



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**STANDING COMMITTEE ON JUSTICE  
AND COMMUNITY SAFETY**

(Reference: [Inquiry into ACT Budget 2021-22](#))

**Members:**

**MR J HANSON (Chair)**  
**DR M PATERSON (Deputy Chair)**  
**MS J CLAY**

**PROOF TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**MONDAY, 18 OCTOBER 2021**

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**Secretary to the committee:**  
**Ms B McGill (Ph: 620 70524)**

**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 12.59 pm.**

Appearances:

ACT Electoral Commission

Cantwell, Mr Damian, ACT Electoral Commissioner

**THE CHAIR:** Welcome to the second of what will be six public hearings of the Standing Committee on Justice and Community Safety inquiring into the ACT budget for 2021-22. Today we are speaking to ministers and statutory office holders about expenditure proposals and revenue estimates for the JACS section of the budget.

This afternoon we are hearing from the Electoral Commission; the Special Minister of State; the Integrity Commission, with the Integrity Commissioner himself; and the Public Trustee and Guardian.

These proceedings are being recorded for Hansard and are being broadcast and webstreamed. We are not taking opening statements today. Commissioner, can you confirm that you have read the privilege statement?

**Mr Cantwell:** I have, yes.

**THE CHAIR:** We do not have very long so we are probably only going to get one question each if we are lucky. I will start off by asking whether there are any particular issues that you are concerned about in the budget in terms of gaps in being able to provide your service. Are there things where you think there is a shortfall where resources will need to be made up down the track?

**Mr Cantwell:** I am comfortable with the budget as stated and provided. I note that the appropriation provided for control of recurrent payments for the Electoral Commission for the process of implementing the legislative amendments, as per the amendment act of 2020, provide for such funding until the period 2022-23 inclusive. From 2023-24 onwards, currently there is no provisioning for the enactment of those legislative amendments. I understand the reasoning for that to be that there needs to be a two-year period from such funding becoming available for us to enact it in the commission and seeing how we can implement that with that funding which is provided. That funding provides for both an external vendor, which we are in the process of finalising arrangements for at the moment, and an additional FTE member.

I just draw to the committee's attention that from 2023-24 onwards, on the presumption that such legislation will continue to be in place, that will require either continuation of such funding at a level to be determined or for that funding to be rolled into our baseline provisioning. That is just a point about the practice of implementation.

The other point I would highlight is that the funding which is provided for new permanent accommodation—which is well on the way to being designed and having construction start in detail—only kicks in from the period 2022-23 onwards. If we occupy that, which at this stage is intended to be early next year, we have not yet received provisioning for which we pay the lease. We are continuing to monitor those

things carefully. We will continue engagements with Treasury, and if we have any issues along those lines, we will take that through the normal processes.

Otherwise, the funding provides the commissioner with the means by which we continue our core mission in providing elections. In particular, the planning theme I have directed for the 2024 election is to continue to build trust in the integrity of elections through transparency and security. That is why we are prioritising the resources provided to the commission to ensure that we continue to reassure all stakeholders in the community that the electoral results are of the highest integrity.

**MR CAIN:** You have \$643,000 allocated for uplifting the functionality, security and reliability of IT in the budget. What will you be doing? I note that in past financial years there seems to have been a significant underspend on such capital projects. Could you discuss that briefly; and does the failure to deliver undermine your IT security?

**Mr Cantwell:** I would not categorise it as a failure to deliver. Rather, we have been able to commit the funds provided within the COVID-impacted supply lines to the prioritised improvements and enhancements to our electoral voting systems for the 2020 election. Where we have not been able to provide or apply those funds against that approved outcome, we have taken steps to roll that funding forward and to continue the program of improvements to our electoral systems.

The thrust of your question really is: how are we using those? Essentially, as I have said, we are using them to further the aim of continually modernising and improving our systems to ensure that we can continue to deliver the trusted electoral outcomes you would expect of us.

**MR CAIN:** Have there been any breaches of your IT security?

**Mr Cantwell:** No; in the 2020 election there has been no evidence of any breach, as such, of the integrity of our system. In fact, the processes worked as we had intended in terms of a program of governance, detection and response as appropriate. We work very closely, in a cybersecurity sense, with our cybersecurity partners at the Australian Cyber Security Centre and with the ACT ICT Shared Services team, now known as DTS.

We have worked at mastering the resources of the federal agencies, coordinated through a taskforce known as the Electoral Integrity Assurance Taskforce, to look at the range of threats within the cyber environment, reflective of the growing threats more broadly in the electoral environment, both here and overseas. We did a series of technical tests on top of that, which we would normally do by way of working with our vendors, to test and certify the integrity of the EVACS system. For 2020, that also included the overseas electronic voting option for a number of voters who were overseas.

We did a series of rehearsals and activities beforehand to test our procedures, should any such breach occur. As reported previously to the inquiry, and as is outlined in our election report, thankfully, no such breaches or attempts occurred. But I would offer that we cannot be comfortable in this space; we must always guard against continuing

challenges which are evident in this area. That is where we are going to focus the portion of the money which has already been allocated, continuing to use it for that outcome, as well as using funding in the future to ensure that we continue with our core mission.

**DR PATERSON:** My question is on the Aboriginal and Torres Strait Islander Elected Body election that has just been held. Can you speak to the process for attracting representatives across the ACT Aboriginal and Torres Strait Islander communities to nominate and talk about how the election went, including voter turnout and those types of issues?

**Mr Cantwell:** We are greatly honoured to continue our engagement with ATSIEB and associated stakeholders in this space; I hold it to be a very important role. We continue to work closely with ATSIEB and persons within the body to make sure that we can provide the electoral service that we would all wish to be provided for that outcome.

I think you referred to the relatively reduced number of electors who took part in this election, noting that such voting is not compulsory. I think it is a question also for the body—again, it is their business—to do all they can to reach out to those who are eligible to vote in the election and to engage the community. As for every other organisation, there are many challenges in that space, particularly in the COVID pandemic, in being able to connect with and reach those electors.

We provided the service as we were able to and contracted to do, and I think that worked well. Wherever we can, we will continue to improve our services, not just for ATSIEB but for the Assembly and any other fee-for-service organisations.

There are some challenges in this space. It is not unlike the federal picture. In particular, the NT, South Australia and WA are sometimes challenged in trying to engage some members of the Aboriginal and Torres Strait Islander communities. It is a mission that we take on with great pride, and we will continue to do all that we can in that space.

**MS CLAY:** Mr Cantwell, this committee made a number of recommendations for reform in elections. We recommended that roadside advertising be banned; we recommended a \$10,000 cap on political donations; and we recommended that gambling donations be banned. There is quite a lot of change coming. I am wondering whether you have been able to provide expert input to the government in those consultations and whether you feel you are adequately resourced to provide input and then subsequently implement those.

**Mr Cantwell:** I would offer up-front that it has only been, I think, five weeks since we had a change of chairperson and I have yet to have the opportunity to engage personally and directly with the new chairperson on the inquiry report and our draft response, which is in a good draft form. I am reluctant to speak on behalf of the full commission in areas where there is particular detail, although I know that is not where you are looking.

I feel that I am adequately resourced, but at the point of engaging with the Assembly,

MLAs, staff and those who draft the legislation, it is an area where collectively we can all improve. I have made such commentary in our report on the 2020 election. I would like to see a more proactive and early engagement with all who are involved in drafting and furthering legislation to improve our electoral outcomes here in the ACT and to protect and strengthen our democratic processes.

I think I can do better—I think all stakeholders can do better in this space—to reach out early, proactively, and always make ourselves, as a commission, available. Rohan Spence carries 20-plus years of electoral experience. I have noticed in the time that I have been commissioner that there have been a number of new challenges relating to legislation, relating to some new initiatives on behalf of members in the Assembly. That is great. We need to continue to further that outcome.

