



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**STANDING COMMITTEE ON JUSTICE
AND COMMUNITY SAFETY**

(Reference: Annual and financial reports 2014-2015)

Members:

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

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 11 NOVEMBER 2015

**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 1.32 pm.

Appearances:

Gentleman, Mr Mick, Minister for Planning, Minister for Roads and Parking, Minister for Workplace Safety and Industrial Relations, Minister for Children and Young People and Minister for Ageing

Chief Minister, Treasury and Economic Development Directorate
Young, Mr Michael, Executive Director, Workplace Safety and Industrial Relations
McCabe, Mr Mark, Executive Director, Construction and Workplace Protection, and ACT Work Safety Commissioner

ACT Long Service Leave Authority
Savage, Ms Tracy, Chief Executive Officer and Registrar

THE CHAIR: Good afternoon, and welcome to the second public hearing of the Standing Committee on Justice and Community Safety inquiry into annual reports 2014-15. Today we will hear from the Minister for Workplace Safety and Industrial Relations, the Attorney-General as the minister responsible for the Justice and Community Safety Directorate, the Solicitor-General, and also the ACT Electoral Commission. We will hear first from the Minister for Workplace Safety and Industrial Relations.

Witnesses appear under privilege. The obligations and protections are described on the privilege statement, and I presume you would all be pretty familiar with that by now.

Mr Gentleman: Thank you, yes, Mr Chair.

THE CHAIR: Minister, do you have an opening statement?

Mr Gentleman: Yes, thank you, Mr Chairman, and thank you to committee members for allowing me to appear before you today to talk about the annual report. The government remains strongly committed to working collaboratively with unions and industry to ensure there are healthy, safe, fair and equitable workplaces in the ACT. Good conditions and a safe workforce contribute to Canberra being one of the most livable cities in Australia.

2014-15 was a significant year for work safety, industrial relations and injury management. I wish to highlight some of our key achievements during that period. In 2014-15 we saw significant improvements in the ACT public sector's injury management performance, with the number of lost-time injuries reducing by 18 per cent compared to the previous year. This followed an improvement of 13 per cent in 2013-14.

Safety performance has improved significantly since the government committed additional funds of almost \$3 million per annum for the ACT public sector workers compensation and work safety improvement plan. In 2014-15 the improvement plan

initiatives included the delivery of training in mental health awareness and resilience to more than 400 supervisors and managers across the service.

We have implemented a service-wide electronic system for managing workplace accidents and incidents. I am pleased to report an improvement of approximately 37 per cent in the proportion of incidents that are now reported within 48 hours when compared to the previous year. This is an excellent result and will drive earlier injury management, with further improvements anticipated.

Musculoskeletal injuries are one of the most common types of workplace injury. In 2014-15 an early intervention physiotherapy program was piloted. The program delivered in excess of 100 treatment sessions to workers as well as advice to the workplace on the worker's fitness for work. All workers who participated successfully returned to work, and 80 per cent of the workers who responded to a follow-up survey indicated their ability to do activities around the home had increased as a result of the treatment received.

The improvement plan funds have also been used to hire additional staff with specialised allied health qualifications or insurance experience. One of these staff members developed and managed the ACT's successful appeal to the Safety, Rehabilitation and Compensation Commission against the Comcare workers compensation premium for 2014-15. The appeal was significant in that it was the first time that the territory successfully challenged the commonwealth's premium pricing model. The appeal resulted in a refund of around \$6 million and a further premium reduction of approximately \$2 million per annum.

In the private sector we continue to work in close partnership with employers, unions and other stakeholders to implement the recommendations of the *Getting home safely* report. Although a variance was recorded against accountability indicator 1.3(j), this is due to the narrowness of the reporting criteria, and not because safety standards have fallen. On the contrary, an independent actuarial report produced during the 2014-15 period showed that in the first year following the government accepting the report recommendations the number of work injuries in the construction industry reduced by 27 per cent. This was quite a remarkable result, particularly in view of the fact that injuries had been increasing by around seven per cent per annum for the past five years. The results are very heartening, and demonstrate that the government and industry's investments in work safety are having a positive effect.

Some of the safety initiatives implemented in response to *Getting home safely* involve the government driving best practice purchasing arrangements as well. We applied whole-of-government construction project management guidelines and implemented active certification for the review and the measurement of contractor health and safety performance. To date more than 190 active certification audits have been completed. In addition the government will shortly bring forward legislation to increase work safety inspector powers to identify and respond to sham contracting—another *Getting home safely* recommendation.

The passage of the Holidays Amendment Bill 2014 has ensured that Christmas Day, Boxing Day and New Year's Day are now public holidays on the actual days on which they fall. More recently, we have introduced legislation to similarly make

Easter Sunday a public holiday in its own right from next year.

I am pleased with the work that has been undertaken in the workplace safety and industrial relations sphere during 2014-15, and I am eager to continue ongoing initiatives and to build upon the progress that we have made. Thank you for the opportunity, Mr Chairman. My staff and I are ready to answer your questions.

THE CHAIR: Thank you very much, minister. Minister, the Chief Minister, Treasury and Economic Development Directorate annual report, volume 1, page 27, states that the directorate “redesigned and oversaw the independent actuarial review of the territory’s workers compensation system”. Can you tell the committee what the review found and what that tells us about how the scheme is travelling? What trends are observable in the proposed schedule of reasonable workers compensation premium rates for 2015-16? And when will the review be published?

Mr Gentleman: The review showed that the number of new cost incurred claims fell by over five per cent in that period, to around 3,200. The number of new lost-time injury claims fell by eight per cent, to around 2,000. This was driven primarily by improvements in the construction industry’s experience. The gross average cost of a claim was around \$36,500, and we had 514 claims that received a lump sum payment. I might ask officials to give you some more details.

Mr Young: I might go firstly to the question around publication of the actuarial report. The report that was published during the 2014-15 financial year pertained to the previous financial year. That is as a result of data lag in timing. So it takes quite some time after the end of the financial year for the actuary to receive all of the information from the territory’s seven approved insurers, to do the analysis and to publish the report. We expect that the report for 2014-15 will actually be published in April next year. That is one of the KPIs that we have under output class 1.3. So the results that we are talking to here today actually pertain to the previous financial year. In terms of those findings, was that one of the questions?

THE CHAIR: That is correct, yes.

Mr Young: Firstly, on the question of price, for about the past four or five years the ACT private sector workers compensation scheme has had an average collected rate sitting at just under 2½ per cent of wages. I should clarify that this scheme applies only to the ACT private sector. The public sector is insured under the commonwealth’s Comcare scheme. So the private sector average rate has been sitting quite stably for around the past five years at something under 2.5 per cent of wages.

However, we have seen cost pressures increasing over that time. The private sector insurance market is a competitive one and we have seen insurers effectively absorbing cost pressures, in order to maintain a stable premium rate. However, the report does show in the most recent year an increase in claims costs, driven predominantly by an increase in both the number and average size of common law damages claims. That is creating a cost pressure which may, in this financial year, result in an increase in prices. The scheme actuary publishes an expected reasonable premium rate, which, I believe, for the current financial year was estimated at 2.65 per cent of wages—an increase. However, it remains to be seen whether insurers will pass those prices on to

employers.

The minister has commented on the improvement in the number of injuries that occurred—the number of lost-time injuries. We have seen a mixed performance overall. Improvements in safety have resulted in fewer injuries occurring. However, there has been an increase in the average cost of those claims, once they come through, driven almost entirely by changes in common law utilisation patterns.

In terms of the reduction in the number of injuries that have occurred, that has been driven primarily by improvements in the construction industry. It was very heartening to see in the first 12 months following the government's take-up of the *Getting home safely* report recommendations quite remarkable improvements—and very rapidly, much faster than we expected, in terms of the reduction in the number of injuries and lost-time injuries in the construction industry. It outperformed all other industries against those key measures by a significant margin.

THE CHAIR: Thank you. Dr Bourke.

DR BOURKE: I have a supplementary. Minister, in the light of this, how goes the progress on the new workers compensation scheme for the ACT public service? I understand that there has been some consultation about that.

Mr Gentleman: Yes, indeed. We are working with unions and employee representatives for an outcome as we move away from the Comcare scheme. As you are aware, the Comcare scheme is unable to be affected by us as a government, so it means that any changes made to the Comcare scheme directly affect workers compensation in the ACT public service without us being able to do much about it. The government has made the decision to move away from that process and develop its own workers compensation scheme for the sector. We have been now working with the union movement and those groups for quite some time to develop the new scheme and progress is going well, I think.

DR BOURKE: Apart from that advantage of being able to have an effect on the scheme as a government, what other advantages might arise from a territory-owned workers compensation scheme?

Mr Gentleman: It allows us to focus on a particular theme, and the theme that we have is to get workers back to work as quickly as possible, to improve life outcomes for them. That is the key strategy within the new scheme that is being developed. It allows us to treat, in a health way, the presence of injury as quickly as we can and move those employees into a stage where they can return to work as soon as possible and therefore, as I said, get the best life outcomes for those employees.

DR BOURKE: I will move on to my substantive, if I may.

THE CHAIR: Yes.

DR BOURKE: Thank you. I just want to know about how the directorate might be cooperating with other government directorates to improve the workplace safety environment.

Mr Gentleman: We are working with all directorates to provide the best environment we can in matters of safety within the ACT public service. Our industrial relations policy also comes into play with that, and we are developing strategies and detailed actions and training to ensure that we can provide the best safety for our workplace and its employees. I will ask Mr Young to give you some more detail on some of those.

Mr Young: We collaborate in a number of ways. Firstly, as a central agency, we are in a very strong position to be able to review and implement improved whole-of-government strategies for the management of workplace health and safety, and injury management, and have done so. There is a suite of integrated whole-of-government policies which are implemented and monitored by the human resources directorates cooperative group.

In addition, we are responsible, since 2011, for the implementation of the improvement plan, as the minister has mentioned, for the delivery of return to work coordination services for the majority of the ACT public sector. That has allowed us, firstly, to centralise the resources, the staff and the systems involved in delivering those services; to centralise them and to ensure a consistent minimum standard of service. We were able to do that. In the process of doing that, we adopted commercial best practice injury management systems and processes, and have been able to roll them out across the public sector.

The improvement plan allowed the employment of additional return to work case managers and expert staff with allied health and insurance industry qualifications. That resulted in a reduction in the average case load of matters that each case manager was dealing with and, therefore, an increase in the amount of attention that our injured workers were able to receive. Those services apply to both workers compensation and non-compensation claims and are very much in the spirit of the earliest possible identification, intervention and commencement of injury management, regardless of compensation status.

Also, as a result of the improvement plan investment, we have put in place a number of very much improved ICT systems. RiskMan is the one that the minister mentioned in his opening statement. As a result, we have moved to much more like real-time reporting and response to safety events as they occur across the public sector.

DR BOURKE: I might drive into RiskMan a bit more there if I might, minister. That is a web-based or specific piece of software. Is it available for apps on portable equipment or is it just desktop based?

Mr Young: It is an online system accessed via a web browser. There are no apps per se, but mobile equipment that is accessing the government's networks via our web browser is able to access the system.

DR BOURKE: Is this a more efficient way for workers to report an incident than using the old forms and filling in bits of paperwork?

Mr Gentleman: Much more efficient, yes.

Mr Young: Absolutely, and that has translated into a much higher proportion of claims that are notified within the benchmark two days. The previous system was a paper-based system, as you have mentioned, that involved workers filling in a form and faxing it, and a manual process where that then had to make its way into the hands of supervisors, safety professionals and those involved in the response. The current system has an automated notification process. As soon as an injured worker or a person acting on their behalf inputs the information, that triggers a coordinated set of notifications, including to the safety regulator, where appropriate, which absolutely provides for not just earlier reporting but much faster action and management for events when they occur.

Mr Gentleman: It is interesting that you raise the question of an app, because we know that some of the reporting that was delayed was due to shiftworkers in particular going off shift for a four-day break, for example. Some of their reports did not occur until after the 48-hour period. There may be an opportunity for us to look at an application that they could use to start reporting when they come off shifts, say, if they are on nightshift going home for a rest and then find the injury or whatever. We will certainly have a look at whether that can be developed.

DR BOURKE: Is there any sense that reporting of incidents has increased because of this ease for workers to report an incident?

Mr Gentleman: Yes, it has been successful in more reporting. What are the numbers, Mr Young?

Mr Young: I do not have those at top of mind; I might return to that at some point in the hearing if that is okay. I will seek to get some figures on the number of incidents that were reported both pre and post implementation of the online system.

DR BOURKE: And you report near misses with the system as well?

Mr Gentleman: Near misses in—

DR BOURKE: Incidents which may have caused injury but which were near misses. Is that reported within the system as well?

Mr Young: The system does allow that reporting, and they are being used for that purpose, yes.

DR BOURKE: Has that reporting gone up as a result of introducing a system which is easy for workers to use?

Mr Young: I believe that it has, but I will also provide those figures in due course.

DR BOURKE: Thank you.

THE CHAIR: I believe Ms Porter has a supplementary before she gets her substantives.

MS PORTER: Yes, chair. My question is about national standards. I believe there is some discussion going on about national standards in relation to work safety around the states and territories. Minister, could you brief us about that?

