



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

**STANDING COMMITTEE ON JUSTICE
AND COMMUNITY SAFETY**

(Reference: [Inquiry into annual and financial reports 2020-2021](#))

Members:

**MR P CAIN (Chair)
DR M PATERSON (Deputy Chair)
MR A BRADDOCK**

TRANSCRIPT OF EVIDENCE

CANBERRA

MONDAY, 21 FEBRUARY 2022

**Secretary to the committee:
Dr D Monk (Ph: 620 50129)**

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.

APPEARANCES

ACT Gambling and Racing Commission	25
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Privilege statement

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Amended 20 May 2013

The committee met at 3 pm.

Appearances:

Rattenbury, Mr Shane, Attorney-General, Minister for Consumer Affairs, Minister for Gaming and Minister for Water, Energy and Emissions Reduction

Justice and Community Safety Directorate

Glenn, Mr Richard, Director-General

Garrisson, Mr Peter, Solicitor-General for the ACT

Drumgold, Mr Shane, Director of Public Prosecutions

Nuttall, Ms Amanda, Principal Registrar and Chief Executive Officer, ACT Courts and Tribunal

Johnson, Ms Kathryn, Executive Branch Manager, Justice Reform, Legislation, Policy and Programs Division

Dening, Mr Richard, Senior Director, Restorative Justice Unit, Legislation, Policy and Programs Division

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

Greenland, Ms Karen, Executive Branch Manager, Criminal Law, Legislation, Policy and Programs Division

Hakelis, Ms Robyn, Executive Branch Manager, Civil Law, Legislation, Policy and Programs Division

Cvetkovski, Ms Dragana, Executive Branch Manager and Chief Finance Officer

THE CHAIR: Good afternoon, everyone. Welcome to the first of three public hearings of the Standing Committee on Justice and Community Safety inquiry into annual reports 2020-21. Today the committee will hear from Minister Rattenbury in his capacity as Attorney-General, Minister for Gaming and Minister for Consumer Affairs. Before we begin, on behalf of the committee I would like to acknowledge that we meet today on the land of the Ngunnawal people. We respect their continuing culture and the contribution they make to the life of this city and this region.

Please be aware that the proceedings today are being recorded and transcribed by Hansard and will be published. Proceedings are also being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses used the words, "I will take that as a question taken on notice". This will help the committee and witnesses to confirm questions taken on notice from the transcript.

In the first session today, we will hear from the Attorney-General. We welcome Minister Rattenbury and accompanying officials. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw their attention to the privilege statement. Could you all indicate for the record, either by a signal or affirmation, that you understand the privilege implications of the statement?

Mr Rattenbury: Thank you, Chair. I am familiar with the matter and all the officials who are with us have appeared before, so I think we are seeing lots of waving hands there.

THE CHAIR: Thank you. As we are not inviting opening statements, we will now

proceed to questions. Attorney-General, I have a question about the appointment to the solicitor-general's office of the ACT Government Solicitor. When was the last time that a woman was in that position?

Mr Rattenbury: Specifically as the solicitor-general?

THE CHAIR: That is correct.

Mr Rattenbury: I might hand to the Solicitor-General who has been in the role some time, I think. He might be able to remind me of the history.

Mr Garrison: The role of Solicitor-General was created in 2011 by amendments to the Law Officers Act, and I appointed the first Solicitor-General at that point. It was for a—

THE CHAIR: Mr Garrison, what was the equivalent role prior to 2011?

Mr Garrison: The Solicitor-General role did not exist.

THE CHAIR: The head of the ACT government solicitor before that date?

Mr Garrison: That is the role of Chief Solicitor, which I held at the point in time when I was appointed Solicitor-General—

THE CHAIR: Has there been a woman chief solicitor?

Mr Garrison: There has not been a female chief solicitor but there have been three chief solicitors; I was the third.

Mr Rattenbury: Thanks, Mr Garrison. Just for your benefit, Mr Cain—Mr Garrison, can you confirm when you started in that role?

Mr Garrison: I commenced acting in the role of Chief Solicitor in 2004, and was appointed to the role following a process in 2005.

THE CHAIR: Thank you. You may have said this, and forgive me if I missed it: when did the position of Chief Solicitor commence in the ACT?

Mr Garrison: Chief Solicitor? That was created when the Office of the Government Solicitor was created on self-government. The first Chief Solicitor was in fact the former Deputy Crown Solicitor from the Australian Government Solicitor's Office, who took over, in effect, when that function was moved across to the territory on self-government.

THE CHAIR: So that would have been in 1989, I assume.

Mr Garrison: Correct.

Mr Rattenbury: Just to clarify that, Mr Cain: that position has not been appointed since 2004. There has not been a vacancy since 2004.

DR PATERSON: Mr Garrison, just from memory, looking at the annual report with respect to your staff and your employment of female counsel, you aim to have around 50 per cent. Is that correct?

Mr Garrison: The office of the Government Solicitor has approximately 74 per cent female staff, from memory. So we have a very heavy predominance of female lawyers in the office. We are also a signatory to the Law Council equal opportunity briefing policy, which aims to have 30 per cent of female counsel briefed. In the last year, 42 per cent of our work went to female counsel. There is a structural issue, particularly in the ACT, because of the very small number of female counsel at the ACT Bar. One of the things that we have done over the last few years is to take very active steps to engage new female counsel, particularly those who have recently started at the ACT bar, to bring them into the fold, so to speak, in terms of bringing them up to speed in certain types of work that they might not have done before.

That has been a very active campaign on our part. When you look at the list of counsel that is briefed, which is in the annual report at pages 272 to 274, a number of our female counsel are, in fact, from interstate. And part of that is, of course, a function of the particular areas of expertise. Some of our work is work that is not widely undertaken in the ACT and hence we need, either by virtue of the volume of the work or the particular type of work, to draw on female counsel mostly from the New South Wales bar as well as the female counsel at the ACT Bar.

DR PATERSON: Thank you. I will just go back, I guess, to a bit of a general question. Just looking through the DPP annual report at matters that go through the Childrens Court, there seems to be a fair number of matters going through the Childrens Court, despite the fact the age group probably only makes up a small percentage of the population. I also note the number of referrals from the Childrens Court to the restorative justice program. Within the context of the minimum age of criminal responsibility, I am interested to know, do you think that there will be a reduction in cases through the Childrens Court with the raising of the age?

Mr Rattenbury: Sorry, I was not sure if there was more to that question. Inevitably, that is the intent in the sense that children under the age of 14 will not be able to be prosecuted. I would invite the Director to join in the conversation, but we are aware that for minors—those under 18—the vast majority appearing in court and being charged are above the age of 14. The numbers below 14 are relatively low, but nonetheless, our intention is to minimise their contact with the criminal justice system. But, as I said, the Director may wish to answer some further points on that.

Mr Drumgold: You can see from our annual report, that at table B.14 (1) are the total number of matters finalised—that is 248. I do not have the distribution of ages and one would need to have a look at—obviously, if there is an increase in the age of criminal responsibility, a percentage of those will be captured by that age group. So one would envisage that there would be a reduction through that.

I think the first part of your question started with referrals to the restorative justice unit. It is extraordinarily difficult for us to make referrals to the restorative justice unit, because of the way the act is structured. The act gives us a very narrow window up to

the second mention, and we simply are not able to engage with a matter sufficiently to personally make a referral. We do, however, support court referrals that can be made after the second mention.

DR PATERSON: Mr Drumgold, with the Childrens Court, how many of those matters would be the same person, or re-offending?

Mr Drumgold: Again, that is difficult to say. A matter is not a charge; it can be a collection of charges. So it depends on what a file represents. A file could represent, hypothetically, a series of offending that is charged in one matter and that becomes a single matter. So there are 248 single matters. We do not keep statistics on charges, because they are not helpful, because some of them are back-up charges. On some of them we change our view on the prospects of conviction and may proffer a different charge. But as for recidivism, I do not know the answer to that number—how many of the children would fall within recidivists.

DR PATERSON: Okay, thank you.

MR BRADDOCK: I would like an update on coronial reforms. Where are we up to with that and what has been the community feedback that we have received about that?

Mr Rattenbury: Yes, thank you, Mr Braddock. I guess, there are two streams to this. One is that, as members of the committee will recall, in last year's budget we funded a dedicated coroner position. That was advertised late last year, and we are very close to finalising the recruitment process for that dedicated coroner. I expect to be able to have that matter before cabinet and make a public announcement of that within a matter of weeks.

So that side of filling the dedicated position is well underway. The second side of it is the policy reform and the procedural reform that will go around the court. To that end, we have had three workshops facilitated by Relationships Australia. They partnered with the ACT government to assist us to conduct workshops. We had two groups. The first session was for families who had been through the coronial process, and they came and told of their experiences, areas of potential reform and the concerns they had with the coronial system.

The second workshop was one where it was for what we roughly call professionals who work in the coronial space. So it was health staff, firefighters, police, lawyers—all the sorts of people whose jobs are around the coronial system. Then the third workshop was those two groups coming together to have a cross discussion. That was a preliminary process to help us get the conversation started and, I guess, identify some of the scope. What we are doing is working to identify a facilitator to move that into a very focused reform process, now that we have talked about some of the scope. We will do that work through the course of this year. That is a very quick summary; I am happy to answer questions off the back of that.

MR BRADDOCK: Yes, I have a supplementary question. I note the family liaison officer role, which was created in June 2020, was funded only up until December 2021. Can you please provide an update on that position and the feedback.

How useful was that position?

Mr Rattenbury: Yes, I can. I will ask one of the officials to remind me where we are at with budget on that. What I can tell you is that the feedback from the community has been very positive. They have seen that as a very helpful role. The experience that has been fed back to us through both those workshops, as well as other feedback, is that families suddenly find themselves in the coronial process because of a sudden death. They have no experience. They do not want to be there. They find it very confusing or difficult to navigate. The family liaison officer provides, essentially, a translating service and helps them navigate their way through that. I see that Ms Nuttall has now come online and she might add some further comments.

Ms Nuttall: Thank you, Attorney. My recollection—and I am just looking for the budget line, Mr Braddock—is that the family liaison officer was funded in the 2021-22 budget on a permanent basis. In the 2020-21 budget it was only funded for an initial period of time, but I am just trying to clarify that piece of information. The use of that position has been strongly taken up by members of the community to the extent where we, out of existing funding, supplemented that role to a full-time position, and the officer has been working in that role on a full-time basis. The person who was in that role has recently moved to another agency, so we are currently recruiting to that role again.

MR BRADDOCK: Okay. Ms Nuttall, do you mind taking the question on notice about the permanent funding of that position, because I note that the annual report says it is only funded up until December.

Ms Nuttall: The annual report may have pre-dated the budget announcements, but I will take that on notice.

MR BRADDOCK: Of course, yes. Thank you.

THE CHAIR: Okay, thank you for that. Attorney-General, Table 38 on page 116, you detail the recidivism rate and I notice that it has increased from 36.6 per cent in 2016-17, to 38.5 per cent in 2021. How does the ACT recidivism rate compare to other jurisdictions?

Mr Rattenbury: Thank you, Mr Cain. Actually it was 38.6 per cent in 2016-17, if I am reading the table correctly, and the 2021 result was 38.5 per cent. As I mentioned to this committee on Friday, we have seen a slight increase in the 2021-22 results—the result that has just come out of the latest Report on Government Services—but the baseline being used for the government target of reducing recidivism by 25 per cent, is actually the 2017-18 figure. because that is the year the policy was put in place. So that is just for the sake of clarity.

In terms of compared to other jurisdictions, I do not have the numbers in front of me, but we generally sit in about the middle of the pack, if I remember rightly.

THE CHAIR: Is that something you are happy to take on notice please?

