

STANDING COMMITTEE ON JUSTICE AND
COMMUNITY SAFETY
Report on Annual and Financial Reports 2009-2010

JUNE 2011

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Resolution of appointment

On 9 December 2008 the Legislative Assembly appointed a Standing Committee on Justice and Community Safety to perform the duties of a scrutiny of bills and subordinate legislation committee 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.¹

Terms of reference

Each year the annual reports of government agencies are presented to the Assembly pursuant to the *Annual Reports (Government Agencies) Act 2004*. On 23 September 2010 the Attorney-General moved a resolution that the Legislative Assembly refer annual and financial reports for the calendar year 2010 and the financial year 2009–2010 to the Assembly's Standing Committees. The motion was subsequently passed. The referral of annual reports of particular agencies to particular Standing Committees follows a schedule tabled in the Assembly to accompany the resolution.²

¹ Legislative Assembly for the ACT, *Minutes of Proceedings No 2*, 9 December 2008, pp 12–18

² Legislative Assembly for the ACT, *Debates*, 23 September 2010, pp 4416–4419.

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RECOMMENDATIONS

RECOMMENDATION 1

2.90 The Committee recommends that the government provide for a new case management system for ACT courts.

RECOMMENDATION 2

3.50 The Committee recommends that the ACT Human Rights Commission be allocated a budget appropriation as an *Expense on behalf of the Territory*, to ensure its independence.

RECOMMENDATION 3

4.34 The Committee recommends that Corrections institute formal, on-going, quantitative and qualitative evaluation processes for the Alexander Maconochie Centre's employment program, and that base-line data be established, at the earliest possible opportunity.

RECOMMENDATION 4

4.39 The Committee recommends that Corrections establish formal, on-going quantitative and qualitative evaluation processes for drug and other rehabilitation programs at the Alexander Maconochie Centre as a matter of urgency, and that base-line data be established for the programs at the first possible opportunity.

RECOMMENDATION 5

5.33 The Committee recommends that the Department of Justice and Community Safety present in its Annual Reports the rationale and evidential basis for KPI targets used for ACT Policing.

1 INTRODUCTION

Referral of the inquiry

- 1.1 On 23 September 2010 the Legislative Assembly referred annual and financial reports for the calendar year 2010 and the financial year 2009–2010 to the Assembly’s Standing Committees, as set out in a schedule in the referral.
- 1.2 These reports were presented to the Assembly pursuant to the *Annual Reports (Government Agencies) Act 2004*.
- 1.3 Under the administrative arrangements in place in 2009–10 the reports referred to the Standing Committee on Justice and Community Safety cover the portfolio responsibilities of the Attorney-General and Minister for Police and Emergency Services.
- 1.4 The Committee reviewed the following reports:
 - ACT Electoral Commission;
 - ACT Human Rights Commission;
 - ACT Ombudsman;
 - ACT Policing;
 - Department of Justice and Community Safety (including the Emergency Services Agency and Corrective Services);
 - Director of Public Prosecutions;
 - Independent Competition and Regulatory Commission;
 - Legal Aid Commission (ACT);
 - Public Advocate of the ACT;
 - Public Trustee for the ACT; and
 - Victims of Crime Support Program.³

³ Legislative Assembly for the ACT, *Debates*, 23 September 2010, pp 4416–4419.

Conduct of the inquiry

- 1.5 Assembly Committee inquiries into annual and financial reports are an important part of the Assembly's power to scrutinise government. They allow Committees, and other Members of the Legislative Assembly (MLAs), to seek clarification on matters raised in annual reports, through public hearings, 'Questions on Notice' and Supplementary Questions.
- 1.6 MLAs who are not members of the Committee may participate in public hearings, and take part in the Questions on Notice process. The issues pursued and details about response times to questions taken on notice during the hearing, and placed on notice after the hearing, are listed at Appendix A.
- 1.7 The Committee held a public hearing on 19 November 2010. Witnesses who appeared before the Committee at the hearings are listed at Appendix B.
- 1.8 In keeping with established practice, the Committee agreed that the report would be selective—that is, that it would give attention to particular parts of the business of the Department—and that it would be concise. This means that the report does not summarise the publicly-available transcript evidence, except where text is needed to support findings and recommendations.⁴
- 1.9 The Committee deliberated on the draft inquiry report at a meeting on 27 June 2011, and adopted report.

Purpose and intent of annual reports

- 1.10 Agencies' annual reporting requirements are set out in the *Annual Report (Government Agencies) Notice 2010*.⁵ The Notice includes the Chief Minister's *Annual Reports Directions* (the *Directions*) which are issued under the *Annual Reports (Government Agencies) Act 2004* (ACT).⁶

⁴ The full transcript of public hearings is available on the Assembly website at <<http://www.hansard.act.gov.au/hansard/2009/comms/justice22.pdf>>

⁵ *Annual Reports (Government Agencies) Notice 2010 (No 1)*, Notifiable instrument NI2010-308, is accessible from the ACT Legislation Register at <<http://www.legislation.act.gov.au/ni/2010-308/current/pdf/2010-308.pdf>>, accessed 31/01/2011.

⁶ ss 5(2)(b) and 6(2) the *Annual Reports (Government Agencies) Act 2004* <<http://www.legislation.act.gov.au/a/20048/default.asp>>.

- 1.11 Annual reports reflect the performance of government agencies for the year—their achievements and outcomes—and account for the expenditure of public monies. The *Directions* specify that annual reports ‘should not be designed for promotional, marketing, commercial or morale-building purposes’, but should be ‘an objective account, primarily to the Legislative Assembly, of how the entity has performed during the reporting year’.⁷
- 1.12 Annual reports, tabled in the Assembly, and as such on the public record, are an essential part of the process through which agencies and ministers are held accountable, to the Legislative Assembly and to the wider community.

Business of the Department

- 1.13 In its annual report for 2009/10, the Department of Justice and Community Safety identifies a number of highlights for the reporting year, which provide an introduction to the recent work of the Department. They include, among other things:
- The establishment of an Aboriginal and Torres Strait Islander Justice Agreement;
 - The creation of WorkSafe ACT to oversee occupational health and safety matters in the ACT; and
 - The development of a new Liquor Bill, described as the ‘culmination of a root and branch review of the ... *Liquor Act ACT 1975*’, in order ‘to deliver better regulation of the liquor industry to change the culture of binge drinking in the ACT’.⁸
- 1.14 The Department also identified reviews of significant initiatives embarked upon in previous reporting years, in particular:
- A review of five years of operation of the ACT *Human Rights Act 2004*;
 - A review of the Alexander Maconochie Centre (AMC); and

⁷ *Chief Minister’s 2007–2010 Annual Report Directions*, p 7

⁸ ‘Aboriginal and Torres Strait Islander Justice Agreement’, Justice and Community Safety (JACS), *Annual Report 2009/10*, p.12; ‘WorkSafe ACT’, *JACS Annual Report 2009/10*, p.9; Liquor Bill’, *JACS Annual Report 2009/10*, p.9.

- An evaluation of the Sexual Assault Reform Program, conducted by Australian Institute of Criminology.⁹

1.15 This displays the diversity of the areas for which the Department is responsible, holding a range of responsibilities which extends from regulation (such as *WorkSafe*) to the development of legislation. Also displayed are a number of initiatives, from community engagement and alternative justice (the *Justice Agreement*) to the evaluation of initiatives, such as the *Human Rights Act 2004*; the Alexander Maconochie Centre; and the Sexual Assault Reform Program, where the ACT intends to reform specific areas of the justice portfolio.

Key areas for the report

1.16 These items touch on a number of the key of the areas which attracted the Committee's attention in the annual reports process. In particular the Committee identified matters of significance in the following areas:

- access to and the operation of justice, especially with regard to a backlog in court proceedings, but also including other aspects of access to justice, including legal aid and community legal centres;
- implementation of the *Human Rights Act 2004*, and in particular the status, resources, and position of the Human Rights Commission in administering and supporting the Act;
- the effectiveness and management of the AMC, including accommodation, planning, rehabilitation, and human rights at the facility;
- the preparedness of the Emergency Services Agency (ESA) in the face of threats to the ACT such as were experienced in bushfires in 2003;
- the effectiveness of both the ESA and the Australian Federal Police (AFP) in maintaining a safe and orderly environment in the ACT; and
- Contracting, administrative and financial management, across all areas of the Department's area of responsibility.

⁹ 'Review of the Human Rights Act 2004', *JACS Annual Report 2009/10*, p.9; 'review of the AMC', *JACS Annual Report 2009/10*, p.7; 'evaluation of the Sexual Assault Reform Program', *JACS Annual Report 2009/10*, p.10.

Structure of the report

- 1.17 These areas are the focus of this report, which considers them in detail in the following order:
- Chapter 1: which is an introduction to the report;
 - Chapter 2: which considers access to justice and the courts backlog, drawing upon the testimony of the Attorney and his officers, including the Director of Public Prosecutions and the Manager of ACT Law Courts and Tribunals Administration;
 - Chapter 3: which considers the implementation of the Human Rights Act, in particular the current operation of the Human Rights Commission (HRC), drawing on the testimony of the Attorney and his officers, including the three Commissioners of the HRC;
 - Chapter 4: which considers the management and operation of the AMC, drawing upon the testimony of the Attorney and his officers, in particular those representing Corrections;
 - Chapter 5: which considers the management and operation of ACT Policing drawing on the testimony of the Attorney and officers from ACT Policing; and
 - Chapter 6: which considers the Emergency Services Authority (ESA), drawing on the testimony of the Attorney and his officers from the ESA.

2 JUSTICE

Introduction

- 2.1 This chapter considers aspects of access to justice in the ACT. The most significant issue in this area is a backlog in processing court cases, in addition to related issues regarding court efficiency. These include:
- Adjustments to the jurisdiction of the ACT Supreme and Magistrates Courts;
 - alternative ways of taking evidence (in the Sexual Assault Reform Program);
 - alternative sentencing practices—in particular, diversion strategies;
 - information systems;
 - changes to other administrative arrangements, such as those for security in courts; and
 - arrangements around judge-alone trials.
- 2.2 Other topics which have implications for access to justice—provisions for legal aid and resources for the community legal sector—are also considered here.

The Courts backlog

Background

- 2.3 In its previous report on Annual Reports (2008/09), the Committee expressed concern at the number of court cases that were outstanding beyond recommended parameters set in the *Report on Government Services* (RoGS) for 2010. It recommended that the Attorney report half-yearly to the Legislative Assembly on steps taken to reduce the backlog.¹⁰

¹⁰ Standing Committee on Justice and Community Safety, *Report on Annual Reports 2008/09*, p.19; and see Recommendation 9, p.21.

- 2.4 A backlog in court cases has been a matter for concern in the ACT for some time. In 2005 an Auditor General's performance audit report stated that :

Statistics in the Australian Bureau of Statistics (ABS) report on the Criminal Courts for 2003-04 indicate that the ACT Magistrates Court had the highest proportion of its cases taking longer to finalise than other states and territories. On state and territory average, 44% of cases were finalised in under 6 weeks, but only 16.8% in the ACT were finalised over the same period. At the 26-week mark, 76% of cases in the ACT Magistrates Court were finalised, compared with 90% nationally.¹¹

- 2.5 The report noted that at this time timeliness for the ACT Supreme Court was 'close to average' for Australian jurisdictions, while the ACT Childrens Court 'remained the most expensive of all jurisdictions in recent years'.¹²

- 2.6 The Auditor General also noted that:

There have been many reviews of the ACT Courts, dating back to the early days of self-government. The repetition of themes within these reviews indicates that there has not been a consistent process of formally analysing recommendations and either rejecting or accepting them, nor have there been sound processes to implement agreed recommendations.¹³

- 2.7 In 2010 the Auditor General published a follow-up report on Courts Administration, in which she noted that, within 'the inherent limitations of these data (*sic*), the results [suggested] that in 2008-09':

- 'backlogs in the ACT Supreme Court were significant, compared to other jurisdictions, although costs per matter (civil and criminal) were lower than the average;
- the backlog of criminal matters in the Magistrates Court was low compared to other jurisdictions; however, the civil case backlog percentage [was] the highest in the country. The Magistrates Court also had the highest costs per

¹¹ ACT Auditor-General's Office, (2005), *Performance Audit Report - Courts Administration*, <http://www.audit.act.gov.au/auditreports/reports2005/Report%204_2005.pdf>, viewed 22/02/2011, p.4.

¹² ACT Auditor-General's Office, (2005), *Performance Audit Report - Courts Administration*, p.4.

¹³ ACT Auditor-General's Office, (2005), *Performance Audit Report - Courts Administration*, p.4.

matter and was well above the national average for criminal and civil matters; and

- backlogs were low in the Childrens Court, although the cost of each matter was high by national averages'.¹⁴

2.8 Clearly, as these reports indicate, the courts backlog has been seen as a significant issue in the ACT for a considerable period of time.

