



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

FRIDAY, 13 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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Privilege statement

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Amended 20 May 2013

The committee met at 11.06 am.

Appearances:

Rattenbury, Mr Shane, Minister for Territory and Municipal Services, Minister for Justice, Minister for Sport and Recreation and Minister assisting the Chief Minister on Transport Reform

Justice and Community Safety Directorate

Mitcherson, Mrs Bernadette, Executive Director, ACT Corrective Services

Taylor, Mr Don, General Manager, Custodial Operations, Alexander Maconochie Centre, ACT Corrective Services

THE CHAIR: Good morning everyone. Welcome to the third 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 Justice regarding Corrective Services and regulatory responsibilities, the Sentence Administration Board and the Legal Aid Commission.

Today's proceedings are being recorded and transcribed by Hansard. Witnesses are appearing under privilege, and the obligations and protections are described in the privilege statement set out on the table where witnesses sit. I presume that all of you are fairly familiar with the privilege statement?

Mr Rattenbury: Yes.

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

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

THE CHAIR: I will pose the first question. Minister, the JACS Directorate annual report states on page 70 that the current expansion of the Alexander Maconochie Centre will bring capacity up to a maximum of 512. Can you tell the committee what modelling has been done on future demand for the AMC and what methodology is being used?

Mr Rattenbury: Certainly. The estimates that the government used were from Mr John Walker, who is a recognised criminologist and certainly one of the experts in this area. He has given us a range of scenarios, going forward into the future. He has run a series of forecasts based on high, medium and low population growth. That is the basis on which the government took the decision that we did to expand the size. It was also a qualitative decision around a particular type of facility. So the special care unit is an important part of not just having greater capacity but having more flexible capacity, so that we can manage detainees in a different way.

As I have explained to this committee before, one of our issues here in the ACT is that a lot of people know each other, so we do need improved rates of separation when we have detainees who are quite vulnerable in a range of ways. So having the capacity to treat them and their vulnerabilities or the behavioural issues that have led to their offending is an important part of the design of the additional facilities.

DR BOURKE: Minister, what steps are you taking now to mitigate those overcrowding issues that we have just been talking about?

Mr Rattenbury: As members will know, we have opened the Symonston correctional facility to full-time detainees. We have a maximum of 30 detainees there. That has been operating very smoothly. Both the official visitor and the human rights commissioner have had full access to that facility to ensure that there are no concerns. The feedback so far has been that the facility is operating well; people have access to a full range of services there. In addition we have now opened the special care unit, with currently a 30-bed capacity. That has provided some short-term relief until the full expansion of facilities is completed next year.

DR BOURKE: What is the capacity of the periodic detention facility?

Mr Rattenbury: At the moment we are using at its capacity full time for up to 30 detainees. We are still operating periodic detention on the weekends as well. Overall it can accept 104 people. We do not intend to use it for more capacity for full time detainees at this point.

THE CHAIR: A supplementary, Ms Porter.

MS PORTER: I have a supplementary in relation to remandees and sentenced prisoners. What is the situation currently? Where are they located in the AMC?

Mr Rattenbury: We can give you the numbers first, if you like, and then proceed from there.

Mrs Mitcherson: The sentenced numbers today are 281, and the remand numbers are 125. We have been operating at about a one-third or two-third capacity for some time. We have not changed for a little while.

In terms of where they are located, as you would be aware, one of the issues for the AMC is separation. We are currently sitting at just under 50 per cent of detainees who require some kind of separation due to a vulnerability related to their behaviours or their offence type or mental health. We have a remand section and a sentenced section but there are remand and sentenced mixed up in those areas where we need to keep, for example, the paedophiles or child sex offenders together, all those on strict protection. They are not totally separated.

MS PORTER: Minister, going forward would there be an opportunity for further separation of remandees and sentenced prisoners with the new design, extensions or whatever is happening?

Mr Rattenbury: I best describe the new accommodation areas as being an X design. It means that the Corrective Services staff are essentially in the middle of the hub and there is a range of wings. This means that there is more scope for separation. The cell blocks which we have at the moment are single, long design in a sense.

DR BOURKE: It is a panopticon site?

MR RATTENBURY: I will take your word for that. That is a deliberate design feature based on the learning of the first five years of the operation of the AMC. We need those greater rates of separation. The special care unit already is in that format. The intent is to have greater flexibility in future to separate groups of detainees. As Mrs Mitcherson said, it is not just remand and sentence that is the key consideration. It is about putting like prisoners together. That is both an important security consideration and also for the safety of the detainees.

THE CHAIR: A supplementary question, Mr Wall.

MR WALL: We will get the headline figure out. How many have you got staying there at the moment?

Mr Rattenbury: There were 407 last night.

MR WALL: Is that a new record?

Mr Rattenbury: No. That is below where it was last week. We have had a few releases.

MR WALL: What is the new record number?

Mr Rattenbury: It is 413.

MR WALL: The main question I want to ask is this: are we towards the end of the forecasts that have been done, taking into consideration diversionary measures such as a larger emphasis on community corrections?

Mrs Mitcherson: Thank you for the question. Certainly when we designed the accommodation we were very cognisant of the report that John Walker had done for us, which, as you know, takes into consideration historical figures, census data and local ACT census data as well as looking at some of the drivers and some of the areas. There is a formula that we use, and we are going to redo that formula every four years, with a tabletop update in between. So we did consider that.

We also considered the potential new non-custodial community work that would target those with sentences of around two years or less: to have a community sentence with intensive supervision as opposed to going into custody. That was certainly part of the suite. The idea is to not keep filling up the jails, which, apart from being expensive, is not always the best option for rehabilitation, particularly for short sentences.

There are some drivers beyond our control. We have had a spike in serious homicides this year in the ACT and some quite horrendous domestic violence situations. Those sorts of incidents, in any jurisdiction, and there has been some national coverage in other areas, tend to give you a spike in numbers. We think the spike at the moment is in relation to domestic violence, the peak in homicides is here and there are some sexual assaults. We are doing a bit of work on that now.

The issue around predictions is that it is not an exact science. You can do all the things that the statisticians tell us we should do and then see events like the terrible murder of Jill Meagher 18 months ago in Victoria. Those sorts of incidents really see a spike across the country in terms of people not getting parole, people not getting released, people getting longer sentences and community outcry.

MR WALL: It sees the judiciary become a bit more rigid in their approach, does it?

Mrs Mitcherson: I think the community outcry becomes noisy, if you like. There is lots of talk in the paper and on talkback radio. People start talking about it and people have an expectation of different outcomes. All those things impact on us. Notwithstanding that I think we do good work in terms of managing people in custody, at the end of the day it is really hard to predict what the numbers will be.

THE CHAIR: Dr Bourke, your first substantive question.

DR BOURKE: Minister, the report on page 125 notes a recommendation by the Auditor-General that an evaluation framework for rehabilitative activities and services should be developed by Corrective Services and states:

The Directorate has developed a draft work plan.

I understand from page 86 that Corrective Services procured the services of the Social Policy Research Centre to undertake the evaluation of the extended through care pilot program. Minister, can you tell the committee what efforts have been made to conduct an evaluation of the present through care program and what is the first year of data that will be available to provide a baseline for such an evaluation.

Mrs Mitcherson: Yes, that is right. The Social Policy Research Centre of New South Wales university won our tender to do the evaluation. Because it was a new program when we first started taking clients in June 2013, we wanted not to set ourselves targets, because I did not want staff to be driven by targets; I wanted them to actually think about and be able to have a program that was responsive to what the emerging needs were.

We set some basic principles for ourselves in terms of through care when it started, and you will be aware of some of these. First, it was a voluntary program. Also, it would be available to clients who did not have an ongoing order with us—in other words, did not have a good behaviour order or a parole order after finishing their custodial service. Also, it would be very person-centric, so the person would be involved, and their family, whatever guise that family might take for them, and they would be engaged before release. The other thing that we felt was really important was that everyone who left the AMC on a through care program is picked up; no-one is just left at the door with their bag and told, “See you later.” It is really important that people get picked up.

They were our principles. Apart from the four main packages that we developed, which were health, accommodation, connections and one other one—we developed four that we thought were pretty important. Within the first three to six months, we realised—even those of us like myself who have been in the business for a long time

realised—that most of our clients were pretty unable to cope with the basic infrastructure of life. So we developed another package, which is just called basics. And it really is basics. It was not good enough to find someone housing. There is no point in getting someone released from custody and putting them in a bedsit if they have no furniture, no light bulbs and no food, and they are just going to sit there. What are they going to do? We actually had to get the whole package together—somewhere to live, housing, toiletries, some basic clothes and very basic things. And St Vincent de Paul won a tender with us in relation to providing intensive services.

We have revamped our pre-release program in custody. That is called the assisted release to custody program—we call it the ARC program—and it commences three months prior to release. At that point they are engaged with a pre-release case worker from the jail. We also have female case workers and Indigenous case workers to get that mix both in the jail and in the through care casework categories. At that point their families engage. Everyone is engaged in terms of the services and getting them ready to get out.