Mr Rattenbury: Yes, it is available in the report on government services. You can

read it there, but we will dig that out and provide it to the committee. Do you want the figures just for this year?

THE CHAIR: That would be good, thank you.

Mr Rattenbury: Yes, terrific. We will take that on notice.

THE CHAIR: Thank you. What are the biggest blockers to reducing recidivism?

Mr Rattenbury: As we spoke about in the committee late last week, the reducing recidivism strategy has seven key pillars in it that are designed to tackle recidivism. I am just pulling that up. Bear with me a second. Those pillars are reducing over-representation for Aboriginal and Torres Strait Islander people; responding to Justice Housing needs; supporting people who have substance use disorders; supporting people living with a mental illness or a disability who are in contact with the justice system; supporting detainee reintegration; and developing community capacity. And number seven is specifically responding to the needs of women, who do have unique needs in the justice space.

In highlighting those seven pillars, I think they implicitly flag the barriers that are out there. I mean, we could have a very long conversation, but I think that summarises the key areas we think are needed to focus on to reduce recidivism.

THE CHAIR: Thank you. Are there programs or initiatives that are working particularly well?

Mr Rattenbury: We have seen some good ones. As part of the reducing recidivism strategy, we have the evaluation partnership with ANU so that we have an ongoing evaluation process. We do not just leave it till the end to look back at what worked. But we have that live and ongoing scrutiny so that we can adjust programs, or if they are not working, possibly discard a program and start something different, or as people bring new ideas forward. There are a couple I would point to, particularly the partnership with Winnunga, whose Ngunnawal name temporarily escapes me. Ms Johnson might help me with the name of the program.

Ms Johnson: I have seen some really good programs that are working. I am not exactly sure which one you are reminding me of in relation to Winnunga, but there is an alcohol and drug residential facility that has been worked on with Health in relation to Winnunga recently. There are a lot of really good programs. Some of the ones here in the directorate that you have talked to me about in the past include the Ngurrambai bail support program, which is currently under an evaluation. We have done part 1 of that. It is run by the Aboriginal Legal Service. One of the things they are doing there is really trying to reach out and assist detainees with their applications for bail, et cetera, so that we have fewer people who are on remand and what have you in the system. So there is that one.

We also have the Front Up program, which is at the other end of that. If people have breached their bail support program again, the Aboriginal Legal Service has a culturally appropriate support service which also starts working to come up with the new bail program and to get rid of the impediments to meeting their bail arrangement.

So they are some of those programs that we find are really useful.

There was some great work on the Strong Connected Neighbourhoods which is one of those terrific reducing recidivism programs. You might recall that the analysis of that recently showed something like a 50 per cent reduction in violent incidents. That program that is on Ainslie Avenue is an organisation called Reclink Australia, which is supporting the local residents in public housing to provide really excellent activities to reconnect with community but also to try and build an environment there that is safe from some of these activities that might escalate into things that might lead to engagement with the justice system. There are something like 21 programs in that. A number of them are aimed at Aboriginal and Torres Strait Islander people, and they give that support because of the over-representation. Yarrabi Bamirr is one that was evaluated in 2019 with Winnunga. Attorney, that might be the one you were thinking about. That pilot has been very well evaluated and has been extended recently and involved other providers now as well, Yeddung Mura and Clybucca Dreaming. They are also supporting families in a real wraparound service kind of way.

I know they have all been impacted during COVID but are still providing those services through phone calls and making sure that a family and the children involved in those family situations like Yarrabi Bamirr are really getting those referrals to other services and the supports that they need to make sure that they do not engage again with the system. I may have talked too long there, but there are just so many good programs.

THE CHAIR: Thank you, Ms Johnson.

DR PATERSON: My question is in respect of restorative justice. I refer to table 3: referrals by stage, outcome for suitability. There has been an almost doubling of not-eligible or not-suitable matters. I was wondering if you could speak to that and why that might be happening.

Mr Rattenbury: Certainly. I will ask our restorative justice team, who should be on the call, to come into the conversation. While they are coming online, Dr Paterson, I will just go back to a previous matter. The family liaison officer in the coronial process was permanently funded in the 2019-20 budget review at 0.6 FTE. Just so that we do not have to come back with that on notice, that is the answer. I will hand over to the team from restorative justice. Richard Denning is the appropriate staff member.

Mr Denning: That seems to have been related to COVID, or has co-occurred with it, so we are kind of left to draw that conclusion. The majority of matters not proceeding to conference seem to be about not being able to contact people—in particular, the person who caused the harm, the offender—but also with the offender declining the service. So, obviously, that is a matter of concern for us. We look at things like the satisfaction rate to try and figure out is that because our services are declining in quality? But our satisfaction rate remains at 99 per cent. So there is not necessarily a correlation for us to draw any conclusions from there.

Our experience in working with clients is that COVID has complicated their lives significantly. People have additional care responsibilities; people have additional volatility in their lives; people have a range of other needs which may be taking

precedence over being involved with restorative justice conferences. What I can say, though, is that we are noticing a significant turnaround since that reporting period in 2021-22 so far. The rate at which matters are proceeding from referral to conference has gone up significantly—64 per cent—and that is notwithstanding the lockdown, although most of those occurred in late November and December, when the restrictions had eased significantly. So we were finding that after a period of people wanting to wait—because we do offer a range of other participation options for people—people still generally want to wait for that face-to-face contact. When the opportunity arose for them, people were really keen to get involved. So, we were very happily run off our feet, in the lead-up to Christmas, helping people conclude these matters that they had been waiting to conclude for some time.

DR PATERSON: So what happens if you have been deemed not eligible, even though you have been referred? What happens to the victim after that?

Mr Dening: I should say that the team does a lot of work to track people down. They really go above and beyond to give people every opportunity to participate if they can, and they are very flexible around that for a victim or an offender—because sometimes it is also the victim who declines, and through no fault of an offender. So it can happen both ways.

It can be very disappointing for people. So we spend some time with them to help them decide about what their next move will be and what they would like to do, and we can refer them on if required. We would not generally report about the person. Confidentiality would prevent us from doing that. So we would just try and do a really careful exit from those people's lives and make sure they have referral options—link them up.

DR PATERSON: But what happens to the offenders that are being referred through the courts? Do they still face another form of justice or penalty or outcome?

Mr Dening: Yes. We provide a report back to the court and let them know that the matter was not suitable in that case. If we have all the relevant permissions, we can provide a bit more information, but generally it is a letter that says it is not suitable. And then the court will proceed. Court will proceed anyway, with a court referral. But with a police referral, where it is a diversionary referral, police then would need to make a decision about whether they want to proceed with the matter or whether they want to go down another avenue like a caution, or whether they want to proceed with a charge at all.

DR PATERSON: Do those victims who are deemed non-eligible and who do not go any further, get support from the Victims of Crime Commission? Are they adequately supported post referral?

Mr Dening: If they are not already linked in with victim support—and hopefully they will be—we can absolutely refer them there, if that is what they are looking for. Some people might identify that they do not have other ongoing needs; for other people we will be seeking a range of different referrals.

DR PATERSON: Thank you.

MR BRADDOCK: I have a substantive question on the same topic. I am interested in the rates of reoffending by those who have successfully gone through restorative justice, versus the normal population, versus the people found not suitable.

Mr Dening: Attorney, would you like me to—

Mr Rattenbury: Thanks, Richard. If you have that data, that would be great.

Mr Dening: I do not, I am afraid.

Mr Rattenbury: Okay.

Mr Dening: That is my answer. This was evaluated as part of the evaluation of phase 1 and reported on at the time. Was that reporting done in 2016 as part of moving to phase 2? I can find it.

Mr Rattenbury: Mr Braddock, we will take that on notice, because there has been data done to that effect. My broad recollection is that we do see lower rates of reoffending. There is a strong sense that it is very impactful for offenders who go through a restorative justice process. It is also very positive for the victims. They find it very therapeutic. That evaluation did show certainly good levels of compliance with the agreed comes. Mr Dening has already talked about the satisfaction rates with the process. We will just check that recidivism data for you. We will take that on notice.

MR BRADDOCK: I would appreciate that, if there is any information, because I suppose my concern is that there might be positive bias happening here, where the people who are more likely to engage with the process are those who are less likely to reoffend in the first place. So we are trying to do that statistical analysis, to be able to determine whether we are plucking out the most suitable offenders for restorative justice and hence getting really good stats, but are we effectively actually dealing with some of the hard cases who are found not suitable? That is just my underlying question.

Mr Rattenbury: It is an interesting question in the sense that you have called it a bias that is built into it. But the assessment process, before somebody can go into a restorative justice conference, is very thorough. The conference facilitators—the staff that work with Mr Dening—really evaluate the offender, because the offender needs to be willing to participate in a constructive way that does not add further trauma to the victim, and the victim needs to be willing to participate in the process and feel that it is going to be a positive.

So you are right in the sense that the people who go into the process want it to work, and there are offenders who either do not, or are unwilling to, recognise their culpability. They will be deemed unsuitable by the facilitators. You cannot put someone in the room who is unwilling to see their culpability, because it does not produce a good outcome for the victim. So you might call that a bias or, I guess, a particular bent, but that is the very nature of the process.

THE CHAIR: Attorney, on page 116 you detail the perception-of-safety rate from

2016-17 until 2021.

Mr Rattenbury: Yes.

THE CHAIR: Do you actually have a gender breakdown of this data?

Mr Rattenbury: I do not know, Mr Cain. Are any of the officials able to assist with this one? I am just grabbing the table; bear with me a moment.

THE CHAIR: Obviously if this is going to take too long you will be taking that on notice.

Mr Rattenbury: Yes. Here comes Mr Ng. He might be able to help us with that one.

Mr Ng: Mr Cain, I was just going to observe that I think we might take that on notice for the moment and see if we can come back before the end of the hearing with an answer for you.

THE CHAIR: Thank you. Is anyone able to say whether there is a gender breakdown or not?

Mr Ng: That is the answer I will endeavour to provide you before the end of the hearing.

THE CHAIR: Thank you. You might also take this on notice: is there a breakdown by suburb and electorate of such data?

Mr Rattenbury: I do not think there is, Mr Cain. On my recollection of this data, I have never seen it broken down that way, but as part of that checking process we will look into that for you. If it is done at all, it would be by police district rather than by electorate boundaries.

THE CHAIR: I will certainly look forward to some clarity on that. What about a breakdown of this rate by fear of crime type? In other words, what is it that makes an individual feel unsafe? Maybe there is more than one type of crime that touches on that.

Mr Rattenbury: We will add that to the list of questions to check for you, in terms of what is available.

THE CHAIR: Are there programs or initiatives that you think need reviewing, perhaps that you may feel are not working particularly well?

Mr Rattenbury: In which context, sorry?

THE CHAIR: In terms of addressing people's perception of safety and security?

Mr Rattenbury: I would not have thought about that in a sort of direct program sense. Clearly the work that we are doing on reducing recidivism broadly is designed to make the community safer, in the sense that if we reduce the rate at which people are

reoffending, then the community will be safer and presumably their perception of safety would improve from that. That is probably the best answer I can give you on that question.

THE CHAIR: Obviously, I could have been a bit clearer myself. In other words, what are the programs or initiatives that are reaching out to the community so that they feel that they are safer in their community?

Mr Rattenbury: I see what you mean; I understand now. You might ask the police about this when they appear, if they have not already. They have a range of community engagement activities. I think that is where a lot of people derive their confidence from. But I think people's perception of safety comes from a range of places. It comes from the conversations they have with their neighbours. It probably comes from their own personal experience of crime. If they have had a break-in or had their car stolen, a person would naturally have a heightened level of concern. I think it comes from the commentary in the media and the way that media outlets and perhaps members of our Assembly talk about crime rates. So I think people's perceptions are shaped by many things.

THE CHAIR: Thank you. We will look forward to those other questions taken on notice. Are there any supplementary questions on that theme?

