



**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

WEDNESDAY, 16 MARCH 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

Legal Aid ACT174

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Amended 20 May 2013

The committee met at 11.29 am.

Appearances:

Legal Aid ACT

Boersig, Dr John, PSM, Chief Executive Officer

Monger, Mr Brett, Chief Financial Officer

THE CHAIR: I welcome the CEO of Legal Aid ACT, Dr John Boersig, and the CFO, Mr Brett Monger, for the purposes of an inquiry into Legal Aid's annual report. Could you please confirm, each of you, that you have read the privilege statement and that you understand its implications?

Dr Boersig: I confirm that.

Mr Monger: Yes, I confirm that.

THE CHAIR: We had the benefit of hearing from Mr Monger earlier in the month, and we have some of the answers provided to questions taken on notice by Mr Monger. Dr Boersig, would you like to make a short opening statement?

Dr Boersig: No, nothing from me at the moment. Happy to just take questions.

THE CHAIR: Okay; thanks.

Dr Boersig: I confirm that we did answer the questions on notice and they should be with you.

THE CHAIR: Yes. The committee has answers to those seven questions. I would like to lead off on something that I was very interested in—and you have answered, Dr Boersig—which was the surplus that was reported. Thank you again for your response to that. I am curious, from an accounting point of view, to know what that surplus is, as a percentage of your operating costs, and whether that is a comparable surplus with legal aid providers in other jurisdictions.

Dr Boersig: I can answer more broadly; then I will turn to Mr Monger. Firstly, I should say that I have a correction to our answers to questions on notice, which is my error. On the second page it says "expenditure of up to .05 million" on IT. It is actually 0.5.

THE CHAIR: Yes, I see. I do remember half a million from Mr Monger. We will note that as a correction to your answer.

Dr Boersig: Thank you. Across Australia there are a whole range of surpluses or percentages, depending on the nature of individual organisations and their structure. It partly depends on superannuation. For example, in New South Wales they have a superannuation scheme—or they had one. Obviously, when you are running a superannuation scheme, you have a huge amount of cash invested there. It is different around Australia. I cannot explicitly tell you what they are.

I can say that we run this based on our operational needs and we try to outline some of those. Partly, it is the nature of running as a business. There would not be, within the ACT, many similar organisations that would have to run the kind of surplus that we run because of the nature of our outgoings. You will see that in our answers to questions on notice we have listed some of those.

One of the more problematic areas that we need to manage is the increasing short-term nature of funding, and that is at both a commonwealth and a state-territory level. We are seeing that more often. When we were doing this report last year, my recollection is that, of the \$19 million or \$20 million, \$7 million was in short-term moneys. That meant that at the end of the current financial year we had—is it 36 employees—

Mr Monger: Yes.

Dr Boersig: who could finish their employment if our contracts were not renewed. That is almost a third of our staff, and if the programs ceased then we would have to manage the redeployment or the termination of all those. That is something we carry constantly, and it happens. We had a program some years ago, \$800,000 over two years, with the commonwealth government. There was a change of government, that program was cancelled and we were suddenly faced with a \$400,000 forward costs expenditure without the money to spend towards that. That happens from time to time.

THE CHAIR: Do you use the surplus for that?

Dr Boersig: We do.

THE CHAIR: To cover that?

Dr Boersig: We do. This is partly a longer answer to your question. It means that we have a constant issue about ensuring that we have as many people as we can in ongoing positions and not under contract or casual employment. The balance of that means that we need to make sure that we have the capacity to meet ongoing commitments for anyone we place on long-term benefits. So there is a policy behind this in relation to ensuring stability for people who come to the commission. Oddly enough, it links also to your earlier questions about retention and those kinds of issues.

THE CHAIR: Sure.

Dr Boersig: Also, we often have to cash manage grants before we get the money. For example, in relation to the Afghan matter—and we have referred to that—we still have not got the funding for that, \$90,000, because of the changes in the government's requirement to have those section 494 visas in in a short period, and we have 10 people working on that at the moment. We have to have the availability of funds to meet that surge in demand. We have signed the contract with the Red Cross, but we have been managing this since August last year, so hopefully we will see that.

THE CHAIR: Thanks.

Dr Boersig: I will just turn to Mr Monger. Would you like to make any more comment on that?

Mr Monger: Yes, sure. To expand a little more, Legal Aid is not really like a lot of other ACT government entities. We run our own cash balances, we run our own payroll and we run our own IT; that sort of thing. We do not actually go through the normal ACT government entities. For example, we have \$1.9 million in employee entitlements as at now, so if we went under we would have to pay out \$1.9 million to our employees. The ACT government is managed centrally. That is one of the reasons that we keep a reasonably large cash reserve.

I will say that, right at the moment, it is larger than normal. There are two major issues. One is that—I think, Mr Braddock, I spoke to you at the last meeting—we have nearly \$1 million in what I would call revenue received in advance for projects where we have received the money and have not yet spent the money on them, but we have to spend that money on those initiatives. The other big one is our accommodation. We have been in our existing accommodation for 12 years. That is coming up for renewal at the end of September this year, so we need to either update our existing accommodation and renegotiate the lease terms for that or find new accommodation to move into.