Mr Gentleman: Yes, certainly. Of course, there are standards. Sometimes they are different between different jurisdictions. What we are doing is working to harmonise, as much as we can, with other jurisdictions. It really is about red tape reduction; it is an opportunity for us to make it easier for the business community, particularly, to harmonise our regulations with other states and territories. It mainly allows us to comply with essentially the same safety requirements in the same manner by regulators. Therefore, employers, for example, can be assured that the same sets of rules are in place here as in other jurisdictions.

We are working through that process. Victoria and Western Australia, at the moment, remain outside those harmonised processes, but we understand that Western Australia's version of the model has been tabled in state parliament and is released for public comment. So we are looking to work with those groups as well.

Mr Young: Significantly, New South Wales and the commonwealth have, like the ACT, adopted the harmonised workplace health and safety laws. That is particularly significant for the ACT, obviously, as we have a fairly high proportion of employers who operate across those borders. The government, for some years, has been putting in place a range of measures to reduce red tape and make it easier for employers who are operating in New South Wales, in the ACT or potentially under contract with the commonwealth to understand and comply with their safety and workers compensation requirements.

Last year we introduced legislation to clarify the cross-border arrangements for workers around workers compensation. Significantly, the adoption in the 2011 act for work safety and its subordinate regulations picked up the majority of those harmonised safety laws. That has translated to significant benefits in a number of ways. First—Mr McCabe is here and I am sure he would agree—it has allowed the regulator to tap into a national body of guidance material, education information and expertise to much more quickly respond to issues and to put out very high quality guidance in a manner that the territory's limited resourcing previously would not have allowed. That has been, I think, quite significant. Certainly the trends that we have seen in injury numbers in the ACT in the period since the adoption of the safety laws have been positive.

Mr Gentleman: Whilst we are in this process, whilst harmonisation of those laws has been mostly adopted, there is an opportunity for us to look at opportunities to improve the legislation, perhaps, as long as we make sure that safety standards are not diminished during that.

MS PORTER: Thank you. May I have a substantive?

THE CHAIR: Substantive, yes.

MS PORTER: Thank you very much. Minister, when you began with your remarks earlier in the hearing, you mentioned the consultation that happens across unions,

employers, employees, employer associations and the like, and it is mentioned in the annual report on page 27. Can you comment about how those consultations go? Are there different responses from the different groups, like the union body versus the employer associations, or is it generally a positive consultation that is held between you and the directorate and these different stakeholders?

Mr Gentleman: I think we have certainly learnt a lot from the consultation that we have done with the different groups. As you would imagine, they come from different perspectives, but all have, I think, the view to ensure that we have the safest workplaces in the ACT. Both in the private sector and in the public sector we want to ensure that that is the case. So yes, they have been quite successfully providing this opportunity to look at particular parts of workplace safety that need working on and also, for employer groups, particular areas that burden them in regard to red tape if you like. We are looking at what we can do to reduce red tape for those groups as well.

MS PORTER: In relation to that, you mentioned the amendments to the public holidays legislation and you mentioned the recent initiative as far as Easter Sunday is concerned. You did talk about other public holidays where we are introducing the idea of them falling on the day that they actually occur. What is happening?

Mr Gentleman: Yes.

MS PORTER: I have heard some remarks from some of the employer associations that they are not really pleased about some of those amendments, some of those reforms. How has the latest Easter Sunday amendment been received by both sides of the coin, as it were?

Mr Gentleman: Wholehearted support from employee groups on the proposal for Easter Sunday as a public holiday. Some reserved judgement from employer groups on it; they are concerned that this will affect their trading on that particular day. I have not seen any evidence from them yet to determine whether or not that will affect their trade, but the generic response has been that, because of extra costs on a particular day, they might not be able to trade in the same manner they have traded before. They cite costs as the issue in regard to that.

Of course, the ACT government has a cost with that too. We have many shiftworkers who receive penalty rates for working on public holidays, so there is a cost to the ACT for that as well. But overarching is the view by government that it is important to recognise the ability for workers to be able to have a public holiday on a day that is recognised as a significant day—that is, in this case, Easter Sunday—and to be able to refuse work on that day, to actually commemorate the day with their family and kinfolk, if you like. However, if they do decide to work, they are compensated appropriately by the correct penalty rate. That is a view that government took in moving forward with Easter Sunday as a public holiday.

MS PORTER: Will you be keeping a watching brief over a period of time to see how the rollout goes and whether it has these effects on some small businesses in particular?

Mr Gentleman: Certainly, yes. I am quite interested to see whether that effect will

occur—whether small businesses will not trade as much or cease to trade on the public holiday. On the other days that are public holidays, we have not seen any evidence that they cease to trade or close on those particular days, but we are certainly keeping an eye on it, yes. Mr Young was just going to give you some more information.

Mr Young: On that subject, I was just going to add that, significantly, Victoria has essentially put in place the same arrangements for Easter Sunday to be a public holiday from 2016. So our monitoring of the results will allow us to look at both the ACT and the Victorian experience and, indeed, New South Wales, where that has been the arrangement for some years.

THE CHAIR: Mrs Jones, your first substantive question.

MRS JONES: Before I ask my question, it is a little hard to hear. I do not know if your microphone is not close.

MR SMYTH: The microphones are not for audio; they are for recording purposes. You have to speak up.

MRS JONES: Regarding the *Getting home safely* report, which you mentioned in your preamble, where is the government at with regards to the implementation of the recommendations? Have all 28 recommendations been implemented? If not, which ones have not?

Mr Gentleman: Thank you for that question. It is a very important report and came at a particular time when the construction industry had seen a lot of injury. The report made 28 recommendations, all of which were accepted by the government. As you are aware, we are working through those. In my last update to the Assembly I reported that a significant number of those recommendations had been introduced. And it is heartening also to note that—

MRS JONES: How many?

Mr Gentleman: I will get to that. I want to go through some of the outcomes of it too. Mr Young will give you the number of recommendations.

Mr Young: Of the 28 recommendations, 15 were primarily the responsibility of the ACT government. Each of these has been substantially implemented. Those are recommendations 1, 2, 3, 7, 12, 13, 14, 19, 20, 21, 22, 23, 24, 25 and 26. Those were the ones that the ACT government primarily agreed to and have been implemented, often involving changes to operational practices. And measures have been rolled into core business.

MRS JONES: And the rest are whose responsibility?

Mr Young: The remaining recommendations relied on collaboration with external stakeholders or were dependent on external factors, including reviews of model work, health and safety legislation. Of these, 12 are currently ongoing and are likely to be completed prior to the 2016 audit, which was also a recommendation.

MRS JONES: Can you take it away with you and come back to us with the list of which stakeholders are required to fulfil the final recommendations and where each one is up to?

Mr Young: Certainly. I just clarify that the government is certainly one of those stakeholders and is actively involved. The differentiation that I was making between those two categories was really a—

MRS JONES: Pure government versus government plus others?

Mr Young: Indeed yes.

MRS JONES: I am interested in a list of others against the recommendations and where they are up to.

Mr Gentleman: Certainly. To come back where I was going originally, during the year when the report was commissioned there were 736 workers compensation claims in the construction industry, which is equivalent to about one injury per million dollars in wages paid. In 2013-14 the number of injuries reduced to 527, and the number of injuries per million dollars of wages reduced to 27 per cent. The construction industry's safety improvement was significantly better than other ACT industries. It was a good outcome in that period.

MRS JONES: Is there a budget associated with the implementation specifically?

Mr Gentleman: That is within our directorate's budget.

MRS JONES: Is there a figure associated with the implementation or is it aggregated all over the place?

Mr Young: There is no project budget. However a number of the recommendations have certainly had budget implications, including the hiring of an additional 12 inspectors within the work safety inspectorate.

MRS JONES: Can we also have tabled or can you come back to us with the list of additional funds that have been expended or are expected to be expended and how much and against which recommendations?

Mr Gentleman: As much as we possibly can.

MRS JONES: If you have got it, yes.

Mr Gentleman: There will probably be quite a bit of work in that. I will come back to the committee with a time line as well.

MRS JONES: Also on that, to wrap up, are there additional targets or outcomes as a result of the recommendations that have been set? You were talking about percentages of injury. Have the government set themselves specific outcomes at the end of the process or a level that is acceptable?

Mr Gentleman: The outcomes are in reference to the recommendations of the report. Since all of the recommendations have been agreed to—

MRS JONES: That is not quite my question. My question is: as a result of having put all of these different changes in place have you then had the courage to put a specific level on where you are trying to get to, once they are all implemented, in a statistical sense?

Mr Young: If I may, the report recommended targets and those were accepted as part of the recommendation.

Mr Gentleman: I will leave Mr McCabe to give you more detail on those targets.

MRS JONES: In relation to the numbers that Minister Gentleman mentioned before, how did they match up with the actual outcomes we are trying to achieve?

Mr Young: Just before Mark speaks to the targets that were included in the report itself, the results that we have seen in the first 12 months are extremely positive but they need to be sustained – the targets – on a longer time frame.

Mr McCabe: Recommendation 4 from the *Getting home safely* report had a specific target of an improvement in the injury rate for construction, which would bring the ACT rate down below the national average. In the past couple of days we have had some new statistics out of Safe Work Australia, not for the construction industry at this stage. They have only got the broad figure but they will then work on the construction stats. But they show, for the first year of data which has now become available since the *Getting home safely* report, a 20 per cent reduction across all injuries in the ACT in incidence rate, which is a huge improvement in one year. It takes us from, for all industries, 10 per cent above the national average to 10 per cent below the national average. That is the incidence rate for serious claims, which is one of the key measures used in the *Getting home safely* report. Serious claims are claims for a week or more of time off work. And for the incidence rates of claims with over 12 weeks time off work there was a 30 per cent reduction.

MRS JONES: When will the construction stats be available and how—

Mr McCabe: I do not know. I have not been able to talk to Safe Work Australia yet. Usually they do these figures and then they will go and work on the bi-industry figures. I expect they will be available within the next month or so. Both Michael and I know from the data we have seen that that is largely driven by improvements in the construction data.

Mr Young: If I might just add for clarity—

MRS JONES: I am pretty happy, unless there is something?

THE CHAIR: We will move on to the next question if you do not mind. Mr Smyth, your substantive question.

MR SMYTH: Minister, you are responsible for safe work places in the ACT. Since the allegations in the royal commission against the CFMEU in the ACT on construction work sites what have you done to assure yourself that there is no verbal intimidation, physical intimidation, threats, requests for donations, outright bribes or intimidation and standover tactics in the ACT?

Mr Gentleman: Thanks for that question. It is an interesting inquiry that we have seen rolling out in the royal commission. As you have seen from media reports, there are lots of allegations within that inquiry into improper conduct in the workplace. I have been working with Mr McCabe on looking at evidence provided, or any evidence provided to us, on such allegations. We want to ensure, of course, that workplaces are safe and that they are free of harassment and intimidation. I have asked Mr McCabe to provide me with any evidence that has come to him on such matters.

You are aware and the committee would be aware that there were some arrests made as a result of evidence given to the commission in July this year. Some allegations of criminal misconduct, we see, are very serious as well and need to be appropriately dealt with. There were a number of cases that I will not particularly comment on at the moment but the response from Mr McCabe to me in a brief was that in regard to his officers in particular—and I requested information both in regard to the ongoing royal commission and also in regard to a question I received in the Assembly on matters to do with his officers in particular—there may have been four instances of allegation of harassment of his officers. Two of those instances occurred from members of unions, and two occurred from employers during the period.

All of those Mr McCabe has looked into, and I do not think any further work has occurred. From memory, in regard to one of the instances where an employer and a union official were alleged to have harassed one of our work safety inspectors over a WorkSafe incident at a building site in the ACT, the building site was closed later that day. It appears in that case there were genuine concerns from the employer and the union representative.

MR SMYTH: What have you done to assure yourself that ACT workplaces are free of extortion, blackmail, threatening behaviour, standover tactics and intimidation?

Mr Gentleman: As I said, I asked Mr McCabe to provide me with information on any of those matters that he has seen, and that is the outcome of that request.

MR SMYTH: Have you met with, for instance, any of the employer groups to talk about their concerns?

Mr Gentleman: Yes I have. I have met with a number of employer groups who have provided me with some anecdotal quotes that have later come into the commission's inquiry. No action has occurred on them. There have been allegations, if you like, similar to what we have seen in the inquiry and no further work has been done.

MR SMYTH: No further work has been done?

Mr Gentleman: By the inquiry on those matters.

MR SMYTH: Why not?

Mr Gentleman: That is up to them. I do not control the—

MR SMYTH: Sorry, I thought you were talking about Mr McCabe. That is all right. Are you aware of the survey that said 71 per cent of respondents had been verbally intimidated, 41 per cent had been physically intimidated, 58 per cent had received threats, 32 per cent had been asked to make donations for industrial peace, and seven per cent had reported they were then asked for outright bribes? What have you done to ensure that that sort of activity does not take place on ACT work sites?

Mr Gentleman: Firstly, no I have not been provided with that survey information, from memory.

MR SMYTH: You are not aware of that?

Mr Gentleman: No.

MR SMYTH: Are you concerned that seven per cent of ACT building firms have been asked for outright bribes?

Mr Gentleman: That certainly would be a concern, yes.

MR SMYTH: And what would you do?

Mr Gentleman: I will ask Mr McCabe.

MR SMYTH: I will get you a copy of the survey. What will you do to fix that?

Mr Gentleman: I will ask Mr McCabe to investigate the matters that you have brought before us today.