Mr Ng: Mr Cain, I wondered if I could just add to the Attorney's evidence in relation to the programs. The one program I did want to highlight was that which is currently operating, the Safe Home program. That is a program to support individuals to better set up their homes to deal with opportunistic property crimes, in small capital upgrade types of arrangement. They can apply for grants and assistance to apply locks and the like to their windows and the like. It is targeted currently at preventing opportunistic property crime. I guess in that space one would expect, after those upgrades are completed, that that may contribute to higher levels of feelings of safety in the community.

THE CHAIR: Is there a way of evaluating the effectiveness of the program?

Mr Ng: I believe that program was subject to an evaluation, and in the grab bag of materials that I hope to come back to you about before the end of the hearing, perhaps I can provide that information as well.

THE CHAIR: Thank you. Anything else on that?

Mr Rattenbury: In respect of your questions on notice, Mr Cain, you asked earlier where the ACT's recidivism rates sat compared to other jurisdictions. For 2019-20, the average across Australia was 46 per cent. The ACT in that year sat at 37.1 per cent. The lowest jurisdiction was South Australia at 34.8 and the highest was the Northern Territory at 60.8 per cent. Yes, the ACT was eight points below the national average.

THE CHAIR: Thank you. I might touch on something with the other committee members. Members, are you happy for questions on notice to be delivered during our discourse or to wait to the end?

DR PATERSON: Up to you, Chair. Either way is okay.

THE CHAIR: If you have concerns that it is being delivered during our discussions, please let me know.

Mr Rattenbury: I am happy to take your guidance, Chair. I am just trying to make sure we get as much information back to you as quickly as possible.

DR PATERSON: My question relates to page 205, output 1.5, protection of rights. The Public Advocate's public advocacy is not meeting its targets, basically. That is concerning because the most vulnerable people are intersecting with the Public Advocate. In the notes it says:

The lower than target result is mainly due to a significant increase in demand and complexity of mental health/forensic mental health matters brought to the attention of the Public Advocate.

I am wondering whether the Public Advocate needs further resourcing around dealing with mental health issues and whether there is a projected increase in these matters being dealt with by the Public Advocate next year.

Mr Rattenbury: Dr Paterson, I am reluctant to do this, and I am sorry, but the Public Advocate sits with Minister Cheyne as the minister responsible for the protection of rights.

DR PATERSON: I will ask her. Thank you. Again on restorative justice, what does compliance mean with respect to restorative justice? When the data says that there is an 87 per cent compliance rate with domestic violence, what does that mean for the 13 per cent where there was noncompliance?

Mr Rattenbury: I will invite Mr Dening to talk to you about the detail of that.

Mr Dening: A restorative justice conference usually ends in some agreement about outcomes. That is usually what a person who caused the harm—the offender—will do in order to try and address the harm that they have caused, either by directly repairing the harm that they have caused or potentially doing something to address the causes of their behaviour. It could be a range of different things. The compliance is whether they have followed through on that.

Many conferences do not have a recorded agreement, so those outcomes are not monitored, but lots of them also result in a written agreement, in which case we will undertake activities to ensure that the person follows through on what they said they would do. An 87 per cent compliance rate means that 87 per cent of those ones that did not result in a formal agreement and also the ones that resulted in an agreement were fully complied with; so the person did what they said they were going to do.

In terms of the specific family violence figures, I am not completely across those, but I can let you know that what generally happens in these cases is that the matter is returned to the referrer and they are advised that there was not full compliance on the matter. Then the referrer—so the justice agency—can make a decision around what is

the best way to proceed in that case. In terms of the person who was harmed by that offence—the victim—it is not as though we just say, “Well, we couldn’t help here; have a nice day.” We do some work with them around what their next steps are going to be.

Sometimes that noncompliance might be small, but still the person who caused the harm was not able to see it the whole way through. Other times it might be more significant; so a victim might draw some different conclusions based on that. But we would ensure that the victim understood what had happened so they could make decisions around what they do moving forward.

DR PATERSON: Thank you.

MR BRADDOCK: Page 115: the Supreme Court, due to COVID reasons, has not been able to complete its cases in time. I suppose there are two questions arising from that. Is it, in the 2021-22 year, starting to perform a bit better and is there a backlog of cases associated with this?

Ms Nuttall: There was a small slowdown in the 2021 year and also through the most recent lockdown in August 2021. At this stage we anticipate being able to catch up with the matters that were not reached during that period by the end of this financial year. There are six trials and 35 days of trial that were not able to proceed and they are scheduled to be completed by 30 June.

THE CHAIR: This touches on something Dr Paterson just raised. Regarding restorative justice conferencing, Attorney, at page 28 you state that 17 per cent of offenders and 16 per cent of victims referred actually participate. Do you have any suggestions as to why the participation rate is so low and what can be done to increase the level of participation?

Mr Rattenbury: Mr Denning, why don’t you start, and I will add any comments if I feel the need?

Mr Denning: The reasons that matters do not proceed to conference I raised earlier in response to Dr Paterson’s questions. There are a range of reasons, but the most common reasons are that one or both parties do not respond to contact, that they initially respond to contact and then respond less to contact and eventually disengage, or that they decline to participate. Those are definitely the most common responses. There are a range of situations, of course, as well where we assess the matter as unsuitable to proceed. Obviously, it is very important that we do that, otherwise we might be exposing people to risks and victims in particular to a risk of re-victimisation.

The things that we have been doing to try and address those, particularly during this time of COVID, include being as flexible as possible and doing things like meeting people at a place that is most comfortable and most convenient for them; so not making them come into the office if that is not something that would be convenient for them. Often the convenors speak to people early in the morning or late after work or in their lunch hour. They do those kinds of things to try and make it as easy as possible for people to participate if they want to. As I said before, we have experienced in the first half of this financial year a significant upswing in those

participation rates. We are really hopeful that, with some of these efforts to be as flexible as possible and give people as many options to participate as possible—like telephone, video: all those kinds of things—we will be able to see a continued increased in the participation rate.

THE CHAIR: For the offenders who do participate, is there a lower rate of recidivism among that cohort?

Mr Dening: That comes back to a question that was also asked by Mr Braddock before about those recidivism rates. Those are difficult things to measure, so they are not measured routinely. The last time that they were measured, as I understand it, was on the 10-year evaluation of phase 1. I was able to find what was written in that report, if that would be helpful, and if that could also address Mr Braddock's question from earlier, Attorney?

Mr Rattenbury: Yes, that would be great.

THE CHAIR: I am probably asking a question that is rather obvious, but obviously a way of measuring the success of the program is with a reduction in the recidivism rate from those who participate compared to the broader rate.

Mr Rattenbury: I think we will go to the results of the evaluation, Mr Dening.

THE CHAIR: Okay.

Mr Dening: The 10-year evaluation of phase 1 showed that there was a reduced rate of offending for young people, because for that period it was just young offenders who were able to participate in the program. In answer to Mr Braddock's question before as to whether there is a bias of selecting people in, what they found was actually the opposite of that. If you just compare young people who participated in restorative justice to every other young person who was an offender in the criminal justice system, the young people who participated in restorative justice reoffended at a higher rate.

But the reason for that was the young people who participated in the restorative justice conference were part of a demographic that were much more likely to reoffend. They found that they were more likely to be young men with extensive criminal histories, or people who were young anyway. As a result, they needed to do a multivariate analysis so they could find a comparable group of young people who had not participated in restorative justice versus a group who had participated in the restorative justice conference. Once they had done that multivariate analysis, they found that the young people who did do the restorative justice conference reoffended at a lower rate compared to their peers, if that makes sense.

I guess that also built on the results of the RISE experiments, which happened in Canberra between 1995 and 2000 and which, as I understand it, led to these further developments in restorative justice here in Canberra. They had the luxury of rolling those out as randomised controlled trials, so they were not having to do these multivariate analyses. They were able to take a group, split them, and say, "You can have restorative justice and you can't," and were able to compare those groups. That

was a lot easier to do with that experiment and those results came out. Does that address your question, Mr Braddock, and also yours, Mr Cain?

MR BRADDOCK: It is half the answer. I suppose the other question is whether those who are found unsuitable or do not go down that path are more likely to reoffend compared to the multivariate analysis of a similar grouping?

Mr Dening: In the rapid research that I did before, I did not find anything about that. In my general knowledge, I am not aware who might have done those kinds of studies; I am sorry.

MR BRADDOCK: Thank you.

DR PATERSON: My question is regarding the DPP: the breakdown of family violence cases in different courts. Has there been an increase over the last few years in family violence matters in the Children's Court?

Mr Drumgold: I have not done a lineal analysis across years on domestic violence. I do a lineal analysis on total demand, but I have not done a lineal analysis across years. I would need to take that on notice. I would need to check across a number of annual reports to see the trending of that. It is a difficult question to answer because, in a growing population, most offences are trending up. The question really is whether or not that is significant, taking into consideration population growth. For example, our total matters this year were 13 per cent up on the last reporting period. One would extrapolate from that that domestic violence would also increase evenly across the board.

The question then becomes a lineal regression analysis as to whether or not the growth in domestic violence against a particular demographic is inconsistent with the growth in the population. It is a rather complicated question. Domestic violence matters generally have increased. For example, trials are up around 70 over the last reporting period. I am not sure that I would be equipped to answer whether or not the statistical growth in domestic violence for a particular demographic is inconsistent with the growth of the population. There is actually a lineal analysis that can be done on that—it is called an R-value—but we do not have that data.

DR PATERSON: We heard from the Victims of Crime Commissioner in hearings last week around how there are different risk assessments and things for family violence. How does that change in terms of the Children's Court and dealing with children who are offenders? Do we have adequate supports in place to support the families through that court?

Mr Drumgold: You are talking about the risk assessment tool that domestic violence offenders undertake. I would need somebody a little more expert in the application of the risk assessment tool, but I have certainly read a lot of that evidence. There are risk assessment tools for young people and different risk assessment tools for adults. However, a child or a young person would be considered to be of lower risk because they are not old enough to have collected the criminogenic factors that would increase their risk of reoffending. I think someone from corrections that applies those risk assessment tools would need to answer those questions.

DR PATERSON: Thank you.

MR BRADDOCK: Can I have an update on the raising the minimum age of criminal responsibility campaign? What are the next steps going to be for that?

Mr Rattenbury: As the committee may recall, the most recent step was that last year the government issued a consultation paper during the winter—I think it was in July or August—for community feedback on a range of questions. We got that feedback. We have issued the listening report on that. Similarly, we also commissioned a piece of work, led by Professor Morag McArthur, on service delivery. That report has also been issued publicly. That is all the work that has been done. Where that gets us to is the government is now pulling all of that together.

Minister Stephen-Smith, Minister Davidson and I are the three lead ministers on it. I am from the legal policy perspective, and the other two ministers are more from the service delivery side. I guess what we are doing is pulling together those two streams. We need to make sure we have the service response in place so that when we change the age of criminal responsibility we still have a service response so that, if a young person is still involved in what we loosely call “harmful behaviours”, there is a response there in place for them.

Raising the age of criminal responsibility is not about just having a free-for-all. Young people still need to be held to account and also provided with therapeutic responses. We do not want the response to be time in custody. The next step will be the finalisation of that model of care and then a piece of legislation. That is roughly the plan.

MR BRADDOCK: Just to clarify: when you say, “finalise that model of care,” is that going to be a specific standard level of care that we need to have in place before we actually change the age of criminal responsibility?

Mr Rattenbury: I think it will involve making sure that we have the right service responses. We are not starting from a blank slate. We have a range of services that are there and are available. Some of them might need to be adjusted to a different age group. Professor McArthur’s report made some other suggestions. I do not think there is an exact line of saying, “We must be at this particular point,” because there are many different ways you could approach this.

