



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**STANDING COMMITTEE ON JUSTICE
AND COMMUNITY SAFETY**

(Reference: [Annual and financial reports 2013-2014](#))

Members:

**MR S DOSZPOT (Chair)
DR C BOURKE (Deputy Chair)
MRS G JONES
MS M PORTER**

TRANSCRIPT OF EVIDENCE

CANBERRA

MONDAY, 13 OCTOBER 2014

**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 12.32 pm.

Appearances:

ACT Electoral Commission

Green, Mr Phillip, Electoral Commissioner

ACT Human Rights Commission

Watchirs, Dr Helen, ACT Human Rights and Discrimination Commissioner

Roy, Mr Alasdair, Children and Young People Commissioner

Durkin, Ms Mary, Health Services Commissioner and Disability and Community Services Commissioner

Public Advocate of the ACT

Watchirs, Dr Helen, Public Advocate of the ACT

Mackey, Ms Patricia, Principal Advocate

Ms Sue Houghton, Senior Guardian/Advocate

THE CHAIR: Welcome to the first public hearing of the Standing Committee on Justice and Community Safety for its inquiry into annual and financial reports. I presume you have read the privilege statement enough times by now. I welcome Mr Phillip Green from the ACT Electoral Commission. Would you like to start by making an opening statement?

Mr Green: Mr Chair, thank you for inviting us to appear before the committee. I do not really have an opening statement. The only thing I wanted to draw the committee's attention to was the publication of a report on proposed changes to the Electoral Act in response to the *Proposed changes to the Electoral Act 1992: response to the Voting Matters report and further campaign finance reform issues* that was tabled in the Assembly a few weeks ago. That is something that has happened since we have published our annual report. Other than that, I am happy to take questions.

THE CHAIR: Going a little bit further than your earlier comments indicated, commissioner, the biggest news for the Electoral Commission is the forthcoming expansion in the size of the Legislative Assembly. Can you tell the committee about the work the commission is undertaking to prepare for the expanded Assembly, and are there any particular obstacles that you have encountered or anticipate in your preparation for the new Assembly?

Mr Green: Preparations for the redistribution are going well. We do not have any obstacles that we are aware of at the moment. The most important thing we are doing at this point is working with the Australian Bureau of Statistics to come up with population projections for the estimated enrolled population in all of the various suburbs and localities in the ACT, and that work is going well. We are also working on putting together a tool on our website that people will be able to use to draw boundaries with and get the internet site to do the maths and work out what the proposed enrolment projections would be for various boundaries that people will be able to do on the website. That is something that we are hoping to launch along with the invitation for making submissions to the redistribution committee.

Under the Electoral Act the commission has to appoint a redistribution committee as the first process in the redistribution process. That cannot start until two years short of the next election date, so that will be happening later this month. The committee will be appointing the redistribution committee, which will then meet and decide when to call for public suggestions and comments. There is a chance that that will happen in November, with the various comments and suggestions period closing in December.

THE CHAIR: Is the information you mentioned about the website going to be available for general consumption?

Mr Green: That is right. When we make the call for public suggestions, we are hoping to have that on our website, ready to go for people to use.

THE CHAIR: Thank you. Dr Bourke?

DR BOURKE: Mr Green, what are the effects of the commission now coming under the Legislative Assembly and the Speaker?

Mr Green: What are the implications of that?

DR BOURKE: Does it, for example, affect the workings of the redistribution committee?

Mr Green: It has no effect on the redistribution committee. That is a statutory process that was not changed following the establishment of the commission members as officers of the Assembly. The main change that has taken place from 1 July this year, when the commission members became officers of the Assembly, is the separation of the commission from the Justice and Community Safety portfolio. We are now effectively stand-alone entities under the Assembly. Rather than reporting to the Attorney-General, we now report to the Speaker. So our annual report that we are considering here is the first annual report that was submitted to the Speaker rather than to a minister.

We are now responsible, under the Financial Management Act, for our own finances, whereas previously I exercised financial powers as a delegate of the Director-General of the Justice and Community Safety Directorate. I now have those financial powers in my own right. That means for the current financial year, when we come to do this financial year's annual report, we will be doing our own financial statements for the first time as opposed to having them included in the Justice and Community Safety portfolio statements. That means in practice that we have to do the financial work in house rather than relying on JACS to do part of our financial strategic directions. We now have, for example, a contract chief finance officer who is going to come in and do our chief finance officer functions when we come to do our financial statements at the end of the financial year.

Other things that we had JACS do for us on our behalf we are now doing ourselves. With things like strategic corporate functions, strategic human resources functions, which we used to get JACS to do, we are now doing these on a fee-for-service basis through the Chief Minister's directorate. Other than that, though, we have always been an independent agency. The fact that we were in the Justice and Community

Safety portfolio did not prevent us from acting independently in the course of our functions, and that element of our work really has not changed.

DR BOURKE: So given this new arrangement, will the Speaker in future come down and front the committee at annual reports hearings?

Mr Green: My understanding is that that is not the Speaker's intention, but you might want to talk to the Speaker about that.

DR BOURKE: Do you have any agreement with the Assembly equivalent to the MOU you had with JACS?

Mr Green: We renegotiated the MOU we had with JACS, which was more about the process of advising the Attorney-General on electoral matters. Because the Attorney-General still retains responsibility for the Electoral Act, the attorney still has a relationship with the commission in the sense that any Electoral Act matters that the minister is considering are still things that we will be advising the minister on. For example, we still look at draft cabinet submissions and comment on draft cabinet submissions on electoral matters as they go up to cabinet. That is part of the relationship we have with the Attorney-General. I have forgotten where I was going with the rest of that remark. Did I answer your question?

DR BOURKE: More or less. Maybe you can tell me how future members of the commission will be appointed, given the new position. As I understand it, Ms Casey's term is expiring in 2015, which will be around the time that the redistribution is to be finalised.

Mr Green: Indeed, and my own appointment expires at the end of March 2015, so there will need to be an appointment process for both me and Dawn Casey, the other member of the Electoral Commission, whose term expires in September next year. That process will be conducted by the Speaker, and the Speaker is required to consult with party leaders and with this committee. So there is a fairly detailed process in the Electoral Act about how that appointment process will be conducted.

MS PORTER: On page 12 there is mention of the school-based electoral education program. How many schools were involved in the period of the report and were they in the main primary schools? I note the program is not offered to older secondary and college students. Why is that the case? What response has there been from the young students?

Mr Green: I do not have that information off the top of my head. Could I take those questions on notice and get back to you?

MS PORTER: All of them?

Mr Green: Most of those are about numbers, and I do not have those numbers.

MS PORTER: No, I asked why the program is not offered to older students—secondary and college students? That is not about numbers; that is about why it is not offered. The third question was about what response there has been from the students

that have actually attended. That could involve a number, I suppose—how many satisfied et cetera—but could you answer the middle one, please?

Mr Green: Yes, I could. The aim of our education program is to reach as many different students as possible. The difficulty with reaching students in years 11 and 12 is that the curriculum is very crowded at that point and it is very difficult for us to deliver electoral education programs to students in years 11 and 12. So we do tend to focus on the earlier years. It is as much to do with getting into their timetables as anything else. It is a very difficult thing for us to be able to fit in to their curriculum. My electoral education officers would be able to give a more fulsome reply to that, so if I could take that on notice, I can get back to you with more detail.

MS PORTER: That would be terrific, thank you. I will ask other questions later when Mrs Jones has asked hers.

MRS JONES: Commissioner, regarding pre-polling, in reviewing the impact of pre-polling in the last election, what lessons were learned and what are the plans or forward planning in relation to the next ACT election for pre-polling, as it seems to be increasing?

Mr Green: Pre-polling is increasing not only in the ACT; it is increasing in every jurisdiction in Australia, and indeed in New Zealand. The Electoral Council of Australia and New Zealand met in Wellington, in anticipation of the New Zealand election last month, and they were also experiencing increases in pre-poll voting.

MRS JONES: What was the experience from the last election that you learned from?

Mr Green: Roughly a quarter of our voting population voted pre-poll. I would not be at all surprised if that number goes up at the next election. We are intending to possibly expand the number of pre-poll voting locations at the next election in order to offer that to as many people as possible in a convenient way. Again, we are intending to use electronic voting at the pre-poll voting locations. Really, our planning is all around meeting the expected demand. We are hoping to ensure that we have an increased number of locations. We probably need an increased number of staff simply because so many voters are going through those places.

MRS JONES: Do you see a role in relation to pre-polling as relatively passive, just dealing with demand, do you see it as something that is beneficial, as something that is detrimental or do you have no view? What is the general way that you tackle it? Obviously the more available it is, potentially the more popular it will become.

Mr Green: In terms of the—

MRS JONES: Are we heading towards a voting season; I guess that is what I am asking.

Mr Green: When a quarter of your voters are voting early then you really do have to think of pre-poll voting as a fairly normal way of voting. It is not really an exceptional way of voting. It has become a recognised feature of elections not only in the ACT but right across the region that people expect to be able to vote early. People expect the

convenience of it. So it does obviously impact on the political aspects of elections in that people are voting earlier and earlier in the election period. The majority of people who vote pre-poll do it in the last week before polling day, and of the people voting in the week before polling day, it is the Friday before polling day that is the busiest day. So most pre-poll voters are still voting quite close to the election polling day. From the perspective of the operations of elections, because we provide electronic voting at the pre-poll voting centres—

MRS JONES: It is easier.

Mr Green: the more people who pre-poll vote and electronically vote, that means those votes are in the computer and ready to be counted on election night. So you get a much earlier indication of what the election result will be because we can distribute the preferences of all those electronic votes on election night.

MRS JONES: Have you considered whether you need to increase the number of locations to reduce it to the one week given that most demand is at the end of the second week?

Mr Green: That would be an option, but the biggest cost to do with setting up the pre-polls is the setting up of the pre-polls. If you are going to do it for one week, it is probably a better return on investment to do it for three weeks rather than just for one week.

MRS JONES: Presently we do it for two; is that right?

Mr Green: No, we do it for the full three-week pre-poll period.

THE CHAIR: Two supplementaries before we get to Mr Hanson. First, Ms Porter.

MS PORTER: On page 12 the report talks about providing pre-poll voting facilities for South Australia and Tasmania in general elections and the two Tasmanian council elections. Could you tell the committee how this was carried out?

Mr Green: This is something we have been doing for 20 years or more. All of the state electoral commissions and territory electoral commissions around the country issue pre-poll votes for each other so that when we have an ACT election all of the state and territory electoral commissions will issue pre-poll votes for ACT voters if they are travelling in those capital city locations. So we provide that service for the other electoral commissions. At the moment we are issuing votes for a by-election in Western Australia. There is another by-election coming up for the Northern Territory, I think, which we will be issuing votes for very soon. It does not cause us a great deal of work but we just take voters over our counter, and our normal office staff take the votes. It is a way of providing a reciprocal service so that the ACT gets the benefit of that when we have elections ourselves.

THE CHAIR: Dr Bourke.

DR BOURKE: Mr Green, is there any sense in your mind that people pre-poll because they prefer to vote electronically?

Mr Green: We have not surveyed people about this. So any guesses or thoughts we might put to this are just that—just guesses. My impression is that people find it more convenient to vote early. People are more and more working on Saturdays, perhaps more so than in the past. The way that people are in the workforce is obviously different from what it was decades ago. That might be something we might think of including in our post-polling day surveys that we typically do. That is something we might put in our exit polling, to ask people, particularly at the pre-poll centres, why they actually chose to vote early.

MRS JONES: Because those pre-poll booths are still open on election day and still offer electronic voting, is that right?

Mr Green: That is correct, yes.

THE CHAIR: Mr Hanson, you have a substantive question.

MR HANSON: On the changes to the Electoral Act that are required as a result of the expanded Assembly—and there has been the committee inquiry, and I know that you put submissions into that—can you give me an update on where you are at with that process and, from your view, what needs to be done from the Electoral Commission’s perspective as regards changes to the Electoral Act to make that process work smoothly?

Mr Green: You are talking only about the size of the Assembly?

MR HANSON: No, also the recommendations that you had that were outstanding from previous reports. I know that you had a series of reports that you put in and there were outstanding recommendations. So the whole gamut really.

Mr Green: Okay. The Electoral Act has been amended to increase the size of the Assembly. That is all in place. There is nothing further that is required in relation to the increase in the size of the Assembly. That will just happen later this month, that process will commence.

The committee that looked at the report of the Electoral Commission has issued its report. That has not yet been responded to by government. The Electoral Commission, as I mentioned, have published a report to the Assembly that addresses the recommendations of that committee and we have published some further recommendations in that report that pretty much arose from recommendations we put to that committee in our original submission to the committee but because of the time constraints of that committee, which had to report by 30 June, which was quite a short time frame, they were not able to address all of those issues that we addressed in our submission. We have put all those things in the report to the Assembly. That was tabled a couple of weeks ago.

MR HANSON: And have you been advised of the time frame for the government to respond to that report or not?

Mr Green: Under the amendments to the Electoral Act that established the members

of the Electoral Commission as officers of the Assembly, a new provision was inserted in the Electoral Act that requires the government to respond to reports of the commissioner within three months of them being tabled.

THE CHAIR: Commissioner, on page 83 of the annual report, it states that there was over \$500,000 in savings from a budget of less than \$3 million. How was this achieved?

Mr Green: We were given additional funding for campaign finance reforms in last year's budget and, I think, the budget before that and that included quite substantial funding for additional staff and for the preparation of an online reporting tool for parties to use in loading their returns to our website. In looking at how we would deliver that tool for parties, we initially were thinking of coming up with a fairly comprehensive online reporting tool that parties could use to upload the information to the web and to do that well would have cost quite a bit of money but in talking to the parties—we had briefings with the parties where we talked about how best we could get their information loaded into our systems—it actually turned out that it was a lot easier for the major parties, the ones who have the most reporting obligations, to simply upload spreadsheets onto our website, which was a very cheap process. While we budgeted for spending quite a lot of money on that reporting tool we decided that it was not required that we spend that money and we actually went down a much cheaper route.

We also had funding for two additional staff and we ended up not employing those two additional staff for the full time. We had one staff member who had to leave the commission. We did not replace her. So we were able to make some savings in that way.

THE CHAIR: Obviously you are undertaking a very large body of work over the next few months. In your original budget estimates that you indicated you would require for that, have you met any unexpected expense items that you need to consider?

Mr Green: No. We feel that our budget is quite adequate to meet our needs. In negotiating a budget for this financial year and in light of our conversion to officers of the Assembly, we did put a request for additional money into our budget estimates and we got what we asked for essentially. The committee helped with that process, thank you, and we are quite comfortable that we have got sufficient funding for our needs.

THE CHAIR: Dr Bourke.

DR BOURKE: Yes, just a supplementary after that one, if I might. Given that you are taking on a chief financial officer and leaving strategic, corporate and HR functions outsourced to other organisations, what is that going to achieve in relation to a change in the budget? I see in the financial summary on page 83 that you reported a total expense last financial year of \$2.3 million. What do you anticipate that it would be in the next financial year?

Mr Green: I would probably have to get back to you with the dollar amounts, but we

have an amount in our budget. That is the amount that we are budgeted to spend and I am very confident we will be able to work within that budget. Included in that budget was additional funding for our corporate overheads that were previously carried out on our behalf by JACS. We are satisfied that the funding we have received is sufficient to cover off on those additional functions.

DR BOURKE: You do not have that number at your fingertips?

Mr Green: I do have some financial figures. Here we go. I do have it, sorry. Our budget for 2014-15—that is not right, because we are now in 2014-15. Sorry, I am a year ahead of myself. Our total budget for 2014-15 is: government payment for outputs, \$2.425 million, with another \$20,000 revenue, giving total revenue of \$2.445 million. And we are anticipating our total expenses will be \$2.739 million, with an operating deficit of \$294,000.

DR BOURKE: That is an extra \$400,000 over the previous financial year?

Mr Green: That would be about right, yes.

DR BOURKE: With the redistribution for five seats how do you plan for uneven future growth in areas such as Molonglo, Gungahlin and with urban renewal?

Mr Green: The redistribution process requires us to take account of the anticipated enrolment as at the time of the next election, October 2016. The Electoral Act itself does not require us to take account of future growth beyond that point. We are mindful of future growth when we are drawing the boundaries but it is not actually a factor that the act requires us to take into account. But it is a desirable thing to try to include growth areas in each electorate if at all possible.

Once the ACT is divided into five, that might become more difficult because the growth in the ACT is very much concentrated on Gungahlin and Molonglo Valley at the moment. It is a factor that we will be looking at but whether that is able to be factored in to minimise changes in future uses is something that remains to be seen, I think.

DR BOURKE: And what level of discrepancy between electorates do you allow for?

Mr Green: The act allows for a variation from the quota, the average enrolment as of the next election, plus or minus five per cent. So that is the figure that we will be working to.

THE CHAIR: Ms Porter.

MS PORTER: On page 11 and further on page 54 it mentions the upgrade of Election ACT's ICT election systems in preparation for the 2016 election. How will these upgrades improve the commission's performance for that election? And on page 64 it mentions risks in association with the ICT systems. Could you outline for the committee what these risks are?

Mr Green: Yes. What we are intending to do in the 2016 election is upgrade and

improve the systems that were used in 2012 and look at new systems for the 2016 election. So we will be looking at using the EVAC system, the electronic voting and counting system, in pre-poll centres. We are looking at using the ballot paper scanning system again to scan all the paper ballots. We are wanting to upgrade our election results display system, because with five-member electorates that is a fairly significant change to our election results display system.

We are wanting to reuse the electronic Legislative Assembly polling place system that we used for the marking off of names in polling places. An issue there is that we need to ensure that we have got hardware that we can use to deploy for all our polling officials during the election. At the 2012 election we used net books on loan from the Tasmanian Electoral Commission. Those machines probably will be available in 2016, but they will be ageing and things like batteries will be starting to fail in those machines. So we need to ensure that we have hardware for use in the polling places. We also need to ensure that we have got hardware that we can use for deployment of electronic voting in the pre-poll centres.

Some of our biggest risks are making sure that we are able to source hardware that is both appropriate and within budget, because we do not want to be buying equipment. We want to be either borrowing it or leasing it. We are also upgrading our election management database system called TIGER. That stands for the integrated gathering of electoral records. That is a very extensive system of election management database systems that we use for things like paying polling officials and buying materials and so forth.

With any IT system, there are risks associated with the use of those IT systems because, obviously, if a system fails and it is a Google system, then you have got a serious issue. We put a lot of effort into making sure that our systems are robust, that they are fit for service, that we have got backup systems in place for all our systems. And we have received capital budget funding in this lead-up period to the election to ensure that we do make sure our systems are up to date.

THE CHAIR: Mrs Jones.

MRS JONES: I have a supplementary to an earlier question; I will hand my substantive over in the interests of time. Regarding the redistribution that you have already touched on, are you expecting the electorate names to be all completely different or are you expecting to maintain the three names you have got and then add?

Mr Green: That is entirely up to the redistribution committee to initially propose and then for the augmented Electoral Commission to decide on. One of the things that we are wanting from people when we invite public submissions later this year will be people's views on what they think the redistribution names should be. It is entirely open at this point as to what those names will be. We can retain some or all of the existing names, but there is no legal requirement to retain any of them, so it really is open.

MRS JONES: I will hand my substantive question over to Jeremy.

MR HANSON: Given the time, Mr Chair, I am—

THE CHAIR: We have a couple of minutes.

MR HANSON: Good. The Electoral Act caused a couple of disruptions to party reporting. It was a difficult process, with the changes to the Electoral Act that occurred a couple of years ago. I know that with all the parties there were teething problems. Are you happy now that those have been sorted out and all of the parties are across the issues and are complying with the act?

Mr Green: The report to the Assembly that we recently published does talk about particularly some of the time lines for reporting, and the *Voting matters* committee report also addresses some of those reporting periods. There is a suggestion, for example, that, rather than have reporting gifts received within 30 days outside an election year, there be a reporting period at the end of each quarter. There are some decisions to be made around changing those reporting time lines; we are certainly not at the stage now where I think everyone is happy with the current regime, and there are several proposals on the table now for changes to those.

MR HANSON: Thanks.

THE CHAIR: Commissioner, thank you for coming in. All too quickly our time has flown, but the committee secretary will stay in touch with you regarding any questions on notice, and a copy of the proof transcript will be sent to you.

I welcome witnesses to the first public hearing of the Standing Committee on Justice and Community Safety for our inquiry into annual and financial reports of 2013-14. We look forward to hearing from the ACT Human Rights Commission this afternoon. I would like to welcome Dr Watchirs, Mr Roy and Ms Durkin for being here this afternoon. Could I ask you to make sure you are familiar with the privilege statement; I think you have read those before. And would you like to make an opening statement?

Ms Durkin: No.

Mr Roy: No.

Dr Watchirs: Yes, I have a brief one, thanks.

THE CHAIR: Okay.

Dr Watchirs: As noted at the start of the annual report, from 1 January this year I have also undertaken the role of Public Advocate, including public guardian. I want to emphasise that it has not, in my view, affected the quality or volume of work of human rights and discrimination.

The highlights of the reporting period are the audit of women's conditions of detention at the AMC; a substantive review of the Discrimination Act submission to the Law Reform Advisory Council; holding our fourth annual roundtable; and attending two community consultations about racial vilification and proposed amendments to section 18C of the federal Racial Discrimination Act. In the year of

the ACT centenary, we celebrated International Human Rights Day at the National Library with a record crowd; it was streamed nationally on ABC radio. And, for the first time in over 10 years, we hosted the Australian Council of Human Rights Agencies Officers Conference here in Canberra, with over 50 staff from around Australia and guest speakers such as Ken Henry, former head of Treasury, and Professor Simon Rice from the ANU.

THE CHAIR: Thank you, Dr Watchirs. I would like to ask a question which all three of you may want to comment on. In previous hearings, each of you has told the committee that, as you educate people in the community about their rights, demand for the services of the Human Rights Commission increases. In some instances, you have told the committee, complaints processes have been handed back to ACT government agencies because you had insufficient resources to respond to all requests. What is the present state of the equation between the demand and your ability to meet that demand? I will leave that as an open question for all three of you.

Ms Durkin: The bulk of the complaints that are received by the commission are in the health jurisdiction. I am not sure of the total number of complaints this year, but 413 of the total were health complaints. I have outlined in my annual report how I am dealing with increased complaint numbers at a time when resources have not similarly increased. We are referring a lot back to providers, but I am quite happy with how that is being handled, particularly in relation to ACT Health, who “get it” in terms of complaint handling and have solid complaint-handling mechanisms in place.

With the private sector it is not quite as simple; often you have got small organisations that do not have sophisticated policies and procedures. But I am undertaking work with the private sector to look at their complaint-handling policies and procedures and try and assist them in that way.

THE CHAIR: Thank you.

MR HANSON: I have a supplementary, if I could, on that.

THE CHAIR: Yes, Mr Hanson.

MR HANSON: Ms Durkin, have you identified a reason for the 16 per cent increase in health complaints? Is it simply more people making complaints, or is it a problem in the health system or a particular area in the health system? Is there any consistency to them?

Ms Durkin: It is always difficult to tell with increases in complaint numbers. It can be because you increase your education of the community; it can be because there are increased problems in the system; it can be because of increased awareness for other reasons. One of the things I have said in the report is that the introduction of national registration in relation to health professionals has probably contributed to a greater community awareness of the right to complain about health professionals. It is hard to say exactly what the answer is. We are a very educated community in the ACT; people are pretty aware of their rights and quite happy to complain.

MR HANSON: Sure. Are you seeing any particular areas in the health system that are

generating more complaints than others? Is there a particular problem with an area in the health system?

Ms Durkin: No. If you look to page 15 of the annual report, the complaints that have increased have not increased in relation to the public system. While we had a 16 per cent increase in complaints, there was only an increase of two complaints in the public health system, so I am not seeing that there are any major areas of concern there. Each year I report about the break-up of complaints; they are in that table there. They are fairly consistent with previous years.

