

INQUIRY INTO ANNUAL AND FINANCIAL REPORTS 2013-2014

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

MARCH 2015

REPORT 3

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RESOLUTION OF APPOINTMENT

At its meeting on Tuesday, 27 November 2012, the Assembly passed a resolution creating Standing Committees for the Eight Assembly, including the Standing Committee on Justice and Community Safety.

The resolution stated that the Committee was to perform:

a legislative scrutiny role and examine matters related to community and individual rights, consumer rights, courts, police and emergency services, corrections including a prison, governance and industrial relations, administrative law, civil liberties and human rights, censorship, company law, law and order, criminal law, consumer affairs and regulatory services.

TERMS OF REFERENCE

On 25 September 2014 the Legislative Assembly agreed to the following motion:

That:

- (1) the annual and financial reports for the calendar year 2014 and the financial year 2013–2014 presented to the Assembly pursuant to the Annual Reports (Government Agencies) Act 2004 stand referred to the standing committees, on presentation, in accordance with the schedule below;
- (2) the annual reports of ACT Policing and the Office of the Legislative Assembly stand referred to the Standing Committee on Justice and Community Safety and Standing Committee on Public Accounts respectively;
- (3) notwithstanding standing order 229, only one standing committee may meet for the consideration of the inquiry into the calendar year 2014 and financial year 2013–2014 annual and financial reports at any given time;
- (4) standing committees are to report to the Assembly by the last sitting day in March 2015;
- (5) if the Assembly is not sitting when a standing committee has completed its inquiry, a committee may send its report to the Speaker or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publishing and circulation; and
- (6) the foregoing provisions of this resolution have effect notwithstanding anything contained in the standing orders.

The schedule to the motion referred the following agencies to the Standing Committee on Justice and Community Safety:

Annual Report (in alphabetical order)	Reporting area	Ministerial Portfolio/s	Standing Committee
ACT Electoral Commission		Attorney-General	Justice and Community Safety
ACT Human Rights Commission		Attorney-General	Justice and Community Safety
ACT Long Service Leave Authority		Minister for Workplace Safety and Industrial Relations	Justice and Community Safety
ACT Policing		Minister for Police and Emergency Services	Justice and Community Safety
Chief Minister and Treasury Directorate	Industrial Relations Policy Workplace Compensation and Workplace Safety	Minister for Workplace Safety and Industrial Relations	Justice and Community Safety
Chief Minister and Treasury Directorate	Default Insurance Fund	Minister for Workplace Safety and Industrial Relations	Justice and Community Safety
Chief Minister and Treasury Directorate	Work Safety Council	Minister for Workplace Safety and Industrial Relations	Justice and Community Safety
Director of Public Prosecutions		Attorney-General	Justice and Community Safety
Justice and Community Safety Directorate		Attorney-General	Justice and Community Safety
Justice and Community Safety Directorate	Corrective Services	Minister for Corrective Services	Justice and Community Safety
Justice and Community Safety Directorate	Emergency Services Agency	Minister for Police and Emergency Services	Justice and Community Safety

Annual Report (in alphabetical order)	Reporting area	Ministerial Portfolio/s	Standing Committee
Justice and Community Safety Directorate	Transport Policy and Regulation	Attorney-General	Justice and Community Safety
Legal Aid Commission (ACT)		Attorney-General	Justice and Community Safety
Public Advocate of the ACT		Attorney-General	Justice and Community Safety
Public Trustee for the ACT		Attorney-General	Justice and Community Safety
Victims of Crime Support Program		Attorney-General	Justice and Community Safety

TABLE OF CONTENTS

Committee membership	i
Secretariat	i
Contact information	i
Resolution of appointment.....	ii
Terms of reference	ii
Recommendations	vii
1 Introduction	1
Introduction.....	1
Agencies considered.....	1
Conduct of the inquiry.....	2
Structure of the report	2
2 The Directorate	3
Introduction.....	3
Matters considered	3
Discussion	5
Committee comment	12
3 Industrial relations and related matters	13
Introduction.....	13
Matters considered	13
Discussion	15
Committee comment	17
4 ACT Policing, the Emergency Services Agency	19
Introduction.....	19
Matters considered	19
Discussion	21
Committee comment	27
5 Corrective Services and the AMC	31
Introduction.....	31
Matters considered	31

Discussion	33
Committee comment	40
6 Statutory officers and agencies.....	43
Introduction.....	43
ACT Electoral Commission	43
ACT Human Rights Commission	46
Victims of Crime Commissioner	49
Legal Aid Commission.....	52
Public Advocate of the ACT.....	55
Public Trustee for the ACT	56
Director of public prosecutions	60
Committee comment	62
Appendix A Witnesses and hearings	65
Appendix B Responses to Questions Taken on Notice	67

RECOMMENDATIONS

Recommendation 1

2.36 The Committee recommends that the ACT Government publish all submissions to its inquiry into law reform on double jeopardy.

Recommendation 2

4.37 The Committee recommends that the Emergency Services Agency (ESA) take disciplinary action in relation to incidents where reviews show that inappropriate behaviour has taken place in the workplace.

Recommendation 3

4.44 The Committee recommends that in relation to any proposed legislation specifically providing for responses to outlaw motorcycle gangs the ACT Government move a motion in the Legislative Assembly that would, if passed, refer such legislation to the Standing Committee on Justice and Community Safety for review and report to the Legislative Assembly.

Recommendation 4

6.100 The Committee recommends that the ACT Government develop a new funding model for statutory agencies which more accurately reflects real costs and demand, and fund statutory agencies accordingly.

Recommendation 5

6.101 The Committee recommends that the ACT Government introduce in the Legislative Assembly legislative amendments which would, if passed, create an avenue for human rights complaints to the ACT Human Rights Commissioner.

1 INTRODUCTION

INTRODUCTION

- 1.1 On 25 September 2014 the Assembly referred annual and financial reports for the calendar year 2013 and the financial year 2013–2014 to the Committee.¹

AGENCIES CONSIDERED

- 1.2 The schedule to the motion indicated that the following agencies were to be considered by the Committee:

- ACT Electoral Commission;
- ACT Human Rights Commission;
- ACT Policing;
- Chief Minister and Treasury Directorate;
- Chief Minister and Treasury Directorate — Default Insurance Fund;
- Chief Minister and Treasury Directorate — Work Safety Council;
- Director of Public Prosecutions;
- Justice and Community Safety Directorate;
- Justice and Community Safety Directorate — Corrective Services;
- Justice and Community Safety Directorate — Emergency Services Agency;
- Justice and Community Safety Directorate — Transport Policy and Regulation;
- Industrial Relations Policy;
- Legal Aid Commission (ACT);
- Public Advocate of the ACT;
- Public Trustee for the ACT;
- Victims of Crime Support Program; and
- Workplace Compensation and Workplace Safety.

¹ Legislative Assembly for the ACT, *Minutes of Proceedings*, No.73—25 September 2014, p.787 *ff.* and *Debates*, 2014 Week 10 Hansard (25 September), p. 3208 *ff.*

CONDUCT OF THE INQUIRY

- 1.3 The Committee held two public hearings for the inquiry, on 13 October and 3 November 2014, at the Legislative Assembly for the ACT.
- 1.4 Witnesses from the above Directorates and agencies appeared and are listed in Appendix B of this report.

STRUCTURE OF THE REPORT

- 1.5 The report considers the following matters:
- Chapter 1, which is this introduction;
 - Chapter 2: the work of the Justice and Community Safety Directorate, including legal policy, the administration of the Courts and Tribunal;
 - Chapter 3: Industrial Relations, Work Safety and Workers' Compensation;
 - Chapter 4: the work of ACT Policing and the Emergency Services Agency (ESA);
 - Chapter 5: the work of Corrective Services, including the administration of the Alexander Maconochie Centre (AMC); and
 - Chapter 6: the work of statutory officers and agencies, including the:
 - ACT Electoral Commission;
 - ACT Human Rights Commission,
 - Victims of Crime Commissioner and Victims of Crime Support Program;
 - Legal Aid Commission (ACT);
 - Public Advocate of the ACT; and the
 - Public Trustee for the ACT.;
- 1.6 For each of the agencies considered, there is:
- an introduction setting out when they appeared before the Committee;
 - a dot-point listing of matters considered in the hearings;
 - a 'discussion' section giving further detail on selected matters; and
 - 'committee comment', putting forward the Committee's views and recommendations on the material considered.
- 1.7 Each item in 'Matters considered' taken up for further consideration in 'Discussion' is marked with a star (*).

2 THE DIRECTORATE

INTRODUCTION

2.1 The Justice and Community Safety Directorate's *Annual Report 2013-14* describes the role of the Directorate as follows:

The Justice and Community Safety Directorate (JACS) seeks to maintain a fair, safe and peaceful community in the ACT where people's rights and interests are respected and protected. We do this by:

- maintaining the rule of law and the Westminster style of democratic Government
- promoting the protection of human rights in the Territory
- providing effective offender management and opportunities in relation to rehabilitation
- protecting and preserving life, property and the environment
- providing for effective and cohesive emergency response and management
- implementing and enforcing legislation covering regulatory functions of Government.²

2.2 The Attorney-General and his officers from the Justice and Community Safety Directorate (JACS) appeared before the Committee in public hearings of 3 November 2014.

MATTERS CONSIDERED

2.3 At the hearings, the following matters were considered:

- Indigenous overrepresentation in the criminal justice system;³ *
- Indigenous guidance partners and their role in restorative justice;⁴
- referrals to the Galambany Circle Sentencing Court;⁵
- legal assistance;⁶
- surveys administered to offenders participating in restorative justice;⁷
- possible reform of legislative arrangements for double jeopardy;⁸ *

² Justice and Community Safety Directorate, *Annual Report 2013-14*, p.12.

³ Mr Simon Corbell MLA, *Transcript of Evidence*, 3 November 2014, p.99;

⁴ *Transcript of Evidence*, 3 November 2014, pp.99-100.

⁵ *Transcript of Evidence*, 3 November 2014, p.100.

⁶ *Transcript of Evidence*, 3 November 2014, pp.100-103.

⁷ *Transcript of Evidence*, 3 November 2014, p.103.

- rates of recidivism (that is, rates of repeat offending and imprisonment) in the ACT;⁹
- management of speed cameras;¹⁰
- working with vulnerable people background checks;¹¹
- parking, paid parking and parking fines;¹²
- management of 'Mr Fluffy' loose-fibre contaminated houses;^{13 *}
- listing practices in the ACT courts;¹⁴
- proposed new court facilities;¹⁵
- the ACT Sentencing Database;¹⁶
- whether there should be a fifth judge for the ACT Supreme Court;¹⁷
- a proposed replacement ICT case management system for the ACT courts;¹⁸
- payment plans and debt recovery for fines;¹⁹
- operations of the Government Solicitor;²⁰ and
- costs in relation to same-sex marriage laws.²¹

2.4 Questions Taken on Notice were also asked and answered regarding:

- license costs for a new case management system for the courts;²²
- law reform on double jeopardy;²³
- legal services to government;²⁴
- management for non-payment of fines;²⁵

⁸ *Transcript of Evidence*, 3 November 2014, pp.104-105, pp.122-123.

⁹ *Transcript of Evidence*, 3 November 2014, p.105.

¹⁰ *Transcript of Evidence*, 3 November 2014, p.106.

¹¹ *Transcript of Evidence*, 3 November 2014, pp.106-107.

¹² *Transcript of Evidence*, 3 November 2014, pp.107-109.

¹³ *Transcript of Evidence*, 3 November 2014, pp.109-115.

¹⁴ *Transcript of Evidence*, 3 November 2014, p.116.

¹⁵ *Transcript of Evidence*, 3 November 2014, pp.117, 119.

¹⁶ *Transcript of Evidence*, 3 November 2014, p.118.

¹⁷ *Transcript of Evidence*, 3 November 2014, pp.118-120.

¹⁸ *Transcript of Evidence*, 3 November 2014, pp.120-121.

¹⁹ *Transcript of Evidence*, 3 November 2014, pp.121-122.

²⁰ *Transcript of Evidence*, 3 November 2014, pp.123-128.

²¹ *Transcript of Evidence*, 3 November 2014, pp.128-131.

²² Answer to Question Taken on Notice, received 17 November 2014, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

²³ Answer to Question Taken on Notice, received 17 November 2014, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

²⁴ Answer to Question Taken on Notice, received 19 November 2014, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

²⁵ Answer to Question Taken on Notice, received 20 November 2014, available at:

- parking revenue;²⁶ and
- the ACT Sentencing Database.²⁷

DISCUSSION

2.5 This section presents further detail on topics selected from the list of 'Matters considered', above.

INDIGENOUS OVERREPRESENTATION IN THE CRIMINAL JUSTICE SYSTEM

2.6 When he appeared in hearings of 3 November 2014 the Attorney-General was asked about responses by government to the overrepresentation of Indigenous people in the criminal justice system.

2.7 In response the Attorney-General told the Committee that the ACT Government:

- had 'worked closely with the Indigenous community' over the past four years and had 'put in place an Aboriginal justice agreement', 'focused on areas for common cooperation and effort to reduce overrepresentation in the criminal justice system';²⁸
- had 'put in place new programs to assist with the diversion of Indigenous young people in particular away from the more formal elements of the criminal justice system', in an 'attempt to try and divert them away from time in jail and the potential for recidivism that particularly comes with that';²⁹
- had 'provided funding through an Indigenous friends program to assist with young people being diverted into restorative justice where that is appropriate';³⁰ and
- was 'finalising a new Aboriginal justice agreement between the representatives of the Indigenous community here in the ACT and the government'.³¹

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

²⁶ Answer to Question Taken on Notice, received 2 December 2014, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

²⁷ Answer to Question Taken on Notice, received 16 December 2014, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

²⁸ Mr Simon Corbell MLA, *Transcript of Evidence*, 3 November 2014, p.99.

²⁹ Mr Simon Corbell MLA, *Transcript of Evidence*, 3 November 2014, p.99.

³⁰ Mr Simon Corbell MLA, *Transcript of Evidence*, 3 November 2014, p.99.

³¹ Mr Simon Corbell MLA, *Transcript of Evidence*, 3 November 2014, p.99.

2.8 In a related question, the Attorney-General was asked about Indigenous guidance partners. The Manager of the Restorative Justice Unit responded to the question. She told the Committee that the Indigenous guidance partner was:

a position that works very closely with young people and their families. They are often on the front line. They make contact first. They build rapport with families and the young person. They explain what restorative justice processes are all about and they work really hard to build that relationship, build a bit of a bridge between the family, the young person and the restorative justice convenor.³²

2.9 The Manager went on to say that the:

convenor then assesses the young person for suitability and the Indigenous guidance partner guides and supports that young person and their family all through that process, to conference and beyond, and then monitoring the restorative justice agreements.³³

2.10 In addition the Manager told the Committee that the Indigenous guidance partner was a person who 'knows many of the young people in the community' and had 'a lot of ties in the community'. As a result 'when young people see her, many of them recognise her', and 'think very highly of her'. She went on to say that she thought 'her presence and her ability to engage young people will have a big impact on their future participation'.³⁴

2.11 The Justice and Community Safety Directorate's *Annual Report 2013-2014* makes a number of references to Indigenous people and the ACT criminal justice system.³⁵

REFORM OF LEGISLATIVE ARRANGEMENTS FOR DOUBLE JEOPARDY

2.12 In hearings of 3 November 2014 the Attorney-General was asked about the ACT Government's consideration of law reform regarding double jeopardy.³⁶

2.13 'Double jeopardy' is described by *Laws of Australia* as follows:

The general principle of protection against double jeopardy (see [9.1.3000]) is derived from the maxim that no person should be twice troubled for one and the same offence.

³² Ms Amanda Lutz, *Transcript of Evidence*, 3 November 2014, pp.99-100.

³³ Ms Amanda Lutz, *Transcript of Evidence*, 3 November 2014, p.100.

³⁴ Ms Amanda Lutz, *Transcript of Evidence*, 3 November 2014, p.100.

³⁵ See Justice and Community Safety Directorate, *Annual Report 2013-2014*, Vol.1, pp.21-23, 71, 74, 76 & 80. Available at: http://cdn.justice.act.gov.au/resources/uploads/JACS/JACS_Annual_Report_2013_14_Vol_1.pdf

³⁶ *Transcript of Evidence*, 3 November 2014, pp.104-105, pp.122-123.

This has been interpreted to mean that if a person has once been convicted of a particular offence, he or she cannot be tried again for the same offence, and, if a person has been acquitted, he or she cannot be tried again for the same or any other offence for which he or she could have been properly convicted at the previous trial. It is sometimes expressed as a person should not be placed in jeopardy, or exposed to the peril, of being convicted twice for the one offence.³⁷

2.14 *Laws of Australia* also states that:

The general doctrines of the criminal law dealing with double jeopardy are found in the procedural and doctrinal complexities and confusions, and the definitional structure, of the criminal law. As a result, the area is remarkable for the lack of agreed vocabulary, tests and rationales.³⁸

2.15 In response to questions, the Attorney-General told the Committee:

- that he could not ‘announce the government’s policy position on these matters at this time’;³⁹
- that he had received ‘representations from both the Victims of Crime Commissioner and the Director of Public Prosecutions’, and also from the Bar Association, the Law Society, the Legal Aid Commission, the Human Rights Commission and ‘a range of other stakeholders’;⁴⁰
- that the ACT Government had ‘released as a discussion paper a paper that had been prepared by the DPP a couple of years ago and sought stakeholders’ views on the matters posed by the DPP’;⁴¹
- that the ACT Government was ‘considering issues arising from that paper’; and
- that it was ‘fair to say that this is an area that is controversial at least in part and the issues that arise are absolutely fundamental to the way our criminal justice system operates’.⁴²

2.16 The Attorney-General was asked as to when a decision would be made on the government’s approach to reform of legislative arrangements regarding double jeopardy. He responded by saying that the government ‘would envisage announcing its policy position and the possible introduction of legislation, I would envisage that that would be in the autumn session next year’, that is 2015.⁴³

³⁷ *Laws of Australia* [9.1.3010], viewed 18 February 2015.