One of the big issues we have is the cost of time. When people walk to the courts—and the vast majority of our staff are walking to the courts regularly—that cost of time is really important. That is why we are looking for specific venues that are close by, so that we do not waste time with staff commuting too far. We are looking at accommodation, and we are talking about \$1 million a year in rent for accommodation, trying to find it around the area we are in at the moment, which is the prime area for what we want, close to all of the courts. One of the issues that has come about—

THE CHAIR: I am mindful of time. Thank you for your explanation. You have answered my queries. I might throw to Dr Paterson. Sorry to cut you off there, but I think we will start another line of questioning. Dr Paterson?

DR PATERSON: There was a doubling of personal protection orders, not domestic violence related ones. I am interested to understand what that is and why.

Dr Boersig: That is a range of behaviours, inappropriate behaviours, one might say, and people taking action on that. I think partly it is the frictions around COVID that we have seen at a community level, with more people at home, more conflict in apartments. It picks up a number of relationships which are non-domestic but which are still close. We have seen a surprising increase in those. I expect it is a sign of where we have been over the last two years.

The people who come to us are people in difficult housing environments. We are talking both sides of the fence, in that sense, so we are seeing both people who are aggrieved and people who are the alleged aggriever. My answer, ultimately, would boil down to (1) the impact of COVID and (2) the particular impact on certain socio-economic environments where people are living closer to each other.

DR PATERSON: Do you think there are any specific lessons? Is it something that Housing needs to look at more, or are there specific relationships that really do need a bit more close attention?

Dr Boersig: We are at the pointy end. The issues that you are alluding to, I think, are gravamen issues in relation to the question of: what are the social circumstances of people? It links to our previous inquiry as well. Where are people going? Where are they returning? What choices are available and what environments are they going into? I think they are the right questions to be asking. Unfortunately, we are at the pointy end of it. I expect there are departments within government, Housing in particular, who would be better able to address that.

DR PATERSON: Thank you.

MR BRADDOCK: In your response to question on notice No 29, which was about the tenancy advice service, you suggested some measures that might prevent the issues from arising in the first place. I would be interested if you could talk a bit more, in particular, about enforcing penalties prescribed by legislation. Is that not happening at the moment? Who is the responsible body for regulating that, and what is happening there?

Dr Boersig: I am advised by the people on our tenancy line that we are not seeing enforcement by government on that. I do not have an answer or a reason for you on why that is the case. We certainly see it as a factor that could influence better decision-making in the management of landlord and tenant relationships. I think that is all I can say about that at the moment. It is just what is coming to us from the people seeking assistance.

MR BRADDOCK: Is it just section 23 or are there other offences that you are seeing as well?

Dr Boersig: As far as I am aware, section 23 issues are the primary ones. The issues that were addressed more broadly are the usual ones in relation to landlord and tenant in terms of timing, conditions of housing and so forth, but this one, when I inquired of our staff, is the one that was really exercising them on that line.

THE CHAIR: I am realising, Mr Monger, that I did truncate your answer on the surplus question, so are there any other thoughts you would like to get on the record?

Mr Monger: No, Mr Cain. That is fine.

Dr Boersig: The only other thing that I would underline is that it is only every 10 to 12 years that we have to change accommodation. We are in a position where we need to fund that. That includes make-good provisions. The issues that we have been trying to build in have been the increasing costs of labour and materials and the indication of what it will cost us to leave those premises, to maintain other premises in the interim and to refit new premises. That is partly why we have a bigger than usual amount of cash, because we need to be able to carry that.

THE CHAIR: Thank you for that clarification.

DR PATERSON: Looking at your profile, the number of Aboriginals and Torres Strait Islanders receiving services is 630 people, yet you have one Aboriginal and Torres Strait Islander staff member. Looking at your CALD numbers, you have 640 CALD cases and you have 21 headcount, so clearly you are doing things right there. What are you doing to increase your staffing?

Dr Boersig: We have had a number of Aboriginal staff on leave, either on maternity leave or on secondment, in fact, across to the victims commission. We have engaged two trainees, two Aboriginals and Torres Strait Islanders. That was done earlier this year. We need to keep jobs for the people who are on leave. At the moment we are engaged with the trainees to try and develop that. We encourage employment, where we can, from Aboriginals and Torres Strait Islanders as well as people in the CALD community.

That is difficult recruitment. There are a whole range of ways in which we encourage it. Word of mouth is, to be honest, the best way of doing it, but we are certainly engaged with the Aboriginal organisations. That is how we found the most recent trainees. We came to that view because we were not finding people who were already experienced; we could best make a contribution by not leaving positions vacant but by putting on the trainees.

DR PATERSON: I guess I would challenge you about how Legal Aid is being proactive or could be proactive on this. I am pretty sure that the DPP have quite a substantial number of Aboriginal staff, so I believe it is possible. How will Legal Aid be proactive in the coming years to engage Aboriginal and Torres Strait Islander staff?