ACT performance 2007/08–2009/10

- 2.9 The Department of Justice and Community Safety Annual Report 2009/10 shows that the courts backlog remains a matter for concern. Tables 32 and 33 of the Annual Report present time-series data on the courts backlog for 2007/08, 2008/09 and 2009/10. These display mixed results for courts backlogs at the lower end of the spectrum. However there are, in a number of instances, increases in the proportion of court cases beyond accepted standards of timeliness at the higher end—that is, cases taking more than 12 months and / or 24 months to complete.¹⁵
- 2.10 Table 32 shows the duration of criminal cases in the Supreme, Magistrates, and Childrens Courts. For the Supreme Court, total cases that have taken between one and two years to resolve peaked in the 2008/09 reporting year and then reduced, in 2009/10, to a figure that was nevertheless greater than for 2007/08. The percentage of cases greater than two years increased steadily through the three-year time series from 6.33% to 8.54%.¹⁶
- 2.11 In the same table, criminal cases in the Magistrates Court requiring 6-12 months to resolve decreased year-by-year (from 17.82% to 13.0% to 12.4%), but cases requiring more than one year increased overall after a dip (from 6.33% to 5.9% to 7.2%).¹⁷ In the Childrens Court cases requiring 6-12 months to resolve

¹⁴ ACT Auditor-General's Office, (2010), Performance Audit Report: Follow-up Audit - Courts Administration, <[http://www.audit.act.gov.au/auditreports/reports2010/Report_9_2010_Follow-up_Audit-Courts%20 Administration.pdf](http://www.audit.act.gov.au/auditreports/reports2010/Report_9_2010_Follow-up_Audit-Courts%20Administration.pdf)>, viewed 22/02/2011, p.20.

¹⁵ JACS Annual Reports 2009/10, vol.1, Table 32, p.60.

¹⁶ JACS Annual Reports 2009/10, vol.1, Table 32, p.60.

¹⁷ JACS Annual Reports 2009/10, vol.1, Table 32, p.60.

spiked and then reduced (12.40% to 24.2% to 8.1%), but cases requiring more than 12 months had a flat trajectory then increased significantly (2.58% to 2.6% to 8.1%).¹⁸

- 2.12 Table 33 shows durations for civil cases in the Supreme, Magistrates and Childrens Courts. For the Supreme Court, the total of (appeal and non-appeal) cases requiring one to two years was high and then reduced, although to a still substantial level (from 44.98% to 43.6% to 27.7%). Supreme Court cases requiring more than two years dipped and then rose moderately (from 22.71% to 20.8% to 23.3%).¹⁹
- 2.13 In the same table, civil cases in the Magistrates Court requiring 6-12 months reduced over time (from 37.21% to 30.3% to 25.1%) but cases requiring more than a year steadily increased (from 7.47% to 14.2% to 15.7%). For civil cases in the Childrens Court, cases requiring 6-12 months were significantly reduced (from 37.5% to 23.9% to 10.7%) while cases requiring more than one year steadily, if modestly, increased (from 2.08% to 3.0% to 5.4%).²⁰
- 2.14 For the Coroners Court over the same period there were reductions, from a high start, for cases requiring 6-12 months (from 48.26% to 15.97% to 13.6%) and a flatter trend of reduction for cases requiring more than one year (35.65% to 30.25% to 27.5%).²¹

Standards and comparisons

- 2.15 The *Report on Government Services 2011* quotes the following 'national standards' for court case completions, that for Federal Magistrates Court, magistrates' and children's courts there should be:
- 'no more than 10 per cent of lodgments pending completion are to be more

¹⁸ JACS *Annual Reports 2009/10*, vol.1, Table 32, p.60.

¹⁹ JACS *Annual Reports 2009/10*, vol.1, Table 33, p.60.

²⁰ JACS *Annual Reports 2009/10*, vol.1, Table 33, p.61. 'Civil cases' for the Childrens Court refers for the most part to matters relating to the care and protection of children and young people. See 'Childrens Court', <http://www.courts.act.gov.au/magistrates/Childrens_Court_general_information.doc>, viewed 8/06/2011.

²¹ JACS *Annual Reports 2009/10*, vol.1, Table 33, p.61.

than 6 months old

- no lodgments pending completion are to be more than 12 months old'.²²

2.16 For 'Supreme courts, the Federal Court, district/county, family and coroners' courts and all appeals' there should be:

- 'no more than 10 per cent of lodgments pending completion are to be more than 12 months old
- no lodgments pending completion are to be more than 24 months old'.²³

2.17 In practice, these guidelines are frequently exceeded in Australian jurisdictions. Tables of backlogs in criminal matters (Table 7.9) and civil matters (Table 7.10) in RoGS provide a basis for comparison. Selected results show that for some indicators ACT Courts are either the highest, or at the high end of backlogs in Australian jurisdictions. At 30 June 2010, for criminal matters in the ACT Supreme Court, 15.9% of appeal cases over 12 months (second only to Victoria, at 17.0%), while cases over 24 months were the highest of any reported jurisdiction at 3.7%. However, backlogs for the ACT Magistrates and Childrens courts were average for results reported by Australian jurisdictions.²⁴

2.18 For civil matters, the ACT Supreme Court showed the highest percentage of cases between 12 and 24 months, at 51.4%, and for cases more than 24 months, at 23.6%. In the ACT Magistrates Court cases between 6 and 12 months were close to the median but were, at 15.7%, the highest for any Australian jurisdiction. In the same table, the ACT Coroner's Court was in the middle band for these indicators.²⁵

²² *Report on Government Services 2011*, 7.27.

²³ *Report on Government Services 2011*, 7.27.

²⁴ *Report on Government Services 2011*, Tables 7.9, 7.10, p.7.28.

²⁵ *Report on Government Services 2011*, Table 7.10, p.7.31.

The Director of Public Prosecutions on the Courts backlog

Remarks in public hearings

- 2.19 In the public hearing of 19 November 2010, the Director of Public Prosecutions (the DPP) told the Committee that the Courts backlog was best addressed by adjusting the jurisdiction of ACT Courts so that the workload of the Supreme Court was reduced, transferring a proportion of its cases to the Magistrates Court. This would, the DPP suggested, 'make a significant contribution to unclogging the list of the Supreme Court', allowing it to 'concentrate on more complex matters'.²⁶
- 2.20 The DPP told the Committee that 'there a number of matters that currently go up to the Supreme Court which could be more than adequately dealt with by our excellent bench of magistrates'. These were, in particular, 'relatively straightforward, factual disputes', such as 'aggravated assaults, possibly breach of protection orders'. This would have benefits in both courts, in that it would simultaneously 'unclog the Supreme Court' and result in 'those matters [being] dealt with more expeditiously in the general criminal justice scheme of things' as they were processed in the Magistrates Court.²⁷

Remarks in the DPP's Annual Report

- 2.21 This reflected comments made by the DPP in his Annual Report for 2009/10, where he noted that backlogs in the Supreme Court had been 'much discussed this year, in both the profession and the general community'.²⁸ He noted that his office had, through the Supreme Court Working Group, proposed a number of ways to reduce the courts backlog, including:
- the establishment of a sentence list in the Supreme Court to allow a number of sentences to be listed together and assist in the streamlining of the present sentencing process; reform to bail procedures; the abolition of

²⁶ *Transcript of Evidence*, 19 November 2010, pp.21, 22.

²⁷ *Transcript of Evidence*, 19 November 2010, p.21.

²⁸ Director of Public Prosecutions, *Annual Report 2009/10*, p.1.

face to face pre-arraignment conferences; placing all pre-trial applications in a directions list; a mechanism to increase defence participation in pre-trial forums; and the abolition of arraignment lists.²⁹

- 2.22 The DPP also noted, in his Annual Report, that there were significant contrasts between the handling of these matters between the ACT and other jurisdictions:

Our Supreme Court judges enjoy a status and position similar to Supreme Court judges in other jurisdictions. However, a significant proportion of the work they do is carried out in other jurisdictions by lower level courts. In the criminal area, Supreme Court judges in most jurisdictions are confined to dealing with serious indictable only matters. In the ACT on the other hand, a significant proportion of the work done in the Supreme Court comprises straight forward matters such as aggravated assaults. Typically these are matters which involve disputes of fact and which are appropriate to be dealt with by magistrates, particularly magistrates of the quality we have in the ACT.³⁰

- 2.23 As a result, the DPP noted:

A way needs to be found to restrict the work for the Supreme Court to matters of a complexity and seriousness which become the status and resourcing of a Supreme Court judge, while at the same time getting the most out of our bench of magistrates.³¹

- 2.24 As noted above, this rests on changing the jurisdiction of the Supreme and Magistrates Courts. Specifically, this could entail:

increasing the criminal jurisdiction of the Magistrates Court to all matters involving imprisonment up to 5 years. The Magistrates Court already has jurisdiction in such matters by consent. This increase in the summary jurisdiction of the Magistrates Court would ensure that matters such as aggravated assaults, breaches of protection orders and minor drug matters could be dealt with expeditiously by the Magistrates Court,

²⁹ Director of Public Prosecutions, *Annual Report 2009/10*, p.1.

³⁰ Director of Public Prosecutions, *Annual Report 2009/10*, p.1.

³¹ Director of Public Prosecutions, *Annual Report 2009/10*, p.1.

without clogging the Supreme Court. This would free the Supreme Court to concentrate on more serious and complex matters.³²

Court delays and sexual assault cases

- 2.25 The DPP's Annual Report noted that a particular matter of concern in relation to the courts backlog was its effect on sexual assault cases. He noted that:

this sort of delay in sexual matters is undesirable and runs counter to the intention of the SARP [Sexual Assault Reform Program] and committal reforms. There are ways of tackling such delay. For example in last year's Annual Report I wrote of Victorian legislation which requires child sexual assault matters to be heard within 3 months of committal. A similar approach - perhaps encompassing all sexual assault matters - could be considered here.³³

- 2.26 A table in the DPP's Annual Report shows the duration of sexual assault cases in ACT courts with categories for cases 'ongoing for less than 12 months'; 'between 12 and 24 months' 'between 24 and 36 months' and 'more than 36 months'.³⁴

- 2.27 The DPP also spoke to this in public hearings, where he told the Committee that in this area the 'primary issue' is again 'the backlog in the Supreme Court itself', where such cases are heard. The DPP stated that in these 'more complex matters' relating to sexual assault:

there are now a number of special measures which are really quite complex ... I can report that those measures are operating very effectively. But they do introduce levels of complexity in relation to those sorts of crimes. It maybe thought that it is appropriate for the Supreme Court to be developing its expertise in those sorts of matters and not trying the relatively straightforward aggravated assaults and the like.³⁵

³² Director of Public Prosecutions, *Annual Report 2009/10*, p.2.

³³ Director of Public Prosecutions, *Annual Report 2009/10*, p.2.

³⁴ Director of Public Prosecutions, *Annual Report 2009/10*, p.22.

³⁵ Director of Public Prosecutions, *Annual Report 2009/10*, p.22.

- 2.28 The 'special measures' referenced by the DPP include four remote witness rooms created under the Sexual Assault Reform Program, where witnesses are able to give testimony without having to be in the same physical space as the defendant.³⁶

Information Systems

- 2.29 Another important aspect of the administration of ACT Courts that was discussed at the Committee's public hearing was the state of Information Technology systems. The Acting Courts Administrator, ACT Law Courts and Tribunals Administration, told the Committee that:

The case management system at the courts is an old one. It was built in 1991 originally and copied to the Supreme Court in 1992 and 1993. So it is an ageing system. The capital injections for the system in the last few years have been to maintain it and add some functionality to it to allow it to do reporting requirements that are now required through the Productivity Commission and also to automate some of the functions for the registry staff to be able to produce forms automatically, and those sorts of things.³⁷

- 2.30 The Acting Courts Administrator told the Committee that upgrades to the system were going ahead, and although they were running over-time, that they were within budget and providing necessary functionality.³⁸
- 2.31 However, there have been criticisms of this approach. There is a view that system upgrades will not be sufficient to ensure efficiency, and that an entire new system is necessary. In her 2005 report on the Courts, Auditor General stated that:
- Current Information and Communication Technology (ICT) equipment appears inadequate to meet the needs of the courts.

³⁶ The use of these facilities was the subject of a Question on Notice from Ms Hunter MLA at the 19 November public hearing. See Question on Notice 32 and the response at: <http://www.legasassembly.act.gov.au/downloads/issues-papers/31-50.pdf>.

³⁷ Ms Purvis, *Transcript of Evidence*, 19 November 2010, p.66.

³⁸ Ms Purvis, *Transcript of Evidence*, 19 November 2010, p.66.