We also need to address issues such as if police find a person under the age of 14 who is involved in a harmful behaviour, what is their response? If police cannot arrest them, we still potentially need to take them to a safe place. They are the sorts of questions we are working through at the moment. Again, it is not that we do not have a system in place, because that is the case now. If a child under 10 is involved in a harmful behaviour, we have mechanisms. We just need to make sure we apply them appropriately across the different age groups.

DR PATERSON: How will the system deal with children under 14 who commit a crime? For example, will there be differences in how they are treated—for example, if a child stole something, in comparison to a child who was very violent and injured

someone very badly? Will the system appropriately respond to very different types of crime?

Mr Rattenbury: That would certainly be the intent. We are still finalising that model. As you can imagine, the response to the young person's needs might be quite different in those circumstances. Ideally, the way the system will be set up is that it will look at why that young person is involved in the harmful behaviours. For example, are they homeless; have they had to leave their home because of family violence? Do they have a mental health problem? Do they have a drug and alcohol problem? Of course, some of these things might be related, but the system response will be designed to seek to address the underlying issues that are driving that behavioural issue that is leading to those sorts of behaviours or those sorts of offences, if you like.

THE CHAIR: Jumping back earlier into the report, on page 25 you talk about the property crime prevention strategy 2016-2020 and the level of property offences reducing from 21,670 in 2015-16 to 17,737 in 2019-20 and you say that four of the five KPIs were achieved. Firstly, why was one of those not achieved and how much of the reduction in the numbers do you attribute to the strategy directly?

Mr Rattenbury: In terms of the first half of the question, as the bottom paragraph on page 25 notes, the fifth target was around motor vehicle theft. We have seen motor vehicle theft rise in the ACT. That is again reflected, I think, in this year's data, where across the board we have seen property crime declining, in some categories by quite a lot—in the order of 30 to 40 per cent—but motor vehicle theft, I think, climbed around five to six per cent in the past 12 months. That continues to be a challenge. I think that is the case across Australia. That goes to the first half of your question. I am sorry; can you remind me of the second half of your question?

THE CHAIR: How much of the reduction in the numbers do you attribute to the strategy directly?

Mr Rattenbury: I am sure ACT police would say directly, the complete strategy. These things are difficult to separate out. ACT Policing has a range of strategies to respond to these matters. Clearly, in this strategy it has tried to sit down and think about the most effective ways, and we would like to think it has had a significant impact.

THE CHAIR: What else could be done to achieve further reductions and are there particular strategies to deal with the rise in motor vehicle theft?

Mr Rattenbury: I might seek some support from my officials here. Again, the broad answer I would give is that the justice reinvestment policies and the reducing recidivism strategy are designed to cut these rates, because the people who are involved in these offences generally have a history of offending. There is quite a bit of repeat offending in the ACT, as you see from various datasets. In the broad, that is the strategy response. As you know, the police are working on a new police services model in which they are endeavouring to change the way they operate to also break down that criminal involvement and that opportunity for offending. I guess, across the board, there are a number of strategies designed to tackle this.

THE CHAIR: And anything in particular to assist with the rise in the motor vehicle theft rate?

Mr Rattenbury: That might be a question best put to ACT Policing, I suspect. They would have had the lead in that area. If you are happy to defer to them, I think they would be the best place to have that conversation.

DR PATERSON: Again, going to the DPP, the annual report talks about a twin program with Solomon Islands and Pacific regions, working around family and sexual violence matters and improving their support and coordination over there. Can you speak more about that project, what is involved and how long it has been going for—those types of thing?

Mr Drumgold: A number of my prosecutors have had time in various South Pacific countries, myself included, and we tend to maintain contact with them; you tend to be classed as alumni and maintain those contacts. That refers to one of my crown prosecutors, Rebecca Christensen, who we relieve from duty for brief spells to go to the Solomon Islands—I think that there is another one scheduled for Papua New Guinea this year—to do training within their prosecution service on how we deal with domestic violence matters and how we overcome hurdles in prosecution and recidivism issues. It is just an ongoing commitment that we both benefit from. I am sure our South Pacific counterparts benefit from the exchanges from here. We certainly benefit from those exchanges also.

MR BRADDOCK: In terms of reducing the incarceration rate for Aboriginal and Torres Strait Islander people, how are we measuring and how are we going in terms of reducing that rate?

Mr Rattenbury: Let me take that on notice and come back to you. I am just having a mental blank on what datasets we have.

THE CHAIR: I will move on to a question regarding data security and data management. Attorney, recommendation 4a of the government's response to this report, ACT Auditor-General's report 3/2020, *Data security*, was actioned by establishment of the ACT Governance and Management Framework, which was endorsed by the Strategic Board in 2020. Have there been any updates to this framework since 2020?

Mr Rattenbury: I am looking to the director-general here for some guidance on who might know the answer to this.

Mr Glenn: I might need to take that on notice and seek some further advice as to whether there has been an update to that piece of work from 2020 and, of course, its relationship to the more recent Auditor-General's report on data security.

THE CHAIR: Anticipating a possible answer, if there have not been any updates to this framework, could this be explained, given that data management is such an evolving field? Thank you; I accept that you will take that on notice as well.

Mr Glenn: Thank you, Mr Cain.

DR PATERSON: I hope this is a relevant question. In a few of the submissions to the community corrections inquiry, there were calls to accelerate the Disability Justice Strategy—that it is moving too slowly. What are your thoughts on that, and are there aspects of the strategy on which we can move faster?

Mr Rattenbury: That strategy sits, with joint responsibility, between me and the Minister for Disability, predominantly. There have been some good areas of progress; for example, we now have disability liaison officers, about eight of them. I met them all recently at an event and they are very enthusiastic about their roles. That recruitment process has been very effective. Particularly because there is a group of them, there is now a community of practice there; they are also reinforcing each other and sharing their experiences.

I recently had a conversation with the Minister for Disability about the fact that I was concerned—and she agreed—that, with respect to the last 12 to 18 months, there is a risk that we do lose some momentum in that strategy, and that we need to get back on to it. We are looking at ways to do that at the moment, including consulting with some of the key community stakeholders to get their insights as to the areas of concern they have.

If the committee has been looking at that, we would certainly welcome any specific recommendations, because we are starting to do some of that work as well. Ms Greenland also works on this with me. I might ask whether she has any additional comments.

Ms Greenland: One thing I would add is that Corrective Services launched their own disability action plan and inclusion plan in December 2020. They have been working on implementation of a number of elements of that plan. One of the areas that they have been focusing on is developing new content and material, and modifying formats to provide information to offenders and detainees to ensure that they get critical information in an accessible and inclusive way.

They are also at the moment in the process of investigating options to connect offenders with disability support services in custodial and community corrections environments. There is definitely quite an awareness of and a focus within community corrections on making sure that the Disability Justice Strategy is rolled out in a way that supports detainees and those who are participating in community corrections programs.

MR BRADDOCK: My question is to the Director of Public Prosecutions. I am interested in how you go about dealing with offences under the Electoral Act—in particular, those which involve failing to enrol or vote. How many of those do you deal with and what is your process for dealing with those offences?

Mr Drumgold: They come to us from an external agency. We prosecute them on behalf of that external agency. I think it commences with a fine, and the only time it comes into our office is if that fine is disputed. Obviously, they are clustered around groups, around timings, so they are not something that is sprinkled throughout the year.

What will happen is that a fine will be issued. If that fine is disputed, a summons will be laid, and that summons will be returnable on a specific day in the Magistrates Court. They tend to allocate a specific list and we deal with them all at the same time. Some of them plead guilty; some of them are disputed. With the way that they are generally prosecuted—I have only done a handful myself—the evidence on behalf of the prosecution is generally documentary evidence. That is how they are dealt with.

MR BRADDOCK: Could you point me in the direction of any statistics about the number of cases and the outcomes of those?

Mr Drumgold: I would not have statistics. In our annual report, having regard to the way that we collect and present data—I am just having a look at it—in B.2.14 I run through the rules on statistical collection and reporting in accordance with ANZSOC and various ABS requirements. They would simply fall into the regulatory matters, so we do not break up the regulatory matters into individual charges. The total amount of those would fall into the regulatory prosecutions, because that is our reporting protocol. I could extract data from cases by charge and section number, if that was useful. My feeling is that the numbers would not be great; the numbers would not be very large.

MR BRADDOCK: What would be the typical outcome of that process?

Mr Drumgold: That is a question for the judicial officer. For example, someone might dispute the fine, a summons results and they might plead guilty to that summons and get no conviction or they might get a small fine.

THE CHAIR: What happens if someone simply does not pay the fine?

Mr Drumgold: It results in a—

Ms Nuttall: Perhaps I could assist, Mr Drumgold. There are approximately 1,200 fail-to-vote matters that come before the court out of any given election. Of those, 820 are withdrawn with no evidence to offer. Of the resulting ones, I would have to take that on notice in terms of the outcome. They are a fine-only offence, which means that defendants are not subject to a term of imprisonment.

In circumstances where the defendant fails to pay that fine, they then go through the usual fine enforcement process. There is a staged process through fine enforcement. The first is that a reminder notice is sent. If they fail to reply to that, they have an opportunity to enter into a payment arrangement, if they are unable to afford it within the time specified by the court. If they fail to pay after that, there are then sanctions on drivers licence and registration.

Mr Drumgold: The majority of those that are withdrawn are withdrawn because the fine is paid.

Ms Nuttall: Yes.

Mr Drumgold: You can pay the fine right up to the hearing and, when they are paid,

we simply withdraw the prosecution.

THE CHAIR: I have a question on data security; again, it relates to the ACT Auditor-General's report on data security that I referenced earlier. Recommendations 1, 3a and 3b in the annual report are classified as "in progress" and listed as agreed actions to be completed respectively by November 2021 and early 2022 for the other two. Attorney, could you advise whether these actions are complete; if not, what is the time line for completion?

Mr Rattenbury: I will look to our IT team here.

Mr Glenn: If I might jump in, Mr Cain, with respect to recommendations 3a and 3b, which are around the updated protective security policy framework, I can confirm that that work is still in progress and there is further consideration of that going through relevant bodies within the ACT government—in particular, the Security and Emergency Management Senior Officials Group and then to ministers. That work is ongoing. The whole-of-government threat and risk assessment has been commenced. I cannot speak to the final status of that at the moment. That is not something that is being led by JACS.

THE CHAIR: With 3a and 3b, when are those actions anticipated to be completed?

Mr Glenn: I hope we will have something for government to consider in the first half of this year. As to when they are actually going to be completed, I suppose that is a matter for government as to how they wish to adopt those particular pieces of work. There are a couple of parallel pieces that go along with this around how we do the implementation of the updated PSPF. Also, work that is happening in the commonwealth space around systems of national significance and other critical infrastructure protections need to be aligned. So there is a little bit of alignment work going on with those pieces at the moment.

DR PATERSON: My question is in relation to the national redress scheme for institutional child sexual abuse. The annual report says that seven survivors in the last financial year indicated that they would like a direct personal response from the ACT government institution. It says that one direct personal response was facilitated. Is there an issue with the other six? Is the government prompt in responding to survivors or is there—

Mr Rattenbury: I will invite Ms Hakelis to provide a response.

Ms Hakelis: Thank you for the question. Yes, we had seven requests for DPR, a direct personal response, from the ACT government institutions. Out of the seven that requested, only three have formally accepted the offer for a DPR. It is quite a lengthy process and a trauma-informed process, which is why it is not reflected as high in the annual report in that particular period of time. Two are currently in process, and Victim Support ACT have engaged an external provider at this point in time to undertake those DPRs.

DR PATERSON: Can you outline how long an average process would take for this to happen?