I would like to continue to offer up the services of the commissioner, the staff and, in particular, Ro Spence and some of our staff who have deep experience in these areas, to help frame legislation, to help draft proposals before they are tabled in the Assembly, so that we can get ahead and provide the advice that you would expect of us. It is one of our statutory requirements and roles, and I want to continue to improve in that area.

If I can take that point further, one of the inquiry recommendations related to the provision of the source code for our electronic and voting systems, and accounting systems—for that code to be available six months ahead of the next Assembly election. Without pre-empting the commission's formal response, my intention is to support such a recommendation—indeed, to try to exceed it, to try to make that code available at least six months ahead of the next Assembly election.

In doing so, though, I will flag that that is on the premise that the Assembly does not introduce new legislation or amendments to the act within a period of about 12 months ahead of the election, so that the commission continues to be provided with the opportunity to do the series of tests, certifications and re-tests of the code if coding change is necessary as a result of such changes.

Of course, we were all bound by the pandemic conditions of 2020. The government acted as best they could to provision for the commission to deliver the election under the COVID conditions. It did result in some quite late changes in a legislative sense, and those changes required some late coding variations which had to go through the process of certification and testing again as we attempted to roll them out.

We can avoid such pressure, and therefore have the code delivered for public scrutiny, as recommended by the inquiry report, if such Assembly deliberations or amendments to such Electoral Act provisions are avoided in the last 12 months. Of course, it is the Assembly's prerogative and the government's prerogative to do what you do by way of your Assembly business and make legislation, but I wish to point out the risks attendant to doing such actions in the 12 months leading up to the election. I hope that I have answered your question.

**MS CLAY:** Yes, thank you.

**MR BRADDOCK:** My question relates to truth in political advertising, which

Ms Clay mentioned earlier. How has the commission gone in terms of implementing that? I noticed you have a resource to help do that, but it stops after two years. I would like to know how the implementation of that is going to work.

**Mr Cantwell:** It is one of the new legislative amendments on which we have worked hard—noting that it has been in full effect from 1 July this year. We have published a number of guides or frequently asked question sheets on our website which outline the process and covers both misleading electoral advertising and also the legislation around a ban on donations by prohibited donors.

I would refer any committee member who wishes to find out more about the particular actions we take in each of those areas to our website, where they can find that information. I am as well positioned as I can hope to be, with the resources and time constraints afforded to me, noting that these things were brought in late last year in a transitional sense and have been in full effect from 1 July.

The process is established. I am comfortable with the resources we have, and we have now established the processes in consultation with our colleagues in South Australia and elsewhere who have had like legislation in place for a while. We have taken a risk-based approach to the actions we need to take in this sense, and I am as well disposed as I can be to enact that as I will be required to from the time that it has been law.

Of course, we will continue to look at this and refine it. By way of inquiry report, response or other means, if we think it is appropriate, we will come back to government and to the Assembly with recommendations as to how they might be refined in the future.

**MR DAVIS:** In June, the Assembly unanimously passed a motion which, among other things, asked the government to consider strengthening support to Elections ACT and the Legislative Assembly education officers to support teachers to offer increased civics and democracy education. Have you received a strengthening of your resources in this budget? More broadly, what would Elections ACT need, in your opinion, to increase access to those educational programs?

**Mr Cantwell:** That is an interesting topic. I would not wish to delve into matters that I am not necessarily responsible for directly, but I do think that our broader community is well served through such an initiative insofar as it meets the commission's vision of an ACT community actively engaged in a trusted, inclusive democracy.

I do not necessarily have additional funds provided in the budget under consideration to further my actions in community engagement and educational programs. I have a small team who do that—a small but very capable and well experienced team who enact the initiatives and actions in the community engagement strategy.

We are going to continue to develop and improve that. This morning I was talking to my team about this very matter—how we can improve our actions to deliver such programs remotely, perhaps more frequently and in smaller pieces. Maybe we could take advantage of some modern or more contemporary social media channels through



which we can engage our community engagement plans. In principle, I support the broader initiatives to further civics education and the like, and a general awareness across our community.

In an electoral sense, we see that there is a strong interest in such programs. We have been able to deliver mock elections, for example, to schools and small community groups. When an elector becomes eligible to vote, they take part in our democratic processes—and good on them for doing that. I think that both here in the ACT, to some extent, and more broadly across Australia in other jurisdictions, the experience is that sometimes life gets in the way of other things and the attention to that right—indeed, requirement—to vote sometimes drops off after the first couple of experiences of taking part in elections. If we can get a firm base of understanding, a sense of personal engagement in our democratic processes in this country, it can only bode well for all of us for the future.

**MR DAVIS:** Mr Cantwell, there is an ongoing conversation in the community about the potential for lowering the voting age to 16. Putting aside the politics of that issue, were the Assembly to resolve to lower the voting age to 16, what kind of additional resources do you think Elections ACT might need to ensure that that age group is adequately prepared to take up the vote?

**Mr Cantwell:** The commission has submitted formal reports to the Assembly on this. In the first instance, I would refer such inquiries to a review of that submission. The official position of the commission is that the commission does not support lowering the voting age. I note that the inquiry report recommended that it not be lowered. I also note that we have a meeting early next month. Again, I am happy to engage on and discuss this very matter.

I will not offer a position about what additional resources might be required to support such an outcome, principally because I am opposed to such an outcome in the first instance. That does not mean that we should not talk about it, and I am looking forward to those discussions in due course, but there are very valid reasons we think that the commission's position is sound. We have tabled those previously and I would ask any person who is interested to look at that report. It is available on the website.

**MR CAIN:** Commissioner, there is an organisational review of Elections ACT. Firstly, will the terms of reference be made public?

**Mr Cantwell:** I have not considered it. I am not sure that I would have any issue with doing so. The point of such a review is to ensure that the commission is, in essence, structured for future success or continued success.

**MR CAIN:** Commissioner, are you happy to take the answer to that question on notice?

**Mr Cantwell:** I am happy to respond to it in more detail, yes, and take it on notice.

**MR CAIN:** Thank you. I have a supplementary, Chair. Another priority appears to be the modernisation of electoral services. What does that mean?

**Mr Cantwell:** It is somewhat akin to what I spoke on earlier. Our community engagement programs could be modernised to see how we could deliver such programs to schools and community groups remotely in small, short, contemporary bursts. They might take the form of short videos or podcasts which speak to some issues that would encourage awareness of electoral legislative changes—I know it is exciting stuff—and also deal with where or how things might matter to the elector. In that sense, it is incumbent upon me to try to see how we can improve our services more broadly.

Also, it speaks to the issue of continuing to modernise the systems that we present to the electorate on the Assembly election. We did a lot of work leading up to the 2020 election to update and modernise the electronic voting screens which were presented to each voter at each of the voting booths. The majority of voters took up the opportunity to vote early and electronically in 2020—because of the conditions, but also because of the opportunity to do so. We will continue to set higher benchmarks and see whether we can continue to meet or exceed those.

Across the board, I am going to engage with my team—it is going to be part of that organisational review of Elections ACT—to see where we can improve, particularly in the areas of strengthening our cybersecurity systems and our information and community engagement processes, making sure that we have the wherewithal: the right team, the right skill sets. Also, we have to continue to see how we can best enact the legislation that is now in place, as I said earlier on, around prohibited donors, misleading advertising and continuous reporting. Those are things which may, with a bit of testing and adjustment if needs be, need us to come back and look for additional resources and new legislation.

**MR CAIN:** Regarding the modernisation and the review, do you feel that you have adequate funding for these programs?

**Mr Cantwell:** At the moment, yes. You ask me if I have adequate funding. I am always going to come back to you with a reservation, something like “where the opportunity emerges” or “where the need arises to continue to enhance our electoral integrity, particularly as it relates to cybersecurity and to enact the legislation as it now exists and will exist in the future”. I always reserve to, through the budgetary process, seek additional resources from government to carry out those actions.