- Progress to replace the caseload management system (CMS) has been slow and limited by funds.
- The Courts have not yet taken full advantage of ICT to improve administrative processes.³⁹

2.32 The Auditor-General also observed that:

The AS400 system is out of date, for example, it does not use a graphical user interface such as Windows. It has been in place about 15 years and subject to continual maintenance. It requires two on-site personnel to maintain it and provide occasional minor upgrades.⁴⁰

2.33 In her 2010 follow-up report, the Auditor General stated that:

Although recent enhancements of the Courts' case management system (MAX) enabled the system to function in the medium term, there were significant risks associated with the continued use of the system. There was no final strategic ICT plan to inform and assist JACS in considering and making decisions regarding the replacement of the MAX system.⁴¹

2.34 This suggests that JACS and the Auditor General's office have different conceptions of an appropriate approach for upgrade and priorities for the Courts' caseload management system.

Subsequent legislative developments

2.35 On 9 December 2010 the Attorney-General presented the *Courts Legislation Amendment Bill 2010*, which sought to alter the balance of jurisdiction between the ACT Supreme and Magistrates Courts in two ways. First, if it met with the approval of the Assembly, the legislation would change the jurisdiction of the Magistrates Court in terms of indictable offences attracting certain maximum

³⁹ ACT Auditor-General's Office, (2005), *Performance Audit Report - Courts Administration*, <[http://www.audit.act.gov.au/auditreports/reports2005/Report%204 2005.pdf](http://www.audit.act.gov.au/auditreports/reports2005/Report%204%202005.pdf)>, viewed 22/02/2011, p.72.

⁴⁰ ACT Auditor-General's Office, (2005), *Performance Audit Report - Courts Administration*, pp.72-73.

⁴¹ ACT Auditor-General's Office, (2010), *Performance Audit Report: Follow-up Audit - Courts Administration*, <[http://www.audit.act.gov.au/auditreports/reports2010/Report_9_2010_Follow-up_Audit-Courts%20 Administration.pdf](http://www.audit.act.gov.au/auditreports/reports2010/Report_9_2010_Follow-up_Audit-Courts%20Administration.pdf)>, viewed 22/02/2011, pp.8-9.

penalties. In his address to the Assembly when presenting the Bill, the Attorney stated that:

The Magistrates Court already has jurisdiction to deal summarily with all indictable offences with a maximum penalty of 10 years, and some with much higher maximum penalties where the parties so elect. If the Assembly agrees, in relation to charges with an offence greater than two years but less than the revised definition of an indictable offence, a defendant will no longer be able to elect to have the matter proceed to the Supreme Court for hearing. Instead, as is the case now where a defendant elects to have these matters proceed summarily in the Magistrates Court, all these matters will be dealt with summarily in the Magistrates Court. As with other summary matters, an appeal will lie to the Supreme Court.⁴²

- 2.36 As the Attorney told the Assembly, the second way the legislation seeks to alter the jurisdiction of the Magistrates Court concerns its dealings in civil matters:

the bill ... increases the civil jurisdiction of the Magistrates Court. The government proposes to increase the civil jurisdiction of the Magistrates Court to a \$250,000 threshold from the current threshold of only \$50,000. The cumulative effect of this change will be that the Supreme Court will generally hear the civil claims with the most significant outcomes, such as major medical negligence claims.⁴³

- 2.37 In addition, the Attorney told the Assembly of a number of other proposed responses by government to the courts backlog, proposed including changes to arrangements for bail (by way of the *Bail Amendment Bill 2010*), and the creation in statute of a Family Violence Court and the Galambany Court (in the *Courts Legislation Amendment Bill 2010*).⁴⁴

- 2.38 The *Bail Amendment Bill 2010* was passed by the Assembly without amendment on 15 February 2011 and notified on 3 May 2011. The *Courts*

⁴² Mr Simon Corbell MLA, *Hansard*, Legislative Assembly for the ACT, 9 December, 2011, p.6049.

⁴³ Mr Simon Corbell MLA, *Hansard*, Legislative Assembly for the ACT, 9 December, 2011, p.6050.

⁴⁴ Mr Simon Corbell MLA, *Hansard*, Legislative Assembly for the ACT, 9 December, 2011, pp.6049, 6050.

Legislation Amendment Bill 2010 was passed, with substantial amendment, on 22 February 2011 and notified 11 May 2011.⁴⁵

Diversion

- 2.39 Another avenue for improving the timeliness and efficiency of courts is diversion. The Report on Government Services 2011 notes that diversion in the criminal court system includes:
- referral of defendants to drug programs (from counselling through to treatment programs);
 - referral of defendants to a mental health court;
 - referral of defendants to a family violence court; and
 - referral of defendants to an Indigenous court or Circle Sentencing program.⁴⁶
- 2.40 The Report also notes the application of diversion to civil cases where, it suggests, 'diversion programs can be a quicker and cheaper form of dispute resolution'. According to the Report, diversion in civil cases may involve mediation, arbitration, or reference to a referee, where 'technical issues arising in proceedings [are] referred to suitably qualified experts (referees) for inquiry and report'.⁴⁷
- 2.41 The Report suggests that the impact of these measures for the timeliness of civil cases is generally positive: '[s]uccess at mediation (settlement of the case) or at arbitration (acceptance of the arbitrator's award) generally finalises cases earlier than if finalised by trial and judgment'.⁴⁸ However, where 'the mediation or arbitration is unsuccessful, the delaying effect on finalisation is highly variable'.⁴⁹

⁴⁵ *Bail Amendment Act 2011* (repealed), http://www.legislation.act.gov.au/b/db_40173/default.asp, viewed 08/06/2011 and *Courts Legislation Amendment Act 2011*, http://www.legislation.act.gov.au/b/db_40367/default.asp, viewed 08/06/2011.

⁴⁶ *Report on Government Services 2011*, 7.30.

⁴⁷ *Report on Government Services 2011*, 7.30.

⁴⁸ *Report on Government Services 2011*, 7.30.

⁴⁹ *Report on Government Services 2011*, 7.30.

- 2.42 For criminal cases, the effects of diversion on timeliness (overall) can be more equivocal:

The processes listed above can range in completion times between one week and seven years. With some diversion programs, success will delay finalisation significantly. For example, some drug court programs can require compliance for 12 months or longer before the defendant is considered to have completed the program.⁵⁰

- 2.43 Yet this way of hearing cases still reduces the caseload in Magistrates courts, and may in this way contribute to a rise in efficiency in the system overall.

Restorative justice

- 2.44 The particular aspects of diversion most discussed in the Committee's Annual Reports hearing were restorative justice and circle sentencing.

- 2.45 'Restorative justice' employs an alternate approach to sentencing, typically involving conferences between offenders and complainants. The Department of Justice and Community Safety Annual Report 2009/10 notes that:

Restorative justice involves an exchange of information between those people who have been affected by a crime – the victim, offender and their respective supporters. It is a voluntary process where these key individuals discuss what happened, who has been impacted and what can be done to repair the harm done.⁵¹

- 2.46 The Committee pursued a line of questioning which sought to establish trends in referrals to restorative justice, particularly to establish whether there were repeat offenders who were not being given access to restorative justice, who might benefit from it. The Committee was told that referrals to restorative justice can be made by the Police, the DPP or the courts).⁵²

- 2.47 In response, the Attorney commented that, in relation to restorative justice:

We are certainly seeing an improvement in the number of matters being

⁵⁰ *Report on Government Services 2011*, 7.30.

⁵¹ *JACS Annual Report 2009/10*, Vol.1, p.16.

⁵² *Transcript of Evidence*, 19 November 2010, p.20.

successfully completed and an improvement in the participation rate. Of the 236 victims who were offered the opportunity to participate in a conference, 178 or 75 per cent did so. That is an increase of seven per cent over the same period last year. Of the 188 offenders who were offered the opportunity to participate, 163 did so, or 87 per cent. That is an 11 per cent increase. I think what that highlights is that there may be some value in that earlier referral taking place in getting a much stronger participation rate as a result.⁵³

- 2.48 As noted above, however, for diversionary measures in general, there can be equivocal outcomes for timeliness and, indeed, the case load of conventional courts. The DPP noted in his report for 2009/10 that:

While RJ [Restorative Justice] is a proper sentencing consideration for the court, successful completion of the RJ process or agreement will not necessarily result in a discontinuation of the prosecution. As the Crimes (Restorative Justice) Act 2004 makes clear, access to restorative justice does not substitute for the criminal justice system or change the normal process of criminal justice.⁵⁴

- 2.49 The Attorney also made further comment in responses to questions on notice:

The important issue is that there are opportunities for referral at each point of the criminal justice continuum, from the point of apprehension through to the serving of a sentence for an offence. The scheme is designed to allow police to use their discretionary powers to divert young people from prosecution and for young people, who are charged with more serious types of offences and with existing criminal histories, to have the opportunity to be referred later in the justice process.

To maximize the number of opportunities afforded to young people, officers from the Restorative Justice Unit provide a presence in the Children's Court to facilitate as many referrals as possible. They also pursue the referral of any co-offenders of each young person who is referred to restorative justice in order to assist those young people to

⁵³ *Transcript of Evidence*, 19 November 2010, p.21.

⁵⁴ Director of Public Prosecutions, *Annual Report 2009/10*, p.13.

share responsibility for their offending.⁵⁵

- 2.50 In later discussion the Committee noted that restorative justice only applies, at present in the ACT, to juvenile justice matters.⁵⁶

Circle sentencing

- 2.51 Circle sentencing is a more specialised, but related form of diversion. The Department of Justice and Community Safety Annual Report 2009/10 notes that:

The Ngambra Circle Sentencing Court (NCSC) provides a culturally sensitive and specialist sentencing process for eligible Aboriginal and Torres Strait Islander defendants within the Magistrates Court. The NCSC allows indigenous community members to be involved in the sentencing process.⁵⁷

- 2.52 In practice:

An offender who has pleaded guilty to an offence in the Magistrates Court may be referred by the Court to the NCSC to be assessed by a panel of Aboriginal and Torres Strait Islander Elders or community panel members for suitability to be sentenced in the NCSC.⁵⁸

- 2.53 Through this process:

The NCSC attempts to address offending behaviour within a culturally sensitive framework that recognises the ongoing disadvantage experienced by many Aboriginal and Torres Strait Islander people in the criminal justice system. The Magistrate, in consultation with the panel of members, determines the most culturally appropriate sentence for the individual.⁵⁹

⁵⁵ Response to Question on Notice No.11, <http://www.legassembly.act.gov.au/downloads/issues-papers/01-20.pdf>, viewed 28/06/2011.

⁵⁶ Standing Committee on Justice and Community Safety, Meeting No.84, 27 June 2011.

⁵⁷ JACS Annual Report 2009/10, p.57.

⁵⁸ JACS Annual Report 2009/10, p.57.

⁵⁹ JACS Annual Report 2009/10, p.57.

- 2.54 In the public hearing, the Committee asked the Attorney how offenders were assessed for suitability, in accordance with the Act. The Attorney was asked what proportion the 11 Indigenous offenders referred to the circle sentencing court comprised of the total number of Indigenous offenders.⁶⁰
- 2.55 The Attorney took these questions on notice and in response provided practice directions for the Circle Sentencing Court, a URL for a review of the Court, and other information about the operation of the Court.⁶¹

Judge-alone trials

- 2.56 Another issue with consequences for timeliness in the courts is the matter of judge-alone trials. In the ACT defendants may elect to have judge-alone trials and the DPP told the Committee that the ACT has a large uptake in this area. Asked why this may be the case, the DPP told the Committee that defendants ‘presumably ... [make a] decision which is more likely to be in favour of the person making the election’.
- 2.57 The DPP told the Committee that this has also consequences for the operation of the justice system. Judge-alone trials increase the burden of work on judges:
- It is quite a burden on the judges—and I think they have indicated this—to have to formulate their written decisions in judge-alone trials which, under the legislation quite appropriately, they do have to do. The formulation of a written decision, even on a reasonably straightforward matter in a judge-alone trial context, is quite a complex issue. They have to record all their legal directions, they have to record all of their conclusions on the evidence and so on and so forth. So a lot of the matters that are being heard by a judge alone are delayed awaiting the delivery of judgements.⁶²
- 2.58 In short, the DPP told the Committee, judge-alone trials ‘contribute to ... overall delays’ in the justice system. Moreover: ‘when those judgements are in

⁶⁰ *Transcript of Evidence*, 19 November 2010, p.71.

⁶¹ See the response to Questions on Notice 24-26, available at <http://www.legassembly.act.gov.au/downloads/issues-papers/21-30.pdf>.