MR SMYTH: Are you concerned that 58 per cent of respondents had received threats?

Mr Gentleman: I have not seen these details that you are providing to the committee today.

MR SMYTH: Whether you have seen them or not, are you concerned that 58 per cent of respondents had received threats to be excluded from the market?

DR BOURKE: I have a supplementary.

Mr Gentleman: Mr Smyth, I think it is important that—

MR SMYTH: Simple question: are you concerned? You are not concerned?

Mr Gentleman: Mr Smyth, I think it is important that we understand whether these are allegations or actualities. We have seen in the royal commission several

allegations of improper propriety, yet many of those allegations have not been proven and actions have not been taken in regard to them. Some action has been taken, of course, and that is important and the appropriate place to do it.

MR SMYTH: That is fine, but the question is: are you concerned that 58 per cent of respondents had received threats?

Mr Gentleman: As I said, Mr Smyth, I do not have that information in front of me.

MR SMYTH: Are you concerned that one person receives threats?

Mr Gentleman: Nobody has given me any certification that that information is correct, so it would be improper—

MR SMYTH: But you are not concerned that people are getting threats?

DR BOURKE: Chair, Mr Smyth is badgering the minister.

MR SMYTH: The witness is not answering the question. Are you concerned? It is a simple answer.

MS PORTER: Yes. He has answered.

THE CHAIR: Mr Smyth—

MR SMYTH: You are clearly not concerned.

MS PORTER: He has answered.

THE CHAIR: Mr Smyth—

Mr Gentleman: It would be completely improper to answer an allegation that you are making to this committee this afternoon—

MR SMYTH: No. It is an online result—Master Builders—

THE CHAIR: Order, please, Mr Smyth. We will come back to Mr Smyth. There is a supplementary question first off.

DR BOURKE: Minister, your annual report states on page 27 that the directorate developed and rolled out new guidelines on the management of construction projects commissioned by the territory. What is the main focus of those guidelines and what effect is anticipated?

Mr Gentleman: The main focus is, of course, on workplace safety and instruction in safety matters. But I want to ask directorate officials to give you some more detail there.

Mr Young: The whole-of-government guidelines set a benchmark for the management of construction projects that are commissioned by the government. They

assure that workplace safety is a key consideration in procuring and managing construction work. They apply to construction projects with a value over \$250,000 and provide practical guidance and tools to assist project officers and managers of construction projects to manage the complexity of that work. They form part of a suite of assurance strategies developed to manage health and safety in construction work commissioned by the territory.

Other strategies include the implementation of a safety management system for territory work, weighted assessment criteria for workplace health and safety being included in construction procurement. Simplified guidelines for projects with a value of less than \$250,000 are also in the process of implementation.

MRS JONES: Thank you.

MR SMYTH: And just to finish—

THE CHAIR: Mr Smyth—a supplementary from Mrs Jones.

MRS JONES: Minister, just on that topic, do you think that the MBA would produce fake data, false data, lying data, or would their data be invalid for some reason?

Mr Gentleman: You are referring to Mr Smyth's earlier question?

MRS JONES: Yes.

Mr Gentleman: No, I am not making those comments at all. But I have not seen, Mrs Jones, any evidence to associate that data with any—

MRS JONES: It is in an article of 7 July suggesting that 41 per cent of respondents to a Master Builders ACT members survey claimed that they had been physically intimidated and 71.8 per cent of respondents said they had been verbally intimidated.

Mr Gentleman: Yes, Mrs Jones, and in your question you have said that it is suggested. That gives me the—

MRS JONES: I will just rephrase my question then. It says—

Mr Gentleman: That gives me the impression, Mrs Jones—can I answer? Can I answer first?

MRS JONES: No, I will rephrase my question, thanks. Minister, do you believe that the responses of MBA members that 71.8 per cent of those surveyed said that they had been verbally intimidated and 41 per cent of those surveyed said that they had been physically intimidated by the ACT branch of the CFMEU on Canberra building sites is inaccurate or would be inaccurate?

Mr Gentleman: No, Mrs Jones. What I am saying is that I have not seen any evidence to prove those allegations.

MRS JONES: But that evidence is not enough?

Mr Gentleman: No, certainly not.

MRS JONES: Right.

MR SMYTH: I did not ask for evidence. I just asked for an expression: are you concerned that 71 per cent of respondents said they had been verbally intimidated and 41 per cent that they had been physically intimidated? Are you concerned that that number, that volume, of a survey would say that?

Mr Gentleman: Mr Smyth, as I have said earlier, I have seen no evidence to prove that those indicators are correct.

MR SMYTH: So you are not concerned at all?

Mr Gentleman: Mr Smyth, what I am saying is—

MR SMYTH: You are avoiding it deftly, and we understand the relationship of your faction with the CFMEU. But—

Mr Gentleman: It would be improper, Mr Smyth, to—

MR SMYTH: Are you concerned that one person—

DR BOURKE: Chair, is Mr Smyth here to ask questions or is he here to give evidence?

MR SMYTH: I am here to get answers eventually, Dr Bourke.

DR BOURKE: If he wants to give evidence, he can go over there and I will start asking him questions.

THE CHAIR: Okay. Order, please!

MR SMYTH: You are not concerned at all? The Minister for Industrial Relations is not concerned about reports of intimidation—

MS PORTER: He did not say that, Mr Smyth.

MR SMYTH: Well, he has not answered the question, Ms Porter.

THE CHAIR: Mr Smyth—

Mr Gentleman: You cannot verbal me, Mr Smyth. We are being recorded by Hansard.

MR SMYTH: You verballed yourself, minister. Okay. I will give you another: are you concerned at reports that contain the figures that 71 per cent were verbally intimidated, 41 per cent said they were physically intimidated, 58 per cent said they had received threats to exclude them if they did not make payments, 32 per cent were

asked for donations, and seven per cent reported they had been asked for outright bribes. Are you concerned that those numbers actually exist?

Mr Gentleman: What concerns me, Mr Smyth, is the difference between the numbers that you are giving me and the numbers that my officials have given me. They have given me evidence—

MR SMYTH: But you are not concerned at all?

Mr Gentleman: They have given me evidence of four matters over two years—

MR SMYTH: I will get the MBA to contact you.

Mr Gentleman: Two matters were from employers and two matters from employees and unions, over four years. So there is a stark difference between the figures that you are producing here for this committee and what my officials are giving to me.

MRS JONES: Official complaints versus responses.

THE CHAIR: Order, members!

MR SMYTH: But you are not concerned? That is okay.

THE CHAIR: We have reached the end of our allotted period for this. We are looking at the Long Service Leave Authority for the next 10 minutes.

Mr Gentleman: Mr Chairman, we have that additional figure for the RiskMan numbers, if we can provide that?

THE CHAIR: Certainly.

Mr Young: The number of incidents reported increased by 25 per cent in the period post introduction of the RiskMan system compared to the manual system prior.

Mr Gentleman: And Mr Chairman, too, can I just for the record encourage anyone that has an issue with workplace safety, harassment or bullying certainly to make official complaints to me, the government or Mr McCabe. As I said, at this point those numbers quoted by Mr Smyth are quite stark in the number that we have official complaints for.

THE CHAIR: I am sure the committee is encouraged by your statement, minister, but we are also hoping that some of the information that is available to Mr Smyth should be available to you as well.

DR BOURKE: Chair, you are not speaking for the committee there; you are speaking for yourself. Please—

MRS JONES: It is about an MBA survey. You should be across it.

THE CHAIR: Okay. I am speaking for myself as a member of this committee, which

I am entitled to do.

DR BOURKE: You are indeed.

THE CHAIR: Okay. Have we got any members of the Long Service Leave Authority to join you?

Mr Gentleman: Yes.

Mr Young: Yes, Ms Savage, the CEO.

THE CHAIR: Welcome, Ms Savage. Hopefully you are aware of the privilege statement that you have before you?

Ms Savage: Yes, thank you, Mr Chair.

THE CHAIR: Thank you. Minister, would you like to make an opening statement on this sector?

Mr Gentleman: It is very pleasing to see that the authority achieved its above target performance during this period. It is also quite important that we encourage, where possible, more people to look after their long service leave. It is an important part of workplace agreements that long service leave is in place, and also for the ACT government's enterprise bargaining agreements.

THE CHAIR: Ms Savage, would you like to make a statement about your activities within the Long Service Leave Authority and any issues that you want to bring before us?

Ms Savage: No thank you, Mr Chairman. But we are very happy to take questions.

THE CHAIR: Okay. Dr Bourke.

DR BOURKE: Minister, what measures are planned to be implemented to improve efficiency in the coming financial year?

Mr Gentleman: There are a couple of measures I will ask Ms Savage to go through for you.

Ms Savage: In relation to what, in terms of measures?

DR BOURKE: The efficiencies of your operations, collections of long service leave levies, a review of investments—those kinds of efficiencies.

Ms Savage: The ACT Long Service Leave Authority is actually quite a small organisation. We have about 11 FTE. We are a little bit below that at this particular time but we are looking at recruiting and filling some vacancies. We run a fairly lean operation, I have to say, in general terms.

One area of focus, certainly for this year, is looking at investment returns. We have

seen that volatility in the market that will probably reflect against our returns for the end of this current financial year. We probably will not see the types of returns that we certainly experienced in the last financial year.

Certainly, we are looking at how we can educate, assist employers and workers on long service leave, and really looking at voluntary compliance in signing up, paying levies. We are probably looking at some efficiencies in our IT system, and that is a cycle of continuous improvement. They are probably the main areas.

DR BOURKE: I understand that you achieved an 11.7 per cent return on the year to date, which was actually 2.9 per cent above your target. I presume congratulations are in order there, Minister. How did you achieve that? Tell us your secret.

Ms Savage: I think everybody had very healthy returns, from looking at other jurisdictions' long service leave arrangements in other states and territories. I think everybody benefited from an up market situation. We have a fairly conservative investment approach, but certainly a number of people benefited from the markets last year. We will be looking at that very closely this year, though, as I said, with market volatility.

DR BOURKE: So which other statutory authorities do you benchmark your return on investment against?

Ms Savage: I do not believe we actually do any benchmarking per se. We have an investment plan that we certainly manage our investments to, and that is signed off by the Treasurer. We are very interested in the returns that other jurisdictions are receiving, and we compare very favourably with those.

DR BOURKE: How would you compare with, say, the Public Trustee?

Ms Savage: I am talking in terms—sorry—of other long service leave arrangements across other jurisdictions.

DR BOURKE: Okay. I meant in terms of return on investment. Given that the Public Trustee also has a range of investments and is another ACT government entity which has done particularly well in the past, I wondered how you measured up against that.

Ms Savage: I could not tell you off the top of my head, but I could certainly take that on notice and get back to you.

DR BOURKE: Are there any constraints, because of the nature of your operation, placed on style and type of investment that you can make that could be worthy of review?

Ms Savage: We are in conversation with Treasury at the moment. We are relatively small. We have got about \$125 million in funds under management, and that does, I think, restrict us in some ways in terms of looking at particular investment vehicles or options. But, as I said, we have started conversations with ACT Treasury to look at how we might be able to leverage some of their arrangements, and they have been incredibly helpful.

DR BOURKE: Good.

MS PORTER: Just one quick question. I realise we are running over time, Chair. On page 8 it says:

- The compliance team visiting 69 sites (2013-14: 62) to ensure that employers and workers in the covered industries were registered.

What did they find? Did they find high compliance?

Ms Savage: They have found high compliance. We also do another range of compliance activities like Yellow Pages searches. We generally go and talk to apprentices at the CIT—that sort of thing. But on those visits it is really about informing people, educating people—and certainly from those visits we have had a very good response—looking at our other range of compliance activities to look at any non-compliance and really, as I said, generally to educate people.

MS PORTER: Thank you.

MRS JONES: Just briefly, according to the list of priorities since estimates for 2015-16, number 6 is to coordinate the authority's contribution to the drafting of the Long Service Leave Act, the portable scheme. Have you had any input into changes expected there, and have you been consulted, or who have you consulted with?

Ms Savage: In—sorry?

MRS JONES: Changes to the portable long service scheme?

Ms Savage: Sorry, yes. We have had conversations. We are looking very much from an administrative perspective, as you would imagine, but there has been very strong consultation and—

MRS JONES: With whom?

Ms Savage: With the directorate.

MRS JONES: Okay. And do you have an idea of when that will be concluded? Do you get a feel for when that will be concluded?

Ms Savage: I might hand over to Michael.

Mr Young: Sure. I am answering in my capacity as the official responsible for the legislation that governs the portable long service leave scheme. Extending that scheme to the additional classes of workers requires legislative amendment. There has been extensive consultation going on with the authority, obviously, but also with affected employers and unions. It has been a complex issue. I guess the challenge is ensuring that the extension balances the interests of extending the coverage as broadly as possible but excluding classes of workers that are unlikely to benefit from the changes, and doing that in a way that is both transparent and predictable to the

employers that need to engage with the authority. That has been a particular focus.

MRS JONES: Where is the conversation up to? Are there conclusions being drawn now?

Mr Young: They are at a very advanced stage and I think we will be making recommendations to government with a view to the legislation going forward in the autumn 2016 sittings, so a very advanced level of consultation—ironing out the kinks.

THE CHAIR: Okay. Ms Porter had a supplementary, I think.

MS PORTER: I was talking to the chair, so I might have missed something in relation to the question, I was going to ask: were you talking about the aged care and waste management industries entering the scheme?