MR HANSON: There were a couple of pretty horrific examples in the report. Is that consistent with the number of reports that you were provided with or were they exceptions?

Ms Durkin: We get serious complaints every year where things go wrong, in both the public and the private sector. I do case examples every year. The media has picked up on some of those case examples this year, but, equally, in previous years there have been things go wrong that have been of significant concern.

MR HANSON: Sure. The examples are interesting because they give the committee an idea of what sorts of issues are occurring. You give a couple of those examples. The rest seem to be just statistics—42 from the Canberra Hospital and so on. In the way that you put those examples together, do you have a summation of what the complaints were—obviously without identifying individuals—beyond what is provided in the report that is available to the committee?

Ms Durkin: When we deal with complaints, we enter into our database a summary of what the complaints are.

MR HANSON: Yes.

Ms Durkin: I am happy to go back and have a look at themes arising out of them if you like.

MR HANSON: I suppose what I am looking for is those summaries.

Ms Durkin: We are subject to strict secrecy and privacy provisions, and I think a lot of those summaries would possibly allow people to be identified. Could I just take that on notice and have a think about it?

MR HANSON: Sure.

MRS JONES: Potentially could we have a topic, an area or something for each one?

Ms Durkin: Yes.

DR BOURKE: I have a couple of supplementaries, chair.

THE CHAIR: Okay.

DR BOURKE: Just coming back to that point, how important is it to protect people's privacy with regard to complaints, and what steps do you take to do that?

Ms Durkin: Absolutely important. As I said, we are subject to strict secrecy and privacy provisions. We are also subject to the provisions of the Health Records (Privacy and Access) Act, which basically provides that information on people who provide information to a health service provider or to some places like the commission will not be passed onto anyone else without their consent.

There are exceptions to that such as compassionate grounds—when someone is in hospital in a critical condition or whatever, you can share with families—and exceptions like dealing with the treating team and so on. But generally people's privacy should be protected. That is about confidence in the system. If people go to the public or private sector and find that their personal health information has been breached, they lose faith in the system and they are less likely to go back and get treatment for things when they should get treatment.

That can have quite significant implications for the system: people leave things until it is too late; you deal with something as a crisis rather than back here at a primary health care stage. There are lots of reasons why privacy should be protected.

DR BOURKE: Thank you. And you mentioned an increase in numbers before. How does this compare with other jurisdictions?

Ms Durkin: I would have to look at my colleagues' annual reports from around the country. We meet every six months; anecdotally we all talk about increases in complaint numbers, but I would have to go back and look at their annual reports to see if that has been the case in this last year.

DR BOURKE: I have a substantive question.

THE CHAIR: I am conscious of the time, so perhaps I can ask that original question I asked and you could include a portion of that in your answer to the next substantive question, if that is okay.

DR BOURKE: Thank you, chair. Dr Watchirs, could you outline where the review of the ACT Human Rights Act is up to?

Dr Watchirs: There is a two-year review of the act looking at economic, social and cultural rights. We have seen an outline of what that review will look at, and that will go out to the community. The commission is not responsible for that; it is the Justice and Community Safety Directorate.

DR BOURKE: Thank you.

THE CHAIR: Ms Porter.

MS PORTER: Ms Durkin, on page 10, the report mentions the development of a disability action plan for the Human Rights Commission, which was initiated in December last year. A number of initiatives under the plan have been progressed.

How has the plan been progressed and how is it progressing?

Ms Durkin: The plan is progressing well. In the plan we undertook to do an access audit of the commission, which is about our physical access as well as access for people to come to the commission and be able to complain. We have just recently received that access audit and it made a number of recommendations around the physical facilities both within our office and within the building and general vicinity that we work in.

One of the other things that we did commit to in the disability action plan was to try to increase disability employment across the ACT public sector by seeking to influence other directorates. I have gone and spoken to the people in—I cannot remember what it is called—all the areas of directorates that are responsible for personnel. I have gone and spoken to them and I am very encouraged by the most recent meeting with the new Commissioner for Public Administration that there is quite an intention to try to do better than we have done in the past in relation to disability employment.

THE CHAIR: Mrs Jones.

MRS JONES: I want to go to the Human Rights Commission, on pages 29 to 45 of the report, in particular touching on the report on human rights of prisoners in the AMC. Is there a plan to do a full audit of the male prisoners at the AMC? You mentioned in your opening remarks that you do not feel that there is any additional pressure in balancing the two roles that you have now got. Can you explain to us how that balance is being reached? Do you divide your time proportionally or just as things come up? I have got some supps, but let us just start there.

Dr Watchirs: Sure. In relation to males at the Alexander Maconochie Centre, we do not have a plan to do that audit. It was fully stretching resources to have a person work on the audit for a 12-month period. It ran over time several months because of giving corrections the opportunity to make submissions on a draft report. No, there is no plan, unless we get additional resources to do work. And we are taking an interest in the Auditor-General's review of the prison, whether any human rights issues come from that.

The decision was made to target women because it was an area that could be achieved and it was an area that we had heard a lot of criticism about—some of it historical, some of it new. But I think it was a worthwhile audit and we were heartened by the government response that it was taken seriously and is being implemented.

MRS JONES: I was talking about your balance of the two roles now with the Public Advocate role.

Dr Watchirs: Sure. Half of this report is fully as Human Rights and Discrimination Commissioner. It is only for this year I have had the additional role. I must say that it saves the government \$200,000 a year per annum; that is, \$100,000 per agency saving in terms of staff coverage. Some of the cuts that were proposed have not actually yet been implemented because of those savings to both agencies.

I am located in the Public Advocate's office daily. I formally meet my staff weekly. I

am in contact several times daily, in person probably every few days. The advantage is that, having been in the role for 10 years, I am very familiar with the work and I delegate to staff. Probably more the discrimination role has been delegated than the human rights role. And I am the manager of the whole of the Public Advocate's office in that there is no office manager. So I am responsible for financial budgeting and staffing issues. But there has been no change of staff. That has not been as onerous as it could be.

MRS JONES: Just to reflect for a moment on the women at the AMC, given that that report has now been handed down and that there were 61 recommendations for improvement, is the prison human rights compliant for women at present, given the number of recommendations that have been made?

Dr Watchirs: Certainly there were a number of reservations about giving it a tick off as human rights compliant.

MRS JONES: At the point of the report, no?

Dr Watchirs: I do not think any institution is ever fully human rights compliant. It is a thing of continuous improvement. Certainly compared to the 2007 audit we did at the Belconnen Remand Centre, it is a thousand per cent better in term of facilities and treatment.

In relation to the differential treatment of women to men, women have the advantage of being accommodated in cottages whereas men have sentence and remand blocks and cottages are seen as something you work towards. On the other hand, women have fewer work opportunities. They are not allowed to go to the transitional release centre. There is one woman on weekend release. This year, several weeks ago, she was going home on weekends, but from inside the prison to outside, not from the transitional release centre.

THE CHAIR: Mr Hanson, a substantive.

MR HANSON: The number of complaints particularly in the health area has gone up but resources for the Human Rights Commission have not. How are you managing that one? I am particularly interested, Ms Durkin, in how you are. If you have got more complaints and the same number of staff, I assume that means that you conduct less thorough investigations or you simply cannot investigate a number of issues. What is the impact?

Ms Durkin: That is right. We basically triage complaints. Those that are really quite simple, less serious in nature, we will send back to providers to respond to and say we do not want to see it again. If you go up a bit further—and it might have some issues in it that might be worth looking at a bit later—we will ask the provider to respond directly to the complainant and then the complainant can come back to us if they are not happy. And then, basically, we will look into matters that raise significant issues of public health and safety, if it looks like compensation might be appropriate, if it looks like it might lead to policy or procedural change, if it looks like it is an issue that we have seen before and there are some themes. Generally, we will deal with matters that come from most vulnerable people in the community, but, yes, we handle

it in ways that ensure that we are still dealing with the most important complaints as they come through to us.

MR HANSON: One of the issues that have been brought to me by health consumers is that they think that they have made a complaint because they have complained to the front-line health staff, a doctor or a nurse, and said, “This is unsatisfactory,” whatever the issue is, thinking that they have made a complaint but essentially they have not because the health professional does not really act on that beyond listening at that point. Are you aware of that? And how do you address that?

A lot of people are thinking that they have made a complaint and that that is going to be addressed but it does not really go beyond that individual that they talked to in the health system. How do we make people aware that if they want to make a complaint they actually need to do it in a more formal way than just speaking to the nurse or the doctor?

Ms Durkin: That is what this project is aimed at, as I was mentioning before, working with the private sector in particular to see how they handle complaints. There is a provision within the Human Rights Commission Act that basically says if a person is attending premises to get a health service then that service must display information that tells people about their right to complain not only to the service provider but to the commission. We distribute that material to all health service providers. Most of the public system seems to have it whenever you wander around and have a look. We are gradually dealing with different sectors of the private sector on a year-by-year basis.

The other thing is community education, obviously, and we do that as much as we can in terms of educating providers that it is everybody’s responsibility within the system to respond to issues at the local level, try to resolve it. If it is not resolved, tell people about their right to escalate it, the right to put in a formal complaint et cetera.

THE CHAIR: Moving on to the Commissioner for Children and Young People—I think you have been neglected—I will ask you a question. Commissioner, can you update the committee on progress by government in response to your 2011 report on the ACT youth justice system? Are there any particular areas which you would like to highlight?

Mr Roy: Overall I would have to say that both Bimberi Youth Detention Centre and the broader youth justice system itself have improved significantly since the review. The number of young people entering custody has decreased markedly, and I would say the services they receive while in Bimberi have improved markedly as well.

I meet monthly with the other oversight agencies—the Public Advocate of the ACT and the official visitors of the ACT, and now Legal Aid actually has joined us as well—to review what is happening within Bimberi and also within the broader youth justice system, and we have recently released a second annual report which we provided to the standing committee and which outlines some ongoing concerns.

There is nothing substantial that I could identify that is, I would say, still fundamentally flawed with the system—and I use that word cautiously but purposely.

I would say that the system was fundamentally flawed when we undertook the review but it has changed, as I said, significantly since then.

THE CHAIR: And in terms of my original question, what is the present state of the equation between demand and your ability to meet that demand?

Mr Roy: Since I began, my complaints have gone up tenfold and, as I have identified in previous annual reports, I said that it was unsustainable to be able to meet that level of complaint. I have a number of functions which I tend to put into three categories: responding to complaints, engaging with children and young people, and providing advice to government and non-government agencies about how to improve services.

As complaints go up, obviously the other two go down or remain the same. A number of years ago we made the decision to actively triage complaints, similar to how Commissioner Durkin outlined. We probably took a more hardline approach, and we have decreased our complaints probably by about 50 per cent in that time and have used those resources to focus on systemic issues which I have outlined in my report. I think in this annual report there are about 24 to 25 systemic issues which I am trying to get my teeth into.

That is great, because I think, on balance, systemic work is probably more productive than individual complaint work. However, I do worry that we are missing things, that we are missing the information which we often only glean once we have looked into the complaint. I also worry that even if you do refer an individual back to an agency, following on from what Mr Hanson said, despite great undertakings by agencies, sometimes people do not get the response that they either deserve or need, and they give up or and they do not come back to me. So I worry about that.

THE CHAIR: Thank you. Dr Bourke.

DR BOURKE: Just a supplementary, chair. Coming back to the reduced numbers of youth at Bimberi, what is your understanding of the reason for that?

Mr Roy: It is really hard to identify one issue, which probably explains why the Bimberi review was so long. We looked at all aspects of the youth justice system. I think there is a greater understanding of the negative consequences of incarceration for young people, so I think the system is more willing to look at other alternatives. I think we are doing better with respect to bail conditions and breaching young people for breaches of bail or arresting young people for breaches of bail. I think we are doing far better transitioning young people from Bimberi into the community; I know Bimberi have done a lot of work with the transition unit, and there are some great success stories from the young people who they actually support prior to transitioning back into the community. We are also getting better at supporting young people once they are back into the community. So it is multifaceted.

DR BOURKE: What about restorative justice, in particular the government's move to hire a guidance partner for Indigenous restorative justice?

Mr Roy: I could not comment on that; I would have to take that question on notice.

DR BOURKE: As a substantive question, Dr Watchirs, let me ask about the establishment of the NDIS.

Dr Watchirs: Do you mind if I answer the last question about Bimberi?

DR BOURKE: Sure.

Dr Watchirs: There was a human rights audit of Bimberi as well as the commissioner's review of the youth justice system. As you know, we did an audit of Quamby in 2005, and the change was quite dramatic in terms of the facilities. But the culture has been the big change since the report of Mr Roy and the human rights audit in terms of building a human rights culture. Not only are half the number of young people detained but as Public Advocate I am seeing half the number of segregations occurring. We saw fewer strip searches going from Quamby to Bimberi, but we saw more use of restraints and force. On all those indicators, Bimberi is doing well, because of the changing culture.

DR BOURKE: Just going to my question on the NDIS and its local establishment, what has been the commission's involvement in that?

Dr Watchirs: As Discrimination Commissioner, the majority of my complaints are disability, in areas such as, particularly, housing. I have to say that in my role as Public Advocate I have really got my teeth into it. It did not come into force until 1 July this year, which is not the reporting period, but certainly there has been a lot of anxiousness in the community about whether the supports will be the same or better. In some cases, they are worried that there will be a deterioration. I have not seen that in practice yet, but I think it is too early to tell. Ms Durkin is definitely the expert on the NDIS compared to me.

THE CHAIR: We have time for one more question. Ms Porter?

MS PORTER: Dr Watchirs, on page 30, the third dot point notes as a highlight of the year:

Promoting the understanding and enhancement of rights amongst the Aboriginal and Torres Strait Islander community.

How is this achieved and what has the effect been in relation to the rate of complaints received from Aboriginal and Torres Strait Islander people?

Dr Watchirs: We received some special funding from the department, and we kept an Indigenous trainee to do some of that work. We had some higher level staff doing the policy work. Demand from the community following the race roundtables was that they wanted training on the UN Declaration on the Rights of Indigenous Peoples, so we have done more of that community training. We have done it within directorates such as Community Services Directorate. And we have held events like having a film. We did *Our Generation* two years ago; this year we did *Charlie's Country* at the National Film and Sound Archive. That is part of our wrap. That is not just a special project; it is an ongoing obligation.

We did recently launch a small note card to put in your wallet about what happens when you are arrested, what your rights and obligations are. That is focused on young Aboriginal people—not just people under the age of 18 but people in their 20s as well. We have yet to see the impact of that, but there has been an issue about people knowing what their rights are, whether they are arrested or not or whether they need to be moved on. That was something very positive that has come out of that as well as the practical training.

I can give you more information on notice if you would like.

MS PORTER: Yes; it would be lovely to have a copy of that.

Dr Watchirs: The wallet card? Sure.

MS PORTER: That would be terrific. Thank you very much.

THE CHAIR: Mrs Jones, did you have any further questions?

MRS JONES: I only want to ask a quick question, and maybe we can just go down the line. Obviously the budget constraints are constant and government has to make priority decisions, but if each of you had the opportunity to put an injection into one area of your work, where would the priority be for additional funding? Ms Durkin?

Ms Durkin: It is a tough one. Having three hats, I would like to be able to devote resources specifically to the older people jurisdiction. Currently that is handled within my health team. In the disability area, I have one person working four days a week, so clearly that is a fairly small resource. And in the health area I would like to be able to do more systemic issues, inquiries.

MRS JONES: Mr Roy?

Mr Roy: It is a very good question. I have one FTE assisting me and I have had one FTE for my time as commissioner. As you would imagine, with one FTE it is almost impossible to undertake the full range of my statutory functions to the full extent that I would like to or probably should do. I do not think I am engaging and consulting with children and young people and their families as much I should or could. I would certainly like to be able to respond to all complaints on balance, without turning them away. As I said before, I do worry what I am missing and what is just around the corner with respect to “the next Bimberi” kind of thing. I would also like to be able to get my team more solidly into some systemic issues. With one FTE, you start, you get distracted and you go back to it; it can take years to achieve something that we really should be able to do in a number of months.

MRS JONES: Thank you. Dr Watchirs?

Dr Watchirs: In relation to my two roles, I would like the money in the discrimination area. That is something that has shrunk over time. It was timed to start with the old Human Rights Office, which existed before the Human Rights Commission. The areas I would look at would include pregnancy. We are developing a pamphlet at the moment. It is only two per cent of complaints; I think in practice it

is much higher—

MRS JONES: Yes, under-reporting.

Dr Watchirs: We know that from the federal work recently on that. Own-motion work is an area. My complaints have been fairly steady—84; it was 82 the previous year, with 133 allegations.

MRS JONES: In which area was that? I missed it. What did you say?

Dr Watchirs: In relation to discrimination complaints, I have had 84 new complaints. In the previous year it was 82, and 133 allegations. So disability first, race second.

In relation to own motion, we have done a case against the Education and Training Directorate in relation to charging of international student fees, including for asylum seekers. We are expecting that to be released soon. And with those systemic reports, I would like to do more in the private sector, such as looking at sexism in some areas of retail or hospitality where we have seen trends or with security guards in relation to racism, over the years with pockets where discrimination is occurring.

There had been concern with tenancy. We worked with the Real Estate Institute and the Tenants Union and got a pamphlet out there. Discrimination has been reduced because people know what their rights and obligations are.

MRS JONES: Just to clarify, one thing you mentioned was security guards. Obviously, there is an increased emphasis at the moment on religious and cultural groups—dress and security around that. Do you have any comment you want to make about if that could be handled better or if there are specific suggestions that you would like to get out in the community about dealing with people in alternative dress?

Dr Watchirs: Sure. I think Canberra is a fairly tolerant community, but seeing the Canberra Islamic Centre being defaced earlier this year was quite a shock to the community. I still feel that the general feeling is of tolerance, and people are free to dress as they wish. In the security area, we have had issues of racism, and of course that can spill over into religious garments. We have had cases of nightclubs with a man wearing a Sikh turban not being admitted. In past years, African people have been excluded from certain places because there had been a fight the previous week. It is about absolutely arbitrary and unlawful rules. With those individual establishments, because we have had complaints against them, we have come to agreements where they have said what they will do in terms of changing their policies and training their staff. That is registered with the ACAT and has the force of a tribunal order without going to all the trouble of having a full hearing. Of those 84 cases, we had 47 conciliations and 33 of them got registered in the tribunal for hearing.

THE CHAIR: We will hold it there at the moment. Dr Watchirs, you are staying with us for the Public Advocate segment. Mr Roy and Ms Durkin, thank you very much for joining us this afternoon. The committee secretary will be in touch regarding any questions on notice and to forward the approved transcript for your consideration.

Ms Durkin: Thank you.

Mr Roy: Thank you.

THE CHAIR: You answered a couple of the questions in your capacity as Public Advocate. We have eaten a bit into your current time; there is 15 minutes left now.

Dr Watchirs: Sure.

THE CHAIR: We have already gone through the previous welcome, but would you like to make an opening statement?

Dr Watchirs: Just that I have only been Public Advocate for half of this period, six months, so the work reflects that of the previous occupant, Anita Phillips, over eight years and, before her, Heather McGregor, for 12 years. So there has been 20 years of people of very high calibre performing this work and it has been an honour to be offered the opportunity to do this work even though it means juggling hats. It is really down to the dedication of the staff in both bodies that this is made possible. Patricia Mackey is here from the public advocacy side, not the guardianship side, of the advocate's office for questioning.

THE CHAIR: Thank you. I might start with the first question. I will address it to you and you may want to direct the question as appropriate. Dr Watchirs, in previous annual report and estimates hearings, the former Public Advocate told the committee that demand for services in your office for both guardianship and enduring power of attorney were increasing to an unsustainable level in terms of case loads for staff. Can you tell the committee about current case loads and conditions and what can be done to address the apparent long-term trend in demand?

Dr Watchirs: Certainly there has been an increase of casework in relation to guardianship. There have been 220 clients appointed by ACAT, so 47 cases per advocate is the case load currently, which is a very high one, using the national standards. In relation to advocacy, there has been a large increase in relation to mental health and children and young people that Ms Mackey would like to speak to.

THE CHAIR: Before you start, Ms Mackey, I welcome you and Ms Houghton.

Dr Watchirs: Ms Houghton is from the guardianship area.

THE CHAIR: Thank you. I would just like to ensure that you have read the statement before you to ensure that you are aware of the comments you make here, in what context you are making them and the protection you receive under that.

Ms Houghton: Yes, I am.

Ms Mackey: Our branch has three areas of public advocacy: children and young people, mental health and forensic, and disability. If you look at the numbers in total of people brought to our attention, it is 1,975 people who are reported to us under various legislation, be it mental health legislation, the Children and Young People Act or other legislative provisions.

In relation to that number, we do a review of documentation for 71 per cent of them and direct advocacy is provided for 555 people. I do that with a team of me and three other advocates. We are constantly prioritising matters and doing those that are most urgent. Just over a thousand of those people come to us via the mental health legislative provisions. They may be detained in hospital or they might be in the Alexander Maconochie Centre. In this reporting period we commenced a clinic there every fortnight where we see detainees who are there for mental health reasons. It is a juggling act and we do what we can with the resources that we have currently got available to us.

THE CHAIR: Dr Bourke.

DR BOURKE: Perhaps you could explain how the advocate works with the official visitor at Bimberi to avoid duplications?

Ms Mackey: Certainly. We have very close relationships and, I guess, an understanding and a protocol of how we work together. The official visitor visits Bimberi fortnightly, and a lot of those issues the official visitor can resolve at the time of the visit. If there is a matter that is beyond what the official visitor could attend to, she will make a referral to us and we can then follow up on an individual advocacy level. It might be attending court, it might be investigating further a matter that a young person has.

We also participate with the official visitor and the Children and Young People Commissioner on an oversight committee which meets every month. That gives us an opportunity also to look at areas of common interest, and we have been working on a number of those through the last reporting period.

Our role is very much around the individual advocacy and representation in courts and tribunals, which distinguishes our role from the official visitor. The official visitor investigates complaints; we are an individual advocacy representation. It is a different role.

Dr Watchirs: In relation to numbers, we provided 18 advocacy services for seven young people in Bimberi. In relation to segregation, there were 12 notices and they were for five young people. That was down 64 per cent.

Ms Mackey: Our role is quite discrete. We have an oversight role in relation to inspection of registers, search registers, segregation registers, use of force. That is a requirement under the children and young people legislation. But our role is very much distinguished around complaints. The official visitor would deal with a complaint from a young person in Bimberi, and if there is a need for representation for that young person at a case conference or in court, the matter would be referred to us by the official visitor.

THE CHAIR: Ms Porter.

MS PORTER: Dr Watchirs, I think that you might have answered this question in relation to discussions that you had with the director of youth and justice and Bimberi management to facilitate the resolution of issues, as you discussed that beforehand

when you were wearing that different hat, but I am happy for you to elaborate on that in relation to those meetings. You also have bi-monthly meetings with Richmond Fellowship, senior management of OCYFS and the official visitor regarding Marlow Cottage. I was wondering if you or any of your other officials that are here want to make any comments about those meetings.

Ms Mackey: Certainly. We have this bi-monthly meeting that involves Richmond Fellowship staff, the official visitor, youth justice representation—at times care and protection also attend—and the Public Advocate. During that time we look at young people who are resident in Marlow and some of the other facilities that fall under the auspices of Richmond Fellowship. We review their current case situation. If there is a need for advocacy, the Public Advocate would take on a matter at that time.

It provides, I guess, an opportunity for also the agencies to bring young people to our concern and attention if we may not be aware of them. So it gives us, I guess, a bit of an oversight opportunity for young people who are involved in funded placements with Richmond Fellowship.

THE CHAIR: Mrs Jones.