⁶² *Transcript of Evidence*, 19 November 2010, p.23.

comparatively straightforward matters which would be dealt with expeditiously in the Magistrates Court, that just exacerbates the delays'.⁶³

- 2.59 In response, the Government introduced the Criminal Proceedings Legislation Amendment Bill 2011 into the Legislative Assembly on 17 February 2011.

Among other things:

The Bill amends the Supreme Court Act by limiting the types of offences for which an election for trial by judge alone can be made. The Bill does this by specifying a class of offences where an election to be tried by judge alone cannot be made. The excluded offences include charges involving the death of a person and charges of a sexual nature.⁶⁴

- 2.60 The Criminal Proceedings Legislation Amendment Bill 2011 was passed in the Legislative Assembly on 23 June 2011.⁶⁵

Committee comment

- 2.61 In the Committee's view, reflecting on statements made by the Attorney and other interested parties, it is clear that there are many things that can be done toward reducing the historical courts backlog in the ACT by making better use of current resources.
- 2.62 As the Committee heard, the proposed changes in jurisdiction for the ACT Supreme and Magistrates Courts are an example of this. Similarly, the proposed changes to criteria allowing defendants to elect judge-alone trials would also work to allow better use of resources—in this instance the time and energy of judges—that already exist.
- 2.63 In addition, the Committee agrees that defendants should not be in a position to determine the nature of their trial simply on the basis that the charges involved are likely to arouse community feeling. As the Attorney suggested, the use of this avenue has in practice exceeded the original intention of the

⁶³ *Transcript of Evidence*, 19 November 2010, p.24.

⁶⁴ Explanatory Memorandum, *Criminal Proceedings Legislation Amendment Bill 2011*, <http://www.legislation.act.gov.au/es/db_40819/current/pdf/db_40819.pdf>, viewed 25/02/2011.

⁶⁵ Criminal Proceedings Legislation Amendment Bill 2011, http://www.legislation.act.gov.au/b/db_40830/default.asp, viewed 28/06/2011.

legislation that introduced it, and the reforms proposed offer a chance to restore balance between the interests of the defendant, the resources of the Court and maintaining the important practice and principle of trial by jury.

Courts security

- 2.64 Security is a further aspect of the management and smooth running of the ACT Law Courts. In his Annual Report for 2009/10 the DPP said that he regarded court security as the 'most concerning issue facing the Office this year', following 'a number of concerning incidents'.⁶⁶ The DPP stated that:

There is no doubt that security for courts is a more pressing issue than in the past. Security screening has only recently been introduced at the entrances of our courts. However the security environment in the ACT courts is far from ideal. Our courts were not designed with security in mind, nor are there in place comprehensive procedures to deal with security breaches. There are issues with both the physical layout of the courts and the delineation of responsibility for security.⁶⁷

- 2.65 The DPP also noted that:

I am reliant on others to provide a secure working environment for my officers for much of their working day. The court rooms, the court buildings and the environs of the courts are part of the work place of my officers, but are areas over which I have no control.⁶⁸

- 2.66 Moreover, the DPP, suggested:

Following one serious incident, a Report on Workplace Safety recommended amongst other things that the Department of Justice and Community Safety commission a suitable expert to undertake a security review of the ACT Courts and associated systems. I strongly endorsed

⁶⁶ Director of Public Prosecutions, *Annual Report 2009/10*, p.2.

⁶⁷ Director of Public Prosecutions, *Annual Report 2009/10*, p.2.

⁶⁸ Director of Public Prosecutions, *Annual Report 2009/10*, p.2.

that recommendation and continue to do so. However to date no such review has been commissioned.⁶⁹

- 2.67 The Attorney spoke to this matter in the Committee's public hearing for Annual Reports 2009/10:

Generally speaking, security in the courts is a matter which I take very seriously. A range of additional measures are being identified for further action by my department following a number of more high-profile security breaches of concern to me and users of the courts. In particular, I have indicated to my department the need to develop a legislative framework for better management of the responsibility of security within the courts and between the courts and the court precinct as a whole.⁷⁰

- 2.68 The Attorney also noted actions taken by his department to address security requirements in the courts:

In relation to that, my department is in the process of commissioning additional work in relation to further examination of improvements that can be made to security in the courts. \$1.9 million was provided in 2007-08 to upgrade security in courts and that was for the installation of the airport-style screening technology that members are probably now familiar with. A range of other steps will be considered in the context of the forthcoming budget process to further enhance and improve the provision of security services in the courts as well as the legislative framework issues which I referred to previously.⁷¹

Committee comment

- 2.69 While these are more specific matters to do with the smooth running of ACT courts, and while direct impacts have been described (by the DPP) for only one part of the broader picture of daily activities at the Courts, it is the Committee's view that the implications of security must reach further into the business of the Courts.

⁶⁹ Director of Public Prosecutions, *Annual Report 2009/10*, p.3.

⁷⁰ The Attorney-General Mr Corbell MLA, *Transcript of Evidence*, 19 November 2010, p.73.

⁷¹ The Attorney-General Mr Corbell MLA, *Transcript of Evidence*, 19 November 2010, p.73.

- 2.70 In the Committee's view this is an aspect of the practical day-to-day running of the Courts that must be addressed if ACT residents are both to feel the confidence in the Courts system that they are entitled to feel, regardless of the capacity in which they attend the Courts. Moreover, if the Courts are to run smoothly and efficiently, it appears fundamental, in the view of the Committee, that clear deficiencies in security arrangements are remediated. The efficient and safe functioning of the Courts is fundamental to civil society, and it is the Committee's view that this must, accordingly, attract sufficient resources and attention from the Executive.

Other aspects of access to justice

- 2.71 The ability of ACT Courts to resolve cases in a timely and secure manner, including to divert defendants where possible, are, as noted, aspects of access to justice. Further aspects are arrangements for Legal Aid and provision for Committee Legal Services.

Legal Aid

- 2.72 In the public hearing, the Committee asked the Attorney for details of a new national partnership agreement on legal aid negotiated by the Standing Committee of Attorneys-General.
- 2.73 The Attorney told the Committee that the new agreement was 'a disappointing one for the Territory', in particular because there had 'been no growth in funding for legal aid services from the commonwealth as a result of the new agreement'. On the other hand, the Attorney said, there was also 'no net detriment to the territory' from the new funding agreement.⁷²
- 2.74 The original funding agreement, the Attorney told the Committee, 'would have ... seen, if the formula had been applied to the smaller jurisdictions, including the ACT, a real reduction in funding'. This was averted through representations by the Attorneys General of small jurisdictions, including the

⁷² *Transcript of Evidence*, 19 November 2010, p.6.

ACT. The outcome overall was that there were 'significant increases in funding for large jurisdictions but ... no reduction in funding for small jurisdictions'.⁷³

- 2.75 There are other differences, between smaller and larger jurisdictions, that exacerbate these differences. For larger jurisdictions, their capacity:

to fund legal aid services is significantly enhanced because of the size of their legal trust funds and similar arrangements. The sheer volume of dollars flowing through those trust funds for what you can imagine are the very large legal markets of Sydney, Melbourne and Brisbane certainly makes significant funds available for the operation of legal aid services there, compared to small jurisdictions.⁷⁴

- 2.76 In response to questions, the Attorney told the Committee that while there was no growth in funding through the legal aid agreement, indexation continued to be applied to funds being directed to the ACT. The Committee asked for further clarification, asking whether figures in the financial statements of the JACS Annual Report 2009/10 supported this picture. The Attorney undertook to take the question on notice and respond, but noted that the Commonwealth did as part of its funding activities provide one-off payments from time to time, and that this may account for apparent anomalies in financial statements in this area of the Department's financial statements.⁷⁵ The Attorney also noted that the current agreement is binding on the Commonwealth for the next four years.⁷⁶

- 2.77 However, there were other outcomes from the national partnership agreement that were more positive:

In relation to the policy objectives of the new national partnership agreement on legal aid, the focus is very much on achieving earlier resolution of legal problems for disadvantaged Australians, a more effective targeting of legal aid services to people who need it, increased collaboration and cooperation between legal assistance providers

⁷³ *Transcript of Evidence*, 19 November 2010, p.6.

⁷⁴ *Transcript of Evidence*, 19 November 2010, p.7.

⁷⁵ *Transcript of Evidence*, 19 November 2010, p.8.

⁷⁶ *Transcript of Evidence*, 19 November 2010, p.7.

themselves, in particular focusing on the role of community legal centres and legal aid offices in working together to assist our clients where possible.⁷⁷

- 2.78 The other significant development in this area discussed with the Attorney was the advent of more flexible arrangements regarding how the money could be employed. The background to this was that ‘in the past [this funding] had to be used [in the ACT] in issues around commonwealth law’. Increasingly, however, there is great scope for expenditure of granted monies where inter-jurisdictional matters are engaged:

The flexibility has come around matters, as I understand it, which are joined up. For example, a client may have a family law matter but then may also have a domestic violence matter in an ACT court. The client may have some other associated criminal matters that have to be dealt with. Where the client is crossing across the jurisdictions of the territory and the commonwealth, the legal aid funding is able to be shared, effectively, in relation to those matters, rather than on a strict delineation of which bucket of money it comes from. I think that is an example of the type of flexibility that the commonwealth is now applying in relation to these matters.⁷⁸

Provision for Community Legal Centres

- 2.79 In its public hearing on Annual Reports 2009/10, the Committee considered the matter of accommodation for Community Legal Centres (CLCs), and asked the Attorney-General a number of questions on the matter.
- 2.80 During the discussion it was acknowledged that CLCs were experiencing some difficulties with office accommodation, and that some opportunities, which had appeared to offer a resolution to these problems, at least for some individual centres. However these opportunities had not been taken-up, leaving the question of future arrangements unresolved.⁷⁹

⁷⁷ *Transcript of Evidence*, 19 November 2010, p.7.

⁷⁸ *Transcript of Evidence*, 19 November 2010, p.9.

⁷⁹ *Transcript of Evidence*, 19 November 2010, pp.10-11.

- 2.81 The Attorney suggested that although this had not traditionally been seen as part of the remit of his Department, he was interested in assisting CLCs with respect to their accommodation, and had communicated this directly to the Centres. The Attorney also indicated that he was well-disposed toward the concept of a 'community legal centre hub', where a single facility could be used by the diversity of CLCs operating in the ACT.⁸⁰
- 2.82 The Attorney advised the Committee that in his view 'it is desirable to recognise that [CLCs] form the coherent critical mass of community legal aid services in the community' and that, as a result, this was a matter that his Department was 'pursuing in the context of the forthcoming budget round.'⁸¹ The Committee notes, however, that there is no provision in the 2011/12 Budget to further this objective.

Committee comment

- 2.83 In this chapter the Committee has considered a number of aspects of access to justice. This has ranged from the courts backlog to court security; alternative sentencing regimes; legal aid and community legal centres; and the implications of current proposals to change the jurisdiction of the ACT Supreme and Magistrates Courts to expedite case completions.
- 2.84 As noted, the Committee is concerned that the Government should adopt a balanced approach, in which judicial functions are managed in a practical, effective way without any casual or unnecessary expunging of rights that are traditional under our system of justice: in particular that of trial by jury.
- 2.85 In the Committee's view the reasonable imperative of providing an adequate level of access to justice is not served if court cases take a long time to commence and to be completed, or if expediency in the face of courts backlogs results in the jettisoning of significant rights under the law.
- 2.86 It appears to the Committee that while there are arguments in favour of the change of jurisdiction planned by the Government as an important part of its

⁸⁰ *Transcript of Evidence*, 19 November 2010, p.10.

⁸¹ *Transcript of Evidence*, 19 November 2010, p.11.

response to the courts backlog, there are a number of other approaches that could attract a higher priority.

- 2.87 The case management system has been repeatedly cited as a bottle-neck in the court system's ability to clear cases, and the Auditor General has indicated that it should be replaced. The Committee notes that in response the Government has reported on patches and improvements to the current system, but this clear falls short of the mark, in view of the Auditor General's assessment in the original and follow-up reports.
- 2.88 In the Committee's view it is unequivocally time for the Government to inject funds into the acquisition of a new case management system so that the backbone of the administration of the courts is built along contemporary lines.