Ms Hakelis: That is a wonderful question. Survivors have until the end of the scheme's operation to access a DPR. With respect to the time that it usually takes, I will get that detail for you. I will return shortly.

Mr Rattenbury: Could I provide a correction to the committee? This is on Mr Braddock's question about the number of prosecutions and the like arising from elections, for failure to vote. I have been told that approximately 2,000 fail-to-vote matters occurred, with 1,200 proceeding to final outcome and 800 with no evidence to offer. That is a little update on those numbers that were put forward earlier.

MR BRADDOCK: "No evidence to offer": is that from the offender or from the government?

Mr Rattenbury: As was indicated before, Mr Braddock, my understanding is that it can mean that they have paid the fine, so the matter does not proceed. But I will defer to my colleagues, if there is more clarity on that.

Mr Drumgold: "No evidence to offer" is a procedural way to bring an offence to an end. There are two ways to bring an offence to an end. You can withdraw the charge; but, in theory, if you withdraw a charge, you can re-lay it. What we tend to do is offer no evidence and invite a determination, a conclusion in the matter; then that brings an end to the matter in that way.

MR BRADDOCK: I am interested in the Residential Tenancies Act and what we are doing to help to protect renters. I have noticed some of the COVID initiatives have come to an end; how are we going to move forward in that space?

Mr Rattenbury: There are probably two answers to your question. On COVID specifically, we had a number of measures in place last year, including an eviction moratorium. The formal eviction moratorium has come to an end, but there are a range of transitional provisions in place so that if, after that period, you have a debt, but you continue to pay your rent, you cannot be evicted. If you are back on track, you might have got your work back or you have got another job, and you are paying your rent now, the protections remain in place while you pay down that debt with your landlord. We also have a financial support scheme. The government has partnered with Care Financial Services whereby tenants can receive a cash grant to help them if they find themselves in difficulty from COVID.

Some of those COVID-specific protections remain in place. Outside that, the government is currently working on a number of reforms to the Residential Tenancies Act, including looking at no-cause evictions. We had a discussion paper out in the second half of last year which sought community feedback on those. We are now analysing the input from that community feedback. The no-cause evictions is the main reform in that space. There are a couple of others.

THE CHAIR: I have a fairly succinct question regarding the cost of litigating lease variation charge disputes. The question is in two parts. Obviously, it may be taken on notice. Firstly, what was the dollar value of ACT Government Solicitor resources committed to the provision of litigation support of LVC disputes? Secondly, what was

the dollar value of non-ACT Government Solicitor resources, such as barristers and expert witnesses?

Mr Rattenbury: I will defer to the Solicitor-General.

Mr Garrisson: Mr Cain, the legal services provided by the ACT Government Solicitor are provided out of existing government resources. Therefore there is no particular charge attached to it. Accordingly, the only relevant issue is the question of the engagement of counsel. It will be difficult for us to identify specific matters relating to lease variation charges because, of course, there is not a particular topic in our practice management system that records the nature of that. We would need to, in effect, do a search. Over what period of time are you wishing to have this information?

THE CHAIR: Even the last financial year, or the one before, recognising that I do not think they are an everyday occurrence.

Mr Garrisson: No, they are not, mercifully. The evidence is normally valuation evidence and, of course, the use of counsel. I will have to take that on notice, and will endeavour to get back to you within the normal time frames.

DR PATERSON: I have a follow-up for Mr Garrisson. I am trying to find the table; it was along the lines of six per cent of the cases in which you represent the government being child welfare matters.

Mr Garrisson: Yes. That table is on page 40, at chart 4. We thought that it would be helpful for the report to set out, in effect, what percentage of our resources is spent on what classes of work. With the child protection services, could I ask, Dr Paterson, where you got that figure from?

DR PATERSON: You had a table. I do not have the page number; I am sorry. It broke down the different matters that you—

Mr Rattenbury: The point of confusion, Dr Paterson, is that the chart that Mr Garrisson is pointing to on page 40 does not have a specific one around children.

DR PATERSON: No, but there was one; I saw it.

Mr Rattenbury: We believe you.

Mr Garrisson: I certainly would not doubt you, Dr Paterson.

DR PATERSON: I am interested to know whether there has been an increase in child welfare matters over the last few years. Is that increasingly becoming part of your core business?

Mr Garrisson: It has been consistently part of our core business. It is one of the areas where we continue to be under pressure in relation to the number of matters that are being addressed.

The other aspect to it is that a number of the matters are becoming more complex. For example, there can be a number of different interests involved in a particular dispute. Some of them are very large matters. There has been, for example, a very significant coronial inquiry which absorbed significant resources from within my office to address it. It remains a very significant part. I do not know that I could give you a percentage figure, but if you look at the table that I mistakenly drew your attention to before, the children's work falls within the citizen rights and welfare protection practice area. That practice area comprises 13 per cent of our work. That includes children's protection work, discrimination claims and human rights claims—quite a significant amount. I would imagine that, of that 13 per cent, the children's work would not be 50 per cent of that work but it would certainly be a significant proportion.

THE CHAIR: Thank you, Solicitor-General. We might come to a close. Obviously, members are entitled to put questions in themselves for a later time. We now conclude the discussion of the Attorney-General's portfolio and adjourn for a short break. I want to thank the attorney and his officials for being assembled at the one time. That is convenient, for many obvious reasons. Minister Rattenbury and officials will return at 4.45, when we turn our attention to the gaming portfolio.

Hearing suspended from 4.32 to 4.45 pm.

Appearances:

Rattenbury, Mr Shane, Attorney-General, Minister for Consumer Affairs, Minister for Gaming and Minister for Water, Energy and Emissions Reduction

Justice and Community Safety Directorate

Glenn, Mr Richard, Director-General

Garrison, Mr Peter, Solicitor-General for the ACT

Drumgold, Mr Shane, Director of Public Prosecutions

Nuttall, Ms Amanda, Principal Registrar and Chief Executive Officer, ACT Courts and Tribunal

Johnson, Ms Kathryn, Executive Branch Manager, Justice Reform, Legislation, Policy and Programs Division

Dening, Mr Richard, Senior Director, Restorative Justice Unit, Legislation, Policy and Programs Division

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

Greenland, Ms Karen, Executive Branch Manager, Criminal Law, Legislation, Policy and Programs Division

Hakelis, Ms Robyn, Executive Branch Manager, Civil Law, Legislation, Policy and Programs Division

Cvetkovski, Ms Dragana, Executive Branch Manager and Chief Finance Officer

ACT Gambling and Racing Commission

Chan, Ms Yu-Lan, Chief Executive Officer

Chief Minister, Treasury and Economic Development Directorate

Rynehart, Mr Josh, Executive Branch Manager, Fair Trading and Compliance, Access Canberra

Cubin, Ms Derise, Executive Branch Manager, Licensing and Registrations, Access Canberra

THE CHAIR: Welcome back to the first public hearing of the Standing Committee on Justice and Community Safety inquiry into annual reports 2020-21 with respect to the Minister for Gaming. In this session we will hear from the minister. I welcome back Minister Rattenbury and his accompanying officials. As we are not inviting opening statements, we will now proceed to questions. Minister, I refer to page 14, relating to gaming policy. Under the “Gaming policy” heading, the report states that LPP is leading the implementation of the 10 gaming-related commitments listed in the Greens-Labor parliamentary agreement. Commitment No 5 refers to \$5 bet limits and \$100 load-up limits. How far have you got with the implementation of these limits?

Mr Rattenbury: Thank you, Mr Cain. You are correct; LPP are responsible for the policy work on that. They have been undertaking a range of background work, research on the best way to implement that policy and developing ideas to put to government what we have been indicating.

As you will recall, we have the Community Clubs Ministerial Advisory Council. It is my intent that government will work up some propositions and take it to that advisory council to seek their feedback and to get their views. I have been very clear that the

government has a clear sense of where we want to get to, but there are potentially different ways to do it. We are keen to work with both the club members of that group and the advocacy members of that group in order to make sure that we deliver not only a cost-effective strategy but also one that delivers the outcomes we are after in terms of reducing gaming harm in our community.

THE CHAIR: Who is funding the preparation work for the implementation of these limits, and how many FTEs are allocated to it this year?

Mr Rattenbury: The government is funding that at this point. There are obviously transitional costs, but we have not yet ascertained that position because it depends on the policy we land on. In terms of the numbers of FTE, Mr Ng might be able to help with that matter.

Mr Ng: In relation to the FTE allocated to the delivery of the gambling harm commitments as a whole, there is a team within the division, a liquor, racing and gaming policy team. It would be difficult to give you a figure for the exact number of FTEs that are specifically working on it; as the name suggests, they are spread across liquor, racing and gaming policy and they do work across those areas to support the government's policy reform agenda in that space.

In relation to the costs, one of the key foundational pieces of work that we have been progressing is the procurement of a technical specialist to advise government on the technical capability of ACT machines moving to \$5 bet limits and \$100 load-up limits. That is one of those key foundational, evidentiary pieces of work to understand what the industry can do in terms of their technical capability regarding moving to these new policy settings. That will inform the range of options that government gives consideration to in the longer term.

THE CHAIR: In terms of this review and preparatory work, what constraints have you encountered or any hindrances to proceeding smoothly?

Mr Rattenbury: If I understand your question correctly, Mr Cain, it is a question of the technical capability of the machines. Depending on the age of the machine, their ability to be adapted can vary quite a lot in terms of both hardware and software. That is the technical work that we are sifting through at the moment.

MR PARTON: Minister, both of us are mindful that technology continues to change in this space, and I know that you have been watching closely the Newcastle trial that is rolling out around cashless gaming. I wonder whether our journey down this path to the \$5 bet limits and \$100 load-up limits will change along the way based on new technologies. Are you able to give any indication of whether that is possible?

Mr Rattenbury: It is a fair question, Mr Parton. It is one that we are keeping a very close eye on and have an open mind on, in the sense that we want to make sure that any significant reform we make is mindful of emerging technologies and does not put us in a position where we make a change now and then want to make another change in two years time. We want to make sure that we make a substantial change, we do it once and we do it properly.

That said, it is a really fluid space at the moment. That Newcastle trial that you referenced is behind schedule. It was due to commence in September last year, but we all know what happened in August and September last year. So they are a little bit behind. We are talking constantly with ClubsACT, who are watching that very closely as well. As soon as the Newcastle trial gets up and going and they have something to report, we intend to invite them to speak to our ministerial advisory council about their experiences. We are using that as one specific touchstone regarding how the technology is going.

MR PARTON: What I am hearing—and it pleases me, Minister—is that there is much more of a focus, when it comes to fulfilling this part of the agreement, on getting it right than just getting it done.

Mr Rattenbury: Yes, I think so, Mr Parton. That would be a fair summary of it. We are committed to the policy position, but in terms of timing, obviously, the pandemic has had an impact, and the technology is evolving. We are trying to find that sweet spot that both delivers the harm minimisation outcome we are looking for and does it in a cost-effective and practical way.

DR PATERSON: My question is in relation to page 50 of the ACT Gambling and Racing Commission annual report, around gambling revenue. In previous years, gambling revenue in the ACT has been decreasing. Last year, in comparison to 2019-20, there was a 20 per cent increase in gambling revenue in the ACT. Would you suggest that, unlike every other sector of business and hospitality, COVID restrictions and the pandemic have been a good thing for gambling revenue?

Mr Rattenbury: Dr Paterson, I am just having a look at that data for you and trying to think through the answer to your question. I do not know whether Ms Chan is there, from the Gambling and Racing Commission.

Ms Chan: Thank you, Dr Paterson, for the question. Yes, with the change in the revenue, there has been a bit of an increase. I am not able to say what is behind that, apart from the fact that the revenue is based on gaming activity. An increase in revenue is directly attributable to an increase in activity.