³⁸ *Laws of Australia* [9.1.3000], viewed 18 February 2015.

³⁹ Mr Simon Corbell MLA, *Transcript of Evidence*, 3 November 2014, p.104.

⁴⁰ Mr Simon Corbell MLA, *Transcript of Evidence*, 3 November 2014, p.104.

⁴¹ Mr Simon Corbell MLA, *Transcript of Evidence*, 3 November 2014, p.104.

⁴² Mr Simon Corbell MLA, *Transcript of Evidence*, 3 November 2014, p.104.

⁴³ Mr Simon Corbell MLA, *Transcript of Evidence*, 3 November 2014, p.104.

2.17 The Attorney-General was also asked whether the discussion paper was publicly available, to which he responded by saying that it was, and subsequently provided a URL for the paper in a response to a question taken on notice.⁴⁴

2.18 In addition, the Attorney-General was asked about access to the submissions provided to the Directorate by stakeholders. In response he told the Committee that these would be made available to the Committee on request, on the proviso that they 'be kept confidential' by the Committee.⁴⁵

THE DISCUSSION PAPER

2.19 The discussion paper noted that following the High Court decision in *R v Carroll* (2002) 213 CLR 635, the Model Criminal Code Officers Committee (MCCOC) recommended reform of constraints on double jeopardy in Australian legislation.⁴⁶

2.20 The paper noted that these recommendations were accepted and expanded by COAG in 2007, which recommended 'that the rule against double jeopardy should be reformed'⁴⁷ to permit the following exceptions:

1. 'prosecution for an administration of justice offence connected to the original trial';
2. 'retrial of the original or similar offence where there is fresh and compelling Evidence';
3. 'retrial of the original or similar offence where the acquittal is tainted';
4. 'the powers of appeal for the Crown from an acquittal should be widened particularly to facilitate appeals from acquittals resulting from trial judge rulings on the admissibility of evidence'; and
5. 'on Crown sentence appeals no principle of double jeopardy should be taken into account (this was not considered in the MCCOC Discussion Paper but was included in the COAG recommendations).' ⁴⁸

⁴⁴ ACT Director of Public Prosecutions, *Proposals For Reform Of Double Jeopardy Laws*, available at http://www.justice.act.gov.au/resources/attachments/DPP_Double_jeopardy_discussion_paper.pdf and see response to Question Taken on Notice received 17 November 2014, available at: http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

⁴⁵ Mr Simon Corbell MLA, *Transcript of Evidence*, 2 November 2014, p.123.

⁴⁶ ACT Director of Public Prosecutions, (2013), *ACT DPP Double Jeopardy Discussion Paper*, <http://www.justice.act.gov.au/cache/attachments/12785>, viewed 19/02/2015, p.1.

⁴⁷ ACT Director of Public Prosecutions, (2013), *ACT DPP Double Jeopardy Discussion Paper*, <http://www.justice.act.gov.au/cache/attachments/12785>, viewed 19/02/2015, p.1.

⁴⁸ ACT Director of Public Prosecutions, (2013), *ACT DPP Double Jeopardy Discussion Paper*, <http://www.justice.act.gov.au/cache/attachments/12785> viewed 19/02/2015, p.1.

2.21 The paper noted that within the ‘general principle’ of double jeopardy there were three distinct principles, that:

- Prosecution for the same offence is not permitted;
- Prosecution for *substantially* the same offence [is not permitted, emphasis added]; and
- An acquittal at a first trial cannot be undermined or controverted in later proceedings.⁴⁹

2.22 The paper also notes that changes to legislative arrangements on double jeopardy may come into conflict with s 24 of the *Human Rights Act 2004* (ACT), which sets out the principle ‘that “no one may be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with law”. However the discussion paper notes two factors which may qualify or dilute this element of the Act, in that:

- interpretation of the Covenant⁵⁰ on which it is based has been modified by further comment by the United Nations Human Rights Committee;⁵¹ and
- that dissenting judgements in the High court case of *Davern v Messel* (1984) 155 CLR 21 also set out a wider scope for procedure in this area of law.⁵²

2.23 In light of this, the paper suggests:

The above decisions suggest that proposed reforms would not offend against section 24 of the Human Rights Act 2004 (ACT), as the defendant would not have been "finally acquitted or convicted" in accordance with the law and penal procedure of the ACT.⁵³

2.24 The paper notes that other jurisdictions—NSW, Victoria, and Tasmania—have proceeded with reform to alter legislative arrangements relating to double jeopardy.⁵⁴

2.25 The paper also notes that the same stream of discussion has generated consideration of reform of legal constraints on prosecution appeals against acquittals due to double jeopardy

⁴⁹ ACT Director of Public Prosecutions, (2013), *ACT DPP Double Jeopardy Discussion Paper*, <http://www.justice.act.gov.au/cache/attachments/12785> viewed 19/02/2015, p.2.

⁵⁰ The United Nations *International Covenant on Civil and Political Rights*, <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>

⁵¹ ACT Director of Public Prosecutions, (2013), *ACT DPP Double Jeopardy Discussion Paper*, <http://www.justice.act.gov.au/cache/attachments/12785> viewed 19/02/2015, p.4.

⁵² ACT Director of Public Prosecutions, (2013), *ACT DPP Double Jeopardy Discussion Paper*, <http://www.justice.act.gov.au/cache/attachments/12785> viewed 19/02/2015, p.5.

⁵³ ACT Director of Public Prosecutions, (2013), *ACT DPP Double Jeopardy Discussion Paper*, <http://www.justice.act.gov.au/cache/attachments/12785> viewed 19/02/2015, p.4.

⁵⁴ ACT Director of Public Prosecutions, (2013), *ACT DPP Double Jeopardy Discussion Paper*, <http://www.justice.act.gov.au/cache/attachments/12785> viewed 19/02/2015, p.4.

constraints—a matter which directly influences the activities of the DPP—and reform in this area in other jurisdictions.⁵⁵

2.26 Finally, the paper considers:

- a ‘new and fresh evidence exemption’ to double jeopardy constraints recommended under the COAG Model, that is, that: ‘an acquitted accused could be retried for a very serious offence where there is fresh and compelling evidence against the acquitted person in relation to the offence’, and reform in this area in other jurisdictions;⁵⁶
- a ‘tainted evidence exception’, under which ‘an acquitted accused could be retried for a very serious offence where the acquittal appears to be tainted’, and reform in this area in other jurisdictions;⁵⁷ and that
- ‘public justice offences’, such as the perjury offences employed in *R v Carroll*, should be permissible.⁵⁸

2.27 The Justice and Community Safety Directorate’s *Annual Report 2013-2014* does not refer to double jeopardy law reform.

MANAGEMENT OF ‘MR FLUFFY’ LOOSE-FIBRE CONTAMINATED HOUSES

2.28 In hearings of 3 November 2014 questions were asked and answered regarding the ACT Government’s management of ‘Mr Fluffy’ loose-fibre contaminated premises.⁵⁹ In particular it was asked, in connection with references in the JACS Annual Report 2013-14,⁶⁰ as to when the Work Safety Commissioner first became aware of the loose-fibre asbestos contamination of premises.⁶¹

2.29 In response, the Attorney-General told the Committee that:

- he had, as Minister for Industrial Relations, had the initial ‘responsibility for the Mr Fluffy issue’;⁶²

⁵⁵ ACT Director of Public Prosecutions, (2013), *ACT DPP Double Jeopardy Discussion Paper*, <http://www.justice.act.gov.au/cache/attachments/12785> viewed 19/02/2015, p.7-8.

⁵⁶ ACT Director of Public Prosecutions, (2013), *ACT DPP Double Jeopardy Discussion Paper*, <http://www.justice.act.gov.au/cache/attachments/12785> viewed 19/02/2015, p.12 ff.

⁵⁷ ACT Director of Public Prosecutions, (2013), *ACT DPP Double Jeopardy Discussion Paper*, <http://www.justice.act.gov.au/cache/attachments/12785> viewed 19/02/2015, p.13 ff.

⁵⁸ ACT Director of Public Prosecutions, (2013), *ACT DPP Double Jeopardy Discussion Paper*, <http://www.justice.act.gov.au/cache/attachments/12785> viewed 19/02/2015, p.15.

⁵⁹ *Transcript of Evidence*, 3 November 2014, pp.109-115.

⁶⁰ Justice and Community Safety Directorate, *Annual Report 2013-2014*, Volume 1, p.57, http://cdn.justice.act.gov.au/resources/uploads/JACS/JACS_Annual_Report_2013_14_Vol_1.pdf.

⁶¹ *Transcript of Evidence*, 3 November 2014, p.110.

⁶² Mr Simon Corbell MLA, *Transcript of Evidence*, 3 November 2014, p.109.

- that responsibility for the issue now lay with the Chief Minister, and that questions about the matter should be directed to the Chief Minister;⁶³ and
- that there was a 'whole-of-government response to asbestos-related matters', in which the Work Safety Commissioner, who reports to the Attorney-General, had a role.⁶⁴

2.30 Subsequently, the Work Safety Commissioner was asked directly as to when he became aware of asbestos contamination of particular premises. He told the Committee he could not recollect and took the questions on notice.⁶⁵ Further questions were subsequently asked about other dwellings, and the Work Safety Commissioner also took these questions on notice.⁶⁶

2.31 In a response to the Question Taken on Notice the Attorney-General advised the Committee, in relation to premises in Dickson:

- that the presence of 'asbestos containing material' was reported to WorkSafe ACT on 20 January 2014;
- that an inspector attended the premises on 22 January 2014 and issued 'a number of prohibition notices';
- that a 'licensed asbestos removalist was engaged by the building owner in March 2014'; and
- that a 'clearance certificate for the premise was issued in early June 2014 and the Prohibition Notice was lifted'.⁶⁷

2.32 Another question was also taken on notice regarding asbestos regarding the so-called 'Downer house'. The question asked about recommendations about the house to government. In the response to the Question Taken on Notice, the Chief Minister responded by advising the Committee that:

The recommendations regarding asbestos in a Downer house were made by the Office of Industrial Relations in the Chief Minister, Treasury and Economic Development Directorate in consultation with the cross-Directorate Asbestos Regulators Forum, the Work Safety Commissioner and Class A licensed asbestos assessors.⁶⁸

⁶³ Mr Simon Corbell MLA, *Transcript of Evidence*, 3 November 2014, p.109.

⁶⁴ Mr Simon Corbell MLA, *Transcript of Evidence*, 3 November 2014, p.110.

⁶⁵ *Transcript of Evidence*, 3 November 2014, pp.112-113.

⁶⁶ *Transcript of Evidence*, 3 November 2014, pp.114-115.

⁶⁷ Response to Question Taken on Notice, received 19 November 2014, available at: http://www.parliament.act.gov.au/data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

⁶⁸ Response to Question Taken on Notice, received 4 December 2014, available at: http://www.parliament.act.gov.au/data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

2.33 The Justice and Community Safety Directorate's *Annual Report 2013-2014* makes a number of references to loose-asbestos contamination of premises.⁶⁹

COMMITTEE COMMENT

2.34 After reflecting on the material submitted to the inquiry, the Committee considers that the Attorney-General should publish the submissions made to his inquiry into law reform on double jeopardy.⁷⁰ This would allow the Committee, and other parties with an interest in this matter, to see not only the discussion paper,⁷¹ but also a wider range of opinion on the matter. This would provide further important information to support the Committee's scrutiny and consideration in this area.

2.35 In light of this the Committee makes the following recommendation.

Recommendation 1

2.36 The Committee recommends that the ACT Government publish all submissions to its inquiry into law reform on double jeopardy.

⁶⁹ See Justice and Community Safety Directorate, *Annual Report 2013-2014*, Vol.1, pp.56-57 & 59. Available at: http://cdn.justice.act.gov.au/resources/uploads/JACS/JACS_Annual_Report_2013_14_Vol_1.pdf

⁷⁰ *Transcript of Evidence*, 3 November 2014, pp.104-105, pp.122-123.

⁷¹ ACT Director of Public Prosecutions, (2013), *ACT DPP Double Jeopardy Discussion Paper*, <<http://www.justice.act.gov.au/cache/attachments/12785>>, viewed 19/02/2015.

3 INDUSTRIAL RELATIONS AND RELATED MATTERS

INTRODUCTION

- 3.1 In 2012 there were changes to Administrative Arrangements under which arrangements the Office of Industrial Relations (OIR) continues to be situated within the Chief Minister and Treasury Directorate (CMTD), as before, but reports to Minister Mick Gentleman as ACT Minister for Workplace Safety and Industrial Relations. This is also the case for Continuous Improvement and Workers' Compensation Branch (CIWC).
- 3.2 WorkSafe ACT continues to be part of the Justice and Community Safety Directorate but reports to the Minister for Workplace Safety and Industrial Relations.
- 3.3 The work of the OIR and CIWC are reported on in Output 1.3, Industrial Relations Policy, in the CMTD *Annual Report 2013-14*.⁷² Matters relating to work safety are also reported in Output 1.2, Public Sector Management of that report.
- 3.4 The work of WorkSafe ACT is reported on in Output 1.7 – Regulatory and Transport Services in a section on WorkSafe ACT in the JACS *Annual Report 2013-14*.⁷³
- 3.5 These arrangements have prompted changes of responsibility for oversight by Assembly committees. Under the previous arrangements responsibility for oversight over Industrial Relations was held by Standing Committee on Public Accounts (PAC). In 2013, after an exchange of letters with the PAC, the Standing Committee on Justice and Community Safety assumed this responsibility.
- 3.6 The Committee considered a number of matters relating to industrial relations and workplace safety in its public hearings of 3 November 2014.

MATTERS CONSIDERED

- 3.7 The following matters were considered:
- staffing in WorkSafe ACT;⁷⁴
 - investigations currently in-hand;⁷⁵

⁷² Chief Minister and Treasury Directorate, *Annual Report 2013-14*, p.21 ff.

⁷³ Justice and Community Safety Directorate, *Annual Report 2013-14*, p.56 ff.

⁷⁴ *Transcript of Evidence*, 3 November 2014, pp.156-157.

⁷⁵ *Transcript of Evidence*, 3 November 2014, p.157.

- training of inspectors for asbestos awareness;⁷⁶
- efforts to harmonise workplace relations and health and safety legislation across Australian jurisdictions;⁷⁷
- coordination and response to loose-fill asbestos;⁷⁸ *
- a new workers compensation management system;⁷⁹
- work safety in the construction industry following the release of the *Getting Home Safely* report;⁸⁰ * and
- reporting on leases and other financial arrangements of the Long Service Leave Authority.⁸¹

3.8 Questions Taken on Notice were also asked and answered regarding:

- numbers of WorkSafe investigations;⁸²
- knowledge by WorkSafe of loose asbestos in Dickson building;⁸³
- the 'Downer House' and loose-fill asbestos;⁸⁴ and
- loose-fill asbestos at a property in Yarralumla.⁸⁵

⁷⁶ *Transcript of Evidence*, 3 November 2014, p.158.

⁷⁷ *Transcript of Evidence*, 3 November 2014, pp.159-160.

⁷⁸ *Transcript of Evidence*, 3 November 2014, pp.160-163.

⁷⁹ *Transcript of Evidence*, 3 November 2014, pp.164-165.

⁸⁰ *Transcript of Evidence*, 3 November 2014, pp.166-167.

⁸¹ *Transcript of Evidence*, 3 November 2014, pp.168-169.

⁸² Answer to Question Taken on Notice, received 20 November 2014, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

⁸³ Answer to Question Taken on Notice, received 19 November 2014, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

⁸⁴ Answer to Question Taken on Notice, received 4 December 2014, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

⁸⁵ Answer to Question Taken on Notice, received 16 December 2014, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

DISCUSSION

3.9 This section presents further detail on topics selected from the list of 'Matters considered', above.

COORDINATION AND RESPONSE TO LOOSE-FILL ASBESTOS

3.10 In hearings of 3 November 2014 questions were asked and answered regarding the coordination of the ACT Government response to loose-fill asbestos.⁸⁶

3.11 In response to questions, the Committee was told that:

- while the CMTD Annual Report 2013-2014 had listed coordinating the whole-of-government response to loose-fill asbestos as a highlight, under the administration of the Minister for Workplace Safety and Industrial Relations, this had responsibility passed to the Asbestos Response Taskforce under the administration of the Chief Minister;⁸⁷
- the Minister for Workplace Safety and Industrial Relations did not have a direct role in the Taskforce, but retained 'the regulatory authority for asbestos in the ACT', which entailed ensuring 'that the laws involved are up to par with the investigations and the work that the task force does';⁸⁸
- that 'the government will be responsible for compliance with the law, insofar as it is undertaken as a government program, and WorkSafe will be responsible for making sure the government complies with the law';⁸⁹
- that this did not represent 'an additional impost' on WorkSafe ACT, but was part of 'our job';⁹⁰
- that it will be '[u]ltimately, it will be [WorkSafe ACT's] job to make sure that whatever processes are put in place' to dispose of waste from asbestos-affected premises 'are safe and are carried out safely'.⁹¹

3.12 The Justice and Community Safety Directorate's *Annual Report 2013-2014* makes a number of references to loose-fill asbestos.⁹²

⁸⁶ *Transcript of Evidence*, 3 November 2014, pp.160-163.