Right now, I am okay, but these things are always based upon a risk assessment process. The cyber environment in particular is ever changing. The threats are very real. The fact that we are a small commission, a small jurisdiction, does not mean that we are immune to such threats. Where one jurisdiction might be seen to be vulnerable to cyber threat, all jurisdictions in Australia would equally be challenged.

If I can put it another way, if I was given more resources, I would put those resources towards addressing those increasing risks to our electoral integrity. That is where I have emphasised the leading theme for my team: to build trust in the integrity of elections through transparency and security and answer those issues ahead of them becoming a real problem for the commission or the outcome that we seek to provide.

**THE CHAIR:** You have a statutory process in terms of redistribution. It has time

frames. You have to write to the Bureau of Statistics and do a draft redistribution and so on. There is always a desire, I think, from the Assembly to see that process done at the earliest opportunity within those statutory time frames rather than doing it towards the end. Then everyone knows what is happening in terms of redistribution. Can you confirm that you are going to aim for the earliest opportunity rather than pushing it towards the latter stages of those time frames?

**Mr Cantwell:** Yes. The redistribution process itself kicks off by way of legislation in October next year. It will kick off as it is currently legislated unless something is changed between now and then. We will go through that process. We will do the redistribution actions; then there is an augmented commission action which needs to consider each of those processes.

Yes, Chair, you are absolutely right. We will continue to do that, within legislation, and get that done as quickly as we can, giving all due and proper consideration to legislation and giving the opportunity for anyone who wants to have a say in this matter to be able to do so. We will give it proper consideration and make a duly considered response.

**MS CLAY:** One of the other reforms that was recently already implemented is truth in political advertising. We are a little way off needing to use that for one of our ACT elections, but have you got your procedures and implementation on track to be able to enforce that properly?

**Mr Cantwell:** Yes. As I indicated before, we have the frequently asked questions addressing that and the other new legislation we have previously done is available on our website. We have had to have that in place from 1 July, when it became full law. The process is outlined there. I consulted with South Australia and other jurisdictions with like legislation for misleading electoral advertising.

It is not without its challenges, but it is, again, risk assessment procedure based. It relies upon a complaint being raised and the complaint being substantiated. The core issue there is that it is an electoral matter. It has to be in a statement purporting to be fact and it has to be inaccurate or misleading to a material extent. We have taken legal advice and we have war gamed this along the way, but we now have what I think is a good process in place within the resources and the time that have been made available. We will get on with it and we will make it happen.

**THE CHAIR:** Thank you very much for attending today. There was a quasi-question taken on notice on the terms of reference for your internal review. If you can provide that information to the committee, it will be appreciated.

Once again, and we said this when we were doing the inquiry on the election, well done on the work you did during the pandemic to deliver a very well run election, if not a great result.

**Mr Cantwell:** Thank you very much.

**Short suspension.**

Appearances:

Steel, Mr Chris, Minister for Skills, Minister for Transport and City Services and Special Minister of State

Justice and Community Safety Directorate

Glenn, Mr Richard, Director-General

Ng, Mr Daniel, Acting Executive Group Manager, Legislation, Policy and Programs

**THE CHAIR:** I welcome the minister and directorate staff. First, we need to make sure that you are all aware of the privilege statement.

**Mr Steel:** Yes.

**THE CHAIR:** We are being webstreamed and recorded for Hansard. There are no opening statements. I have promised Dr Paterson the first question.

**DR PATERSON:** Minister, my question is in relation to the MOU with the Canberra Racing Club. How much does that cost, and what does the ACT government or the community get in return?

**Mr Steel:** We are currently discussing the next MOU with the racing industry here in the ACT. It is an important mechanism to provide obligations to the racing industry, particularly around issues around animal welfare.

That funding contribution allows us to talk to the industry, and there are obligations in the MOU around standards for animal welfare. That has been a very productive conversation. The amount that has been provided is \$7.5 million per annum until 30 June 2022, when the current MOU expires. We are in discussion with the industry about what the next MOU may provide. I am happy to hand over to Richard Glenn to provide some further information.

**Mr Glenn:** The value of the MOU is \$7.5 million a year for both the Canberra Racing Club and the Canberra Harness Racing Club. The Canberra Racing Club's share of that is about \$6.5 million, about 85 per cent. In terms of some of the work that is ongoing around the MOU and the measures we receive by being able to negotiate, I might pass to Mr Ng.

**Mr Ng:** The MOU provides a useful tool to engage with the industry in relation to animal welfare responsibilities. It does not purport to take over the regulatory responsibilities of the existing regulatory frameworks, but it provides a common set of understandings about the respective responsibilities of each of the parties to the agreement.

As the minister has identified, some of the responsibilities of the racing clubs under ACT legislation relate to animal welfare. Our colleagues in the Transport Canberra and City Services Directorate continue to do the regulatory work that they do in relation to enforcing animal welfare standards under the Animal Welfare Act; but

there is a range of other obligations which clubs acknowledge they must comply with as part of their standard operations. These include responsibilities under the Liquor Act for the responsible sale of liquor and the like.

I should add that I think the racing clubs would reflect that they take their animal welfare responsibilities incredibly seriously. I know that when the *Four Corners* report came out and there was quite a lot of public and media attention in relation to welfare responsibilities, the Canberra Racing Club reached out to us proactively and very quickly after the report to indicate their position in relation to the allegations that were going around in relation to the animal welfare of racehorses in other jurisdictions. I hope that answers your question, Dr Paterson.

**DR PATERSON:** Yes. I have a quick supplementary. How does the MOU support close engagement between the Canberra racing industry and the government around these animal welfare issues?

**Mr Ng:** We have a standing group to continue that engagement on a range of issues, including animal welfare. We have a joint racing industry and government committee, which a senior official from JACS sits on, as does the head of the various racing clubs. We invite and welcome regular engagement with the clubs. As I mentioned previously, where these significant issues of concern arise one way or the other, we invite more informal and bespoke engagements with the heads of the clubs as well.

The MOU provides a formalised pathway for engagement with the racing clubs, but we welcome bespoke and regular engagement with the club in any event.

**DR PATERSON:** Thank you.

**MS CLAY:** I understand that the local industry has just done its own review of welfare standards here. We also have legislation stating that animals are sentient beings here. How have you reviewed the MOU and the regulatory environment in the light of those two things, and is the review that has been conducted by the industry a public document now?

**Mr Steel:** I understand that they have presented the report from that review, and that will no doubt inform the discussions in relation to the development of the MOU. Once the animal welfare amendment bill was passed, I wrote to the animal welfare advisory committee and met with them, asking them to update the codes of practice that apply across a range of animal management practices. They are going through each of the codes of practice to update them based on the new objectives under the Animal Welfare Act and further provisions that were provided as part of that amendment. That work is ongoing. It is a massive program of work to go through. It also includes the codes of practice that relate to the management of horses.

That is the regulatory side, but there is a further piece of work to be done, particularly around what further things we can include in the next MOU—KPIs, for example, around animal welfare and so forth that go beyond what is in the regulatory standards. That is what the mechanism of the MOU enables us to do.

**MS CLAY:** In the budget we have \$30 million for output class 1.1 under policy

advice and justice programs and we have a \$3 million increase in some of the JACS budget. Can you let me know which bits of these fall under your responsibility as Special Minister for State and what that money is for?

**Mr Steel:** I think the measure that relates to my portfolio is in relation to freedom of information. Richard Glenn may be able to outline in further detail what is being provided; but basically, further funding was required to resource the processing of freedom of information requests that come from a variety of different sources—the media, politicians and individuals across a range of ACT government directorates.

This has come after quite substantial reform of the FOI Act in the past, and we are still adjusting the resources required to be able to process the applications in a timely way. That is why there is a budget measure which has provided some extra resourcing to be able to do this, particularly in areas where the applications require a more significant and rigorous level of resourcing—areas like the Community Services Directorate, for example, where people are requesting personal information.