MRS JONES: I go to page 30 of the report where it states that part of the role of the advocate is to foster and promote quality provision for children and young people engaging in the mental health system. I just ask the question: what are the reasons that are put by the Canberra Hospital or by the adult mental health unit for admitting the majority of young people to the adult mental health unit? What is the experience there that you are finding?

Ms Mackey: Is this in relation to young people who may be admitted?

MRS JONES: Yes.

Ms Mackey: Where possible, young people are accommodated in the adolescent unit of the Canberra Hospital. At times their presentation, however, is so concerning and of risk to other patients in the adolescent unit that they cannot be managed without significant risk to self or other patients or even hospital staff. When they have been admitted to the adult mental health unit, they have been accommodated in the special area for special nursing. They have been accommodated there for the minimal time possible because we do not have an adolescent mental health unit here. At times we have had to look at interstate transfers where that is clinically indicated.

MRS JONES: Has that occurred?

Ms Mackey: I could not give you numbers on it, but there have been instances of that where a young person might be transferred to Campbelltown Hospital, to the mental health unit there. They are given special one-on-one nursing and they are accommodated separately, but it is normally around risk and clinical presentation that deem it that they cannot manage them. They have attempted to do so but, as you can imagine, some of the behavioural presentations can put other children and young people at risk. The mental health services have had no choice at times.

Dr Watchirs: Certainly I have had meetings with Disability ACT in relation to a young woman who was kept in the adult area and argued that as a public authority their obligation was to provide services in the community to support that young person. And we have seen an improvement in relation to those services provided.

MRS JONES: There has been an increase in community care rather than the institutional option?

Dr Watchirs: Exactly. The institution is an absolute last resort, particularly in an adult unit.

MRS JONES: And in the work of the Public Advocate, are you experiencing the needs of people who are admitted involuntarily into the adult mental health unit and—

Dr Watchirs: Can I just give you the figures for young people?

MRS JONES: Yes.

Dr Watchirs: We provided advocacy for 62 young people on 191 occasions, and we were notified—

MRS JONES: You are a little hard to hear.

Dr Watchirs: Sorry. We provided 62 young people with advocacy in relation to mental health on 191 occasions and, of those, 58 young people were admitted to care. We visited 10 young people 12 times in hospital, and 28 of those admissions were voluntary, which is a decrease. The previous year it was 48 young people were voluntary.

MRS JONES: So fewer are going voluntarily into hospital?

Ms Mackey: There has been an increase in involuntary admissions this reporting period, a significant increase.

MRS JONES: Is that a policy change or has the case load changed?

Ms Mackey: I am not sure of—

MRS JONES: The reasons.

Ms Mackey: I would probably have to do a project on that. Possibly due to risk, that has required involuntary detention. Involuntary detention is a last resort for young people as well as adults. The mental health services have obviously deemed it in the best interests of that young person. But there has been an increase from, I think, four involuntary admissions last reporting period to 30 involuntary admissions this reporting period.

MRS JONES: That is a very significant increase.

Ms Mackey: In relation to admissions, we are at the hospital every Tuesday and we

will at that time see young people who are involuntarily detained and we will meet with the CAMHS consultant liaison position in relation to all voluntary admissions. I have got only one senior advocate in the mental health area covering the whole program area, which is young people, adults in the mental health facility as well as the Alexander Maconochie Centre. We review voluntary admissions with CAMHS to see if there is a role for us as far as advocacy—

MRS JONES: Can you elaborate—CAMHS?

Ms Mackey: Child and Adolescent Mental Health Service.

MRS JONES: Just for the record. And my question was about then stretching out your experience with adults as well, and managing advocacy for adults in the adult mental health unit and their experiences of these involuntary admissions.

Ms Mackey: We attend the consumer meeting every Tuesday at the adult mental health unit where consumers have an opportunity to bring their concerns to the Public Advocate. And if there are individual matters, then we can deal with them after that. But they are positive, when you compare their experience now, to what it was when we had the psychiatric services unit.

MRS JONES: Certainly.

Ms Mackey: Yes, it is very positive, but—

MRS JONES: Nonetheless, you want to run well the facilities you have got.

Ms Mackey: Yes, and they have that opportunity to bring concerns to us. Most of the time it is actually positive feedback that we receive. We then meet with Allied Health and the team leader and management of the adult mental health unit to bring those issues to their attention, and then we can feed that back to the consumers. But I guess we have an individual advocacy role with consumers as well as a broader systemic advocacy role in taking their concerns collectively to Mental Health ACT.

Dr Watchirs: In terms of numbers, we provide services to 323 adults. We received 4,750 notifications and we provided 1,021 occasions of advocacy. So not all of those—

Ms Mackey: That is across—

MRS JONES: They are not all individual people; some of them are twice with the same person?

Dr Watchirs: Yes, and also they have had community treatment. So they are not necessarily detained.

THE CHAIR: I have one final question I would like to ask Dr Watchirs. Have either you or the previous Public Advocate brought to the government's attention the massive increase in workload in your area? In the annual reports there are umpteen instances where you have got a massive workload and long-term under-resourcing.

My question is: have these issues been brought to the attention of the government and, if so, what was the government's response?

Dr Watchirs: That is good news on the front of mental health, that because of changes to the Mental Health Act from 1 January we are going to receive a one full-time equivalent SOGC officer but that will be between both teams. As Ms Mackey explained, there is a lot of advocacy work for adults and young people but in relation to guardianship, there is a lot of mental health work there. Under the new act, we will have power to make substitute decision making for compliant patients and that will require a lot of getting the views and wishes, advance directives, consented advance from consumers and talking to treating teams in relation to whether that treatment is one that we would consent to.

In relation to the advocacy team, currently we are notified in 26 different areas of the Mental Health Act. Under the new act, there will be 46 areas of notification. So it remains to be seen how much extra work that will be for one person who is going to be stretched across the whole office. The big area of work is from 1 July, when the NDIS started. We have 88 people we are guardian for who require applications for NDIS funding, and eight of them are in the process now. As you may know, there are quarterly intakes, and the amount of hours is huge in preparing each of those cases.

At the moment we are focusing on group homes. Where people want to move into a different home, then that is an even bigger workload. Those houses will transfer. They are public housing. They will remain public housing, but Disability ACT currently provides half of the group housing. It will bow out completely and there will be that transition happening as well, which is complex and requires a great deal of advocacy from both sides of the office.

But in relation to guardianship our obligations are statutory and immediate and I am happy if Ms Houghton wishes to add to that.

Ms Houghton: Only to say that in relation to the number of hours, primarily we have two full-time guardians. We have identified 88 of our current clients. That is not any new clients we might get in the reporting period. It is taking, on average, 10 to 12 hours just to get the process working through. Then we end up with a plan and we have to seek, on behalf of our appointment, services, supports. This is done in conjunction with the client wherever possible. We meet every month. The guardianship section meets every month on the national disability insurance scheme because there is a lot of learning as we go along.

THE CHAIR: Ms Houghton, I am afraid I am going to have to cut your answer a little short, but can I say that if there are aspects of the question that you feel that you have not had an opportunity to respond to, can you give us a written response to that? We would love to have your answer on that, but unfortunately time has run out at the moment.

Dr Watchirs: Just one last thing, in relation to children and young people, 816 were brought to our attention. We were only able to advocate for 693, that is, 81 per cent. I think mental health has been the most stretched area and children and young people will remain to be stretched because of the lack of input of new resources.

THE CHAIR: And I stress that if there is any other information that you want to put on record, please send that information to us. You may get a few additional questions. Thank you for joining us here this afternoon. The committee secretary will be in touch regarding any questions on notice that we may forward to you. You will also be forwarded a copy of the proof transcript for your consideration. Thank you for appearing before the committee.

Dr Watchirs: Thank you so much.

Sitting suspended from 1.56 to 2.02 pm.

Appearances:

Rattenbury, Mr Shane, Minister for Territory and Municipal Services, Minister for Corrective Services, Minister for Aboriginal and Torres Strait Islander Affairs and Minister for Sport and Recreation

Justice and Community Safety Directorate

Playford, Ms Alison, Director-General

Martin, Mr Victor, Director, Criminal Law Group, Legislation, Policy and Programs

Beattie, Ms Liz, Acting Executive Director, People and Workplace Strategy

Mitcherson, Mrs Bernadette, Executive Director, ACT Corrective Services

Taylor, Mr Don, General Manager Custodial Operations, ACT Corrective Services

THE CHAIR: Welcome to the first public hearing of the Standing Committee on Justice and Community Safety for its inquiry into annual and financial reports of 2013-14. We heard from a number of areas early this afternoon and now we welcome the minister for corrections and officers. Would you like to make an opening statement?

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

THE CHAIR: Minister, in previous hearings there has been some discussion about ways in which the budget for the extension of the Alexander Maconochie Centre can be kept on track.

Mr Rattenbury: Yes.

THE CHAIR: Could you update the committee on how these measures are proceeding. And what would you regard as an acceptable variation in the cost of the extension and what would be an unacceptable variation?

Mr Rattenbury: To go to the essence of your question, I do not expect there to be any variation in the cost of the project. A range of oversight measures have been put in place. I am happy to go through to the membership of various committees if you wish.

THE CHAIR: Sure.

Mr Rattenbury: I could bring staff to the table for that. There are a range of oversight committees within the ACT public service and in the project management team. I refer also to the way in which the contract has been let, in which there is a strong partnership between the government and the contractor through this managed contract process, such that the contractor came on early. They have been involved in finalising the design of the AMC. Therefore, I guess there are no surprises in that sense, as opposed to perhaps doing a design and then having the builder come in and wanting to get changes. I think that will be an important part of the process of ensuring that we keep to budget on this project.

The project is currently underway, as members probably know. Site works have commenced. At these early stages, everything has gone to plan and the project is rolling out as we would intend.

THE CHAIR: Before we go to the next question, I should have mentioned a couple of the housekeeping rules. I think you have all probably been here enough, but I want to make sure you are aware of the privilege statement and its implications.

Mr Rattenbury: Yes.

THE CHAIR: Dr Bourke.

DR BOURKE: Minister, you have announced that periodic detention will end in a few years.

Mr Rattenbury: Yes.

DR BOURKE: What is the range of sentencing options that corrections have been able to implement, and are there some that could be used more successfully and more often?

Mr Rattenbury: Yes, certainly. I will start first with the intention behind removing periodic detention. The ACT, as you perhaps are aware, is the last jurisdiction in Australia that has periodic or weekend detention. I think it is fair to say that we believe there are better ways to provide rehabilitation.

The numbers are quite low in the ACT. We tend to have 40 or 50 people at the weekend across a range of offence types and a range of behavioural issues. What we find is that people just come in for the weekend and there is not a lot of time to work with them on rehab. The intent from a big picture policy point of view is to move towards a range of community corrections orders where people still have the opportunity to remain in the community—which is the intention of periodic detention: they still have connection to their family and perhaps maintain their employment—but will be on the kind of supervision orders which are much more targeted at their own offending behaviour. Whether it is an alcohol and drug issue, an anger management issue or a range of other behavioural-type issues that our detainees have, through having essentially a corrections orders type of approach, we will more effectively target the offending behaviour. That is the big picture intent. Does that go to your question, Dr Bourke?

DR BOURKE: No; I was also talking about a range of sentencing options that you have available and that were not being used as much as perhaps could be done.

Mrs Mitcherson: In relation to PD, I am quite familiar with that, as I used to look after PDCs in New South Wales as well, so I know the program very well. We were the last remaining area for PD. It was difficult. In terms of a program, we were unable to supervise people during the week, so it did not give you that option. Plus when you had people from different cohorts turning up, there were not great numbers that you could get to run groups. We do not have program staff on weekends as well. Plus we have a large facility with a building which costs for all the infrastructure related to a

building that is only used on weekends—security and that.

So from a corrections point of view, we saw it as a way forward in terms of looking at what the best practice was around the world.

We currently have a number of orders available. They are generally good behaviour orders, which may or may not be accompanied by someone getting community service hours. We also have the option of some people doing a sentence and then getting parole. Parole can be given as an alternative to a good behaviour order straight without doing a custody sentence. That does not happen very often, but it is not something that we would be unhappy about, because you can put quite strict conditions around parole.

Also, with the previous combination sentences where people were getting custody sentences, PD and a good behaviour order, it meant that in between they did not have any supervision. From a corrections point of view, it would be much better to see someone doing custody than getting a parole order as opposed to a good behaviour order, which does sometimes happen.

Also, you can use a suspended sentence in an enhanced way. Suspended sentences are often a good option, particularly for someone who has had a number of opportunities in the community. You say, “Look, this is your last opportunity before you’re going to jail,” and put some strict conditions around a suspended sentence. If they are enforced, they can be really powerful in keeping someone out of custody. So we still use good behaviour orders quite a lot, and community service orders. We would not be unhappy with an enhanced use of suspended sentences and parole in other circumstances, if that answers your question.

DR BOURKE: Indeed, it does. Thank you.

THE CHAIR: Ms Porter has a supplementary.

MS PORTER: I want to ask about the application of restorative justice practice in relation to alternative methods of keeping people out of the Alexander Maconochie Centre in relation to this particular question that we are dealing with now.

Mr Rattenbury: Sorry, Ms Porter.

MRS JONES: Use of restorative justice?

MS PORTER: Yes, restorative justice, in relation to this question of an alternative to periodic detention, so an alternative method of—

MRS JONES: It cuts in earlier.

MS PORTER: Yes; it cuts in earlier, as Mrs Jones says, but it is a way of actually diverting people away from sentencing.

Mr Rattenbury: There is no doubt that there is value in restorative justice. We have had it for a number of years now in the ACT, although limited to young people. I have

heard tremendous anecdotes—not anecdotes, but individual stories—of people who respond to the process, both from a perpetrator perspective and also from a victim perspective. That is a very important consideration.

It is important to note that I do not think restorative justice is appropriate for every case. That can be particularly from a victim perspective. But also, if a perpetrator is not open to being empathetic or seeing the error of their ways, there is not a lot of value in it. It is something the Attorney-General and I are looking at as part of the justice reform package that is coming with the expansion of the AMC—as to whether we might expand the use of restorative justice to adult offenders because of the benefits that we have seen with juvenile offenders.

MS PORTER: Thank you.

MRS JONES: I think there was a supp here.

THE CHAIR: There is another supplementary from Mr Wall.

MR WALL: Just on the periodic detention centre, while we are talking about it, has there been a future use determined for that site by the directorate yet?

Mr Rattenbury: No.

MR WALL: And I am just wondering what sort of changes might come in the staffing profile when that ceases to be operational. Currently, I believe corrections officers from the AMC make the shift out there on a Friday afternoon—is that correct?—to run the centre on the weekend.

Mrs Mitcherson: We have officers that are dedicated to the PDC now. Of course, if we are short-staffed or if someone is sick, we use casuals and move staff around. Corrections officers are employed to work in an operational capacity, which could be the courts, the jail or the PDC. When the PDC is no longer operational, those staff will be absorbed back into the AMC or the courts.

MRS JONES: What is the end date for the PDC?

Mrs Mitcherson: Ceasing end of 2016 to be sentenced, but there will be still be people who will have orders that will have a tail.

MRS JONES: So it phases out.

Mr Rattenbury: Part of the reason for announcing it now is that we start to put it in place, because there is a lag in it. We started to announce it early, and we will work with the courts so that we have got that transition organised in an orderly way.

MR WALL: Just to follow on from that, minister, are there any sentences that are going to be served beyond the end of 2016 period?

Mrs Mitcherson: We have not done the calculation, but there would be, I notice, from hearing sentences on the news. I know that there would be.

MR WALL: I am just wondering if there is an indicative time frame as to when you envisage that facility being shut.

Ms Playford: I have just been advised that there are currently three offenders who go beyond that date.

MR WALL: How far beyond that date, Ms Playford? Do we have those details?

Ms Playford: I might ask Victor Martin to answer that.

Mr Martin: We are aware that there are three offenders who have been sentenced to serve PD as part of a combination sentence with full-time detention to be served beyond 2016-17, and one of those offenders is meant to be serving beyond 2018 just because of the length of the full-time sentence at the front end.

MR WALL: Is it the intention to continue to maintain operating the current facility until that 2018 date, or are other options being investigated to perhaps intermittently bring these people in and out of the AMC?

Mrs Mitcherson: Corrections will look at other options. If we are down to one or two offenders, it would not make good sense to have the building operational for that period of time. The general manager and I will be looking at some options for that going forward.

MR WALL: Thank you, chair.

THE CHAIR: Ms Porter, your substantive question.

MS PORTER: My question is in relation to visits, which are talked about on page 72 of the report, minister. I was wondering if you could outline the importance of facilitating such visits for detainees?

Mr Rattenbury: Yes, certainly. Thank you, Ms Porter. The AMC has the highest rate of visits of any Australian jurisdiction. I think that is consistent with our desire to have a strong rehabilitative focus at the AMC. And there are, I guess, a range of reasons for that. It is about maintaining continuity of connection with family. Certainly at times when I have been at the AMC just talking to detainees, one of their strongest motivators for perhaps getting their life back on track or making sure they do not go back is that they have got family on the outside, particularly wives and children, and they have often a strong sense of remorse for being inside because they have left them to fend for themselves. So having that family correction is very important.

We have made some changes this year to the visitation schedule, and one of the benefits of that is that some of the actual individual sessions are now longer. It is quite a lot of work to get out to the AMC, go through security, get inside. So part of one of the drivers in that change was to have longer sessions so that it is essentially more worth while to go and make a visit.

MS PORTER: Minister, on page 78 it mentions the supported children's transport service, which commenced in November 2013. This is obviously to enable children to visit their parents. How popular is this service?

Mr Rattenbury: Just before I go on, I should have perhaps mentioned to you before that our annual report does indicate that we had nearly 14,000 visits take place during the financial year. It is a large amount of visits. Again that puts some pressures on the AMC, but in the last 12 months in response to visitor feedback we have actually improved the phone system. We had some people complaining it took them a while to get through, and in response to that we have made changes and the feedback has improved quite a lot in the last six months since those changes have been brought into place.

In terms of the children's visits, I will ask Mrs Mitcherson to talk about that, because I know her enthusiasm for shine for kids and I would hate to keep her from that.

Mrs Mitcherson: I might say also that we did have a few complaints about phone calls, but we had over 13,000 visits last year, which is a lot of visits to be facilitated by the staff. It is higher than any other jurisdiction. Shine for kids run a number of programs, including activity days and particular days. We have a childcare worker there three days a week, because sometimes it can be very beneficial in visits and parents might want to talk. So it is good to have someone to distract and take care of children and that as well.

The transport service we just started this year. I will have to take on notice the response to that. It is certainly not a service that I have been familiar with in other jurisdictions, but certainly sometimes children are brought out by carers, not necessarily parents, and transport is sometimes an issue if you have got a few children. I do not think the usage would be high. As I said, I will take it on notice, but it is important to have that option there if you have got two or three children and getting a couple of buses is just not possible, but you want to maintain the access. We think it is an important part of a suite of services for families.

We are also doing parenting classes for men and women with Marymead. We are focusing on different issues that men and women may have in relation to parenting as well.

THE CHAIR: There is a supplementary I will now ask. Minister, you mentioned recidivism in your previous statement. Can you confirm that the ACT has the highest level of recidivism of any jurisdiction?

Mr Rattenbury: I cannot. I do not have that full set of ROGS figures to hand. I am happy to take that on notice. We have seen this year across three of the four measures of recidivism a reduction in the ACT's recidivism rate. The other category did go up, and it continues to be an area we need to work on. As Mrs Mitcherson has described in this place before, probably the people who go to the AMC are the ones who have generally gone through all the other options in terms of perhaps suspended sentences and a range of other measures to try to keep them out of jail. So those who do go to jail tend to have been people who perhaps have a bit of a habit already of crime committing.

The other thing that has gone very well is the through-care program, which has now been in operation for 16 months. The rate of return to custody and of breaches has been very low compared to our recidivism rate. It is not exactly comparable data yet, because the recidivism rate is measured over a two-year period, and of course with only 16 months we do not have a fully comparable set of data. But the rate of return to custody and the rate of breach for detainees who have gone into the through-care program have been much lower. And I think this points to the value of the effort and the ongoing support that detainees have when they come out of the facility.

THE CHAIR: As a supplementary—and then we will go to Ms Porter who has a supplementary on her supplementary—are there any figures that you may be keeping or you are aware of that give some indication of any correlation between the rate of recidivism and the level of sentences in a particular jurisdiction?

Mrs Mitcherson: It is a very broad question and it is probably a little hard to answer, though it is generally known, I guess for people who have worked in the business for a long time, that people with really serious offences, a serious indictable offence like a murder, have a really low recidivism rate. Often, for example, murder is a crime of passion. Often the repeat offenders are the ones that probably have a lot of community episodes before they come into custody and have a lot of short sentences building up, generally alcohol and drug related.

I would say, on the figures that will be published in ROGS, our return to custody has gone down from 46.6 to 41.9. The numbers do jump around a bit—our numbers are small—but it is encouraging, and our return to community corrections has shown a pattern of going down as well.

In terms of length of sentence, I think the other stat—and we have been looking at some numbers recently—is that last financial year 36 per cent of people that came into the AMC did four weeks or less. That includes remands but some sentences as well. It gives you an idea of the churn at that very low level.

THE CHAIR: I understand my question is quite broad, but I would like to know what figures you may have on this. I am quite happy for you to take it on notice or—

Mrs Mitcherson: We do not detail down to offence type where someone comes back into custody but I guess I am intuitively saying to you that people with significant drug and alcohol issues are the ones that are at the most harm of having an impact. And that has really been the case in through-care as well. In through-care for the first 12 months, we had 229 people take up through-care. Of those, 34 returned to custody. Maybe two-thirds of those were for breaches of parole, which is a good thing because if someone breaches when they are a bit out of control you can get them settled again and there is no victim. One-third were breached for further crimes, which, for us—it is around 15 per cent of the total—is pretty good. As I say, it is early days and you are not necessarily comparing apples with apples. I do not know any jurisdiction that drills down to the type of offence as to whether they come back. I say intuitively it is people with drug and alcohol issues who are the ones that take up most of our time.

THE CHAIR: Ms Porter, your supplementary.

MS PORTER: Yes, it is to your earlier question to my question. It is in relation to what support programs are available to Aboriginal and Torres Strait Islander people to ensure they do not become repeat offenders.

Mrs Mitcherson: First of all, the whole suite of programs is available to Aboriginal and Indigenous clients in custody, but we do have some specialised programs. We have a social wellbeing program from Winnunga that comes out twice weekly, particularly for those clients with mental health issues and wellbeing issues. We have a yarnning program, which is a group program for Aboriginal men, who are often more comfortable to be in a group, but we do have Aboriginal counsellors available from Relationships Australia on a one-on-one basis as well.

We also introduced conservation and land management certificate III for Indigenous offenders, which gives them some skills to work in the community. Actually, we work with ACT officials in relation to that. We have Aboriginal staff who work now in the parks coming in and talking to them and giving them practical work around that.

Also through-care is quite intensive. If we know someone's sentence, then we can plan for it. By that I mean sometimes if someone has got a large period of remand often they only get a short time to work with them because they might get time served or only a short sentence period. But generally where we know and can plan for someone's release we really start working quite intensively for the last three months, fixing up generally the basic things about identification, accommodation, where you are going to live—those kinds of things that we probably take for granted. We can kind of build in quite a few things.

We also make sure that they are picked up. It would be very rare that someone was released from the AMC from a sentence and was not picked up by someone to make sure that they get to the rehab or they get to where they are supposed to be.

We have found that the first 90 days on release are the most important. When we first started through-care we had four packages: jobs, accommodation, health and connections. We pretty soon realised we needed a basics package, which was included. Intensive support for the first six weeks might mean three or four contacts for the first week and then down to one contact by week six. Then one of the major NGOs will take over as the primary worker for that particular client. It is very client centric. The client is involved in picking out whom that agency might be as well.

