medical staff can seek to engage that detainee about their substance-taking behaviour and seek to channel them towards some sort of program or engagement as to why they are doing that, the risks and the dangers of it and that sort of thing. So it actually in that sense provides a point of exposure and a potential point of engagement.

THE CHAIR: Any further questions will need to be put on notice.

MR HANSON: If I could ask one supplementary, please?

THE CHAIR: We have run five minutes overtime now, Mr Hanson. A very quick one, but that is it.

MR HANSON: Yes, it will be quick. If you do not get staff support, are you going to

impose this at the jail?

Mr Rattenbury: I think you are aware of the provisions of the enterprise agreement, Mr Hanson.

MR HANSON: The current enterprise agreement, yes. Is that a yes or a no, then?

Mr Rattenbury: The terms of the enterprise agreement are quite clear, and it is certainly my desire that we find a place where staff are supportive of the program.

MR HANSON: Sure, but assuming you do not get staff support, this is not happening, is it?

Mr Rattenbury: A final decision has not been taken. We are still in consultation, and that is an ongoing discussion.

THE CHAIR: We will have to call it a morning there. Any further questions should be put on notice. Thank you, minister and witnesses, for appearing before the committee. The secretary will be in touch regarding transcript and corrections. If you could respond to any questions taken on notice within five working days it would help the committee in its deliberations.

Sitting suspended from 11.33 to 11.44 pm.

Appearance:

Potas, Mr Ivan, Official Visitor

THE CHAIR: We are now moving on to our next witness, the Official Visitor, Mr Potas. Are you aware of the privilege statement that is before you? I think you have appeared a number of times.

Mr Potas: Yes, I am aware of it.

THE CHAIR: Would you like to make an opening statement or would you like to proceed to questions?

Mr Potas: I am happy to proceed to questions.

THE CHAIR: I will ask my first question. What are your observations about conditions at the AMC with respect to the crowding or otherwise of the prisoners?

Mr Potas: It has become probably the most significant matter that has occurred over the last 12 months or so. The great problem is that there is a mix of categories who cannot be housed together, which makes the problem particularly difficult for management and staff and the detainees who now, in the main, must share accommodation where, previously, they may have occupied a cell on their own.

THE CHAIR: The committee has visited the prison. The overcrowding was not that evident to us. What are your observations on the situation at the moment?

Mr Potas: What happens quite often is that detainees are locked down more than they used to be because of the various categories of detainees. When I say there is overcrowding, it is not generally seen. The problem is: where do you house people? Of course, double bunks have been installed in the cells, and then there are difficulties about who shares with whom, for example, if you have a non-smoker with a smoker. That is just a simple example. The staff do their best to accommodate non-smokers.

But generally, the real problem is that quite often there are particular detainees who just cannot be housed in certain parts of the jail. So the overcrowding is not so much a function of beds but where they can mix, for example, in programs. You have to be careful not to mix people who do not wish to mix or who may assault one another. So it is a very tricky business in managing the jail and ensuring that there are no incidents of the kind that jails are meant to avoid.

THE CHAIR: Where would this situation rank in the feedback you get from prisoners on a host of issues? Is this one of the priority issues from their point of view?

Mr Potas: I think for management and for some prisoners it is a priority. There are many prisoners who live in fear of being mixed with other prisoners. For me, it is a priority if somebody says, "I cannot be sent out from where I am." I ensure that that matter is looked into very carefully, because detainees generally know if there is a threat against them. And they often know who the people are that may wish to harm

them. So that is a particularly delicate issue. People who feel insecure are a problem.

But apart from that aspect, there is also, I guess, a general not so much fear but concern about the lockdowns. Basically, in some cases they cannot get to programs when they ought to be able to. They have fewer privileges, if you like, for gym time. They need to be escorted when they move from one part of the jail to another. Other detainees have to be locked in while one group is allowed out. So the overcrowding has contributed to the difficulty of handling these people.

THE CHAIR: Can you just explain how you feed back and whom you give feedback to after you have these meetings with the prisoners as the Official Visitor. Whom do you talk to?

Mr Potas: I talk to the senior officers in the first instance. The idea is to try to resolve problems at the lowest level. And I do that orally, in most cases. I will take back the complaint and then the senior officer will say they can or cannot do something about it. With lockdowns, it seems to be a function of staff shortages in some cases—not enough staff. I have just lost the thread of my thoughts.

THE CHAIR: Just on your reporting, whom do you report to? You mentioned that you report at the lower levels of the ranks to try to address the situation. Should senior management be aware of some of your concerns so that they can keep track as to whether they are being addressed?

Mr Potas: I do write my quarterly report to the minister where I indicate what the main complaints are, and obviously there is the issue of overcrowding, which is not a specific complaint but a general complaint. A lot of complaints emerge as a consequence of overcrowding. For example, more people are put into cottages, and the cottages have one stove, one fridge and so on. The complaint is, “We need another fridge,” or, “We need more cooking implements,” or, “We need another couch.” There might be a general complaint like, “Eight of us have to share one toilet where previously five people shared the facilities.” So I mention these.