Mr Rattenbury: We might take this on notice. I am happy to keep going with questions, but, from my quick look at this, with respect to the figures you are referring to, the increase is compared to 2019-20. Certainly, with the 2019-20 financial year, because we had the initial lockdown, my recollection is that overall gaming revenue was down that year; therefore, the government's revenue was down that year. The following year, I understand that it went back up. Let us check that and come back to you. I am trying to line up the financial years here and make sure I am giving you an accurate answer. Please go on with your questions.

DR PATERSON: Do you think that we should have done more, coming out of the first COVID lockdown, to reduce gambling harm, given that there was such a significant increase in revenue?

Mr Rattenbury: I do not know that there has been a significant increase in revenue. We have seen over recent years, overall, that gaming machine revenue has been either

stagnant or slightly declining. That would be over a six- to eight-year period. I do not believe it has gone up substantially in recent times. I will double-check this to make sure, and we will provide that to you on notice. I think it bounced back after going down, materially.

You did ask me this question at the last hearing, about whether we should have done more. We have a substantial harm minimisation program. We have reduced the number of gaming machine licences in the ACT by around 25 per cent in the last five years, and we are working on bringing in bet limits and load-up limits. These are, historically, compared to what has happened in the ACT, significant reforms that are designed to have a big impact on harm minimisation.

DR PATERSON: I will be interested to see your answer to the question on notice.

MR BRADDOCK: Gambling harm does not affect just one part of the population; it affects many groups who have English as a second language or do not even speak English in the home. What are we doing to address gambling harm within those communities? How are we reaching out to them?

Mr Rattenbury: I have some notes on this; I will just find them. Ms Chan might start.

Ms Chan: Thank you for the question. I acknowledge the privilege statement. I believe your question was about what we are doing to reach out and prevent harm with non-English speaking communities—have I got that right?—the culturally and linguistically—

MR BRADDOCK: That is correct.

Ms Chan: The ACT Gambling Support Service and Gambling Help Online are the two primary support services that we have in the ACT. Those are both funded by the commission and they have a remit to work with all communities, including those of a non-English speaking background. We have outreach to those communities through those groups—for example, we ask what materials might be useful for them. Recent feedback through the Gambling Support Service was on some of the materials that we have. There is a little credit card-sized card that has the Gambling Support Service information on it with the contact details. It is very discreet and it fits in your wallet. We were given feedback that having something like that in different languages would be quite useful. For example, the Vietnamese community were saying that it would be useful to them. Those are some of the things that we have in place.

MR BRADDOCK: So that is something the commission is doing now?

Ms Chan: Through the Gambling Support Service, which is funded by the commission, yes. We are working with communities to work out what would be useful for them and then we will act on that.

MR PARTON: Yes. Minister, I heard you on the radio this morning with some quite positive news to share about the ACT government's diversification and sustainability support fund. I heard you talking again about moving clubs away from poker machine revenue. You and I would both agree that there are some good stories in there, but

there are also some not so good stories. In the past, you and your party have touted the Polish White Eagle Club in the inner north as a beacon of what you would like a community club to be in Canberra. I think the Austrian Club probably also fits in that model. My understanding is that neither of those clubs is likely to reopen; certainly the restaurant at the White Eagle Club has closed. Does the Polish White Eagle Club remain a beacon for you of what you would like clubs to look like in the ACT?

Mr Rattenbury: I would refer you to the *Canberra Times* article about the restaurant at the Polish White Eagle Club. I believe they indicated that they had outgrown the venue; they were going so well that they wanted to explore new possibilities. So I do not think the example fits the narrative that you are painting.

MR PARTON: So you are suggesting that those two clubs will reopen and that everything is rolling along nicely?

Mr Rattenbury: No, that is not what I am suggesting. I am talking about the specificities of the restaurant at the Polish White Eagle Club, who indicated that their business was so successful and they want to do something else.

MR PARTON: I am talking about those clubs, the small clubs, that do not have poker machines. I understand that your electoral base has a vision of a clubs industry in the ACT without a single poker machine. When are you going to explain to them that that is not how it is going to work?

Mr Rattenbury: Again, you are making suppositions there. There is no policy document that says we see no poker machines in the ACT. The parliamentary agreement talks about reducing the number of authorisations to 3,500. Your suggestion of position is, again, not accurate.

MR PARTON: It is pleasing for me to hear you answer even in that way, Mr Rattenbury, because when I hear answers like that, part of me genuinely believes that perhaps we can see a long-term and sustainable future for the clubs. I know that you would like to see that.

Mr Rattenbury: I think it is well understood that the Austrian Club are struggling financially. They do, in fact, have poker machines. I think it is an interesting question for them about what they want their future to be. The government is having active conversations with the Austrian Club in order to try and assist them and put a range of propositions to them, but they need to make some decisions about their own future as well.

DR PATERSON: There is not a huge number of those grants given to diversify. Do you think more could be done to encourage clubs to engage in this scheme?

Mr Rattenbury: I am encouraged by the fact that across the clubs industry the diversification conversation is very different to where it was probably even five years ago. If we go back to, say, 2016, I do not think there was an acceptance of the need for diversification across the whole industry; whereas now, I think, to a person or to a club or to a board, if you like, they will acknowledge the need to diversify and move to a different revenue base. That is kind of understood. I think a lot of the clubs are

still thinking about what that will look like.

I was encouraged by the quality of applications this year. We were able to disperse the entire \$1 million that was available pretty much, but I think there is a long way to go. The clubs, in the honest conversations, will openly admit that they got enormous amounts of revenue from poker machines over the last 30 years and that has enabled them to build significant capital infrastructure; they have now got a machine that they need to keep feeding. It is a bit of a vicious cycle and it is a long-term project to turn this around.

Mr Ng: In relation to Dr Paterson's question, on the directorate side we are certainly in frequent communication with the club industry to let them know about funding rounds and the funding opportunities from the Diversification and Sustainability Support Fund. To recap on the model, the government appoints an advisory board which provides advice to the minister about which applications should be supported and the like. Obviously, not all applications can be supported on every occasion. The chair of the Diversification and Sustainability Support Fund advisory board was able to provide an information session to the club industry to provide them feedback on the types of things that would be well received by the board and the types of things that fall within the remit of the fund to support. That is just to provide the context around the directorate's engagement with the club industry.

MR PARTON: Were there applications that were not successful?

Mr Ng: Yes. The applications which the minister spoke to this morning were the ones that were referred through from the advisory board and were recommended for approval, but not all of them are of that nature.

MR PARTON: Are you able to give us an indication—I do not know if you are—of how many were not successful?

Mr Ng: Numerically, I believe there were three.

Mr Rattenbury: Going back to Dr Paterson's earlier question about the revenue figures, I can perhaps best explain it by saying that, in the 2021 financial year, COVID restrictions required gaming operations to cease in the ACT for 40 days. In the previous financial year it was 140 days, so a 100-day difference, which I think would probably largely explain that difference in revenue which you were asking about.

DR PATERSON: I think there is still a five per cent increase for the two years, even if you account for that.

Mr Rattenbury: If you want to come and chat to me later about that analysis, I would be happy to have a look at it.

DR PATERSON: Yes.

THE CHAIR: Obviously that would be of interest to the committee as well. Regarding the gaming machines surrender incentive, on page 369 of the report there is

a \$1.5 million saving from the gaming machine authorisation surrender initiative. How much did you budget, Minister, for this initiative, and how much was finally spent?

Mr Rattenbury: The original budget allocation was in the order of \$2½ million. I think we spent about 1.1 in the end. One of the officials might assist me with the exact numbers. The reason for the underspend was that the offering was up to 250 authorisations to be retired. We will provide the figures on notice. The full offering was not taken up. Ms Cvetkovski can help us.

Ms Cvetkovski: The budgeted amount was \$3.75 million and the saving to that amount was 1.5.

MR PARTON: With all of the COVID problems, why is it that clubs did not surrender a lot more to get hold of this cash? Are you perplexed by that, Minister?

Mr Rattenbury: Not necessarily, Mr Parton. I think they will have individually made a strategic decision about what was the best pathway for their venue.

MR PARTON: It is a fairly big amount, to get this estimate wrong. To be honest, I am a little perplexed that clubs did not step forward and say, “Hey this is the moment; let’s do it.” Where to from here?

Mr Rattenbury: In terms of your point around the estimate, it would be fair to say that, in making the original policy position, as with many things at the beginning of the COVID pandemic, government took some decisions very quickly. It was, I would like to say, an informed estimate, but it was not something that was carefully modelled; it was really designed to be put in place very quickly, to make sure there was an opportunity there for clubs. I do not think anybody would say that they had a detailed model for it. What was the second half of your question?

MR PARTON: Where to now?

Mr Rattenbury: We have been having some conversations about that with the clubs recently. As you know, there is a commitment in the parliamentary agreement to reduce the number of authorisations to 3,500 across the duration of this term. We will need to make sure we have a policy mechanism to do that. That will be the next step, and we are currently canvassing options. I have started to ask a range of clubs how they would like to see that happen and what they think would be an effective way to do it.

MR PARTON: Fair enough; thank you.

DR PATERSON: Page 28 of the commission’s annual report refers to breaches detected. I have a question relating to gaming machines and a question relating to the casino. It says that, of the 27 breaches to the Gaming Machine Act, there were two instances of failing to operate a gaming machine at the correct percentage payout. Do you think that ACT residents should be concerned when they are playing the poker machines that they are not getting the correct payout?

Mr Rattenbury: I will ask Ms Chan to provide more details on that, Dr Paterson.

Mr Rynehart: I will take that question, Dr Paterson. The Gambling and Racing Commission undertook a program early last year across all the licensees to look at the operation of the gaming machines. The breaches listed in the report were those ones identified during those inspections. They were identified as being either administrative or lower level, and the licensees came into compliance either during the inspection or immediately after. We had some follow-up inspections earlier this year, and found that those issues have been resolved and the licensees were compliant.

DR PATERSON: In respect of the breaches at the casino, there were 813. I looked at the last annual report and it is basically the same number. Do you think that the casino is doing enough to report or detect breaches? Also, how many of their breaches involved self-exclusion?

Mr Rynehart: I will have to take the detail about the self-exclusion on notice. We have an ongoing program with the casino; we are quite active. We have a regular inspection and engagement focus on the casino, specifically. As you indicated, the numbers are largely consistent, and we continue to engage with the casino and work through issues as they present. I will take the exclusion question on notice.

MR BRADDOCK: I am interested in the community contribution scheme. How much of that has been used to donate to political parties in both the last financial year and the year before that? Is it possible to obtain that information?

Mr Rynehart: I would need to take that question on notice. I do not know the answer; I do not know whether Mr Ng is aware.

Mr Rattenbury: He seems to be hesitating as well.

Mr Ng: It is probably best for us to take that on notice. There are also exclusions which apply to matters which can be subject to community contributions, so we will come back to you with advice about the quantum, if it is available, of the contributions that have been made to political parties, and also confirm whether that falls within the scope of an allowable contribution.

MR BRADDOCK: Thank you; I would appreciate that clarification of what is in scope and out of scope for that community contribution scheme.

Mr Ng: Mr Parton, if I could come back to you. I apologise—in your follow-up question, you asked me how many applications to the DSSF were rejected and I told you it was three; it was actually six.

MR PARTON: Okay. Minister, in relation to your agreement with Labor, commitment 8 refers to the review of non-potable water usage and costs. I know so many things have been interrupted by COVID, and we are not quite clear as to the exact outcome of this review and where we are at. Are you able to clarify that?

Mr Rattenbury: Yes, I can, Mr Parton. That review was completed and released in December 2021, a couple of months ago, just before Christmas. That has now been

provided. It was conducted by the Chief Minister's directorate, primarily through the treasury agency. That has now been provided to me, with my other hat on, as the minister responsible for water, to prepare the government response to that report.