There is a lot of intensive work, but we still have the lowest imprisonment rate in the country, which means that we do not have any low-hanging fruit. The people that are going into custody in the AMC are generally medium to high risk in terms of their needs. Generally they have quite significant alcohol and drug issues as well.

THE CHAIR: Mrs Jones, your substantive question?

MRS JONES: Thank you. My questions are around the crisis support unit and mental health. The annual report talks at page 74 of volume 1 about changes that have taken place with the management and structure of the crisis support unit. What are these changes, and how are you measuring their success? I have a couple of supps, but I

will start there.

Mr Rattenbury: Sure. Don, do you want to speak to that?

Mr Taylor: Certainly. Thank you, Mrs Jones. In respect of the crisis support unit, originally we had one psychologist that was sort of across the whole centre in the very early days of the AMC. We became aware that too many elements of forensic mental health were involved in our high and acute risk persons. Since then we have set up a team called “corrections, psychological and support services” because we have identified needs that were not specifically just acute that forensic mental health could look after for us, but in corrections we needed to respond to some of the other needs that we found there.

So in that team we employed a senior psychologist and around that one position we have put some students from ANU that have come in. We do a placement process there. We have one other position that supports full time and we have also implemented some other groups that have not been in the unit before. The schema therapy group was one of the first undertaken in prisons in Australia. It has been certainly successful in the community.

MRS JONES: What is that?

Mr Taylor: It talks about each person’s individual schema. I am not going to try and elaborate too much on the psychological side of it, but each person has a different sort of an approach as to why they were doing what they are doing and their specific needs. It identifies what they are and works specifically with that.

That is something that we have been able to develop again in association with the university. We have done a lot of work around what we think the needs are for the people in the crisis support unit and as they transit back out into the facility. Each detainee is discussed every day. We set up a team called the high risk assessment team. That is sort of a multi-agency. It is custodial. It is forensic mental health. It is primary health.

Everybody gets together every day to discuss these people and their needs. Every person that moves out of the crisis support unit has an exit plan. This team organises and discusses what they think is the best process and the needs that each detainee has and they are followed up as they move out of the CSU.

MRS JONES: Is the CSU a physically distinct area within the prison?

Mr Taylor: Yes, it is.

MRS JONES: Also, how will the management change again when the expansion is complete?

Mr Taylor: Again, the management of the crisis support unit itself will not change, because that is a specific place for acute persons with high suicidality and psychiatric needs. What the new environment will assist us to do is to be able to have more places for more condensed treatment of people that do not need to stay in the CSU.

MRS JONES: Right, they are coming out.

Mr Taylor: What we are finding is that people leave the CSU and we try and work with them. But certainly some of the environments are not conducive to being able to do what we want them to do. So the new accommodation will support them.

MRS JONES: Additionally to that then—I guess I am asking for your feedback, your experiences—what proportion of people being treated at the CSU would you imagine going out of the new secure mental health unit when it is up and running? What are their general presenting illness or situations, because I know that at public presentations we have been told about people slashing their wrists and this type of thing? I am assuming that there are not necessarily knives and blades available to them, but can you elaborate a bit more on the expectations of the use of the secure mental health unit once it is up and running?

Mrs Mitcherson: I could not really speculate because it is a matter for Health to decide who would be scheduled and who would not be scheduled. But in terms of presenting to the AMC, Mr Taylor can go over the detail. We have four ratings. The level of suicidality dictates how often they are observed. We have someone on constant observations at the moment. It could go to 15 minutes. That also earmarks what they can have in their room and what they can wear.

MRS JONES: Yes, but presumably suicidality is not the only measure of severe mental health because there might also be outbursts, physical assaults and this type of thing.

Mrs Mitcherson: Certainly some people present with psychotic behaviour. It could be induced from drugs they have been taking and they could be stabilised quite quickly. It could be that they are—

MRS JONES: Or a bipolar person.

Mrs Mitcherson: It could be that they have not taken their medication or it could be that they have not been diagnosed before and they are just a bit out of control. So there are occasions when someone will come into the AMC and Don's team will be advised if they need to be transferred and other times they are managed and stabilised with us.

MRS JONES: The decision-making around who is likely to be able to go out into that facility will be determined by the criteria that facility has for who they can accept?

Mrs Mitcherson: We would not—corrections would not be involved in determining who might go to mental health unit.

MRS JONES: No, because what has been presented to me previously is that that unit will be available. If you have got a problem with someone who obviously the CSU is not able to completely handle for their own safety, they will have a capacity while still being a prisoner of the AMC to transfer into that facility and transfer back.

Mrs Mitcherson: There is the capacity for someone who is a detainee to be transferred there and back again but the decision to transfer someone to any health facility is a matter for Health. Health will tell us someone needs to go to the doctor because they have got chest pains or because they have got—

MRS JONES: The medical unit within the facility or the CSU?

Ms Mitcherson: It would be the forensic team or doctor.

MRS JONES: I am trying to understand.

Mr Taylor: No that is fine. In the CSU itself it is an environment in which we have different ratings. Mrs Mitcherson spoke about the “S” rating, and different categories, which is suicidality/self-harm. You also get “P” ratings, which is psychiatric ratings as well. Often the behaviours will certainly fit together but it is not about whether the CSU can handle or manage a specific type of person. It is really around the professionals deciding what is the best therapeutic environment for that person for what they are currently presenting with. There is certainly currently the capability of moving people from the prison, whether they be in CSU or elsewhere, to the current facility.

MRS JONES: To the adult mental health unit?

Mr Taylor: Absolutely, and that is done, again, on advice from forensic mental health as to the need for that person to go for specific treatment that they feel is better treated outside the unit. So it is not about the CSU being able to cope.

MRS JONES: Okay, I understand. Best practice for that person’s outcome.

Mr Taylor: At the time that they present.

MRS JONES: In addition to that, with the current capacity that you have there how often does that occur? Can you come back with some numbers for me over, say, the past three years of how often individuals have gone from one to the other? This would help us to understand best how much of a new practice it will be and how it will be managed.

Mr Taylor: I am going to take that on notice.

MRS JONES: Thank you.

THE CHAIR: Mr Wall, a substantive question.

MR WALL: Minister, there has been a fair amount of discussion about the proposed needle and syringe program at the prison. Perhaps in the first instance you might provide us with an update on where things are at with that.

Mr Rattenbury: Yes, certainly. I guess it really goes—the hard issue at the moment is that it does lie around the employer’s negotiation agreements, enterprise agreement negotiations. The government has received advice that the existing clause in the

enterprise agreement is not a permissible clause. We have put that position to the CPSU on behalf of the corrections officers. That is a matter that we are still discussing.

As you might have heard in the press, I met with the CPSU the week before last. We actually had, I think, a good discussion. The spirit of the conversation was very positive in terms of wanting to find an outcome. As a result of that, we have now started work on some new text to try and find a way through that process. That is now an ongoing discussion.

MR WALL: The clause that you are referring to that is in question is the one that states that a scheme will not be introduced without the agreement of the corrections officers. Is that correct?

Mr Rattenbury: That is correct.

MR WALL: Certainly, if there is a clause in an agreement like that the legality of whether or not it is able to be put into the agreement would only come into question if a party's position changed. Is that correct?

Mr Rattenbury: What do you mean?

MR WALL: It was put in there and it was agreed both by government at the time and corrections officers that a scheme would not be introduced without agreement. Now, the issue of whether or not that was a clause that could be legally upheld would not come into question unless the government's position clearly changed—that you now want to introduce a scheme without the approval of corrections officers.

Mr Rattenbury: The government's position has always been that we wanted to introduce the scheme. I will not re-prosecute the reasons for that. We have canvassed them before. The government's view is that policy matters like this should be a managerial matter for the government. The government has that prerogative to implement these policies. That said, and I made this very clear at the CPSU when I met with them just two weeks ago, I would like to do that on a basis that is a collaborative one. I think that to make this work well it needs to be a partnership.

MR WALL: When did the government or your directorate receive the advice as to whether or not that clause would be able to be legally upheld?

Mr Rattenbury: I cannot recall the date on which we received the advice, but I can let you know that we communicated that to the CPSU on 19 May this year. So it was a couple of weeks before that, in broad terms.

MR WALL: Why has that issue, I guess, entered the negotiations at such a late point? I believe that the enterprise agreement expired September of last year?

Mr Rattenbury: Something like that.

Ms Beattie: The agreement has a nominal expiry date of 30 June 2013, as did most ACT public service agreements. We have flagged all along in our claims to the union that we were going to negotiate that clause, but it was decided to focus first on things

that we could do quickly, knowing that we would need to progress that at a later stage.

MR WALL: When did negotiations with the union initially begin?

Ms Beattie: Sorry, just give me one second.

MR WALL: And other corrections officers more broadly. I understand that not all of them are represented.

Ms Beattie: I am just looking for the right piece of paper, sorry. Meetings have been held with the CPSU since March. However, there was some written correspondence prior to that.

MR WALL: That was March of this year?

Ms Beattie: This year, yes. We received the CPSU's log of claim in February of this year. The directorate had written to the CPSU twice the year previous seeking them to actually commence negotiations and to present the log of claims.

MR WALL: When do you envisage having this issue resolved?

Mr Rattenbury: As soon as possible.

MRS JONES: Do you have an end date?

Mr Rattenbury: No. We need to agree. I would like to get it done as soon as possible.

MRS JONES: And if there is not an agreement reached, is there a possibility that it will be imposed?

Mr Rattenbury: Will be?

MRS JONES: Imposed without agreement?

Mr Rattenbury: We have to find agreement to resolve the enterprise agreement in that sense. We have to agree from a—

MRS JONES: There will be back pay and you will want to get it done, but is there a possibility that on this issue you will go ahead with the program without the agreement?

Mr Rattenbury: I think there are two separate issues. One is that we need to get the enterprise agreement finalised. I would like to do that as soon as we practically can. Then there is a separate question of the implementation of an NSP. I have indicated to the union that I would like to keep working with them on that. I would like to get the enterprise agreement finished in a way that leaves it open for us to move forward on that and then we need to start a process of working through implementation.

MRS JONES: So you could see the enterprise agreement finished and agreed to with that left as something to continue to negotiate on?

Mr Rattenbury: The government cannot agree to sign off an enterprise agreement on which we have legal advice that a clause is impermissible. So we need to find a way to resolve that issue. If we can do that, we can complete the enterprise agreement and then we will, ideally, have an agreed pathway forward from there. That is my hope and my aspiration.

MR WALL: If an agreement is not able to be reached between Justice and Community Safety and the government and corrections officers, what will the way forward be?

Mr Rattenbury: I have indicated to the CPSU that I would be, for example, quite willing to go to arbitration and have this resolved. I was very clear to them that the spirit of that is that my view of arbitration is that if two parties cannot agree, one seeks outside assistance to help them agree. I have certainly made that offer. They do not want to go down that path at this point. We have not got to that point yet. We are very much in a space, having just met recently, where we are making a renewed effort to find agreement.

MR WALL: And let us jump forward a little further. Assuming that agreement is reached, the scheme moves ahead and is introduced into the prison, what would the mechanics of that scheme likely be? What is the current favoured model by the directorate of introducing the NSP?

Mr Rattenbury: The current model, as you know, is a one-for-one exchange. That said, there are a range of possible models and that is potentially a point of discussion.

MR WALL: The one-for-one exchange would see the needle and the syringe remaining in the possession of a prisoner or a detainee until such time as they wanted to exchange it for a clean one? It would increase, potentially, the incidence of needles that are left in the prison that have been used rather than having sterile ones in their possession ready for use? Ultimately, they are going to head up to a nurses station or a guard station, exchange a dirty needle for a clean one, head back to their cells, use it and then the next time they need a needle, head back and exchange it, correct?

Mr Rattenbury: At its most simple, that is the premise, yes.

MR WALL: The needles and the syringes that will be hanging around within detainees' cells and in common areas of the prison will, in fact, most likely be used needles rather than clean needles?

Mr Rattenbury: As is currently the case.

MR WALL: And to what extent do you believe there would be an increase in the number of needles? What does the intelligence suggest at the moment as to what the number of these prohibited items are within the prison population and what proportion of the prison population do you anticipate will actually access this program?

Mr Rattenbury: I am not able to anticipate the numbers. And in terms of how much is in there at the moment, of course, you do not know what you do not know.

MR WALL: As I said, intelligence suggests.

Mr Rattenbury: The current intelligence is used to interdict in the sense that, where we have intelligence that somebody has those sorts of things, efforts are made to confiscate that contraband. Perhaps if I step out of that, I am very much committed to the three-pronged approach to dealing with drugs in the AMC, which is supply reduction, demand reduction and harm minimisation. Again, this is something I was very clear on with the CPSU when I met with them recently.

The AMC and Corrective Services are making considerable effort to interrupt the supply of drugs into the AMC. We are working with detainees to reduce their demand for drugs by the range of programs that are provided in the AMC. Of course, if there is no demand for drugs, people will not seek to smuggle them in. And then, of course, there is harm minimisation, and that brings us to the place of the NSP, where there is a regrettable acknowledgement that, despite those first two efforts, some people will still make the effort and seek out drug-taking behaviour. And where that does happen, we do not want to see the spread of blood-borne viruses and other risky health behaviour.

MRS JONES: So if the needles that are in the prison area are generally used, how does that decrease the risk of the spread of blood-borne viruses?

Mr Rattenbury: At the moment we have a range of contraband within the prison and that is an unknown quantity in a sense. I think that presents a considerable risk. My view is that moving to a program where people have better access to clean syringes will result in a reduced level of harm.

DR BOURKE: That would be one of the unknown unknowns, minister?

MRS JONES: No, my question, quite seriously, is: how do you decrease the risk of the spread of blood-borne viruses when you have used implements currently and then you will have used implements after the introduction of an NSP?

Mrs Mitcherson: I think it is probably fair to say that we acknowledge that there is contraband in the jail and we know we have syringes in the jail because Don's team find them during normal searches. There is a matrix of searches that go on on a regular basis plus there are targeted searches on the basis of intelligence. For example, you would know we listen to phone calls, or our staff do, and it is surprising, even though they know we are listening, we do pick up a lot of intelligence. We do intercept syringes, among other contraband in various ways before it gets used.

We know we have contraband there now, which is why we start training staff very well in terms of universal precautions, safe ways of searching, if you are going to search, the kinds of blood issues and how you should do that kind of searching. So we do not walk away from the fact that we have syringes there now and we expect staff to follow the protocols in relation to how they do a pat search or a strip search now. They check clothes and those kinds of things. It is part of the job.

MRS JONES: And that is just doing your job, but how does that change once you

have used syringes that are being issued rather than used syringes that are coming in as contraband? How does that improve health outcomes?

Mrs Mitcherson: I think the premise is that if they have exchange and they go and exchange it, they would be less likely to share it and just keep exchanging it for a clean one.

MR WALL: I have one further question on needle sharing. You said a moment ago, minister, that the intelligence within the prison is used to inform searches and the like. With the introduction of a scheme such as an NSP, what information gleaned from those individuals coming to exchange a needle will then feed into the intelligence operations that occur in the prison as to identifying people that are in possession of or smuggling contraband into the site?

Mr Rattenbury: The NSP program is confidential.

MR WALL: Ultimately, from the outside and then I think the wide view in the community is that this is going to be sending mixed messages. On one hand, you have got items that are prohibited within the prison, such as drugs, alcohol and the like and weapons, and rightly so. I think it is in line with most community expectations that those things do not belong inside a jail. On the other hand, you are going to be handing out needles for the use of prohibited items and you are going to end up with a case where one side of the operation is not going to necessarily be talking to the other. Certainly that is going to complicate matters in the management within the prison on a day-to-day basis.

Mr Rattenbury: I think if you focus exclusively on the NSP your argument might stack up but, given the point I made about the three-pronged approach, I think the community are fairly sensible. They would understand that those three elements operate together and I think most people in the community have that understanding of the real world that unfortunately people in jails seek to do things that are not legal.

MR WALL: Ultimately, that is what led them to be there in the first place.

Mr Rattenbury: Indeed.

MRS JONES: I have a final supplementary on that. Is there any evidence of reduced disease and infection rates after the introduction of NSPs that you are relying on for the introduction of this policy?

Mr Rattenbury: Yes, there is. But I would probably need to take that on notice from Health for you.

MRS JONES: Take it on notice, thank you.

Mr Rattenbury: That is an area for Health.

THE CHAIR: I have a supplementary on this topic as well. There have been serious concerns raised by corrections staff and the CPSU regarding the NSP and I think they are pretty well documented. There are safety concerns. Do you feel that you have

addressed their concerns adequately?

Mr Rattenbury: As I said earlier, I think that is where we need to work very closely with corrections officers because they have obviously good practical knowledge of the operating environment. I think that they are at risk at the moment because we have contaminated syringes in the AMC environs. Anything we can do to improve that, I think, is beneficial to Corrective Services staff as well. I certainly put the safety of Corrective Services staff as one of the paramount things we have to do, or safety in the prison generally. The safer the AMC is, the better it is for both detainees and Corrective Services staff.

THE CHAIR: My question relates to the fact that, as you quite rightly point out, the staff are probably pretty well aware of how to deal with people in those circumstances.

Mr Rattenbury: Yes.

THE CHAIR: They are concerned about increased risks to them—and to other inmates, I should imagine—with the introduction of an NSP. Thus my question is this: is there an impasse at the moment between an ideological point of view on introducing this and the practical safety of the people who administer it?

Mr Rattenbury: I think you are incorrect to ascribe a singular point of view to all of the Corrective Services staff that work for AMC. There are varied views on this matter. Far from it being an ideological issue, I think it is a practical issue and an issue of policy debate. There are a range of people who are not coming to this at all ideologically—they come to it from a public health perspective—who are very clear about the evidence of the benefits that a model like this can provide. I am not interested in being in any kind of public spat with anybody about this; I think it is simply a matter of working respectfully with people and working in a very practical way to sort out the details of this.

MRS JONES: And I think we are going to get that evidence.

THE CHAIR: I go to my substantive question.

Mr Rattenbury: Sure.

THE CHAIR: Minister, one of the significant things on the horizon is the move to create a new separate forensic mental health facility in Canberra. Can you advise the committee as to the state of progress with the facility? In addition, what changes would you expect when the facility is in operation?

Mr Rattenbury: I am not in a position to answer that, Mr Doszpot, simply because it is led by ACT Health. I guess we can, as I said earlier, in the sense that the only place it will intersect with corrections is that there will be a different facility for people to go to, depending on their health needs.

THE CHAIR: That is what the ultimate point of the question is. Would you see fewer prisoners or can you quantify how many fewer prisoners would be housed at the AMC if such a facility was introduced?

Mr Rattenbury: No, I do not think it is possible to do that. I guess there are two elements to your question. One is that certain detainees at certain times will go to the secure mental health unit on the advice of Health. If they need it, they will be transferred out for a period of time and then come back to corrections. I guess that is the first interface. The second interface is that perhaps some people will not come to jail if they have perhaps been admitted to a mental health facility first. But to make that sort of link is entirely speculative; it is not possible to put a number on it or even directly draw that causal link. One might speculate that that is the best we can do.

THE CHAIR: Dr Bourke.

DR BOURKE: Minister, I have got some questions about employment at the AMC.

Mr Rattenbury: Yes.

DR BOURKE: On page 73, could you explain the trend in detainee earnings. It seems to show, in the last three years, a fall in earnings from employment, whilst unemployment payments are going up.

Mrs Mitcherson: Certainly, unemployment figures have gone up. While the average has increased, the actual numbers have increased by 100 within a matter of less than 12 months. We are not able to create that many jobs in that period of time. That is partly because we do not have a lot of positions. Also, we do not exclude remandees from education or most programs, but I would draw you back to that figure before: 36 per cent of our clients last year did less than four weeks. Some of those would be in that category. But even if we did have enough jobs, for someone who is custody for less than four weeks, in the time you might have brought them down for whatever they need coming down, they might not have been able to be put in the program, education or an employment position.

DR BOURKE: Do you think it might be better to report statistics which give a more realistic view, given that that proportion of people in that four to six-week category may not have been able to have an employment option? Could you just pull them out so that you can report a more realistic view of what is going on?

Mrs Mitcherson: It is a reasonable question. I think the difficulty for the AMC is that it is all things to all people. In other jurisdictions you might have one jail that has got all medium classifications for people doing over two years or over five years, whereas we have the churn, from two or three days to four weeks, to short and medium-term remands, to doing a sentence. Then we have to break down all the categories.

Sometimes a real report does not show the true story because of the nature of the different cohorts we have to manage within the centre. It is really only through the conversation and questions that you get to understand the complexity around how difficult that is. For example, our kitchen employs, I think, 20 a day now. Sometimes we struggle to meet that because of the different groups that cannot be together or that are not suitable. It is complicated.

DR BOURKE: What are the main forms of employment that you have out there?

Mrs Mitcherson: List of employment?

Mr Rattenbury: Sorry, what was the question?

DR BOURKE: What are the main forms of employment that you have at the AMC?

Mrs Mitcherson: We will start with hospitality, in the kitchen. There are certainly detainees in the kitchen who are doing related certificates in hospitality which they can continue while they are there or go outside with. There are over 20 vocational courses that can be done. Some of those relate to some of the jobs. There are a lot of jobs around—grounds maintenance, laundry. We have a commercial laundry, if you like; we do all our own laundry, which is blankets and clothing. They work in the laundry. And there is cleaning and gardening—the general range there. We do not have an industry as such, with commercial operations, if that is what you are asking, beyond hospitality.

DR BOURKE: Are there any plans to do that?

Mrs Mitcherson: There are plans to do a lot of things. We are certainly looking at some things—if I could possibly manage some small industries over the next 12 months. I want to focus a bit of attention on that. It is difficult. I have come from New South Wales, where they have big industries. You need a steady supply of labour. In a jurisdiction where you have got over 10,000 inmates, you have got a steady supply of labour that is settled. For us, the steady part of our labour might be quite small in numbers, and those numbers may not be able to mix with someone else. So it will be depending on whether we can find something that will suit our small cohorts.

Mr Rattenbury: As you might recall, Dr Bourke, when the AMC was first built, my advice is that a decision was taken at that time to not focus on industries at the AMC but, rather, focus on educational and rehabilitative programs. My view is that we do need to put some greater emphasis on industry. One of the areas of feedback we get is that there is a level of desire for people to do more. I think there are opportunities in that. To that end, as Mrs Mitcherson touched on, we are now putting some dedicated effort into that within Corrective Services. We are going to New South Wales in November to meet with New South Wales corrections authorities to look at employment programs and get some further understanding of what they do and the style of industry we might consider for the AMC.

DR BOURKE: Could you just tell me what is covered by “Programs payment” in that column on page 73, graph 6?

Mr Rattenbury: Sorry, I just did not hear the question.

DR BOURKE: “Detainee earnings”, “Programs payment”.

Mrs Mitcherson: We do also remunerate detainees for going to programs and education. That is not peculiar to the AMC. That is in New South Wales as well; they have certain numbers in each jail for people who want to do education programs and not go to work. We do try and encourage detainees to take up programs and

vocational courses.

THE CHAIR: Supplementary, Ms Porter?

MS PORTER: In relation to these employment opportunities, are there some that are more popular than others with detainees? That is the first part of my question, my supplementary. And how important do you think these opportunities are for them in relation to their employment opportunities on release?

Mrs Mitcherson: In relation to the issue about working, people often relate it to working opportunities on release, and I do not want to diminish that, but it is important to understand that a lot of our clients have never worked, so it is not so easy. I think it is important in a jail situation because for some of our clients their life outside jail is sleeping all day and being up all night. Just to get someone into a routine—to get them out of bed and get them to turn up, be part of a group, take direction and figure things out—is really important in terms of structuring their lives and providing them with some social skills.