Ms Savage: Yes.

Mr Young: Yes.

MS PORTER: Thank you.

THE CHAIR: We have reached the end of our allotted period. Minister, I would like to thank you and your officers for attending here this afternoon. A proof transcript will be sent to you in case there are corrections to be made, and if you have taken any questions on notice could you please provide answers to the committee within five working days. Thank you for appearing before the committee today.

Mr Gentleman: Thank you, Mr Chair. Just in regard to questions on notice, there was one that will take some time, I think, to get together—it was quite extensive—but we will try and get it to you as soon as we can.

THE CHAIR: The standard period—

Mr Gentleman: All the rest will be within the standard period, but if I could—

THE CHAIR: I am not sure if there is any leeway. I think the standard period is five days.

Mr Gentleman: We will get to you as much information as we can in that period.

THE CHAIR: Okay. Thank you.

Short suspension.

Appearances:

Corbell, Mr Simon, Deputy Chief Minister, Attorney-General, Minister for Health,
Minister for the Environment and Minister for Capital Metro

Justice and Community Safety Directorate
Playford, Ms Alison, Director-General
Lutz, Ms Amanda, Manager, Restorative Justice Unit

THE CHAIR: Good afternoon, and welcome to the second public hearing of the Standing Committee on Justice and Community Safety inquiry into annual reports for 2014-15. We welcome the Attorney-General this afternoon as the minister responsible for the Justice and Community Safety Directorate, and those officers appearing with him.

Minister, I presume you and your officers are all aware of the privilege statement that is on the table in front of you. You have read that before?

Mr Corbell: Yes.

THE CHAIR: Minister, would you like to make an opening statement?

Mr Corbell: Yes, thank you very much, Mr Chairman. And thank you to the committee for the opportunity to make this brief opening statement. I would like to take the opportunity to outline to the committee some of the key achievements for 2014-15 which have seen a strong focus on justice system reform in my role as Attorney-General.

Firstly, in May last year I announced the establishment of the justice reform strategy. This is a two-year project examining sentencing law and practice in the territory. It has been developed in response to the need to create a whole-of-government response to address issues around incarceration rates and the government's decision that periodic detention should no longer be a sentencing option.

The justice reform strategy has two main strands. The first is to manage the move away from periodic detention and introduce a new community-based sentencing option. The second is to consider longer term sentencing and related reforms with a view to ensuring that we have a more efficient and effective sentencing regime.

The move away from periodic detention began with the Crimes (Sentencing) Amendment Act of last year, which commenced in December last year. The new community-based sentencing option is anticipated to be introduced through the Crimes (Sentencing and Restorative Justice) Amendment Bill which I will be presenting to the Assembly in the next week's sittings.

Justice reinvestment is another area of priority. Justice reinvestment is an emerging field in the Australian criminal justice landscape. It is a data driven approach to reducing expenditure in criminal justice and improving outcomes, that is, using money more efficiently through reductions in imprisonment and offending. The

government is one of the most proactive in Australia in its use of justice reinvestment. To date we have focused on the co-design of a justice reinvestment trial, the development of a literature review authored by the Australian Institute of Criminology, and continued development of evaluation frameworks on key justice reinvestment initiatives such as through the extended through-care model for prisoner support and through our application of restorative justice practices.

On the issue of restorative justice, I am particularly pleased with the work that is being undertaken in relation to our restorative justice scheme. The ACT scheme has continued to deliver a very well received, victim-focused model of RJ as it prepares for its expansion in March next year. This expansion of RJ will allow citizens to access this voluntary scheme whether an offence has been committed by an adult or a young person and regardless of the seriousness of the offence.

My directorate has also begun to examine the concept of restorative cities and establishing a group of restorative champions for Canberra. This may lead to consideration of opportunities for the application of restorative principles and practices more broadly, not just in the criminal justice system.

Finally, can I focus on the important area of family and domestic violence. Preventing domestic and family violence is, and continues to be, a high priority for the government. In 2014-15 my directorate worked closely with the Domestic Violence Prevention Council and other key government and community organisations to better respond to domestic and family violence, including sexual assaults.

Statistics recently released by Australia's National Research Organisation for Women's Safety showed that one in four women and one in 20 men experience domestic and family violence in Australia every year. Out of those affected, 73 per cent of women experience more than one incident of violence. Domestic and family violence is the top risk factor for death, disability and illness, and almost 70 per cent of women murdered in Australia are victims of domestic and family violence. Indeed more than one woman every week in Australia is killed because of this violence. The Australian Institute of Criminology found in May this year that despite the national rate of homicide declining, two in every five homicide victims are killed by a family member. This is a reality that this government, and indeed all governments in Australia, are trying now to confront.

Here in the ACT, the Crimes (Domestic and Family Violence) Legislation Amendment Act was passed with the unanimous support of the Assembly in October. In addition to legislative measures, the government has been working to improve access to services and coordination across government and community sector partners through the appointment of the Coordinator-General for Domestic and Family Violence.

In 2014-15 I approved the use of the confiscated assets trust fund to provide funding for grants relating to women's sector proposals, as well as a number of projects aiming to respond to domestic and family violence issues in the territory. In July last year I announced that the Domestic Violence Prevention Council would undertake a review into domestic violence deaths in the ACT. The council's review is an important opportunity to provide a clearer picture of domestic and family violence in

our city, and will be a valuable tool in informing future government policymaking. The council is in its final stages of review, with its final report to be provided to me early in the new year.

With that, Mr Chairman, I will conclude my remarks, noting that those are only a number of highlights of work undertaken by my directorate. I am happy to try to answer the committee's questions.

THE CHAIR: Thank you, Attorney-General. The first question is regarding restorative justice. On page 35, under "referrals," there is a 27 per cent increase in the number of offences, a 13 per cent increase in the number of young offenders and an 18 per cent increase in the number of victims referred. Why has there been an increase in referrals?

Mr Corbell: I will ask Ms Lutz to give you some more detail on that, but generally speaking, I make the observation that referrals are driven by the level of suitability of the offending behaviour for RJ, as well as awareness from the referring authority as to the availability of RJ. So I would see an increase in the number of referrals as a very positive thing. It would mean that the police, the DPP or the courts themselves are recognising that RJ is available as an alternative to more traditional responses, and that is seeing greater levels of utilisation. I will ask Ms Lutz to elaborate.

Ms Lutz: As the minister says, there are fluctuations generally from year to year. Sometimes the proportion does not refer to big changes. However, we have been making a lot of headway, talking with stakeholders and liaising very strongly with referring entities over the last year. We are building relationships to be strong in the lead-up to the expansion to phase 2. That probably accounts for a little rise in those referrals.

THE CHAIR: How is the Restorative Justice Unit coping with this increase in numbers?

Ms Lutz: It is coping really well. We have recruited four new people to be part of phase 2. That includes a senior convenor with good experience in the domestic violence area, and two convenors with a very strong criminal justice background and experience. We will have a court liaison officer and general operational support officer on top of that. We have been engaging in training already with some eminent restorative justice trainers who have been pretty active overseas and around Australia in providing best practice training. So there is a bit of a buzz around the unit. We are very excited about the expansion and we are increasing our capacity day by day.

THE CHAIR: A supplementary from Mrs Jones.

MRS JONES: On the use of restorative justice in DV cases, have we actually done that yet or are we just training up to get ready?

Mr Corbell: The government will implement the expansion of RJ to adult offenders in a series of stages. The first stage will involve matters other than DV and sexual violence, and the second stage will include DV, family violence and sexual violence matters. So it will be a staged implementation, recognising that the most complex

matters are going to be those matters that involve the imbalance between power relationships and manipulation, and emotional manipulation in particular, in the context of family violence, domestic violence and sexual assault.

MRS JONES: It is just that it was mentioned there as part of the training, so I wondered whether we had had any lessons yet, or any specifics that we were doing within this system, in order to eventually have it available for these cases.

Ms Lutz: The Restorative Justice Unit engages in ongoing domestic violence awareness training. It is a prerequisite for anyone working in any workspace to be aware of it. You never know when you are dealing with a client who may have domestic violence in the background.

MRS JONES: Just to save time, though, have any specific adaptations been suggested or considered in order to make it work for those clients?

Ms Lutz: There is a very strong set of guidelines that have been produced in collaboration with the Domestic Violence Crisis Service and other gender violence agencies in Canberra—multi-agency input into guidelines. There will be more specific domestic violence training as we move towards what is essentially phase 3. We are looking to bring people from Project Restore from New Zealand to help train not only restorative justice staff but also the dedicated victims agencies so that we are all on the same page and we are working together.

MRS JONES: I just wondered if you had any practical differences yet regarding how those things will be addressed; how the differences in the clients, essentially, will be addressed. Everyone knows we have to work carefully with it, but some of us are still grappling with how that will be different.

Ms Lutz: We will be involving more people, for a start. Victims agencies need to come in and support a victim.

MRS JONES: So they have a support person.

Ms Lutz: There needs to be a representative to come in, whether that is from DVCS or Victim Support. The more people that you have in a conference, the more community awareness there is of an issue, so there is much more safety in involving more people. There will be stringent risk assessment. That will be a new, dedicated family violence risk assessment, so that we are working with all of the agencies: police, DVCS and corrections.

MRS JONES: So that we do not accidentally make things worse.

Ms Lutz: That is right. Any intervention has the potential to make things worse. Going through a court process can possibly make things worse. So we aim to minimise those risks and not run a process unless we can be sure that safety is part of the process.

THE CHAIR: Dr Bourke.

DR BOURKE: Minister, if I turn to page 148, looking at headcount by diversity group, I note that the directorate has 28 Aboriginal and Torres Strait Islander employees, being 1.7 per cent of the total staff. How has this changed from previous years? Has it gone up, has it gone down, or is it stable?

Mr Corbell: I will ask the Director-General.

Ms Playford: I will have to take on notice the exact number in the previous year, unless somebody here has got it. I think it has gone up by one; that is the advice I am getting regarding the Aboriginal and Torres Strait Islander personnel.

DR BOURKE: How do you plan to improve performance in the future, given that there is a target of two per cent and I understand the Head of Service has written to all directors-general requesting that they put their shoulder to the wheel, so to speak, on this matter?

Ms Playford: The Head of Service has put into each director-general's performance agreement specific targets for each directorate. That, of course, is a very good way of focusing. We in JACS have done a number of things over the past year, including the appointment of an inclusion officer. We have an existing employment strategy in relation to Aboriginal and Torres Strait Islander staff; that is currently due for review and renewal. We have done some work towards that; our inclusion officer is at a stage where next month there will be a workshop with our current Aboriginal staff to provide some feedback about what a new strategy might look like.

Our current strategy has been focused on how we might increase our numbers. We have a number of strategies in that, including participation in the training schemes that have been run across the whole of the ACT public service. Also, some of our business units, such as corrections, have participated in years where there has not been a whole-of-ACT scheme. Corrections participated in another scheme with a private provider and had Aboriginal trainees.

Our second employment strategy, as well as looking at increasing our numbers, is to look at employment development opportunities in a more structured way. In terms of disability, we are in the final stages of preparing our first disability employment strategy. We are going to have a similar workshop targeting some of our current employees, getting assistance from the disability commissioner in terms of how we might structure that where we still have some work to do.

In terms of other types of diversity, like gender diversity, again some of our business units are doing specific things. The Emergency Services Agency has its ESA strategy. Corrections, in its last lot of recruitment of custodial officers, did some very targeted recruitment aimed at increasing numbers of female custodial officers, which is an area where we have, in the past, struggled to recruit. That was done through information sessions that were held at various clubs around town and having some of our current female custodial officers be part of those.

So the inclusion officer is looking generally at a whole range of strategies. We also have mandatory RED and cultural awareness training across the directorate which tries to provide information for all staff in terms of understanding the value of a

diverse workforce.

DR BOURKE: Do you do any auditing of staff attitudes to diversity to determine whether there are particular issues that need to be further dealt with?

Ms Playford: We have a staff survey, but that particular aspect has not been part of that. We can consider that for future years.

DR BOURKE: Yes, sure. Some of the theories in diversity management indicate that there are a range of steps that could be used to promote diversity recruitment, in particular conveying to particular populations that you need them to do your job. So the directorate would, in some way, convey to the Aboriginal and Torres Strait Islander community that more Aboriginal and Torres Strait Islander people in your directorate are needed for you to do your job. Is there any sense that that is something that you are grasping?

Ms Playford: I should have mentioned before that we have nine identified Aboriginal and Torres Strait Islander positions across the directorate. That has grown over the past couple of years. And we have targeted recruitment into a number of sources where we are likely to attract Aboriginal and Torres Strait Islander staff for some of those specific positions. So yes, absolutely. In corrections we have a number of designated positions and we also have a number of designated positions in our legislation and policy area, including restorative justice and the Galambany court position. There is also a policy officer in our legislation policy area; that is a designated position as well. So we have used that strategy. Also, in terms of our recruitment for various positions, we have tried to target our advertising.

DR BOURKE: Very good. So you are looking at targeting your advertising into Indigenous media and into the community?

Ms Playford: Yes. And for some of our areas where we are trying to increase our gender diversity, again, we are looking at specific strategies. We have had some advice from a range of people, including our own human rights commissioner and the Australian Human Rights Commissioner, about how we might best do some of those things.