RECOMMENDATION 1

- 2.89 **The Committee recommends that the government provide for a new case management system for ACT courts.**

3 THE HUMAN RIGHTS COMMISSION

Introduction

- 3.1 The ACT was the first Australian jurisdiction to have a Human Rights Act, the *ACT Human Rights Act 2004*. The Act sets out the rights framework, and functions and powers, for the Human Rights Commission (HRC), which is created by the *Human Rights Commission Act 2005*.
- 3.2 The Commission comprises the Human Rights Commissioner (who is also the Discrimination Commissioner), the Children and Young People Commissioner, and the Health Services Commissioner (who is also the Disability & Community Services Commissioner).⁸²
- 3.3 This combination of areas means that the HRC is involved in a wide diversity of matters in the ACT, including:
- Receiving and dealing with complaints under its various areas of responsibility;
 - Promoting ‘the right of people to be free from unlawful discrimination and sexual harassment’;
 - Contributing to processes of legislative review, such as that conducted for the *Human Rights Act 2004*, and is proposed for the *Discrimination Act 1991*.⁸³
- 3.4 In addition, the HRC receives applications for exemptions under the Act, such as that it considered from Raytheon in the 2009/10 reporting year.⁸⁴
- 3.5 Further, the HRC conducts what it refers to as the ‘relatively new process of early conciliation in discrimination complaints’, which involves the creation of

⁸² See ACT Human Rights Commission, <<http://www.hrc.act.gov.au/>>.

⁸³ The HRC made a submission to the five-year review of the *Human Rights Act 2004*. See ACT Human Rights Commission Annual Report 2009/10, pp.4, 6. A review of the *Discrimination Act 1991* was also discussed in *Transcript of Evidence*, 19 November 2010, pp.29-31.

⁸⁴ ACT Human Rights Commission, *Annual Report 2009/10*, p.18.

conciliated agreements which are 'registered with the ACAT and have binding effect on the parties, as if they were an order of the Tribunal'.⁸⁵

- 3.6 The HRC states that it is involved in 'significant human rights litigation' in the ACT, and expects to continue in this function. Of particular interest in this regard are matters arising from the operation of the new prison, the Alexander Maconochie Centre.⁸⁶

The HRC and the Alexander Maconochie Centre

Views on the AMC

- 3.7 The HRC voiced a number of concerns about the Alexander Maconochie Centre (AMC) from a rights perspective, including:
- regarding the operation of the Crisis Support Unit at the AMC;⁸⁷
 - mixing of prisoners of different categories;
 - lockdowns;
 - 'lack of adequate programs, industry and education for detainees';
 - 'inadequacy of facilities and supports for women to care for their babies';
 - 'video taping of strip searching';
 - 'arbitrary restrictions on private family (and conjugal) visits'; and
 - 'lack of adequate heating in cells'.⁸⁸

Ability of the HRC to inquire into matters at the AMC

- 3.8 The HRC also voiced concerns over the capacity of the Commission to perform its mandated functions at the AMC. Its annual report stated that it had launched two own-motion investigations of the Crisis Support Unit, of which the second (at that time ongoing) inquiry was 'aimed at allowing the Commissioner to understand, measure and comment on the adequacy of the

⁸⁵ ACT Human Rights Commission, *Annual Report 2009/10*, p.23.

⁸⁶ ACT Human Rights Commission, *Annual Report 2009/10*, pp.18, 6.

⁸⁷ *Transcript of Evidence*, 19 November 2010, pp.38-39.

⁸⁸ ACT Human Rights Commission, *Annual Report 2009/10*, p.14.

Crisis Support Unit in its role to provide appropriate crisis health care and increased support to detainees'.⁸⁹

- 3.9 In a more positive light, the HRC noted the operation of the Crisis Support Unit at the AMC, saying that there was a 'valuable working relationship' that had been developed between itself and 'senior Corrections, Corrections Health and Forensic Mental Health staff, enabling complaints to be dealt with in a timely and effective way.'⁹⁰
- 3.10 However, in relation to such inquiries, the Human Rights Commissioner expressed concern that 'AMC inspection powers and other work, such as increased inquiries and complaints is unfunded', and that 'systemic work is unable to be performed within existing inadequate resources'.⁹¹
- 3.11 As a result, the Commissioner suggested:
- Although claims are repeatedly made by the ACT Government that the AMC is a human rights compliant prison, there has been no real opportunity to comprehensively and objectively assess this situation through performing a Human Rights Audit under s.41 of the Human Rights Act 2004.⁹²
- 3.12 These matters are considered in the following *Committee comment*.

Committee comment

- 3.13 The Committee views with concern the matters raised by the Human Rights Commissioner. In the Committee's view successful legislative reform, such as that initiated with the advent of the *Human Rights Act 2004*, requires more than legislation alone: there need to be sufficient resources, and successful administrative arrangements in-place, to give meaning to the legislation.

⁸⁹ ACT Human Rights Commission, *Annual Report 2009/10*, p.59.

⁹⁰ ACT Human Rights Commission, *Annual Report 2009/10*, p.59.

⁹¹ ACT Human Rights Commission, *Annual Report 2009/10*, p.7.

⁹² ACT Human Rights Commission, *Annual Report 2009/10*, p.7.

- 3.14 The case of the *Human Rights Act 2004* is an important one, because the Act applies across all areas of government (and indeed private) administration and statute in the ACT.
- 3.15 The resource constraints faced by the key administrator of the Act, in the person of the Human Rights Commissioner, clearly reduce the reach and application, in-practice, of the Act in the ACT. While the ACT is right to be proud of being the first human-rights jurisdiction in Australia, by virtue of the enactment of the *Human Rights Act* in 2004, it appears that there is some way to go toward making this consistent in word and deed.
- 3.16 Indeed other jurisdictions, such as Victoria, while they introduced human rights legislation after the ACT, are arguably ahead in their implementation. If so, this means that the ACT has work to do to catch-up with a trend in which it was, in the first instance, a key initiator.
- 3.17 In the Committee's view, this is an important matter and that, given its remit, this is an on-going matter of interest to the Committee.

The Disability Commissioner

- 3.18 As noted above, the position of Disability Commissioner is vested in the Human Rights Commissioner.
- 3.19 The Human Rights Commission Annual Report for 2009-10 lists a number of matters of interest for this part of the Commission's work, including that:
- complaint numbers increase as awareness of Commissioner's role increases;⁹³
 - there are significant changes underway in the national framework relating to disability, including the consolidation of four Commonwealth Acts, which are the Racial Discrimination, Sex Discrimination, Disability Discrimination and Age Discrimination Acts;⁹⁴ and that

⁹³ ACT Human Rights Commission, *Annual Report 2009/10*, p.4.

⁹⁴ ACT Human Rights Commission, *Annual Report 2009/10*, p.15.

- the HRC has achieved status as an ‘avenue of complaint’ under the Australian Government’s accession to the Optional Protocol to the Convention on the Rights of Persons with Disabilities in 2009.⁹⁵

3.20 For the 2009/10 year, the Disability Commissioner noted in her report that the year’s work had included complaints and inquiries, among other things, regarding:

- ‘staffing constraints in the disability sector’;
- ‘chemical restraint of people with disabilities’; and
- a review of case management services to people with a disability in the ACT.⁹⁶

3.21 The Commissioner also stated her view on the outcome of a disability case brought before the former Disability Tribunal. The Commissioner said that she regarded the decision, which took 13 years for the Tribunal to conclude, was ‘was the worst Tribunal decision made in the history of the ACT Discrimination Act’.⁹⁷ She also stated that in her view:

the tone and choice of language in these paragraphs [in the Tribunal Decision] to be highly inappropriate, and coupled with the low damages awarded, reflects poorly on the former Tribunal's ability to take sexual harassment complaints seriously.⁹⁸

⁹⁵ See ACT Human Rights Commission Annual Report 2009/10, p.15: ‘The decision means individuals or groups who exhaust all avenues of redress available in Australia for breaches of the Convention will be able to take “communications” to the United Nations Committee on the Rights of Persons with Disabilities chaired by Australian Professor Ron McCallum. The Committee can investigate individual complaints once domestic remedies have been exhausted, and make recommendations to the Government concerned.

One such avenue of complaint is the ACT Human Rights Commission, which can take complaints of both disability discrimination and about services for people with a disability. The Convention has also been declared under the Australian Human Rights Commission Act 1986 to enable the Australian Human Rights Commission to conciliate complaints based on breaches of the Convention.’

⁹⁶ ACT Human Rights Commission, *Annual Report 2009/10*, pp.46, 48.

⁹⁷ Matter of Paterson & Clarke, referenced in ACT Human Rights Commission, *Annual Report 2009/10*, p.20.

⁹⁸ ACT Human Rights Commission, *Annual Report 2009/10*, p.27.

Children & Young People Commissioner

- 3.22 As for the Disability Commissioner, in the Annual Report for the HRC the Children & Young People Commissioner (CYPC) reported a rise in 'complaints and formal inquiries' for the 2009/10 year, which had 'increased by just over 220% since the last reporting period'.⁹⁹ Most of these (55%) concerned the Office for Children, Youth and Family Support (OCYFS).¹⁰⁰ Resource constraints prevented any further analysis of data on complaints.¹⁰¹
- 3.23 The Commissioner noted his contribution, over the 2009-10 reporting year, into the:
- ACT Young People's Plan 2004-2014;
 - DHCS draft policy:
 - Charter of Rights for Children & Young People in Out of Home Care;
 - JACS draft policy: AMC Women & Children Program; and
 - TAMS draft policy: Drug Driving in the ACT.¹⁰²
- 3.24 In the report, the CYPC stated his 'ongoing concerns about the lack of a comprehensive child death review mechanism within the ACT'.¹⁰³ This absence had been noted in a series of instances from 1994 through to 2009.¹⁰⁴
- 3.25 The Commissioner stated that current arrangements in the ACT do not amount to a 'child death review mechanism', 'as defined and operational in other Australian jurisdictions'.¹⁰⁵ If the ACT were to put in-place 'comprehensive child death review mechanism' it would 'contribute to the reduction and prevention of the deaths of children and young people in the ACT', while without one, the ACT 'may be losing an opportunity to properly

⁹⁹ ACT Human Rights Commission, *Annual Report 2009/10*, p.7.

¹⁰⁰ ACT Human Rights Commission, *Annual Report 2009/10*, p.30.

¹⁰¹ ACT Human Rights Commission, *Annual Report 2009/10*, p.31.

¹⁰² ACT Human Rights Commission, *Annual Report 2009/10*, p.38.

¹⁰³ ACT Human Rights Commission, *Annual Report 2009/10*, p.38

¹⁰⁴ ACT Human Rights Commission, *Annual Report 2009/10*, pp.38-40.

¹⁰⁵ ACT Human Rights Commission, *Annual Report 2009/10*, p.40.

understand and address the factors contributing to the deaths of children and young people.’¹⁰⁶

Health Services Commissioner

- 3.26 In her account of her work during the 2009/10 reporting year, the Health Services Commissioner noted the following, which had implications for her area of responsibility:
- the legislative implementation of national registration of health practitioners in the ACT;¹⁰⁷
 - amendments to the *Health Records (Privacy and Access) Act 1997*, following the closure of a number of suburban GP practices;¹⁰⁸ and
 - the discovery that psychologists were not subject to mandatory reporting of child abuse under the *Children and Young People Act 2008*, and subsequent communications to the responsible Minister.¹⁰⁹
- 3.27 As for the other Commissioners in the HRC, the Health Service Commissioner reported an increase in complaint numbers in the 2009/10 reporting year, in which the 300 complaints represented a ‘20% increase on the total number of incoming matters compared to the previous reporting period, and a 32% increase compared to the 2007-08 reporting period’.¹¹⁰
- 3.28 The Commissioner noted that this ‘increase in complaint numbers was due in part to the opening of the Hume Health Centre at the Alexander Maconochie Centre, for which the Commissioner did not receive additional funding’.¹¹¹
- 3.29 As a result, the Commissioner suggested, the 2009/10 reporting year saw conditions under which complaint numbers ‘reached a new high, while staffing numbers remained at an all time low’.¹¹² At the same time, the

¹⁰⁶ ACT Human Rights Commission, *Annual Report 2009/10*, p.40.

¹⁰⁷ ACT Human Rights Commission, *Annual Report 2009/10*, pp. 58-59.

¹⁰⁸ ACT Human Rights Commission, *Annual Report 2009/10*, pp. 60-61.

¹⁰⁹ ACT Human Rights Commission, *Annual Report 2009/10*, p.62.

¹¹⁰ ACT Human Rights Commission, *Annual Report 2009/10*, p.51.

¹¹¹ ACT Human Rights Commission, *Annual Report 2009/10*, p.50.

¹¹² ACT Human Rights Commission, *Annual Report 2009/10*, p.50.