Of course, with overcrowding, there is nothing you can do about it. So I have to go back. I am told, “I’m sorry, we have to house people somewhere, and we’ve just got to squeeze more people in, even though the cottages were not designed for this and blocks were really intended to be one-outs, not two-outs.” They are the kinds of problems that emerge from overcrowding, and the lockdowns, as I mentioned.

THE CHAIR: A supplementary, Mr Gentleman, and then Mrs Berry.

MR GENTLEMAN: Earlier, prior to your appearing, the minister was asked about expanding the size of AMC or the cells within that. He indicated they are looking at final sketch plans for 30 new cells. Do you think that would alleviate those issues of complaints that you are getting?

Mr Potas: I think in the very short term it would obviously be a help. But my feeling is that one should be looking at many more. Another couple of blocks would be a good idea, I think. Obviously the more the better, but I realise there are budgetary constraints. So something is better than nothing.

MR GENTLEMAN: He did indicate this was the first step.

Mr Potas: Yes. I think the idea of expanding the jail as need arises is a good idea. But it would be good to be one step ahead rather than one step behind. But that is an ideal situation and probably cannot be attained unless more funding is made available for the jail.

MRS JONES: My understanding about the cottages arrangement is that people are generally one in a room. Is that wrong? Is that correct?

Mr Potas: That is now wrong.

MRS JONES: So they were designed, though, to have one in a room, originally in the cottage scenario?

Mr Potas: I am not the architect.

MRS JONES: Sorry.

Mr Potas: It may have been designed with the thought of possibly putting two in a room. In some cases, people could share. But I think the situation now is that there is no option unless one looked for other accommodation outside the jail.

MRS JONES: When we toured the facility, we were not able to look deeply at the bedroom accommodation in the cottage facilities because of privacy and so on, which is quite understandable. Are the cottages that have a couple of stories the ones—

Mr Potas: The cottages are divided into pods of four. So they are actually—

MRS JONES: That is right. And each of those had six or so in them.

Mr Potas: Yes, about five or six.

MRS JONES: And now they are up to eight or something, are they?

Mr Potas: They are up to eight, yes.

MRS JONES: I did have one fellow, while we were touring, say he was unhappy that they had to all share a washing machine. I have also heard about similar situations.

Mr Potas: It is not just washing machines; it is cutlery and, as I said, cooking facilities.

MRS JONES: So have they not had an increase in any of those utensils?

Mr Potas: When I say this is the kind of complaint I am getting, the jail is responding by providing extra bedding, extra cutlery, extra couches.

MRS JONES: But you cannot install an extra toilet in that situation very easily?

Mr Potas: I do not think you can.

MR HANSON: A supplementary.

THE CHAIR: Yes, Mr Hanson.

MR HANSON: You mentioned the lockdowns. Can you explain to what extent the lockdowns are occurring, how many hours a day and is it happening with any degree of frequency?

Mr Potas: It happens on a fairly regular basis, particularly since some of the blocks have had two regimes, which means one group of detainees is allowed out in that block while another will be locked in because they cannot mix. You can see that you are actually halving the time out. Management tries to give people equal time out of cells but, unfortunately, where you have different categories of detainees that cannot mix, you have got this problem of when do you let one group out.

MR HANSON: They have got that mix of categories in the same block?

Mr Potas: They have had, and they are trying—

MR HANSON: Does that indicate that people are shut down at least half the day?

Mr Potas: That happens in one or two parts of the jail. Basically, some detainees for a period of time were only having four or five hours out of cells, which I find—

MR HANSON: That is very low, is it not?

Mr Potas: That is low. That is low for what the jail was originally designed for.

MR HANSON: What you would say, then, is that essentially it is not meeting the intent of its design?

Mr Potas: I would say now, with overcrowding, it is becoming fairly restrictive, more so than originally intended.

MR HANSON: I actually read a speech from Simon Corbell a while back about the importance of people being out, being busy and being occupied as part of their rehabilitation. I assume that being locked down all day has a longer term effect on rehabilitation, on prisoner attitude and the conditions in the jail more generally?

Mr Potas: I guess so. If you can occupy people all day, it is far better than just languishing in the cell.

MR GENTLEMAN: Does that actually occur? Mr Hanson just said they are locked down all day.

Mr Potas: I think that is extremely rare. The ideal situation is that they are let out in the morning about, say, 9 o'clock. They might be locked in for lunch for an hour, and

that is when the officers go for lunch—I think between 12 and 1. And then they are let out again until dusk, until dark. So they have basically the whole day, except for lunch time, out. That is the intent of the jail. But, as I say, the complaint about lockdowns is so common that I no longer do very much about it. I just report it that people are complaining. Management knows, but they are in a situation where, if they do not lock down, there is a risk of violence or the jail could become out of control. For example, if there is an emergency and officers have to take people to hospital suddenly, you lose staff and then during that period some people may need to go back to their cells and be contained because no officers are available to manage that group of detainees.

It is a good system in the sense that you do not need a lot of officers. It is a bad system when there are emergencies occurring and there are not enough staff to allow detainees their full day out of their cells.

MRS JONES: I have a quick supplementary. You said very rarely there would be a lockdown all day, but do lockdowns all day happen?