Dr Boersig: We will continue our policy of developing our own people, once we clarify the ongoing nature of employment. We have suggested to government, from time to time, that it would be supportive to have people identified. At the moment we fund all of these positions internally. To provide those strong, wraparound services you need people who are connected to the community and those kinds of support roles. At the moment we fund all of those ourselves.

MR BRADDOCK: I am interested in the Youth Law Centre. In particular, there is a phrase used in your submission talking about youth law. Can you explain to me what that is?

Dr Boersig: I do not know. Is it a typo?

MR BRADDOCK: No. It seems to be a subject of your legal information sessions and law for non-lawyers. I am just curious as to what that is, exactly. If you want a reference, it is page 52 of your annual report.

Dr Boersig: The Youth Law Centre is a joint project between us and the ANU. It is used as a hub for that particular program, which is a clinical training program. We also have UC students there. It is also used as a hub for our colleges program, where we have lawyers embedded in the colleges around the ACT. It is linked to the services that we provide at the ANU and the University of Canberra, where we send lawyers out on outreach. I am just going to find those words.

MR BRADDOCK: It is under the heading “Free Legal Information Sessions”, the second paragraph.

Dr Boersig: Yes. Those topics will be like the ones that we have discussed today with your office. That will be everything ranging from traffic offences to sexting to domestic violence. It is part of a CLE program we run and offer to a whole range of outreach sites. Schools are a big site for us, because you have kids there, and it is an integral part of what we do in the colleges program.

The Youth Law Centre students also accompany us on pop-up clinics, for example, which we used to run before COVID in particular, where we turn up at a shopping centre and try to direct people. It is part of the program at Bimberi, which we go out to as well.

It indicates a focus on the type of information and the way you provide that information. It is rare that someone like me would do it, for example. It will be younger people who go out and relate. Our colleges program has two young lawyers, for example, who are in their 20s. They are out at the schools. It is great stuff.

I have been trying to get to kids, to give them information about making better choices, all my working career. In one sense, I am an abject failure in all that, but I have tried various avenues. I have run clinical programs on beaches in a previous life, just to try and encourage them. It is hard to get to kids before they make those choices. One of the best programs I have ever seen has been the colleges program, embedding those young lawyers. Sorry; I get really excited about this program; I think it is so fantastic. We are bringing in young people who are facing domestic violence and harassment at school. It is a fantastic program.

THE CHAIR: On behalf of the committee, I would like to thank Dr Boersig and Mr Monger from Legal Aid ACT—

DR PATERSON: I have one more question.

THE CHAIR: Sure. Go ahead.

DR PATERSON: It is in relation to the questions on notice around sexual violence matters. You say you cannot disaggregate the number of sexual violence matters outside family violence matters, but you can provide data on legal representation of accused people.

Dr Boersig: We can.

DR PATERSON: Why don't you separate those two?

Dr Boersig: The information is available, but it is in the lawyers' notes.

DR PATERSON: Okay.

Dr Boersig: It is not a reporting requirement. To find it would take a manual effort.

We would have to look at all of those matters. Out of those 4,000-odd matters, there will be a significant number that include sexual violence as part of the allegation of family violence, whether it is to children or not, but we do not currently report on it.

Like all service providers, we are struggling with the reporting regime. The commonwealth government has imposed 1,500 reporting indices which we all have to report on at the moment. It is an incredible onus. But that particular question is not. One of the ways we could look at it is a snapshot review, to try and work out how many people, roughly, would indicate that as a factor in their family violence.

DR PATERSON: Yes. What I am interested in is sexual violence outside family violence, because if you do not know how many people are there then how do you seek funding specifically for that? There will be people who have experienced sexual violence from someone who is no way, shape or form their family member, so I guess it is about ensuring that that group of people also have adequate resourcing and representation.

Dr Boersig: Are you talking more about children here?

DR PATERSON: No; anyone who has experienced sexual violence and is looking for legal—

Dr Boersig: Yes, in workplaces as well.

DR PATERSON: Yes; anyone.

Dr Boersig: We could talk more to your office about that.

DR PATERSON: Yes. That would be great. I would be interested to know if, in the future, Legal Aid might report those two things separately.

Dr Boersig: Okay.

DR PATERSON: Thank you.

THE CHAIR: Dr Boersig, is that something you are happy to take on notice?

Dr Boersig: I suppose I will take on notice that I will contact the member's office to discuss this in more detail, to see what we can come up with, to clarify. My suggestion is, at this stage, a snapshot review, which we have done in the past, where we have taken a hundred files, for example, and then gone through all of the hundred files to look for particular indices. That is the kind of thing, but I would want to make sure that that was what Dr Paterson was after and be clear about what the terms were.

DR PATERSON: Thank you.

THE CHAIR: Thank you for extending your time with us, Dr Boersig and Mr Monger. Thank you for appearing before the committee today. The secretary will provide you with a copy of the proof transcript of today's hearing, when it is available. Regarding questions taken on notice, could the answers please be provided to the

committee secretary within five working days of the receipt of the uncorrected proof transcript of today's hearing? This public hearing is now closed.

The committee adjourned at 11.55 am.