For the two weeks prior, their St Vincent de Paul worker is engaged. They have intensive contact with that worker for those two weeks and for the first six weeks out of custody. For the first six weeks out of custody they are likely to have four or five contacts per week to make sure they get to where they have got to go. For us, that was a really big learning in the first six to 12 months. I was very pleased that we did not set ourselves some targets. It allowed the program to be quite organic in the way it developed.

At the end of June this year we will have two years worth of data, so we will be able to do some good comparable data with the same methodology that is used in relation to ROGS. The terms of reference for the Social Policy Research Centre include a number of things, but they also include—which I think is very important for the community—a cost-benefit analysis. For example, we know that some of our clients are doing much better. If we know that someone is staying out of custody for six months instead of six weeks, which is normal for them, we want to be able to cost what that means in terms of fewer victims, less court time, less work for legal aid and so on. Even though we will be looking at who is staying out and why they are staying out, what we are doing well and what we need to improve, we will also cost the program to see whether we are providing a service that is beneficial to the ACT community. That is an important feature of it as well.

We are quietly optimistic. I think that 100 per cent of Aboriginal and Torres Strait Islander men and women who are eligible for the program have joined up. All women who are eligible have signed up. I think it is about two or three per cent of non-Indigenous men who have not. I have to say that probably half of those are deportees, so there is no reason to sign up.

The other thing that is encouraging for me as executive director is that a third of the clients of through care have no reason to be involved with corrections, yet they are willing to sign up and keep working with us. To me that says great things about the relationships our staff have with the clients—that they are willing to sign up and be engaged, even though they are not on parole or on a good behaviour order. That is very encouraging.

THE CHAIR: My supplementary to you: there seem to be a very large number of parolees in Oaks Estate. Can you elaborate on how parolees are assigned and how many parolees are in Oaks Estate?

Mrs Mitcherson: When someone goes into custody they have a time when they can apply for parole and in preparation for that a report is ordered and community corrections staff do a parole report. That report covers all aspects of how they have been in custody, what their offending behaviour was, whether they have attended groups et cetera. They will make a recommendation to the parole board and they may be required to give evidence at that point. The parole board makes a determination as to whether someone is granted parole or not granted parole. If they are not granted parole, they can reapply, and some are granted parole. We hope that through care sign up as well. Well, we know that they are because we are getting nearly 100 per cent. Some of those things are linked in as well.

As part of the parole process we check their accommodation. They might say, "I want to go and live in X." Community corrections officers will do a home visit to the location. They will talk to the people who live in the house to make sure that they are suitable people for the person to be living with and are not co-offenders or something like that. If they are a sex offender we want to make sure there are no children in the home. Those are the kinds of things we look for. There is quite a lengthy assessment process for that.

If the accommodation is approved, that goes into the parole report. Sometimes it is not approved and they have to find somewhere else. Sometimes they cannot get accommodation and the parole is delayed for that period. In terms of Oaks Estate, I do not have those figures. I am not sure which figures you are quoting from.

THE CHAIR: I understand there are over 40 parolees in Oaks Estate.

Mr Rattenbury: What is the source for that data, Mr Doszpot? We are happy to check that.

THE CHAIR: It was supplied to me by residents who are concerned at the number of—

Mr Rattenbury: How do the residents know who parolees are?

THE CHAIR: Mr Rattenbury, I am asking the questions.

Mrs Mitcherson: Just in terms of our parole numbers, I would find that really—

Mr Rattenbury: I think we need to get to the bottom of this. You are saying there are up to 40 parolees. I need to know where that data comes from. If you want us to give you an answer, we will go and check that, but I need to know the source of that data.

THE CHAIR: Rather than depend on hearsay, I am asking what the number—

Mr Rattenbury: You started with the hearsay, so let us work out how we are going to

conduct this.

THE CHAIR: Mrs Mitcherson stated that the process examines whether there are any potential issues for cohabiting or any parole violation in terms of other people being near them. My question relates to, firstly, what figures you have on how many parolees there are and, secondly, are there any issues with any number? I do not know what the number is if what you are saying is correct. If it is a large number, are the issues that you mentioned before taken into consideration?

Mrs Mitcherson: To answer part of that question, Community Correction would not recommend accommodation if it was not suitable and also there is an obligation on a parolee to advise us if they want to change accommodation. So, if they moved somewhere and we did not approve it, we would breach them if they did not move from there. There are quite strict guidelines.

I might also add that not everyone coming out of custody to supervision is on parole. About one-third of people that come out are on parole; the other third are on good behaviour orders and are not subject to the parole board or the same rigour as someone who is a parolee. That said, community corrections have taken a standard of supervising high risk GBOs, as we would a high risk parolee, so, even though we are not obligated to, we would still even do a home visit for a high risk GBO.

We do not keep data on postcodes but in terms of the numbers I know of I would be very surprised if that were the case.

THE CHAIR: So are you taking that on notice?

Mr Rattenbury: St Vincent de Paul has 38 houses in Oaks Estate but we are advised there is no through care program operating in Oaks Estate. Does that go to what you are trying to ask?

THE CHAIR: I am also trying to determine whether the conditions that exist in Oaks Estate are appropriate for parolees who do not have transport, for instance. How do they get to meet their obligations? I believe there are some issues with transport there and, if there is a large number—I come back to asking you to take on notice the number and we will take it from there.

Mr Rattenbury: Do we have that data?

Mrs Mitcherson: We would have to do a search.

Mr Rattenbury: We do not necessarily have that exact data, Mr Doszpot. We will see what we can find for you.

DR BOURKE: Returning to recidivism and through care, Minister, page 71 of your report states that recidivism rates within two years of release have fallen from 41.9 per cent to 38.7 and that this is solely attributable to a 10.2 per cent fall in the non-Indigenous male recidivism rate. What do you consider to be the cause of that fall in recidivism rates?

Mrs Mitcherson: When we calculate the recidivism stats for ROGS each year, we do the work and then we get them double checked because it is a very complicated accounting rule. The advice was that it was mainly non-Indigenous men. We do not know. Today, there are 60 sentenced Aboriginal men and women in custody—three women. We tend, particularly for the men, to have the same men coming in and out. What I can say to you is that in the past 12 months from through care for Aboriginal women who have signed up, nine have come back into custody. In terms of Aboriginal men coming into custody, we have put on a second Aboriginal case worker in custody to deal with the increase and we have an Aboriginal worker in through care. We work very closely with Winnunga and Gugan, so we are concentrating efforts around what we can do to keep more out of custody. I cannot say more to you than that. We drill down to try to get an idea of where we need to focus resources.

DR BOURKE: Maybe you could tell us a little bit more about those Aboriginal and Torres Strait Islander programs in the AMC and whether they are, beyond what you just said, assisting Indigenous detainees not to commit crimes again in the future.

Mrs Mitcherson: We have a couple of new Aboriginal programs since I last spoke to the committee. We have always had our conservation and land management program but we have extended that to include some more culture and are working with TAMS and ESD on that. We still have our Winnunga social wellbeing program, so those staff come from Winnunga to custody and they also engage in through care with us. We still have our elders program. We have introduced a new pastoral care program with an Indigenous chaplain who runs an Indigenous service, which is new for us. We continue with our counselling with Relationships Australia, which has Indigenous counsellors as well as non-Indigenous counsellors, and our partnerships with all the art programs.

In community corrections, general managers are working with Galambany circle sentencing and the Canberra Institute of Technology to introduce a new cultural awareness for young Aboriginal and Torres Strait Islander offenders who are not in custody but who are subject to community through Galambany courts. We can try to work with them so that they do not make that next step. We hope that in the next 12 months that program will be operating. At the end of this month we are opening a reporting centre at Winnunga so that those clients—back to the transport issue—who find it difficult to move around for their appointments will have an officer who goes out to Winnunga. The Aboriginal clients can do their reporting there and also make other appointments with Winnunga staff so that we can have a holistic approach to management. It also means that they do not have to keep coming into Civic all the time. We are hoping to have another couple of those reporting centres over the next 12 months. In terms of staff services for the clients, they are pretty significant. There is an Aboriginal liaison officer, two case workers, a female case worker just in custody as well as outside. The other suite of programs we have for everyone is also available for them.

I have been here for 4½ years now and I am beginning to know some of the families quite well and I meet them when they come in to visit—I would much rather run into them in the street. It is the case that it is a sizeable minority of this group that comes back in and out all the time. They have probably spent much of their adult life and

probably a lot of their juvenile life in custody, so the more work we can do with them and their families—the effort might be to reduce their children coming in and becoming part of the system.

THE CHAIR: Ms Porter has a supplementary, and then Mr Wall.

MS PORTER: When you were talking about the through care program, you mentioned the connectedness program as being one of the planks—

Mrs Mitcherson: The connections, yes.

MS PORTER: Yes, that is right. You also talked about how important family contacts were in terms of perhaps helping a person when they leave the prison to be able to establish themselves in the community. By having that support there, they will not have broken all of their contacts; therefore they will have a better chance of settling in and re-integrating back into the community. It says on page 78 that there are some changes to that regime. Could you tell us what the changes are in relation to the regime? Is it connected at all to the through care program that you mentioned?

Mrs Mitcherson: What page are you referring to?