MR PARTON: I do not suppose you can give us any insights into that at this particular point in the journey?

Mr Rattenbury: Not quite. The report is publicly available. It has made four recommendations, and we now need to assess those. The report provides some useful analysis, in that it highlights some potential anomalies in the system and some areas in which improvements can be made. The report identifies that the program of concessions is complicated, and that it could be simplified. Those are good recommendations; we will need to work through the detail of those. As you have flagged, the review took longer than was originally intended; it did get slowed down through the course of last year. I am keen to make sure that we respond as quickly as possible, because there are a number of people waiting to see the outcomes of that process.

MR PARTON: Minister, there are also some large peaks and troughs when it comes to rainfall in this town. I know no-one would wish us to be in a drought, but perhaps those clubs who are waiting for an outcome from this review are wishing it did not rain as much over the summer. It makes decisions in this space really difficult for you.

Mr Rattenbury: Yes and no. I think this summer will be the anomaly. The long-term climate projections indicate that Canberra will be hotter and drier, so we need to work on a basis that a year like this year is not one we can rely on. Long term, we need to work with heavy water users like golf courses and people that have responsibility for ovals, on an assumption that it will be drier rather than wetter. We need to think about how they can make their watering systems more efficient, and whether there are ways in which they can reduce their water usage and improve their water storage on site. We need to work in that broad direction.

DR PATERSON: My question is on the new self-exclusion database. It says in the annual report that it is expected the new system will be completed by the 2021-22 financial year. I am just wondering is that on track and what will the new system look like.

Mr Rattenbury: Ms Chan?

Ms Chan: You are probably aware that the current database has been in place since 2014. It does what it is supposed to do but it is a little bit older and it is not as user friendly as modern systems are. The upgraded database will be easier for everybody to use—easier for all the venue staff to input data. It will also hopefully give us better reporting capabilities so that we will have better analysis coming out of it.

It is on track for completion this side of June, and we will be working with clubs. We have already consulted with the clubs a little about what are the things about the current system that they do not like so that we can build that into the design of the new one. We have had some official engagement and we will be working with them as the system gets closer to completion, to talk to them about what the new system is

like, how to use it, what the new functions are—sorry, the new capability and how to use the system.

DR PATERSON: And is it expected that the new system will make it easier to recognise people who may have self-excluded?

Ms Chan: At the moment, with the way that the reporting is, it is quite clunky, I guess is the best word to use it. With the new system, it will be easier for a venue to have a picture, I guess, of all the incidents from their venue about a particular patron. At the moment it is a bit difficult to get that sort of clear picture of an individual, for example how many incidents might have been reported or how many, I guess, reports might have been made about them.

The new system will make that much easier, with the goal of making it easier for the club staff to share information about a particular patron, who they might need to just closely work with—keep an eye on. Then they can record in the system what they have noted, what interactions they have had and what the outcome was.

MR PARTON: I just want to ask in that space: I know that one of our clubs has gone through the process of trialling some whizzbang technology in regard to facial recognition. I am sure the minister is aware of that. I am not going to name the club here but I just want to know if there had been consideration given to potentially moving to—I do not know what the word is—a system that would not need staff to actually identify when a person walks in, that the system actually does it itself.

Mr Rattenbury: We have been involved in some broad conversations with people about that. That trial has not actually physically taken place, that I am aware of. There are a range of considerations around privacy information, that people have consented to having their image taken, those sorts of important but very practical questions.

It goes back to our earlier conversation also around the prospects of cashless gaming. It may be that if you went down the cashless gaming path, that provides a link to self-exclusion because you would essentially set someone's cash limit at zero. There are a couple of different ways. I think generally technology is seen as a pathway for making self-exclusion more effective.

MR BRADDOCK: It appears that we only measure gambling harm every five years by the conduct of a survey, and I am just wondering if whether that is a fit-for-purpose time limit, given technological improvements, the amount of online gambling and so forth. Do we need to revisit that question?

Mr Rattenbury: That has been an historical pattern. It was a very substantial number of participants in that survey. I gather it takes quite some time to prepare, conduct it and analyse it. That said, your point around could it be done more rapidly with greater use of online surveying, for example, I think, is an interesting question. If I understand correctly, though, the current model was done by telephone survey; so there is quite a lot of work involved in surveying all the participants, because there was a large number of them, but I think it is a question that is worth contemplating going forward.

MR BRADDOCK: I suppose my question is: whatever the form of the survey takes, is the survey interval period of five years too long and does that need to be shortened? That is the question.

Mr Rattenbury: Yes, and it becomes a balance between yes, you want to gather the data with frequency and, as it has also been put to us by some, you need to allow enough time for a policy adjustment to wash through the system so that you can measure whether some of those policy changes have had the desired impact. I think that is the tension that exists around what is the right frequency for undertaking these surveys.

DR PATERSON: Since the last survey was conducted in 2019, we have had COVID. That had a fairly large impact on the industry. Again, I put the question: do you think it might be time to update the survey, given that there has been such a disjoint in the industry in the last—

Mr Rattenbury: Yes, it does raise that question, because there is also at least a strong anecdotal sense—and I think there is data around that has shown this as well, at least, early data—that we have seen a change in gaming behaviour, particularly to online gaming, and I think that would be quite a relevant consideration in whether it is the right time to consider doing the survey again.

MR PARTON: Minister, when you say that there has been a change in online gaming behaviour, are you able to just summarise that in a sentence or two?

Mr Rattenbury: I think the suggestion is that, by not being able to access poker machines, people have gone to things they can do on their phone at home.

MR PARTON: That is an interesting outcome, is it not?

THE CHAIR: Is that a question or a comment?

MR PARTON: I am just wondering if the minister would like to reflect on that outcome.

Mr Rattenbury: I think the question will be whether that becomes a permanent shift or whether it was a temporal shift related to the inability to attend venues.

MR PARTON: I know you have said in this hearing already that you do not have a belief in shutting down poker machines in the ACT, but it certainly suggests that, if you did, the gambling would continue in a different form, does it not?

Mr Rattenbury: I am not prepared to draw that direct causal linkage. I think it is a complex matter. I know we have been seeing an increase in online gaming. Everyone knows that. These companies are spending presumably hundreds of millions of dollars in advertising. I think their marketing tactics are deplorable, in the sense that they are clearly targeting young men who are vulnerable to this advertising, and they are targeting them in a way that suggests that if they want to be cool and have friends they should participate in online gaming.

I think that is something that needs to be addressed at a federal level because that cannot be done by states and territories and I think that it is a very unhealthy advertising practice.

MR PARTON: Minister, do you feel often that your hands are tied completely in that space regarding the online gambling, and what more would you like governments to be doing here, even if it is just pressuring the federal government to move on it?

Mr Rattenbury: It is an interesting question. I think there is scope. It is something I would like to put some time and effort into once we get through the federal election phase. It is not a great time to be trying to start new discussions with people; they are all busy focused on elections. But I think it is a discussion worth taking up with the federal government, whomever that might be, post the election.

Can I just take the opportunity—as I thought was the case but we just wanted to go and check the details—in response to Mr Braddock’s question, under the regulation, section 69(1)(a), a contribution to a business association, registered party, associated entity or industrial organisation is not a community contribution, and that would include registered political parties. To answer your question specifically, Mr Braddock, no community contributions went to political parties. That does not mean the clubs could not give to a political party, but it would not count as a community contribution.

THE CHAIR: We will come to a close slightly earlier and we will conclude the discussion of the gaming portfolio and turn our attention to the consumer affairs portfolio. Minister Rattenbury and relevant officials will remain with us for this session.

Short suspension.

Appearances:

Rattenbury, Mr Shane, Attorney-General, Minister for Consumer Affairs, Minister for Gaming and Minister for Water, Energy and Emissions Reduction

Justice and Community Safety Directorate

Glenn, Mr Richard, Director-General

Garrison, Mr Peter, Solicitor-General for the ACT

Drumgold, Mr Shane, Director of Public Prosecutions

Nuttall, Ms Amanda, Principal Registrar and Chief Executive Officer, ACT Courts and Tribunal

Johnson, Ms Kathryn, Executive Branch Manager, Justice Reform, Legislation, Policy and Programs Division

Dening, Mr Richard, Senior Director, Restorative Justice Unit, Legislation, Policy and Programs Division

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

Greenland, Ms Karen, Executive Branch Manager, Criminal Law, Legislation, Policy and Programs Division

Hakelis, Ms Robyn, Executive Branch Manager, Civil Law, Legislation, Policy and Programs Division

Cvetkovski, Ms Dragana, Executive Branch Manager and Chief Finance Officer

Chief Minister, Treasury and Economic Development Directorate

Rynehart, Mr Josh, Executive Branch Manager, Fair Trading and Compliance, Access Canberra

Cubin, Ms Derise, Executive Branch Manager, Licensing and Registrations, Access Canberra

THE CHAIR: We will now turn our attention to the Minister for Consumer Affairs. Mr Rattenbury, thank you for being with us again, along with the relevant officials. I have a question for you regarding licensing of hawkers in the ACT. I will give a bit of background. Recently, I had an email from a constituent who was concerned about a street food van that they could not find on the hawkers public register, or at least for that particular location. My question is about the process of licensing of hawker vendors. When was the last time that the Access Canberra hawkers public register was updated, and how current is it?

Ms Cubin: I have read and understood the privilege statement. Mr Cain, in response to your question, hawker licences are issued under the Public Unleased Land Act, which may not be in Mr Rattenbury's portfolio. However, with regard to your question around the last time that the public register was updated, I will have to take that on notice and check, from a technical perspective.

THE CHAIR: Thank you. Could you also take this on notice: it is one thing for a hawker, like a food van, to be registered, but should they not stick only to the areas designated for them?

Ms Cubin: To the area designated, yes; that is correct.

Mr Rattenbury: Mr Cain, for the benefit for your constituent, if they did have that concern, they would be welcome to call Access Canberra, and an inspector could go out and check that. If they were in the wrong place the various enforcement steps that are available to Access Canberra could be implemented.

THE CHAIR: Thank you, Minister. I can pass on—again, this is what has been reported to me—that the constituent did contact Access Canberra and came away with a bit of frustration regarding that encounter. Again, that is not my firsthand report. I have another question: Minister, are government employees who handle the registration of hawker vendors required to declare any conflicts of interest?

Mr Rattenbury: Yes, they would be, Mr Cain. It is a standard matter, as you would be aware, across the public service that public servants are expected to declare any conflicts of interest. They have to do that at the point of joining and where new matters arise. If they were to breach that, it would be a matter of discipline within the public service.

DR PATERSON: My question is in relation to Airbnb. I have had multiple representations on this issue. How does the government monitor Airbnb in the ACT?

Ms Cubin: Dr Paterson, this matter is probably more relevant to the planning portfolio, because there are some complexities around that with the leasing provisions. I would suggest that it is probably not a matter for Minister Rattenbury.

MR BRADDOCK: My question is about cooperatives; hopefully, I am asking about it in the right place. Apart from registering cooperatives, what does the ACT government do in terms of encouraging cooperatives and promoting them?

Mr Rattenbury: That is a good question, Mr Braddock. I know that a couple of years ago we made some reforms to the cooperative law. I do not know whether Ms Cubin is able to remind me of the details of that.

Ms Cubin: Minister, I will have to clarify that. With regard to encouraging cooperatives, no, we would generally have a responsive approach, when people contact us to register. That is the approach that we take.

MR BRADDOCK: We do not do any proactive comms or encouragement out there?

Ms Cubin: Not at this point, no. Over the last couple of years we have been focused on COVID and supporting business and those other aspects with regard to the proactive activities that we have been doing. Obviously, as we are easing out of the pandemic, it is an opportunity for us to look at broader communication strategies around a whole range of different industries and businesses, including cooperatives, of course.