**DR PATERSON:** So the \$3 million is for FOI application processing?

**Mr Steel:** Yes. The specific budget measure was around FOI in this portfolio, but I think you are referring to a much broader set of measures. Richard, do you want to add anything?

**Mr Glenn:** The measure the minister is speaking about is \$3.586 million over two years, which will help sustain a number of staff that have been brought in to assist with FOI processing and compliance. That has been able to ensure the timely processing of FOI requests, particularly, as the minister says, the sensitive and complex ones that involve multiple third parties to make sure that they can be managed in a timely way. That will support, effectively, 12 FTEs in total who are spread across each of the directorates.

**DR PATERSON:** Are there particular directorates or agencies that experience higher volumes than others. If so, why is this happening?

**Mr Glenn:** The directorate that receives the highest number of applications is CMTEDD. That is reflective of the activities of the directorate. It also includes Access Canberra, which generates a lot of interest from people. CSD receives the second highest number of requests; again, that goes to the very broad range of issues that CSD deals with and people's interests in them, with their own information and information that relates to, for example, child protection decisions and things like that.

**MR CAIN:** Minister, I have a question regarding the Electoral Commission's IT system. Firstly, how many breaches have been reported to you? Secondly, can you explain why the commission has had a significant capital underspend in the last three financial years, and is this all for IT?

**Mr Steel:** I will take the first part of your question on notice in relation to whether any breaches have been reported to us. The other questions are really questions for the commission itself. They do not report to me; they are an independent office of the Assembly. I understand that they will be appearing before estimates and be able to

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provide you with the answers that you are seeking.

**MR CAIN:** You would be aware of the budgetary issues that affect the commission's operations?

**Mr Steel:** I am aware of the budget measure that is in there for them, but they can speak to that, as it is their responsible measure. It is not for me to speak for them on that.

**THE CHAIR:** Minister and staff, thanks very much for attending. I remind you that you took a question on notice.

**Short suspension.**

Appearances:

Office of the Commonwealth Ombudsman

McKay, Ms Penny, Acting Commonwealth Ombudsman

Macleod, Ms Louise, Senior Assistant Ombudsman, Social Services, Indigenous and Disability Branch

Andersen, Ms Symone, Senior Assistant Director, Program Delivery

**THE CHAIR:** We are now moving to the Inspector of the Integrity Commission. I assume that everybody that is going to be here is here. On behalf of the committee, thanks very much for attending. I welcome witnesses from the Commonwealth Ombudsman in your role as Inspector of the Integrity Commission. You have got the privilege card. I just want to confirm that you have seen that and you are aware of its statutory obligations and coverage?

**Ms McKay:** Yes.

**THE CHAIR:** We are being recorded and webstreamed. I will kick off. We have not seen a lot come out of the Integrity Commission at this stage. No doubt you have been monitoring their activity. Are you comfortable that the Integrity Commission is doing everything required under its statutory obligations and is actually performing its role as required?

**Ms Macleod:** I will let Penny McKay answer this one.

**Ms McKay:** In terms of your question, the Integrity Commission has just reported and released our annual report for our first full year of operation. They have spent some time getting their practices and procedures, their staffing, their premises, up and running, as have we in our inspector role. We are satisfied, and we have reported this year that we are satisfied, that they are meeting their obligations but they have spent some time getting up to speed, as we would expect for any new agency.

**THE CHAIR:** You are confident that that phase of getting up to speed is done with, by and large, and now it is into the substance of the actual purpose of the Integrity Commission?

**Ms McKay:** Yes, we are satisfied of that. In fact, because we get reports every month from the Integrity Commission about their activities, we can see that it is increasing. We can see that, for example, in their use of powers, their confidentiality notices, their preliminary inquiry notices and their examination summons. Just to take two of those as an example, they issued 39 confidentiality notices over the last financial year. Just in the first two months of this financial year they have already issued 27. Similarly with the examination summons, they issued 24 of those summons in the full financial year of 2020-21 but in the first two months of this financial year they have already issued 27. So they are starting to increase their operational activity and I expect that we will see much more out of them.

**DR PATERSON:** Again, there has been a lot of talk about integrity commissions in the news over the last couple of weeks and there was a lot of talk on social media



around the Integrity Commission in the ACT and not many people knew that we had one. As part of your remit is to raise awareness and educate not only within the ACT directorates but also more broadly in the community—and I understand that you are just starting out—what is the strategic plan to communicate with the community to let people know that the Integrity Commission does exist and what the role is and how they can get in touch?

**Ms McKay:** I might hand that question to Symone Andersen who is my Senior Assistant Director, Program Delivery.

**Ms Andersen:** We are very much ramping up our education activity in this space. We have a dedicated page on our website where we talk about the function we perform. Obviously any notice that is issued by the commission includes information about complaints and complaint handling, which can direct people to us. We have our general line through the Ombudsman and we can sometimes get complaints through that which will filter through to our specialised staff in this area. Obviously in any community engagement we do, any forums, we use that as an opportunity to educate the ACT general public about the roles that we perform.

**MS CLAY:** I am just wondering whether you see your investigatory role, your inspection role, as a proactive or a reactive role. If you think that it is a proactive role, what would be the trigger for you to proactively investigate?

**Ms McKay:** I think it is both proactive and reactive. In terms of reactive, we obviously receive complaints, and that would be something that we would investigate potentially and take a look at. Obviously there have not been too many complaints yet. I think we reported four in the last financial year. Proactively, because we receive those monthly reports from the Integrity Commission each month, it is something that we can look at closely and work out whether there are any red flags or anything that we would like to investigate further.

As part of those reports, they need to provide us with a number of different things, including their confidentiality notices that they have issued, preliminary inquiry notices, their public examinations, examinations summons. They also need to provide us with the video footage and transcript of any examinations that they conduct. We can take a closer look at those and see if they are complying not only with the legislation but complying with their own guidelines that they have released. So I think it would be both proactive and reactive.

**MS CLAY:** Given the low level of general understanding we have in Canberra that we have an integrity commission and probably also, I would say, an even lower understanding that we have an inspector of the integrity commission, you probably would not expect to see many complaints, would you? You would probably need to be taking a proactive role until the awareness of both of those has risen?

**Ms McKay:** That is right. In saying that, anybody who is issued with one of these notices from the Integrity Commission is advised of our role. Should they have any complaints about how they have been dealt with by the Integrity Commission they can raise those complaints with our office.

Yes, whilst the broader public might not have a great deal of understanding, anybody who comes in contact with the commission would certainly know about our role and be able to reach out to us should they need to.

**MR CAIN:** Just touching on the fact that no completed investigations have been made and that they are getting their priorities and practices and procedures in place, I note that the Integrity Commission was established by law in July 2019 and began operations in December 2019. That is almost two years. Are you not a bit surprised that there have been no concluded matters in that time?

**Ms McKay:** I am not sure if I would be surprised. It would really depend on what matters they are investigating. Investigations can be like a piece of string. Some can be quite simple but some can take a period and it is difficult to predict. So I cannot say that I am surprised, but I would hope to see some activity and conclusion of investigations in the coming months or years.

**MR CAIN:** To me, it must be of some concern because, for the people who are aware that they are under investigation, the length of that investigation without an outcome must be something that weighs upon them?

**Ms McKay:** I would expect so. Anybody who is under investigation by an integrity commission, I expect that would weigh on them; and that is a real concern.

**MR CAIN:** Timeliness ought to be a priority.

**Ms McKay:** I would agree with that.

**DR PATERSON:** The Integrity Commission's funding has increased quite substantially in this budget. I am assuming that will go to more staff but it would be good to hear: will that go to more staff that will hopefully speed up some of these investigation time frames?

**Ms McKay:** That would not be for me to say as the inspector. It is a matter for the Integrity Commission how they would allocate their budget. It is probably a better question for them, as they are appearing next, I think.

**THE CHAIR:** Yes, they are.

**MR BRADDOCK:** Just in terms of the complaints about the Integrity Commission, what were the general findings in those, particularly where you say the inspector's decision in each case was not to investigate a complaint? What did you find in relation to those complaints?