MS PORTER: Page 78, at the top of the page in the left-hand column. The second paragraph says “implemented changes to the visits regime”.

Mrs Mitcherson: We revamped the visits program in the last financial year. That is referring to that particular part of it, for when visitors come in. There are a number of things we do in the visits area. Obviously our visits area is quite complicated because we have so many different cohorts in custody. So we have separate visits for people who might be on protection or different kinds of offences. We have “shine for kids” every weekday there. There is a play area for children and we do things with children, because visits are very artificial for families and for children. Also some of the adults in custody, particularly adult men, do not know how to play with children. So we also do some work around that.

We do two programs in custody—one for men and one for women—run from Marymead in relation to parenting. Not all relationships continue out of custody but with Relationships Australia we are trying to set up that counselling for couples before they get out, so that they can continue that as well. So there is a holistic approach to the family.

I will give you an example. We have a young Aboriginal man in custody at the moment who has had a difficult upbringing. He is from northern New South Wales. There is a lot of violence in his family. We noticed that he was a little bit agitated and not doing so well. He has signed up for through care, getting ready for release. We found out through talking with him and understanding his family situation that his wife and child were homeless and couch surfing. Because he is a through care client, that allowed us to work with the family and she was happy for us to work with her and with Housing. She now has a house and is engaged with local groups who support her, which meant he was more settled in custody and is now engaged in the Solaris program and getting ready.

That connectedness is important in custody as well as for getting ready to go out of custody. We see it as being crucial in terms of keeping people out of custody at least for longer, and trying to break that cycle for their children as well.

THE CHAIR: Mr Wall, a supplementary.

MR WALL: While we are talking about Indigenous detainees in the AMC, a number of people in the Indigenous community and also service providers in that space have come to me with some fairly significant concerns about the bashing of Steven Freeman earlier in the year. Can you give us an update on where the investigations are up to with that?

Mr Rattenbury: As you know, the investigation is being conducted by the Australian Federal Police. So in that sense it is out of the hands of Corrective Services. Corrective Services is obviously fully cooperating with the Federal Police. You may have seen, about three weeks ago, that the Federal Police released an update and sought specific information from the community. I am aware of the concerns amongst some service providers and individuals in the Indigenous community about this matter. I think their concern is that there is a racial overtone to this attack. I am very cognisant of that because we know from things like the royal commission into deaths in custody and the like that there is a strong sense that we need to ensure that Indigenous people are particularly cared for in our custodial environment. I think all of these other measures go to that. You will appreciate that I am not able to say too much more on the individual case until the AFP finish their investigation, but I am hopeful that will be soon.

MR WALL: I understand, minister, that you would not do that around a specific case, but it is broader: about whether the centre is in touch with the racial aspect of it. The Indigenous community, I believe, has a disproportionate number of their community going through the AMC. The concern that their families have is: what is being done to make sure that they remain safe and alive whilst they are in your care?

Mr Rattenbury: Our rate of Indigenous population in the jail continues to be 19 to 20 per cent. It ebbs and flows a little. It is obviously incredibly disproportionate to the percentage of their population in the regular community, at 2½ per cent.

In the case of Mr Freeman individually, after that incident, a series of measures were put in place to ensure his personal safety. I might say that it is an outlying incident in the sense that these things are not happening frequently. I am sure the investigation will point to particular circumstances there. But individual detainee safety is very important. It is one of the reasons that mixing remanded and sentenced offenders together can sometimes be okay. Sometimes we will put Indigenous people together in a cell, to improve their sense of safety, perhaps cultural connectedness and those sorts of things. It is one of the reasons why we do not always follow that black and white rule of not having sentenced and remanded together, for those kinds of reasons.

MR WALL: Was Mr Freeman in this area at the time?

Mr Rattenbury: I will ask Mr Taylor to remind me of the facts.

Mr Taylor: He certainly was, Mr Wall, and with the individual case certainly we consider the best placement of all our detainees, whether they be Aboriginal or non-Aboriginal, and we consider safety as a prominent part of that. But certainly we rely on detainees often for that information, and there are other sources that we have available to try to inform us as best we can. In answer to your question, yes, he was with other detainees who were sentenced and other detainees who were remanded.

MR WALL: The element of this incident that alarms me, and I think it has alarmed a number of the Indigenous community, is that there was not clear security footage or observation of the event as it unfolded. How is it, in what is a secure facility—I have been out there, and you have been very welcoming in showing me through not just the facilities there but also the security and the surveillance aspects of the prison—that an incident like this could occur blind from the eyes of those watching?

Mr Taylor: There are a couple of things with security cameras. In the first instance, we had some 340 cameras; they all are there for monitoring purposes and they transmit live feed to our master control room, where there is one officer who manages that post. Cameras had not been put in place to be permanently monitored. We had, obviously, recording capability as well.

As far as the prevention measure goes, there certainly is the capability for prevention, and we get that at times, because we understand, by looking through our footage, what is going on. In this case—again, following on from the minister's comments, I do not want to say too much because it is still under investigation—there certainly has been footage of the area, which has been handed over to the AFP and has helped them in their investigations.

THE CHAIR: Supplementary to Dr Bourke. Then we will go to Ms Porter.

DR BOURKE: Minister, this is not the first case but one of many cases where I have opened up the *Canberra Times* and read about another Indigenous detainee who has been bashed at the AMC. What is the proportion of assaults on Indigenous detainees versus non-Indigenous detainees?

Mrs Mitcherson: We would not have that figure. I think it is probably fair to say that sometimes it is Indigenous detainee on Indigenous detainee or non-Indigenous on non-Indigenous. It is important to—

DR BOURKE: Regardless of who is doing the assault, it is an Indigenous detainee who has been attacked. My interest here, whilst I accept your statement that about 20 per cent of the population at AMC is Indigenous, is that I want to draw a parallel between that population percentage and the number of assaults that are occurring, to work out whether you have a particular issue around assaults on Indigenous detainees which is beyond this particular case.

Mr Taylor: The specific figures for Indigenous versus non-Indigenous assaults are not something that we readily have. However, in terms of managing the centre and understanding the assaults, when they do occur, I am certainly well aware of them. In terms of managing the centre, it is not something that I am concerned with as being

disproportionate. There is a higher number of Indigenous detainees. The assaults that occur are many and varied in reason. The reasons do not appear to be specific to Indigenous, non-Indigenous or any specific culture. There are a number of factors inside the prison where a specific person may be involved in the assault, but there does not appear to be a disproportionate number of Indigenous persons.

DR BOURKE: Perhaps you could consider collecting some data in that area, minister, and being able to report in future when we ask the questions.

THE CHAIR: Ms Porter, your substantive question.

MS PORTER: Minister, on page 83 of the report, it mentions the out of the dark program for women detainees who have been victims of domestic violence, family violence. Can you comment on how this program helps the participants with issues around domestic violence and family violence, and can you comment on detainees' experience in this program? Mrs Mitcherson, I think you mentioned the unfortunate series of events that we have had in our community of late in relation to domestic violence and the re-occurrence of this problem across the whole of our community. I was particularly interested in this program.

Mrs Mitcherson: That program was developed in New South Wales a number of years ago and we have it here. It is in recognition that, while women in custody have committed offences and been found guilty by the court, disproportionately, probably 90 per cent of them, are also victims themselves. Often their crimes are part of an attachment to a male figure or they have been victims of domestic violence or sexual abuse.

Out of the dark was designed for a group to talk about their experiences, because often if you have been subject to abuse from a very young age it becomes legitimate in your life and it becomes a norm. You think, "All men do this," or "This happens to all women." It is about trying to raise awareness and give them strategies to say, "No," and to move away and choose a different partner or choose to be alone. It is recognising that, again, while women in custody have offended, they are also victims themselves. It is trying to perhaps give them the strength to reach out.

MS PORTER: As to the success of the program, are you finding that the program is in fact doing what you intend it to do?

Mrs Mitcherson: You cannot say, "Did someone go out and then not be subject again to something?" We run it a couple of times a year. We would have only a small number of women and obviously some of the time we would have the same women. We are cognisant of when we run it. The feedback I have had from staff is that women quite enjoy the program and feel they get a bit out of it. Women tend to be very good in groups and talk more sometimes than blokes, so I think they do find it quite useful, if it gives them a strategy—and it might be ages down the track—which, combined with something else, makes them say, "No, I've had enough." You need to start the narrative with them and the discussion so they can think about, "This is not normal. I don't have to put up with this."

MS PORTER: Does the through care program touch on these issues as well?

Mrs Mitcherson: Yes. In relation to women who sign up for through care—we have a 100 per cent sign-up rate for all women, and we also include women on remand because the numbers are so small: so 100 per cent of women in custody are included—we work very closely with women’s organisations, particularly Toora. They are engaged well before women are released.

In the 12 months just finishing, from 1 October to 30 September, we had no women go back into custody in that period. We are quite pleased with the strong relationships that are being developed by community organisations and corrections with women. We actually partner formally with over 100 agencies and NGOs as part of our through care and pre-release programs. I do think it is having an impact. Sometimes it is incremental for women, or for anyone. You might have to do it a couple of times. It is like smoking. You might have to try to give up a few times before you suddenly get out of the dark and say, “I’m not putting up with this anymore.” That is what it is about. It is about trying to lift that fog.