Mr Potas: The minimum standard rules are that you have to let a detainee out of their cells one hour a day. I do not think there has ever been a complete lockdown. But long lockdowns have occurred.

THE CHAIR: A substantive question, Mr Gentleman.

MR GENTLEMAN: Mr Potas, on page 2 of your report you say that detainees generally reported that they related well to the majority of corrections officers. Ms Whetnall points out that staff have also been very willing to assist. Has this always been the case, and would you say this is an improvement?

Mr Potas: An improvement? I think it has always been the case. Officers are very carefully selected. I would say, yes, it has always been the case that officers and detainees have got on reasonably well. Unfortunately, with the overcrowding, there is more tension in the jail and obviously people are being locked down and they might resent that, and so there may be a little more tension, I would say, than in the past.

MR GENTLEMAN: But no major complaints about officers themselves?

Mr Potas: Not to me. That does not mean there have not been complaints and there have not been unsuitable officers. I am sure there have been. I do have individuals who dislike individual officers, but I do not think there has been anything like assaults or anything serious brought to my attention.

THE CHAIR: Substantive question, Mrs Jones.

MRS JONES: I will defer my question to Mr Hanson.

MR HANSON: Do you have a formal relationship with Prisoners Aid or other representative groups, and do you meet with them frequently?

Mr Potas: No, I am sole worker, a sole operator. I do not actually have close relations

with any group. I get referrals, say, from human rights and we do liaise, but I am not involved in any other group.

MR HANSON: I am not suggesting you are involved with them. I assume that these people are also meeting and discussing issues with prisoners, so you do not, then, discuss those issues with them as another line of communication? You do not discuss issues that might be occurring with prisoners through Prisoners Aid or other representative groups? You do not have any conversations with them?

Mr Potas: I do not. Sometimes I might refer people and suggest that they speak to their lawyers.

MR HANSON: Have you ever met with Prisoners Aid?

Mr Potas: No.

MR HANSON: Do you think that would be something worth doing to find out what they are doing in the jail, what complaints they are getting and what issues they are pursuing?

Mr Potas: I think that is a good suggestion. But, thus far, I have not had much to do with Legal Aid or Prisoners Aid. I have suggested individuals contact them, ring them and get assistance. I am not there to be an advocate for prisoners; I am there to convey their complaints.

MR HANSON: I suppose with the title “Official Visitor” and a figure of authority, so to speak, that there may be prisoners there that you do not happen to come in contact with or who might be intimidated by you—whatever the reason is—and they are passing on concerns to other representative groups, be it Prisoners Aid or someone else. I would have thought that would be a useful opportunity for you to, in confidence, have discussions so you can identify issues, particularly if they are systemic issues where there are a range of complaints coming, but you are not doing that?

Mr Potas: No. Whenever I speak to another agency or another group, I would ask the detainees if it is okay if I do that. But, basically, if I think there is a legal issue, then I advise them to get their own legal assistance and I basically stay out of it. I am not saying the complaints may not be the same, but I do not have discussions with other agencies.

THE CHAIR: A supplementary on Mr Hanson’s question about the rights of prisoners, in the absence of full review of human rights at the AMC, what is your view on the degree to which prisoners enjoy appropriate rights while they are detained?

Mr Potas: That is a very difficult question to answer. I realise the theory of jail is the deprivation of liberty. You do not get sent to jail for punishment; it is the loss of liberty. But, then, within the jail system you have got restrictions on movement, you have got issues about ensuring that people do not assault each other. So human rights within the jail is a bit of a balancing act. It is how many rights can you give a detainee

without being excessively coercive. It is a matter of judgment. I would like to see more space. I know there is a lot of space, but I would like to see more work, I would like to see industry. Quite a percentage of detainees do not have jobs. I would like to see them busy, and I would like to see more courses, more rehabilitation, more activities. That would perhaps then reflect more like the outside than the restrictions they are currently facing. I think lockdowns is one area which concerns me in terms of human rights.

MR HANSON: A supplementary on that, you said you want to see more rehab, more activities, things like that and so on. Have you had experience in other jails or other systems to have a comparison there? You think there needs to be more?

Mr Potas: Industry, for example. I have in the past visited Cooma jail and people are working with sewing machines and producing sheets for the hospital. This is going back a long time. I have visited prison farms where they have a piggery and cows and so on. I think if some of that kind of thing could be introduced, it would be very good.

MR HANSON: There are some lessons we could learn from New South Wales perhaps?

Mr Potas: New South Wales and other states. But, you see, the big problem with the ACT is that there is only one jail, and we are putting mixing categories. That makes it very, very difficult.

THE CHAIR: We will have to move on to the last question; we are running out of time. Substantive question, Ms Berry.

MS BERRY: It is not often that you get to read a report written in the first person, so that was refreshing.°

Mr Potas: Was it? Thank you.

MS BERRY: Mr Hanson raised an issue that I am interested in learning a bit more about as far as the AMC goes in being human rights compliant and how it compares to other jails. You said you have been to Cooma and to some prison farms where it is fairly low level—

Mr Potas: They would be medium security jails.