Commissioner's expenses 'increased substantially' because expenditure 'on peer reviews and expert opinions increased by 400% during the financial year'. This trend, she suggested, was 'likely to continue'.¹¹³

3.30 This, the Commissioner suggested, had a negative impact on her ability to conduct 'systemic' work, rather than respond solely to complaints. When asked by the Committee, through a question on notice, to detail systemic issues that needed attention, the response listed:

- management of surgery waiting lists;
- health services for people in detention;
- management of health records; and
- issues arising from complex individual cases.¹¹⁴

National registration of health practitioners

3.31 Pressures on the budget of the Health Services Commissioner were, the Commissioner suggested, likely to be increased by the advent of national registration for health practitioners. In her report, the Commissioner stated that health complaints have particular characteristics which make them expensive to investigate:

Complaints will often involve concerns being raised about a number of different entities. For example, one complaint might include concerns about a general practitioner, a nurse and a specialist. It may also include complaints about one or more health facilities in which those people work. Each complaint about an individual health professional needs to be discussed with separate health profession boards.¹¹⁵

3.32 Conversely, the Commissioner suggested, 'complaints that are initiated by the Commissioner into the practices of a particular health professional will often involve investigating the treatment provided to multiple patients'.¹¹⁶

¹¹³ ACT Human Rights Commission, *Annual Report 2009/10*, p.50.

¹¹⁴ See response to Question on Notice No.83, <<http://www.legassembly.act.gov.au/downloads/issues-papers/71-90.PDF>>, viewed 28/03/2011.

¹¹⁵ ACT Human Rights Commission, *Annual Report 2009/10*, p.51.

¹¹⁶ ACT Human Rights Commission, *Annual Report 2009/10*, p.51.

- 3.33 'Historically', the Commissioner suggested, she has been able 'to briefly discuss clinical issues with local board members'. But this 'will not be available to the Commissioner under the new scheme for the national registration of health practitioners', and more 'expert opinions and clinical advice will need to be purchased'.¹¹⁷

Response by the Attorney

- 3.34 In Question on Notice no.84, the Attorney was asked to provide an update on what the financial impacts of the new National Registration and Accreditation Scheme will be on your [the Health Services Commissioner] office, and what progress has been made with ACT Health to resolving these finances?¹¹⁸
- 3.35 The Attorney responded that:
- The Government has committed \$135,170 per annum for the years 2010-11 and 2011-12 to assist the Health Services Commissioner to undertake additional work associated with the Scheme. Discussions with the Commissioner are ongoing in relation to her practical experience of the new system since its inception.¹¹⁹

Resourcing for the Human Rights Commission

- 3.36 Each of the Commissioners in the HRC made comment on resourcing in the HRC's annual report for 2009/10. This included references to Commissioners doing un-funded work in order meet statutory obligations and indications from the Commissioners that they had insufficient funding to perform 'systemic work', rather than only responding to complaints alone.¹²⁰

¹¹⁷ ACT Human Rights Commission, *Annual Report 2009/10*, p.50.

¹¹⁸ See Question on Notice No.84 and response, see <http://www.legassembly.act.gov.au/downloads/issues-papers/71-90.PDF>, viewed 28/03/2011.

¹¹⁹ See Question on Notice No.84 and response, see <http://www.legassembly.act.gov.au/downloads/issues-papers/71-90.PDF>, viewed 28/03/2011.

¹²⁰ ACT Human Rights Commission, *Annual Report 2009/10*, pp.4 & 7. Resource constraints on the HRC are also discussed in *Transcript of Evidence*, 19 November 2010, pp.31-38.

3.37 Comment was also made in the report about resourcing for the Commission as a whole. First, the Commission's current staffing budget was 'insufficient to cover the cost of existing positions', a situation that had exacerbated by 'an unusually high proportion of senior staff taking parental leave (which equalled to approximately \$1000,000 in salary costs)', which 'made it impossible for the Commission to fill a number of vacancies'.¹²¹

3.38 More importantly, the Commission stated in its report, the Commission was subject to an efficiency dividend at a higher rate than many small government agencies in the ACT:

The 'efficiency dividends', as announced in the last two ACT Government budgets, have also placed on-going pressure on the Commission, with the agency being required to reduce [p.6.] expenditure by up to \$56,000 per year in future years. Because the Commission is corporately aligned with the Department of Justice & Community Safety, it is not considered to be a 'small agency' for the purposes of determining the size of the efficiency dividend. The Commission therefore needs to find savings of 1%, compared with other small stand-alone agencies, to which an efficiency dividend of 0.5% will apply.¹²²

3.39 The Commission stated in its report that it anticipated that the only way it could arrange for this progressive reduction in financial resources would 'to cut service delivery', which could 'only be done by reducing staffing levels'.¹²³

3.40 The implications of this, the Commission stated in its report, were that it would be unable to perform a number of the functions for which it was created, and which was obliged to perform by virtue of the *Human Rights Act 2004*:

Due to a range of factors, including an increase in complaint numbers and an increase in responsibilities, during the reporting period the Commission struggled to undertake any significant activities beyond its most basic statutory responsibilities. As a result, a number of the

¹²¹ ACT Human Rights Commission, *Annual Report 2009/10*, p.5.

¹²² ACT Human Rights Commission, *Annual Report 2009/10*, pp.5-6.

¹²³ ACT Human Rights Commission, *Annual Report 2009/10*, pp.5-6.

Commission's broader statutory obligations are currently receiving inadequate attention, with some simply being unable to be met at all. Of particular concern is the Commission's current incapacity to provide timely and informed advice to Government, and to undertake human rights audits and systemic reviews.¹²⁴

3.41 In brief, the Commission noted:

without additional resources the capacity of the Commission to adequately meet the objects and functions of the ACT Human Rights Commission Act 2005 and related legislation remains compromised.¹²⁵

3.42 This matter will be further discussed in *Committee comment* below.

Relationship to the Executive

3.43 During its discussion in the public hearing on Annual Reports 2009/10 in the Justice and Community Safety portfolio area, the Committee asked a number of questions regarding the relationship of the Commission to the Executive.

3.44 It has been noted above that the Commission is subject to a higher rate of efficiency dividend by virtue of its administrative links with the then Department of Justice and Community Safety. The Committee was told that this linkage, in part, consisted in an arrangement in which the Commission purchased administrative services from the Department. A response to a question on notice detailed the services provided under this arrangement, and stated that the amount paid by the Commission to the Department for administrative services was \$300,000 in the 2009/10 reporting year.¹²⁶

Committee comment

3.45 The Committee is concerned both about the funding position of the Human Rights Commission, and its administrative ties to government.

¹²⁴ ACT Human Rights Commission, *Annual Report 2009/10*, p.5.

¹²⁵ ACT Human Rights Commission, *Annual Report 2009/10*, p.6.

¹²⁶ See Question on Notice no.12, <<http://www.legassembly.act.gov.au/downloads/issues-papers/01-20.pdf>>, viewed 28/03/2011.

- 3.46 The Commission has told the Committee that it is unable to meet its statutory obligations with its current level of funding, and the Committee is, as a result, concerned that there may be insufficient resources to administer the *Human Rights Act 2004*, and that this may prevent the Act achieving its full significance in the public life of the ACT.
- 3.47 The Committee also considers that the Commission's structural relationship to executive government is problematic. In the Committee's view, the fact that the Commissioners appear before the Committee as officers of the Attorney-General (as Minister for the Department of Justice and Community Safety) is problematic for the Commission's independence as a statutory authority. The Committee notes, *inter alia*, that Questions on Notice for the Commission during this inquiry, have been received, and are responded to, through the Attorney's office. This too appears at odds with an independent role for the Commission.
- 3.48 In the Committee's view, anomalies in the Commission's position with regard to the efficiency dividend reinforce the sense that this is unsatisfactory. The Commission has a higher rate of efficiency dividend applied to it because it is seen as just part of a bigger agency. According to the government, the Commission benefits from the purchase of administrative services, but it is not clear to the Committee whether the Commission has at any stage been able to exercise an option to purchase those services elsewhere or to provide them in-house.
- 3.49 Considering the broader picture, the Committee takes the view that if the *Human Rights Act 2004* is to function properly in the ACT, the Human Rights Commission must be properly independent and sufficiently and independently funded.

RECOMMENDATION 2

- 3.50 **The Committee recommends that the ACT Human Rights Commission be allocated a budget appropriation as an *Expense on behalf of the Territory*, to ensure its independence.**

4 CORRECTIONS

Introduction

- 4.1 The *Report on Government Services 2011* shows comparative data on corrections in the eight state and territory jurisdictions in Australia, and for Australia overall. Among other things, it shows that the ACT has the lowest imprisonment rates of any of these jurisdictions,¹²⁷ and the second-lowest rates of Indigenous incarceration (after Tasmania).¹²⁸
- 4.2 The ACT also has the highest percentage of 'eligible prisoners employed' (over 90%) and the highest percentage of prisoners enrolled in education and training (again over 90%), as reported for the 2009/10 reporting year.¹²⁹ Consistent with these characteristics, ACT prisoners spent more time out of their cells, averaging more than 14 hours per day.¹³⁰
- 4.3 ACT prisoners were the most expensive to maintain in prison, with costs in excess of \$650 per prisoner per day, compared with Tasmanian, the next most expensive jurisdiction, at costs of approximately \$350-400 per prisoner per day. Costs per prisoner in all other state and territory jurisdictions lay within the range of \$150-\$300 per day.¹³¹

The Alexander Maconochie Centre

- 4.4 The Department of Justice and Community Services Annual Report 2009/10 states that the Alexander Maconochie Centre (AMC) was 'developed as

¹²⁷ *Report on Government Services 2011*, Figure 8.2, 'Imprisonment rates, total prisoners, five-year trends'.

¹²⁸ *Report on Government Services 2011*, Figure 8.3, 'Indigenous and non-Indigenous crude imprisonment rates, 2009-10'.

¹²⁹ *Report on Government Services 2011*, Figure 8.9, 'Percentage of eligible prisoners employed, 2009-10' & figure 8.21, 'Percentage of prisoners enrolled in education and training, 2009-10'.

¹³⁰ *Report on Government Services 2011*, Figure 8.8, 'Time out-of-cells (average hours per day), by security level, 2009-10'.

¹³¹ *Report on Government Services 2011*, Figure 8.11, 'Total cost per prisoner per day, 2009-10'.

Australia's first human rights compliant prison', with a 'strong focus on rehabilitation and community engagement'.¹³²

Rehabilitation programs

4.5 According to the report, every prisoner admitted to the AMC is reviewed by its Sentence Planning Group, which 'drafts and revises rehabilitation plans' for prisoners.¹³³ Framed under the AMC Drug Strategy, which focuses on 'supply reduction; demand reduction; and harm reduction', this can include participation in alcohol and other drug (AOD) rehabilitation programs including but not limited to:

- The AOD 'Therapeutic Community';
- 'First Steps' ('a six session AOD education, awareness and relapse prevention program');
- 'Back in Control' ('a 16 session relapse prevention program');¹³⁴
- Adult Sex Offender Program;
- Cognitive Self Change Program (for men and women, separate programs);
- Family Violence Cognitive Self Change;
- 'Responsible, Respectful Relations' (which 'caters for young people who exhibit unlawful or inappropriate sexual behaviour');
- 'Exploring Change';
- Violent Offender Program; and
- Anger Management.¹³⁵

4.6 There is also a Women and Children Program in operation at the AMC.¹³⁶

4.7 The perceived success and evaluation of these programs is considered below.

¹³² JACS Annual Report 2009/10, p.43.

¹³³ JACS Annual Report 2009/10, p.53.

¹³⁴ JACS Annual Report 2009/10, p.49.

¹³⁵ JACS Annual Report 2009/10, p.48.

¹³⁶ JACS Annual Report 2009/10, p.54.

Employment-oriented programs

4.8 The report also references vocational education programs at the AMC.¹³⁷ These include the Prisoner Employment Program,¹³⁸ the opening of the Transitional Release Centre (TRC),¹³⁹ and the launch of the 'New Employment Options' (NEO) website in May 2009.¹⁴⁰ The report describes various work experience and employment programs in areas such as horticulture; barbering and hairdressing; and recycling, among others.¹⁴¹

4.9 When asked about the targets for these programs, and their effectiveness, the then Executive Director, Corrective Services, Mr Ryan suggested that :

It is an embarrassing figure to give because the target is to have 100 per cent of people on release going to either a job or training leading to a job. We are nowhere near that yet, and it should be eminently achievable in the ACT.¹⁴²

4.10 The Executive Director attributed the gap between current targets and outcomes to the fact that:

Our prisoner employment program, compared to, say, Singapore's, is not as widely known or as well supported in all parts of the ACT community. I think their program is successful because it is based very strongly on compassion and forgiveness, and we have yet to get that across.¹⁴³

4.11 These matters are considered in *Committee comment* below.

¹³⁷ JACS Annual Report 2009/10, p.53.

¹³⁸ JACS Annual Report 2009/10, pp.51-53.

¹³⁹ JACS Annual Report 2009/10, p.52.

¹⁴⁰ JACS Annual Report 2009/10, p.53.

¹⁴¹ JACS Annual Report 2009/10, p.52.

¹⁴² Mr Ryan, *Transcript of Evidence*, 19 November 2010, p.63.