THE CHAIR: Mrs Jones, your substantive question.

MRS JONES: It is good to see you all here this morning. On page 72 of the report there is a reference to the crisis support unit. I was wondering whether that is related to statements that have been reported in the *Canberra Times* of a senior judge highlighting criticisms of a failure to explain an offender’s mental health condition. The particular events being referred to were about “an annoyingly frustrating failure to explain an offender’s mental health problems in the court” and “inexplicable”—

Mrs Mitcherson: I am aware of the matter.

MRS JONES: Yes, I think you know what we are talking about. How did it occur that a report went into the court that was not really detailed enough to be useful? What is the process around those reports?

Mrs Mitcherson: Thank you for the question. I am very aware of the issue. The general manager of community corrections has had a discussion with Mr Refshauge this week about the particular matter.

The process is that when someone is convicted, found guilty, in most cases—not all but in probably 90 per cent of cases—a court will order a pre-sentence report. We do a number of things in that pre-sentence report, including a level of service inventory and the level of risk. When we do the level of risk that highlights the risk factors. The risk factors for a particular individual are highlighted in the pre-sentence report. The pre-sentence report has headings in it so it is very clear for the court to understand what is important for the particular offender, and it is written. If, for example, we are assessing someone for community service, their medical would be important because we would need to know whether they were actually capable of carrying out community service. We do not go into detail about them having this disease or that disease.

In this particular case the PSR was originally done in, I think, January or February this year—January, I think it was. We did request the information from Health, which was

not available at the time we had to lodge the report. We have to lodge the reports within five weeks—

MRS JONES: Within five weeks of?

Mrs Mitcherson: The request. And we have to give them five days notice of a report. There is a strict time frame. Sometimes that can become a bit dire if the offender does not come in or we cannot find them. It is a tight time frame for officers. At the particular time that report was not available. The person was then remanded and a court date was set for later this year. It was too late—that PSR was already six months old—so the court ordered an updated PSR. The updated PSR should have included the summary, which was provided, and the officer was not clear enough in that summary. That matter has been discussed, and discussed with Mr Refshauge. But that is generally the process.

MRS JONES: Do I understand that the recent information was not available even for the first PSR because the detainee was not available?

Mrs Mitcherson: No. The detainee was available. My understanding is that in relation to the first PSR, which was in January, I think, the report from Health was not available in the summary format that we have; so we put it in through the detainee.

MRS JONES: You requested it from Health and within five weeks they were able to get back to you?

Mrs Mitcherson: I am not sure of the exact time frame.

MRS JONES: Do you mind having a look at the time frame for us so that if there is a blockage somewhere that is a systemic problem—

Mrs Mitcherson: The general manager and I have discussed it. We do not believe it is a systemic issue. It was unfortunate. The matter was heard in January and was not set down again until October. There was a long period between court dates, which is not a matter that we can comment on. But we do not believe it is a systemic issue at all.

MRS JONES: Are the PSR and the court duty report two different things?

Mrs Mitcherson: They are two different things. There is a full PSR. In this case the court requested an updated PSR. The officer put it on the wrong template, which is the court duty report. The court duty report is really important. We provide a corrections officer for the court on a daily basis. If someone comes in and they might be known to us and known to the court, and the court might want a quick update on what is happening with that offender, the officer can have a quick interview with the offender, check on the computer what they have been doing, what their previous stuff is and give the court a short update for that day. The court may sentence on that day, which is useful in terms of matters that do not need to be held over for a long period. That is our court duty report. We have a full-time officer available to the court for that.

In this case we would consider a presentence report to be valid for six months. After

that you really need to check to see if something has changed. An update was requested because the second court date was nine months past the January one.

MRS JONES: Should the form that was used have been a PSR?

Mrs Mitcherson: No. The officer should have put it on an update report template. She used the—

MRS JONES: The court duty report?

Mrs Mitcherson: Yes.

MRS JONES: That is possibly why there was frustration?

Mrs Mitcherson: It was human error. We have had discussions with the officer and also Ms Hibberd has had a meeting with Justice Refshauge this week about the matter.

MRS JONES: You referred to the conversation with Justice Refshauge. Is this a one-off thing that he is frustrated with or is he frustrated because there are ongoing issues with understanding the full mental health condition of people coming before the court?

Mrs Mitcherson: We do not believe there is a systemic issue with information coming from Health but there is probably a divergence of views about what should be provided. It is really important—

MRS JONES: That there is a balance?

Mrs Mitcherson: Yes, a balance. I am not referring particularly to Justice Refshauge but some people will want to know, for example, someone's hepatitis status. It is probably not relevant to a sentence. There might be one view that we should have every little thing and one view that we just need to know what would impact on the sentencing. We are providing advice whether someone is suitable to go to the PDC or do community service. For example, if someone is a chronic alcoholic and cannot go a day without a drink, we are not going to recommend him to PDC because they are not going to make it. Those are important things to know in terms of sentencing.

The other part is whether the condition they might have has impacted on their offending. If it has, has it been verified and are they seeking treatment? For an offender to say to us, "I've got X," if we cannot verify that information from them we would say to the court, "The offender has given us information but we are unable to verify it." Offenders tell us lots of things. They are not always true.

MRS JONES: Finally, these reports are generally looking at the capability of the person to do certain things or be in certain circumstances but they are not necessarily laying out a historical mental health picture. I get the feeling from the report I read that what the judiciary probably wants is more information about how the mental health of the person has developed over time. I do not know whether that is too expensive as a concept or whether that would be a possibility.

As we move on, judges are desperate to do the best that they can within the framework they have got. The more they know about people and how those people came to be in the state they are in, obviously the more sensitive they can be in their decisions and potentially the more effective we can be with subsequent rehabilitation. If you have got someone with high anxiety it might be different to someone with PTSD because of a traumatic incident. Obviously judges cannot be experts on everything.

Mrs Mitcherson: I think what you say is really relevant in terms of how we manage people, particularly if they are in custody. We do a lot of work around stabilising people. Sometimes people get diagnosed for the first time. It probably would not be possible to do a full history in the five-week period. We do not own the report. Health provide us with a letter with a summary. They are not our reports. It is not really appropriate that we do more than a summary. We might also recommend that if someone is going to be under community supervision they continue the counselling or whatever they might be doing.

Certainly if someone comes into custody it is really important to understand all aspects of their health. You might think, "Someone is violent. Put them straight into a program." They might be violent because they were psychotic. We need to stabilise them. They might have been violent because they were psychotic and they were drinking. We might want to do that before we put them into a cog skills program. It is important to understand the whole picture. I could not agree with you more.

MR WALL: Minister, page 81 talks about community corrections. There are some interesting aspects. The team building day: what was the purpose of that?

Mrs Mitcherson: With team building, we have increased our staff and we have done a lot of work in the last couple of years to work on our culture and to develop a community corrections that is really an important part of the community. You will recall that we appointed a general manager a couple of years ago. So we have a custodial general manager and a community general manager. It has completed the triangle, if you like. Before that there was a bit of a linear approach. So we are saying that community corrections is a really important part of corrections. Going forward, our work is really important in terms of the new youth sentencing option. It is important that staff feel a sense of having a good culture, so that they enjoy coming to work and they see the importance of their work. So it was a really successful day.

MR WALL: You mentioned that you have recently increased the number of staff in community corrections. How many staff are currently there at the moment?

Mrs Mitcherson: I would have to take that on notice because we have changes all the time. We have a couple on maternity leave and we have some temporaries in.

MR WALL: What is the allocated staffing level for the area?

Mrs Mitcherson: I would have to take that on notice.

MR WALL: Was the reason for the team building day that there has been a history or an issue with morale or collaboration in the community corrections team?

Mrs Mitcherson: I would have to say that when I joined 4½ years ago we spent most of our time working on the AMC and working through those issues. It was really important that we started to focus on community corrections. I have spent a lot of my time and effort in terms of increasing training and introducing a certificate III in corrections management. Some staff were used to a custom and practice, and we have made some changes in terms of minimum standards and expectations.

The community corrections staff are based in Eclipse House, as you know. For me, it is a joy to go and walk on those floors because it is a really delightful workforce to be part of and to walk around. Whatever it might have been, I can tell you that it is a great place to work, and we are attracting some really wonderful staff. The existing staff who have been there for a long time before me are commenting to me that they love working for community corrections.

For me, it is about what the end result is and where we are, both with staff who have been around for a long time and new staff. I have to say that it is a pretty good space, and a pretty good place to work.

MR WALL: Have there been any claims of bullying or harassment in that section of corrections?

Mrs Mitcherson: I do not have details of where they come from over a particular period of time.

MR WALL: How many staff that belong to the community corrections team are currently off on workers compensation or sick leave?

Mrs Mitcherson: There are two on maternity leave; there is one who has just started leave for an emergency operation; there is one on workers comp.

MR WALL: It does not relate to stress leave or bullying and harassment?

Mrs Mitcherson: I am not aware of a bullying claim, or a harassment claim from that person.