MR BRADDOCK: I will be very interested to see that happen.

DR PATERSON: We have just gone through a pretty turbulent time with access to rapid antigen tests. What has been done to prevent price gouging on the tests in the ACT? Have there been any complaints about that?

Ms Cubin: Thank you for your question. With regard to price gouging, obviously, that is the responsibility of the Australian Competition and Consumer Commission, with regard to the Competition and Consumer Act. As you have probably seen in the media, Rod Sims has been highlighting the fact that anything to do with price gouging with regard to RATs should be reported to the ACCC.

From our perspective, at this point I am not aware of any complaints of that specific nature being reported to Access Canberra, but we would divert them to the ACCC. Obviously, they are trying to take an environmental scan and are looking at whether it is a business that is state or territory based, or whether it is a business that has a broad business spread across Australia. They are really taking the lead on that.

THE CHAIR: On page 22, Minister, you highlight that the Justice Legislation Amendment Bill 2020 was passed. One of the amendments that this bill introduced was to establish a process for the Commissioner for Fair Trading to conduct binding conciliations with respect to certain consumer law. How established is this process and how many instances of such conciliations have occurred?

Mr Rattenbury: I will ask Ms Cubin to provide the details in a moment. The background is that the mechanism is designed to provide a means for better consumer protection and enable people to resolve disputes at an earlier stage. We often see a power imbalance in these situations, and having an ability for the government to require a business to turn up and be involved in this binding conciliation is quite a powerful tool to improve consumer protections. That is the origin of it. The team has been recruited. It is now up and running. At this point I will hand over to Mr Rynehart for the numbers.

Mr Rynehart: I have read and understood the privilege statement. Mr Cain, we have not completed a binding conciliation at this time. It is an option that is available. As the minister indicated, we have recruited the team and we have it in place. It is now a tool that is available to the commissioner, at the point when there is an appropriate matter to be resolved. We have not finalised a matter yet, partly due to the lockdown period last year. One of our intentions is to undertake, certainly the early ones, face to face, if possible. We are ready and, as I said, it is a tool that is available to the commissioner.

THE CHAIR: Could you explain, in an overview manner, what is the process for one of these conciliations to be conducted? What leads up to it, and to what does the commissioner have regard, in order to institute one?

Mr Rynehart: In broad terms, the process will generally commence through a consumer complaint. The most likely occasion is that we will receive a complaint through our complaint management team. The complaint management team have an existing process for conciliation, which already existed under the Australian Consumer Law. Through that process, they gather information and evidence from both parties and form a view of the matter. Based on a risk assessment, it would then proceed through to a binding matter, if it was deemed appropriate. It is effectively one of the tools available to resolve a matter for the commissioner. Essentially, they will come in through a complaint, and the complaint team will assess and deal with the

complainant at that point.

THE CHAIR: What other tools, as you put it, are available for resolving complaints?

Mr Rynehart: There are a range of tools. We provide many complainants with opportunities for them to self-manage their complaint. We provide them with information on their legislative rights and responsibilities, and tools or options for them to go back and approach the trader. A common approach when we receive a complaint is to provide information to the complainant that they may provide to the business and a process for them to work through with the business.

We work under a risk framework. If there is substantial harm then we may proceed to an investigation for the higher level activities. Certainly, our first step is to provide advice and support to consumers so that they are informed consumers, for them to be able to obtain the outcome under their rights under the act. Realistically, if they are unable or do not have the capacity to obtain that outcome for themselves, there are other tools that we start to enter into.

DR PATERSON: I asked this question last time, but I think it is worth asking again. It is around scams. During the COVID lockdown I know I received many more phone calls—a lot, actually—and I can see how people get sucked in, because they are telling you that your internet will be shut down, you have not paid your bill for eBay and these types of things. There are extortionate amounts of money that Australians, including ACT residents, are losing to these scams. What more can we be doing and how can we be supporting the community to not get sucked in?

Mr Rattenbury: It is a very good question. Like you, I have experienced it over the period. The number of texts I get telling me I have got a parcel that could not be delivered and I just have to follow this link and it will all be good is very concerning. I do not think I am that tech savvy, but for those that are even less so it is obviously very risky. We have a range of promotional activities, and the ACCC is obviously undertaking a range of educational matters, media engagements and the like.

You might have seen just last week we did a romance-themed scam alert around Valentine's Day, just trying to make the most of the public moment to draw people's attention to that. I do not know if you saw the story but we had \$2 million lost by ACT residents to romance scams last year, which is a very large amount of money for our relatively small community, in my view.

It is a constant effort to raise people's awareness of the risks that are out there. The scammers are getting more and more sophisticated, and it obviously works for them because they continue to bother to do it.

DR PATERSON: Do you think, similar to sexual assault or sexual abuse, the romance scams, in particular, are obviously a form of grooming, building the relationship with someone. Even without Valentine's Day, do you think we could frame some of the educational material and engagement around that?

Mr Rattenbury: It is an interesting point. There is no doubt that people do put considerable time into it, and describing it as grooming, I think, is an accurate account

of it. People do not usually ask straight up. They build the trust and they build the relationship before the ask comes. I think your point around how we communicate it is a really interesting idea. I do not know if Ms Cubin has anything she wants to add in terms of any of these matters.

Ms Cubin: Yes, you are right, Dr Paterson, with regard to the concerns you have raised. Scams have been around for a long time but, with the pandemic, new types of scams have emerged, as the minister highlighted. There are scams that are saying, “Your parcel has not been delivered,” hoping that someone will click on that and then they can put malware on someone’s phone. That is through the whole identity scam aspect.

There is also a scam at the moment—when you talk about emotional triggers, a romance scam is definitely one of those—where people are being called by people purporting to be the AFP, saying that people have a fine.

DR PATERSON: I have had that one.

Ms Cubin: They have got a fine or they have got to pay money or they are going to be arrested. I think it draws on people being frightened and seeing the police as an authority. To bring awareness to those, we agree, is very important.

As I said in my response before, we are starting to look at our outward comms, our outreach program. We know we have had some really successful scam awareness work that previously happened through retirement villages and talking to residents in those types of situations, where they had an opportunity to talk to our officers and ask lots of questions about how scams might work. I think those are things that we will be reconsidering.

Obviously we have not been able to do face-to-face type interactions over the last couple of years but, as we slowly change our response with regard to COVID, those are things that we are looking at. Definitely it is something that we are considering.

DR PATERSON: I have seen some of the Facebook posts occasionally that come out saying, “Beware, this is the current scam.” As you said, there is a whole group out there that just do not access the internet like that and do not use social media that just might not get that information. Are there lessons to learn from product recalls and how they are done in terms of how you get information to people who are not necessarily huge online users?

Ms Cubin: Would you like me to continue, Minister?

Mr Rattenbury: Yes.

Ms Cubin: I think you are right. There are obviously channels that we can use to get information out. On a targeted recall approach—for example, the Takata air bags—there was the opportunity to leverage off the vehicle registration database so that we could directly contact people and so that manufacturers could contact people. And there were responses in different languages. I think those are factors as well we would need to consider—safety elements or things that we need to bring the community’s

awareness to in different languages and do it through different channels.

We do use Facebook, we obviously use direct contact and we use other opportunities that we might have. But I think there are always opportunities to look for ways to get relevant information to people.

DR PATERSON: Do banks do anything on this?

Ms Cubin: Banks do that. I do not know if you use internet banking but quite often they will have alerts about a particular type of scam. Their clients or customers will get that information if it is a banking-related scam. I think there are lots of agencies that look at this holistically to raise awareness about the impact of scams. The ACCC has a scam watch website. There is also a cyber security, government-initiated agency as well. There is also an agency which is government funded called IDCARE so that, when people feel that their identity has been compromised, then they will help people recalibrate and get their identity back. They support them through that whole process.

There are support mechanisms and reporting lines there. It is just making people aware of those as well.

Obviously if someone rings Access Canberra, we are able to provide all that information to people at the same time through our contact line.

MR BRADDOCK: I have a question about right to repair. Where have we got to with that one?

Mr Rattenbury: We have made some reasonable progress on that one actually. I am very pleased with how that has gone. As you probably recall, the ACT took that motion to the consumer affairs ministers meeting in 2019, and out of that the federal government instructed the Productivity Commission to undertake a report. The Productivity Commission did their draft report and then their final report. That was released in the last quarter of last year. They have made a series of recommendations on how to proceed with that. Most of them sit with the federal government.

It is seemingly something, again, I would want to take up with any incoming government after the election. I think now is probably not the moment to be trying to get into some of those detailed policy discussions. But we have already moved on the bits that we can, to a large extent. For example, the Productivity Commission recommended a binding conciliation process, which we had already moved to put in place. So I am pleased about that. But we have quite some way to go.

I thought the Productivity Commission's report was very good. I think they have come up with some very practical initiatives to help improve the ability for products to be repaired in Australia and for consumers to have better protections—be that on electronic goods right through to farm machinery.

MR BRADDOCK: There is nothing further the ACT government can do within its remit; it is just lobbying the federal government to do its part on the recommendations?

Mr Rattenbury: In terms of specific legislative reform, not a great deal at this point in time. We are still analysing the Productivity Commission's report and thinking about how to carry it forward. We will certainly continue to be an advocate for the work. I will be looking to work with consumer affairs ministers from other states and territories as to how we might work collectively to carry this work forward as well as in partnership with the federal government. Ms Hakelis has appeared; I do not know if she has any points she wants to add.

Ms Hakelis: You appear to know it all. That was quite impressive. I do not have too much to add, only just that, on the remaining recommendations, we will be working closely with other jurisdictions and with the commonwealth in multi-jurisdictional working groups in relation to the 16 recommendations. The report was released on 1 December 2021. It made 16 recommendations, ranging from the Australian Consumer Law, ACCC actions, copyright law—a whole host of different recommendations. We are currently considering all those and will be preparing a brief with Access Canberra to progress for the minister.

DR PATERSON: Is fuel pricing a question for you, Mr Rattenbury?

Mr Rattenbury: Potentially, yes.

DR PATERSON: I had a constituent contact me this morning. She is a senior on one income, and now has to stay at home more because she simply cannot afford to visit family and drive around. She fears the rising prices in fuel. I was just wondering what is done in the ACT to monitor the fuel prices and to ensure that ACT residents are paying a fair price at the service station.

Mr Rattenbury: I am very sorry to hear the experience of your constituent. Particularly for older people, that social connection is so important. Clearly we have seen an upward trend in fuel prices globally. The last time I checked the data, the ACT in recent times has actually had prices comparable to other jurisdictions. Whilst we have historically seen the ACT perhaps have higher fuel prices, that has not been the case in recent times. That is no consolation to your constituent who has got her budget. In terms of the specific ACT situation, what I am trying to say is that we do sit alongside other jurisdictions at this point in time, to my recent knowledge.

MR BRADDOCK: I am interested in the binding conciliations which came through in the Justice Legislation Amendment Bill last year for the Commissioner of Fair Trading. Have they been used at all or, if not, how is it planned to actually utilise those?

Mr Rattenbury: As we touched on with the questions that Mr Cain asked earlier, we have recruited staff into those positions. The mechanisms are all in place. The training has been undertaken. It is a tool that does sit there for Access Canberra to use. It is a matter of having the right consumer dispute come along. Certainly the team are equipped to use that mechanism now, should the right matter arise.

THE CHAIR: We have now reached the conclusion of this hearing. On behalf of the committee, I would like to thank the minister and his officials for their attendance today. If witnesses have taken any questions on notice, could you please provide

answers to the committee secretary within five working days. If members wish to lodge questions on notice, please provide them to the committee secretary within five working days of the hearing. This committee will reconvene at 2 pm for the second day of hearings. Today's hearing is now adjourned. Thank you everyone.

The committee adjourned at 5.54 pm.