¹⁴³ Mr Ryan, *Transcript of Evidence*, 19 November 2010, pp.63-64;

Evaluation of rehabilitation programs

4.12 The JACS Annual Report 2009/10 states that:

An evaluation of drug policies and services provided at the AMC, including whether a needle exchange program would be of benefit, is being conducted under the joint auspices of the Department and ACT Health.¹⁴⁴

4.13 In the Committee's public hearing on annual reports 2009/10, the Department was asked about success rates for drug and alcohol treatment at the AMC; the Therapeutic Community program; and about successful completions of AOD programs.¹⁴⁵

4.14 A response to a Question on Notice about completions of AOD programs at the AMC suggested that 85% of participants had completed the Therapeutic Community program; 48% had completed First Steps; and 30% had completed Back in Control. The main reasons for non-completion of programs were: that participants had been bailed; that they had been subject to a change in classification; that participants had withdrawn or had not attended the program; or that they had been dismissed from the program due to lack of participation.¹⁴⁶

4.15 In the Committee's public hearing, Ms Bresnan MLA asked the Executive Director, Corrective Services, about targets for the Alcohol and Other Drugs programs, and evaluation processes to ascertain whether these targets were being met. A question was also asked as to whether this was subject to a formal process. In response, the Executive Director told the Committee that this evaluation work was being conducted by 'a number of committees' and that 'we think is the best way to go now that we have had more than a year's experience with it'.¹⁴⁷

¹⁴⁴ JACS Annual Report 2009/10, p.54.

¹⁴⁵ *Transcript of Evidence*, 19 November 2010, pp.50-54, 54-55.

¹⁴⁶ Response to Question on Notice 15, available at: <http://www.legassembly.act.gov.au/downloads/issues-papers/01-20.pdf>, viewed 29/03/2011.

¹⁴⁷ Mr Ryan, *Transcript of Evidence*, 19 November 2010, pp.53-54.

4.16 The Executive Director was also asked:

when we can expect to see some performance indicators measured against recidivism and when we can expect to see some reporting against the rehab focus, which is very much a big part of the prison.¹⁴⁸

4.17 Mr Ryan responded, telling the Committee that:

I would think probably not for a couple of years. But now is the time we should be starting to look at how we are going to measure those things and develop a model. That in itself will probably take a year or so.¹⁴⁹

4.18 The implications of these matters are considered in *Committee comment* below.

Measures to control drug use at the AMC

4.19 During the Committee's public hearing on 2009/10 Annual Reports, Members asked a number of questions about the control of drug use at the AMC. This involved questions about drug seizures and the physical prevention of drugs being taken into the AMC, and about the testing of prisoners through urine analysis.¹⁵⁰

4.20 A question was put to the Attorney about the effectiveness of measures to prevent the importation of drugs into the AMC. The Attorney took this as a Question on Notice, and in his response stated that:

During the 2009-10 financial year there [had] been 17 instances of drugs and drug related implements being seized before they could enter the Alexander Maconochie Centre.¹⁵¹

4.21 In relation to the detection of drug use through urine analysis, questions were put to the Attorney as to whether it had been possible to track the extent of

¹⁴⁸ *Transcript of Evidence*, 19 November 2010, p.59.

¹⁴⁹ *Transcript of Evidence*, 19 November 2010, p.59.

¹⁵⁰ *Transcript of Evidence*, 19 November 2010, pp.54-56.

¹⁵¹ Response to Question on Notice No.16, available at: <http://www.legassembly.act.gov.au/downloads/issues-papers/01-20.pdf>, viewed 29/03/2011.

drug use in the AMC; which drugs were commonly used; and whether it was possible to advise as to quantities being used.¹⁵²

4.22 In the first instance, the Attorney advised that regular and routine urine analysis was performed on all prisoners entering the AMC, as was both targeted and random testing of the AMC's prisoner population.¹⁵³

4.23 As to the types of illegal drug used within the prisoner population, the Attorney advised that urine analysis testing:

indicates that the drugs most commonly used by prisoners whilst incarcerated at the AMC are cannabinoids and methadone, with opiates, methamphetamines, valium based drugs, buprenorphine and cocaine appearing to a lesser extent.¹⁵⁴

4.24 Regarding the amount of these drugs used, the Attorney advised that:

It is not possible to determine how much of any given drug is used by prisoners. When a prisoner returns a positive urinalysis result, the test determines only how much of the drug was in the prisoner's system at the time of testing. For example, if a prisoner used a drug, and was tested two days later, the test result would not be an accurate indication of the amount of the drug used, as the amount of the drug in the prisoner's system would have decreased between the time it was taken and the time of testing. Other variables which have an effect on determining the quantity of drugs taken by a prisoner include the purity of the drug, how the drug has been ingested and the prisoner's metabolism.¹⁵⁵

¹⁵² Response to Question on Notice 18, available at:
<<http://www.legassembly.act.gov.au/downloads/issues-papers/01-20.pdf>>, viewed 29/03/2011.

¹⁵³ Response to Question on Notice 18, available at:
<<http://www.legassembly.act.gov.au/downloads/issues-papers/01-20.pdf>>, viewed 29/03/2011.

¹⁵⁴ Response to Question on Notice 18, available at:
<<http://www.legassembly.act.gov.au/downloads/issues-papers/01-20.pdf>>, viewed 29/03/2011.

¹⁵⁵ Response to Question on Notice 18, available at:
<<http://www.legassembly.act.gov.au/downloads/issues-papers/01-20.pdf>>, viewed 29/03/2011.

- 4.25 However, the Attorney later advised the Committee his advice was, in part, incorrect:

I stated in my response that 'ACT Corrective Services (ACTCS) has a urinalysis testing regime whereby all prisoners are tested on admission to the prison.' ACTCS does indeed have a Drug Testing Procedure in place which states that 'all prisoners will be given a 'base line' drug test within 72 hours of their induction into ACTCS custody.' I have been advised, however, that testing has not in fact been undertaken of all new admissions within 72 hours.¹⁵⁶

- 4.26 As a result, the Attorney advised the Committee that:

the number of admission tests appears to have been overstated. On the other hand the overall number of tests was actually higher than previously reported.¹⁵⁷

- 4.27 The correct figures, the Attorney advised the Committee, were for the 2009-10 financial year, as follows:

There was a total of 739 urinalysis tests administered to a total of 344 prisoners. Of these, 46 prisoners were subject to disciplinary action. Of the 739 urinalysis tests administered, 672 were random or targeted tests and 67 were tests administered on admission.¹⁵⁸

- 4.28 The Attorney went on to address the circumstances that had led to the incorrect answer being provided to the Committee, and his intended response:

I assure you I take the provision of incorrect data seriously. Indeed I have asked the independent reviewer Keith Hamburger and his firm Knowledge Consulting to investigate the implementation of drug testing procedures at the AMC and the extent to which the Government has been misinformed about drug testing practices. The review will also examine accountability, monitoring, review and evaluation systems and

¹⁵⁶ Amended response to Question on Notice 18, available at: <http://www.legassembly.act.gov.au/downloads/issues-papers/01-20.pdf>, viewed 29/03/2011.

¹⁵⁷ Amended response to Question on Notice 18, available at: <http://www.legassembly.act.gov.au/downloads/issues-papers/01-20.pdf>, viewed 29/03/2011.

¹⁵⁸ Amended response to Question on Notice 18, available at: <http://www.legassembly.act.gov.au/downloads/issues-papers/01-20.pdf>, viewed 29/03/2011.

practices in ACT Corrective Services more generally. This is in addition to the independent review of the first 12 months of operation of the Alexander Maconochie Centre.¹⁵⁹

4.29 These matters are considered in the following *Committee comment* below.

Committee comment

4.30 In the Committee's view, a number of matters for comment and concern were raised in the Committee's line of questioning about the AMC. These focussed on employment and drug rehabilitation programs in particular.

4.31 The Committee is aware of two recent reviews (the Hamburger Report on operations at the AMC and the Burnet report on the evaluation of drug policies and services at the AMC) which consider programs at the AMC. These were released some months after the Committee's annual reports hearings.¹⁶⁰

Employment programs

4.32 The Committee commends the government on its commitment to vocational education and employment programs, and welcomes the quantum of resources put against this by government relative to other state and territory jurisdictions. While the Committee recognises that the employment program at the AMC is in its infancy, wherever there are significant outcomes at stake, and where significant amounts of public money being expending, it is vital that these programs are subject to valid, rigorous assessment and evaluation.¹⁶¹

4.33 Recent reviews and evaluations have provided some sense of challenges and progress in programs at the AMC. However it is Committee's view that it is

¹⁵⁹ Amended response to Question on Notice 18, available at:

<<http://www.legassembly.act.gov.au/downloads/issues-papers/01-20.pdf>>, viewed 29/03/2011.

¹⁶⁰ Knowledge Consulting, *Independent Review of Operations at the Alexander Maconochie Centre, ACT Corrective Services*, 12 March 2011, available at:

<http://www.justice.act.gov.au/resources/attachments/Report_of_Independent_Review_of_AMC_12_March_2011.pdf>, accessed 2/05/2011, and Stoové, M., Kirwan, A. (2010) *External component of the evaluation of drug policies and services and their subsequent effects on prisoners and staff within the Alexander Maconochie Centre*, Burnet Institute, Melbourne, Australia, available at:

<<http://www.health.act.gov.au/c/health?a=sendfile&ft=p&fid=1302161190&sid>>, accessed 2/05/2011.

vital that such evaluation processes be integrated into vocational education and employment programs, rather than being conducted on an occasional or periodic basis. It is a matter of great concern that these evaluation processes were not integrated into programs from their inception. Immediate steps should be taken to establish evaluation processes of this kind so as to create base-line data for programs.

RECOMMENDATION 3

- 4.34 **The Committee recommends that Corrections institute formal, on-going, quantitative and qualitative evaluation processes for the Alexander Maconochie Centre's employment program, and that base-line data be established, at the earliest possible opportunity.**

Evaluation of rehabilitation programs

- 4.35 The Committee also considers it a matter of great concern that some time after the opening of the AMC, and some time also after the commencement of drug rehabilitation programs, and related programs, that Corrections is still conducting planning toward formal evaluation of the programs.
- 4.36 As noted for vocational education and employment programs, this is contrary to contemporary best-practice, in which it is usual for evaluation measures to be integrated into programs from their inception. It appears now an urgent matter that a formal process be adopted so that base-line and subsequent data can be established for the AMC rehabilitation programs on an on-going basis.
- 4.37 In the Committee's view, such an approach is also vital if rehabilitation programs at the AMC are to develop practices suitable for the particular environment in which they operate, and for the particular client groups they are intended to service. Such an approach is necessary if the AMC is to fulfil its intended purpose in providing pathways to rehabilitation, and if the AMC is successfully to adapt to the changing circumstances of the jurisdiction it serves.
- 4.38 It is the Committee's view that it is not good administrative practice to leave this aspect of the AMC's rehabilitation programs un-formalized. Formal processes should be instituted at the earliest possible opportunity, and be subjected to on-going development and improvement.

RECOMMENDATION 4

- 4.39 **The Committee recommends that Corrections establish formal, on-going quantitative and qualitative evaluation processes for drug and other rehabilitation programs at the Alexander Maconochie Centre as a matter of urgency, and that base-line data be established for the programs at the first possible opportunity.**

Measures for controlling drug use at the AMC

- 4.40 The Committee wishes to register its concern at the poor advice given to the Attorney by his officers, and the apparent non-compliance with the drug-testing regime at the AMC.
- 4.41 The Committee wishes to make the point that while the stated aims of the AMC with respect to rehabilitation are admirable goals, they are in danger of being undermined if officers do not execute policy in a consistent and thorough way.
- 4.42 It is the Committee's view that compliance with the rehabilitation framework at the AMC can only be achieved where there is a testing and control regime that is effective.
- 4.43 The Committee is aware that the Attorney has issued directions to his officers in Corrections, to comply with policy on drug testing. While the Committee wishes to make no further recommendation in addition to the Attorney's directions, it wishes to signal, at this point, that this is, in its view, a matter that is integral to the proper functioning of the AMC, and to the success of the vision behind it. As such the Committee wishes to maintain a watching-brief, and asks that the Attorney brief it on these matters in six months time.

Other matters

- 4.44 There are a number of other matters regarding the AMC which the Committee considers significant.
- 4.45 First, the Committee welcomes the outcome of the Hamburger review of the AMC. As noted above, it is especially important for a new facility to be subject to evaluation. In the Committee's view this is of central importance not only in checking progress against the corrections philosophy that lies behind the

AMC, but also in providing an evidential basis with which to steer future policy, and to respond to the practical and philosophical challenges that will inevitably emerge over time. Prisons are complex institution, it is important to establish good base-line data to give the AMC the best possible basis on which to meet its remit.