DR BOURKE: Another suggestion has been that within HR it is very useful to have representations of diversity within your recruiters. Is that something that—

Ms Playford: Within what?

DR BOURKE: Within your recruitment staff. Is that something that—

Ms Playford: Yes; sorry. In fact, our inclusion officer is one of our Aboriginal staff members, and within our people workplace strategy, which is essentially our HR area, we are quite good at diversity actually. I would have to take on notice the exact diversity, but we certainly have gender diversity and people from non-English speaking backgrounds—and, as I said, our Aboriginal staff member who is our inclusion officer.

DR BOURKE: Very good. Thank you.

MS PORTER: In relation to Aboriginal and Torres Strait Islander people, it mentions on page 18 a development of a new Aboriginal and Torres Strait Islander justice service delivery model. I was wondering if you could talk to us about that.

Mr Corbell: Thank you for the question. The new justice partnership was signed by the government with the Aboriginal elected body on 27 July this year. That partnership looks at the key issues around over-representation of Indigenous people in the criminal justice system, particularly in terms of people in custody, and contains a number of targets and other actions to address these problems. The focus is on reducing over-representation by reducing recidivism; increasing access to diversion, so improved diversion away from the traditional criminal justice system; and improvements to data collection and services. JACS will be meeting with the elected body in the next week or so to discuss the implementation plan that flows from the partnership and look at how those actions can be progressed.

MS PORTER: When do you expect to be able to report to the Assembly on the results of the implementation? How long do you think you will need to see some of it?

Ms Playford: The plan goes from 2015 to 2018, and we probably will do sort of annual report cards. Whether that needs to be in the Assembly is a matter for the minister.

MS PORTER: The other thing I would just ask is whether, in relation to the high numbers represented in the criminal system, in your service delivery model are you seeing, with the introduction of restorative justice some time back, any improvements in those rates at all?

Mr Corbell: There are different cohorts. With young people—at the moment RJ is only available to minors so—

MS PORTER: Yes, it is only available for young people. Sorry, I should have said.

Mr Corbell: You are less likely to see them in terms of full-time custody anyway so it is probably not a reasonable point of comparison at this point. It certainly will be interesting to see, as we expand RJ into adult offenders, whether or not that has any impact in terms of the number of people who end up in custody in terms of a sentence. That is probably too early to judge at this point, Ms Porter.

THE CHAIR: A supplementary from Dr Bourke.

DR BOUKE: Within that restorative justice framework, the Indigenous guidance partner has been particularly effective in increasing the number of Indigenous young people who have participated in that program. Given that you are planning to extend it to adults, are you going to extend the Indigenous guidance partner to manage adults as well, or are you going to put some more staff on?

Mr Corbell: If I recall correctly, Dr Bourke, this is really more a matter for the estimates in the most recent budget. But if I recall correctly, funding was obviously

granted for the expansion of RJ for adult offenders, and that will include an increase in resources for RJ. We will be continuing to have a targeted approach to Indigenous offenders. As to whether that has resulted in additional capacity or is simply an expansion of scope of the existing guidance partner, I would need to take that on notice.

THE CHAIR: Mrs Jones.

MRS JONES: I go to the pressure in the Magistrates Court. The DPP noted in their annual report at page 3 that the Magistrates Court had not previously listed matters for hearing during the intensive listing periods in the Supreme Court but this has now changed, which means the DPP's office requires additional prosecutors in order to keep the Magistrates Court operating at the same time. What has been done to resolve the issue?

Mr Corbell: I am aware of the DPP's request for additional resources and that will be considered by the government through the budget process.

MRS JONES: Do you consider it to be reasonable for them to operate at times that both of those courts are operating?

Mr Corbell: These are matters for the heads of jurisdiction of both of those courts and—

MRS JONES: About how they timetable their time?

Mr Corbell: Indeed.

MRS JONES: And whether the DPP can handle the requirement?

Mr Corbell: The decisions on listings are a responsibility of the heads of jurisdiction.

MRS JONES: And whether the DPP can handle the requirement to be—

Mr Corbell: These decisions on listings are a responsibility of the heads of jurisdiction. The Chief Magistrate has made that decision, as is her prerogative. I am aware that the DPP and Legal Aid have raised concerns with the court about the impact that will have on their resources but clearly the court believes that it is beneficial to proceed with that arrangement.

MRS JONES: Do you have an opinion yet on the requirement to resolve that issue from a government funding perspective?

Mr Corbell: I am aware of requests for additional resources from both the DPP and Legal Aid and, as I said, the government will look at that in the context of the budget process.

MRS JONES: That would be announced only at the next budget?

Mr Corbell: That is correct yes.

MR HANSON: I have a supplementary.

THE CHAIR: Certainly.

MR HANSON: Minister, are you aware why the Chief Magistrate has made the decision to list those hearings during the Supreme Court's intensive period?

Mr Corbell: The Chief Magistrate is of the view that it is necessary to allow her to manage the business of her court in a timely manner, and that is her judgement and her decision to make.

MR HANSON: What has changed?

Mr Corbell: I cannot speak for the Chief Magistrate. All I can say is that she is cognisant of the need to ensure that matters are dispatched in as timely a manner as possible in her court, and she believes that she needs to list in the manner she has announced.

MR HANSON: The advice that I am receiving is that the additional resources in the Supreme Court and some of the steps that have been taken there seem to have taken some of the pressure away, but the pressure now is on the Magistrates Court. There is more work than they can handle as priority to criminal over civil matters and so on. Can you give me some advice on what advice you have had from the Chief Magistrate with regard to pressure on the Magistrates Court and whether you are considering or have received any requests from the Magistrates Court for additional resources?

Mr Corbell: It is certainly the case that we have seen growth in the number of matters being listed in the Magistrates Court, and we need to look at whether that is a sustained outcome or whether that is a one-off, and those are matters that I consult with the Chief Magistrate on. I regularly consult with the Chief Magistrate on resourcing, as I do with the Chief Justice, and any matters raised in the context of those discussions will have to be considered by the government in the budget context.

MR HANSON: Have you received a request from the Chief Magistrate for additional resources?

Mr Corbell: The position I have reached with the Chief Magistrate is that before we come to a conclusion on the issue of additional judicial resources we should approach the issue in the same way as the Chief Justice and I have approached the issue when it comes to the resourcing of the Supreme Court which—

MR HANSON: It does not give us—

Mr Corbell: Hang on, which is to—

MR HANSON: I will hang on, if you answer my question.

Mr Corbell: which is to reach agreement on a judicial resourcing model that will allow us to objectively assess demand and the relative availability of judicial

resources to meet that demand. That is the agreed—

MR HANSON: But have you received a request for additional resources to meet that demand?

Mr Corbell: The agreed position moving forward between the Chief Magistrate and me is as I have outlined.

MR HANSON: The question actually is: have you received a request for additional resources, yes or no?

Mr Corbell: Nothing has been received by me in the context of the budget process, no.

MR HANSON: Outside the budget process in terms of any requests, formal or informal?

Mr Corbell: I am not going to go into informal discussions between me and the Chief Magistrate. That would not be appropriate. The simple fact is that we recognise there are pressures on the court, and we collectively agree, as from the executive government perspective and from the Magistrates Court perspective, that objectively quantifying workload and resourcing in the same way we have for the Supreme Court is the sensible way to address this issue.

MR HANSON: The Chief Magistrate has or has not asked you for additional resources? It is a pretty straightforward question.

DR BOURKE: Chair, we are getting a bit repetitive here.

Mr Corbell: It is not appropriate for me as attorney to disclose informal conversations that I have with heads of jurisdiction.

THE CHAIR: Mr Hanson, it is time for your substantive question.

MR HANSON: It is about ice and the increasing concern in our community. Obviously it is a whole-of-government response—Health and so on. But within your responsibilities as Attorney-General, can you advise the committee what steps you are taking to address that issue, and then also what coordination there is, within government with other directorates but also with other jurisdictions, be it federal or New South Wales?

Mr Corbell: The ACT government's position is that issues in relation to the use of crystal methamphetamine, or ice as it is known, are fundamentally a Health response. This is an addiction problem and we need to manage that Health arm first and foremost, although it also has implications for law enforcement and for the operation of the criminal justice system.

The government has held a forum on the use of crystal methamphetamine within our community. Over 40 stakeholders attended that to discuss the issues and challenges presented by misuse of ice. That has been used as part of our input into the national

task force that is being led by Mr Lay, the former Victorian Police Chief Commissioner. Further to that the government is providing additional investment in a range of non-government organisations to improve front-line response to issues—

MR HANSON: It is mostly Health, is it not, within your portfolio?

Mr Corbell: Yes indeed it is, and that is appropriate because this is fundamentally a Health issue.

MR HANSON: I will probably follow that up tomorrow or whenever we have got Health. I am trying to find out, in your portfolio, what action has been taken, other than forums and discussions and so on. I am not discounting those, but what substantive action has occurred within the JACS portfolio?

Mr Corbell: The government has already substantively reformed our drug possession legislation in the past 12 to 18 months to provide for a consistent, evidence-based response to the offences and the penalties that relate to possession and dealing for all illicit drugs, including crystal methamphetamine. That reform has already been implemented through regulation in the past 12 months or so. We are the leading jurisdiction now in terms of an evidence-based response to thresholds for possession and for drug dealing, and making sure that our penalties align with those various thresholds.

We have undertaken, I think, some significant work in that space. Obviously enforcement of those laws is a matter for the police and I refer you to the police minister in relation to those matters.

THE CHAIR: I defer my question to Mr Hanson, a substantive question.

MR HANSON: Thank you, chair. There are a couple of items on the issue of outlaw motorcycle gangs and their activities and the legislative response. You may be aware of some questions that were asked in the police hearings the other day where the Chief Police Officer in July made some pretty definitive statements that the discrepancy between our laws and the laws in New South Wales was encouraging outlaw motorcycle activity here in the ACT. There have been a number of events where bikies have come down from New South Wales to have meets here because, in his view, we have softer laws—I am paraphrasing—than New South Wales. There are plans afoot, as I understand it, to look at the legislation with regard to trying to harmonise with New South Wales. Where is the government at?

Mr Corbell: The government is looking at a range of legislative responses that address the recent changes in activity of outlaw motorcycle gangs in the territory. That analysis is ongoing. There is a range of issues. The first is in relation to the ability to manage events such as organised runs, as they are known, where motorcycle gangs or members of a gang come together for essentially a parade of motorcycles to a particular location. Options to allow police to better manage, control and disperse such activity are currently under consideration.

In addition, there is the issue of the operation of possible consorting legislation. The government has developed to a good level of detail a number of options in relation to

these matters, but we are also of the view that we need to look closely at the issues that have arisen from the use of consorting legislation in other jurisdictions, particularly New South Wales. The New South Wales Ombudsman is currently completing its report on the operation of the New South Wales consorting law. I have indicated to ACT Policing and to my directorate that we should give consideration to the issues that arise from the Ombudsman's report before completing or concluding our decision making on a possible consorting law mechanism for the territory.

MR HANSON: Given that the bikie gangs already come here, and that has been going on now for many months, why are you taking a reactive approach rather than responding proactively to prevent this occurring in the first place?

Mr Corbell: I think we are responding very proactively; we have throughout. This is not the first time the government has amended legislation to deal with changes in organised criminal gang activity. We reintroduced a range of other offences onto the territory statute books a number of years ago in response to these issues, including the reintroduction of offences such as affray and other—

MR HANSON: But it has not prevented this activity of bikies coming from New South Wales, which the Chief Police Officer says is the direct result of basically your inaction to legislate in this regard.

Mr Corbell: I think you are misrepresenting the Chief Police Officer's position. What I would say to you is that outlaw motorcycle gangs still exist in other jurisdictions that have laws that we do not. It is not as though the passage of these laws removes that OMCG activity. There are still plenty of OMCG gangs in Sydney, Melbourne, the Gold Coast in Queensland and South Australia. They still exist. They are still—

MR HANSON: Yes, but the Chief Police Officer made the very clear point that that was—

Mr Corbell: We can have a debate about it, but your question is: what have we done? What we have done is amend the criminal law on a number of occasions in response to changes in the level of criminal activity. We did it a couple of years ago. We are doing it again now and we are doing that consistent with the advice we get from police on what the actual changes are in the behaviour of those criminal groups.

MR HANSON: You are saying you are doing it—and we asked these questions before at hearings—but we have seen nothing yet. Why is it taking so long?

Mr Corbell: I have explained to you what the issues at play are. I am happy to elaborate on those. The facts are that consorting laws in New South Wales have not been without their problems. There has been abuse of those laws, and there have been unfair outcomes as a result of those laws. One of the key challenges with the application of consorting laws is what happens when you are dealing with people with a criminal record who are members of the same family, for example? Do you prohibit them from having contact with other family members?

These are the types of issues at play. They are not easy to deal with. They are particularly complex in the ACT context because in the ACT, regrettably, a significant

proportion of people involved in OMCG activity are members of some South Pacific island communities with close familial relations. The application of consorting laws in those contexts intersects with the fact that you are dealing with people who are directly related to each other. Should the criminal law in those circumstances prohibit members of the same family from residing with each other or interacting with each other in any way? You are asking why we are taking our time. It is because of the complexity of the issues, as I have just outlined, that we need to take our time.

MR HANSON: How many crimes are you aware of have been committed by bikies coming down from New South Wales, and do you take any responsibility for that?