**Ms McKay:** When we receive these complaints, for starters we do an initial assessment to make sure that the complaint is in jurisdiction. If a complaint is in jurisdiction, we have a list of things that we look at before we determine whether an investigation should be progressed.

Some of the things we look at in our initial assessment are: is the complaint specific enough? Does it relate to a specific person, policy, practice? Is it able to be

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investigated? Are all people contactable? Can evidence be obtained? What outcome does the complainant want and is that outlined in the act? Does the complainant's desired outcome require external input? And do we need to seek further information or clarity from the complainant? Then we look at the seriousness of the complaint, the impact, the risk, referral et cetera when we are looking at those.

In those two particular complaints that were related to decisions by the commission not to investigate reports of alleged corruption, we did not find that an investigation was warranted.

**MR CAIN:** There is one outstanding complaint where the Integrity Commission decided not to investigate, which you are currently assessing.

**Ms McKay:** That is correct.

**MR CAIN:** When do you expect to conclude that assessment?

**Ms McKay:** I do not have a time line for that at the moment. We are currently assessing it. It should not be long.

**MR CAIN:** When did your assessment begin, if you do not mind saying?

**Ms McKay:** Mid-year.

**THE CHAIR:** Does anyone have another quick question or are we all done? I will take it that we are all done. Thank you very much to all the staff from the ACT Ombudsman in your role as Inspector of the Integrity Commission. Thank you for attending. I do not think that there were any questions taken on notice, from memory. Thanks again for attending. We will now move to the integrity commissioner for the next session.

**Short suspension.**

Appearances:

ACT Integrity Commission

Adams, Mr Michael, ACT Integrity Commissioner

Hoitink, Mr John, Chief Executive Officer

Hickey, Mr Scott, Chief Finance Officer

**THE CHAIR:** Thank you very much for attending this afternoon. There are just a couple of housekeeping matters. Just to remind you, these proceedings are being livestreamed and recorded by Hansard. There are no opening statements today, as a reminder. Can I just confirm, a bit of a thumbs up, that you have read the privilege statement that was sent to you?

**Mr Adams:** Yes.

**THE CHAIR:** I will kick off then. We just heard from the inspector, and I guess there has been some surprise in the media, that after a couple of years there has still not been actual visible output from the commission. I am not suggesting that you have not been busy. We understand that you have been setting up and there have been matters ongoing. Can you just give us a bit of a summary of where you are at, at the moment, in terms of activity and whether we can expect that there will be something more visible, I suppose, coming out of the commission in due course?

**Mr Adams:** Certainly. As to visibility, can I just mention that quite a number of matters have been published on our website; for example, the substantial public interest disclosure guideline. We are about to publish another guideline relating to MLAs. I would like to come back to that in a moment, if I may.

We have had a very large number of assessments. We have determined that some of them have gone to investigation; but the majority of them are dismissed, for various reasons. That is well over 100. Each of those needs to be assessed. Obviously we never publish complaints that are made that do not get investigated and are dismissed. In the nature of things, that cannot be in the public domain.

We do have ongoing investigations. I think you heard from the inspector the number of summonses that have been issued. We have had, I think, something over a dozen private hearings already and we had more or less the same when lockdown occurred. There are practical problems with conducting private examinations in that space. That, of course, puts off investigations until we can, as it were, get on with them.

We are doing other work. I can tell you that presently I am working on four reports, two of which are quite substantial and one of which perhaps will be completed in a week or two. Do not forget, when a report is completed, if it is averse to any person, we need to give them an opportunity to respond.

If I can talk hypothetically, it is much more difficult if one comes to a disagreement, shall we say, with the Auditor-General about an Auditor-General's view of facts. Do we go back to the Auditor-General and say, "We have got a different view of facts. Do you want to add anything or say anything?" It is not clear in our act what we

should do. Those considerations slow down the issue of reports once they are completed; but we do have a number of reports underway.

We have at present no plans, I am prepared to say—but this is necessarily a moving feast, as it were—for public hearings. In one particular matter public hearings may be likely. We would ask the relevant people for their submissions on public hearings before we make a decision to conduct public hearings.

We have had a significant number of community interactions. I have spoken to the Master Builders Association; we have spoken to Unions ACT; we have had an information session for members of the ACT Council of Social Service; we presented to the newly elected members of the Aboriginal and Torres Strait Islander Elected Body; and we have had meetings with the relevant integrity officers in the various departments.

That is our good facing. It is not matters in the general public. By and large, for obvious reasons, you do not ask journalists those, not because I am concerned about my answers but the people who come to those interactions have questions which they do not want blasted in the headlines of the ACT press. By their nature they are essentially kept confidential because of the nature of the interactions. Otherwise one is confined to apple pie statements, which are of no use to anybody. In fact, there has been a fair amount of activity interacting with members of the public, though not in the public arena.

Can I come back to the MLAs? I am sorry, cut me off if I am going into more detail than you wish.

**THE CHAIR:** Just before you go to the next one, can I ask you a quick supplementary to that. You said that some matters have gone to investigation. Can you tell me how many matters have currently gone to investigation and at what stage they are at?

**Mr Adams:** We have 12 preliminary investigations. Those are investigations where we need additional information for the purpose of assessing whether it is going to go to a full investigation, and we have 10 investigations currently.

**MR CAIN:** This might be on notice, commissioner, but since the establishment operationally in December 2019, close to two years ago, could you outline how many complaints you have received, then investigated, then concluded and publicly reported on and how many have been made against current cabinet ministers?

**Mr Adams:** I think the answer is none have been made about cabinet ministers, whether current or otherwise. I will have to take on notice the number. Our last annual report would take that information up to 30 June 2020 and our next annual report will take the next number up to June 2021. We have had, I think, 25 or so since then—that is, reports requiring assessment.

Some assessments, by the way, are very substantial. Can I explain? In one investigation, for example, which is an investigation where we cannot have our private hearings because of COVID limits, we have a tranche of 11,000 documents

requiring analysis. That is a massive amount of work. That is being done. We are looking at documents when we cannot have hearings.

Just to come back to your question about where those investigations are at, two investigations are completed, which I will be reporting on shortly—in the next few weeks, I would expect. One report is almost completed, subject to procedural fairness considerations. One is probably going to be finished by the end of the month; but then procedural fairness requirements will induce a delay and possibly a change. Those are major matters.

Of course, we report on an investigation which concludes that there is no corruption. They are very important also because they give the public a sense of confidence, one hopes, in the particular issues raised in the complaints. So not every report will be condemnatory. We do not approach matters on that basis.

**THE CHAIR:** You said that you had something you wanted to mention about MLAs. We might just go to that, if we can, briefly and then I can go to the next MLA's questions.

**Mr Adams:** Sure. All I wanted to say was that the Public Interest Disclosure Act makes provision for disclosures to MLAs in particular circumstances. It also requires the commission to issue guidelines. They are in the last stage of drafting and will be put on our website shortly and will be circulated to every MLA.

I was planning on having an interactive meeting with MLAs to discuss those matters. It occurs to me that I would be prepared to answer, at a general level, any questions which they have—a general information session perhaps for MLAs focusing first of all on the public interest disclosure guidelines.

**THE CHAIR:** Thanks for that advice. I am sure that would be useful.

**DR PATERSON:** In the budget there is a substantial increase in capital injection from 2021-22 to 2022-23. I am just wondering if you can outline what that funding will be spent on.

**Mr Adams:** Surely. The capital funding is essentially to enable us to undertake electronic interception. It is a very substantial, regrettably, investment; but it is one-off at least. This matter was never part of the original funding because telephonic interception was not part of the original understanding that we would have to have it. Of course it is essential. In fact, a couple of the investigations, which we are now in the course of, will be regrettably incomplete because of our inability to investigate that way. That is the capital expense.