For me that is really paramount. It also puts structure in the day at the jail. A busy jail is a safe jail. The busier your jail is, the better it is, and the better it is for staff that detainees are structured. Certainly there is a flow-on effect in that with some people it does help with employment skills; I do not want to diminish that at all. But I do not want to pretend that our particular cohort of detainees is suddenly going to go out and get a job. We have been working very hard. We work with the Salvation Army employment program, the Employment Plus program. We have just started working with them. We have been working with Habitat Personnel on Indigenous employment for the last 12 months. While they are having a few little successes, it is pretty tough.

MRS JONES: Yes.

Mrs Mitcherson: A lot of our clients, the ones that come in and out all the time, might be young men in their late 20s or 30s who have never held a job and who do not have any men around them in their extended family who have held jobs. So it is difficult.

MS PORTER: I understand what you have said about the opportunities that are available and how difficult it may be to facilitate that, but are there things that detainees prefer to do rather than doing than other kinds of stuff?

Mrs Mitcherson: I do not know if there is anything more popular than anything else. Don?

Mr Taylor: They like being in the kitchen, because it is longer, it is a bit of a more specialised sort of environment, and you might be able to eat a bit more than other people. Those are the types of things that people enjoy. You get other people that enjoy being out, out doing the grounds maintenance, because they are outside and they enjoy doing that. There is no real employment avenue where people are really lining up.

MS PORTER: My substantive question, chair—

THE CHAIR: We will go on to another supplementary, Ms Porter.

MR WALL: Just a quick supplementary. The employment opportunities that exist in the prison—are they only available for sentenced detainees or are there opportunities for remandees as well?

Mrs Mitcherson: No, we do not restrict.

Mr Taylor: No.

Mrs Mitcherson: We do not restrict.

MR WALL: And the same for the education opportunities?

Mrs Mitcherson: We do not restrict for remand from education. Other jurisdictions do. We think it is important to try and engage.

MR WALL: On the education opportunities, what are some of the courses that are offered there? I have had some feedback—I am sure you get many letters from prisoners out there—about some wishing or desiring to do a high-level qualification, people that have come from a background where they have had some employment and, for whatever reason, have found themselves in there—

Mrs Mitcherson: Yes, absolutely.

MR WALL: but look to do further courses—a cert IV or higher, or even tertiary level.

Mrs Mitcherson: Absolutely. At any one time we have got at least one handful of people doing higher education, including with universities. I think some of the issues have been around a couple of detainees wanting open access to the internet for their studies; we restrict that, and we will continue to do that. I am aware of a couple of complaints around that, but we certainly facilitate higher education. It is important, though, to realise that the majority of our population have significant issues around literacy and numeracy, so we do focus there quite significantly. As to the level of courses, I do not want to list all the courses available; there are over 20 vocational courses available. And also the team is very responsive if we want to run something new in that sense.

MR WALL: Perhaps you might take it on notice just to provide a list of courses for the committee.

Mrs Mitcherson: Yes, absolutely; no problem.

MR WALL: Thank you.

THE CHAIR: Ms Porter, your substantive question.

MS PORTER: Yes, my substantive question was around the education program. You mentioned before, minister, that there was an emphasis on the education program

when the AMC first opened. On page 75 it is stated that the ACT is well above the national average in detainee education. Perhaps that is the reason. Can you expand on the statement and this pleasing result? Also, could you expand on the data that is in graph 7 on the same page?

Mrs Mitcherson: I think we achieve a higher result if we do not actually exclude people on remand. While we do have a churn at that level under the four weeks, which is some sentences, generally for the population that is settled, a lot of them do like to do education and vocation. While it is not compulsory, we do make it compulsory to be assessed. So everyone at least gets one certificate in something. In respect of the number of attainments, graph 8 on the next page gives an indication that the number of certificates completed is quite high, but also the units are quite high.

We have had situations where someone will not be able to finish. They do a couple of units, go out and unfortunately come back in and do some more units. Actually, it is a female detainee that holds the record for doing the most units and certificates at the moment. I guess I would say that if you want to keep really busy, notwithstanding that we would like to have more industries, for this group to be concentrating more than a couple of hours a day in education is significant for many of them. If you want to keep really busy in terms of your being involved with educational programs, you certainly can.

MS PORTER: Sorry, did you say that you were referring to graph 8 or graph 7?

Mrs Mitcherson: I talked about graph 7, but I said that graph 8 on the next page gives you an indication of the units completed and the certificates.

MS PORTER: Thank you very much.

THE CHAIR: Can I come back to a supplementary question on graph 6? Would you explain the headings you have got? Reference is made to employment payment, education payment, program payment and unemployment payment. Could you give us a brief idea of what each of those includes?

Mrs Mitcherson: Payments are based on whether you do employment. There are different levels of payment, depending on what that work is. I think the highest paying is the kitchen, from memory. There is also a payment for attending education programs. For those that are willing to be involved but for whom there is nothing there, we do do an unemployment sort of—

THE CHAIR: Are they cumulative or are they stand-alone payments?

Mrs Mitcherson: Stand-alone.

THE CHAIR: What about unemployment then?

Mrs Mitcherson: Unemployment is recognising that people need a little bit of money to survive in custody, otherwise it is a big drain on their families for basics—toiletries and those kind of things. While we do give a pack when people come in, we do not supply those kinds of things in an ongoing way.

THE CHAIR: What sort of things would your unemployment payment be?

Mr Rattenbury: It is 50c per hour, Mr Doszpot. So per six hour day, it is \$3; a maximum of \$15 a week.

THE CHAIR: Has that gone up to \$1 an hour now, or is that—

Mr Rattenbury: No, that is the current figure.

Mrs Mitcherson: We have not changed the rate.

THE CHAIR: Ms Porter, are you finished with your—

MRS JONES: I think there was a supplementary.

THE CHAIR: Supplementary, Mr Wall.

MR WALL: Just one further supplementary on education while we are there. All of the courses that are currently offered at the AMC, are they all able to be completed? I am referring to all units of competency that are being offered, or are there some areas—

Mrs Mitcherson: I would have to take that on notice. As far as I know, I do not think we would offer a course if you could not complete it. There might be one or two that some might have to complete on, but if there was, they would enter into that course knowing that. Auswide staff—you have met some—are very passionate and enthusiastic. They make sure they steer their students in the right direction there. I could certainly take the question on notice.

Mr Rattenbury: We will double check.

MR WALL: Mr Taylor, you were trying to—

Mr Taylor: No, I am fine, thank you, Mr Wall. Thank you for the opportunity.

THE CHAIR: A substantive question from Mrs Jones.

MRS JONES: I have a substantive question, but just before I go on to it, while we are talking about education in the prison, when I was touring the facility earlier this year the librarian raised that she would like more resources to have automotive magazines. I just wanted to raise that. I do not know if you have heard it come through, but she seems to be doing a very good job of engaging prisoners who perhaps are not in education or work. I wanted to raise that in this official capacity for you, minister, to be able to take away and have a think about, because it is an engagement at the very beginning levels with people.

My substantive question is around the Indigenous official visitor and the comments that have been made, as per page 84. My question is: what is being done to address the issues raised by Ms Whetnall and, as such, regarding particularly activities for

Indigenous prisoners?

Mr Rattenbury: Could you repeat the last part of your question?

MRS JONES: What is being done to address activities for Indigenous prisoners?

Mr Rattenbury: Just as a general observation, the official visitors report to me quarterly. I receive those reports. I read them quite carefully. Often I will take up matters. I will call the official visitor. I have the report by the other official visitor—the non-Indigenous one, if you like—on my desk to ring her and ask her a few things to follow up those questions. She is overseas at the moment. Alternatively, I talk directly with corrections about them.

A lot of the work that is done by the official visitor actually never even gets to my desk. They do a lot of work where they engage directly. A complaint comes and they will go and talk to corrections or often even direct to a correctional officer. So a lot of their work is that sort of troubleshooting, I suppose, in the first instance. In terms of activities for Indigenous detainees, Mrs Mitcherson spoke before about a range of the things that are specifically in place for Indigenous detainees—things like the elders visits program.

We have had the Indigenous art exhibition in the last couple of years, in partnership with Southside Community Services. That has been very popular and I think it has been a real source of pride for detainees. Their works actually go on display and get sold in some cases. But then, of course, there are all the things that are available to all detainees.

MRS JONES: Certainly, we hear these comments that there is a worry about not enough activities to stay busy, the frequency of lockdowns and perhaps a lack of ability to attend funerals. I understand that that is a drain on resources and causes other lockdowns, but still it has been raised. There is also a fear or a concern that complaints are not being taken seriously. I know that that may not be the perception of management, but if that is being stated on the ground—

Mrs Mitcherson: Can I address all those issues?

MRS JONES: Please.

Mrs Mitcherson: I meet regularly with Tracey as well, either by email or by catching up. We certainly discuss the issue of activities. I guess the same conversation I have here as I have with Tracey and other staff as well. It is really important that when we have visitors—part of the reason for having the elders and committee leaders' visitation program is to try and encourage more so young men than young women to actually engage.

I said to you earlier that if you want to keep busy, whether you are Indigenous or non-Indigenous, there are plenty of things to do. I had a young man speak to me recently about going on parole. I said, "What have you done?" He said, "I am going to that." I said, "Well, I was there last week for two days and you were not there; so did you get out of bed?" He said, "No, I didn't."

There are those kinds of conversations that need to go on about people in custody taking responsibility. Yes, there are reasons why they are there and some have suffered terrible hardship, but if you want to be engaged in activities—whether you are Indigenous or non-Indigenous—those activities are there. I certainly would make that comment and have done so to Tracey.

In relation to lockdowns, I think Mr Taylor might be able to talk to that. We have really been working hard in the last 12 months. I think it is showing in the reduced number of lockdowns. But lockdowns do not always mean a whole day. Sometimes it might be just for two hours.

Certainly in terms of funerals, while sometimes the distance is an issue, it is more about the risk assessment—about whether the family want them there, depending on the nature of their offence, whether the local police want them there and non-compliance. So if someone attended a funeral and tried to engage in a contraband exchange in the church, we might not let them go the next time.

I am just being hypothetical. Sometimes hypotheticals are more than hypothetical. So we do really recognise the importance of funerals and we do try and facilitate attendance. I think we have a pretty good record on that, but sometimes it is not so much about the lockdown, although an interstate one can be a 15-hour turnaround. It is generally about risk and behaviour and engaging with family and local police as well. In terms of complaints, we take our complaints very seriously.

THE CHAIR: As a supplementary to Mrs Jones's question, when did the Indigenous official visitor Tracey Whetnall take over from—did she take over from Mr Potas or was she—

Mrs Mitcherson: No, we have two official visitors. Dr Judy Putt took over from Mr Potas and Tracey was reappointed for a further two years.

THE CHAIR: She has visited 40 people at the AMC, which seems a fairly significant number. That includes both male and female detainees?

Mr Rattenbury: Yes, that is 40 visits. So it will not be just 40 individual people.

THE CHAIR: I see; it is not individuals.

Mr Rattenbury: She will go in for a couple of hours at a time and official visitors are able to move through the centre and meet with a range of people.

Mrs Mitcherson: We do not constrain where they go. They just have free range.

THE CHAIR: And typically they stay for how long—a number of hours?

Mrs Mitcherson: Half an hour, yes; a few hours. They are also invited to bi-monthly oversight committee meetings which Don chairs. The Ombudsman comes to those as well as HRC and public advocates. Don can talk not about any individual issues but certainly any policy or procedural issues or any systemic issues that any of the

oversight committees membership or the official visitors wish to raise. There is a forum there just for general discussion. As well, obviously, Don is available all the time.

MRS JONES: I have a supplementary to that. The official visitors are both women, yet the majority of detainees are men. I am not trying to state that women cannot listen to men, but is there an attempt normally to have a balance of gender as well for people to feel comfortable and confident with raising concerns?

Mrs Mitcherson: We do a merit selection process. We advertise and do an interview process. Last time we did have a male and a female, but we generally try and get the best person for the job. Certainly it is my experience while I have been the governor of all-male jails that I have had no problem communicating or engaging. I think sometimes actually women—present company accepted of course—engage quite well with men in custody.

DR BOURKE: I have a supplementary on this very issue. You mentioned before about not obstructing official visitors. It is actually an offence to obstruct an official visitor, is it not?

Mrs Mitcherson: We do not constrain where they go in the centre. We do not say, “You can go to remand today, you can go to CSU.” They make a determination about where they want to go when they visit the centre. That was what I was implying.

DR BOURKE: And maybe, minister, you could highlight for members of the committee what official visitors actually do and what their purpose is? There seems to be perhaps a lack of clarity around that.

MRS JONES: I think we understand quite well what they do.

DR BOURKE: I am not sure you do.

MRS JONES: Thank you very much, Dr Bourke, that was very helpful. The question now needs to be answered.

Mr Rattenbury: The official visitors are really there to provide a level of external oversight and, as I said before when I was answering Mrs Jones’s question, I think they provide a very valuable role in ensuring that some matters do not get escalated, in that they intervene at an early point in time and are able to really, through that freedom that they have of moving through the facility and the connection they have with Corrective Services, resolve issues or escalate them, as required.

MRS JONES: And am I correct in understanding that they represent the concerns of detainees to those in management?

Mr Rattenbury: That would be a pretty good summary.

MRS JONES: I would say so, yes.

THE CHAIR: Mr Wall, your substantive question.

MR WALL: Minister, just turning to community service orders if we could get away from the prison for a moment, volume 1, page 82, table 27 has got the number of community service hours that have been ordered and the number of hours that have been worked. There is quite a variance between, I guess, what has been sanctioned by the courts and what has actually been completed. What is the reason for close to 9,000 hours this year not being completed?

Mrs Mitcherson: We have totally revamped our community service program this year. We have reviewed every policy and procedure and re-inducted every detainee who is on a community service order, even if they had already been inducted, so that they are very clear about the expectations. Certainly some need some encouragement. Some even have to go back before the court. Because orders do not necessarily start and finish in a financial year which we report on, there might be some there that look like they have not finished but they may not yet have started because they might be in custody on another matter or on remand or on hold or they might be doing an appeal where their order is stayed and those kinds of things. It can be a varied range of reasons why that happens.

MR WALL: What sort of time frame is an individual given to complete their community service order?

Mrs Mitcherson: I think they have a legislative time frame of up to three years, with 500 hours being the maximum they can be given. I will take that on notice in case I have got the figure wrong, but I am pretty sure that is correct. So 500 is the maximum hours they can be given.

MR WALL: How are the projects that are worked on identified or what process does the directorate go through to ensure that there is productive work to be done?

Mrs Mitcherson: There are a number of processes. First of all those on orders go out on work crews. They are not necessarily suitable to be placed in an agency because of perhaps the nature of the offence or perhaps they are just better suited to more supervision from us. We have officers that take people out on work crews and they go and work in areas of national parks or home care, those sorts of places. We also have relationships with, I think, well over 40 NGOs who would use people on community service orders to help supplement their volunteering or their work. Some people are placed in individual agencies as well.

Some people will get a community service order. They realise they have made a mistake, they want to be really productive. They turn up, they are really responsible and you know on the induction process whom you want to place somewhere with an agency so that they are not going to be problematic for them. Generally the problematic ones are with us on a work crew or move to a work crew, if that makes some sense. There are a wide variety of people who get community service orders.

MR WALL: And for an NGO that takes on an individual on a community service order, what sort of reporting or administrative work is there for them to do?

Mrs Mitcherson: It is quite limited really. They have to obviously report that

someone has turned up and keep notice of their times. That is very important. And those time sheets are forwarded to us. I have just been given the hours, thank you very much. I lost my train of thought then. If someone is not turning up, obviously they let us know. But when they do turn up they keep their hours. And they really have no other obligation on them, apart from we do work health safety inspections to make sure that it is an okay place to work. Generally where there are issues around equipment they are usually with us, in terms of ear muffs, those kinds of things.

The period during which community service is required to be completed under the community service order, if fewer than 250 hours, is 12 months. If it is more than 250 hours they have to complete it within 24 months.

THE CHAIR: Minister, thank you for joining us here this afternoon. We have come to the end of our time. I would like to thank all your colleagues, Mr Watson, Mrs Mitcherson and Ms Playford. Thank you for coming. The committee secretary will be in touch regarding questions on notice and will forward a proof copy of the transcript for your consideration. Thank you for appearing before the committee.

Appearances:

Sentence Administration Board
Delaney, Mr Grahame

THE CHAIR: Good afternoon, Mr Delaney. Thank you for joining us this afternoon from the Sentence Administration Board. You are familiar with the privilege statement?

Mr Delaney: Yes, I am.

THE CHAIR: Would you like to make an opening statement?

Mr Delaney: A very brief one, thanks, Mr Chair. My name is Graham Delaney. I am the Chair of the Sentence Administration Board. I think on the last occasion I described the way in which the board goes about its business. I will just make a few brief comments since then. It is fairly clear that the board is using the compulsory process of warrants more frequently, and the execution of warrants has proved more efficient in the last year or so, partly because we have a member of the AFP sitting with the board and he has been able to ensure the efficient execution of those warrants.

Revised figures for last year indicate that parole is refused in around 25 per cent of cases at hearing. There has been an overall decline in the number of reported breaches of periodic detention from 583 down to 422. Although, saying that, we do not have the figures for the overall number of detainees. So there might be a relation there in the sense that the overall numbers might have dropped so that as a percentage nothing much has changed.

A couple of things for the future of the board: in the new year the board proposes to have a full board meeting at which it considers what its performance indicators ought to be and also what matters it can most usefully report on. Apart from that, three new members have been appointed to the board and settled in well. The board is looking to trialling some hearings by way of audio-visual means rather than having detainees in personal attendance. It may be timely for government to consider streamlining some aspects of the legislation under which the board operates.

Apart from those matters, I am happy for the committee to ask any questions it wishes.

THE CHAIR: I will start with a question. Community concern was raised when it emerged that the driver involved in a fatal accident with a pedestrian and resulting in severe injuries for another outside Canberra Hospital in 2012 was a repeat offender. Given the concern about the administration of parole in other jurisdictions where certain things have happened with people who are repeat offenders or, indeed, out on parole, has the practice of the Sentence Administration Board examined these situations? Has it changed at all the way it addresses these potential issues or is it more or less consistent with its practice prior to these events?

Mr Delaney: In the case of repeat offenders, the act provides for automatic cancellation, where there is a conviction carrying a sentence of imprisonment, of any parole that might be applicable at the time of the offence. Apart from that, the board

would look at the circumstances in light of the various criteria for parole, which are set out at section 120 of the act. The circumstances of the offence would be relevant, together with the effect on the victims, the behaviour of the person when detained, what courses the offender may have done to address the offending and those sorts of issues.

THE CHAIR: What you are saying is that basically you are conducting the activities as before? It is very hard to judge whether someone is going to reoffend; I understand that. But there has been no re-examination of the way people are dealt with?

Mr Delaney: No. We are bound by the criteria in the act. But we certainly take into account the severity and the circumstances of the offending and whether that, in the board's view, has been properly addressed by way of programs, by way of behaviour, by way of attitude. If those things are deficient, we decline parole.

THE CHAIR: Dr Bourke, a substantive question.

DR BOURKE: Mr Delaney, you mention on pages 233 some problems with timing of parole hearings for backdated and shortened sentences? Could you expand on that, please?

Mr Delaney: This is where, for example, an offender is on remand for a considerable period. He is finally tried and convicted, given a jail sentence of a particular period but then appeals and the Appeal Court accepts the appeal and backdates his sentence to a period that is very close to the non-parole period. That does not give much of an opportunity for the board to consider aspects of rehabilitation and whether they ought to be released on parole in those circumstances.

DR BOURKE: One of the things the corrections minister mentioned previously this afternoon was a greater option for parole or using parole as a sentence option. Is that the sort of issue you have been thinking about as well?

Mr Delaney: No.

DR BOURKE: How would the Sentence Administration Board consider that would be managed?

Mr Delaney: To be frank, I have not thought of that.

DR BOURKE: Because it would be down to you to manage it, would it not?

Mr Delaney: I would imagine so. I have always thought of parole as an executive prerogative or discretion. The setting of the parole period is a judicial function and whether to grant parole is an executive function. I am not sure what the minister is referring to. He was referring to the—

DR BOURKE: Parole as a sentencing option.

Mr Delaney: Like a good behaviour order?

DR BOURKE: As opposed to a good behaviour order.

Mr Delaney: Well, to be frank, I have not thought of that as a sentencing alternative, but that may have merit. It is not something that has been brought to my attention.

THE CHAIR: Ms Porter, a substantive question.

MS PORTER: The overview in your report talks about the year being a very busy one for the board and that the workload of the board has continued at a heightened level during the 2013-14. How have you managed to deal with that increased workload and what plans are there in place to work with that should it continue to increase?

Mr Delaney: I think there are a few factors affecting that question. Firstly, when I first joined the board 3½ years ago, it only used to sit in the afternoon on Tuesdays from 1.00 pm till 5.00 or 5.30. We now sit all day each Tuesday. We also have a number of additional days throughout the year to address any backlog. Whereas the board did not sit on a Tuesday after a long weekend, we now do. So there are additional sitting days to accommodate the increased workload.

In addition, we have addressed some process issues which brings matters to the board a little more quickly. We used to see all the correspondence at one stage and make some decisions at that point. Now the correspondence is dealt with by the secretariat and the matters come directly to an inquiry. Broadly, they are the sorts of measures we have taken to address the increase.

THE CHAIR: Mrs Jones.

MRS JONES: Just on some of the data from page 224 of your report, at paragraph 12, of the 337 breaches reported, 108 actions were taken resulting in 37 cancellations, no action on three, warnings on 15 et cetera. I am wondering what action was taken on the further 229 breaches that are not mentioned in this statistical breakdown.

Mr Delaney: Mrs Jones, you have probably got me at a disadvantage. My report is not numbered, unfortunately. You are referring to parole?

MRS JONES: Yes. I will pass this across so you know what I am talking about.

Mr Delaney: So we are talking about breaches of parole rather than periodic detention.

MRS JONES: Sorry, yes. When you add up the statistics, only a proportion of parole breaches have resulted in an action. I am wondering what has happened in the case of the larger proportion of breaches that have not resulted in an action.

Mr Delaney: That is a good question. The methodology, as I understand it, is that the board is apprised of all breaches. I am not quite sure why there would be a gap between the overall number and those dealt with by the board.

MRS JONES: I am not sure if you will be able to shed light on this, but with only

37 parole cancellations in the 2013-14 year, according to my reading, is there a reluctance to cancel parole because of the stress that is already on the AMC because it has been full and over-full in recent times?

Mr Delaney: No.

MRS JONES: You do not take that into account at all?

Mr Delaney: We do not take that into account. We generally take into account the nature of the breach, its seriousness and its effect on rehabilitation as an indicator of how the offender is travelling in terms of his post-jail experience. We take into account the point at which it occurs. So if you have, say, a parole period of 18 months and at 16 months there is a parole breach, you would take that into account as well as the person has almost successfully completed their parole period. They are the sorts of factors.

THE CHAIR: A supplementary to Mrs Jones's question: when you say you do not take into account where the prisoner could go—in other words, the AMC is full—what happens if you cancel someone's parole and they have to be incarcerated again but there is no place to go at the AMC?

Mr Delaney: I do not know that that has occurred. As far as I know, all people who have been cancelled have been accommodated. It may be that there has been some overcrowding.

THE CHAIR: I am just interested to know what happened.

MRS JONES: I think the point Mr Delaney was making was that he does not take into account so he does not know what happens.

THE CHAIR: I understand that, but I am asking whether there should be some consideration as to what happens when you cancel a parole? I know it is not your area.

Mr Delaney: I can see it is a difficult issue for corrections, but we are bound by the act.

THE CHAIR: We have to ask the right people this question, and I think there is a logical reason for asking that of the other area.

Mr Delaney: Yes.

THE CHAIR: Mr Hanson, a substantive question.