MR WALL: Stress leave?

Mrs Mitcherson: I do not want to identify the person. It is one person and it is a small community; I do not want to identify someone who might be watching. I do not want to go into detail.

DR BOURKE: I think the question is out of order, chair.

THE CHAIR: Dr Bourke, do you have a supplementary?

DR BOURKE: Thank you. Minister, are you able to tell us what the current cost per prisoner of your community corrections program is? I think you report through ROGS.

Mr Rattenbury: Yes, I can.

Mrs Mitcherson: \$33.

DR BOURKE: \$33 per detainee. How does that compare with other states and territories?

Mrs Mitcherson: I do not have the comparison with me. The community corrections number also includes through care. The ROGS rules deem that through care should be costs to community corrections. It also includes our increase in staff in getting ready for ICO and increasing training provision; we now do a certificate IV for community corrections staff, similar to what we do for custodial staff. But I do not have the comparison across—

DR BOURKE: Could you take that on notice?

Mr Rattenbury: Yes, we can. That is available through the ROGS data, so we will check that and provide it.

THE CHAIR: In relation to page 75, “Industries”, can you tell us what has been identified as a viable prison industry for the AMC?

Mr Rattenbury: Yes, Mr Doszpot. That is an area that corrections is doing quite a bit of work on at the moment. One of the issues we had when the AMC was built was that industries were not included at the beginning of the project. I think this is a problem, so corrections are now preparing a report. I do not have specific initiatives that have been identified. There is, however, a range of jobs that already take place in the AMC. People, for example, work in the kitchen, horticultural areas and the like. There is a whole series of current occupations that are available in the jail, and I would be happy to provide that on notice if you like. But we want to move to a place of having prison industries that actually produce goods that go outside the jail as opposed to jobs that are more about the running of the jail.

THE CHAIR: But you are saying that there has been nothing identified in that direction at this point?

Mr Rattenbury: I do not have a specific industry register. I cannot tell you we are about to start a bakery or anything like that. That feasibility work is currently being undertaken.

THE CHAIR: When do you see that being completed?

Mr Rattenbury: Hopefully, sooner rather than later.

THE CHAIR: Three months? Three years?

Mr Rattenbury: I do not have a specific time frame, but it would be months, not years.

MRS JONES: I have a supplementary there.

THE CHAIR: Yes, Mrs Jones.

MRS JONES: Obviously the purpose of that is having work skills and all of those really good things, resume building and so on, but is there also an intention to make a profit from that business in order to assist with additions or other things available in the jail?

Mr Rattenbury: Not in the entrepreneurial sense that you are suggesting.

MRS JONES: I am not suggesting anything; not that I would necessarily be against it.

Mr Rattenbury: We want it to make money. New South Wales prison industries do make money. I do not want to add a major additional cost. The intent would be to produce a surplus, yes, and that would offset other costs of the AMC. That is why we still have to do the work. There are obviously substantial benefits in terms of people not being bored, picking up skills and the sorts of things you have touched on—self esteem. I would be prepared to canvass a minor loss to put in that frame for the other benefits that would come. But we also need to be mindful of not undercutting local businesses. We in that sense cannot run a subsidised industry that would be unfair competition to the rest of the community.

MRS JONES: Remarkably right-wing concepts.

MR WALL: Minister, the annual report states that you and officials have been around Corrective Services in New South Wales and had a look at their prison industries. What have been the standouts there?

Mr Rattenbury: I was very impressed. We went to Long Bay jail. They have seven separate workshops there. They had an electrical repairs workshop.

MRS JONES: In which no-one does much.

Mr Rattenbury: I was particularly impressed by that one because—you may not know this, but when a toaster comes into Australia from China and it does not meet Australian standards, historically it would just go to landfill. What is instead happening is that it will be brought in there, repaired and be able to be put back on the market. Obviously it avoids landfill as well. They have a bakery; they have a kitchen. These are really practical skills where people can come out and get a job. They are the sorts of things that I was impressed by. They had a textiles workshop and printing; a range of different things.

MRS JONES: So we could see the brand “Jailhouse bread” on the shelves at some stage.

Mr Rattenbury: That would be great. I reckon it would sell very well. There would be a certain market niche for that.

MRS JONES: Canberrans like to try and be a part of the solution, I think.

Mr Rattenbury: Yes. I think it is a very positive area that I would like to make

progress on as quickly as we can.

THE CHAIR: Dr Bourke, your substantive question.

DR BOURKE: Turning to page 70, minister, it describes the efforts to control the passage of contraband such as illegal drugs in the prison. What do you think is a realistic and achievable target for controlling the movement of contraband into the prison?

Mr Rattenbury: That is an interesting question, Dr Bourke. I do not know how you define a target. Clearly the optimal outcome would be no contraband, but we are not aware of any jail that has achieved that. It is a bit of an arms race as well: as we improve things within the jail, people who are seeking to smuggle contraband in find more and more ways to bring it in. And some of the contraband is decreasing in size. Think about a range of electronic items: they are getting smaller and smaller and therefore easier to smuggle in.

DR BOURKE: Just speaking of electronic items, has mobile phone jamming technology got there yet, and when are you going to do it?

Mr Rattenbury: The Australian Communications and Media Authority has been undertaking a trial at Lithgow jail which I am pretty sure I have spoken to this committee about before. That work is continuing.

I recently received a letter from the executive manager of the Spectrum Management Policy Branch, inviting us to consider whether we would participate in an expanded trial beyond Lithgow. They did, however, set a number of parameters, which included that a correctional facility should be at least 500 metres from a major road and also one kilometre or more from the nearest transmitter site used to supply mobile phone networks.

I have written back to that officer from the commonwealth indicating that we would like to participate but that we breach the requirement for the distance from the road and also drawing to their attention the proximity of the emergency services centre, in particular, as well as having Hydro SouthCare helicopter, which is 1.1 kilometres outside the perimeter of the AMC. I have written back to them saying that we would like to participate but that the criteria present a problem and asking whether there is an opportunity to collaborate further to see if we can perhaps circumvent or re-examine those criteria to see if the AMC can be included.

DR BOURKE: Are there many prisons in Australia that meet those criteria?

Mr Rattenbury: ACMA presumably think so.

Mrs Mitcherson: There would be some in New South Wales.

DR BOURKE: More than 500 metres from a major road?

Mrs Mitcherson: There would be some.

Mr Rattenbury: Yes. For example, we were at the Northern Territory correctional facility, the new one. They have replaced Berrimah and built a new one outside. It is quite some distance from a major road.

MR WALL: Minister, are you able to table that correspondence for the committee?

Mr Rattenbury: Yes, I am happy to table that correspondence.

MR WALL: Both ways—the ACMA request and your response, if that is possible.

Mr Rattenbury: I will provide those to the committee later. I will just get a clean copy.

MR WALL: Yes, through the chair.

Mr Rattenbury: An on-notice approach.

MS PORTER: Minister, on page 88 it mentions increasing public awareness where ACT Corrective Services have held three separate public information sessions to support two correctional recruitment processes. What is the process used in raising public awareness and reducing the negative stereotypes about the role—perhaps they are negative stereotypes; I am not assuming they are—of corrections officers? Do you think that using these processes, which you are going to tell me about, is an efficient way to get people to attend these sessions?

Mrs Mitcherson: I think it is important that we are not quite as popular as the firies and the ambos. When I joined corrections 20 years ago it was really by accident. I did not go looking for it. People do not aspire to come and do our job. Having said that, I think I work with some of the finest public servants I know. While we hear about an assault, every day we have hundreds of assaults that do not happen because of empathy, compassion and good work.

We did a public campaign on the north side and the south side, an information night, so that people who may not have thought about applying for a job with us might come and get some information to see whether it might be useful. We also had a roundtable with a number of female staff and officers to try to get their views about how to encourage more women. For example, they said, “When you do the radio, you have a female voice and a male voice.” We took that on board. We also did things like put ads in gyms where women go during the day. Again, that came out of our roundtable.

We got 300 applicants last time round. Not everyone is going to get through, and it is pretty tough. A third of those applicants were women and a third of the current course going through now are women. We were pretty pleased with that. We also wanted to send a message that this is a really important role as a public servant and if you have not thought about it do not just think about what you might read in a *Canberra Times* or *Daily Telegraph* headline. Think beyond that because we want people who have good values, who are interested, who are committed public servants and have a good work ethic, who are also resilient—you need to be fairly resilient—and who want to work either in community corrections or custodial.

We also had officers at each of those nights from offender services, community corrections and custody to talk about the different areas where they work so people could get an idea of the areas where they might want to come and work with us. We think it was successful. We think we are becoming a pretty popular place to work, actually.

MS PORTER: Do you intend to continue these awareness sessions?

Mrs Mitcherson: We do a bit of a review after each recruitment campaign, but I think we will for a little while. I think people do not have a good view of what it means to be working in corrections. They get their information from headlines or titillating stories that do not always give a full picture or some programs on TV that are not really reflective of the important role we play in the community.

MS PORTER: Minister, do you think that this kind of awareness-raising exercise could be expanded to perhaps give some information to the public about the role of the AMC and those that work there and do an additional public relations exercise in relation to that at some future time?