Mr Corbell: I would refer you to the police on that. They would be the best people to ask.

MR HANSON: But surely you are aware that there is criminal activity occurring, otherwise you would not be legislating.

Mr Corbell: I am happy to take the question on notice if you want a specific number.

MR HANSON: Yes.

Mr Corbell: Yes, criminal activity is occurring, but what is more important from the government's perspective is that the nature of criminal activity is changing and the behaviour of the organised gangs is changing. That is why we are responding by looking at how the criminal law operates in relation to these gangs.

MR HANSON: It would be very useful if you could take the question on notice, and if we could have it for the past six years?

Mr Corbell: If you could be specific about the question?

MR HANSON: In the past six years, how many crimes have been committed by bikies coming to the ACT from interstate?

Mr Corbell: Coming to the ACT from interstate?

MR HANSON: Yes.

Mr Corbell: We can do our best.

MR HANSON: You should know whether they are ACT residents or New South Wales residents. You would hope that someone is recording that information.

Mr Corbell: We will need to correlate between the courts data and police data, but we will do our best.

MR HANSON: Thanks.

THE CHAIR: Mr Hanson, we need to move on. A supplementary question to Ms Porter and then a substantive to Dr Bourke.

MS PORTER: Thank you, chair. At the same time as providing that information to the committee, could you provide—I have heard reports but I have not got the data—data on the recent research that has been done in Queensland on the amount of resources that are being put into the particular area that we are discussing now versus other forms of criminal activity? Can we have the percentage, the ratio, of the amount of work and person power that is put into this matter in comparison to other matters? Then can we have the comparison between the different behaviour? I have heard reports that there is a disproportionate amount of effort being put into this. Legislation was introduced by the previous Queensland government in relation to this matter. The question is: can you provide that data or point me to where this committee could find that data? I have only seen reports in the media and I would like accurate information.

Mr Corbell: We can endeavour to provide you with that data in the context of the ACT's expenditure, but in relation to how much is spent in Queensland we would only be able to source that from public reports. It is the case that a number of responses of the former conservative government in Queensland have been dismantled because they were costing an extraordinary amount of money for very little outcome, for example, the special prison arrangement for OMCG members where they had, effectively, a special wing or division of a prison just for OMCG and where they were required to wear pink jumpsuits and so on. These sorts of responses have been abolished by the current Queensland government.

MS PORTER: As attorneys, do you actually have discussions around the implementation of these measures across states and territories?

Mr Corbell: The issue of outlaw motorcycle gang activity is a regular agenda item for meetings of attorneys-general. It was discussed in the most recent meeting of attorneys last week in the context of a report from the Australian Crime Commission on levels of organised criminal activity in Australia.

THE CHAIR: A short question, Dr Bourke.

DR BOURKE: It will be a very short question, chair. Minister, you mentioned in your opening statement community-based sentencing options and where the government might be going there. Can you elaborate a little more on that for the committee in the brief amount of time that we have left?

Mr Corbell: With the abolition of periodic detention there is a need for an alternative sentencing option for our courts that does not require a full-time custodial sentence. The government is currently finalising the development of what is known as the ICO, the intensive corrections order, which will allow for a community-based sentencing option to be put in place. The details of that will be announced when the government introduces the legislation in the next sittings. I think it would be fair to say that we have developed a very contemporary response to this that gives significant flexibility to the courts in terms of a community-based sentence but also has a strong focus on compliance and effective reprimand for breach of a sentenced person's compliance obligations. I do not want to get into more detail at this point because it is a matter for when the bill is introduced.

THE CHAIR: Attorney, thank you for attending and thank you to your officers as well.

The committee suspended from 3.21 to 3.32 pm.

Appearances:

ACT Government Solicitor

Garrison, Mr Peter, Solicitor-General for the Australian Capital Territory

THE CHAIR: Good afternoon and welcome to the second public hearing of the Standing Committee on Justice and Community Safety's inquiry into the annual reports 2014-15. We welcome the Solicitor-General, Mr Garrison, here this afternoon. I am sure I do not need to ask you whether you are familiar with the privilege statement but I do so for the record.

Mr Garrison: I am well familiar with it.

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

Mr Garrison: No. I am happy to respond to any questions that the committee may have.

THE CHAIR: We will start with Dr Bourke while I get ready.

DR BOURKE: The JACS Directorate's annual report on page 55 states that the Government Solicitor provided advice on the smart parking trial. Could you tell the committee more about that advice, as much as you can?

Mr Garrison: I was not directly involved in it obviously. But like many projects in which the territory engages, my office provided advice on tender and probity issues and then worked extensively in relation to contracting and associated issues. It was a novel and complex project and was undertaken jointly with the commonwealth in relation to the territory-wide parking arrangements. We did a very significant amount of work which resulted, I think, in a very fine outcome, at least in terms of the construction of the tender process and the contractual documents that followed.

DR BOURKE: Can you elaborate on the nature of the complexity?

Mr Garrison: Technical, in terms of the technology that was involved, the assessed setting of the criteria for the tender processes and the assessment of those processes. We go through it regularly, bearing in mind we are legal advisers; we are not the technical assessors of the merits of the particular applications that are made.

THE CHAIR: On page 55 still, it states that the Government Solicitor provided advice on the asbestos buyback scheme, including developing precedent documents for the delivery of the scheme and negotiation and drafting the loan agreement between the commonwealth and the territory. What precedents did you identify for the scheme?

Mr Garrison: We had to create a whole range of new documents for the process, which was to proceed by way of invitations for people to surrender their crown leases. Given that we are talking about, in round terms, 1,000 properties, we had to devise, if you will, the paper trail by which each step of that transaction was to occur. It was complex and, as members will be aware, it involved legislative amendment in certain

respects. We advised in relation to those amendments. It was, and indeed remains, because it is still a continuing body of work that is being undertaken, quite a significant undertaking for my office, indeed to the point where, as you will be aware, each property has been surrendered. That involves something akin to a conveyancing process.

My office simply could not do 1,000 conveyances on top of everything else that it is doing, and we went to the private sector through an existing tender panel and engaged two private law firms to undertake that conveyancing work. That is being done as stand-alone work in relation to that—I will describe it as mechanical—mechanical process for the conveyancing. That drew on all the standard documents that we prepared. My understanding is that it has all run very smoothly.

THE CHAIR: In terms of the role of the ACT Solicitor-General, what protection can the home owners affected by the loose-fill asbestos scheme gain from your office? Is there any avenue for them to seek your advice?

Mr Garrison: No.

THE CHAIR: So it is purely the government response that you are privy to?

Mr Garrison: Yes. Indeed, part of the package of relief that was offered to those who agreed to participate in the program was an amount for legal services, for them to seek their own advice in relation to the transaction that they were about to enter into.

THE CHAIR: And do you feel that the amount that has been allocated to them is sufficient to present their case?

Mr Garrison: To present their case? It is to represent them in relation to a relatively straightforward conveyancing transaction. An amount was fixed as part of the government scheme. My office had input into how those figures were arrived at. There are generally accepted figures for what this type of work involves in terms of cost.

THE CHAIR: It is, you did say, a very complex situation.

Mr Garrison: Preparing it is. In relation to the actual decision for those who are agreeing to participate in the scheme, in effect, as you would be aware, a range of material was made available to the people who were affected. And based on that material, people making assessment of their own positions, they make that call.

THE CHAIR: My question basically is: did you consider anything beyond conveyancing that people affected by asbestos would need some protection on?

Mr Garrison: I do not quite understand what you are asking me.

THE CHAIR: Your advice to the government was simply on conveyancing?

Mr Garrison: No. What we have said is that one of the things we have provided advice on is the recovery scheme, the design of the scheme, how it is framed, the

drafting of the documents and the releases that people give as part of that scheme. We have constructed all of that. My office gives advice to government on a whole range of issues that arise from time to time, and it will be no surprise that there are a range of other issues that arise from the asbestos circumstances.

I will not go into what advice I may or may not have given to government in relation to those broader issues. That is a matter that falls within our having given advice on asbestos and its consequences, and I really cannot go beyond that.

MS PORTER: On page 58 of the report it says that there have been no major matters in the mental health jurisdiction during your reporting period but you continue to provide advice and representation to mental health services, including continuing advice in relation to the new secure mental health facility. Are there specific matters that you need to provide advice on in relation to that facility? I am not asking you to go into some specifics necessarily but is there an area where you need to provide advice on that facility, as opposed to other mental health facilities?

Mr Garrison: It being a new facility, it being a new project—and I have a construction and infrastructure team that provides advice to the government on new capital works projects—it falls within that. The design of secure facilities is obviously a sensitive issue and can, for example, involve considerations of the Human Rights Act and how that applies to the design. Basically, because our lawyers are heavily involved in the project, in providing advice, issues will come up from time to time that require advice. That may not necessarily be one of my infrastructure lawyers. It can be referred to one other part of the office, depending on the nature of the query.

MS PORTER: There is one matter that is listed that I do not really understand what it relates to. I thought you could clarify it for me.

Mr Garrison: I hope I can.

MS PORTER: I think you probably can quite easily. It states:

There have been no significant matters in the Workplace Protection Orders jurisdiction.

What is a workplace protection order?

Mr Garrison: Workplace protection orders are applications that are made by employees to be protected against someone who comes into either the office or workplace. At different times over the years we have represented the territory and its employees in getting workplace protection orders. For example, if they have got violent persons coming into a shopfront or into one of the other government agencies, you go to court and you get an order that prevents that person coming into that workplace.

MS PORTER: It is rather like a family protection order in that—

Mr Garrison: It is similar.

MS PORTER: You are not allowed to come within a certain distance of a—

Mr Garrison: Or you can only come within certain hours, and you have got to make an appointment by telephone and things of that ilk. It is difficult for government agencies because the complaint they may have is about a particular individual and that person still has to do business with them. One of the challenges in some of the workplace order matters is: how do you provide a safe environment for the staff and yet still be able to provide services to the person who has caused these difficulties? That can involve a range of things. Magistrates are well experienced in dealing with these matters. It can be, “You are not allowed to come within 50 metres of this building unless you have made a telephone appointment, and you have got to attend here,” and all of those safeguards that they build in.

MRS JONES: Regarding the same-sex marriage debate that we had in the Assembly and the ongoing accrual of costs, are you aware whether the commonwealth has—what is the word?—recovered their costs yet, and whether we have a final—

Mr Garrison: Yes, they were paid some little time ago.

MRS JONES: Do you know what the final cost was to the ACT government?

Mr Garrison: \$500,000.

MRS JONES: And that is all that we—

Mr Garrison: Yes, and the territory’s own legal costs, of course, but that has already been ventilated.

MRS JONES: Do you know what they were in total?

Mr Garrison: We did and I think there has been a question on notice answered.

MR HANSON: It was about \$800,000, was it not? Is that right?

Mr Garrison: No. It was nowhere near that amount.

MRS JONES: Maybe you could take it on notice.

Mr Garrison: I can certainly provide it again.

MRS JONES: Yes please.

Mr Garrison: Yes, certainly.

MR HANSON: The commonwealth’s was \$500,000?

Mr Garrison: Yes.

MR HANSON: With the capital metro project can you provide advice on what you are doing with regard to assisting capital metro as in: do they have in-house lawyers?

Are they using you or are they using external lawyers, or how is it all working?

Mr Garrison: It is a combination. My office provides legal advice on instructions from capital metro on a range of issues. The principal legal services, however, in relation to the tender and the formulation of the contract have been outsourced to the private sector. We also had one of my senior lawyers and a junior lawyer out-posted into capital metro for the first several months while things were getting set up. We are discussing again with capital metro about them having their own in-house lawyer to assist in managing requests for legal advice.

MR HANSON: With regard to the tenders and the contracts, do you have any oversight of that? Where does the responsibility lie? Is it just through capital metro to the minister, or do you have any formal role or informal role with regard to oversight of those documents?

Mr Garrison: We have no formal role in relation to the oversight of that legal work. We work with the firm from time to time on particular issues that they raise and that they request our assistance on. But the instructions in relation to the matter would go directly from capital metro to the law firm.

MR HANSON: Is it a single law firm?

Mr Garrison: Yes.

MR HANSON: Which law firm is it?

Mr Garrison: Clayton Utz.

THE CHAIR: My question is in regard to your overall activities as Solicitor-General. You give advice to areas like the department of education from time to time, I should imagine, as well?

Mr Garrison: I certainly do.

THE CHAIR: Can you give us any indication of the advice that was given regarding the boy in the so-called cage event?

Mr Garrison: Other than that we have provided legal advice I really cannot go beyond that.

THE CHAIR: Can you advise whether there was any request made of you to see if there was any criminality involved?

Mr Garrison: No.

THE CHAIR: You cannot tell me or—

Mr Garrison: We have provided legal advice in relation to a range of elements of that at different points in time, as you would not be surprised. I am unaware of our being requested to provide advice about any elements of the criminal law.

THE CHAIR: I am just trying to understand the protocol if there is some advice to be given regarding whether some departmental activity crosses potential criminal charges which could be laid. Does it come to you to consider that it needs to be referred somewhere else or does it come to you from the police, or how does it work?

Mr Garrison: From time to time across the territory in relation to a range of matters we can be asked for legal advice about particular circumstances. An issue may arise from time to time as to whether any criminal conduct has occurred. First of all it is a matter for the directorate as to whether it feels strongly enough about that issue to say, “We really need to do something about it.” Should that decision be made and we perhaps can assist them in that conclusion, that is then referred to the Australian Federal Police and that is—

THE CHAIR: That is referred to the Federal Police by whom?