⁸⁷ *Transcript of Evidence*, 3 November 2014, pp.160-161.

⁸⁸ Mr Mick Gentleman MLA, *Transcript of Evidence*, 3 November 2014, p.161.

⁸⁹ Mr Mark McCabe, *Transcript of Evidence*, 3 November 2014, p.162.

⁹⁰ Mr Mark McCabe, *Transcript of Evidence*, 3 November 2014, p.162.

⁹¹ Mr Mark McCabe, *Transcript of Evidence*, 3 November 2014, p.162.

⁹² See Justice and Community Safety Directorate, *Annual Report 2013-2014*, Vol.1, pp.56-58 & 59. Available at: Available at: http://cdn.justice.act.gov.au/resources/uploads/JACS/JACS_Annual_Report_2013_14_Vol_1.pdf

WORK SAFETY IN THE CONSTRUCTION INDUSTRY AFTER THE *GETTING HOME SAFELY* REPORT

3.13 In hearings of 3 November 2014 questions were asked and answered regarding work safety in the construction industry following the release of the *Getting Home Safely* report.⁹³

3.14 In response to questions the Minister for Workplace Safety and Industrial Relations told the Committee that:

- it was 'really pleasing to note that there have been no fatalities in the ACT construction industry since the getting home safely inquiry was commissioned';⁹⁴
- that this compared with '17 deaths in construction Australia-wide in 2013' and '14 construction deaths Australia-wide in 2014' at the time of hearings;⁹⁵
- that following the report '12 additional work safety inspectors have been hired through additional funding to WorkSafe ACT', which brought 'total number of inspectors to 31, with four team leaders who are also inspectors';⁹⁶
- that, in addition, infringement notices had been introduced 'to ensure that you can operate in a real-time sense to ensure safety in the workplace';⁹⁷ and
- that the infringement notices could be applied in relation to 'regulations around personal protection, equipment, trench collapses, white card training, verification and other improved safety measures for employees'.⁹⁸

3.15 In response to questions about the training of inspectors, the Work Safety Commissioner told the Committee that:

There are a couple of formal courses that we put all inspectors through. One is cert IV in government (investigations). Another is a cert IV in government (inspections). There is a distinction between the two. Where inspectors have completed that, we then look to upgrade their training up to diploma level in both of those items.⁹⁹

3.16 The Justice and Community Safety Directorate's *Annual Report 2013-2014* makes a number of references to the *Getting Home Safely* report¹⁰⁰

⁹³ *Transcript of Evidence*, 3 November 2014, pp.166-167.

⁹⁴ Mr Mick Gentleman MLA, *Transcript of Evidence*, 3 November 2014, p.166.

⁹⁵ Mr Mick Gentleman MLA, *Transcript of Evidence*, 3 November 2014, p.166.

⁹⁶ Mr Mick Gentleman MLA, *Transcript of Evidence*, 3 November 2014, p.166.

⁹⁷ Mr Mick Gentleman MLA, *Transcript of Evidence*, 3 November 2014, p.166.

⁹⁸ Mr Mick Gentleman MLA, *Transcript of Evidence*, 3 November 2014, p.166.

⁹⁹ Mr Mark McCabe, *Transcript of Evidence*, 3 November 2014, p.166.

¹⁰⁰ See Justice and Community Safety Directorate, *Annual Report 2013-2014*, pp.5, 17, 19, 56 & 141.

COMMITTEE COMMENT

- 3.17 After reflecting on the evidence put to the inquiry, the Committee considers that that the ACT Government should table in the Legislative Assembly a timeline representing its knowledge of loose-fill asbestos contamination of ACT premises from the start of 2010 to November 2014, as recommended in the previous chapter.

4 ACT POLICING, THE EMERGENCY SERVICES AGENCY

INTRODUCTION

- 4.1 The Minister for Police and Emergency Services, Mr Simon Corbell MLA, and officers of ACT Policing and the Emergency Services Agency (ESA), appeared before the Committee at public hearings on 3 November 2014.

MATTERS CONSIDERED

EMERGENCY SERVICES

- 4.2 The following matters were considered in relation to Emergency Services (ESA):
- bushfire preparedness;¹⁰¹ *
 - the Aranda fire and ambulance station;¹⁰²
 - community resilience;¹⁰³
 - the Sydney Building fire;¹⁰⁴
 - work culture within different parts of the ESA;¹⁰⁵ *
 - upgrades to ICT systems and other technologies;¹⁰⁶
 - recruit colleges;¹⁰⁷ and
 - new equipment in the Ambulance Service.¹⁰⁸

¹⁰¹ *Transcript of Evidence*, 3 November 2014, pp.131-132.

¹⁰² *Transcript of Evidence*, 3 November 2014, pp.132-133.

¹⁰³ *Transcript of Evidence*, 3 November 2014, pp.133-134.

¹⁰⁴ *Transcript of Evidence*, 3 November 2014, pp.135-136.

¹⁰⁵ *Transcript of Evidence*, 3 November 2014, pp.136-138.

¹⁰⁶ *Transcript of Evidence*, 3 November 2014, pp.138-139.

¹⁰⁷ *Transcript of Evidence*, 3 November 2014, p.140.

¹⁰⁸ *Transcript of Evidence*, 3 November 2014, pp.140-142.

ACT POLICING

4.3 The following matters were considered in relation to ACT Policing:

- the use of prohibition orders by police;¹⁰⁹
- rates of offending;¹¹⁰
- the work of the Crime Reduction Unit;¹¹¹
- outlaw motorcycle gangs in the ACT;¹¹² *
- the use of tasers by police;¹¹³
- perceptions of crime;¹¹⁴
- recruiting strategies;¹¹⁵

4.4 Questions Taken on Notice were also asked and answered regarding:

- use of tasers by ACT Policing;¹¹⁶
- ambulance defibrillators;¹¹⁷
- chief officer contracts;¹¹⁸ and
- numbers of Emergency Services Agency (ESA) officers on stress leave.¹¹⁹

¹⁰⁹ *Transcript of Evidence*, 3 November 2014, pp.142-143.

¹¹⁰ *Transcript of Evidence*, 3 November 2014, pp.142-144.

¹¹¹ *Transcript of Evidence*, 3 November 2014, pp.144-146.

¹¹² *Transcript of Evidence*, 3 November 2014, pp.147-148.

¹¹³ *Transcript of Evidence*, 3 November 2014, pp.148-150.

¹¹⁴ *Transcript of Evidence*, 3 November 2014, p.150.

¹¹⁵ *Transcript of Evidence*, 3 November 2014, pp.150-152.

¹¹⁶ Answer to Question Taken on Notice, received 25 November 2014, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

¹¹⁷ Answer to Question Taken on Notice, received 2 December 2014, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

¹¹⁸ Answer to Question Taken on Notice, received 3 December 2014, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

¹¹⁹ Answer to Question Taken on Notice, received 9 December 2014, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

DISCUSSION

- 4.5 This section presents further detail on topics selected from the list of 'Matters considered', above.

BUSHFIRE PREPAREDNESS

- 4.6 In hearings of 3 November 2014 questions were asked and answered regarding bushfire preparedness, which had been the subject of a 2013 Auditor-General's report.¹²⁰
- 4.7 In response to questions the Chief Commissioner of the ESA told the Committee that the Auditor-General had made 'a number of recommendations',¹²¹ including:
- a higher level of cooperation between the ESA and the Territory and Municipal Services Directorate (TAMS), the 'broader JACS Directorate' and the Environment and Planning Directorate (EPD) 'to ensure the appropriate implementation of the strategic bushfire management plan';¹²²
 - a 'revitalisation of the implementation working group';¹²³
 - changing the ESA's 'approach to bushfire planning for rural leaseholders within the ACT', leading to the ESA considering 'not only how we can work better with our rural leaseholders ... but how we could strengthen the legislative arrangements around that', and that this had led to recent amendments to the *Emergencies Act 2004*;¹²⁴ and
 - engaging 'rural leaseholders to ensure that they understand what issues they have in relation to their land management', leading to a clarification of those responsibilities through amended legislation, removing 'confusion in relation to land management agreements and the importance of having a bushfire operational plan within what is called the bushfire abatement zone'.¹²⁵

¹²⁰ *Transcript of Evidence*, 3 November 2014, pp.131-132. ACT Auditor-General's Office, Performance Audit Report: *Bushfire Preparedness*, Report No.5 / 2013, available at:

<http://www.audit.act.gov.au/auditreports/reports2013/Report%20No%205%20of%202013%20Bushfire%20Preparedness.pdf> . This report is subject to further inquiry by the Standing Committee on Public Accounts: see http://www.parliament.act.gov.au/in-committees/standing_committees/Public-Accounts/review-of-auditor-generals-report-no-5-of-2013-bushfire-preparedness?inquiry=567843

¹²¹ Mr Dominic Lane, *Transcript of Evidence*, 3 November 2014, p.131.

¹²² Mr Dominic Lane, *Transcript of Evidence*, 3 November 2014, p.131.

¹²³ Mr Dominic Lane, *Transcript of Evidence*, 3 November 2014, p.131.

¹²⁴ Mr Dominic Lane, *Transcript of Evidence*, 3 November 2014, p.131.

¹²⁵ Mr Dominic Lane, *Transcript of Evidence*, 3 November 2014, p.131.

4.8 The Commissioner also told the Committee that:

- the ESA had made clear ‘the length of time between bushfire operational planning reviews’, now stipulated in legislation as ‘once every five years, which aligns to the length of time of the strategic bushfire management plan’;¹²⁶
- the ESA had responded to the Auditor-General’s recommendations to work ‘better with our national land managers—whether it be defence, science, education or federal government land, of which there is quite a deal within the ACT—to implement very similar arrangements to what we would expect of our territory land managers in relation to bushfire plans of operation for those areas’;¹²⁷ and that
- the ESA had responded to ‘some limitations in relation to those other minor landholders within the ACT’, and that the ESA had ‘worked very hard’ with these landholders ‘to ensure that we can improve ... education, our utilities and community services to ensure that we have bushfire plans of operations for those as well’.¹²⁸

4.9 The Justice and Community Safety Directorate’s *Annual Report 2013-2014* makes a number of references to the bushfire preparedness.¹²⁹

4.10 Bushfire preparedness was the subject of the Auditor-General’s report No.5 of 2013, which is subject to further inquiry by the Legislative Assembly’s Standing Committee for Public Accounts.¹³⁰

WORK CULTURE WITHIN THE ESA

4.11 In hearings of 3 November 2014 questions were asked and answered regarding work culture in the ESA.¹³¹

4.12 In response to questions the Attorney-General told the Committee that:

- the ACT Government had ‘commissioned a cultural review of the Ambulance Service’, which was expected to be completed ‘by the end’ of the 2014 calendar year’;¹³²

¹²⁶ Mr Dominic Lane, *Transcript of Evidence*, 3 November 2014, pp.131-132.

¹²⁷ Mr Dominic Lane, *Transcript of Evidence*, 3 November 2014, p.132.

¹²⁸ Mr Dominic Lane, *Transcript of Evidence*, 3 November 2014, p.132.

¹²⁹ See Justice and Community Safety Directorate, *Annual Report 2013-2014*, Vol.1, pp.89, 117, 154, 157, 164, 165. Available at: http://cdn.justice.act.gov.au/resources/uploads/JACS/JACS_Annual_Report_2013_14_Vol_1.pdf

¹³⁰ The ACT Auditor-General’s report on *Bushfire Preparedness* is available at: <http://www.audit.act.gov.au/auditreports/reports2013/Report%20No%205%20of%202013%20Bushfire%20Preparedness.pdf>; The Standing Committee for Public Accounts inquiry webpage for its *Review of Auditor-General’s Report No. 5 of 2013: Bushfire Preparedness* is available at: http://www.parliament.act.gov.au/in-committees/standing_committees/Public-Accounts/review-of-auditor-generals-report-no-5-of-2013-bushfire-preparedness?inquiry=567843

¹³¹ *Transcript of Evidence*, 3 November 2014, pp.136-138.

¹³² Mr Simon Corbell, *Transcript of Evidence*, 3 November 2014, p.136.

- there had been ‘a small number of matters reported over the past 12 to 18 months, all of which have been appropriately responded to’;¹³³ and
- that the ACT Government had ‘announced the development and the implementation of a women in emergency services strategy’, to ‘increase the representation of women in both paid and volunteer workforces of the ESA’.¹³⁴

4.13 The Chief Commissioner of the ESA also responded. He told the Committee that:

- the ESA had ‘hit the ground running in relation to our women in emergency services strategy’;¹³⁵
- the ESA had been ‘a key sponsor of the women in firefighting forum that was held here in Canberra earlier this year which brought firefighters, emergency managers and members of Defence personnel to Canberra to discuss the matters that relate specifically to organisations like emergency services which are underrepresented in relation to women within a workforce’;¹³⁶
- that the ESA ‘also provided opportunities for staff and volunteers of ESA to attend other such forums here in Canberra to promote the importance of women in organisations like Defence and emergency services’;¹³⁷
- that key areas of focus by the ESA were to ‘target and recruit women into the ESA’; ‘how we promote women within the agency ... to take on higher ranked positions’; and ‘about understanding, for the rest of ESA, that is, the men, the importance of growing our capability by being a more diverse workforce in terms of gender and for other areas of diversity as well.’¹³⁸

4.14 Further questions were asked as to how many officers of ESA were stood down at the time of hearing.¹³⁹

4.15 In response, the Acting Executive Director, People and Workplace Strategy told the Committee:

- that one ESA employee was currently under suspension;¹⁴⁰
- that this officer had at that time been suspended for approximately 16 months;¹⁴¹

¹³³ Mr Simon Corbell, *Transcript of Evidence*, 3 November 2014, p.137.

¹³⁴ Mr Simon Corbell, *Transcript of Evidence*, 3 November 2014, p.137.

¹³⁵ Mr Dominic Lane, *Transcript of Evidence*, 3 November 2014, p.137.

¹³⁶ Mr Dominic Lane, *Transcript of Evidence*, 3 November 2014, p.137.

¹³⁷ Mr Dominic Lane, *Transcript of Evidence*, 3 November 2014, p.137.

¹³⁸ Mr Dominic Lane, *Transcript of Evidence*, 3 November 2014, p.137.

¹³⁹ *Transcript of Evidence*, 3 November 2014, p.137.

¹⁴⁰ Ms Liz Beattie, *Transcript of Evidence*, 3 November 2014, p.138.

¹⁴¹ Ms Liz Beattie, *Transcript of Evidence*, 3 November 2014, p.138.

- that this process had reached its conclusion and the officer had been notified of the outcome;¹⁴² and
- that the ESA was ‘currently negotiating a replacement’ for this officer.¹⁴³

4.16 In relation to this matter the Attorney-General told the Committee that:

these matters can be complex and therefore protracted. Each party has rights in relation to the way these matters have to be addressed and these grievances resolved.¹⁴⁴

4.17 Questions were also asked as to how many officers were on stress leave and this was taken on notice.¹⁴⁵

4.18 The response to the Question Taken on Notice later received by the Committee advised it that 7 ESA officers were ‘currently absent from work for an accepted worker’s compensation claim’, and that:

These include reasons of:

- Post Traumatic Stress Disorder;
- Anxiety;
- Physical injury.¹⁴⁶

4.19 The response also advised the Committee that there were in addition ‘a small number of staff on personal leave with a diagnosis of a mental health illness’, but that details ‘of the type of leave and the reason are not provided due to concerns for privacy’.¹⁴⁷

4.20 The Justice and Community Safety Directorate’s *Annual Report 2013-2014* makes limited reference to matters mentioned in relation to workplace culture in the ESA.¹⁴⁸

¹⁴² Ms Liz Beattie, *Transcript of Evidence*, 3 November 2014, p.138.

¹⁴³ Ms Liz Beattie, *Transcript of Evidence*, 3 November 2014, p.138.

¹⁴⁴ Mr Simon Corbell MLA, *Transcript of Evidence*, 3 November 2014, p.138.