Mr Rattenbury: We had a very good story earlier this year in the *Canberra Times*. I think the series was about people who work in challenging jobs or something like that. One of our senior female staff from the AMC was part of that story. That was a great example where she put her view of what it was like and probably dispelled a few myths in the process. We do seek out those opportunities from time to time. In the past 12 months we have had a detainee actually appear on the local *7.30 Report* before its demise. Again, I think that was about challenging some of the stereotypes. Those stories are not as easy to get as ones about contraband in the jail and the like, but we do make those efforts.

THE CHAIR: Minister, thank you for appearing before the committee today. A proof transcript will be sent to you in case there are corrections you wish to propose. The questions you have taken on notice—if you could provide answers to the committee within five working days? I thank you and your colleagues for coming along.

Appearances:

Sentence Administration Board
Delaney, Mr Grahame, Chair

THE CHAIR: We welcome Mr Delaney this afternoon. I take it that you are aware of the privilege statement that is before you.

Mr Delaney: Yes I am.

THE CHAIR: Would you like to make a brief opening statement?

Mr Delaney: Yes, just a brief one. I want to make a correction, if I could, to page 372 of the report. Towards the bottom left-hand column, the second last paragraph talks about the board making a total of 83 parole orders and conducting 140 parole hearings. Then it says:

The Board made 24 parole orders needing to proceed to a parole hearing.

That should read:

The Board made 24 parole orders without needing to proceed to a parole hearing.

THE CHAIR: Thank you. My first question relates to page 371. The report states that in 2014-15 the Sentence Administration Board considered 2,419 matters, of which 1,702 related to the management or breach of periodic detention orders, 717 related to release, management or breach of parole. Could you elaborate why such a large number related to the management or breach of periodic detention orders?

Mr Delaney: The reason for that is that there are two ways in which periodic detention is supervised. There is a management component and there is a breach component. Because of the way the act is worded, unless you gave a notice about each you could only deal with one, you could not deal with the second. In other words, if you got a report about breaches of periodic detention and you set up a hearing to look at those, if you thought that some of the management outcomes were better suited you could not look at them because you had to give further notice and you had to wait two weeks. There are those sorts of requirements in the act. Those figures represent both management and breach provisions. That is why there are so many.

THE CHAIR: What actions have been taken to ensure that periodic detention orders are not breached?

Mr Delaney: With regard to the supervision of detainees on periodic detention on weekends, the way in which breaches were dealt with was to get them to court as quickly as possible so that the person could be brought before the court and if it was thought that periodic detention was no longer suitable or the breach was so serious it warranted cancellation that could be done. It was really reacting as quickly as possible. That was the approach.

DR BOURKE: Has the increase in the detainee population at the AMC affected the

work of the Sentence Administration Board?

Mr Delaney: It has, particularly on the parole side because the periodic detention breaches are falling because there are fewer people going to periodic detention now. It finishes next year. In terms of parole, I could give you some figures which indicate the increase. If we go back to, say, 2011-2012 there were 82 parole hearings. In 2012-2013 there were 98. In 2013-2014 there were 164. In 2014-2015, the year under report, there were 140. Those parole hearings reflect the increase in the prisoner population coming towards their non-parole period.

The other thing to say about those figures is that, whereas previously people often got parole at the first appearance before the board, because of the recalcitrant nature, I suppose, of a number of offenders that is not happening as much. They will come before the board for the first hearing and then we will want to see some improvement in behaviour. For example, we will want to see them do a particular course relevant to their offence. It may be that it takes two or perhaps even three hearings before they are ultimately given parole. That partly explains the increase as well.

DR BOURKE: That explains why the number of cases in which parole has been refused has risen?

Mr Delaney: Yes.

DR BOURKE: We have heard previously about the proposal for an expanded community corrections system. What will that mean for the Sentence Administration Board?

Mr Delaney: It will mean more work but it is coming at an appropriate time, I suppose, because as periodic detention winds down, if breaches of the new intensive correction orders come to the board, they will in effect replace the periodic detention breaches. I am not sure just what the number is going to be. We will have to wait and see just how that all develops.

DR BOURKE: You mentioned the figures, 82, 98, 164 and 140. Is the decline from 164 to 140 significant or do you think it is a bit of an annual variation?

Mr Delaney: I think it is just a bit of an annual variation. I think it is starting to flatten out. I would expect it to stay at over 100 just because of the number of offenders in prison. I do not think it is particularly significant that it dropped from 164 to 140.

DR BOURKE: Finally, do you think the proposed expansion of restorative justice approaches to adults will affect your work?

Mr Delaney: It could. I have been to meetings about restorative justice but I have not yet seen details of the legislation that is proposed. It will depend, I suppose, on the detail.

THE CHAIR: Ms Porter, your substantive question.

MS PORTER: It will be interesting to see, going forward, what effect the second

phase has. On page 174, at the top of the right-hand column it talks about victims' issues and contact and in particular about the victim liaison officer's role supporting victims of offenders being considered for release on parole or licence. Can you explain how these written submissions mentioned here play a role in that and how they are viewed by your court?

Mr Delaney: I should say that I have now got some additional figures for the victims reporting. When this report went to print they were not available but they are available now. There were 259 victims contacted in the year under review; 29 became registered and we got 14 submissions from victims overall. One of the statutory criteria that the board has to look at is the statement from the victims.

MRS JONES: So there are a large number of people contacted and it seems to me a fairly small number of people who registered and then an either smaller number who submitted. Can you make any comments about it?

Mr Delaney: I can only speculate and I suppose people want to get on with their lives. If you are the subject of a robbery at home or that sort of thing, I guess some people do not particularly want to be reminded of it; others are very keen to have their voice heard, but, as you say, not a great percentage of the overall number.

MS PORTER: We may see change after the restorative justice second phase comes in, I suggest.

Mr Delaney: Yes. That could be the result.

THE CHAIR: Mrs Jones, your substantive question.

MRS JONES: With regard to the board sittings, noted on page 371, the board consists of a chair, deputy chair and six general members and they sat on 61 occasions in the reporting period. My understanding is that meetings were full board meetings. All liaison meetings were between the judicial members and the staff of the secretariat, as is the custom for other boards. I assume it would be appropriate for details of board attendance to be detailed in the annual report. Is it possible for that to be published or supplied?

Mr Delaney: Yes, we could do that. We could give that information on notice.

MRS JONES: Yes, and do you think that it should or could end up in the annual report, or is that something that you have not done before or are not keen on?

Mr Delaney: It is just something that we have not done; we have reported on the number of meetings and their time. I do not think there would be a difficulty with that.

THE CHAIR: Mr Hanson, your substantive question.

MR HANSON: There has obviously been an increase in the number of sentenced prisoners. You would have seen that. In your position you would have been observing the nature of the sentences and who the people are that are being sentenced. Do you have a view from the position that you are in if there has been a change in the nature

of sentencing that has led to the increase? Does this reflect an increase in crime, so that we have more people being arrested and sentenced, or is it a change in the way people are being sentenced, so people are more likely to receive a custodial sentence than they would have previously? Have you reflected on the reason for this increase?

Mr Delaney: My impression is that it is more the latter than the former. The tariff has increased to some extent and I think that is possibly a function of some reluctance previously to sentence ACT offenders to jail in New South Wales and separate them from their families—that sort of thing. But that is really just a conclusion I have reached without any particular evidence I guess.

MR HANSON: You have been involved in this for some time. How long have you been on the board?

Mr Delaney: Around five years.

MR HANSON: Would you say that that trend has plateaued or is it increasing?

Mr Delaney: I think it has plateaued and I think the people we see are really the hard core offenders in the main and I think that perhaps explains as well why sentences are somewhat greater than they were previously. Courts are seeing people who—

MR HANSON: They are more inclined to provide a custodial sentence?

Mr Delaney: Yes.

THE CHAIR: I defer my question to Mr Hanson for the last question of the afternoon.

MR HANSON: I am done, thank you, Mr Chair.

THE CHAIR: Mr Delaney, thank you very much for appearing before the committee. A proof transcript will be sent to you, in case there are corrections you wish to propose. I do not think you have taken any questions on notice, so you have no tasks ahead of you. But thank you very much for appearing today.

Appearances:

Legal Aid Commission

Boersig, Dr John, Chief Executive Officer

THE CHAIR: Good afternoon and thank you for joining us. Can I take it that you are aware of the privilege statement that is before you? You have read that on previous occasions?

Dr Boersig: Yes.

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

Dr Boersig: Only briefly, to say thank you for the opportunity to be here. It is always great to have the opportunity to talk about the work of the commission. We are very pleased with the progress that has been made, over the past 18 months in particular, and we think we are really turning the commission into a fine-focused organisation. In a difficult environment where finances are strapped—we have been hit by that the same as anyone else—I think you will see that our figures are showing that we are exceeding our targets. We are finding new and innovative ways to deliver services. I cannot think of a better example than the fact that we have moved from two outreach services to 12. We are currently about to speak to hospitals about being at Woden and Calvary hospital to be available for outreach services there. So there is a lot to talk positively about here—particularly, as I say, around how we are being an effective part of this community. I thank you for this opportunity.