Mr Garrison: By the directorate.

THE CHAIR: By the directorate?

Mr Garrison: Not by me.

THE CHAIR: They do not have to come through you?

Mr Garrison: No.

THE CHAIR: Or the police?

Mr Garrison: If they believe there has been criminal conduct the appropriate mechanism is for the directorate to refer it to the AFP for investigation.

DR BOURKE: Mr Garrison, the directorate’s annual report states that your office is currently handling a number of claims by inmates who allege a failure to provide appropriate care at the territory’s prison. Can you tell us anything about what kinds of claims are being made and what are the primary parts of law that these seek to engage in making the claim?

Mr Garrison: It is a bit hard without trespassing into particular matters, some of which are still before the courts. There have been circumstances where, for example, a prisoner has been assaulted or a prisoner asserts that he has been treated unfavourably within the prison, has not been provided with facilities that the prisoner believes the prisoner should have or has not been provided with adequate employment—or a range of matters. There has been a tendency in recent years for those issues to be escalated outside the internal corrections portfolio; not a great many, but some.

DR BOURKE: Wouldn’t some of those categories—certainly not the assault ones, but others—be better off being dealt with by the official visitor?

Mr Garrison: I am sorry?

DR BOURKE: Official visitors— isn't that their purview in most of the areas—

Mr Garrison: Well, prisoners choose to take another course.

DR BOURKE: Thank you.

THE CHAIR: Ms Porter? No question. Mrs Jones?

MRS JONES: I will pass mine to Mr Hanson.

MR HANSON: In terms of litigation, particularly from places like Health, who handles all of those matters? Is that handled by you or is that handled internally by lawyers commissioned by Health?

Mr Garrison: It is my office.

MR HANSON: It is?

Mr Garrison: Yes. We undertake all of the territory's legal work. Some of it is outsourced in particular circumstances; I have already given some examples of that. The legal service directions that were made by the Attorney-General in 2012 really embody the policy that has been in place for some time—that in a jurisdiction of this size, you need to look for the most efficient way of delivering your legal services and also ensure that you have got consistency and value for money. The territory is not simply a smaller version of the commonwealth, for example, as you would be aware. It has its own legislative framework; it has its own complexities; it has its own public service; it has its own mechanisms for service delivery. The advantage for the legal services being focused in one place is that you have a very significant body of knowledge—one almost might say the government's corporate memory—sitting in one place. That enables us to deal with matters very efficiently.

MR HANSON: Sure. But with regard to the specific issue of litigation—

Mr Garrison: Yes?

MR HANSON: If there is a matter, the decision to contest it or to settle—who makes that decision? Is that made by the health minister, just taking that as a particular example?

Mr Garrison: Ministers very rarely are involved—very rarely.

MR HANSON: Right.

Mr Garrison: You will be aware, for example, that there are matters where I have intervened on behalf of the Attorney-General in constitutional and human rights matters, but our litigation, particularly the health litigation, first of all is generally covered by the territory's insurance arrangements, so instructions come from the insurer, with Health participating in those processes. Decisions to settle or not are made by the insurer, ACTIA, in consultation with Health, on advice from our office and our counsel.

MR HANSON: In terms of that insurance arrangement, who is that?

Mr Garrison: That is managed through ACTIA, through the insurance agency, the ACT Insurance Authority.

MR HANSON: Yes.

Mr Garrison: It manages all of the territory's insurance claims and it reinsures those risks off to other places.

MR HANSON: In terms of who has got the summation of litigation and what the sums were, by each directorate, who would have that information—short of going to each directorate and asking them? Do you have the summation of it?

Mr Garrison: As to amounts or what the outcome of each matter was? That would be my office.

MR HANSON: On notice, could you provide that for us, please? I do not need to know the specifics of the case, but I would like to know the date and the amount.

Mr Garrison: For what particular claims?

MR HANSON: For litigation.

Mr Garrison: Across the entire territory?

MR HANSON: Yes. You said you have got that information?

Mr Garrison: We do not have it all in place. We can get it, but, Mr Hanson, you will have to understand that in any given year there can be literally hundreds of matters that we deal with across all directorates—everything from, literally, someone stubbing their toe on a paving block and making a claim to complex medical negligence matters.

MR HANSON: Don't you have that data consolidated?

Mr Garrison: We do not have a consolidation of what the outcomes for all those matters were. The insurance authority generally has been "on risk", so to speak, in relation to all of those matters. I can certainly make inquiries as to how that information might best be provided. I can take on notice finding out how we can provide it to you if that is—

MR HANSON: Yes. What I am looking for—I just want the outcomes; then I can look at where there are particular areas where there might be high litigation and then try to work out what has gone wrong or what the issue might be. That is my motivation, because—

Mr Garrison: Mr Hanson, far be it for me to question your motivation.

MR HANSON: Sure, but it may help you in consolidating the information for me. Ultimately there is a job for us to try and inquire into where taxpayer resources are going.

Mr Garrison: Certainly.

MR HANSON: And if it is on lots of payouts, the question is: why? But I need to know that there are lots of payouts or not before I can start asking why.

Mr Garrison: I will find out what I can find out.

MR HANSON: Sure.

Mr Garrison: Bear in mind, of course, that the settlement of any claim is bound by the obligations in the legal service directions: matters cannot just be settled for the sake of settling them; they need to be settled in accordance with legal principle and practice.

MR HANSON: Yes.

Mr Garrison: We are very insistent in achieving that outcome. One does get cases where the other side come and say, "It is not a very big claim; just pay us some money." We do not operate that way. There has to be a reasonable prospect of a liability on the part of the territory before we will settle a matter. Settlement is a good thing: we like to settle matters and not take up continuing resources of all concerned; and we participate in mediation extensively, and now also as part of the court-mediated processes. But I will ascertain what I can find.

MR HANSON: Thanks.

THE CHAIR: A supplementary from Ms Porter.

MS PORTER: It is really a matter of clarification. In relation to taking that request on notice, I was wondering whether there is any consideration of any confidentiality of the clients in relation to it. If you provided dates and amounts, that might tie back into the actual origins of those matters and there may be some consideration of confidentiality. I guess you would be taking that into account in providing information.

Mr Garrison: Perhaps I could seek some clarification from Mr Hanson. When he mentions dates, does he mean years or months?

MS PORTER: Mr Garrison is asking you a question.

MR HANSON: Asking me a question? Sorry; my apologies.

Mr Garrison: We are great believers in interactive processes, Mr Hanson!

MR HANSON: Right. I thought I was—

Mr Garrison: You thought you were off the hook.

MR HANSON: Am I under oath? It has been a while since a lawyer had to ask me questions.

Mr Garrison: Through you, chair, may I ask Mr Hanson, in relation to the dates: is it by month?

MR HANSON: No; annual is fine.

Mr Garrison: Annual?

MR HANSON: Just annual. Absolutely.

Mr Garrison: For the last two years, three years?

MR HANSON: Sure; that would be good.

Mr Garrison: Two years. Excellent.

MR HANSON: Let us split the difference and make it three, shall we? I will probably regret asking that question.

THE CHAIR: Mr Hanson, if I can make a suggestion, I think a proper set of questions on notice may be provided.

MR HANSON: The normal form for a committee is that if a witness agrees to take a question on notice, I am not required to put in a formal notice.

THE CHAIR: Sure. I am simply stating that there are methods that we can put in that as well where detailed questions can be put on notice.

MR HANSON: I am comfortable that Mr Garrison understands the purpose of my question.

Mr Garrison: I understand the information that you are seeking.

THE CHAIR: I am glad to see agreement is unanimous. We will move on. Thank you very much for joining us this afternoon.

MR HANSON: I have never been questioned by a lawyer before, just for clarification for the *Hansard*.

THE CHAIR: We will have to draw this momentous occasion to a halt, Mr Hanson. Thank you for joining us, Mr Garrison. With any of the questions on notice that you have taken, if you could provide information within five days, we would appreciate it.

Mr Garrison: Thank you. I must say that this is the first time in the years I have been doing this that I have had a session all to myself. You may or may not want to make it a habit; I do not know.

Short suspension.

Appearances:

ACT Electoral Commission
Green, Mr Phillip, Electoral Commissioner

THE CHAIR: Good afternoon, and welcome to the second public hearing of the Standing Committee on Justice and Community Safety's inquiry into annual reports 2014-15. Today we have heard from the Minister for Workplace Safety and Industrial Relations, the Attorney-General and the Solicitor-General. We now welcome the ACT Electoral Commissioner, Mr Green, to the table. Thank you for joining us. I believe you are well aware of the privilege statement before you?

Mr Green: Yes.

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

Mr Green: Thank you, Mr Chairperson. I do not have a prepared statement. I am very happy to take questions.

THE CHAIR: It is within the realms of possibility that the federal election in 2016 may impact on the current scheduled ACT election. What sorts of challenges will this pose for you if that occurs?

Mr Green: I understand that the Prime Minister has recently stated that he thought the next federal election might be September-October next year, which is clearly going to be very close to our election. That happened once before, in 2004. We had the federal election one week before the ACT election. It is something very much in our minds. It is something we have to make contingency plans for.

Under the Electoral Act, if the Governor-General were to issue a writ for a federal election on the same day as our election then our election automatically gets moved to the first Saturday in December. So that is something that we also need to be planning for as a contingency. I am hoping that that does not happen, but that is something we have to plan for.

We have had the experience of an election a week away from our election and we understand what we need to do there. There is particularly a question of informing the electors of the fact that there are two elections running almost concurrently, so we have to make sure that people are aware that there are two elections happening and they have got obligations for both elections.

We have issues regarding pre-poll voting centres, in particular, if we have overlapping pre-poll voting periods. We have a ban on canvassing and how-to-vote cards within 100 metres of the polling place at our elections, whereas at federal elections they have a six-metre ban on handing out how-to-vote cards, which is quite a different consideration. That precludes, for example, us sharing pre-poll voting centres with commonwealth elections. We effectively have to find different premises for those if we have overlapping periods, which in a sense helps to distinguish our election from their election. We will have in place a range of measures designed to cater for the eventuality of the federal election happening near our election date. If we do have to

move our election date then we will make all steps necessary to do that.

THE CHAIR: Will it necessitate getting additional staff on board to cover such, if that eventuality occurs?

Mr Green: If our polling day gets moved to 1 December then we would effectively be employing our staff for that extra period of time. It would probably be quite difficult at that late stage to put people off for a month and then get them to come back again. We would have to extend the lease on our premises. At the moment we are anticipating we would be moving out of our extended premises at the end of November next year. So there would be some cost involved if we were to move the election date. We would also have to renegotiate all of our arrangements with the hire of polling places and pre-poll voting centres and things. That may well incur additional costs.

THE CHAIR: A supplementary, Mrs Jones.

MRS JONES: Just briefly, do you know what the logic of 1 December is? It seems quite a long distance from the original date.

Mr Green: I was involved in drafting that legislation back in the early 1990s. I think the logic was just to have a clear separation between the two dates so that our periods did not overlap at all. It was just designed to totally separate the timing. It is something that the Assembly could amend if it wanted to. It is within the remit of the Assembly to change that.

MRS JONES: Just to have your thoughts on that, if there were to be an amendment to that, what would be the minimum period that you would require to be able to fulfil your obligations?

Mr Green: It is not something I have given thought to.

MRS JONES: Maybe you can take it on notice?

Mr Green: We will take that on notice and give you some considered thoughts on that.

MRS JONES: It is a long time for candidates to be waiting around or if they have taken leave from work et cetera.

DR BOURKE: Welcome, Mr Green. Referring to page 15, could you elaborate on the risks, both real and perceived, of electronic voting and how the eVACS system aims to mitigate them?

Mr Green: The electronic voting system we will be using in 2016 is an evolved version of the system we have been using at all elections since 2001. It has been used in 2001, 2004, 2008 and 2012 so, in computing terms, it is a very mature system. The system that we will be using in 2016 will be very much like the system we used in 2012. It will have some fairly minor enhancements, mostly around making it more difficult for people to cast an informal vote. We will have a couple of extras to our

screens where it prompts people: do you really want to cast an informal vote? We had some cases where people were inadvertently casting informal votes by just randomly hitting keys without paying a lot of attention to what they were doing. So we have made it more difficult for the random hitting of keys to result in an informal vote.

Other than that, it is essentially the same system as we used in 2012. We consider it to be not a risky system, because it is not in any way connected to the internet. It is not internet voting. It is voting only in a polling place. It is voting using a secure local area network that is physically isolated within the polling place. The server where the votes are recorded and stored and the server that sends the ballot information to the voting clients are contained within a locked cabinet within a locked polling place. So we consider it to be a very secure way of delivering this kind of voting solution.

It has got a range of things built into it that are fail-safes. It has things like dual mirrored hard-drives in the servers so that if one server were to fail, there would be a back-up server. The voting would immediately stop at that point, if a hard-drive fell over. There are ways to back that up if that becomes an issue. So the chance of votes being lost is very small. As I say, it is something that has been used now for four elections without any problems. I am very confident that it will work very well in 2016.

DR BOURKE: Will you be increasing the number of polling places that electronic voting is available at next year?