¹⁴⁵ Answer to Question Taken on Notice, received 9 December 2014, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

¹⁴⁶ Response to Question Taken on Notice, received 9 December 2014, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

¹⁴⁷ Response to Question Taken on Notice, received 9 December 2014, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

¹⁴⁸ See Justice and Community Safety Directorate, *Annual Report 2013-2014*, Vol.1, pp.89, 90 & 97. Available at:

http://cdn.justice.act.gov.au/resources/uploads/JACS/JACS_Annual_Report_2013_14_Vol_1.pdf

OUTLAW MOTORCYCLE GANGS IN THE ACT

4.21 In hearings of 3 November 2014 questions were asked and answered regarding the activities of outlaw motorcycle gangs in the ACT.¹⁴⁹

4.22 In response to questions the Chief Police Officer told the Committee:

- that ‘quite some months ago [ACT Policing] set up a task force called task force Nemesis that was specifically targeted at outlaw motorcycle gangs within the ACT, their use of illicit drugs, their use of firearms and the way in which outlaw motorcycle gangs connect with other gangs throughout Australia and to some extent throughout the world’;¹⁵⁰
- that ACT Policing were ‘finding that the use of cannabis and ice—methamphetamine—in the ACT is increasing’;¹⁵¹
- that recently ACT Policing ‘executed warrants at Hume where we closed down a clan lab of quite some significance’, which resulted in ‘taking many hundreds of millions of drugs off our streets, some of which would have been destined for Canberra’;¹⁵²
- that ACT Policing were ‘targeting very closely the activities of outlaw motorcycle gangs throughout all types of organised crimes, not just drugs, and we are having good success in Canberra in doing that’;¹⁵³ and
- that the ‘reach of outlaw motorcycle gangs in Canberra is still minimal’ and the ‘reason we have things like task force Nemesis set up is to keep it that way’.¹⁵⁴

4.23 When asked about whether more than one gang was involved the Commissioner told the Committee that:

The Rebels have been domiciled in Canberra for a long, long time. In recent times, within the last 12 months, we have seen the Comancheros try to gain a foothold in Canberra. We have seen what we call patching over—some of the Rebels wanting to become members of the Comancheros. The cultures, if I can use that word, of the Rebels and the Comancheros are completely different. They are different types of outlaw motorcycle gangs. Whereas the Rebels like to remain relatively under the radar, the Comancheros have no such desire. Our work through task force Nemesis has been specifically targeting the Comancheros to make sure they do not get a foothold in Canberra. Over the last six months we have executed a lot of warrants on both the

¹⁴⁹ *Transcript of Evidence*, 3 November 2014, pp.147-148.

¹⁵⁰ Mr Rudi Lammers, *Transcript of Evidence*, 3 November 2014, p.147.

¹⁵¹ Mr Rudi Lammers, *Transcript of Evidence*, 3 November 2014, p.147.

¹⁵² Mr Rudi Lammers, *Transcript of Evidence*, 3 November 2014, p.147.

¹⁵³ Mr Rudi Lammers, *Transcript of Evidence*, 3 November 2014, p.147.

¹⁵⁴ Mr Rudi Lammers, *Transcript of Evidence*, 3 November 2014, p.147.

Rebels and the Comancheros. We have seized firearms, we have seized ammunition and we have seized weapons. And we will keep the pressure on them.¹⁵⁵

- 4.24 The ACT Policing *Annual Report 2013-2014* does not refer to outlaw motorcycle gangs explicitly but makes a number of references to organised crime in the ACT.¹⁵⁶

USE OF TASERS BY POLICE

- 4.25 In hearings of 3 November 2014 questions were asked and answered regarding the use of tasers by police. In particular, questions were asked as to whether consideration had been given to issuing tasers to officers other than 'substantive' (that is, not acting) sergeants.¹⁵⁷

- 4.26 In response the Chief Police Officer told the Committee that he had 'given quite some consideration in recent times to whether or not tasers ought to be rolled out past front-line sergeants'.¹⁵⁸

- 4.27 He went on to state that the 'use of tasers in the ACT is relatively minimal' and the 'use of firearms in the ACT is even less than the use of tasers'.¹⁵⁹

- 4.28 In light of this, he told the Committee, he had 'seen no compelling argument for me to roll out tasers past front-line sergeants to constables'.¹⁶⁰

If the situation changes where I need to re-examine that, I will certainly do so. But right here and now, I see no compelling argument for front-line officers to have tasers in Canberra.¹⁶¹

- 4.29 Following this questions were asked as to whether numbers of police shootings in the ACT would have been reduced if tasers had been issued to a broader category of officers in ACT Policing.¹⁶²

- 4.30 In response the Attorney-General told the Committee that:

since 2000—so in the last 14 years—there have been four occasions where a police officer has had to discharge their firearm, four occasions in 14 years. That is a very, very small number. In the majority of those occasions the discharge of the firearm

¹⁵⁵ Mr Rudi Lammers, *Transcript of Evidence*, 3 November 2014, p.147.

¹⁵⁶ See ACT Policing, *Annual Report 2013-2014*, pp.12, 21, & 39. Available at:

<http://www.police.act.gov.au/~media/act/pdf/act-policing-annual-report-2013-14.pdf>

¹⁵⁷ *Transcript of Evidence*, 3 November 2014, pp.148-150.

¹⁵⁸ Mr Rudi Lammers, *Transcript of Evidence*, 3 November 2014, p.148.

¹⁵⁹ Mr Rudi Lammers, *Transcript of Evidence*, 3 November 2014, p.148.

¹⁶⁰ Mr Rudi Lammers, *Transcript of Evidence*, 3 November 2014, p.148.

¹⁶¹ Mr Rudi Lammers, *Transcript of Evidence*, 3 November 2014, p.148.

¹⁶² *Transcript of Evidence*, 3 November 2014, p.148.

occurred after the rollout of tasers to front-line sergeants. There is clearly no link between the absence of tasers and the use of firearms, and we are talking about very, very small numbers. Those are matters I keep in mind from a policy perspective when I look at whether or not there is an argument for an expansion in taser use.¹⁶³

4.31 In addition the Attorney-General told the Committee that:

just because a taser is available does not mean it will be deployed ahead of a firearm being deployed. It is a dynamic use of force, a continuum that the police use. They use force consistent with the threat they face. Just because a taser is present does not mean that it will be used as a matter of course before a firearm is drawn. It depends on the circumstances police face. Obviously they are trained to use the force options available commensurate with the threat and the circumstances they face.¹⁶⁴

4.32 The ACT Policing *Annual Report 2013-2014* makes limited reference to the use of tasers by ACT Policing officers.¹⁶⁵

COMMITTEE COMMENT

WORK CULTURE IN THE ESA

4.33 After reflecting on the evidence provided to the inquiry, the Committee considers that questions remain as to the state of work culture in the ESA. In the Committee's view it is more than apparent that campaigns to recruit female officers will have limited effect if there are perceptions that female officers are treated in ways that do not meet a professional standard.

4.34 In the Committee's view the ESA should state and promulgate this view to its workforce and, where necessary, discipline officers if they should be at fault. Representations made to the Committee by senior officers emphasised recruiting campaigns and public relations measures. In the Committee's view this is only one part of the recruitment and retention equation, and will only be effective if female officers are secure in knowing that the organisation ensures a respectful workplace.

4.35 The Committee makes these comments aware that strongly relevant matters were discussed in the course of the inquiry by the Select Committee on Estimates 2014-2015, where an

¹⁶³ Mr Simon Corbell MLA, *Transcript of Evidence*, 3 November 2014, p.149.

¹⁶⁴ Mr Simon Corbell MLA, *Transcript of Evidence*, 3 November 2014, p.149.

¹⁶⁵ See ACT Policing, *Annual Report 2013-2014*, p.58. Available at: <http://www.police.act.gov.au/~media/act/pdf/act-policing-annual-report-2013-14.pdf>

incident was described in which moving picture footage was taken of a female officer in 'a private cubicle' without her consent, and that no disciplinary action had been taken.¹⁶⁶

4.36 In light of this the Committee makes the following recommendation.

Recommendation 2

4.37 The Committee recommends that the Emergency Services Agency (ESA) take disciplinary action in relation to incidents where reviews show that inappropriate behaviour has taken place in the workplace.

OUTLAW MOTORCYCLE GANGS IN THE ACT

4.38 The Committee notes ACT Policing activity in connection with outlaw motorcycle gangs in the ACT, and information provided in the course of this inquiry identifying the presence of these organisations in the ACT for some time.

4.39 The Committee notes reports that the Attorney-General has announced that the ACT Government is laws specifically targeting outlaw motorcycle gangs were under 'active consideration', as have been put into law in Queensland and NSW. He was also quoted as saying that he did not 'want outlaw motorcycle gangs to see the ACT as "a soft touch" when it came to organised crime'.¹⁶⁷

4.40 In connection with this, the Committee notes:

- that the Queensland laws include criminal offences framed in connection with membership of scheduled criminal organisation and the association of members thereof,¹⁶⁸
- that freedom of association is held to be an important legal right in Australia;¹⁶⁹
- that laws of this nature have been subject to challenges in the High Court;¹⁷⁰

¹⁶⁶ See Select Committee on Estimates 2014-2015, *Appropriation Bill 2014 2014- 2015 and Appropriation (Office of the Legislative Assembly) Bill 2014 - 2015*, pp.297-298, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0004/622858/Estimates-2014-Volume-1-FINAL.pdf

¹⁶⁷ ABC News Online, (2015), 'New anti-bikie laws flagged for ACT following spate of shootings in Canberra', <http://www.abc.net.au/news/2015-02-16/anti-bikie-laws-flagged-for-act-following-shootings/6120466>, viewed 23/02/2015.

¹⁶⁸ Ananian-Welsh, R., (2014), 'High Court invites fresh challenge to Queensland's bikie laws', *The Conversation*, 17 November 2014, <http://theconversation.com/high-court-invites-fresh-challenge-to-queenslands-bikie-laws-31103>, viewed 25/02/2015.

¹⁶⁹ Thomson Reuters, *Laws of Australia*, [21.5.730], 'There is a right to freedom of association in Australia'.

- that this ‘case was not only fought between [the plaintiff] and the state of Queensland’, as the ‘Commonwealth, New South Wales, the Northern Territory, South Australia, Victoria and Western Australia all intervened to support the validity of the laws’;¹⁷¹
- that following the failure of a recent challenge, the Northern Territory and South Australia had indicated that they would consider adopting similar legislation;¹⁷²
- that the Queensland Labor Opposition, successful in forming government after the most recent Queensland election, had stated at the time that if elected it would move to repeal the legislation because it considered them ‘unworkable’;¹⁷³
- that the High Court judgement had stated that ‘the possible reach of these laws is very wide, and even their operation may be excessive and [even] harsh’;¹⁷⁴
- that, regarding the point of law on which the challenge was based, however: ‘to demonstrate that a law may lead to harsh outcomes, even disproportionately harsh outcomes, is not, of itself, to demonstrate constitutional invalidity’;¹⁷⁵
- that some comment saw the High Court’s judgement as ‘an invitation’ to mount a ‘fresh challenge to Queensland’s bikie laws’;¹⁷⁶ and
- that some other comment, local to the ACT, had argued that such legislation would be not be effective, and would be disproportionate to the actual level of risk to the ACT of from outlaw motorcycle gangs.¹⁷⁷

¹⁷⁰ ABC News Online Updated 15 November 2014, (2014), ‘Anti-bikie laws: High Court rejects challenge to Queensland VLAD laws’, <http://www.abc.net.au/news/2014-11-14/high-court-rejects-challenge-to-vlad-anti-bikie-laws/5890254>, viewed 25/02/2015.

¹⁷¹ Ananian-Welsh, R., (2014), ‘High Court invites fresh challenge to Queensland’s bikie laws’, *The Conversation*, 17 November 2014, <http://theconversation.com/high-court-invites-fresh-challenge-to-queenslands-bikie-laws-31103>, viewed 25/02/2015.

¹⁷² Ananian-Welsh, R., (2014), ‘High Court invites fresh challenge to Queensland’s bikie laws’, *The Conversation*, 17 November 2014, <http://theconversation.com/high-court-invites-fresh-challenge-to-queenslands-bikie-laws-31103>, viewed 25/02/2015.

¹⁷³ ABC News Online Updated 15 November 2014, (2014), Anti-bikie laws: High Court rejects challenge to Queensland VLAD laws, <http://www.abc.net.au/news/2014-11-14/high-court-rejects-challenge-to-vlad-anti-bikie-laws/5890254>, viewed 25/02/2015.

¹⁷⁴ Ananian-Welsh, R., (2014), ‘High Court invites fresh challenge to Queensland’s bikie laws’, *The Conversation*, 17 November 2014, <http://theconversation.com/high-court-invites-fresh-challenge-to-queenslands-bikie-laws-31103>, viewed 25/02/2015, quoting [2014] HCA 46 [217].

¹⁷⁵ Ananian-Welsh, R., (2014), ‘High Court invites fresh challenge to Queensland’s bikie laws’, *The Conversation*, 17 November 2014, <http://theconversation.com/high-court-invites-fresh-challenge-to-queenslands-bikie-laws-31103>, viewed 25/02/2015, quoting [2014] HCA 46 [217].

¹⁷⁶ Ananian-Welsh, R., (2014), ‘High Court invites fresh challenge to Queensland’s bikie laws’, *The Conversation*, 17 November 2014, <http://theconversation.com/high-court-invites-fresh-challenge-to-queenslands-bikie-laws-31103>, viewed 25/02/2015, quoting [2014] HCA 46 [217].

¹⁷⁷ Waterford, J., (2015), New ACT bikie laws won't address problem, *Canberra Times* (online) February 21 2015, <http://www.smh.com.au/comment/new-act-bikie-laws-wont-address-problem-20150221-13k3rv.html>, viewed 23/02/2015.

4.41 In the Committee's view , after taking these views into account, it appears that there are a number of factors to consider.

4.42 These include:

- the uncertain stability of laws framed on this model given the equivocal response by the High Court;
- the potential loss of freedom — in particular freedom of association— incurred when framing criminal offences on grounds of association;
- the question of whether current legislation defining criminal offences is, in fact, insufficient to meet the challenge of organised crime, or whether shortfalls may hinge, rather, on implementation;
- the question of consistency with other Australian jurisdictions.

4.43 In light of this the Committee makes the following recommendation.

Recommendation 3

4.44 The Committee recommends that in relation to any proposed legislation specifically providing for responses to outlaw motorcycle gangs the ACT Government move a motion in the Legislative Assembly that would, if passed, refer such legislation to the Standing Committee on Justice and Community Safety for review and report to the Legislative Assembly.

5 CORRECTIVE SERVICES AND THE AMC

INTRODUCTION

- 5.1 On 13 October 2014 the Minister for Corrections and his officers appeared before the Committee at a public hearing.

MATTERS CONSIDERED

- 5.2 Matters considered included:

- the extension of the Alexander Maconochie Centre (AMC);¹⁷⁸ *
- the end of periodic detention;¹⁷⁹ *
- restorative justice;¹⁸⁰
- prison visits at the AMC;¹⁸¹
- rates of recidivism;¹⁸²
- programs for Indigenous offenders;¹⁸³
- the function and management of the AMC's Crisis Support Unit;¹⁸⁴ *
- the proposed needle and syringe program at the AMC;¹⁸⁵ *
- the move to create a new separate forensic mental health facility in Canberra;¹⁸⁶
- employment at the AMC;¹⁸⁷
- educational opportunities at the AMC;¹⁸⁸
- activities for Indigenous prisoners at the AMC;¹⁸⁹
- the work of the Official Visitors at the AMC;¹⁹⁰ and

¹⁷⁸ *Transcript of Evidence*, 13 October 2015, pp.28-29.

¹⁷⁹ *Transcript of Evidence*, 13 October 2015, pp.29-30, 31-32.

¹⁸⁰ *Transcript of Evidence*, 13 October 2015, pp.30-31.

¹⁸¹ *Transcript of Evidence*, 13 October 2015, pp.32-33.

¹⁸² *Transcript of Evidence*, 13 October 2015, pp.33-34.

¹⁸³ *Transcript of Evidence*, 13 October 2015, p.35.

¹⁸⁴ *Transcript of Evidence*, 13 October 2015, pp.35-38.

¹⁸⁵ *Transcript of Evidence*, 13 October 2015, pp.38-44.

¹⁸⁶ *Transcript of Evidence*, 13 October 2015, pp.44-45.

¹⁸⁷ *Transcript of Evidence*, 13 October 2015, pp.45-48.

¹⁸⁸ *Transcript of Evidence*, 13 October 2015, pp.48-50.

¹⁸⁹ *Transcript of Evidence*, 13 October 2015, p.51.

¹⁹⁰ *Transcript of Evidence*, 13 October 2015, p.51-53.

- community service orders and program.¹⁹¹

5.3 Matters concerning the Sentence Administration Board included:

- responses to a heightened workload for the Board;¹⁹²
- actions by the Board in relation to breaches of parole;¹⁹³
- comparisons of the management of parole in the ACT and other jurisdictions;¹⁹⁴ and
- the role of victims of crime in the Board's deliberations on parole.¹⁹⁵

5.4 Questions Taken on Notice were also asked and answered regarding:

- studies prisoners are able to be undertake at the AMC,¹⁹⁶
- rates of recidivism;¹⁹⁷
- transport of children to the AMC in connection with visits to prisoners,¹⁹⁸
- transfers to the Crisis Support Unit (CSU) at the AMC;¹⁹⁹ and
- the proposed Needle and Syringe Program and blood-borne viruses.²⁰⁰

¹⁹¹ *Transcript of Evidence*, 13 October 2015, pp.53-55.