Part of our problem has been a limitation in our legal section. For example, I am doing legal work which in most commissions you would expect to be done by your legal staff. It is simply that we do not have the resources and everybody has to muck in because the work has got to be done. Part of that new funding in this budget will enable us to recruit a couple of lawyers. We are actively doing that and that will assist us in speeding up the investigative and reporting process.

**DR PATERSON:** What is required in terms of the technology? Is it computer systems or computers or what—

**Mr Adams:** Its fundamental requirement is that we have our own independent system and not use Shared Services. That is a requirement of the commonwealth government in essence. That, of course, is quite expensive.

The other requirement is that legislation has to be put in place to enable this to occur. Commonwealth legislation requires complimentary legislation in each state and territory. Every state and territory has got that, by the way. We are actively engaged with CMTEEDD in drafting the necessary legislation. I would expect that the drafting task will be finished in the next month or so. Then, of course, it has to go through the necessary political process, over which, naturally, we do not have any control; but that is the other aspect. We cannot spend a very substantial sum of money unless we have got the legislative framework which makes it useable.

**THE CHAIR:** Ms Clay, have you got a question?

**MS CLAY:** I do. Mr Adams, I think you can hear that we are all quite eager to get some reports out.

**Mr Adams:** Not one bit more eager than I am, I assure you.

**MS CLAY:** Excellent. Glad to hear it.

I am wondering about the number of complaints you have received; the time lines to do the preliminary assessment and then finalise; and how that tracks against some of the more established ICACs—so that we can tell if we are moving in the right direction and working efficiently or if somebody else has a system that we should be using instead.

**Mr Adams:** We have only recently been able to put in a new data management program which enables us better to deal with these assessments.

The problem is that every assessment is its own animal. It is impossible to generalise. With some, you look at them and in five minutes you know that there is nothing in it. Some of them will take three or four days. We have had several that have taken a week of work to decide even whether we are going to have a preliminary investigation. No general number gives you any real information.

I had this same problem when I was Chief Commissioner of LECC, the Law Enforcement Conduct Commission, but we were confined only to police. Complaints about police have a much smaller range. There were, of course, complaints about corruption, threat, violence, assaults and false imprisonment, but that is a far more limited universe than complaints made against public services, from procurement to misuse of vehicles.

I am happy to tell you the number over the period, but it does not give you any useful information about how long each takes because each one is unique.

**MS CLAY:** Have you learned some lessons from some of the more established ICACs? I am not sure which one is the best in the country.

**Mr Adams:** We have discussions, of course. I managed the Law Enforcement Conduct Commission for three years, which had a very substantial number of complaints. Our CEO, Mr Hoitink, was with ICAC. He was essentially in charge of investigations, which also involved assessments. He brought a lot of very useful information from there. And we have discussions from time to time in meetings about common issues. But essentially, I do not think there is much room for making the system of assessment more efficient.

May I say this, though? We are becoming more efficient as our staff become more experienced. If you get people—this is true of a number of our staff—who are very competent in assessments from other areas, then an assessment of a complaint which is a forensic exercise, requiring the gathering of the evidence and then the writing of a report, is often not within their direct experience. There is no doubt that there has been a significant improvement in efficiency, especially, I would say, over the last six months, in disposing of assessments, getting a proper analysis.

Earlier we were sitting as a panel. I sat on a panel of senior people to decide what we would do based on an assessment report. We were sending them back for extra information. Now almost invariably they come with all the information that we need, so we are able to make a decision.

In that sense, the process is improving, and I think it will continue to improve as people become more aware. If you have, for example, a complaint about procurement, there are, say, probably three relevant pieces of ACT legislation you have to know of to be able to know what the complaint is about. That involves our legal team, which is already very stretched. But once people have done one procurement matter, they have the resourcing to deal more quickly with the next.

Am I making myself clear about this? It is unfolding and improving.

**THE CHAIR:** Great, thanks.

**MR BRADDOCK:** I have a question on what legislative changes are required for the commission to fulfill its functions. You mentioned the telephone intercept legislative changes. Are there any others?

**Mr Adams:** Yes, there are a number of others. Most of them are not at all controversial; they are really tweaking for efficiency—for example, to enable us to require someone to give us a statement instead of getting them in for a private hearing. We do not have that power really. As you will realise, pretty well everybody, but public servants in particular, get very nervous when they are asked to volunteer information. They may be eager to let you have information, but they prefer to do it compulsorily so that they can say, “I was obliged to give this information.” It is defensive and reasonable. We need that kind of thing, which no-one would sensibly object to, but it happened to have been overlooked.

We are looking at the question of legal professional privilege. That does raise policy



issues. We have decided that our approach is that private individuals should not be obliged to give up their privilege. The reason is simple: you want people who are minded, perhaps, to do something a bit doubtful to go to a lawyer and be told, “Don’t do this.” They are not going to do that if they think that what they disclose is at risk of being exposed. In the public interest, we think that is good, but we cannot see how a public department that is spending public money on legal advice gets to say to the integrity body, “We will not show you our legal advice.” We think that is an untenable decision. We are seeking that kind of amendment.

And there are other changes. I would say they are process changes, non-controversial changes—probably about 20 in all. Some of them are in our past annual report. In our present annual report, we are listing them all. I might say that we have had positive feedback on pretty well all of them from CMTEEDD, and we are working on the way forward to get this done.

**THE CHAIR:** If you are putting legislation forward, I assume you are doing that through the government. If they do not accept some of the recommendations that you have, for whatever reason, will you highlight those aspects of legislative change that are not being supported by the government? What is your process there?

**Mr Adams:** We have not quite got to that stage, so I have not made any decision about it. We are a public body. My initial reaction was to put the way we think the legal structure should work into the public domain. Of course, it is a question for government and whether government is prepared to support it. It will be in the annual report, and then if it does not come forward, members will have an opportunity to put them in the form of a private member’s bill or they might decide that the government argument is fair enough.

**THE CHAIR:** Thanks.

**MR CAIN:** I note that you have had an increase in funding of \$8.127 million over the next four years. Is this sufficient to conduct the necessary operations of the Integrity Commission, and in particular achieve a more timely resolution of investigations?

**Mr Adams:** At present, yes; but it obviously depends on the character of the complaints that we have. Let me take an example of a class of case. Take government procurement. We know that in the public domain there are expressions of disquiet about the way procurement is managed. You can approach this in two ways. You can approach it in a case-by-case manner, which means that your investigative role is limited, or you can decide to widen it to a systemic examination. The latter requires a great deal more investment in investigations and—

**MR CAIN:** With respect, thank you for the description of your approaches and the complexities; I understand that completely. But do you mind saying what you will be prioritising this particular funding for?

**Mr Adams:** In two main areas. There is our legal team, which is at present completely inadequate; and there is intelligence and the transfer of IT responsibilities to the commission, together with the security arrangements that the commonwealth requires. IT and law would be the greatest continuing areas. And I am reminded that

there is the supervision of PIDs. If all we had to do was distribute the complaints, the big disclosures, that would be simple; but under the act we are also required to supervise the investigations and the protections. We have only had about half a dozen PID complaints so far, but I am sure that will ramp up as we enter the public arena more.

So there is that additional work. Do not forget that if we are employing just one individual, for a small organisation that becomes a significant financial requirement over four years.

**MR CAIN:** There is one thing that I am curious about. As part of your scope of work, going forward, are you planning to do a systematic examination of public procurement or is that already something you are doing?

**Mr Adams:** I need to be careful here about what I can disclose. I was simply pointing out what is in the public domain. I think I am prepared to disclose that procurement is on our table as an important question.

**MR CAIN:** Thank you.

**MS CLAY:** I have a supplementary on that. I am curious about your IT systems upgrade. Is that replacing a paper system or a former IT system?

**Mr Adams:** No. Mr Hoitink could best answer this. He is making the administrative arrangements for this, and he would be best able to answer your question accurately.