MS BERRY: So have you been to jails that would compare to the AMC so far as mixing the security levels, and how does the AMC compare to those? Have you read about them? What is your view?

Mr Potas: Well, if you go to somewhere like Long Bay, you will find that it is really a complex of jails. Obviously, they have economies of scale. You can put all the sex offenders into one area and then do some intensive rehabilitation. Here you have got a mix of people and you have got to cater for all categories. It really makes it difficult to do. Remand detainees are mixed with sentenced prisoners now. That is a no-no. I mean, you do not do that.

MS BERRY: I guess I am asking how you think the AMC is going?

Mr Potas: I think generally the AMC is doing well. People, for example, complain about food and then I hear that, “Oh, but it’s better than New South Wales.” I think it actually comes out looking quite good. But, as I say, it is the overcrowding that troubles me. I think that is the number one issue at the moment. The growing tension between prisoners and officers, you can feel it. There is a tension there, and, obviously, the more people you squeeze into a place that is only built for a certain capacity, the greater is the potential for dysfunction or trouble. It would be good to try and get around the problem of overcrowding. The answers may lie outside the jail; they may lie in sentencing policies, for example.

THE CHAIR: Do you have a supplementary on your own question?

MS BERRY: No, I am mindful of the time, so I am happy to put mine on notice.

THE CHAIR: Mr Potas, thank you very much for joining us. If there are any other questions that come up, you will be notified of those. The secretary will be in touch with you regarding transcripts and corrections. If you could reply to any of the questions that may come in within five days, we would appreciate that.

Mr Potas: Thank you.

Appearance:

Delaney, Mr Grahame, Chair, Sentence Administration Board

THE CHAIR: We will now move on to the Sentence Administration Board. Good afternoon, Mr Delaney. I believe you have been here a number of times so you are familiar with the privilege statement?

Mr Delaney: Yes.

THE CHAIR: Thank you very much. Would you like to make an opening statement or would you like to proceed to questions?

Mr Delaney: Thanks, Mr Chair. There is an overview at the beginning of the report which sets out some general observations, but I might just take the opportunity to mention a couple of recent Supreme Court decisions which affect the operation of the Sentence Administration Board.

There is a matter of *Lewis v the Chief Executive of the Department of Justice and Community Safety*. In that case, back in 2008, an offender's periodic detention was cancelled, which meant he went into full-time custody. He appealed that decision. Part of the appeal was a suggestion that the Assembly did not have power to give the board the sorts of powers that it has. The decision rejected that contention.

Another complaint was that the board acted without sufficient proof that Mr Lewis had been served with the relevant documents. The court did uphold that contention because, back then, the board operated on the basis that letters were sent to offenders and then, if they did not appear, they were dealt with anyway. The present board has changed that practice, and if they do not attend, we generally issue a warrant, have them brought before the board and then deal with them. So that particular issue is not one that the board sees as a present problem.

There was another case called *Jacka v The Australian Capital Territory & Ors*. That put the same sorts of issues—that the board was without power and, essentially, the board was exercising powers that should have been exercised by the court. The decision in that case also rejected that contention, but there is an appeal, so we are not out of the woods yet on that. I just thought I would mention those.

The other findings in those decisions were that the Sentence Administration Board is independent functionally, that it cannot be sued—it has to be the ACT that is sued—and the exercise of its power is not a judicial power, so that there was no impairment of the Supreme Court's power. So we just wait for the appeal in *Jacka*; otherwise we will continue to operate according to the principles that we have been acting on so far.

THE CHAIR: Some of the points you have touched upon—would you consider that these are the challenges? Are there other issues which you can term as challenges that face you?

Mr Delaney: I think there are always challenges in terms of ensuring compliance with the Human Rights Act but also compliance with the Crimes (Sentence

Administration) Act and with the other sentencing principles. The board, I suppose, has to strike a balance between those but take them all into account.

THE CHAIR: What about, I guess, your personal point of view as to what are the highlights or the achievements over the last 12 months?

Mr Delaney: Over the last 12 months, as you will see from the report, the workload has stabilised at a fairly high level. We have gradually built up over the last few years, commensurate, really, with the number of offenders who are presently in the AMC. I think, in terms of periodic detention, there has been a gradual increase in the number of people who have been cancelled and, therefore, have gone into full-time custody. I think at last count it was around 20 a year. That has, I suppose, added to the accommodation question out at the AMC. The act requires the board to cancel if there are two or more absences for which there are no exceptional circumstances or health reasons. So the board's hands are tied in that respect and we must cancel.

In terms of parole, the act talks about the public interest being of paramount importance. The board usually takes that to mean that we have to balance community safety against issues of rehabilitation and attempting to ensure that there is no further offending. I guess, in terms of that, we take into account prison behaviour. We take into account whether the person has done programs and whether they are seriously looking for employment prior to release. We see all those as incentives, I suppose, for good behaviour within the prison. There is some evidence that that message is getting through. So that is the general approach, I think.

THE CHAIR: Thanks very much. Mr Gentleman, your first substantive.

MR GENTLEMAN: Thanks, chair. Mr Delaney, on page 369 you have noted 403 breach inquiries made to the board. Can you detail for the committee the process that you go through with each of those inquiries?