MR HANSON: I was wondering, in comparison to New South Wales, how our legislation and how the Parole Board may vary or be consistent or strive to be consistent. Do you reflect on what is happening in New South Wales to give you guidance so that we are not inconsistent one way or the other, or do you work entirely separate from New South Wales?

Mr Delaney: We work under our legislation, which is different, but we do

communicate with New South Wales. I have communicated with the chairman there on a couple of occasions about how they go about their business, also with the other states, Victoria, Queensland, Western Australia. They all have varying experiences, I suppose.

Western Australia for a while, coming back to the point about whether you take into account the effect of cancellation, had a particular chair, and she took the view that you cancelled no matter what, you followed the black letter to the nth degree, and WA had a real problem because their prison numbers went up significantly.

In Victoria, after the Callinan report the Victorian government increased jail capacity by a good deal. I think the board is probably, from what I read and what I am told, more rigorous, I guess, in approaching the question of breaches and cancellation.

MR HANSON: What are the substantive differences? Are you aware that there are substantive differences between our legislation and New South Wales? Are they more stringent, less stringent, or is it not—

Mr Delaney: I do not think so. I think the general considerations are similar, and they reflect the common law, in a sense. Ours, though, are set out in the act, in section 122, and they are the issues we have regard to. It is not there, but I take into account community safety, for example, because I think from those criteria you can deduce that that was a factor in the Assembly's mind when it passed that legislation. It talks about reoffending, but that is an aspect of community safety so far as I am concerned.

MR HANSON: But it is not explicit.

Mr Delaney: No, it is not explicit.

MR HANSON: But it would be in the New South Wales legislation, or are you unsure?

Mr Delaney: I would have to look, yes.

MR HANSON: New South Wales recently brought in legislation—I am not quite sure of the status of it, whether it has been debated yet—with regard to bail laws and excluding certain categories from bail. Do we have laws that exclude certain categories from parole, or is that not—

Mr Delaney: No.

MR HANSON: Violent sex offenders or—

Mr Delaney: There is release on licence, which is up to the minister either after the board considers it or the minister decides to act anyway. But that is only for life prisoners in the ACT.

THE CHAIR: We have limited time left, so I defer my question to Mr Hanson.

MR HANSON: We had a bit of an issue last time with regard to some data.

Mr Delaney: Yes. I have been—

MR HANSON: We asked a question, and there were some anomalies in the data. I have got the letter that was sent by Mr Rattenbury, but are we confident that all the data in the annual report is up to date and accurate?

Mr Delaney: I think it has been more realistically interpreted now. In the document you have been provided, there are some explanations at the bottom of that document. I think the board would agree with those. For example, a person may come before the board two or three times. That was being counted, but it was not really an outcome. The outcome is at the end of the process. That is now being addressed.

MR HANSON: And that has been addressed moving forward. Have you looked to review previous reports to reflect that new methodology or not, or—

Mr Delaney: No.

MR HANSON: No?

Mr Delaney: No, I have not personally.

MR HANSON: Will it not then create what will appear to be a pretty dramatic change in statistics, which actually it is not, but it is just a matter of the way it is reported?

Mr Delaney: Yes, I think that is right. There will have to be an explanation, I think, in next year's report as to—

MR HANSON: Otherwise you will compare report to report?

Mr Delaney: Yes.

MR HANSON: And if you are not aware of that changing methodology it will look dramatic in terms of its changing one way or the other?

Mr Delaney: Yes, that is true, and I think yes, there will be an explanation as to—

MR HANSON: Yes, an explanation that, "Prior to this date, a different methodology applied, and therefore"—

Mr Delaney: Yes.

THE CHAIR: Dr Bourke.

DR BOURKE: How difficult has periodic detention been to enforce, and what are some of the other options that you oversee already that may have become more common?

Mr Delaney: From the board's perspective, periodic detention can be problematic

when, as we would see it, the wrong people get sentenced to periodic detention.

DR BOURKE: Sorry, what is a wrong person?

Mr Delaney: A person who is drug addicted, for example, a person who is a violent offender, that sort of thing. They are not supposed to but I think they slip through the cracks. Also people who are not working, do not have a job and have nothing to do between Monday and Friday, go into periodic detention Friday, Saturday and Sunday, and then they are at large Monday to Friday with no supervision. That can be a problem, I think. They can get into all sorts of strife, and—

DR BOURKE: That would certainly be an advantage to what the minister was talking about before with either parole orders or good behavior, where a much greater level of supervision can be provided. Surely if magistrates are sentencing people to periodic detention they could also overlay control orders on the top of that for what they do during the middle of the week?

Mr Delaney: Yes, they could. They do not, not in all cases. They do in some. But not in all cases, yes.

THE CHAIR: Ms Porter.

MS PORTER: On page 227 of that report, which you have not got—

Mr Delaney: I have got it now.

MS PORTER: It talks about victims being contacted and invited to make submissions. How representative of numbers of people offended against in the period would the number contacted be? Say, just in raw figures, you have 100 people who have been offended against.

Mr Delaney: Yes.

MS PORTER: And you have a number that are contacted. How representative is that number of that raw number—100, for instance?

Mr Delaney: All the victims are contacted, but a good number choose not to respond.

MS PORTER: Right.

Mr Delaney: Or become registered.

MS PORTER: So they need to be registered to be contacted?

Mr Delaney: No, they do not.

MS PORTER: No.

Mr Delaney: They are all contacted, but some just do not want to be involved anymore.

MS PORTER: They do not want any ongoing contact?

Mr Delaney: That is right.

MS PORTER: In relation to the matter?

Mr Delaney: Yes. Others will put in a submission; the board will get that and have regard to that.

MS PORTER: And, of course, there would be numbers of offences when there is no victim as such.

Mr Delaney: Yes.

MS PORTER: Thank you.

DR BOURKE: Perhaps a supplementary?

THE CHAIR: You have finished, have you, Ms Porter?

MS PORTER: Yes, on that particular subject.

THE CHAIR: Supplementary; then we will go to Mrs Jones.

DR BOURKE: Just going back to victims, is there much opportunity for victims to be heard?

Mr Delaney: It is usually almost exclusively by way of writing. As far as I understand, most do not want to be in the same room with the person who has caused the offending. There will be some who do not want the offender to know that they have put a submission in; there is provision under the act that we can seal that submission, and we do, so that the offender never knows what has been said to the board by the victim. That is not all cases, but in a number of serious cases that happens.

THE CHAIR: Mrs Jones.

MRS JONES: Regarding the board sittings, the board obviously consists of a chair, a deputy chair and about six general members. The board sat on 62 occasions in the reporting period. It sits in two divisions of a chair or deputy chair and two others. Correct?

Mr Delaney: Yes.

MRS JONES: As is the custom for other boards, it would be appropriate for details of the board attendance to be detailed in the annual report. Is that a possibility?

Mr Delaney: Yes. We could do that, yes.

MRS JONES: It would be useful, I think, to understand how it functions.

Mr Delaney: Yes, sure. That should not be a difficulty.

MRS JONES: Thank you.

Mr Delaney: I have still got your report.

MRS JONES: That is fine. Just return it when you have finished here.

THE CHAIR: Are there any other questions?

MS PORTER: Just in relation to meetings, chair. Do you have weekly meetings with the ACT Magistrates Court? Is that correct?

Mr Delaney: That is where our meetings are held.

MS PORTER: You hold them at the court?

Mr Delaney: In the hearing room at the Magistrates Court, yes.

MS PORTER: Do you deal with only the range of issues that you have discussed with us today or do you deal with other matters at these meetings?

Mr Delaney: No, we only deal with those matters.

MS PORTER: Only deal with those matters?

Mr Delaney: Parole and periodic detention matters, yes.

THE CHAIR: Mr Delaney, thank you for coming this afternoon. We have extended our time. The committee secretary will be in touch regarding any questions on notice and will forward a copy of the proof transcript for your consideration.

Mr Delaney: Thanks, Mr Chair.

Meeting suspended from 3.52 until 4.06 pm.

Appearances:

Victim Support ACT

Hinchey, Mr John, Victims of Crime Commissioner

THE CHAIR: Good afternoon, everyone, and welcome to the first public hearing of the Standing Committee on Justice and Community Safety's inquiry into annual and financial reports 2013-14. Welcome this afternoon to the Victims of Crime Commissioner, Mr John Hinchey. I presume you are familiar with the privileges statement that is before you?

Mr Hinchey: Yes, I am familiar with that.

THE CHAIR: Mr Hinchey, do you have a statement you would like to start with?

Mr Hinchey: No, I do not, thank you.

THE CHAIR: In that case, I will start off with the first question. In your annual report you flag your intention to raise visibility of and demand for victim support within the Indigenous community in the ACT. What obstacles do you face in doing this and what kind of progress is being made?

Mr Hinchey: I think the obstacles we face are matters of interpretation of the needs of the Indigenous community when it comes to victims of crime. I am developing a different understanding about what that might be. I think Indigenous people generally have an interpretation of justice issues which is different to non-Indigenous people, and this is in no small part caused by the effects of colonisation and intergenerational trauma. I think services like mine that target individuals need to take a different approach and develop services for groups and communities. This is what I think we need to do at Victim Support.

I have committed to increasing our referrals for Indigenous people by 60 per cent over the course of a number of years, and I am not on track for that; I am still fairly low percentage wise when it comes to Indigenous clients. I have not spoken to the community organisations that I intend to approach, but I have an idea in mind where we will begin some outreach services to the major community services. We will be focusing on not only our therapeutic services but access to our victims of crime financial assistance scheme, which I believe is underutilised by the community in general but particularly Aboriginal and Torres Strait Islander people, because it is a complex application process. I intend to be providing more support to the community in that regard in the coming year.

DR BOURKE: How do clients first become aware of your services, Mr Hinchey?

Mr Hinchey: Most of our clients, or 40 per cent from memory from the annual report, are referred by police. Police refer clients to us via the electronic referral system, SupportLink, and they do that on the job. The next most common means of us getting people to our service is through self-referral, through families et cetera and through other community organisations. It is a matter of keeping the community aware of our service, and that is one of the reasons why in the contract with Communities@Work I

have asked them to assist me to raise community awareness for our services.

DR BOURKE: Coming back to the area Mr Doszpot was talking about before, could you tell me if you are doing some work with the Galambany Circle Sentencing Court?

Mr Hinchey: Yes. I used to be involved more closely with the Galambany Circle Sentencing Court at my time at restorative justice when I managed the coordinator, so I am familiar with the role and function of the court. I have had a community discussion day—I think I mentioned that in my annual report—about resuming victim participation in the Galambany court. We have been talking with the coordinator in the restorative justice unit about how best to approach that.

DR BOURKE: Does your team include people who are Indigenous or have experience working with Indigenous clients?

Mr Hinchey: Currently there are no people who work in victim support who are Indigenous, but we have had people in the past and I did employ an Indigenous community worker last year, the year just past. We have an MOU with Relationships Australia and its Indigenous counselling unit. I have thought of employing an Indigenous counsellor at Victims Support ACT. I do not know whether that is the way to go because of what I said earlier around Aboriginal and Torres Strait Islanders' perception of justice and the best way to deliver our service to that community. I think I would be best to deliver first of all an outreach program to the existing community services and then go from there. But it is to be seen.

THE CHAIR: Ms Porter, a substantive question.

MS PORTER: Page 12 of your report mentions the Victim Support ACT early intervention team being recognised with a Justice and Community Safety Director-General award for exceptional and efficient customer service. Congratulations.

Mr Hinchey: Thank you.

MS PORTER: Could you provide some additional information about the workings of this early intervention team and how it achieved the award in your opinion?

Mr Hinchey: The early intervention team came into being because we needed to find different ways of managing the demand within existing resources. We found we were assessing people in a way that was resource intensive. So we formed an assessment team, the early intervention team, and they are the triage assessment unit within Victim Support. They take calls initially; they are the public face on the phones. They make assessments. They are all trained health professional workers. They make assessments about what people need and want. Not everyone needs intensive case management. A lot of victims generally want information and general guidance about things. Also they are not ready at times for therapeutic counselling. The team provides information around how to manage emotions, stabilise yourself and get information. They hold a group of clients within the triage unit as well until those people are ready for case management. That is essentially what they do.

MS PORTER: Do you think it has improved the way it works?

Mr Hinchey: I think it has enabled us to absorb an increase in calls within existing resources. I think we have saved resources by not just moving straight through to case management. That is resource intensive and expensive and it is not what everyone wants. It is not a new model; a lot of services have a triaging system in place and there are good reasons for that. I think we just need to stay with that system because it is certainly demonstrating its capacity.

THE CHAIR: Mrs Jones, a substantive question.

MRS JONES: My question relates to your case study on page 31 of the report, the Mr Williams case and Belconnen library. I am interested in the issues you identify as needing a response. There was obviously strong community concern and lots of Canberra mums raising their deep fears about this kind of case and how we can avoid it, if possible, in the future. I note one of your suggestions is prohibition orders being used better to manage these sorts of risks. Can you elaborate on that? Have you had any response from government?

Mr Hinchey: I have had a response from police. I was not fully aware that the prohibition orders were not being used that much at all.

MRS JONES: Can you explain them for those who do not know what they are?

Mr Hinchey: People who are registered on the child sex register; police can apply to a court for prohibition orders on those people in order to limit their movements or to have greater control over their movements and also to have another way of monitoring people.

MRS JONES: So, for example, you are not allowed to go into premises that are generally full of children?

Mr Hinchey: That would be very difficult, that sort of condition.

MRS JONES: You would have to make very specific locations.

Mr Hinchey: Yes, because everywhere is full of children. If you are going to be managing people in the community, you need to assess the risk, identify high areas of risk and then put into place proper mechanisms to help that person and manage the risk and the community to accept the risk. That is one of the jobs of community corrections in their community correctional supervision process.

Prohibition orders are a little bit more targeted. Since the Canberra Mums group wrote to the government—they also sent letters to other MLAs—I met with a representative of the Canberra Mums group and I wrote to ACT Policing asking questions around prohibition orders. I am advised that Policing are interested in taking a much more proactive stance on the use of prohibition orders. I am interested in that because the policy intention was there to provide police with another option, and I would be interested to know whether that option is effective or not.

MRS JONES: Are there other changes you would like to see in the management of

such offenders in the community, and do you have any other reflections on the way that matter was handled?

Mr Hinchey: It is a fraught area, the management of child sex offenders in our community. My observation is that we are always going to have people in our community who are child sex offenders. Some of those people pose greater risks than others. I think it is dangerous to approach the group as a whole. I think each individual needs an individual assessment and that appropriate steps are put in place to manage that risk.

The thing that worries the community is that there is a lack of transparency and information around that process, the measurement of that risk and how the interventions are applied. In order to allay the fears in our community that child sex offenders are out there preying on our children, we need to be able to give more information to the community around how we manage them. That is not a matter for me, but it is something I need to raise not just with government but with the agencies that are responsible for the management of child sex offenders—that is adult and juvenile systems.

How that case was managed? It is a very unusual thing to occur in Canberra; it does not happen often. But it highlights the fact that it can happen. It happens in other jurisdictions and there are worse outcomes. This is the risk that we need to be aware of at all times. I was surprised with the level of response from the community to that particular issue.

MRS JONES: Perhaps previously we felt very safe.

Mr Hinchey: I think it struck at the heart of people's real fears of where is it safe to leave a child unattended for very brief periods of time. Parents generally are struggling with this in our community. I do not think it is good for children's health and wellbeing to be supervised at all times; they need to explore their freedom, and the community needs to have confidence that they can do that.

MRS JONES: It is a balance.

Mr Hinchey: It is a sign of the times unfortunately, and it is something we need to be particularly mindful of.

THE CHAIR: Mr Hanson, a substantive question.

MR HANSON: Referring to your report on page 9, at table 6, "Client distribution 2013-14", it says that 72 per cent are female.

Mr Hinchey: Yes.

MR HANSON: Then I look at page 20 and the financial assistance scheme and 75 per cent are male.

Mr Hinchey: Yes. It is interesting, isn't it?

MR HANSON: What is going on?

Mr Hinchey: What is going on is that males generally see victim support services as counselling services, and males generally are reluctant to take up offers of referral to a counselling service. The victims of crime financial assistance scheme is designed for victims of assault and victims who experience costs as a result of that and also victims who suffer permanent and serious injuries. We are probably seeing more males through our financial assistance scheme because males are assaulted more often than females—physical assaults. But nearly 50 per cent of our clients are victims of domestic violence and sexual assault.

MRS JONES: Hard to prove.

Mr Hinchey: Sexual assault is particularly difficult to prove in a court of law, and there are not as many costs associated with a sexual assault as with a physical injury caused to a person.

MRS JONES: They are harder to determine.

Mr Hinchey: Psychological injuries, yes, and there are special payments in place for that. Sorry, I missed what you—

MRS JONES: I was just questioning the fact that with assaults on women—if they tend to be of a sexual and family violence nature, the costs can be very real but hard to quantify.

Mr Hinchey: Exactly. Yes, the costs are there, but they are very difficult to measure in terms of dollars and cents.

MR HANSON: Sure.

Mr Hinchey: We do find, though, if I might mention it—and this is where I think it is important that we develop an outreach service to Aboriginal and Torres Strait Islander people, who do not take up offers of therapeutic intervention—that in providing a service to people through our financial assistance scheme, as a by-product of that, we are able to introduce them to some therapeutic services which they would not normally take up. We do not have a formal role in the victims of crime financial assistance scheme, but we do it because we have a role generally to provide services to victims.

MR HANSON: With victims of domestic assault, I note that there is some debate in Victoria at the moment about extra measures to try and provide protections for victims—a sort of bracelet effect for perpetrators and things like that. A number of initiatives have been put forward.

Mr Hinchey: Yes.

MR HANSON: With victims of domestic assault, I imagine that there is a particular fear that they continue to live in because the perpetrators are obviously known to them and there are all those ongoing issues that I guess most of us would be aware of. Have

you put any proposals to government in any way to try and provide additional support or protections to victims of domestic assault?

Mr Hinchey: I have not put any submissions to government about any services this financial year, because I do not believe that any of those submissions would be successful, given the financial climate that we are in.

MR HANSON: Right.

Mr Hinchey: But in relation to the way that I would recommend approaching, addressing or combating domestic violence, ultimately I think governments generally—not just the ACT government but the commonwealth and all jurisdictions—need to pour a lot more money into combating domestic violence. I draw the analogy of the campaigns to reduce smoking or the campaigns to reduce drink-driving. These are national community educational campaigns.

There was a survey released recently, a Victorian survey, which gave some insight into the attitudes of our populations around domestic violence and sexual assault. Some of those results were quite disturbing and revealing, in that a good percentage of our community still believe it is okay to hit a woman and a good percentage of our community believe it is okay to have sexual intercourse with a woman without her full consent, such as when she is intoxicated. It is the community attitudes that we need to tackle first, and we will only do that with a really concerted, coordinated community education campaign.

MR HANSON: Was that a Victorian survey?

Mr Hinchey: Yes.

MR HANSON: If you have got access to that, could you provide that to the committee?

Mr Hinchey: I can provide that to you.

MR HANSON: Yes.

Mr Hinchey: With the white ribbon campaign, 12 ambassadors got together and agreed to make a statement to the media around this. I do not know whether that ever came out, but that is where we need to tackle it. If those attitudes are prevailing in our community, we need to really tackle that. On the other end of the scale, we need to ensure that our local family violence intervention program remains adequately resourced to continue its work in a coordinated fashion to combat domestic violence. And we need to value that program; we need to avoid resting on our laurels. In the past it has been a very successful program, but it needs a recommitment as each agency turns over its staff. And when new staff come in, they need to recommit to that program.

MR HANSON: You have touched on resourcing constraints, and I know that there are probably a couple of other programs which would be potentially rolled out if there was money available, but in terms of potential priorities with domestic violence and

restorative justice, where do you see the priorities are if those resources became available?

Mr Hinchey: Domestic violence and sexual assault are still probably the number one crime area that I see in my agency. I know that the Domestic Violence Crisis Service sees about the same number of women as we do at Victim Support, and I know that the Canberra Rape Crisis Centre sees about the same number of women—and men. They have 300 men on their books who are victims of sexual assault.

These are the silent crimes in our community. These are the crimes that people are living with—on a daily basis, sometimes. If we are talking about managing risk and what is the most harmful thing, they are the areas that I would be putting the resources into.

MRS JONES: Just as a supplementary to that, we were talking before about the victims of crime financial assistance scheme. Would you support a standard payment for sexual assault? Obviously, proving the outcomes of domestic violence and sexual assault is difficult.

Mr Hinchey: Yes.

MRS JONES: And there are the issues of whether people should leave a situation and find alternate accommodation or find a way of breaking off a relationship. There is a whole myriad of issues. But with regard to the actual financial assistance, once it has been established that something has happened, do you think it would be useful to actually reorder the way that that money is managed so that it is not just, “Well, you missed out on work for a week because of an assault; therefore you can have X payment.” When we have a systemic issue that is so hard to quantify, is it perhaps better to tackle it with a standard payment that acknowledges, perhaps in a case study, that generally X, Y and Z are the—

Mr Hinchey: Look, there are so many parts to that question. Firstly, victims appreciate it being recognised that the harm has been done to them. One of the most important things for a victim is to be believed and to be recognised. A lot of these people do not have access to the criminal justice system, and a lot of these crimes go unreported. If they are reported, very few result in convictions or prosecutions. So a process that recognises them is important—a process that captures as many as possible, rather than identifying those who are most harmed and pouring the money into them. I think the current scheme does that. The current scheme has got a very high threshold of harm before you are eligible for a special payment, although you are eligible for a reimbursement of costs.

I think also it is about a scheme that is easily understood, that is administered in a beneficial way, and that is case-managed. It is important to have a case management system in any financial assistance scheme. Our current scheme has no case management. There is no formal case management.

MRS JONES: A payment is made, and it is like they disappear.

Mr Hinchey: Well, the application process is not case-managed. Other jurisdictions

have a case management application process, and those case management practices are linked with the therapeutic arm of victim services. That is the way I would see—

MRS JONES: So it is holistic.

Mr Hinchey: Yes. That would be a sensible thing to do.

THE CHAIR: We have come to the end of our time, Mr Hinchey. I have a very short question for you. In your annual report you state your intention to push for double jeopardy law reform.

Mr Hinchey: Yes.

THE CHAIR: What would these changes entail in terms of change to statute, and what response have you had from government on this?

Mr Hinchey: I have written to government before on this, and I have been advised that the government is looking at it as a—I do not know what sort of priority the government is giving it. I do not have a lot of information apart from the fact that the government have acknowledged my request that it be addressed and that they look at it. Yes, it would require some statutory reforms, but they are not difficult. Other jurisdictions, including Victoria, which has a human rights act, have made changes to the double jeopardy rule.

Basically what I am asking for is that the law is amended so that when fresh and compelling evidence comes to light in serious cases—not all cases: murder, rape, those sorts of serious cases—there is a mechanism for the DPP to make an application to the court to have the matter re-tried. When I say re-tried, I mean once only. It is not going to be open slather. It very rarely happens, really. There are going to be very few of these. But as a matter of principle, and I think it sends the right message to the community, who have a belief that our system is balanced, that the interests and rights of victims of crime in the community are balanced against those of people who are accused of crime. I do not think that is the case.

THE CHAIR: I am not trying to put words in your mouth here, but are you looking at a reasonable—you would like this enacted sooner rather than later?

Mr Hinchey: Yes, I would, frankly. The DPP developed a discussion paper on this in 2011, which I think was tabled in 2013. You might be able to ask Mr White at 5.30. It has been on the COAG agenda since 2007. We are the last jurisdiction that has done anything about it. Even the Northern Territory, and I do not say that in any way disparagingly against the Northern Territory's justice system, released a discussion paper late last year about reforms to double jeopardy.

We seem to have a very conservative criminal justice system in the ACT. We seem to be on the front foot with social reforms but very conservative when it comes to criminal justice reforms.