THE CHAIR: My first question to you concerns the president's report on page 5, which states that the helpline advice service took 14,000 calls over the reporting period, up from the expected target of 9,000. What impact did the increase of 5,000 calls over target have on the commission's resources and its ability to provide professional services?

Dr Boersig: We were required to redirect resources internally, and we have done that in a couple of areas. One is in relation to helpline services; we have had to put more people on those lines and streamline our services so that more lawyers are available for the helpline. That has been something we have been able to do within our budget.

The service itself, we think, is showing dividends in the sense that we think that this service is giving access to a whole lot more people in Canberra who otherwise would not be getting some advice, but it is also cutting down the applications and allowing us to channel and refer people to appropriate areas. We have seen this particularly in relation to setting up some additional advice clinics. For example, we are now running a small business advice clinic where we target tradies, mum and dad investors and cafe owners who come in to get advice in relation to a whole range of matters. We are funnelling them in there. That is done in cooperation with the private profession and the University of Canberra.

We have also just started again moving work that we find in these areas into an employment clinic which we are running in consultation with a private firm who are

doing it pro bono with our lawyers. So we are finding ways of getting more done with less money.

The helpline is a real trigger for people and it is fantastic to see the growth in those numbers. They are up from 9,000 or fewer only a few years ago. That says that Canberrans really want some advice and assistance for these kinds of matters. If we assume that the legal aid environment really is, in the end, about helping people help themselves, it is these kinds of early intervention services which are going to be efficient and economical for the government to fund.

THE CHAIR: The helpline advice service—is it in house or do you have an outsourced component as well?

Dr Boersig: It is all in house. It is run by house lawyers.

THE CHAIR: And you have been able to cope with the increases, you say.

Dr Boersig: We have. We have redirected funds, as you will see in our budget line, to put on a few more staff, which has been good in Canberra over the past year as well—giving people some jobs. And we have been able to give those the opportunity without actually seeking more money from the government, so that has been a positive.

THE CHAIR: Finally, what is the average time allocated to each helpline advice service phone call that you receive?

Dr Boersig: Optimally, they are done within about six minutes. It can take longer. If it starts to take a bit longer, they are referred into our advice services and our walk-in service if it is a trickier or more complicated matter. If, as I said, it is a small business owner, we refer them to the advice clinics. They can come in and have half an hour of free assistance. Sometimes it can be very quick. I drop in and do 10 calls on the advice line from time to time just to get a feel of what people are saying. It is a whole range of matters from dividing fences to dog bites, annoying neighbours, nuisances and family and domestic violence issues. We are able to pick them up and refer them.

DR BOURKE: Is that a toll-free number?

Dr Boersig: It is.

THE CHAIR: Dr Bourke, your substantive question.

DR BOURKE: A couple of times you mentioned funding losses. Can you tell us more about how this arose?

Dr Boersig: The issues in relation to the funding losses relate to the Law Society's statutory interest account. We basically receive funds in four ways. One is from the commonwealth; one is from the territory; and then there is the Law Society through their statutory interest account where they provide legal aid funds for use by community legal centres and legal aid commissions. We also generate some income from client contributions.

The loss to us from the Law Society has been significant. It has moved from 1.4 million less than a year ago back to 9.6 hundred thousand dollars. That is probably the largest drop in legal aid funds in the history of legal aid in the ACT. I need to underline that I am not at all blaming the Law Society for this. This money is generated by and depends on the interest they earn in their statutory interest account and they need to distribute that money as best they can. I am not blaming them at all. But the reality is that that is a 30 per cent loss and we have had to find ways of coping with that.

DR BOURKE: So that was half a million dollars?

Dr Boersig: It is getting close to that. It is; yes, close to it.

DR BOURKE: Have you had to let people go?

Dr Boersig: No, we have not. In fact, we have regeared. We are regearing our staffing so that we have more junior employees. We have made some other savings around—

DR BOURKE: How do you have more junior employees without letting people go? Do you have something here that makes them younger?

Dr Boersig: I do. By natural attrition really. We changed our EBA to allow for a third category of lawyer; we only had two. The EBA was 100 agreed by our staff last year. That meant that when someone left at the top of the legal 2 level they could be replaced by 1½ to two people at the legal 1 level. So we have done that. In addition, we looked at our costing structures, where we were actually expending money, in particular around consultancies and in the corporate area; we did not renew some positions in that corporate area when people left. We are putting our money into front-line service delivery. In the past year, we have actually increased our FTE. Of those, six are lawyers.

DR BOURKE: As you shift your workforce mix, doesn't that affect the quality of your output?

Dr Boersig: The key to all that has been ensuring appropriate service levels. We have moved from a flat legal structure where we have one senior lawyer overseeing eight or nine other lawyers to teams of lawyers. So we have a senior lawyer overseeing two or three junior lawyers in a pyramid structure. And then they are overseen by the legal 3.

The key to this is to identify the nature of the work and ensure it is appropriate. For example, with duty work in the criminal court here in the ACT we can train lawyers at legal 1 level to do that kind of front-line service work in relation to bail applications; they can keep up with volume and standard in that way. Then we look to identify the more complex cases to be delivered by more senior lawyers. We are doing the same in family law.

The other way we have saved is by getting more matters done in family law through family dispute resolution. We have got a success rate there of about 72 to 75 per cent annually. What that means is that whenever a matter settles at that stage, it cuts our

costs downstream. We have moved from doing about 100 of those a year a few years ago to doing over 200. And 125 settled family law matters is a big saving both to the courts and to our external legal budget.

So it is basically by regearing and identifying. I suppose the best analogy is that we stepped back, had a look at the commission and said, “If you were a business, if you were running as a business, how would you expend your money in the most efficient ways?” We have set up a system for that.

DR BOURKE: Do you think there is any role for technology to assist you, for instance, looking at the online presence of government services through Access Canberra? Are there some models there that you can use to administer your services better and perhaps more cheaply?

Dr Boersig: There are. We have been talking about the use of smart forums, for example. It would be fantastic if people could apply for legal aid or come to Legal Aid and do that from wherever they were—whether it was in your office, at the local library or at Access Canberra. We have had an initial meeting with Access Canberra. We may not use smart forums, but we are going to be using electronic technology to help that. Access is crucial from that point of view, and IT is the future.

THE CHAIR: Ms Porter, your substantive question.

MS PORTER: You mentioned before the number of different types of matters that come before you. In particular you mentioned domestic violence. The violence seems to be increasing.

Dr Boersig: It is.

MS PORTER: You talked about how you could rejig the resources to meet these challenges in demand. Another one you mention on page 26 is matters to do with improving outreach services to Aboriginal and Torres Strait Islander and culturally and linguistically diverse communities. Are you working with community groups to support some of the culturally and linguistically diverse people that are coming through your service? How are you supporting your staff who hear the sometimes traumatic stories that people share.

Dr Boersig: We have used particular strategies to improve our services to the CAL communities as well as Aboriginals and Torres Strait Islanders. The commission’s public face needs to be an open door to everyone in Canberra. If you walked in now you would see “welcome” in about 10 different languages on our doors. You would see a lot more colour around the walls. We do not look like a dentist’s surgery anymore. We have a lot of colour going on. It is not a sterile looking place.

In the past year we have employed an African communities liaison officer who is a fellow from Zimbabwe. We have trialled that. We have just advertised for a Muslim communities liaison officer. We may employ two. We have had great success with our Aboriginal and Torres Strait Islander liaison officers. We are looking to break down those barriers and make ourselves an open and welcome place.

The other aspect of your question relates to the support of our staff. We have a counselling program. It also relates to what I said before. We need better supervision and better systems of supervision. A flat structure was not allowing us to provide the best supervision for our lawyers and our front-line staff.

Putting in teams of people—and this is the trend in the commercial world—the favourite phrase used by most businesses now is “pods of people”. I cannot quite come at the pods. I like “teams” a bit better. They are a group of people who work together and are familiar with each other’s matters and have, we would argue, a personal support for each other, which is crucial when you are dealing with clients who generally have a range of disabilities from mental illness through to other disability.

MS PORTER: Do people within the teams rotate so that someone who has been working in a particularly stressful area for a while can move to another team? Do they have an opportunity to rotate to a team that may not have to deal with stress on a daily basis?

Dr Boersig: Over the past 18 months we have introduced a system that says, “You’re employed by the commission. You aren’t employed just to be a criminal lawyer. You need to be able to move around and work in different areas. We will support and train you to do that.” Particularly now with the junior lawyers we are making sure that we move them on a regular basis. That has been very well received, particularly by generations Y and X who like to move around a lot in any case.

We are trying to encourage some of the more senior lawyers to do the same thing. If they have been doing crime for 10 or 15 years or family law for 10 or 15 years, let us have a think about moving them. That requires a lot of cultural change. As you probably know, lawyers like to be familiar with what they do every day. They are very comfortable with that. Introducing this kind of culture takes time but I have got a great deputy and executive team who are right behind all that.