Mr Delaney: I am sorry; my version is differently numbered to yours.

MR GENTLEMAN: Well, generally, if you could just tell us how you deal with those breach inquiries.

Mr Delaney: If it is periodic detention, we will have an inquiry first of all, and this is without the offender being present. If there is a medical report or something else that will excuse the non-attendance, we will deal with that without seeing the person. If we have not heard from him or her we will set a hearing down and then ask for the explanation as to why the person has not attended periodic detention. Depending on that answer, we will decide what we do, given various powers under the act. If the person does not show up, we will issue a warrant and compel their attendance.

In terms of parole, we get a fairly comprehensive report from the probation and parole service and that will set out the background of the offender. It will set out what the offender's behaviour has been like in prison, what courses they have done, if any, what urinalysis has showed in relation to any drugs that have been consumed and prospects for rehabilitation afterwards. We take all those matters into account. We will usually have a face-to-face hearing with the offender, particularly if probation

and parole have not recommended that they be released to parole. It is only in those cases that are very clear on the papers that we consider there should be release that we do not have a hearing. That is just the general approach.

THE CHAIR: Mrs Jones, a substantive.

MRS JONES: Mr Delaney, regarding parole breaches, the board considered three times more breaches this year than last—319 compared to 103—but cancelled less parole—26 compared to 34, a smaller difference. What is the explanation for these figures?

Mr Delaney: When there is a parole breach there can be many reasons for it. Sometimes we will recommit to prison if it is a parole breach we regard that seriously. If there is some prospect of maintaining the parole regime and, for example, if the breach is related to drugs, we might send a person off to live-in rehabilitation, for example, which would mean they do not go back to prison, but they do get their drug problem dealt with. There can be many reasons, and it is difficult to talk in the generality.

MRS JONES: I understand that there are different ways of dealing with breaches, but what I am asking is: why is there a huge increase in breaches? Has there been a change in some other factor which has allowed more breaches to occur out in the community or are there more people on parole? It is a vast difference.

Mr Delaney: I think the increases just reflect the greater number of offenders that we are now dealing with.

MRS JONES: A greater number of offenders in the ACT in general or a greater number of offenders out on parole—or both?

Mr Delaney: Both, yes.

MRS JONES: I am still learning about the board's exact function. Are there any factors affecting the numbers on parole from the board's perspective, or that the board has to do with?

Mr Delaney: I think the question arose initially from breaches. In terms of breaches, the probation and parole service are under general instruction to bring all breaches to the board. There is a huge range in gravity. They can be as simple as not turning up for a supervision meeting or it can be committing another offence, and anything in between.

MRS JONES: Presumably that has been the case in previous years as well.

Mr Delaney: Well, I am not sure that it was. I do not know that it was.

MRS JONES: So there has possibly been a change of—

Mr Delaney: I think there may have been more discretion exercised by probation and parole in years past. I cannot say that from personal experience.

MRS JONES: Well, how long have you been in this—

Mr Delaney: I have been here three years.

MRS JONES: But over the three-year period there has been an enormous increase. That is what I am interested to understand.

Mr Delaney: I am not able to give you an explanation as to why more breaches are being reported to the board. I would think that may have something to do with probation and parole officers sending everything to the board. So if there is a contravention—

THE CHAIR: Mr Delaney, if I could just interrupt you for a quick moment. If you do not have enough information to hand here, you do realise that we are happy for you to take questions on notice?

Mr Delaney: Certainly, I could make some inquiries.

THE CHAIR: We are not asking you to answer everything here if you cannot answer it.

Mr Delaney: Thanks, Mr Chair.

MRS JONES: So you might come back with—

Mr Delaney: Yes, I could come back to you on that particular—

MRS JONES: some analysis of why that large increase.

Mr Delaney: Sure.

MRS JONES: Thank you.

THE CHAIR: Ms Berry, a substantive question.

MS BERRY: Thank you, chair. Mr Delaney, you have talked a little bit about the periodic detention orders being cancelled and that there has been an increase in 20 now that have been cancelled. You said that the act prescribes certain reasons where your hands are tied and you have to just cancel it.

Mr Delaney: Yes.

MS BERRY: Are there other circumstances for the 20 for this year, for example? Can you give us some examples of why there was an increase in the number of cancellations of periodic detention orders? This was on page 382.

Mr Delaney: Section 69(2) of the act says that if there are two or more breaches of periodic detention and there are no exceptional circumstances or no health reasons why that occurred, the board must cancel. There can be a difference of view about

what exceptional circumstances are. I think some past boards were possibly less rigorous about what constituted exceptional circumstances. So views can vary about that. I think there has possibly been a tightening up of the approach to that. In other cases, people have just stopped attending. So there is no excuse. Once we have reached that conclusion, cancellation really is an inevitability.

MS BERRY: So for the 20 that have been identified in here, are you able to provide the reasons why? Was it because of that section in the act or was it for some other reason that their periodic detention was cancelled?

Mr Delaney: It would always be because of section 69.

MS BERRY: Sure.