**Mr Hoitink:** We are not moving from a paper system; we are moving from what was essentially a spreadsheet system to a case management system, a fully integrated case management system. This will allow us to deal with records in a more timely fashion.

**MS CLAY:** So you started with Excel and now you are moving to a case management system?

**Mr Hoitink:** Yes.

**MS CLAY:** And this is the only IT upgrade we have had in the life of this commission?

**Mr Hoitink:** No. We are also looking at going to the whole Shared Services separation. That would be a major upgrade to the IT system that we currently have.

**THE CHAIR:** Thank you, Commissioner.

**Mr Adams:** Can I just raise something very briefly, Chair? I think Scott needs to correct the budget number. I am not sure that \$8.5 million is what we got.

**Mr Hickey:** Yes. Just to clarify, the increase for 2021-22, allowing for the fact that we have the ability to roll over funds as officers of the Assembly, is approximately \$1.8 million that we have received in additional ongoing funding, which is going towards the employment of additional staff and also support for the separation from

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Shared Services and the implementation of telephone interception.

**THE CHAIR:** Thank you very much for that. If there are any questions on notice, I remind you to get the answers to the secretary within five working days.

Thank you very much for your attendance today. I would like to say that we look forward to your reports, but I am not sure that we do. We will expect the reports that you have got coming. I thank you for the hard work that you have been doing with the commission. I appreciate that it has been a very demanding and complex period for you in setting up.

**Mr Adams:** Thank you.

**Short suspension.**

Appearances:

Office of the Public Trustee and Guardian

Taylor, Mr Andrew, Public Trustee and Guardian

Hughes, Mr Callum, Senior Director, Finance Unit

**THE CHAIR:** Thanks for attending, Mr Taylor and Mr Hughes. I remind you that these proceedings are being webstreamed and reported by Hansard. Can I confirm that you have both read the privilege card? Put your thumbs up, if you have. Brilliant.

There are no opening statements today, so I will kick off with questions. In terms of where you are going with the public trustee and guardianship, some of your revenue is self-funded. How is that travelling at the moment with interest rates and so on? Is that affecting your operations?

**Mr Taylor:** It is; it has been. Some of our client funds are invested in cash. We reinvested some today at 0.75 per cent; 0.5 per cent is quite common. The bulk of our client funds, however, are invested in our common funds and they have all been performing significantly better over the last six months than they had been previously. That is not the larger part of our income but it certainly forms an important part of it, and it has been the result of fluctuating revenue for us and for our clients.

**DR PATERSON:** The budget document talks about supported decision-making frameworks that the Public Trustee and Guardian is looking to implement. Can you talk more about the protocols that have been developed and the implementation of those?

**Mr Taylor:** Certainly. Supported decision-making is something that Australia has signed up to by virtue of article 12 of the United Nations Convention on the Rights of Persons with Disabilities. In the ACT we had a review of the guardianship laws back in 2016, with a government report and a government response. It was agreed that we would go down the supported decision-making path.

In the ACT, however, the response has been quite different from what it had been in other states and territories, in the sense that the wording of the legislation that we have at the moment is not quite as restrictive. In fact, the words “substitute decision-making” were not used as a term in the law at all.

In our own management and guardianship of clients under order of the tribunal, and certainly in looking at onboarding managers and guardians at tribunal level, the tribunal has been actively exercising the principles of supported decision-making at that point, by saying, “We don’t really need to appoint either a substitute or supported decision-making, a manager or guardian, because you have demonstrated to us that you have supports in place such as would help you.”

Certainly, when we are appointed as a guardian or manager, there is a continuum of clients, from people who are reasonably capable but have a decision-making disability and, at the other end of the spectrum, people who have no concept of what is going on in their lives at all. At the better end of the spectrum, we have people who have jobs,

cars, are married and have kids, but we are appointed as their manager. Clearly, in that case, we support them and try to move them to a framework where they will not need a guardian or a manager at all. Is that useful?

**DR PATERSON:** Yes.

**Mr Taylor:** What we are looking at with the legislation is that, in the short term, we could make a few tweaks and we could formalise that practice that we are doing now. But it is not cosmetic surgery to fix the substitute decision-making argument; it will require quite significant structural change, in government and outside government, and legislation change. We have committees in government working on that as we speak.

**DR PATERSON:** You do not have formal processes within the PTG because of the law change—or do you?

**Mr Taylor:** We are actively supporting people now in a substitute decision-making framework. Does that make sense?

**DR PATERSON:** Yes.

**MS CLAY:** I want to start by framing this. I am concerned about elder abuse and fraud in a time of financial uncertainty. I know that you examine the accounts of financial managers. How many financial managers are you supervising and how much money in total are those people looking after for their wards?

**Mr Taylor:** That amount varies. There is quite a bit of churn in that from year to year. I am looking for a nod from Callum here, but it is somewhere between 650 and 750 in a year.

**MS CLAY:** How much money are those people looking after?

**Mr Taylor:** I do not think we have a handle on that. I do not think we have a total amount of money that we would be looking after for those people.

**MS CLAY:** That intrigues me, because you examine their accounts, so I would imagine that when you are examining the account, you would have a number.

**Mr Taylor:** Individually, yes, but we do not total them up.

**MS CLAY:** Perhaps you could, on notice, do you think?

**Mr Taylor:** We are developing a CRM at the moment. That will allow us a lot more intel around our clients and the examination process. Once again that is something that we can build in. Assets do not necessarily take the form only of cash; they could take the form of superannuation, shares or property. We do ask them to give us a statement of assets and liabilities of the person. That could easily be trapped in a CRM that we are building in the next 12 months.

**MS CLAY:** You do not have any way of assessing that right now; of the 750

managers, you actually do not know how much money—

**Mr Taylor:** Not in total, no.

**MS CLAY:** That is interesting.

**Mr Taylor:** Not without sitting down and adding—

**MS CLAY:** Are you up to date on the examinations for those 750 managers?

**Mr Taylor:** I will pass to Callum Hughes for that one.

**Mr Hughes:** At the moment we are up to date with all of the paperwork that has been lodged. There are still outstanding lodgements to be made from the external manager.

**MS CLAY:** For every person who should have lodged, you have completed the examination?

**Mr Hughes:** No. We have completed all of the examinations that have been lodged, but that is not saying that everyone has lodged at this stage.

**MS CLAY:** There might be an easier way for me to phrase this: of the 750 people who have been managed in the last 12 months, how many of them have lodged and how many examinations have you completed in the last 12 months?

**Mr Taylor:** We do not have reliable estimates of how many private managers have been appointed, anyway. By an agreement between ACAT and ourselves in the last three months, we decided to take on the process of onboarding and managing external managers, private managers, ourselves. In that scenario, and with this new scenario that we are building, we will have an accurate number of the number of private manager orders that are being made. Because we will be managing the lodgement and reminding those people of their obligations to lodge, we will be able to provide that information then; but we do not have reliable information. It is probably as good as a month old when we get it.

**MS CLAY:** You are not entirely sure how many managers you are examining; you are not sure how much money they are managing; and you are not able to tell us how many examinations you have completed in the statutory 12-month period.

**Mr Taylor:** No.

**MS CLAY:** Is that an accurate summary?

**Mr Taylor:** Yes.

**MS CLAY:** That does concern me quite a lot. The reason it concerns me is that fraud follows patterns, and during times of economic uncertainty there are usually great big upticks in fraud. Right now, I am not sure what the risk is to some vulnerable Canberrans. Do you have any comments on that? Do you think that you are undertaking your statutory responsibility there?

**Mr Taylor:** Yes, I do. The legislation under which I operate only requires me to examine the financial statements that have been lodged with me. It does not give me a policeman role or a regulatory role. The way it has been framed under the Guardianship and Management of Property Act is that my role is to examine what is filed with me for examination. The onus is on the manager to lodge with us, but there is no onus on me to go after them in the event that they have not lodged them. We do in fact do that, and we seek disallowance of items. The responsibility we have here is to examine what has been filed with us.