Mr Green: Probably not. In the past, for the first two, we tried having electronic voting in pre-poll centres and in ordinary polling places on election day. The amount of effort involved in setting up a polling place just for one day we thought was not really worth the return on investment, because it is quite a hardware-intensive thing to do. It is also quite complex to set up of a set of hardware in a polling place just for one day. The view we have taken is that it is really only worth doing at our pre-poll voting centres. At this stage, we are looking at using the same number of pre-poll centres as we used in 2012. While we are not increasing the number of locations for pre-poll voting, we are finding right across the country that the number of people using pre-poll voting centres is continuing to increase. If that means we get more people pre-poll voting then that means we will get more people electronically voting.

DR BOURKE: As I recall, last time about 25 per cent of the population voted at the pre-poll. Given the trajectory and what is happening in other states and territories, how many do you expect in 2016 to vote in pre-polls?

Mr Green: It is very difficult to put a hard number on that. We will be estimating more, and we will be looking at the trajectory both here and in other jurisdictions. So 30, 35 in round terms is a guess but, really, what we will be doing is ensuring that those pre-poll centres are very well equipped to take very large numbers of voters, just in case.

The way that the electronic voting system works now is that the pre-poll centres become polling day polling places in the same locations, using the same electronic voting systems, using the same barcodes. We will have enough barcodes to cover the pre-poll period and the polling day period in those locations. We also have the

capacity, if we get unexpected numbers of people turning up, to employ more staff to deal with additional voters turning up. We will certainly be anticipating what we will need to do to make sure that we cater for whatever numbers we get at the pre-poll voting centres.

DR BOURKE: Did you have any problems at the pre-poll voting centres in 2012 with long queues?

Mr Green: Not that I am aware of, no. That is something we ask the officers in charge of our polling places and pre-poll centres to report to us on, and I have no recollection of that being a significant issue.

DR BOURKE: So in that case, you would expect a 10 to 20 per cent increase may not incur significant problems?

Mr Green: The way that we would run our pre-poll centres is that if we did get large queues, we would get more staff on, in awareness of the fact that some of these premises will have space limitations—assuming we can actually fit the staff into the locations. We would endeavour to do what we had to do to make sure that there were not long queues.

THE CHAIR: Thank you. A supplementary, Mr Hanson?

MR HANSON: Thanks. I have a couple of issues on pre-poll. Firstly, my recollection—I might be wrong; correct me if I am—is that on election night, you start going through booths in terms of a count, but you do not get the pre-poll vote until quite a bit later. If it has all been done electronically and the pre-poll booth essentially closes down the night before the election, why is it that it takes so long for that electronic data to be fed into the result?

Mr Green: I suggest that you might be confusing our election with other elections. We get our pre-poll voting results from the electronic count into our tally room system very early in the night, by somewhere between a quarter past six and 6.30.

MR HANSON: So that does come in straight away?

Mr Green: That does come through very early—not only first preference counts, but preference distribution counts.

MR HANSON: That being the case, with a paper ballot, there is an opportunity for that to be scrutinised. What is the audit scrutiny process on electronic votes, and where does a candidate's or a party grouping's representative have an ability to observe the electronic?

Mr Green: The logic behind the electronic voting system that we have is that the computer code that is used in the electronic voting system and then the electronic counting system is open-source software. It is available for download on the Elections ACT website. That has been scrutinised over the years. We have had it since 2001. Academics from the Australian National University have looked at it. They did actually find a bug at some point that was fixed as a result of their scrutiny.

The logic is that rather than scrutinising the actual marking of the ballot—which is in secret anyway, so you cannot see the marking of the ballot, but you can have scrutineers present while papers are being marked—with electronic voting, we have an electronic audit trail where anyone who wants to—political parties, candidates, media, academics—can go and look at the code that we are using. The code also gets independently audited, so we can put our hands on hearts and say that the code that has actually been used in the polling places is the same code that is on the web that people are able to look at. And anyone with the appropriate computer skills is able to look at the way the electronic voting works, from translating marks on a keypad, which is the way people vote, into an actual vote stored in a ballot box.

It is a very different way of scrutinising an election, but it is still possible for someone with the right skills to look at the way the electronic voting system works and to satisfy themselves that what goes into it is what comes out of it.

MR HANSON: But you do not see any function where people can actually look at each of the individual electronic ballots as such?

Mr Green: It is in the same way that you cannot look at an individual's paper ballot. They get dropped into an electronic ballot box. You can interrogate the database to look at each individual vote and work out the preferences of each vote. In fact, after the election we publish those on our website, so you can download those figures. If someone were to remember or to record how they voted, they could go into the database after the election is over and find their individual ballot paper. It is sorted by polling place. If it is a pre-poll centre, it is always by pre-poll centre. If someone were to vote in a highly unusual way by numbering a candidate in a particular way, they could go into the database and verify that that had occurred. For most people, one person's vote is probably going to look like another person's vote, so that is probably not a reliable or practical way of doing it. But if you wanted to do that, you could do that.

THE CHAIR: A couple of supplementaries on that, on the pre-polling and the methodology. What is the process? Could you take us through somebody making a pre-poll, taking a pre-poll action; and how does it work in terms of that person's name getting crossed off to show that they have already voted? Can you take us through that?

Mr Green: Another electronic system we used in 2012, and which we will be re-using in an enhanced form in 2016, was called our electronic Legislative Assembly polling place system. It is now going to be called the Legislative Assembly polling place and election results display system, LAPPERDS. That puts a notebook computer in front of every issuing officer in a polling place, a central computer that the officer in charge of every polling place has. They are networked within the polling place back to the central officer-in-charge's computer, which in turn is networked to a central database using the 3G telephone network.

The practical upshot of that is that when someone comes in to vote at a pre-poll centre or an ordinary polling place, their name will be found on the net book in front of the issuing officer. They will mark that person's name on the roll as having been issued

with a vote. That sends a signal back through this electronic chain, back to the central database, which marks them off as having voted on the central database. Then that record of the name having been marked gets sent back to each of the other issuing officers' computers. The practical effect is that as soon as your name is marked off the roll in one polling place, within a few minutes, assuming that the 3G network works correctly, that name will be marked off as having voted across all of the issuing points right across the territory.

THE CHAIR: You did say the internet was not used; so this is not the internet as you describe it?

Mr Green: This is using the 3G telephone network, and there will be elements of internet in that, but it has nothing to do with the voting system. It is totally separate from the voting system. It is only a system for marking people's names off rolls. If someone did get into and hack the database and somehow either erase names or add names, in theory, that would be possible. But practically, that would be very difficult to do, and there are security systems built into the network security that would make that very difficult. If someone were to do that, it would not threaten the integrity of the election. The worst it would do would be to result in someone turning up to vote and having their name already marked off. They would be issued with a declaration vote, which would then be admitted, because we do all the checks to ensure that that person has not voted before. So it is very unlikely that that could in any way threaten the integrity of the election.

THE CHAIR: This is all supposition, and I am sure you have got everything covered, but if somebody has already voted at a pre-poll and turns up on polling day, you are saying that there is no way that that person can vote again?

Mr Green: What would happen is that they would turn up to vote and their name would be marked on the roll as having voted. They would be interrogated as to whether they had voted before. If they remembered they had voted before and said, "Yes, I did vote," they would go away and not vote. If they were, for example, suffering dementia and had forgotten that they had voted earlier, which does happen, they would be issued with a declaration vote, and then we would do an investigation after the election where we would check records back. We investigate every case of potential multiple voting, to determine whether there has been a genuine mistake made, which is the most likely thing that happens. But, in a case like that, we are pretty good at working out that people have in fact voted twice, in which case that second declaration vote would not be admitted to the count.

DR BOURKE: How often does that happen?

Mr Green: With the system we have got, not very often. What we find most where we have got a name marked twice is that the polling officials have marked off two very similar names. Often you will get a father and son who have both got the same name or a very similar name, and they will mark off one name twice and the other name not at all. The instances of people actually voting twice are very low and we have never had any information with which we could go and prosecute anyone.

THE CHAIR: My supplementary to my own question is this. If there is fraud

happening and somebody has come in and you had a fairly good inkling that this person or this individual that this person is representing has already voted, since we do not ask for identification from people when they come in, what authority do your officers have to ask that person to identify himself, for starters, and then how do you process the other notice that you can generate?

Mr Green: We are talking hypotheticals, so it is a bit tricky to answer that definitively. What will happen in practice is that if a person claims to vote and states their name and address, and that name and address is on the roll and that name has not been marked off, that person will be issued with a vote. If they actually said, “I have voted lots of times before in the election,” then our instructions say that they should not vote in that case.

If there is any doubt at all as to whether someone has a right to vote or not, our standing instruction to polling officials is that we ask the voters to fill in a declaration vote; then that gets investigated after the event by senior officers, usually the deputy or me in something that is quite a serious matter. We include contact details on those forms, so we will actually ring people up or send them an email or something and ask for further information. The chance of someone deliberately doing that in such a way that we were aware that they were doing it—and that we would let them get away with it—is pretty slim. The greater risk, not just in ACT elections but in any elections, is that, because the electoral roll information is publicly made available, if someone wanted to go and vote in someone else’s name and just walked in and said, “I am Joe Smith of this address,” the way our system works, they would get a vote.

THE CHAIR: I guess that is what I am getting at. My final question is: would there be much problem with introducing compulsory identification when people turn up to vote?

Mr Green: That has been considered in other jurisdictions. It has been raised in the ACT jurisdiction in past discussions. I think Queensland has actually legislated for that, but they cancelled it. At the last Queensland election, they introduced it, but since that election it has been repealed. I am not fully conversant with why it was repealed; it could simply have been that the government changed hue.

THE CHAIR: But you have not put a proposal to the ACT government to examine anything? Is that your role? Is that what you would have to do?

Mr Green: It is certainly the role of the commission to provide advice on electoral matters, and this is something that we would provide advice on if asked. It is something that I have looked at in the past. My view would be that it is probably going to make things more difficult for honest people but not do a lot to prevent dishonest people doing dishonest things. The thing about Australian elections is that they are open and they are convenient. There is no evidence of systematic fraud in any ACT election or elections in other jurisdictions.

THE CHAIR: We do not really know, do we? That is the reality.

Mr Green: If people were systematically rorting elections, they need to do that in large numbers. It is very difficult to rort an election using just a small number of

fraudulent votes; you would have to do it with a large number of votes to actually make a difference. I think that would get picked up. The way that we have our network rolls, meaning that if a name has been used in one place it cannot be used in another place, is probably a greater deterrent than the ID way of looking at it.

The risk I would see with ID requirements is that you would disenfranchise people who might not be carrying ID with them. And you might actually introduce some kind of impediment to voting that might be determined by how affluent someone is, for example. Someone in certain circumstances might not have ID, whereas people in other circumstances might be more likely to have ID. I would be reluctant to introduce anything that might put an impediment in the way of people actually using their franchise.

THE CHAIR: Thank you.

MS PORTER: I note the time; I will try to be as quick as I possibly can. On page 31, it talks about your education program and it talks about both school and community outreach, or at least people coming in to participate in education in relation to these matters. I note that there has been a drop-off in school participation in the programs. I believe you are going to commence or you have already commenced outreach into the community. Has that already started? Or is that planned?

Mr Green: What we are mostly focusing on at the moment is offering services to school students. The numbers are dropping off in that. I think the problem not only for electoral educators but in education generally is getting on what is obviously a very crowded curriculum, getting our material presented in schools.

In early years, we had significant numbers of different school groups coming to the Assembly, where we would provide joint education sessions with the Assembly education office. My understanding is that it is getting more difficult for schools to get their students into buses and bring them here, for all sorts of reasons. I think that is one reason why the numbers are dropping off.

We are looking at providing resources that schools are able to use without them needing to actually get an education session from us. We have got videos on our website. We have got some new videos developed in the past 12 months that are aimed squarely at school students, with simple explanations of how the ACT election works, about how Hare-Clark works, and about electoral boundaries and so forth.

As we get closer to the election, we are going to be putting a lot of resources into educating the general community. We will be doing at least two mail-outs to households in the lead-up to the election. We are going to be doing much more with Facebook, YouTube, Twitter messages and so forth, and putting things on our website. Given how small we are, we have put more focus on providing materials that schools can use themselves rather than having our educators going to the schools.

MS PORTER: In relation to 16-year-olds voting, which has become a matter for debate nationally at the moment, or at least has been raised nationally, you will recall the inquiry on this very question that we did some years ago in the standing committee in this place which I believe I was the chair of at the time. We did not

recommend at that time that this should be introduced. What are your thoughts about the current discussion around this proposal?

Mr Green: I am not sure that my views have changed that much. A complication I think we have in the ACT that may or may not apply in other jurisdictions is that the self-government act effectively requires compulsory enrolment for people who are eligible to enrol for our elections. If we were to make the enrolment age 16 rather than 18, that would automatically, without the Assembly being able to do anything about it, enforce a compulsory enrolment regime on people who are 16 or 17. And we do know that people who are 16 and 17, and 18 and 19, are the ones who are least likely to voluntarily enrol. So there would be that issue about effectively imposing a penalty on people that young, which would be of concern. Essentially, it is a political decision, I think, as to what the voting age should be.

MS PORTER: Thank you very much.

THE CHAIR: Thank you, Mr Green. A proof transcript will be sent to you in case there are corrections you wish to propose. If you have taken any questions on notice, could you provide the answers to the committee within five days as required.

The committee adjourned at 4.32 pm.