For the very reasons you have said, people need to identify when they are starting to get burnt out, when they are starting to be stressed. Our HR officer has got an EPA system. Employees are adequately counselled very quickly if that is required.

MRS JONES: I go to the services that you provide particularly for women. I give a little background. The Victims of Crime Commissioner said that women who are dealing with this matter want one advocate that they can tell their story to once. Obviously there are a lot of silos there. What are you doing already in this space and have you noticed an uptake of people approaching you? How has that affected your performance? On the other hand, I am interested in your views on systemic change in order to break down those silos. I know there was some initial work done by the government. That is quite laudable.

Dr Boersig: We have increased our workload by over 29 per cent in relation to domestic violence. The statistics are on page 37. You will see we have had to resource additional lawyers. We are now running basically a full-time domestic violence advocacy service in the courts every day. On Tuesdays, which is a particularly heavy

day, we have three lawyers there. I could not agree more that we need to be holistic in the way these are dealt with. What has been happening for us is that, on a jurisdictional basis, we are addressing the silos between us and, say, the Women's Legal Centre—

MRS JONES: Yes, because they are doing some similar things.

Dr Boersig: They are doing something similar; they do not do a lot of advocacy in court, and there was already referral. But we are looking at joint training sessions, for example, with them.

MRS JONES: Will they be putting a new person on as well?

Dr Boersig: They are. In the new court structure we are looking to collocate with the DVCS, the domestic violence service here. So we will actually be running our advocacy service in the same place and at the same entrance as the Victim Support service.

Again, in particular over the past year, our role in working with other service providers, including non-legal, has been renewed. The kinds of assistance required here are obviously legal advice, but it is often in relation to housing and tenancy matters. The context is that we are starting to work much more explicitly with domestic violence shelters and other non-government services, and see that as part of our role. The commission in the past has been a bit overly legal and a bit siloed about, "Here's your legal problem and we'll help you with that." We are changing that. We are looking at clients more holistically. And that has been required by government. Referral is key.

MRS JONES: And possibly dovetailing with other things that are out there as well?

Dr Boersig: Absolutely. There are probably in Canberra 100 to 150 families who provide the bulk of the work for a whole range of services around Canberra. That is a bit of an over-simplification, but there is a cohort of people—

MRS JONES: But you know who they are because you are there all the time—

Dr Boersig: If they have a criminal problem, there is a housing problem, there is a family law background problem, there is a domestic violence problem and there is a health problem. So part of our idea in doing outreach is to try to link all of that up. We have formed partnerships with the Migrant and Refugee Resettlement Services. We have formed a partnership with Communities@Work. So we are providing services in their offices, to better link between them and us.

MRS JONES: Right, so those people are then getting the whole gamut.

Dr Boersig: The whole gamut. So when they come in, they have a range of problems, and we are part of the solution. We are looking at ways in which we can do that. Access Canberra, which you raised before, is one of those possibilities; we might start using some of their facilities to run some outreach. People make better decisions if they get good advice.

MRS JONES: And early advice.

Dr Boersig: Early advice.

MRS JONES: I know, for example, that the government has changed some of the delivery of advice to women and it is delivered in the health centres out on the periphery of the city. I do not know if you have ever considered that as part of the outreach.

Dr Boersig: We have. I will send you a list of our current outreach services, so that you know where they are. As I say, we want to talk with the hospitals because they have a major intake of people who are in distress and have associated problems.

MRS JONES: I know there is a fair amount of mandatory reporting going on, for example, out of emergency. I think that is happening quite a lot. The question then is: with mandatory reporting, people are not given a brochure at the time. They are not given a handout or a flyer; the report is just made and they are made aware that the report has been made. The person that the report is being made about in mandatory reporting is left feeling disempowered because a report has been made about them but there is not so much info there. There should be a list of service providers at that point. Often I think the outcome is that they are going to get a phone call from a government agency, but right at that point of contact, when they are in their most vulnerable health and emotional state, I do not think it is being delivered as well as it could be.

Dr Boersig: We are trying to develop a move similar to having health checks for people, which you will be familiar with; we tick a whole lot of boxes about someone's social health as well as their physical and mental wellbeing. We think a legal health check box is the kind of approach that we might want to have taken there.

MRS JONES: Can you just explain that briefly?

Dr Boersig: It is a bit like this: if someone comes and sees us about a criminal matter, what are the associated matters that preceded that? Debt recovery, tenancy and housing. Are we addressing all of the issues that are linking in to that which mean that they have a criminal or a mental health problem? We provide the duty advice; we are the only service in relation to mental health and guardianship here in the ACT. They are classic examples of people who come along with a bundle of problems. The legal problem is just one of a whole range of social issues that include housing, friendships et cetera.

DR BOURKE: You are actually articulating the government's strengthening families program.

Dr Boersig: Yes, and we have had discussions about that. I suppose the only thing I would add about that is that the commission is an independent statutory organisation and we need to make decisions about clients in their best legal interests. But we see ourselves, at least now, as part of an overall justice policy that the government needs to deliver. So we need to watch what government wants to achieve and see how we can support that.

The work that we do in the criminal courts is crucial and important, but people generally often just think about legal aid and think criminal representation. That is about 30 per cent of my work; 70 per cent of my work is about victims and about advice and a whole range of civil issues. We have to expand that to make people understand that it is available. When someone comes to your electorate office I want you to know that you can refer them to us to get assistance then and there.

MRS JONES: Just to correct you, we are not fortunate enough to have electorate offices. We stand in shopping centres—just to make the point—every Friday.

Dr Boersig: You know what I mean.

MRS JONES: I agree with you, exactly.

Dr Boersig: People come to a whole range of people, whether it is politicians or doctors, for help and assistance. They need to know you can contact us, and we make it easy for you to do that.

MRS JONES: If there is a turning around of the focus from the government pushing out to one contact with one person—and we have seen some changes in this area where that person is basically asked what it is that they need, we work it all out and then push back the other way—that makes life easier for us as well because then we can give out one number or two numbers and people can start a process.

Dr Boersig: And we need to be able to answer when they call that number. People are ringing: 14,000 calls, which is a lot for the ACT. I can tell you that it is a whole range of issues that they want some advice about.

MRS JONES: Thank you very much.

THE CHAIR: Mr Hanson, your substantive question.

MR HANSON: In terms of your balance of work between victims and perpetrators, so to speak, people who are accused as opposed to people who are there as a victim of crime, what is that balance? I know there are other things you do as well, but if you were to say that this matter is resourced to this group and this matter to this group, what is that in percentages?

Dr Boersig: As I indicated, we run an increasingly busy and active domestic violence unit, which primarily assists victims. We also provide advice to respondents. In relation to criminal matters linked to family violence, on the other side of our information barrier they are represented in the family violence list, which is at the court, by our duty lawyers.

MR HANSON: I appreciate that, but I am trying to get a sense of what that balance is. Is it a significantly greater amount of work that you are doing for people who are accused or people who are victims, so defendants versus witnesses? What is the balance?

Dr Boersig: I will have to think about that.

MR HANSON: If you do not know that now, you can take it on notice. I am just trying to get a sense of what that balance is.

Dr Boersig: I will take it on notice as to the actual numbers. Historically, we have done a lot more work for perpetrators and representation in the criminal courts. Over the past 18 months we have really grown that domestic violence service to provide a lot more representation. That was partly due to the way we are able to restructure our services. That is increasing. I do not know the exact proportion, but I will find that out.

MR HANSON: Yes, just a sense of it. It might be difficult to get an exact 42 per cent versus 38 per cent or something. But in broad terms is it 50:50; is it two to one? Is it that sort of balance?

MRS JONES: Just as a supplementary: do you find that you are representing both people in a partnership—

Dr Boersig: We do not ever represent as against each other. The civil domestic violence—

MRS JONES: or are you being approached by both parties?

Dr Boersig: Yes, often. In Canberra it is common—

MRS JONES: There is only one legal aid in the city.

Dr Boersig: There is only one legal aid. We have to manage, through information barriers and our conflict policy and our relationship with the private profession, what we can handle and what we have to refer out. We would never have a situation where I had one legal aid lawyer on one side of the information barrier against another one. That does not happen.

MS PORTER: To clarify what you have just said: is it not true that when a person is referred they also get some assistance because they cannot—

Dr Boersig: They do.

MS PORTER: So they are not left having to pay some large legal fees.

Dr Boersig: No. If they are going to be eligible for legal aid, either way they will receive it. It is just that we have started to really build up that work and I am just not clear on the actual percentages as against each other. We are doing much more domestic violence work, which the stats are showing me, than we were in the past. We just do not disaggregate the family violence stats in here, which is the other side of the coin. I think we can. I can get back to you.

MR HANSON: It is interesting. It seems to be evolving.

Dr Boersig: It does, yes.

THE CHAIR: Dr Boersig, we thank you very much for appearing before the committee. A proof transcript will be sent to you in case there are corrections that you wish to make. Of course, any questions you have taken on notice, if you could please respond to the committee within five working days?

Dr Boersig: Of course.

THE CHAIR: This is the final public hearing of the committee's inquiry into the annual reports for 2014-15. I now adjourn the hearing.

The committee adjourned at 12.59 pm.