Mr Delaney: If you are asking me what the specific reasons were—

MS BERRY: I do not want to go into any individual case, but I guess I wanted to know whether all those 20 were cancelled because of section 69. Was it that rigorous process and because, in the board's view, they had not provided sufficient evidence that showed they had extenuating circumstances?

Mr Delaney: Yes.

MS BERRY: Thank you.

THE CHAIR: Mr Hanson, a substantive question.

MR HANSON: I am aware of the time, Mr Chair, I am happy to put my questions on notice.

THE CHAIR: Any other questions from anyone? Okay. Mr Delaney, thank you very much for joining us this afternoon. The secretary will be in touch regarding any corrections or issues. We look forward to getting additional information that you may wish to provide.

Mr Delaney: Thank you.

Appearance:

Green, Mr Phillip, ACT Electoral Commissioner

THE CHAIR: We will now move on to our next witness, the ACT Electoral Commissioner, Mr Green. I think you have been before the committee often enough to have full knowledge of the privilege statement, I should imagine.

Mr Green: Yes, I do.

THE CHAIR: Would you like to make an opening statement or would you like to go to questions?

Mr Green: Very briefly, thank you for allowing us to appear before the committee. Thank you also for moving the date for our hearing to accommodate my leave arrangements. Thank you very much for that. Just one thing of note that happened since the last time we appeared before the committee was the passage of the Officers of the Assembly Legislation Amendment Bill, which is going to create the commission as an officer of the Assembly from 1 July next year. That will create a new arrangement between the commission and the Speaker and also with the relevant Assembly committee, which I imagine will be this committee. I would like to put on record that we are very much looking forward to that new arrangement and to working with the committee.

THE CHAIR: I might start with my opening question. On page 7, your report states:

The Commission was deeply disappointed that it did not meet either of its turnout targets for the last ACT election.

What are your thoughts on how to respond to the disparity between the targets and outcomes in this area?

Mr Green: It is a very difficult issue. It is an issue that is, I think, also tied up with the enrolment participation rates. There seems to be an indication that there are people in the general population who are not inclined to be as participative in the electoral process as they might have been in years gone past. That is not just an ACT phenomenon but a phenomenon that is being experienced across all jurisdictions in Australia.

On the enrolment participation side, we notice, from the most recent figures we have got from the Australian Electoral Commission, the participation rates on the electoral roll, particularly of young people, have improved considerably since the federal election. I think there are two particular reasons for that. One is the fact that the federal election has happened has encouraged people to get on the electoral roll, but also the automatic enrolment system that has been recently introduced by the commonwealth parliament for the commonwealth electoral roll, which then flows across to the ACT electoral roll, is increasing the number of people on the roll. And that is coming through to the ACT roll as well. It is showing that the participation rate for particularly 18 and 19-year-olds is now over 90 per cent for both the federal and ACT rolls. So that is very encouraging.

But what we experienced at the ACT election was a lower than normal turnout. The target we had for turnout as a percentage of enrolment was 92. The actual turnout was 89 per cent. So we are talking three per cent. It is not a huge drop, but it is a drop nonetheless. I think there are complex reasons for that. One is to do with the completeness and up-to-datedness of the electoral roll. If there are people on the electoral roll who are showing up as being on the roll but have, in fact, moved interstate, then they will show up as being people who have not turned up to vote at our election, but they might have actually left the ACT and not have been effectively entitled to vote for that reason.

The holding of the commonwealth election after our election means that that has fixed up, I think, a number of people on the electoral roll, because when a federal election happens, people who have left the ACT then go and enrol in the state that they have moved to, which takes them off the ACT electoral roll. So I suspect if we were to hold an ACT election now, we would probably find that our roll was more accurate than it was 12 months ago. That is one of the factors.

I think what we have experienced not just in the ACT but across Australia is a tendency in some parts of the population to not want to participate in the electoral process. We tried in the election to publicise the election as well or better than we had ever done. We used new media, we used social media to get out to young people. We sent two different household brochures to every household in the ACT. We did a lot of advertising on radio, television, newspapers and on the internet for the first time. There were signs all over Canberra. It would have been very hard to miss that there was an ACT election on.

From the Electoral Commission's point of view, I feel that we did everything that we could to inform people that the election was on. We certainly pushed the fact that enrolment and voting were compulsory and that we do fine people who do not vote. A notable thing—and this is mentioned in the report—was that the number of people who were happy to just pay the \$20 fine for not voting was much higher this election than any previous election which, again, I think seems to indicate that there are people out there willing to not vote and cop the fine. What that says about either people's regard for the electoral process or their regard for their time on a Saturday, who knows? And I think there are a whole range of factors in there.

THE CHAIR: Supplementary, Mrs Jones.

MRS JONES: As a result of that sort of conscripting of a larger group of people onto the roll, do you think that potentially affects the voter turnout, because it is a group of people who previously were not on the roll? Could that lead to a bit of a disappointment, whereas really you have actually got a fairly similar result, do you think? Have you checked those numbers at all?

Mr Green: Because it has only happened in the last few months in the ACT—

MRS JONES: Not in this case.