¹⁹² *Transcript of Evidence*, 13 October 2015, p.58.

¹⁹³ *Transcript of Evidence*, 13 October 2015, pp.58-59.

¹⁹⁴ *Transcript of Evidence*, 13 October 2015, pp.59-60.

¹⁹⁵ *Transcript of Evidence*, 13 October 2015, pp.62-63.

¹⁹⁶ Answer to Question Taken on Notice, received 29 October 2014, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

¹⁹⁷ Answer to Question Taken on Notice, received 29 October 2014, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

¹⁹⁸ Answer to Question Taken on Notice, received 3 November 2014, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

¹⁹⁹ Answer to Question Taken on Notice, received 5 November 2014, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

²⁰⁰ Answer to Question Taken on Notice, received 12 November 2014, available at:

http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

DISCUSSION

- 5.5 This section presents further detail on topics selected from the list of 'Matters considered', above.

EXTENSION OF THE ALEXANDER MACONOCHIE CENTRE

- 5.6 In hearings of 13 October 2014 questions were asked and answered regarding the extension of the Alexander Maconochie Centre (AMC). In particular questions were asked as to how costs for the project would be managed.²⁰¹

- 5.7 In response, the Minister for Corrections told the Committee that:

There are a range of oversight committees within the ACT public service and in the project management team. I refer also to the way in which the contract has been let, in which there is a strong partnership between the government and the contractor through this managed contract process, such that the contractor came on early. They have been involved in finalising the design of the AMC. Therefore, I guess there are no surprises in that sense, as opposed to perhaps doing a design and then having the builder come in and wanting to get changes. I think that will be an important part of the process of ensuring that we keep to budget on this project.²⁰²

- 5.8 The Minister went on to say that:

The project is currently underway, as members probably know. Site works have commenced. At these early stages, everything has gone to plan and the project is rolling out as we would intend.²⁰³

THE END OF PERIODIC DETENTION

- 5.9 At hearings of 13 October 2014 questions were asked and answered regarding the end of periodic detention as a sentencing option in the ACT.²⁰⁴

- 5.10 In response to questions the Minister for Corrections told the Committee that he would 'start first with the intention behind removing periodic detention':

The numbers are quite low in the ACT. We tend to have 40 or 50 people at the weekend across a range of offence types and a range of behavioural issues. What we

²⁰¹ *Transcript of Evidence*, 13 October 2015, pp.28-29.

²⁰² Mr Shane Rattenbury MLA, *Transcript of Evidence*, 13 October 2015, p.28.

²⁰³ Mr Shane Rattenbury MLA, *Transcript of Evidence*, 13 October 2015, p.29.

²⁰⁴ *Transcript of Evidence*, 13 October 2015, pp.29-30, 31-32.

find is that people just come in for the weekend and there is not a lot of time to work with them on rehab.²⁰⁵

5.11 He went on to say that:

The intent from a big picture policy point of view is to move towards a range of community corrections orders where people still have the opportunity to remain in the community—which is the intention of periodic detention: they still have connection to their family and perhaps maintain their employment—but will be on the kind of supervision orders which are much more targeted at their own offending behaviour. Whether it is an alcohol and drug issue, an anger management issue or a range of other behavioural-type issues that our detainees have, through having essentially a corrections orders type of approach, we will more effectively target the offending behaviour.²⁰⁶

5.12 The Minister noted that the ACT was the last Australian jurisdiction to employ periodic detention and that the ACT Government believed that ‘there are better ways to provide rehabilitation’.²⁰⁷

5.13 The Executive Director, Corrective Services, also responded, telling the Committee that:

It was difficult. In terms of a program, we were unable to supervise people during the week, so it did not give you that option. Plus when you had people from different cohorts turning up, there were not great numbers that you could get to run groups. We do not have program staff on weekends as well. Plus we have a large facility with a building which costs for all the infrastructure related to a building that is only used on weekends—security and that.²⁰⁸

5.14 The Executive Director went on to tell the Committee about various types of orders that could be applied to offenders:

We currently have a number of orders available. They are generally good behaviour orders, which may or may not be accompanied by someone getting community service hours. We also have the option of some people doing a sentence and then getting parole. Parole can be given as an alternative to a good behaviour order straight without doing a custody sentence. That does not happen very often, but it is not something that we would be unhappy about, because you can put quite strict conditions around parole.²⁰⁹

²⁰⁵ Mr Shane Rattenbury MLA, *Transcript of Evidence*, 13 October 2015, p.29.

²⁰⁶ Mr Shane Rattenbury MLA, *Transcript of Evidence*, 13 October 2015, p.29.

²⁰⁷ Mr Shane Rattenbury MLA, *Transcript of Evidence*, 13 October 2015, p.29.

²⁰⁸ Ms Bernadette Mitcherson, 13 October 2015, pp.29-30.

²⁰⁹ Ms Bernadette Mitcherson, 13 October 2015, p.30.

5.15 She noted that:

with the previous combination sentences where people were getting custody sentences, PD and a good behaviour order, it meant that in between they did not have any supervision.²¹⁰

5.16 'From a corrections point of view', she told the Committee, 'it would be much better to see someone doing custody than getting a parole order as opposed to a good behaviour order, which does sometimes happen'.²¹¹

5.17 Another possibility, she told the Committee, was to 'use a suspended sentence in an enhanced way':

Suspended sentences are often a good option, particularly for someone who has had a number of opportunities in the community. You say, "Look, this is your last opportunity before you're going to jail," and put some strict conditions around a suspended sentence. If they are enforced, they can be really powerful in keeping someone out of custody. So we still use good behaviour orders quite a lot, and community service orders.²¹²

5.18 In light of this, she told the Committee, Corrective Services 'would not be unhappy with an enhanced use of suspended sentences and parole in other circumstances'.²¹³

5.19 The Justice and Community Safety Directorate's *Annual Report 2013-2014* makes a number of references to the Periodic Detention.²¹⁴

FUNCTION AND MANAGEMENT OF THE AMC'S CRISIS SUPPORT UNIT

5.20 At hearings of 13 October 2014 questions were asked and answered regarding the function and management of the AMC's Crisis Support Unit (CSU).²¹⁵ In particular, questions noted that the JACS Annual Report had referred to changes in the management of the Unit and asked what they were and how their success was being measured.²¹⁶

²¹⁰ Ms Bernadette Mitcherson, 13 October 2015, p.30.

²¹¹ Ms Bernadette Mitcherson, 13 October 2015, p.30.

²¹² Ms Bernadette Mitcherson, 13 October 2015, p.30.

²¹³ Ms Bernadette Mitcherson, 13 October 2015, p.30.

²¹⁴ See Justice and Community Safety Directorate, *Annual Report 2013-2014*, Vol.1, pp.74, 142, 153, 221, 222, 224-226, 228 & 260. Available at: http://cdn.justice.act.gov.au/resources/uploads/JACS/JACS_Annual_Report_2013_14_Vol_1.pdf

²¹⁵ *Transcript of Evidence*, 13 October 2015, pp.35-38.

²¹⁶ *Transcript of Evidence*, 13 October 2015, p.35.

5.21 In response, the General Manager Custodial Operations, ACT Corrective Services, told the Committee that changes to the CSU were that:

originally we had one psychologist that was sort of across the whole centre in the very early days of the AMC. We became aware that too many elements of forensic mental health were involved in our high and acute risk persons. Since then we have set up a team called “corrections, psychological and support services” because we have identified needs that were not specifically just acute that forensic mental health could look after for us, but in corrections we needed to respond to some of the other needs that we found there.²¹⁷

5.22 The General Manager Custodial Operations told the Committee that in response Corrective Services had:

employed a senior psychologist and around that one position we have put some students from ANU that have come in. We do a placement process there. We have one other position that supports full time and we have also implemented some other groups that have not been in the unit before.²¹⁸

5.23 Included among these groups, he told the Committee, was a ‘schema therapy group’ which was ‘one of the first undertaken in prisons in Australia’ which, he said, had ‘been certainly successful in the community’.²¹⁹

5.24 He told the Committee that the group:

talks about each person’s individual schema. I am not going to try and elaborate too much on the psychological side of it, but each person has a different sort of an approach as to why they were doing what they are doing and their specific needs. It identifies what they are and works specifically with that.²²⁰

5.25 The group was, he told the Committee, ‘something that we have been able to develop again in association with the university’.²²¹

5.26 In addition, he told the Committee:

We have done a lot of work around what we think the needs are for the people in the crisis support unit and as they transit back out into the facility. Each detainee is discussed every day. We set up a team called the high risk assessment team. That is sort of a multi-agency. It is custodial. It is forensic mental health. It is primary health.²²²

²¹⁷ Mr Don Taylor, *Transcript of Evidence*, 13 October 2015, p.36.

²¹⁸ Mr Don Taylor, *Transcript of Evidence*, 13 October 2015, p.36.

²¹⁹ Mr Don Taylor, *Transcript of Evidence*, 13 October 2015, p.36.

²²⁰ Mr Don Taylor, *Transcript of Evidence*, 13 October 2015, p.36.

²²¹ Mr Don Taylor, *Transcript of Evidence*, 13 October 2015, p.36.

²²² Mr Don Taylor, *Transcript of Evidence*, 13 October 2015, p.36.

5.27 This team, he told the Committee ‘gets together every day to discuss these people and their needs’.²²³ He noted that ‘[e]very person that moves out of the crisis support unit has an exit plan’, and that the team hold responsibility to organise and discuss ‘what they think is the best process and the needs that each detainee has and they are followed up as they move out of the CSU’.²²⁴

5.28 Asked if the CSU would change as a result of the proposed expansion of the AMC, the General Manager told the Committee that it would not because it was ‘a specific place for acute persons with high suicidality and psychiatric needs’. However the ‘new environment’ would, he said, ‘assist us to do is to be able to have more places for more condensed treatment of people that do not need to stay in the CSU’.²²⁵

5.29 In connection with this, the General Manager told the Committee that:

What we are finding is that people leave the CSU and we try and work with them. But certainly some of the environments are not conducive to being able to do what we want them to do. So the new accommodation will support them.²²⁶

5.30 In addition, questions were asked as to whether, and how many, prisoners currently treated at the CSU would in future be held in the proposed secure mental health unit when it is commissioned.²²⁷

5.31 In response the Executive Director, Corrective Services, told the Committee that:

- this was difficult to determine because It was ‘a matter for Health to decide who would be scheduled and who would not be scheduled’;²²⁸
- that different ratings were applied occupants of the CSU to indicate severity of suicidality or psychiatric dimensions;²²⁹
- that responses could include reinstating medication or, if not previously diagnosed, diagnosis and subsequent medication applied;²³⁰ and
- that there was ‘capacity for someone who is a detainee to be transferred there and back again’ between a secure mental health unit and the CSU, but ‘the decision to transfer someone to any health facility is a matter for Health’.²³¹

²²³ Mr Don Taylor, *Transcript of Evidence*, 13 October 2015, p.36.

²²⁴ Mr Don Taylor, *Transcript of Evidence*, 13 October 2015, p.36.

²²⁵ Mr Don Taylor, *Transcript of Evidence*, 13 October 2015, p.36.

²²⁶ Mr Don Taylor, *Transcript of Evidence*, 13 October 2015, p.37.

²²⁷ *Transcript of Evidence*, 13 October 2015, p.37.

²²⁸ Ms Bernadette Mitcherson, *Transcript of Evidence*, 13 October 2015, p.37.

²²⁹ Ms Bernadette Mitcherson, *Transcript of Evidence*, 13 October 2015, p.37; Mr Don Taylor, *Transcript of Evidence*, 13 October 2015, p.38.

²³⁰ Ms Bernadette Mitcherson, *Transcript of Evidence*, 13 October 2015, p.37.

²³¹ Ms Bernadette Mitcherson, *Transcript of Evidence*, 13 October 2015, p.38.

5.32 The Justice and Community Safety Directorate's *Annual Report 2013-2014* makes a number of references to the Crisis Support Unit at the AMC.²³²

PROPOSED NEEDLE AND SYRINGE PROGRAM AT THE AMC

5.33 In hearings of 13 October 2014 questions were asked and answered regarding the proposed needle and syringe program (NSP) at the AMC.²³³

5.34 Asked for an update on enterprise agreement negotiations which were the focus of moves to implement the NSP, the Minister for Corrections:

- told the Committee that the 'the hard issue at the moment is that it does lie around the employer's negotiation agreements, enterprise agreement negotiations';²³⁴
- agreed that in relation to a clause in the enterprise agreement which states that an NSP scheme will not be introduced without the agreement of corrections officers, the 'government [had] received advice that the existing clause in the enterprise agreement is not a permissible clause';²³⁵
- told the Committee that the Government had 'put that position to the CPSU on behalf of the corrections officers' and that it was 'a matter that we are still discussing';²³⁶ and
- agreed that the previous enterprise bargaining agreement had expired.²³⁷

5.35 In relation to the NSP, and the contested clause in the enterprise bargaining agreement, the Minister told the Committee that:

The government's view is that policy matters like this should be a managerial matter for the government. The government has that prerogative to implement these policies. That said, and I made this very clear at the CPSU when I met with them just two weeks ago, I would like to do that on a basis that is a collaborative one. I think that to make this work well it needs to be a partnership.²³⁸

5.36 The Minister went on to say that there were in his view 'two separate issues':

One is that we need to get the enterprise agreement finalised. I would like to do that as soon as we practically can. Then there is a separate question of the implementation of an NSP. I have indicated to the union that I would like to keep working with them on that. I would like to get the enterprise agreement finished in a way that leaves it open

²³² See Justice and Community Safety Directorate, *Annual Report 2013-2014*, pp.74 & 84.

²³³ *Transcript of Evidence*, 13 October 2015, pp.38-44.

²³⁴ Mr Shane Rattenbury MLA, *Transcript of Evidence*, 13 October 2015, pp.38-39.

²³⁵ Mr Shane Rattenbury MLA, *Transcript of Evidence*, 13 October 2015, p.39.

²³⁶ Mr Shane Rattenbury MLA, *Transcript of Evidence*, 13 October 2015, p.39.

²³⁷ Mr Shane Rattenbury MLA, *Transcript of Evidence*, 13 October 2015, p.39.

²³⁸ Mr Shane Rattenbury MLA, *Transcript of Evidence*, 13 October 2015, p.39.

for us to move forward on that and then we need to start a process of working through implementation.²³⁹

5.37 He also stated that:

The government cannot agree to sign off an enterprise agreement on which we have legal advice that a clause is impermissible. So we need to find a way to resolve that issue. If we can do that, we can complete the enterprise agreement and then we will, ideally, have an agreed pathway forward from there. That is my hope and my aspiration.²⁴⁰

5.38 However, he told the Committee, if that proved not to be possible, he had:

indicated to the CPSU that I would be, for example, quite willing to go to arbitration and have this resolved. I was very clear to them that the spirit of that is that my view of arbitration is that if two parties cannot agree, one seeks outside assistance to help them agree.²⁴¹

5.39 He told the Committee that he had 'certainly made that offer' but:

They do not want to go down that path at this point. We have not got to that point yet. We are very much in a space, having just met recently, where we are making a renewed effort to find agreement.²⁴²

5.40 Further questions and answers ensued in relation to the NSP, including:

- the model proposed for the NSP in terms of one-for-one exchange of needle and syringe;²⁴³
- whether this would result in an increase in the number of needles at the AMC;²⁴⁴
- efforts by Corrective Services to interrupt the supply of drugs at the AMC;²⁴⁵
- the NSP program in the context of risks of transmission of blood-borne viruses;²⁴⁶
- the confidentiality of the NSP program;²⁴⁷ and
- views of Corrective Services officers on the NSP program.²⁴⁸

²³⁹ Mr Shane Rattenbury MLA, *Transcript of Evidence*, 13 October 2015, p.40.

²⁴⁰ Mr Shane Rattenbury MLA, *Transcript of Evidence*, 13 October 2015, p.41.

²⁴¹ Mr Shane Rattenbury MLA, *Transcript of Evidence*, 13 October 2015, p.41.

²⁴² Mr Shane Rattenbury MLA, *Transcript of Evidence*, 13 October 2015, p.41.

²⁴³ *Transcript of Evidence*, 13 October 2015, p.41.

²⁴⁴ *Transcript of Evidence*, 13 October 2015, p.41.

²⁴⁵ *Transcript of Evidence*, 13 October 2015, p.42.

²⁴⁶ *Transcript of Evidence*, 13 October 2015, p.42.

²⁴⁷ *Transcript of Evidence*, 13 October 2015, p.43.

²⁴⁸ *Transcript of Evidence*, 13 October 2015, pp.43-44.

- 5.41 The Justice and Community Safety Directorate's *Annual Report 2013-2014* makes one reference to the proposed Needle and Syringe Program (NSP) at the AMC.²⁴⁹

COMMITTEE COMMENT

- 5.42 In the Committee's view, hearings for this report included a number of important matters in relation to corrections.

EXTENSION OF THE AMC

- 5.43 In relation to the extension of the AMC currently underway, the Committee looks forward to seeing the full implementation of this project and considers that it will maintain an interest in this and related matters to do with the operation of the prison. This may lead to further inquiry into the operation of the prison at a future point in the program of the Committee.