THE CHAIR: That is noted. Mr Hinchey, we have come to the end of our time. The committee secretary will be in touch regarding any questions on notice. And we will forward you a copy of the proof transcript for your consideration.

Mr Hinchey: Thank you.

THE CHAIR: Thank you once again for appearing before the committee today.

Mr Hinchey: Thank you for the opportunity.

Appearances:

Legal Aid Commission

Boersig, Dr John, Chief Executive Officer

THE CHAIR: Dr Boersig, welcome to this afternoon's annual report hearings of the justice and community safety committee. I have to ask you the normal housekeeping questions first off. Have you read the privilege statement in front of you? I think you have been here a few times.

Dr Boersig: I have.

THE CHAIR: Dr Boersig, would you like to make an initial statement?

Dr Boersig: Nothing initially, thank you.

THE CHAIR: In that case, I will ask you the first question. On recent occasions you have spoken to Assembly committees about significant decreases in funding to the commission from the commonwealth. Can you update the committee on funding for the commission and tell the committee what the present funding situation means for the services you offer in the ACT?

Dr Boersig: The general core funding in relation to the commonwealth has continued. The national partnership agreement was rolled over for 12 months and is currently under review. There was a CPI increase with that. From that point of view there was not a depreciation of that core funding from the commonwealth.

We had a two-year agreement with the commonwealth for about \$800,000, and that agreement was partway through and the commonwealth decided not to renew that agreement before its second year. In round figures we were looking at, as against budget, about \$400,000 out of a budget that we were preparing for the subsequent year.

In the result, after negotiations we were able to keep about \$130,000 of that, which was unexpended from the previous year. That was effectively rolled over into this year. We were grateful for that because it enabled us to maintain the employment of a number of key staff. In effect, that is our funding situation in relation to the commonwealth government.

THE CHAIR: And ACT wise?

Dr Boersig: With the ACT, we have continued with our funding. That has been rolled over. That was basically maintained. The issue there, however, was the amount of money we received last year in relation to the Eastman matter, which does vary the figures.

The only concern arising for us relates to the statutory interest account money. That is our other major source of income, and that comes from the Law Society interest account. We were facing a reduction there from about \$1.4 million to just under \$1 million, about \$400,000 we were expecting to lose in this next financial year. That

is the result of a lack of interest being accumulated in that account and a general reduction to both ourselves and the community legal centres, who are also funded out of that fund. That is the most significant to us, really.

THE CHAIR: Dr Bourke has a supplementary first and then I will come to you, Mr Hanson.

DR BOURKE: Dr Boersig, has the time and cost of the Eastman case affected your capacity to provide services to other Canberra clients?

Dr Boersig: No. In the last financial year we were effectively full cost recovery in relation to the amount for the Eastman matter. As you will have seen, there was a lot of money run through that to manage that inquiry. That was fully expended. In actual dollars, we expended \$27,500 at the end of the last financial year, which was not picked up in our previous TA applications, and that is because it came at the end of the financial year, after the close of that. So we have had to roll that expenditure over to the current financial year.

THE CHAIR: Mr Hanson, a supplementary.

MR HANSON: I had the same question, or similar enough.

THE CHAIR: Dr Bourke, your substantive question.

DR BOURKE: On page 5 you mentioned the cancelling of the commonwealth funding agreement for front-line family law services in the Indigenous community. What were the main elements of that program and what did you lose?

Dr Boersig: That money was put towards three different activities, but underlying all that was an endeavour to engage more directly with Aboriginal and Torres Strait Islanders. The funding was being used in the family law area to pick up a number of small property-related disputes. These generally do not receive grants of legal aid because they are about money generally. But we are talking about people who have estates of up to \$250,000—not large. But that is quite a difficult area and that covers a lot of people not in a high financial situation. So it was clearly a target group we would have liked to have addressed.

The other areas were in relation to the help desk services, and that was where we put someone on to try to improve the amount of information referral we could garner with Aboriginal and Torres Strait Islander people. And the final one was that we put on an additional person in relation to our dispute resolution processes which link to our family law activities and we were trying to target the family law services by bringing more Aboriginal and Torres Strait Islanders into that service. They tend, as a group, to underutilise legal services, both family and civil. In both those aspects, there were key front-line activities which in other circumstances we would have hoped to have been supported and continued to be supported by the government.

DR BOURKE: There also seems to be a large increase this year over previous years in clients and services provided to the Aboriginal and Torres Strait Islander community. Is that good or bad?

Dr Boersig: It is absolutely positive from a service point of view. The fact that the community needs this kind of servicing is problematic and obviously in other situations they would not need the improvement of services. But from our point of view we need to find ways of having open doors in mainstream service. If we do not keep our doors open, people will not come. There are a whole range of communities here in the ACT who need different services, particularly civil and family-type services, care and protection. We have tried to ensure that our doors are open. Early in the year we ran a legal expo, which was quite well attended. We tried to showcase that you can get legal aid, legal assistance, from the private profession, from community legal centres, from legal aid commissions. It does not matter, just come when you have got a problem. That is the endeavour.

I am very pleased to see the statistics here that show such an exponential increase. I think since the national partnership was signed a bit over four years ago, there has been something like a 273 per cent increase in pick-up in that community. It is important.

THE CHAIR: Ms Porter has a substantive question.

MS PORTER: On page 23, Dr Boersig, the second point talks about the development and implementation of legal education programs tailored to the needs of people experiencing a high instance of adverse legal events and those working in community organisations that assist them. Would you clarify what these legal education programs are and how they are delivered?

Dr Boersig: One of the areas I think where we can improve is in relation to our outreach services. We have identified a number of areas where we think we can improve our services, for example to the Muslim community, to the Aboriginal and Torres Strait Islander community, to women in distress. We run a range of programs and we are looking at other opportunities to deliver those programs. What we found was that providing legal education is very useful. We need to find further opportunities to do that. We also need to join that up with delivering legal advice. We are looking at a system where we will go out, meet with the community, whether it is in Tuggeranong, Belconnen, wherever, and at the end of the session stay behind and offer legal assistance and information in the same way we do on our legal aid helpline.

The legal aid helpline has been a success. You will see in the statistics that we took over 13,000 calls last year. It really is a service that is being picked up. People want enough information to start being able to make decisions by themselves. At the heart of all this is a drive—not a drive but a recognition by government that we are going to have to look at more creative ways of unbundling our legal services so that we can endow people to help themselves, whether it is before court or during court proceedings. The program is one way in which we are going to do that.

THE CHAIR: Mrs Jones, a substantive question.

MRS JONES: Regarding page 42 of your report, long-term trend in grants, long term there seems to be a decline in legal-assisted cases, from the 2009-10 reporting year having a couple of hundred more cases than the 2013-14 year. Can you explain what

is contributing to the pattern? Are the cases more complex, or is there really just a decline in—

Dr Boersig: I wish there was a decline in the need, but what is happening is that there is complexity around cases, particularly in relation to mental health and so forth and drug-related matters. It is also to do with the length of time before matters are coming before the court and the costs of ancillary services like medical reports and psychological reports.

MRS JONES: Increased demands in those cases?

Dr Boersig: It costs us more to get those reports. We are in court more, matters are taking longer, it is costing us more to run the matters. Our major driver is external expenditure in most of these matters. We are having to cut our cloth, to tailor it to the demand we can meet. And what you see is a long-term trend of doing fewer cases. From my point of view, we have to find ways of remedying that. I have come into a situation this year where we are at grant levels from 1990, the same number of grants as in 1990, and we have got to turn that round.

The only thing promising about the statistics this year was that we had forecast 1,940 grants. We actually made 2,127. We are slowing that decline and I think there are a number of ways we are doing that. One is that we have done a lot of cost cutting inside the commission. We have looked very sharply at the way we provide external grants to private practitioners and look at how we spend that money. We have reduced that money somewhat. At the same time we are increasing our work levels internally to do more cases.

MRS JONES: More cases at a time?

Dr Boersig: And I think the slowing and the decline this year is a reflection of all those factors. In a nutshell we are trying to run the commission like an efficient business so that it is—

MRS JONES: Just on that, you have outlined a little what the long-term effect would be if the trend continues. Obviously you have found ways of arresting it to an extent but—and forgive my ignorance, I am not an expert in legal matters—do you sometimes refer people out to no win/no fee type bodies who then do not necessarily cost you a great deal?

Dr Boersig: We do. We have a good arrangement with the private legal profession. One of the benefits of the way the commission operates is that you can winnow through cases through the helpline or through providing half-hour advice. And you identify cases, particularly around civil, which can then go off as a workers comp case, an employment dismissal case, a personal injury case.

MRS JONES: And you do not have to do it yourselves?

Dr Boersig: We do not do that work ourselves. At the heart of it the commission does not do work that private practices can do. But we winnow through a lot of cases, because many people think they might have a case but—

MRS JONES: They do not.

Dr Boersig: They do not. So we refer them. One of the best relationships we have is with our Youth Law Centre, where we have private practitioners, three different firms, coming into our offices in the afternoon who then take on referrals if it is a case that needs to be run.

MRS JONES: They are doing that as a community service?

Dr Boersig: They do it pro bono. We have just started a small business clinic with the University of Canberra. That is being picked up from a private firm that was running it. We are facilitating that clinic every Thursday afternoon. We have five or six appointments each afternoon targeted at people who often would come to us on a helpline. These are mother and father investors, small business owners running delicatessens or whatever who need just a bit of advice about how they should proceed. We have got private practitioners coming in to give that advice. If it is a case that has legs, to give it a colloquial term, then there is a panel of lawyers who would then take on that case. I think it is the kind of service we should be providing.

THE CHAIR: Mr Hanson, a substantive question.

MR HANSON: Thanks. For the matters that go before court there is a duty lawyer allocated to someone. Have you done any analysis to compare the results of a duty lawyer as opposed to, perhaps, a privately engaged barrister or something? What is the—

Dr Boersig: Yes, it is a quality assurance issue.

MR HANSON: Yes. Is there a difference in the result?

Dr Boersig: I know of no study that I can point to to directly answer your question and it is one that I will explore if that is okay. I will take it on notice. But in terms of the quality of advice, the standards that we provide should be the same as any professional.

MR HANSON: Sure.

Dr Boersig: It is true to say that when you are dealing with large quantities of people you have to tailor how you are able to deal with them. It is inevitable that when you are dealing with five or six or seven people in one morning you can only see them for a certain amount of time.

MR HANSON: That is right. You might have one lawyer and seven clients. But you might have a situation where you have two or three lawyers representing a single client.

Dr Boersig: Indeed.

MR HANSON: Then you would assume that there would be some difference in the

quality simply by the time allocated, not through the professionalism of individuals. Does that result in a different result? Essentially, you get what you paid for.

Dr Boersig: Yes, indeed.

MR HANSON: That raises a question about the legal system, does it not? But I am surprised there are no studies that have—

Dr Boersig: None I can think of. I will explore that and make sure. The quality assurance issues that I have seen do not go directly to the point, which is why I am hesitating. The answer there would be partly in a legal aid system. The cost disparity is enormous. For example, it might cost you \$1,000 to \$1,200 to bring in a lawyer just for one person a day, whereas Legal Aid will do it with a duty lawyer for the cost of the wages for that person. So you can see the immediate financial differences there. We are set up so that those people who can afford to go and see a private practitioner will do it when they have the money. But the costs are quite sharply different.

THE CHAIR: I defer my question to Mr Hanson.

MR HANSON: The courts at the moment have been experiencing quite a problem, I suppose, with delay and throughputs. Are you finding that that is an added complication for you where you might be seeing a client, they are delayed and their day in court essentially is put off and put off? I imagine that has an impact on their ability to get a fair hearing.

Dr Boersig: There are a number of issues to do with price. One is that the more it is adjourned, the more it costs us—the more it costs everyone in both time and money. To have people there on each occasion, it is frustrating for the client; it is frustrating for the court, I imagine. So a judicial system that deals with matters quickly is what we are all after. We are about to keep our duty lawyers there all day every day now so that we can start helping the court in dealing with some of those matters a bit more expediently. I do not know that it is correct to say that justice delayed is justice denied. It is fair to say, though, that it is frustrating to all parties concerned when it is not a planned adjournment.

MR HANSON: The Bar Association and the Law Society have said that there is a need for a fifth Supreme Court judge. Have you got a view on that?

Dr Boersig: I think before we went down that path some further consideration should be given to how the court is administered and some of the ways in which that could be improved.

MR HANSON: Have you provided any input? Have you put in a submission or have you written to anyone to suggest any—

MRS JONES: Specifics?

Dr Boersig: We have regular meetings with the court and with JACS. I think it is about the waiting list, the time it has taken to do matters, finding ways to do them a little bit more quickly. We have got a system where because of the way we—in a way,

it is because of the way our appellate laws work. Everyone addresses all of the sentencing principles every time, so you have got at least three people talking on any one matter, whereas in another system you could get a little bit quickly to the point if you did not have to do that—

MR HANSON: So we are exploring—

Dr Boersig: and we are talking about that with JACS.

MRS JONES: So you are suggesting that they learn something from you and become a bit more business-like?

Dr Boersig: I think it is in all our interest to be more efficient about this. Magistrates courts are courts of summary jurisdiction. They need to be run at that pace. They deal with volumes of people. The work of a judicial officer in those courts is often 20 per cent law and 80 per cent managing paper and people.

MRS JONES: Yes.

MR HANSON: Yes.

THE CHAIR: Dr Bourke had a question.

DR BOURKE: Thank you, chair. Returning to the grants of legal assistance, you apply a means test. Can you tell us how that test is constructed?

Dr Boersig: Like all commissions, we have developed a means and merits test. So there are two basic criteria in that sense on which we rely when we approve a grant. Throughout Australia, the same model is applied, but some of the details are different. We take into account the person's income and the income of an associated person. We take into account their assets and their liabilities and make a full assessment and come to a figure point, depending on the number of children they have, about whether they would qualify for legal aid financially.

The next aspect we look at is whether there is merit to their application for legal aid, and that looks at the strength of their case, their prospects of success. If both those two factors coincide then we will grant them legal aid. The reason I raise the difference is that in Canberra, rents have generally been higher. So our figure for taking account of rents is higher than in South Australia, for example. So it is one of the many factors we review. We come to a certain figure, which is quite consistent around Australia in that sense.

DR BOURKE: Does the position of your budget affect how you apply the means test?

Dr Boersig: The position of the budget is a background factor that means we have to run efficiently; that is correct. We have to run within our dollars. In that sense we have to make decisions about where we might act. For example, we would not act in commercial matters or personal injury matters. We might look not to act—if there is a significant pressure on us, we might have to withdraw our services in a particular

area—for argument’s sake, protection orders in court. We would act in domestic violence matters, but not where personal protection orders came out. That is the kind of decision you might have to make under pressure. At the moment we are keeping that under balance, and we have not had to do that, but we have been looking at it all year.

THE CHAIR: Thank you, Dr Boersig. We have come to the end of our time. The committee secretary will be in touch with you regarding any questions on notice and to forward a copy of the proof transcript for your consideration. Thank you once again for appearing before the committee.

Dr Boersig: I appreciate it. Thank you.

Appearances:

Public Trustee for the ACT

Taylor, Mr Andrew, Public Trustee

Whybrow, Mr Mark, Acting Chief Finance Officer, Strategic Finance, Justice and Community Safety Directorate

THE CHAIR: Welcome, Mr Taylor. We have heard from a number of agencies and we look forward to hearing from you as the Public Trustee for the ACT. I presume I do not have to ask you if you have read the statement in front of you?

Mr Taylor: I have read that.

THE CHAIR: Would you like to make an opening statement?

Mr Taylor: No.

THE CHAIR: I will ask my first question. When you last spoke to an Assembly committee, alleged financial irregularities by two of your officers were under investigation and could not be discussed in any detail. Is that still the case or is there anything further you can tell the committee about these matters?

Mr Taylor: I can tell the committee further details, yes. If I go back a little, we have a fairly good forum of public trustees around Australia. Around 2012 we had spent quite a bit of time learning from one another around other public trustees having had had fraud from a medium to significant level amongst them. We were looking at learning from one another. At one of our annual meetings in 2012 we engaged KPMG to present the findings of the work that they had done on the Tahitian prince fraud in Queensland. You may remember that.

Coming from that we decided to engage KPMG here in Canberra ourselves, and they provided training to my own staff in 2013. They ticked off our decision to appoint a property officer which would grant some separation in roles relating to property. We had two audits of our risk strategy, and we had also bought a software package that enabled us to trawl disparate databases using metrics and analytics to find certain things. We were not expecting to find what we found, but we did find in January this year some irregularities in accounts maintained under financial management order of the tribunal—ACAT—as well as enduring power of attorney.

The Auditor-General, in conducting the end-of-year audit for the Public Trustee last year, required me to estimate the value of the fraud, as they called it; we are calling it “investigating financial irregularities” at this stage. The estimate we made was made on a probable basis and estimated it at \$1.65 million, which was a figure that was attributable losses to client accounts, including interest.

Needless to say, we have a fidelity insurance policy with ACTIA and we have probably got 55 per cent of the way through the investigation and claims process. All of the losses that were sustained by clients, together with interest, as well as the cost of a controls review, the disciplinary process conducted by JACS and the KPMG investigative role with the police have been reimbursed by ACTIA under that

insurance, with the exception of the controls review which was reimbursed to the Public Trustee's guarantee and reserve account.

We know two people were involved and no more. We know there were three, possibly four, people working with these two on the outside. We have been told, and we knew prior to engaging KPMG from an Australian report that they had done, that the striking theme of their investigation and their work was the power of collusion. The real problem is the huge effect the collusion has on the time that it takes to detect a fraud.

I now have a controls report from KPMG, which is finalised. I also have a disciplinary investigation from KPMG, which is finalised. The KPMG controls review made a comment around the fact that the modus operandi was not isolated to one method and exploited multiple schemes to extract funds. They used a combination of deception, external collusion and abuse of the level of trust bestowed on them by others.

The report acknowledged the nature of the clients that we deal with—they have lost capacity, the intensely vulnerable nature of some of these clients and their pressing needs—the several hundreds of transactions that go through these client accounts every day and the minimal rotation of clients amongst trust officers, and they acknowledged the fact that sometimes that is necessary because of the aggressive and violent nature and relationship dependence that becomes necessary in dealing with such people. However, they did say it was that environment that provided the opportunity for those irregular transactions to occur and remain undetected. The report also acknowledged that improvements to the controlled environment as I have described assisted in identifying the irregular transactions. It was very much the case that our capacity to detect fraud and our lower tolerance, if you like, for that activity contributed to us finding it or discovering it.

I can tell you that at the time of preparing for this hearing, the total KPMG costs over three contracts was \$843,000. The total cost of client reimbursements as of last week was \$858,000, including interest. The total cost to PTACT incidentals involved in working with the external contractors was \$17,000. The total of all costs to date, including reimbursements and contractor costs, is \$1.719 million, which has all been reimbursed.

As we said, we estimated a probable result of client losses that will be fully reimbursed with interest of \$1.65 million, but that is a probable estimate. Since we received the controls report in September, we have implemented a number of the recommendations that were made and had already done so prior to receiving the report.

MR HANSON: I have a supplementary on that. The money to reimburse, where did that come from?

Mr Taylor: Money to reimburse has been reimbursed out of Public Trustee's operating account and immediately claimed back from ACTIA. When we talk about client reimbursements, they came from the Public Trustee's operating account and were reimbursed back to that account. The cost of the controls review was paid for by the Public Trustee's guarantee and reserve, as allowed under the Public Trustee Act,

and reimbursed back into that account. Because we are self-funding, we paid out of our operating account the cost of the disciplinary review that was required by JACS but then it was reimbursed back to that.

MR HANSON: Have any police charges been laid, or do you expect that there will be?

Mr Taylor: Not as yet. ACT Policing sought an order in the Supreme Court, which was mentioned in the news, to the extent that they had for the first time in the history of the confiscation of criminal assets legislation sought an order, a civil forfeiture, which can be done where the matter is serious enough. Normally you have got to wait for a criminal conviction before you can get forfeiture of criminal assets. They were successful in getting that order, not only against the two people that were former employees of the Public Trustee but several people on the outside as well.

At a meeting with them two weeks ago I asked the extent of the meaning of “assets” and did it include superannuation, and I was told yes, it did. ACTIA is very much seeking to use the confiscation of criminal assets legislation to bring back any losses.

MR HANSON: Mr Whybrow, when did you come across to the Public Trustee?

Mr Whybrow: Mr Taylor approached me in the preparation of the financial statements to provide accounting advice for the preparation of the statements. That is when I became aware of that. The disclosure in the statements is around the estimation of the losses or the accounting irregularities and the appropriate accounting treatments, and that is where I have provided advice.

MR HANSON: So you are still with JACS but you are working to assist, are you?

Mr Whybrow: I provided some advice to the Public Trustee in relation to the financial statements and their preparation, which is part of the annual report. With the disclosures within the financial statements, I have provided advice and support in their preparation.

MRS JONES: As a supplementary, what internal processes have you changed and improved? Were there 20 dot points from the KPMG report about things not to do in the future? How have you future-proofed yourself from this sort of issue arising again?

Mr Taylor: We need to look at what the significant tool was that these guys had used, and it was that issue around collusion. There were people who had been introduced, properly, to the Public Trustee as what we call service providers. We have a register of service providers that we use for a range of client needs, whether it be real estate or electrical—just like a real estate agency might do—legal services and so forth. These are people we do not necessarily tender but they find their way on the list through checks that might be done of their proficiency or their experience et cetera.

MRS JONES: So it is like a preferred provider list?

Mr Taylor: Yes, but it is not unique. We do not provide services uniquely to one

person. These people had come on to that register legitimately and had done work that we had since evaluated and it had been good work. But there had been a tendency for there to be some level of collusion between certain of these outside providers and our staff, which had actually been mentioned in the KPMG report as far back as 2012. But third-party influence can start in simple ways by a contractor forming a relationship or a favoured service, then to exclusivity, then to gifts and inducements and so forth. The reality is we had a gifts and inducements register. We had all of those things in place. I guess we felt it was okay to accept that where an organisation had an ACN number, an ABN number, and they had gone through preliminary checks they were likely to be a regular provider.

In answering your question, we have pulled that register of service providers process to pieces. We have today written out to every service provider we have and sent them a new declaration that is not just a code of conduct as it used to be but is now a declaration that requires quite a significant amount of information from them about their qualifications, their registrations and things we can check and will check before they are allowed to remain on that register.

In taking that forward, we will be looking at relationships with staff, whether or not any of these people that have been engaged or are to be engaged have any relationship with people in the office and what that relationship is. We have also changed the way in which statements are being sent out to clients. One of the difficulties was that, as a trustee, we see it as absolutely necessary that we should send out statements of account where we are managing somebody's financial affairs. However, there are a growing number of people who do not receive statements, particularly people who are the most vulnerable, people who may be in a nursing home, who do not necessarily have family and people around that can help. Sending a statement of account to those people in a nursing home can bring more problems than it resolves.

We have taken away the decision about whether or not a statement will be sent from staff and established what we call a decisions protocol ranging from simple decisions to complex decisions and how they should be made and who should make them. The decision to send a statement will be what we would call a complex decision that would not be made by one person in isolation of the manager.

Another problem we have had has been that better practice would suggest that you rotate your clients amongst your staff. Probably 20 per cent of our clients are very, very difficult people—aggressive, violent, threatening. We have very regularly taken out workplace protection orders on staff. We have had staff abused and assaulted outside of working hours by people. So what is necessary is to discover a means by which we can allocate the right staff to the right clients. Some staff take this kind of thing home with them at night creating other problems; some staff are very resilient and can handle that kind of thing.

It is unfortunate that some people will then end up with a client group of very difficult people. Others may end up, then, with a client group of very vulnerable people. Once again, we have implemented a means by which we can force that rotation within the need to maintain relationships where they need to be there. But we have also been a lot more conscious since January in deciding not to allow relationships to build up where they do not need to build up.