Mr Green: For our election, the automatic enrolment was not in place. It was in place

for the federal election to a degree. It had only just got started earlier in the year for the federal election. The federal turnout for the ACT divisions was, I think, over 95 per cent, looking at the AEC's website. And that is on about a par with the normal turnout for a federal election. Federal election turnout is always higher than for an ACT election, for a variety of reasons. But one thing that we are particularly going to be talking to the AEC about is whether the turnout of the number of people who were automatically enrolled was greater or less than—

MRS JONES: I wonder whether there will be any way of tracking.

Mr Green: I think there will be, yes. They should know.

THE CHAIR: I have got a supplementary to my original question and Mrs Jones's. With the inroads you are making in electronic registration, computer registration, can you look at something that will give us a more robust picture of who actually votes? At the moment names have got to be crossed off. How far away are we from the position where someone can electronically register, that registration will then go around to all of the different polling booths—real-time voting, I guess I am talking about? Are we far off from that sort of situation?

Mr Green: We actually implemented that for the first time at the election last year. We had used electronic electoral rolls in the 2008 election, but they were stand-alone electronic rolls. We used networked electronic rolls in 2012. In most cases, as soon as a name was marked off in one polling place, it was marked off in all polling places. The network did not work absolutely perfectly. So there were some occasions where those marks did not replicate through to every other polling place, but in most cases it did.

What that does is prevent someone voting twice in their own name. What it does not prevent is someone fraudulently voting in someone else's name, so long as they get there first. So there is that possibility of voting fraudulently in someone else's name. It is a possibility that exists in every election in Australia. The only way that I think you can really solve that problem, if it, indeed, is a problem, would be to require identity when people vote. Nowhere in Australia does that at the moment.

I would argue that there is not a demonstrated problem that would make that necessary. I think you would be more likely to disenfranchise people who might not have ID with them than it would solve the problem, because what we do is investigate any cases of people apparently being issued with more than one vote, and that is reported on in the annual report. The numbers are small and we do not find any evidence of any particularly large-scale attempts to fraudulently vote.

THE CHAIR: Mr Gentleman, a substantive question.

MR GENTLEMAN: Mr Green, welcome again. Good to see you back. There is some comment in today's *Canberra Times* about your audit process beginning at the end of this month. Can you just go through for the committee what you do during that audit process? The *Canberra Times* says that you will be looking at the major parties. Why is it that you audit the major parties and not the smaller ones?

Mr Green: We have an audit program where we go through and audit entities with disclosure obligations under the Electoral Act. We particularly look at the annual returns that are required to be submitted by political parties and associated entities, which cover all of their income and outgoings and debts for each financial year. We also audit election returns when it is election return time. There is a new requirement that came into force on 1 July last year for disclosure of gifts of \$1,000 or more that have to be disclosed within 30 days of receipt. So we are also auditing compliance with that provision.

We take a decision to audit those parties that have significant transactions in and out in their annual returns; they overwhelmingly are only the parties that are represented in the Assembly that actually have significant turnover. While we could audit the smaller parties, typically, particularly in non-election years, they have very small amounts of incoming and outgoing. So just as a value-for-money thing, we focus on those parties that have significant transactions.

MR GENTLEMAN: What are the penalties involved if your disclosures are not correct? You find those in the audit, I imagine?

Mr Green: What we are mainly looking for in our audits is to ensure compliance and disclosure. We are not auditing, in particular, to try and catch people out and fine them. That is not really the object of the audit. What we are after is to ensure compliance with the disclosure laws. There are a range of penalties in the Electoral Act for failure to disclose. For example, there is a penalty for not giving us a return on time; there is a penalty for not giving us a return at all; there is a penalty for giving us an incomplete return. They are the three ones that would be most likely picked up on in an audit.

The object of the audit is, in particular, to ensure that compliance is up to date, on time, complete. Really, what we are looking for is to get on the public record those things that the Electoral Act requires to be on the public record. In terms of our prosecution policy, we are most concerned with looking at whether there are any cases of deliberate avoidance of the laws. They would be the things that we would be most concerned about prosecuting if we were to find anything like that. To date, we have not ever had a prosecution under those laws, because we have not found any deliberate attempts to thwart the disclosure laws.

MR GENTLEMAN: Thank you.

THE CHAIR: Mrs Jones, a substantive question.

MRS JONES: Thank you. Mr Green, given the public interest in ballot papers that is quite high at the moment, I thought I might give you the opportunity to feed back into the community your processes and how you are ensuring them. Obviously the federal Electoral Commission has had some embarrassing revelations concerning the WA Senate vote count in the recent national poll. What is the ACT Electoral Commission doing to ensure that this problem would not occur in the ACT?

Mr Green: We have very tight restrictions on our handling and counting of ballot papers. Those are particularly well served by the automated systems that we have in

the ACT. The way that we deal with ballot papers in our elections is that they are all counted in the polling place in which they are cast on election night. They are counted in front of the scrutineers; they are entered into a computer system; they go up on the internet. So there is a very clear and immediate paper trail from the moment when ballot papers are counted onto the public record. That first count usually has some errors because it is done by polling officials who are working all day.

MRS JONES: All day, yes.