THE AMC'S CRISIS SUPPORT UNIT AND RELATED MATTERS

- 5.44 In relation to the management of detainees with mental health problems, the Committee is concerned at the possibility that some detainees could be, in effect, in prison due to mental health problems rather than criminality as such. While the proposed future availability of a secure adult mental health unit is encouraging,²⁵⁰ as are reports of treatment regimes within the boundaries of the prison, it is the Committee's view that this will need to be explored further over time in order to establish the most appropriate placement of persons within the criminal justice and/or health systems.
- 5.45 The Committee also notes that the secure adult mental health unit currently proposed by the ACT Government will have a capacity of 'around 25 beds'.²⁵¹ In the Committee's view this represents a modest capacity, which will need to be managed carefully in the context of the criminal justice and health systems.
- 5.46 The Committee takes the view that the secure unit will not, alone, answer all needs arising from the management of detainees with mental health problems in the ACT: further creative solutions will be needed.

²⁴⁹ See Justice and Community Safety Directorate, *Annual Report 2013-2014*, Vol.1, p.178. Available at: http://cdn.justice.act.gov.au/resources/uploads/JACS/JACS_Annual_Report_2013_14_Vol_1.pdf

²⁵⁰ See Legislative Assembly for the ACT, *Debates*, 3 June 2014, debate on the Planning and Development (Symonston Mental Health Facility) Amendment Bill 2014, p.1653 *ff.*

²⁵¹ Mr Shane Rattenbury MLA, Legislative Assembly for the ACT, *Debates*, 3 June 2014, p.1657.

NEEDLE AND SYRINGE PROGRAM

- 5.47 The Committee notes the apparent difficulties that have emerged in connection with the ACT Government's intention to introduce a Needle and Syringe Program (NSP) at the AMC. Clearly there are strong concerns on both sides of negotiations between the Government and staff at the AMC.
- 5.48 In the Committee's view this situation may not have been improved by what could be perceived as a heavy-handed approach on the part of the ACT Government, particularly where the government will, if the scheme goes ahead, be relying on these officers for the successful implementation of the scheme.
- 5.49 The other point of concern from the Committee's perspective is that while the original report which foreshadowed the proposal for an NSP outlined a number of possible approaches in terms of practical implementation,²⁵² the practical details of the program were not clearly described during public hearings. In the Committee's view this is a significant proposal and the details of implementation should be clearly described in order to facilitate public scrutiny and debate about the scheme.

²⁵² Public Health Association Australia, 2011, *Implementation of a Needle and Syringe Program at the Alexander Maconochie Centre: Balancing access and safety — Meeting the Challenge of Blood Borne Viruses in Prison*, available at: <http://www.phaa.net.au/documents/email/NeedleandSyringeProgramReportAMC.pdf>

6 STATUTORY OFFICERS AND AGENCIES

INTRODUCTION

6.1 The following statutory officers and agencies appeared before the Committee in public hearings of 13 October 2014:

- ACT Electoral Commission;
- ACT Human Rights Commission;
- Victim Support ACT;
- Legal Aid Commission ACT;
- Public Advocate of the ACT;
- Public Trustee for the ACT; and
- Director of Public Prosecutions.

ACT ELECTORAL COMMISSION

MATTERS CONSIDERED

6.2 The following matters were considered in relation to the work of the ACT Electoral Commission:

- preparations for an electoral redistribution in connection with the forthcoming expansion of the Legislative Assembly for the ACT;²⁵³ *
- the effect of legislative amendments making the Electoral Commissioner an Officer of Parliament;²⁵⁴ *
- pre-poll voting;²⁵⁵
- variations from budgeted expenditure;²⁵⁶
- upgrades of Election ACT's ICT election systems in preparation for the 2016 election;²⁵⁷ and
- reporting obligations for campaign finance.²⁵⁸

²⁵³ *Transcript of Evidence*, 13 October 2015, pp.1-2, 8.

²⁵⁴ *Transcript of Evidence*, 13 October 2015, pp.2-3.

²⁵⁵ *Transcript of Evidence*, 13 October 2015, pp.4-6.

²⁵⁶ *Transcript of Evidence*, 13 October 2015, pp.7-8.

²⁵⁷ *Transcript of Evidence*, 13 October 2015, pp.8-9.

- 6.3 A Question Taken on Notice was also asked and answered regarding the Commission's school-based electoral education program.²⁵⁹

DISCUSSION

- 6.4 This section presents further detail on topics selected from the list of 'Matters considered', above.

PREPARATIONS FOR AN EXPANDED LEGISLATIVE ASSEMBLY

- 6.5 In hearings of 13 October 2014 questions were asked and answered regarding preparations for an electoral redistribution in connection with the forthcoming expansion of the Legislative Assembly for the ACT.²⁶⁰

- 6.6 In response to questions about preparations for the new Assembly the Electoral Commissioner told the Committee that:

Preparations for the redistribution are going well. We do not have any obstacles that we are aware of at the moment. The most important thing we are doing at this point is working with the Australian Bureau of Statistics to come up with population projections for the estimated enrolled population in all of the various suburbs and localities in the ACT, and that work is going well.²⁶¹

- 6.7 He went on to say that the Electoral Commission was also:

working on putting together a tool on our website that people will be able to use to draw boundaries with and get the internet site to do the maths and work out what the proposed enrolment projections would be for various boundaries that people will be able to do on the website. That is something that we are hoping to launch along with the invitation for making submissions to the redistribution committee.²⁶²

- 6.8 The Electoral Commissioner told the Committee about timelines under the *Electoral Act 1992* (ACT):

Under the *Electoral Act* the commission has to appoint a redistribution committee as the first process in the redistribution process. That cannot start until two years short of

²⁵⁸ *Transcript of Evidence*, 13 October 2015, p.10.

²⁵⁹ Answer to Question Taken on Notice, received 21 October 2014, available at:

http://www.parliament.act.gov.au/data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

²⁶⁰ *Transcript of Evidence*, 13 October 2015, pp.1-2, 8.

²⁶¹ Mr Phil Greene, *Transcript of Evidence*, 13 October 2015, p.1.

²⁶² Mr Phil Greene, *Transcript of Evidence*, 13 October 2015, p.1.

the next election date, so that will be happening later this month. The committee will be appointing the redistribution committee, which will then meet and decide when to call for public suggestions and comments. There is a chance that that will happen in November, with the various comments and suggestions period closing in December.²⁶³

- 6.9 The ACT Electoral Commission's *Annual Report 2013-2014* makes a number of references to the increase in size of the Legislative Assembly.²⁶⁴

THE ELECTORAL COMMISSIONER AS AN OFFICER OF PARLIAMENT

- 6.10 In hearings of 13 October 2014 questions were asked and answered on the effect of legislative amendments making the Electoral Commissioner an Officer of Parliament.²⁶⁵

- 6.11 In response the Electoral Commissioner told the Committee that:

The main change that has taken place from 1 July this year, when the commission members became officers of the Assembly, is the separation of the commission from the Justice and Community Safety portfolio. We are now effectively stand-alone entities under the Assembly. Rather than reporting to the Attorney-General, we now report to the Speaker. So our annual report that we are considering here is the first annual report that was submitted to the Speaker rather than to a minister.²⁶⁶

- 6.12 As a result, he told the Committee:

We are now responsible, under the *Financial Management Act*, for our own finances, whereas previously I exercised financial powers as a delegate of the Director-General of the Justice and Community Safety Directorate. I now have those financial powers in my own right. That means for the current financial year, when we come to do this financial year's annual report, we will be doing our own financial statements for the first time as opposed to having them included in the Justice and Community Safety portfolio statements.²⁶⁷

- 6.13 In practice, he told the Committee, this:

means in practice that we have to do the financial work in house rather than relying on JACS to do part of our financial strategic directions. We now have, for example, a contract chief finance officer who is going to come in and do our chief finance officer

²⁶³ Mr Phil Greene, *Transcript of Evidence*, 13 October 2015, p.2.

²⁶⁴ See ACT Electoral Commission, *Annual Report 2013-2014*, pp.11, 13, 20, 42 & 66. Available at: http://www.elections.act.gov.au/_data/assets/pdf_file/0017/11708/14AnnualReport.pdf

²⁶⁵ *Transcript of Evidence*, 13 October 2015, pp.2-3.

²⁶⁶ Mr Phil Greene, *Transcript of Evidence*, 13 October 2015, p.2.

²⁶⁷ Mr Phil Greene, *Transcript of Evidence*, 13 October 2015, p.2.

functions when we come to do our financial statements at the end of the financial year.²⁶⁸

6.14 In addition, he told the Committee:

Other things that we had JACS do for us on our behalf we are now doing ourselves. With things like strategic corporate functions, strategic human resources functions, which we used to get JACS to do, we are now doing these on a fee-for-service basis through the Chief Minister's directorate. Other than that, though, we have always been an independent agency. The fact that we were in the Justice and Community Safety portfolio did not prevent us from acting independently in the course of our functions, and that element of our work really has not changed.²⁶⁹

6.15 The ACT Electoral Commission's *Annual Report 2013-2014* makes a number of references to the Electoral Commissioner as an officer of the Legislative Assembly.²⁷⁰

ACT HUMAN RIGHTS COMMISSION

MATTERS CONSIDERED

6.16 The following matters were considered in relation to the work of the ACT Human Rights Commission:

- increased complaint numbers 'when resources have not similarly increased';²⁷¹
- the Human Rights and Discrimination Commissioner's additional role as Public Advocate;²⁷² *
- a human rights audit of female prisoners at the Alexander Maconochie Centre (AMC);²⁷³
- triage and management of complaints in the health sector;²⁷⁴
- progress by government in response to a 2011 report on the ACT youth justice system;²⁷⁵
- numbers of complaints to the Children and Young People Commissioner';²⁷⁶ and
- particular areas where the Commission is short of resources.²⁷⁷ *

²⁶⁸ Mr Phil Greene, *Transcript of Evidence*, 13 October 2015, p.2.

²⁶⁹ Mr Phil Greene, *Transcript of Evidence*, 13 October 2015, pp.2-3.

²⁷⁰ See ACT Electoral Commission, *Annual Report 2013-2014*, pp.11, 13, 14, 29, 31, 51, 52, 62 & 82. Available at: http://www.elections.act.gov.au/_data/assets/pdf_file/0017/11708/14AnnualReport.pdf

²⁷¹ *Transcript of Evidence*, 13 October 2015, pp.11-13.

²⁷² *Transcript of Evidence*, 13 October 2015, pp.14-15.

²⁷³ *Transcript of Evidence*, 13 October 2015, p.15.

²⁷⁴ *Transcript of Evidence*, 13 October 2015, pp.15-16.

²⁷⁵ *Transcript of Evidence*, 13 October 2015, pp.16-17, 18.

²⁷⁶ *Transcript of Evidence*, 13 October 2015, p.17.

- 6.17 Questions Taken on Notice was also asked and answered regarding complaints to the Health Commissioner and a wallet card advising Indigenous people of their rights.²⁷⁸

DISCUSSION

- 6.18 This section presents further detail on topics selected from the list of 'Matters considered', above.

THE HUMAN RIGHTS COMMISSIONER'S ROLE AS PUBLIC ADVOCATE

- 6.19 In hearings of 13 October 2014 questions were asked and answered regarding the Human Rights and Discrimination Commissioner's additional role as Public Advocate.²⁷⁹

- 6.20 In response to questions the Human Rights and Discrimination Commissioner told the Committee that:

It is only for this year I have had the additional role. I must say that it saves the government \$200,000 a year per annum; that is, \$100,000 per agency saving in terms of staff coverage. Some of the cuts that were proposed have not actually yet been implemented because of those savings to both agencies.²⁸⁰

- 6.21 In terms of practical day-to-day work, she told the Committee:

I am located in the Public Advocate's office daily. I formally meet my staff weekly. I am in contact several times daily, in person probably every few days. The advantage is that, having been in the role for 10 years, I am very familiar with the work and I delegate to staff. Probably more the discrimination role has been delegated than the human rights role. And I am the manager of the whole of the Public Advocate's office in that there is no office manager. So I am responsible for financial budgeting and staffing issues. But there has been no change of staff. That has not been as onerous as it could be.²⁸¹

- 6.22 The ACT Human Rights Commission's *Annual Report 2013-2014* refers to the Human Rights Commissioner's additional role as Public Advocate.²⁸²

²⁷⁷ *Transcript of Evidence*, 13 October 2015, pp.19-20.

²⁷⁸ Answers to Questions Taken on Notice, received 28 October 2014, available at:

http://www.parliament.act.gov.au/data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

²⁷⁹ *Transcript of Evidence*, 13 October 2015, pp.14-15.

²⁸⁰ Dr Helen Watchirs, *Transcript of Evidence*, 13 October 2015, p.14.

²⁸¹ Dr Helen Watchirs, *Transcript of Evidence*, 13 October 2015, pp.14-15.

²⁸² See ACT Human Rights Commission, *Annual Report 2013-2014*, pp.30, .

AREAS IN WHICH THE COMMISSION IS SHORT OF RESOURCES

6.23 In hearings of 13 October 2014 questions were asked and answered regarding particular areas for which the Commission required more resourcing.²⁸³

6.24 Each of the Commissioners responded to this question in turn.

- The Health Services Commissioner and Disability and Community Services Commissioner told the Committee that:

It is a tough one. Having three hats, I would like to be able to devote resources specifically to the older people jurisdiction. Currently that is handled within my health team. In the disability area, I have one person working four days a week, so clearly that is a fairly small resource. And in the health area I would like to be able to do more systemic issues, inquiries.²⁸⁴

- The Children and Young People Commissioner told the Committee that:

It is a very good question. I have one FTE assisting me and I have had one FTE for my time as commissioner. As you would imagine, with one FTE it is almost impossible to undertake the full range of my statutory functions to the full extent that I would like to or probably should do. I do not think I am engaging and consulting with children and young people and their families as much I should or could. I would certainly like to be able to respond to all complaints on balance, without turning them away. As I said before, I do worry what I am missing and what is just around the corner with respect to “the next Bimberi” kind of thing. I would also like to be able to get my team more solidly into some systemic issues. With one FTE, you start, you get distracted and you go back to it; it can take years to achieve something that we really should be able to do in a number of months.²⁸⁵

- The Human Rights Commissioner and Discrimination Commissioner told the Committee that:

In relation to my two roles, I would like the money in the discrimination area. That is something that has shrunk over time. It was timed to start with the old Human Rights Office, which existed before the Human Rights Commission. The areas I would look at would include pregnancy.²⁸⁶

6.25 The Human Rights Commissioner and Discrimination Commissioner told the Committee that while pregnancy matters accounted for ‘only two per cent of complaints’, she thought that ‘in practice it is much higher’, and that this was borne-out by federal work in that area. She noted

²⁸³ *Transcript of Evidence*, 13 October 2015, pp.19-20.

²⁸⁴ Ms Mary Durkin, *Transcript of Evidence*, 13 October 2015, p.19.

²⁸⁵ Mr Alisdair Roy, *Transcript of Evidence*, 13 October 2015, p.19.

²⁸⁶ Dr Helen Watchirs, *Transcript of Evidence*, 13 October 2015, pp.19-20.

that rates of complaints had been 'fairly steady' but that she would like to be able expand own-motion work in her areas of responsibility.²⁸⁷

6.26 The ACT Human Rights Commission's *Annual Report 2013-2014* refers to the Human Rights Commissioner's additional role as Public Advocate.²⁸⁸

VICTIMS OF CRIME COMMISSIONER

MATTERS CONSIDERED

6.27 The following matters were considered in relation to the work of the Victims of Crime Commissioner:

- attempts to raise visibility of and demand for victim support within the Indigenous community in the ACT;²⁸⁹ *
- the work of the Victim Support ACT early intervention team;²⁹⁰
- prohibition orders;²⁹¹
- take-up of victim support services;²⁹²
- responses to domestic violence;²⁹³ * and
- double jeopardy law reform.²⁹⁴

6.28 Questions Taken on Notice were also asked and answered regarding:

- research on attitudes to violence toward women;²⁹⁵ and
- the use of prohibition orders.²⁹⁶

²⁸⁷ Dr Helen Watchirs, *Transcript of Evidence*, 13 October 2015, p.20.

²⁸⁸ See ACT Human Rights Commission, *Annual Report 2013-2014*, pp.26, 30, 41, 47 & 51. Available at: <http://www.hrc.act.gov.au/res/2014%2009%2015%20Final%20%28WCAG%20%200%20Compliant%29%20Version%205.pdf>

²⁸⁹ *Transcript of Evidence*, 13 October 2015, pp.65-66, 69.

²⁹⁰ *Transcript of Evidence*, 13 October 2015, pp.66-67.

²⁹¹ *Transcript of Evidence*, 13 October 2015, pp.67-68.

²⁹² *Transcript of Evidence*, 13 October 2015, pp.68-69.

²⁹³ *Transcript of Evidence*, 13 October 2015, pp.69-72.

²⁹⁴ *Transcript of Evidence*, 13 October 2015, p.72.