We have also implemented a cards register. We very often receive from banks and financial institutions a person's credit card or debit card because we become their financial manager. So we operate their account. In one particular case one of the frauds had been around the use of this card as if it were this member of staff's own card. We have established a register on which those cards are received and held and allocated out involving more than one person and, in all cases, a manager.

The other most significant thing we have done is we have made the decision to upgrade our business system to the next version. We use a system called TACT, which is owned by an organisation called Ultradata in New Zealand. It is a standard trust industry tool. It is a very good system, but it has some shortcomings in the sense that we cannot remove some of the manual processes. The 7.3 version of this system allows us to do that, so staff will not be able to create items of information in a register that they previously could. That is a precis of the kinds of things that we have been doing.

THE CHAIR: Thank you. Ms Porter.

MS PORTER: My question is on another matter, a totally different matter. On page 17 in your report, it mentions the introduction of the NDIS and the commonwealth's revised arrangements for persons entering residential aged-care facilities.

Mr Taylor: Page 17?

MS PORTER: Yes. Have you found it there?

Mr Taylor: Yes.

MS PORTER: It says that the revised arrangements have the potential to dramatically change the environment within which the Public Trustee provides services for persons with disabilities as well as aged persons. Could you clarify these potential environment changes and how these will be dealt with, please?

Mr Taylor: Could I start by saying that nobody that I have worked with around Australia as public trustees, public guardians or public advocates has been satisfied with the manner in which the NDIS has been implemented. We say that because we were consulted. We made significant responses through the Australian Guardianship and Administration Council and also through the Financial Services Council. Also, I and the public trustee for New South Wales approached the federal minister's office with a number of issues. We do not believe that any of the issues that we raised have been adequately addressed.

MS PORTER: By the federal—

Mr Taylor: By the federal roll-out of the scheme. What was of major concern to us was that around Australia we have a number of judicially appointed persons—for example, me—as a financial manager for a person who may end up becoming a client of NDIS. The problem is that the NDIS does not know anything about me and is not going to apprise itself of my existence. And there is a concern about leakage

financially from the system. Somebody could theoretically make an application to the NDIS for financial assistance of some kind and be paid that money without the public trustee being consulted. We think that is a nonsense. If you have somebody appointed as a financial manager, why wouldn't you talk to them?

In the enhanced service offer, we missed the first tranche. But with the second tranche, which was effectively a trial of the NDIS, we made some arrangements with the office of disability to do a data match of clients that we had under financial management against their applications made under the enhanced service offer. We found that there was a significant commonality between the two data sets, which suggested that what we had feared in terms of the potential leakage was real.

As of today, I do not know where we are at with our recommendations, but we have a meeting with the public trustees and the Australian Guardianship and Administration Council later this month. We have a presentation being made as part of that; I should know more then.

There were some suggestions that if moneys were going to be paid to persons who it was known had a financial manager in place, the money might be paid through that financial manager of the public trustee. That is not really necessary; it only needs to be a consultation with our office, with a payment being made direct to the person. Of course, if money goes into a financial manager's pocket, a fee is taken before the ultimate benefit goes to the client, and that is not really necessary.

MS PORTER: You just need to know what is going on.

Mr Taylor: Yes, we absolutely do need to know. There are two kinds of financial managers. There are those who might be, say, parents or relatives appointed by ACAT and there are persons who are professional financial managers, like public trustees. We were only really talking about professional financial managers. The likelihood is that if a mother was the financial manager for her disabled son, she was probably also going to be the person who was dealing with the NDIS, so there was no issue there.

We think, too, that a lot of the difficulties that we have—very often, when we are acting as a financial manager in sync with a public guardian, the line between what a financial manager does and what a public guardian does becomes a little blurred. We should strictly be only making financial decisions, but we often wander across the line into whether or not the person can afford the kind of recommended treatment—not so much treatment; it might be a form of accommodation or repairs to accommodation. It might be all very well and good in the great scheme of things for somebody to have something, but if they cannot afford it they cannot do it. We are the ones then who have to make the decision whether it can be done or not done. A lot of those will be made simpler through the NDIS.

MRS JONES: Just briefly, regarding unclaimed moneys, what changes are in place to manage unclaimed moneys and what roles are being sought to manage these funds?

Mr Taylor: We deal significantly in unclaimed moneys with an unregulated industry. They call themselves money finders. Typically, they might call you and say: “We think we have identified some money that is yours. If you sign—”

MRS JONES: Unclaimed super, for example.

Mr Taylor: Unclaimed money. Sorry?

MRS JONES: For example, unclaimed super or something.

Mr Taylor: It could be moneys in a bank, a travel agent or something along those lines. It could be legal practitioner unclaimed money. They might say, “If you allow us to take the matter on for you, we will take 25 per cent of the amount.” The industry is unregulated and difficult to deal with. There is no code of conduct or ethics around what these people do. So we have had difficulty—the same as the commonwealth—in dealing with unclaimed money with this industry.

We implemented a new database in the last quarter of the last financial year. As part of the digital city challenge, we engaged an organisation to develop an online claims methodology. In doing that, we analysed the kinds of claims that we were getting. The average claim was about \$300, yet we were applying the same risk, if you like, to an applicant for, say, \$100 as we might for several thousand. So we will be looking at taking applications online for people with digital evidence.

We have also sought to change the Public Trustee Act so that section 66 will have a new provision that can allow us to require a person to give us information. The national electronic vehicle driver identification scheme, a register of all drivers and vehicles in the ACT and New Zealand, are happy to provide information that will help us in identifying people for intestate estates and other matters, including unclaimed money. We will be able to use those to identify people in a way that we could not before.

MRS JONES: Okay.

Mr Taylor: The joint parliamentary committee looking at review of the 2013 election is also looking at changing the level of access that people have to the commonwealth electoral roll. We already have access to the ACT electoral roll—things like dates of birth and so forth—to help us in intestate estates. We are seeking that at the commonwealth level so that we will have the whole of Australia. That is another thing that we have done to try and make the process a lot simpler.

MRS JONES: Thank you.

THE CHAIR: Mr Hanson, do you have a brief final question?

MR HANSON: No, I do not.

THE CHAIR: In that case, Mr Taylor, thank you very much for joining us here this afternoon. The committee secretary will be in touch with you regarding any questions on notice and will forward a copy of the proof transcript for your consideration.

Appearances:

Director of Public Prosecutions

White, Mr Jon, Director of Public Prosecutions

THE CHAIR: Good afternoon, Mr White. You have the honour of being our last witness for the afternoon.

Mr White: Thank you.

THE CHAIR: I presume that you will be very familiar with the privilege statement and so forth, so I will not take you through all that rigmarole. Would you like to start with an opening statement?

Mr White: Yes, thank you. I would like to thank the committee for the scheduling of this hearing; it is much appreciated.

I would just reiterate a couple of things that I put in my covering material in the annual report. Firstly, the business in the Supreme Court is very busy and the new listing arrangements that have been brought in with the new Chief Justice are operating very successfully. I think members of the committee will be able to see, in terms of numbers of trials completed, that great advances have been made. In fact I think it is fair to say that the backlog, which was fairly substantial a couple of years ago, has now pretty much been wound back in the Supreme Court. That is very good news.

I also reiterate that the new listing arrangements include sexual offences, which are often difficult cases to run, for various reasons. They often have additional material that has to be put before juries. They are all jury matters, because of the nature of the matters. And there is a lot of technology that needs to be employed in those matters. So they are not as straightforward as some other matters. But they are being included in the listing arrangements; as a consequence, again, the waiting times for the victims to have their matters brought on for trial have been greatly reduced.

That is the first point. The other point is that unfortunately we do seem to have some problems in the Magistrates Court in terms of throughput of work. As I have said in my report—and it is not just me—I think that I and the profession generally have been waiting for some time for some advances in the listing arrangements to be put into effect in the Magistrates Court. Unfortunately, that has not happened to date, although I know that the Chief Magistrate and the court are very aware of the issues and are actively considering the concerns of me and the profession in terms of listing procedures.

Those are the main points that I bring before the committee.

THE CHAIR: My first question to you relates to what you have spoken about. In the annual report you comment on the success of the measures to reduce the backlog in the ACT Supreme Court, and you say that it is time to make similar changes in view of increasing backlogs in the Magistrates Court.

Mr White: Yes.

THE CHAIR: In your view, what are the specific factors that have made the new listing practices in the Supreme Court successful? Could you elaborate on these?

Mr White: Yes.

THE CHAIR: And is this the result of assigning responsibility for a case to a particular judicial officer, better allocation of resources, or both?

Mr White: The key to the success has been that there is a real expectation that once a matter is listed, a trial will eventuate. There is nothing that concentrates the mind of accused persons, and also of prosecutors, better than having a hard listing date where it is highly likely the matter will get on. It sounds like a simple recipe for success, but I think that is the key to the success. If you rigorously work to bring trials on, if you do not accept excuses about why trials should not proceed, both sides of the bar table are really concentrated on preparing the case properly or reaching a compromise which leads to a plea of guilty. I think that is the simple reason behind that. And there is a series of call-overs, so there is very active management of the list at all times and there are set periods which are allocated for trial time when all of the available judicial resources will be concentrated on hearing those trials.

There is also a great advantage in having a concentration of judicial resources. If a trial falls over unexpectedly in one courtroom, that judge can immediately take up another matter, which will effectively be waiting in the wings to be taken up. Again, that is a very efficient way of dealing with matters and has been a key ingredient in the success. And I should say that the Supreme Court judges have done a very good job, if I might say so, with respect, in dealing with those matters in an intensive fashion. It has not been the practice in the ACT for judges to have to conduct back-to-back trials in quite the manner that has been done in the new listing proceedings, and all of the judges have certainly done their part in ensuring the new system works.

THE CHAIR: Thank you. Ms Porter.

MS PORTER: Yes, thank you very much. Good afternoon, Mr White.

Mr White: Good afternoon.

MS PORTER: In relation to witness assistance services, which are mentioned on page 20 of your report—

Mr White: Yes.

MS PORTER: You have mentioned before sexual assault cases. This service is a service by which witnesses that are most vulnerable can receive support.

Mr White: Yes.

MS PORTER: It does talk about witnesses in sexual assault matters being some of those most vulnerable witnesses. It also talks on the next page about the volunteer

service called Side By Side. Could you talk a little more about that Side By Side service, and the support that witnesses to sexual assault cases are given?

Mr White: Yes, we certainly have a coordinated approach in relation to victim support in the ACT. The office only has limited resources, but we target those resources at the crime types that produce the most vulnerable victims. That is not a perfect system, but it is dictated by the amount of resources. So we do concentrate on sexual assault victims and also victims that are thrown up by homicides. In a homicide it might be the family of the victim.

We do concentrate on those matters. That is not to say that there are not other individual crimes or indeed crime types where there is a need for support of victims. But we can only spread our resources so far. So we do look to join, through particularly the Victims of Crime Commissioner and Victim Support ACT, with coordinating victim support services as much as we can.

There is a regular coordination of those services and there are constant updates to doing that. We do key into whatever assistance is available, but it is done on a coordinated basis so that everybody knows who is dealing with whom and so that victims do not slip through the cracks but also so that there is not a kind of turf war in relation to victims between different agencies. Generally that system works very well. Obviously from time to time there are friction points, but generally that system is working well.

MRS JONES: I have a supplementary on sexual offences. There has been an increase in prosecutions against registered sex offenders.

Mr White: Yes.

MRS JONES: How are you sort of planning to deal in future such increases if the trend continues? What impact does it have on the operation of your office?

Mr White: Yes. I am not sure whether the increase that we have noted has come from greater enforcement, which I suspect it has, and more effective enforcement. If that is the case, then I do not necessarily expect it to keep increasing on an exponential basis, so to speak. We hope that the current higher levels will at least be maintained. They are not necessarily cases in themselves which are particularly difficult to prosecute because they do depend usually on people not adhering to their obligations, their reporting obligations, and those sorts of things. So they are fairly straightforward matters.

MRS JONES: The offenders are not adhering to those?

Mr White: Yes. So it does not create huge resource implications for us, but obviously we are very keen to put some teeth behind the regime of registered sex offenders and obviously prosecution is a very important part of that.

MRS JONES: And just on that particular topic, we have already had submissions to this committee about the use of various orders of restricted movement for sex offenders.

Mr White: Yes.

MRS JONES: I wonder what your view is on that in particular. Obviously there is a lot of community interest in the Shane Williams case, which I believe you applied to have taken back. Can you comment on your office's work in that case and what your hopes are for sex offenders from the DPP perspective as we move forward?

Mr White: Yes. The Shane Williams case was a very horrific case, as the whole community knows. The sentence that was imposed by the judge in the first instance we thought was manifestly inadequate. We appealed to the Court of Appeal immediately upon the handing down of the sentence, or within a couple of days, I think it was, because in our view it was quite clearly, with respect to the judge involved, an inadequate sentence. The Court of Appeal agreed with our assessment and increased the sentence in relation to that.

MRS JONES: How much was the sentence increased by, just out of curiosity? Do you remember?

Mr White: Off the top of my head, I cannot remember. I am just wondering if I reported it during this period or not. I should have a better recall.

MRS JONES: Perhaps you can come back to us on that.

Mr White: I can come back to you on that. If it was not within the reporting period, I may not have included it. It does not look like I have. It may be that it was handed down outside the reporting period.

MRS JONES: As a broader question to that, if indeed we are seeing greater enforcement and more effective enforcement of the conditions put around these people, then is that perhaps not being communicated to the public? Do you have any specific suggestions of how that could be increased? People want to feel like justice is being done, as you well know.

Mr White: Yes.

MRS JONES: If we are going to make recommendations to government—and we can—what additional information could be released on a regular basis to the people, if it is the case that there is greater enforcement now?

Mr White: Yes. The Williams case had a really unfortunate aspect to it, which was that Williams was on his way to report to the police when in a terrible tragic event he opportunistically committed the fairly horrific offences that he committed. Clearly, a reporting regime cannot prevent sex offenders reoffending as such. However, it is important that the reporting regime be adhered to for all the reasons of principle that lie behind those reporting regimes.

Unfortunately, the reporting regime in itself will not necessarily prevent offending. One of the things that will contribute to that in our view is greater penalties to be handed down. One of the things I have certainly done since I have been DPP is take a

particular interest in the penalties that are handed to sex offenders. As members of the committee know, I think, I have appealed on a number of occasions when I have thought that sentences have been inadequate and I have had a pretty good success rate, if I might say so in relation—

MRS JONES: So it has not necessarily been a problem with the law but with the way it is being interpreted, in your view?

Mr White: As I say, there is a role that sentencing plays in these aspects. Where I have felt that sentences have been inadequate, I have certainly not been backward in coming forward about that.

MRS JONES: Good to hear.

THE CHAIR: I have a supplementary on that, Mr White. As you said, the sentence was manifestly inadequate, which I think the majority of the community would agree with you on.

Mr White: Yes.

THE CHAIR: What is the process when you highlight that situation? Can you actually recommend to have the maximum sentence imposed? How does this work?

Mr White: If we convince the Court of Appeal that the sentence is manifestly inadequate, the Court of Appeal has to resentence. So they engage in a resentencing exercise. One of the things that have happened recently as a result of a recent High Court decision is that what used to be called double jeopardy in terms of resentencing is not taken into account. There used to be a discount under that situation for a person who was resentenced. The High Court said it is not appropriate for that discount to be applied.

But having said that, the sentencing exercise becomes just a normal sentencing exercise for the Court of Appeal. They take, usually, a conservative view of the sentence that is imposed. But we would make submissions as to what we would say would be the appropriate sentence.

THE CHAIR: That was my next question. Would the DPP actually be in a position to—well, you cannot prosecute the case again.

Mr White: No.

THE CHAIR: But you can give evidence on why you felt it was inadequate?

Mr White: Yes, we would submit to the Court of Appeal why we think the sentence was inadequate. We would point to precedence and principles that underline, we would say, an increase in the sentence.

MRS JONES: Are you able to supply the committee with what your recommendation was as well as what the outcome was for that case, or is that confidential?

Mr White: It is not confidential, but it is part of the submissions that we make to the court. That is a case I conducted myself. So those submissions would be on the public record. If members were interested in it as an instance of the way in which we react to the court, I would be happy to provide that to the committee.

MRS JONES: Yes.

Mr White: But obviously, as you will also see, we conduct many of those appeals during the year.

MRS JONES: Yes.

Mr White: So that is just an example.

MRS JONES: It is just because we are learning about this process and the JACS committee has another inquiry going on at the same time.

Mr White: Yes, I appreciate that.

THE CHAIR: Mr Hanson.

MR HANSON: Mr White, a few committee hearings ago—I cannot remember if it was estimates or annual reports—I remember you came in here and spoke about the resource constraints on the DPP. I remember very specifically you said that some days you struggle to find a lawyer to get to court. Is that still the same? Has it improved or has it worsened?

Mr White: I do not think it has markedly improved, although, as I mentioned in my annual report, it is very heartening to see we did get additional resources in relation to work safety matters. That will make an impact in that area. I suppose the issue that we still struggle with is particularly servicing the Magistrates Court in circumstances where we are also servicing this increased activity in the Supreme Court. When one of these very intensive listing periods is on in the Supreme Court, we do not have a lot of spare bodies to deal with the Magistrates Court.

It is true that there is coordination between the two courts. The Magistrates Court tends not to have hearing lists while the Supreme Court is doing its intensive listing proceedings, but there are still a lot of lists that run in the Magistrates Court and they do take a lot of resources.

MR HANSON: You put in a budget submission, I assume, on an annual basis, do you, asking for additional resources?

Mr White: Yes.

MR HANSON: Have you a view of what additional resources you require?

Mr White: I suppose we are in the next budget round. In fact, we are not that far, with the timetables that operate now, from putting in our business case for the next budget. So we certainly will be addressing that resourcing issue in that business case.

MR HANSON: Good luck.

Mr White: Thank you.

THE CHAIR: With regard to the Magistrates Court, you referred to some of the reforms that are required. Can you elaborate for us why the DPP's recommendation of a separate traffic list has not found favour?

Mr White: Yes. I think there are two issues here. One is that in relation to the Magistrates Court, I think there has been a reluctance of the court to separate traffic matters out and put them in a discrete list. I have to say that the experience in other courts in other jurisdictions is that there often is a separate traffic list and matters can be dealt with very efficiently because they are all fairly straightforward matters. That is one aspect to it.

The other aspect is that, as members of the committee may have seen, there has been some adverse comment from the legal profession in relation to my suggestion that paralegals might appear in these matters. They would have to appear by leave, and these would be people who are law students. I have a number in my office who are excellent paralegals and would certainly do a great job in presenting these fairly straightforward cases. That would be a much more efficient way of proceeding. But the profession is very conservative about such matters and they have raised some concerns about non-lawyers appearing.

I have to say, on that, that, of course, the ACT is the only jurisdiction in Australia where, in the summary area, all matters are prosecuted by lawyers. As members of the committee would be aware, every other jurisdiction has police prosecutors. They are often very good and very experienced and, in many respects, they would often say they were much better than a first-year or second-year law graduate. That is no doubt true. Nevertheless, they are not lawyers and they do not have the same ethical obligations as lawyers, which seems to be one of the concerns that have been raised in the ACT about my paralegals appearing.

Obviously, if my paralegals did appear in court, they would be subject to my control, my supervision, and would be expected to uphold the highest standards. If they did not, they would be subject, like any of my officers, to the threat of disciplinary action if they fell short of that. I have every confidence that would not be the case, of course, but I think it is quite wrong to suggest that paralegals would not be capable of appearing in pretty straightforward matters and doing a very good job and be a lot more efficient for the office.

MRS JONES: Use of resources?

Mr White: Use of resources, yes.

THE CHAIR: It is an interesting example you give. There is a perception that in Canberra we have probably the most lenient sentences imposed than other jurisdictions. Would your explanation carry the argument one way or the other on that?

Mr White: Sorry, are you asking in relation to whether, if paralegals appeared, that might exacerbate the problem, I suppose? There are two ways of looking at this. First of all, if I were able to have dedicated paralegals staffing a traffic list, they would become very au fait quickly with all the current law and all the current tariffs and penalties and so on, and that might actually lead to greater consistency from my office in terms of resistance to judicial attitudes towards these things.

I think there is a case to be made that we could actually make a bigger splash in the traffic area if we had a dedicated traffic unit. I have already got a dedicated unit in terms of the preparation of files within my office, which is done by paralegals. The next step is to go to paralegals perhaps appearing in a separate traffic list.

THE CHAIR: I guess the other part of my question would be: would specialist police prosecutors make a difference?

Mr White: I think there is a philosophical issue about police prosecutors. As I say, I have personally worked closely with police prosecutors in other times of my career and I have found them generally to be of the utmost quality, and they probably do a very unsung job in most jurisdictions. Having said that, I think there is an issue about independence. The DPPs have independence. The police prosecutors do not have the appearance of independence. So I think the system that we have here is probably a system that most other DPPs would like to have in their own jurisdictions.

MRS JONES: Just as a supplementary to that, I was overseas earlier this year, and in the Swedish model when the police are preparing an investigation—in fact, very early in the investigation and this was particularly around illegal prostitution—they actually have an embedded member of their public prosecution. It would be effectively like someone from your office embedding at a very early stage with the police to make sure that the evidence they are collecting is right. It seems a very different system to ours, but for them it means that their police time is used efficiently and the case is ready to go as soon as somebody is arrested. What are your thoughts on a different type of model there? Obviously the police embed with you sometimes, I believe, but it is not so much the other way around.

Mr White: I think the system is very different because they have the Napoleonic code, effectively, where the police are investigating the matter for a magistrate. The investigation is really a holistic approach which has legal resources attached to it. Once that process is gone through, I suppose the process is a lot more advanced than it would be under our system. Having said that, in appropriate cases—and it is a resourcing issue, of course—we do give advice to the police prior to charging. We can only do that in very big or significant cases at the moment, for resourcing reasons, but we are very happy to do that, and often our involvement at an early stage can really resolve a lot of issues and make a lot of difference. So I am very much in favour of that in appropriate cases.

I do not think we would do it on a routine basis, but in significant cases we do that. In some of the assaults, for example, that no doubt members of the committee have been aware of recently, over the last couple of years, sometimes the police will come over to us with CCTV footage and say, “What do you think? What charge do you think is

justified here?” We might have some input in those sorts of matters right at an early stage. It is not just murders or big, involved frauds, although we certainly should be involved in some of those matters. It could be those other matters.

THE CHAIR: We have one final question from Ms Porter.

MS PORTER: Very quickly, on circle sentencing you talk at page 15 about the fact that by its very nature it is more expansive in its approach—that is in the last paragraph on page 15—than conventional sentencing. It also takes significantly longer and is more complicated. However, would you say that it is worth a significant amount of resources by the court and by your office? Would you think that it brings benefits to that particular group of people going through that process, as opposed to a normal court system?

Mr White: It certainly does bring benefits, and I think we are all aware that Indigenous Australians are overrepresented, unfortunately, in the custody rates, not only in this jurisdiction but around Australia. Given that fact, it would seem that it is an appropriate response. It certainly is more labour intensive, if I can put it in those terms, but it is a justified need based on those statistics of which we are all aware.

THE CHAIR: We have now come to the end of our time. The committee secretary will be in touch with you regarding any questions on notice and will forward a copy of the proof transcript for your consideration. We want to thank you for appearing before the committee today. On behalf of the committee, I would also like to thank all of the witnesses who appeared in today’s hearings. And your contribution and that of all the others will assist considerably the committee in its inquiry into annual reports 2013-14.

The committee’s second and final public hearing for the annual reports inquiry will take place on 3 November 2014, commencing at 12.30 pm. Appearing before the committee will be the Attorney-General and his officers from the Justice and Community Safety Directorate, and the Minister for Workplace Safety and Industrial Relations and his officers. I now declare this hearing closed.

The committee adjourned at 6.01 pm.