Mr Green: We are not asking them to be really accurate at that point; we are asking them to be as accurate as they can be. Everything gets looked at again after the election is completed. The process that we follow, and have followed now for the last couple of elections, is that we now scan every handwritten ballot paper into our computer system so that we have an image of every ballot paper. Those scanning systems are extremely accurate. We have audited the accuracy of those systems and we are confident that we are not only capturing every ballot paper but we are capturing every preference on every ballot paper to very close to 100 per cent accuracy. The only reason it would not be accurate is around interpretations of handwritten numbers on ballot papers, which, you might recall, has also been in the media, particularly in the case of the Fairfax re-count. The issue in a lot of cases is not whether you have got ballot paper; it is whether you can read what the elector has written on the ballot paper.

In terms of actually keeping track of your ballot papers and making sure you do not mislay or lose any ballot papers, the systems we have got in place, because we scan every single ballot paper at a central location, mean that it is extremely unlikely that we would be in the situation of ever having lost a ballot paper or failed to count one.

MRS JONES: And just in regard to a couple of those particulars there, the electronic reporting of the ballot on the night of the election—is that done through iPads or something? What is the system for that? I also wanted to ask this: if handwritten ballot papers are illegible even to the machine, what is the process then and what proportion of ballot papers do you have to make a judgement over?

Mr Green: In the polling places we use a netbook system that is used during polling for marking names off rolls as people vote. Part of that system is that there is a polling place management system built into that network, so the officer in charge of every polling place has a computer that not only transmits the names that have been marked off but also transmits the vote count total at the end of the night. That system is used to transmit those numbers. In previous elections, they would have been phoned through to the tally room and entered into a computer system in the tally room, but that takes that step out. So it is a direct thing that happens in the polling place.

In terms of the scanning and interpretation of handwritten ballot papers, particularly ones where the ballot papers are hard to read, the way the scanning system works—you people will not have seen this because, as candidates, you are not actually allowed to scrutinise this—

MRS JONES: That is right.

Mr Green: But your scrutineers are able to see this process. Every single ballot paper goes through a three-step stage of scanning. At the first step, the computer looks at every single number and tries to work out what every single number is. It looks at all the 1s, it looks at all the 2s, it looks at all the 3s and it flashes on the screen a list of all the 1s, 2s, 3s, 4s and so on on every ballot paper. A human looks at all of those numbers. If the human is satisfied that it has correctly read all those numbers, they press the okay button and it goes through as being okay.

MRS JONES: I see.

Mr Green: If there is a break in the sequence, so it is not just 1, 2, 3, 4, 5, but it might be missing a number or duplicating a number, that goes to another stage where a human being again has to look at it and make a judgement about what has been called. If an operator cannot work out from the screen what a number is, that goes to a third stage and a more senior operator will look at that. That is the stage that scrutineers are most interested in. That is the ones where it is doubtful as to whether they have read the correct numbers. Then there are quite a lot of cases where it is really hard to read on screen what those numbers are in the physical ballot that corresponds to that screen image; we will sit down with the scrutineers and we will make a decision about what those numbers are. So it is an extremely accurate way of doing it.

The informal ballot papers, some of which might turn out to be formal, are classified as informal in polling places. The Deputy Electoral Commissioner and I look firstly at every one of those with scrutineers present. So we have got a very high level of integrity checking that goes into all of that.

MRS JONES: Excellent. And just finally on that: I know that the tally room was cancelled for the federal election. Are you planning to have no tally room at the next ACT election?

Mr Green: We have not made a decision on this at this point. I would be very interested to hear the views of the committee and the Assembly in general on whether they would like us to have a tally room. In part it will depend on our budget negotiations for the next election. We do not have a set next budget for the next election at the moment; we are in the early stages of negotiating that budget. It is something where, if we were required to make savings, it is something that would be a straightforward thing to make savings on, because it is a whole thing that you can just cut out.

Quite a number of state commissions around the country have now stopped using tally rooms. I personally like tally rooms. I like the fact that ours is open to the public and that the public can come in and be part of the process. I think it is a way of engaging the public, and particularly the candidates and the parties, in the political process. But it is something that various other jurisdictions have stopped doing, because the internet and the television stations have stopped it as something that they are doing. We will also be talking to the television networks and the radio and newspaper networks to see whether they want the tally room. If they decide not to come, that takes away a lot of the point of having a tally room. So I would be interested in the committee's views on that.

THE CHAIR: Okay. We are running quite close to time. Do you have a substantive question?

MS BERRY: I can put mine on notice.

THE CHAIR: Okay.

MR HANSON: I am good.

THE CHAIR: The committee will deliberate, and if we have a committee point of view we will certainly let you know. If there are any other points that you want to bring across, please do so in any other questions that may come up. Thank you for joining us here this afternoon. We will look forward to seeing you at the next meeting. If there are any other questions, the secretary will be in touch—and regarding transcripts and corrections.

Mr Green: Thank you.

THE CHAIR: I thank our committee and all the witnesses who have appeared today. The committee looks forward to further responses to any questions that may have been taken on notice. Evidence that is provided to the committee will be reflected in the report, which will be available after it is tabled in the Legislative Assembly. I now adjourn the hearing.

The committee adjourned at 12.51 pm.