²⁹⁵ Answer to Question Taken on Notice, received 28 October 2014, available at:

http://www.parliament.act.gov.au/data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

²⁹⁶ Answer to Question Taken on Notice, received 3 November 2014, available at:

http://www.parliament.act.gov.au/data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

DISCUSSION

6.29 This section presents further detail on topics selected from the list of 'Matters considered', above.

ATTEMPTS TO RAISE VISIBILITY IN THE INDIGENOUS COMMUNITY

6.30 In hearings of 13 October 2014 questions were asked and answered regarding attempts to raise visibility of and demand for victim support services within the Indigenous community in the ACT.²⁹⁷

6.31 In response to questions the Victims of Crime Commissioner told the Committee that:

I think the obstacles we face are matters of interpretation of the needs of the Indigenous community when it comes to victims of crime. I am developing a different understanding about what that might be. I think Indigenous people generally have an interpretation of justice issues which is different to non-Indigenous people, and this is in no small part caused by the effects of colonisation and intergenerational trauma. I think services like mine that target individuals need to take a different approach and develop services for groups and communities. This is what I think we need to do at Victim Support.²⁹⁸

6.32 As a result, he told the Committee:

I have committed to increasing our referrals for Indigenous people by 60 per cent over the course of a number of years, and I am not on track for that; I am still fairly low percentage wise when it comes to Indigenous clients. I have not spoken to the community organisations that I intend to approach, but I have an idea in mind where we will begin some outreach services to the major community services. We will be focusing on not only our therapeutic services but access to our victims of crime financial assistance scheme, which I believe is underutilised by the community in general but particularly Aboriginal and Torres Strait Islander people, because it is a complex application process. I intend to be providing more support to the community in that regard in the coming year.²⁹⁹

6.33 The ACT Victim Support *Annual Report 2013-2014* refers to engagement with the ACT Indigenous community.³⁰⁰

²⁹⁷ *Transcript of Evidence*, 13 October 2015, pp.65-66, 69.

²⁹⁸ Mr John Hinchey, *Transcript of Evidence*, 13 October 2015, p.65.

²⁹⁹ Mr John Hinchey, *Transcript of Evidence*, 13 October 2015, p.65.

³⁰⁰ See ACT Victim Support, *Annual Report 2013-2014*, p.13.

RESPONSES TO DOMESTIC VIOLENCE

6.34 In hearings of 13 October 2014 questions were asked and answered regarding responses to domestic violence.³⁰¹

6.35 In response the Victims of Crime Commissioner told the Committee that:

in relation to the way that I would recommend approaching, addressing or combating domestic violence, ultimately I think governments generally—not just the ACT government but the commonwealth and all jurisdictions—need to pour a lot more money into combating domestic violence. I draw the analogy of the campaigns to reduce smoking or the campaigns to reduce drink-driving. These are national community educational campaigns.³⁰²

6.36 The Commissioner went on to tell the Committee that:

There was a survey released recently, a Victorian survey, which gave some insight into the attitudes of our populations around domestic violence and sexual assault. Some of those results were quite disturbing and revealing, in that a good percentage of our community still believe it is okay to hit a woman and a good percentage of our community believe it is okay to have sexual intercourse with a woman without her full consent, such as when she is intoxicated.³⁰³

6.37 In relation to these findings the Committee told the Committee that it was ‘the community attitudes that we need to tackle first’, and that this could only be done ‘with a really concerted, coordinated community education campaign’.³⁰⁴

6.38 The ACT Victim Support *Annual Report 2013-2014* makes a number of references to domestic violence.³⁰⁵

LAW REFORM ON DOUBLE JEOPARDY

6.39 In hearings of 13 October 2014 questions were asked and answered regarding law reform in relation to double jeopardy.³⁰⁶

³⁰¹ *Transcript of Evidence*, 13 October 2015, pp.69-72.

³⁰² Mr John Hinchey, *Transcript of Evidence*, 13 October 2015, p.70.

³⁰³ Mr John Hinchey, *Transcript of Evidence*, 13 October 2015, p.70.

³⁰⁴ Mr John Hinchey, *Transcript of Evidence*, 13 October 2015, p.70.

³⁰⁵ See ACT Victim Support, *Annual Report 2013-2014*, pp. 3, 6, 8, 10, 17, 18, 20, 23-29, 32, 33, 35 & 36.

³⁰⁶ *Transcript of Evidence*, 13 October 2015, p.72.

6.40 In response to questions the Victims of Crime Commissioner told the Committee that:

Basically what I am asking for is that the law is amended so that when fresh and compelling evidence comes to light in serious cases—not all cases: murder, rape, those sorts of serious cases—there is a mechanism for the DPP to make an application to the court to have the matter re-tried. When I say re-tried, I mean once only. It is not going to be open slather. It very rarely happens, really. There are going to be very few of these. But as a matter of principle, and I think it sends the right message to the community, who have a belief that our system is balanced, that the interests and rights of victims of crime in the community are balanced against those of people who are accused of crime. I do not think that is the case.³⁰⁷

6.41 Other comments on legal reform in the area of double jeopardy are considered in Chapter 2 of this report.

6.42 The ACT Victim Support *Annual Report 2013-2014* references double jeopardy law reform.³⁰⁸

LEGAL AID COMMISSION

MATTERS CONSIDERED

6.43 The following matters were considered in relation to the work of the Legal Aid Commission:

- funding for legal aid, particularly Commonwealth funding;³⁰⁹ *
- funding and delivery of front-line family law services in the Indigenous community;³¹⁰
- the legal aid helpline and other information initiatives;³¹¹ and
- declining numbers of legal aid assisted cases, triage and management of caseload.³¹² *

³⁰⁷ Mr John Hinchey, *Transcript of Evidence*, 13 October 2015, p.72.

³⁰⁸ See ACT Victim Support, *Annual Report 2013-2014*, p.34.

³⁰⁹ *Transcript of Evidence*, 13 October 2015, pp.74-75.

³¹⁰ *Transcript of Evidence*, 13 October 2015, pp.75-76

³¹¹ *Transcript of Evidence*, 13 October 2015, p.76.

³¹² *Transcript of Evidence*, 13 October 2015, pp.76-79.

DISCUSSION

- 6.44 This section presents further detail on topics selected from the list of 'Matters considered', above.

FUNDING FOR LEGAL AID

- 6.45 In hearings of 13 October 2014 questions were asked and answered regarding funding for legal aid, in particular in relation to funding from the Commonwealth.³¹³

- 6.46 In response to questions the Chief Executive Officer told the Committee that:

The general core funding in relation to the commonwealth has continued. The national partnership agreement was rolled over for 12 months and is currently under review. There was a CPI increase with that. From that point of view there was not a depreciation of that core funding from the commonwealth.³¹⁴

- 6.47 However, he told the Committee:

We had a two-year agreement with the commonwealth for about \$800,000, and that agreement was partway through and the commonwealth decided not to renew that agreement before its second year. In round figures we were looking at, as against budget, about \$400,000 out of a budget that we were preparing for the subsequent year.³¹⁵

- 6.48 In the aftermath of this decision, he told the Committee:

after negotiations we were able to keep about \$130,000 of that, which was unexpended from the previous year. That was effectively rolled over into this year. We were grateful for that because it enabled us to maintain the employment of a number of key staff.³¹⁶

- 6.49 This, he told the Committee was the Legal Aid Commission's 'funding situation in relation to the commonwealth government'.³¹⁷

- 6.50 The Legal Aid Commission (ACT) *Annual Report 2013-2014* made a number of references to funding matters.³¹⁸

³¹³ *Transcript of Evidence*, 13 October 2015, pp.74-75.

³¹⁴ Dr John Boersig, *Transcript of Evidence*, 13 October 2015, p.74.

³¹⁵ Dr John Boersig, *Transcript of Evidence*, 13 October 2015, p.74.

³¹⁶ Dr John Boersig, *Transcript of Evidence*, 13 October 2015, p.74.

³¹⁷ Dr John Boersig, *Transcript of Evidence*, 13 October 2015, p.74.

³¹⁸ See Legal Aid Commission (ACT), *Annual Report 2013-2014*, pp.5, 17, 20-21, 24-25, 66-69 & 71. Available at:

http://www.legalaidact.org.au/pdf/annualreport_2013-2014.pdf

DECLINING NUMBERS OF LEGAL AID ASSISTED CASES

6.51 In hearings of 13 October 2014 questions were asked and answered regarding declining numbers of legal aid assisted cases.³¹⁹

6.52 In response the Chief Executive Officer told the Committee that he wished this was due to ‘a decline in ... need’, but:

what is happening is that there is complexity around cases, particularly in relation to mental health and so forth and drug-related matters. It is also to do with the length of time before matters are coming before the court and the costs of ancillary services like medical reports and psychological reports.³²⁰

6.53 When asked whether there was increasing demand in this area, the Chief Executive Officer responded saying that, rather:

It costs us more to get those reports. We are in court more, matters are taking longer, it is costing us more to run the matters. Our major driver is external expenditure in most of these matters.³²¹

6.54 As a result, he told the Committee:

We are having to cut our cloth, to tailor it to the demand we can meet. And what you see is a long-term trend of doing fewer cases. From my point of view, we have to find ways of remedying that.³²²

6.55 He told the Committee that he had ‘come into a situation this year where we are at grant levels from 1990, the same number of grants as in 1990’, and the Commission ‘have got to turn that round’.³²³

6.56 He went on to say that:

The only thing promising about the statistics this year was that we had forecast 1,940 grants. We actually made 2,127. We are slowing that decline and I think there are a number of ways we are doing that. One is that we have done a lot of cost cutting inside the commission. We have looked very sharply at the way we provide external grants to private practitioners and look at how we spend that money. We have reduced that money somewhat. At the same time we are increasing our work levels internally to do more cases.³²⁴

³¹⁹ *Transcript of Evidence*, 13 October 2015, pp.76-79.

³²⁰ Dr John Boersig, *Transcript of Evidence*, 13 October 2015, p.77.

³²¹ Dr John Boersig, *Transcript of Evidence*, 13 October 2015, p.77.

³²² Dr John Boersig, *Transcript of Evidence*, 13 October 2015, p.77.

³²³ Dr John Boersig, *Transcript of Evidence*, 13 October 2015, p.77.

³²⁴ Dr John Boersig, *Transcript of Evidence*, 13 October 2015, p.77.

6.57 The Legal Aid Commission (ACT) *Annual Report 2013-2014* referred to declining numbers of grants of legal aid.³²⁵

PUBLIC ADVOCATE OF THE ACT

MATTERS CONSIDERED

6.58 The following matters were considered in relation to the work of the Public Advocate:

- trends of increasing caseloads for guardianship and enduring power of attorney;³²⁶ *
- demarcation between the role of the Public Advocate and that of the Official Visitor in relation to their work at the Bimberi Youth Justice Centre;³²⁷
- placement of youth cases in the adult mental health unit at the Canberra Hospital;³²⁸ and
- the role of the Public Advocate in relation to youth mental health.³²⁹

DISCUSSION

6.59 This section presents further detail on topics selected from the list of 'Matters considered', above.

INCREASING CASELOADS

6.60 In hearings of 13 October 2014 questions were asked and answered regarding increasing caseloads for guardianship and enduring power of attorney.³³⁰

6.61 In response to questions the Public Advocate told the Committee that:

Certainly there has been an increase of casework in relation to guardianship. There have been 220 clients appointed by ACAT, so 47 cases per advocate is the case load currently, which is a very high one, using the national standards.³³¹

6.62 The Public Advocate also noted that, in relation to advocacy, there had also been 'a large increase in relation to mental health and children and young people'.³³²

³²⁵ See Legal Aid Commission (ACT), *Annual Report 2013-2014*, pp.20 & 26. Available at: http://www.legalaidact.org.au/pdf/annualreport_2013-2014.pdf

³²⁶ *Transcript of Evidence*, 13 October 2015, pp.21-22.

³²⁷ *Transcript of Evidence*, 13 October 2015, p.22.

³²⁸ *Transcript of Evidence*, 13 October 2015, pp.23-25.

³²⁹ *Transcript of Evidence*, 13 October 2015, pp.25-26.

³³⁰ *Transcript of Evidence*, 13 October 2015, pp.21-22.

³³¹ Dr Helen Watchirs, *Transcript of Evidence*, 13 October 2015, p.21.

6.63 The Principal Advocate told the Committee that the advocacy branch of the Public Advocate of the ACT was responsible for three areas of public advocacy: children and young people, mental health and forensic, and disability.³³³

6.64 In relation to this work, she told the Committee:

If you look at the numbers in total of people brought to our attention, it is 1,975 people who are reported to us under various legislation, be it mental health legislation, the Children and Young People Act or other legislative provisions. In relation to that number, we do a review of documentation for 71 per cent of them and direct advocacy is provided for 555 people. I do that with a team of me and three other advocates.³³⁴

6.65 In response to this workload, she told the Committee, the branch was 'constantly prioritising matters and doing those that are most urgent'.³³⁵

6.66 The Principle Advocate went on to say that:

Just over a thousand of those people come to us via the mental health legislative provisions. They may be detained in hospital or they might be in the Alexander Maconochie Centre. In this reporting period we commenced a clinic there every fortnight where we see detainees who are there for mental health reasons. It is a juggling act and we do what we can with the resources that we have currently got available to us.³³⁶

6.67 The Public Advocate's *Annual Report 2013-2014* makes a number of references to high caseloads and workloads.³³⁷

PUBLIC TRUSTEE FOR THE ACT

MATTERS CONSIDERED

6.68 The following matters were considered in relation to the work of the Public Trustee for the ACT:

- investigation of alleged financial irregularities by officers of the Public Trustee;³³⁸ *

³³² Dr Helen Watchirs, *Transcript of Evidence*, 13 October 2015, p.21.

³³³ Ms Patricia Mackey, *Transcript of Evidence*, 13 October 2015, p.21.

³³⁴ Ms Patricia Mackey, *Transcript of Evidence*, 13 October 2015, pp.21-22.

³³⁵ Ms Patricia Mackey, *Transcript of Evidence*, 13 October 2015, p.22.

³³⁶ Ms Patricia Mackey, *Transcript of Evidence*, 13 October 2015, p.22.

³³⁷ See Public Advocate for the ACT, *Annual Report 2013-2014*, pp.7, 22, 25 & 28. Available at:

[http://cdn.justice.act.gov.au/resources/uploads/JACS/141038_Public_Advocate_AR_acc_\(2\).pdf](http://cdn.justice.act.gov.au/resources/uploads/JACS/141038_Public_Advocate_AR_acc_(2).pdf)

³³⁸ *Transcript of Evidence*, 13 October 2015, pp.82-86.

- the work of the Public Trustee and the introduction of the NDIS (National Disability Insurance Scheme);³³⁹ and
- management of unclaimed moneys.³⁴⁰

DISCUSSION

6.69 This section presents further detail on topics selected from the list of 'Matters considered', above.

ALLEGED FINANCIAL IRREGULARITIES BY OFFICERS OF THE PUBLIC TRUSTEE

6.70 In hearings investigation of 13 October 2014 questions were asked and answered regarding alleged financial irregularities by officers of the Public Trustee.³⁴¹

6.71 In response to questions the Public Trustee told the Committee that he had in 2012 engaged KPMG to provide, among other things, training to staff and audits of risk strategy. Moreover, the Public Trustee had purchased a new software package which 'enabled us to trawl disparate databases using metrics and analytics to find certain things'.³⁴²

6.72 The Public Trustee told the Committee that this led to the Public Trustee finding, in January 2014, 'some irregularities in accounts maintained under financial management order of the tribunal—ACAT—as well as enduring power of attorney'.³⁴³

6.73 He told the Committee that the ACT Auditor-General 'in conducting the end-of-year audit for the Public Trustee last year, required me to estimate the value of the fraud'. In response the estimate made by the Public Trustee was 'made on a probable basis' and estimated at \$1.65 million, which was 'was a figure that was attributable losses to client accounts, including interest'.³⁴⁴

6.74 The Public Trustee told the Committee that :

we have a fidelity insurance policy with ACTIA and we have probably got 55 per cent of the way through the investigation and claims process. All of the losses that were sustained by clients, together with interest, as well as the cost of a controls review, the disciplinary process conducted by JACS and the KPMG investigative role with the police have been reimbursed by ACTIA under that insurance, with the exception of the

³³⁹ *Transcript of Evidence*, 13 October 2015, pp.86-87.

³⁴⁰ *Transcript of Evidence*, 13 October 2015, pp.87-88.

³⁴¹ *Transcript of Evidence*, 13 October 2015, pp.82-86.

³⁴² Mr Andrew Taylor, *Transcript of Evidence*, 13 October 2015, p.82.

³⁴³ Mr Andrew Taylor, *Transcript of Evidence*, 13 October 2015, p.82.