**MS CLAY:** If I have been told by a constituent that their examination is six months overdue, and they have lodged but it is still not complete, would you have a comment on that?

**Mr Taylor:** I would agree that at one stage during the last year that had been the case, but it is certainly not the case now.

**MS CLAY:** I should pass over to other members of the committee, but this might be a line that others might choose to pursue.

**MR CAIN:** Mr Taylor, you mentioned the customer relationship management system. In budget statements D, at page 87, you state that a contractor has been engaged to complete the implementation of the CRM. Firstly, why wasn't it delivered by the previous contractor, and how much of it has been delivered to date?

**Mr Taylor:** The CRM that we have at the moment has three active modules. We have a replacement will drafting module that has been in use for several years. We have an enduring power of attorney drafting module which, again, has been in place for a couple of years. We have a guardianship module, a workflow module, that was implemented probably around the end of the last financial year. The contractor that we used was the contractor that the New South Wales Trustee and Guardian had used and had developed the code for. In fact, those three modules were able to be taken and modified out of the New South Wales environment.

Moving forward, we have been keeping in touch with other agencies in ACT government that have been developing CRMs using Microsoft Dynamics 365. We think that there is better value to be had from looking around, shopping around and finding another supplier—hopefully, one in Canberra, within the ACT. The performance of the former developer was such that we probably would not have stayed with them, anyway. They had some very good people working for them, who were snapped up by other software development houses, to the point where, at the very end of stage 1, they only had one guy with CRM development analyst skills in-house.

We are currently looking at another supplier who ticks all of the boxes. We are about to sign a contract with them to finish the CRM within the next 12 months.

**MR CAIN:** Can you say how much you expect this to cost? Given that there is no capital allocated, or in your budget—correct me if I am wrong—how will this be funded, and which agency or directorate will deliver it?

**Mr Taylor:** The CRM, to date, has been funded by the trust, not by revenue that we have received. An example might be that, in the first case, we are required under the Public Trustee and Guardian Act to maintain a guarantee and reserve account. We have an audit undertaken of the guarantee and reserve, generally speaking, every five to six years. The last time it was audited they told us that, given the investment arrangements we have with fund managers, we had far more in the trust than we needed to have. That had accumulated since the previous review. That was good; we took note of that.

We then looked at what we do with funds that we have that are excess to a need for the guarantee and reserve account. There are a number of prescribed uses in the Public Trustee and Guardian Act. We took some advice at the time, and the advice was that we could use the fund to establish mechanisms which would benefit the clients and investors that we have. We have been able to use that money to develop stage 1 of the CRM.

**MR CAIN:** How much was that excess, and what percentage is it of your total?

**Mr Taylor:** I think it was \$300,000, give or take. I should add that the spend we had on that was not just on delivering three modules. We did not have a cloud environment. We did not have test development production environments. We were doing an accommodation fit-out, and our internal ICT infrastructure did not adequately support what we were looking at doing. We have done a hell of a lot of work around the invisible stuff that you cannot see to produce the visible stuff that we are using every day.

The word that we had from our Deputy Public Trustee and Guardian, who is responsible for the guardianship business unit, is that this is a ground breaker for her—this new module that we have put in. It not only provides everybody with the same modus operandi and the same templates, but also it gives management intel around what they are doing, where things are at, if somebody is dragging the chain with somebody et cetera.

**MS CLAY:** Mr Taylor, is that guarantee account also guaranteeing funds that are managed by managers?

**Mr Taylor:** No.

**MS CLAY:** So if a manager defrauds those funds, there is no guarantee?

**Mr Taylor:** The examination of accounts by managers, for managers, is undertaken on a full cost recovery basis, but it is subsidised by our community service obligation funding. To examine an average set of accounts generally takes about an hour or an hour and a half. We have a charge-out rate for an hour. We take off GST and charge it out at the rate at the moment of half an hour, subsidised. That is subsidised by CSO funding, which was increased in the last budget, or the budget before.

**DR PATERSON:** The budget document states that the PTG is to benchmark best practice, operate efficiently and meet with peer state and territory organisations to



develop and implement best practice. Where does the ACT PTG sit in comparison to other state and territory public trustees, in terms of what could be improved?

**Mr Taylor:** One of the things I realise when I sit down and speak to my counterparts in the states and territories is that we are small and agile, and we operate in an environment where we can identify a change to legislation that might be needed. We can make a submission about it and we can have it in legislation, realistically, within six months. That does not happen in other states and territories. We are an agile office and we have an agile government and system of government here.

There have been reviews undertaken by other public trustees and guardians around Australia. Three of them at the moment are subject to review. One of the common themes that comes out of those reviews is that they concentrate more on their commercial clients than they do on their community service obligation clients—the management clients. That has never been something that we have done here. You will know that in the ACT we are the only public trustee that is merged with the public guardian function. Going back three or four years, when that happened, it changed the imperative that my office now has from being a trustee organisation to a rights protection agency.

The ethos that we have here is quite different from what you might see coming out of Queensland at the moment, or as a result of the last review of the state trustee in Victoria, where they were roundly criticised for not putting enough of their assets and efforts into managing the affairs of people with impaired decision-making ability.

Another indicator is that we were using will-making software which we had collectively sourced and were all using. None of us were happy with it towards the end. It was an English product. We were the first, with New South Wales, to break away from that and build our own CRM module will software, which we have been using ever since—since 2018. The others are still working out what they are going to do.

**MS CLAY:** We have had a couple of IT upgrades since 2018. You had a system in 2018 and you are now upgrading that again; is that correct?

**Mr Taylor:** No. It is a long-term project to create a CRM from basically no operating system. We have been using a trust accounting system. Various, around the office, there were Access databases and FileMaker Pro. They are variously not being supported anymore, so a lot of this stuff is new territory for us. The first part was not a project in itself; it was phase 1 of the project. With the second phase, I have a proposal from the developer. He says that he can build that within between 130 and 150 business days, which, when you add all the work that we have to do in-house on top of that, is one year's work.

**MS CLAY:** When will that be complete and operational for you?

**Mr Taylor:** We are yet to sign the contract. We will probably sign the contract within three to four weeks. We are allowing ourselves a year to do that.

**MS CLAY:** You would expect that to be complete within 14 months and operating in

your office?

**Mr Taylor:** Yes.

**MR CAIN:** Mr Taylor, as you are aware, with GreaterGood, the Public Trustee and Guardian is trustee of that. Can you explain why it was not asked to administer the Chief Minister's Charitable Fund when that was established in 2018?

**Mr Taylor:** I did try to find that out, Mr Cain, and I was not able to. I would have thought that we are the ACT government and ACT community's trustee, and we operate GreaterGood at no cost to government or to the trust. We largely run on the smell of an oily rag, but we have all of the inputs necessary in-house to undertake that role. No, we were not asked, and we really have no idea why we were not asked.

**MR CAIN:** Have you made inquiries as to why, with this Canberra-wide charitable foundation which you administer as trustee, the Chief Minister chose not to bring it under your trusteeship?

**Mr Taylor:** We did not speak to the Chief Minister, but we attempted to find out from somebody in the Chief Minister's directorate, and we were unable to find out what that reason was. Certainly, we were never asked.

**DR PATERSON:** Looking at the budget document, I am a layperson, basically, in this regard, but it refers to the PTG common funds. You have client funds for investment based on conservative, balanced and growth. How often do you reassess the individual client risk profiles for those funds?

**Mr Hughes:** We have to review a clients' investment strategy every year. At that stage we may invest more, we may change their profile et cetera.

**THE CHAIR:** We will wrap it up there. Thank you very much for attending today. If you took any questions on notice—I cannot recall whether you did or not—you have five days to get those in to the committee secretary. We will see you at the annual reports hearings, if not sooner.

That concludes our hearing for today. We will be back tomorrow afternoon for the Human Rights Commission.

**The committee adjourned at 2.58 pm.**