³⁴⁴ Mr Andrew Taylor, *Transcript of Evidence*, 13 October 2015, p.82.

controls review which was reimbursed to the Public Trustee's guarantee and reserve account.³⁴⁵

6.75 In relation to persons to whom these irregularities were attributed, the Public Trustee told the Committee that:

We know two people were involved and no more. We know there were three, possibly four, people working with these two on the outside. We have been told, and we knew prior to engaging KPMG from an Australian report that they had done, that the striking theme of their investigation and their work was the power of collusion.³⁴⁶

6.76 He told the Committee that one of the key points of this scenario was 'the huge effect ... collusion has on the time that it takes to detect a fraud'.³⁴⁷

6.77 In the aftermath of these events, the Public Trustee told the Committee that he now had 'a controls report from KPMG', and a 'disciplinary investigation from KPMG', both of which had been finalised.³⁴⁸

6.78 'The KPMG controls review', he told the Committee, 'made a comment' to the effect that:

the modus operandi was not isolated to one method and exploited multiple schemes to extract funds. They used a combination of deception, external collusion and abuse of the level of trust bestowed on them by others.³⁴⁹

6.79 This report went on to acknowledge, he told the Committee 'the nature of the clients that we deal with—they have lost capacity, the intensely vulnerable nature of some of these clients and their pressing needs'.³⁵⁰

6.80 Other risk factors that were identified by the report were:

- that 'several hundreds of transactions ... go through these client accounts every day';³⁵¹
- that there was 'minimal rotation of clients amongst trust officers';³⁵²
- that 'sometimes that [was] necessary because of the aggressive and violent nature and relationship dependence that becomes necessary in dealing with such people';³⁵³ and
- that the 'environment [had] provided the opportunity for those irregular transactions to occur and remain undetected'.³⁵⁴

³⁴⁵ Mr Andrew Taylor, *Transcript of Evidence*, 13 October 2015, pp.82-83.

³⁴⁶ Mr Andrew Taylor, *Transcript of Evidence*, 13 October 2015, p.83.

³⁴⁷ Mr Andrew Taylor, *Transcript of Evidence*, 13 October 2015, p.83.

³⁴⁸ Mr Andrew Taylor, *Transcript of Evidence*, 13 October 2015, p.83.

³⁴⁹ Mr Andrew Taylor, *Transcript of Evidence*, 13 October 2015, p.83.

³⁵⁰ Mr Andrew Taylor, *Transcript of Evidence*, 13 October 2015, p.83.

³⁵¹ Mr Andrew Taylor, *Transcript of Evidence*, 13 October 2015, p.83.

³⁵² Mr Andrew Taylor, *Transcript of Evidence*, 13 October 2015, p.83.

³⁵³ Mr Andrew Taylor, *Transcript of Evidence*, 13 October 2015, p.83.

6.81 However, he told the Committee, the report also:

- ‘acknowledged that improvements to the controlled environment as I have described assisted in identifying the irregular transactions’;³⁵⁵ and that
- It ‘was very much the case that our capacity to detect fraud and our lower tolerance, if you like, for that activity contributed to us finding it or discovering it’.³⁵⁶

6.82 In response to further questions regarding the source of monies used to reimburse those lost to the Public Trustee as a result of financial irregularities, the Public Trustee told the Committee that:

Money to reimburse has been reimbursed out of Public Trustee’s operating account and immediately claimed back from ACTIA. When we talk about client reimbursements, they came from the Public Trustee’s operating account and were reimbursed back to that account. The cost of the controls review was paid for by the Public Trustee’s guarantee and reserve, as allowed under the Public Trustee Act, and reimbursed back into that account. Because we are self-funding, we paid out of our operating account the cost of the disciplinary review that was required by JACS but then it was reimbursed back to that.³⁵⁷

6.83 The Public Trustee was also asked whether charges had been laid in relation to financial irregularities. He responded by saying:

Not as yet. ACT Policing sought an order in the Supreme Court, which was mentioned in the news, to the extent that they had for the first time in the history of the confiscation of criminal assets legislation sought an order, a civil forfeiture, which can be done where the matter is serious enough. Normally you have got to wait for a criminal conviction before you can get forfeiture of criminal assets. They were successful in getting that order, not only against the two people that were former employees of the Public Trustee but several people on the outside as well.

At a meeting with them two weeks ago I asked the extent of the meaning of “assets” and did it include superannuation, and I was told yes, it did. ACTIA is very much seeking to use the confiscation of criminal assets legislation to bring back any losses.³⁵⁸

6.84 The Public Trustee’s *Annual Report 2013-2014* makes reference to alleged financial irregularities.³⁵⁹

³⁵⁴ Mr Andrew Taylor, *Transcript of Evidence*, 13 October 2015, p.83.

³⁵⁵ Mr Andrew Taylor, *Transcript of Evidence*, 13 October 2015, p.83.

³⁵⁶ Mr Andrew Taylor, *Transcript of Evidence*, 13 October 2015, p.83.

³⁵⁷ Mr Andrew Taylor, *Transcript of Evidence*, 13 October 2015, pp.83-84.

³⁵⁸ Mr Andrew Taylor, *Transcript of Evidence*, 13 October 2015, p.84.

³⁵⁹ See Public Trustee for the ACT, *Annual Report 2013-2014*, pp.3-4, 16, 37, 62, 63, 64, 67, 68 & 69. Available at:

<http://www.publictrustee.act.gov.au/inf/ar/ar-ptact-2013-2014.pdf>

DIRECTOR OF PUBLIC PROSECUTIONS

MATTERS CONSIDERED

6.85 Matters considered in relation to the Director of Public Prosecutions included:

- problems in Magistrates Court listing practices ‘in terms of throughput of work’,³⁶⁰ *
- witness assistance services and the Side By Side service,³⁶¹
- prosecutions against sex offenders;³⁶² and
- a proposal for a separate traffic list in the Magistrates’ Court.³⁶³

DISCUSSION

6.86 This section presents further detail on topics selected from the list of ‘Matters considered’, above.

MAGISTRATES COURT LISTING PRACTICES

6.87 In hearings of 13 October 2014 the Director of Public Prosecutions (DPP) told the Committee, in his opening statement, that there were problems regarding Magistrates Court listing practices ‘in terms of throughput of work’.³⁶⁴

6.88 He told the Committee that changes in listing practice had brought good results in the ACT Supreme Court, but:

unfortunately we do seem to have some problems in the Magistrates Court in terms of throughput of work. As I have said in my report—and it is not just me—I think that I and the profession generally have been waiting for some time for some advances in the listing arrangements to be put into effect in the Magistrates Court. Unfortunately, that has not happened to date, although I know that the Chief Magistrate and the court are very aware of the issues and are actively considering the concerns of me and the profession in terms of listing procedures.³⁶⁵

³⁶⁰ *Transcript of Evidence*, 13 October 2014, pp.89-90.

³⁶¹ *Transcript of Evidence*, 13 October 2014, pp.90-91.

³⁶² *Transcript of Evidence*, 13 October 2014, pp.91-94.

³⁶³ *Transcript of Evidence*, 13 October 2014, pp.95-96.

³⁶⁴ *Transcript of Evidence*, 13 October 2014, pp.89-90.

³⁶⁵ Mr Jon White SC, *Transcript of Evidence*, 13 October 2014, p.89.

6.89 When asked what had been key elements in improving listing practice in the Supreme Court, the DPP responded by saying that:

The key to the success has been that there is a real expectation that once a matter is listed, a trial will eventuate. There is nothing that concentrates the mind of accused persons, and also of prosecutors, better than having a hard listing date where it is highly likely the matter will get on. It sounds like a simple recipe for success, but I think that is the key to the success. If you rigorously work to bring trials on, if you do not accept excuses about why trials should not proceed, both sides of the bar table are really concentrated on preparing the case properly or reaching a compromise which leads to a plea of guilty. I think that is the simple reason behind that.³⁶⁶

6.90 In addition, he told the Committee, there was ‘a series of call-overs’, which resulted in the ‘very active management of the list at all times’, including there being ‘set periods which are allocated for trial time when all of the available judicial resources will be concentrated on hearing those trials’.³⁶⁷

6.91 Moreover, he told the Committee, there was ‘a great advantage in having a concentration of judicial resources’:

If a trial falls over unexpectedly in one courtroom, that judge can immediately take up another matter, which will effectively be waiting in the wings to be taken up. Again, that is a very efficient way of dealing with matters and has been a key ingredient in the success.³⁶⁸

6.92 The DPP went on to say that:

the Supreme Court judges have done a very good job, if I might say so, with respect, in dealing with those matters in an intensive fashion. It has not been the practice in the ACT for judges to have to conduct back-to-back trials in quite the manner that has been done in the new listing proceedings, and all of the judges have certainly done their part in ensuring the new system works.³⁶⁹

6.93 The Director of Public Prosecutions *Annual Report 2013-2014* makes a number of references to listing practices.³⁷⁰

³⁶⁶ Mr Jon White SC, *Transcript of Evidence*, 13 October 2014, p.90.

³⁶⁷ Mr Jon White SC, *Transcript of Evidence*, 13 October 2014, p.90.

³⁶⁸ Mr Jon White SC, *Transcript of Evidence*, 13 October 2014, p.90.

³⁶⁹ Mr Jon White SC, *Transcript of Evidence*, 13 October 2014, p.90.

³⁷⁰ See ACT Director of Public Prosecutions ACT, *Annual Report 2013-2014*, pp.1, 6, 7, 8, 14 & 17. Available at:

http://www.dpp.act.gov.au/data/assets/pdf_file/0010/644194/2013-2014-Annual-Report.pdf

COMMITTEE COMMENT

- 6.94 The Committee notes the important work done by statutory officers in the ACT.
- 6.95 The Committee also notes the shortage of resources which affects the work of some statutory officers. In particular the Committee notes that inadequate resourcing prevents the Human Rights Commission fulfilling the full range of its statutory obligations as set out in the *Human Rights Act 2004*.
- 6.96 It is clear to the Committee that as a result of advent of the Act, and the Commission's outreach to the community, awareness of human rights has increased in the ACT, leading to an increase in approaches to the Commission, including in the form of complaints. The Committee is concerned that funding to the Commission does not appear to have responded to these developments.
- 6.97 The Committee notes that it continues to be the case that residents of the ACT are unable to lodge a complaint to the Human Rights Commissioner. The only avenue open to persons with human rights grievances continues to be the ACT Supreme Court, which represents a high barrier in terms of cost. In the Committee's view this is a further anomaly in the ACT human rights framework which could— and should—be addressed through legislative reform.
- 6.98 The Committee also notes that these were matters for the Committee's concern in other reports, including its reports into annual reports for the 2011-2012 and 2012-2013 financial years.³⁷¹
- 6.99 In relation to these matters, the Committee makes the following recommendations.

Recommendation 4

- 6.100 The Committee recommends that the ACT Government develop a new funding model for statutory agencies which more accurately reflects real costs and demand, and fund statutory agencies accordingly.**

³⁷¹ Standing Committee on Justice and Community Safety, *Annual and Financial Reports 2011-2012*, pp.54-56, 91-93, available at: http://www.parliament.act.gov.au/in-committees/standing_committees/Justice-and-Community-Safety/annual_and_financial_reports_2011-2012?inquiry=438167 and *Annual and Financial Reports 2012-2013*, pp.53-54, available at: http://www.parliament.act.gov.au/in-committees/standing_committees/Justice-and-Community-Safety/annual-and-financial-reports-2012-2013?inquiry=497604

Recommendation 5

6.101 The Committee recommends that the ACT Government introduce in the Legislative Assembly legislative amendments which would, if passed, create an avenue for human rights complaints to the ACT Human Rights Commissioner.

Steve Dospot MLA

Chair

Appendix A Witnesses and hearings

13 October 2014– Legislative Assembly for the ACT

ACT Electoral Commission—

- Mr Phillip Green, ACT Electoral Commissioner

ACT Human Rights Commission —

- Dr Helen Watchirs, ACT Human Rights and Discrimination Commissioner
- Ms Mary Durkin, ACT Health Services Commissioner and ACT Disability and Community Services Commissioner
- Mr Alasdair Roy, ACT Children and Young People Commissioner

Public Advocate of the ACT—

- Dr Helen Watchirs, Public Advocate
- Ms Patricia Mackey, Principal Advocate, Advocacy Unit
- Ms Sue Houghton, Senior Guardian/Advocate

Minister for Corrections and his officers—

- Mr Shane Rattenbury, Minister for Territory and Municipal Services, Minister for Corrective Services, Minister for Aboriginal and Torres Strait Islander Affairs and Minister for Sport and Recreation
- Ms Alison Playford, Director-General, Justice and Community Safety Directorate
- Mr Victor Martin, Director, Criminal Law Group, Legislation, Policy and Programs
- Ms Liz Beattie, Acting Executive Director, People and Workplace Strategy
- Mrs Bernadette Mitcherson, Executive Director, ACT Corrective Services
- Mr Don Taylor, General Manager Custodial Operations, ACT Corrective Services

Sentencing Administration Board —

- Mr Grahame Delaney

Victim Support ACT—

- Mr John Hinchey, Victims of Crime Commissioner

Legal Aid Commission (ACT) —

- Dr John Boersig, Chief Executive Officer

Public Trustee for the ACT—

- Mr Andrew Taylor, Public Trustee

- Mr Mark Whybrow, Acting Chief Finance Officer, Strategic Finance, Justice and Community Safety Directorate

Director of Public Prosecutions —

- Mr Jon White, Director of Public Prosecutions

3 November 2013— Legislative Assembly for the ACT

Mr Simon Corbell, Attorney-General, Minister for Police and Emergency Services, Minister for the Environment and Minister for Capital Metro

Justice and Community Safety Directorate—

- Ms Alison Playford, Director-General
- Dr Karl Alderson, Deputy Director-General (Justice)
- Ms Liz Beattie, Acting Executive Director, People and Workplace Strategy
- Ms Amanda Lutz, Manager, Restorative Justice Unit
- Mr Brett Phillips, Executive Director, Office of Regulatory Services
- Mr Mark McCabe, Work Safety Commissioner, WorkSafe ACT, Office of Regulatory Services
- Mr Peter Garrisson, Solicitor-General for the Australian Capital Territory
- Mr Dominic Lane, Commissioner, ACT Emergency Services Agency
- Mr David Foot, Chief Officer, ACT Ambulance Service, ACT Emergency Services Agency
- Mr Conrad Barr, Deputy Chief Officer, ACT Fire & Rescue, ACT Emergency Services Agency

ACT Policing—

- Lammers, Mr Rudi APM, Chief Police Officer
- Hayward, Mr Chris, Director, Corporate Services

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

Chief Minister, Treasury and Economic Development Directorate—

- Young, Mr Michael, Executive Director, Continuous Improvement and Workers Compensation, Workforce Capability and Governance Division
- Mr David Nicol, Under Treasurer

Justice and Community Safety Directorate—

- McCabe, Mr Mark, Work Safety Commissioner, WorkSafe ACT, Office of Regulatory Services
- Mr Robert Barnes, CEO and Registrar, ACT Long Service Leave Authority
- Ms Catherine Shih, Chief Financial Officer, ACT Long Service Leave Authority

Appendix B Responses to Questions Taken on Notice

The following responses to Questions Taken on Notice were received by the Committee in the course of the inquiry.³⁷²

1. Electoral Commission: response to Question Taken on Notice regarding education programs - received 21-10-14
2. Human Rights Commission: response to Question Taken on Notice regarding Health Commissioner complaints - received 28-10-14
3. Human Rights Commission: response to Question Taken on Notice regarding wallet card for Indigenous people - received 28-10-14
4. Victims of Crime Commissioner: response to Question Taken on Notice regarding report on attitudes to violence on women - received 28-10-14
5. Minister for Corrections: response to Question Taken on Notice regarding educational opportunities at the AMC - received 29-10-14
6. Minister for Corrections: response to Question Taken on Notice regarding recidivism - 29-10-14.pdf
7. Minister for Corrections: response to Question Taken on Notice regarding transport of children for visits to AMC - received 3 November 2014.pdf
8. Victims of Crime Commissioner: response to Question Taken on Notice regarding prohibition orders- received 3-11-14
9. Minister for Corrections: response to Question Taken on Notice regarding transfers to CSU - received 05-11-14
10. Minister for Corrections: response to Question Taken on Notice regarding Needle and Syringe Program and Blood Borne Viruses - received 12-11-14
11. Attorney-General: response to Question Taken on Notice regarding licence for new courts case management system - received 17-11-14
12. Attorney-General: response to Question Taken on Notice regarding double jeopardy - received 17-11-14
13. Attorney-General: response to Question Taken on Notice regarding legal services to govt - received 19-11-14
14. Attorney-General: response to Question Taken on Notice regarding WorkSafe knowledge of loose asbestos in Dickson building - received 19-11-14

³⁷²All of these responses are available at: http://www.parliament.act.gov.au/data/assets/pdf_file/0008/693998/JACS-Ctee-Responses-to-QToNs-Annual-Reports-2013-2014.pdf

15. Attorney-General: response to Question Taken on Notice regarding WorkSafe investigations - received 20-11-14
16. Attorney-General: response to Question Taken on Notice regarding non-payment of fines - received 20-11-14
17. Attorney-General: response to Question Taken on Notice regarding taser use - received 25-11-14
18. Attorney-General: response to Question Taken on Notice regarding ambulance defibrillators - received 02-12-14
19. Attorney-General: response to Question Taken on Notice regarding parking revenue - received 02-12-14
20. Attorney-General: response to Question Taken on Notice regarding chief officer contracts - received 03-12-14
21. Chief Minister: response to Question Taken on Notice regarding Downer house - received 04-12-2014
22. Attorney-General : response to Question Taken on Notice regarding ESA officers on stress leave - received 09-12-2014
23. Attorney-General : response to Question Taken on Notice regarding sentencing database - dated 16 December 2014
24. Chief Minister: response to Question Taken on Notice regarding asbestos in Yarralumla - dated 16 December 2014