- 4.46 Second, it appears that the prisoner population has reached quite high levels for the facility. The Committee notes that questions were asked about this in public hearings. It does not appear to be the case that the AMC is over-crowded as such, but there is a good basis on which to suggest that there should be plans in place that would allow Corrections to manage accommodation needs if the prison population increases further.
- 4.47 While Corrections officers told the Committee that it was difficult to predict demand, it is in the Committee's view incumbent upon public officers to plan for future contingencies to the extent that is possible. The Committee anticipates that in future inquiries into Annual Reports corrections will be able to provide a more assured set of responses to these questions, which will assuredly be asked.
- 4.48 Third, this report has noted elsewhere, in its discussion of the Human Rights Commission, that there is a disjunction between the characterisation of the AMC as a 'human rights prison' and the inability, due to resource constraints, for the human rights status of the prison to be inquired into by the Human Rights Commissioner.
- 4.49 Moreover, as the Committee has noted above, the close structural relationship between the Human Rights Commission and executive government in the ACT is a further hindrance to the Commission's independent role in making inquiries under the *Human Rights Act 2004*, and this has consequences for the AMC as it does for other aspects of public administration in the ACT, across the board.
- 4.50 In the Committee's view the Commission must be independent, and independently-funded, if the ACT is ever to claim beyond doubt that the AMC

is, indeed, 'Australia's first human rights compliant prison', as claimed in the Department of Justice and Community Safety's Annual Report 2009/10.¹⁶²

- 4.51 This is addressed in Chapter 3 of this report, in Recommendations Two (paragraph **Error! Reference source not found.**), Three (paragraph 3.50), and Four (paragraph **Error! Reference source not found.**).

¹⁶² *JACS Annual Report 2009/10*, p.43.

5 ACT POLICING

Introduction

- 5.1 The *Report on Government Services 2011* states that objectives for police services in Australian jurisdictions should be:
- to allow people to undertake their lawful pursuits confidently and safely;
 - to bring to justice those people responsible for committing an offence;
 - to promote safer behaviour on roads;
 - to support the judicial process to achieve efficient and effective court case;
 - management and judicial processing, providing safe custody for alleged offenders; and
 - ensuring fair and equitable treatment of both victims and alleged offenders.¹⁶³
- 5.2 The Report on Government Services adds that these objectives should be ‘met through the provision of services in an equitable and efficient manner’.¹⁶⁴

Characteristics of the ACT

- 5.3 Each of the objectives listed above forms the basis for reporting for each of the state and territory jurisdictions in Australia in the *Report on Government Services 2011*. This shows, among other things, that the ACT, in comparison with other jurisdictions:
- had the lowest rate for road deaths;¹⁶⁵ and ‘estimated victims of robbery’;¹⁶⁶
 - had a medium-to-high rate for ‘selected personal crimes’ and ‘estimated victims of assault and sexual assault’, in both cases the third highest after the Northern Territory and Tasmania;¹⁶⁷

¹⁶³ *Report on Government Services 2011*, 6.11.

¹⁶⁴ *Report on Government Services 2011*, 6.11.

¹⁶⁵ *Report on Government Services 2011*, Figure 6.35, “Road deaths per 100 000 registered vehicles”.

¹⁶⁶ *Report on Government Services 2011*, Figure 6.19, “Estimated victims of robbery, 2008-09”.

- had a medium-to-high rate for ‘estimated household victims of selected property crimes’, being the third highest after the Northern Territory and Western Australia;¹⁶⁸
- 5.4 In other areas, including ‘victims of homicide’,¹⁶⁹ ‘estimated victims of motor vehicle theft’,¹⁷⁰ and ‘juvenile diversions as a proportion of juvenile offenders’,¹⁷¹ ACT indictors were in a middle-band for Australian state and territory jurisdictions.

Priorities

- 5.5 The Department of Justice and Community Safety Annual Report 2009/10 listed a number of areas nominated for attention under the Ministerial *Direction for ACT Policing*:
- ‘optimise mobile technology in police vehicles and communications systems to increase police efficiency, visibility and exchange of information with the community;
 - work with other ACT agencies to combat alcohol related violence in public places;
 - continue to target traffic offences and drink driving with the aim of improving road safety within the Territory;
 - contribute to an improvement in public safety and perceptions of public safety and confidence in police through community engagement, particularly through the establishment of the Suburban Policing Consultative Committees and an enhanced internet presence work with other criminal justice agencies to achieve better outcomes for victims of crime;

¹⁶⁷ *Report on Government Services 2011*, Figure 6.17, “Estimated victims of selected personal crimes”, 2008-09;

¹⁶⁸ *Report on Government Services 2011*, Figure 6.22, “Estimated household victims of selected property crimes, 2008-09”.

¹⁶⁹ *Report on Government Services 2011*, Figure 6.21, “Victims of homicide - time series”.

¹⁷⁰ *Report on Government Services 2011*, Figure 6.25, “Estimated victims of motor vehicle theft, 2008-09”.

¹⁷¹ *Report on Government Services 2011*, Table 6.3, “Juvenile diversions as a proportion of juvenile offenders”.

- work with other ACT agencies to develop an ACT Aboriginal Justice Agreement'.¹⁷²

Operations

- 5.6 Specific ACT Policing initiatives in the 2009/10 reporting year included:
- Operation Alanova, (to address alcohol-related harms);
 - 'Strategic Priority-Policing of Entertainment Districts';¹⁷³
 - Operation Unite, ('a collective action by jurisdictions on alcohol misuse');¹⁷⁴ and
 - Operation Neapolis, ('targeting identified recidivist offenders'),¹⁷⁵
 - Operation Patronus, targeting recidivism in property crime;¹⁷⁶ and
 - the introduction of Criminal Infringement Notices (CINs), which were 'introduced December 2009 for defacing premises (private, public); urinating in public place; consumption of liquor in prescribed public place'.¹⁷⁷

Information-oriented operations

- 5.7 Two operations in particular were intended to reduce crime by providing a better level of intelligence.
- 5.8 The first of these was Operation Anzio, which was described as a 'DNA back capture program', to obtain
- forensic samples ... from any person convicted of an offence in the last five years which carries a penalty of more than 12 months imprisonment'

¹⁷² ACT Policing, *Annual Report 2009/10*, pp.14-15.

¹⁷³ ACT Policing, *Annual Report 2009/10*, p.19.

¹⁷⁴ ACT Policing, *Annual Report 2009/10*, p.19.

¹⁷⁵ ACT Policing, *Annual Report 2009/10*, p.24.

¹⁷⁶ *Transcript of Evidence*, 19 November 2010, pp.110-11.

¹⁷⁷ ACT Policing, *Annual Report 2009/10*, p.28.

[which] are then entered onto the National Automated Fingerprint Identification System (NAFIS).¹⁷⁸

- 5.9 The second was the Recognition and Analysis of Plates Identified (RAPID) system, which ‘now has a dedicated full-time team to target unlicensed drivers and unregistered vehicles’, to target ‘drive without entitlement’ offenders. According to ACT Policing, these offenders are ‘heavily over-represented in figures for motor vehicle collisions resulting in serious injury’ and targeting these offences ‘removes offenders from the roads pre-emptively, before they can become involved in collisions causing injury or death’.¹⁷⁹

Community engagement

- 5.10 In the public hearing of 19 November 2010, the Committee discussed various aspects of community engagement with representatives of the Department of Justice and Community Safety and ACT Policing. The included: Community Consultative Committees; Police Scouts; Police and Citizens Youth Club (PCYC); Indigenous Community Liaison, and Neighbourhood Watch.¹⁸⁰
- 5.11 The ACT Policing Annual Report for 2009/10 highlighted two programs that had community engagement implications:
- the ‘Front Up’ Program, aimed at reducing incidence of breaches of bail or failure to appear in court for Indigenous people; and
 - a trial of Court Attendance Notices, ‘to expedite minor matters through the judicial system’.¹⁸¹
- 5.12 In both cases these were intended to reduce rates of non-compliance with court processes, and to reduce offending that may stem from this. These initiatives were consistent with programs, indicated above (under the heading ‘Diversion’, paragraphs 2.39-2.55), which seek to apply alternative court and sentencing procedures to at-risk groups for offending.

¹⁷⁸ ACT Policing, *Annual Report 2009/10*, p.24.

¹⁷⁹ *Report on Government Services 2011*, 6.79.

¹⁸⁰ *Transcript of Evidence*, 19 November 2010, pp.98-99, pp.103-104, and pp.109-110.

¹⁸¹ ACT Policing, *Annual Report 2009/10*, p.28.

Reporting

- 5.13 For performance-reporting, the ACT Policing Annual Report 2009/10 stated that reporting was conducted against four 'key outputs', and that each output is 'assessed at a whole of service level against seven key performance indicators: 1. Level of crime; 2. Perceptions of crime; 3. Police responsiveness; 4. Public confidence in Police; 5. Road safety; 6. Supporting the judicial process; and 7. Crime prevention.¹⁸²
- 5.14 Section A7 of the ACT Policing Annual Report presents data on performance against Key Performance Indicators (KPIs) formulated on this basis. Amongst these results, there are categories in which ACT Policing met KPIs and categories for which it did not. For each KPI there is a percentage given for variation from the target.

Outcomes below KPIs

- 5.15 For some indicators, results below stated KPIs showed less than 10% variance from targets. These are not discussed here. Indicators for which variation was greater than 10% were:
- 'Percentage of offences against property cleared', showing a result 27.3% under the stated target;
 - 'Percentage of persons who are concerned about becoming a victim of housebreaking in the next 12 months', showing a result 22.1% above the target;¹⁸³
 - 'Number of road crashes resulting in death per 100,000 population', showing a result 17.1% above the target;
 - 'Percentage of persons who self-report to driving 10km per hour or more over the speed limit', showing a result 17.6% above the target.¹⁸⁴

¹⁸² ACT Policing, *Annual Report 2009/10*, p.2.

¹⁸³ ACT Policing, *Annual Report 2009/10*, p.36.

¹⁸⁴ ACT Policing, *Annual Report 2009/10*, p.37

Outcomes better than KPIs

- 5.16 Conversely there were a number of indicators for which ACT Policing had significantly *exceeded* (that is, done better than) their target, such as for 'Response times for Priority One Incidents within 8 minutes'; 'Response times for Priority Two Incidents within 20 minutes'; 'Number of established complaint issues relating to persons in custody'; 'Percentage of persons who self-report to driving while suspecting they are over the prescribed alcohol limit'; and 'Percentage of cases finalised by a not-guilty verdict or otherwise withdrawn' and 'Percentage of cases otherwise resolved'.¹⁸⁵
- 5.17 ACT Police also registered outcomes better than for KPIs on 'speeding cars, dangerous or noisy driving'; 'louts/gangs'; 'drunken/disorderly behaviour', and for diversionary programs.¹⁸⁶

Errors in KPIs

- 5.18 A further departure from targets was registered in relation to: 'Number of established complaint issues against police', showing, at 45, a result 93.3% above the stated target.¹⁸⁷
- 5.19 This was discussed in the Committee's public hearing on 19 November 2010, in which questions were put to the Acting Chief Police Officer (CPO), ACT Policing, about these figures. The Acting CPO told the Committee that an error had been made in the quoted results against this KPI.¹⁸⁸
- 5.20 The Attorney's response to a Question on Notice on this matter stated that the Australian National Audit Office had, when evaluating ACT Policing's performance against its Purchase Agreement with the ACT Government, found errors in 'the way in which ACT Policing were reporting on the number of established complaint issues against ACT Policing staff'.¹⁸⁹

¹⁸⁵ ACT Policing, *Annual Report 2009/10*, pp.36-37.

¹⁸⁶ ACT Policing, *Annual Report 2009/10*, p.37.

¹⁸⁷ ACT Policing, *Annual Report 2009/10*, p.36.

¹⁸⁸ Commander McLean, *Transcript of Evidence*, 19 November 2010. p.36.

¹⁸⁹ Response to Question on Notice No.55, available at:
<<http://www.legassembly.act.gov.au/downloads/issues-papers/51-70.PDF>>

5.21 The response to the Question on Notice went on to say that:

ACT Policing sources this data from the AFP Professional Standards portfolio. In 2008-2009 the data for this measure mistakenly counted the number of persons with established complaints, rather than the number of established complaint issues. One person can have more than one established complaint issue. As a result, the number of established issues against police increased from 21 to 65.¹⁹⁰

5.22 Unusually, these errors were subsequently expressed in the Purchase Agreement for the following year:

The final result for this measure was published correctly in the 2008-2009 ACT Policing Annual Report. However, the error was discovered after the 2009-2010 ACT Policing Purchase Agreement was finalised, so unfortunately the calculation of the 2009-2010 target for this measure was already published based on incorrect 2008-2009 data.¹⁹¹

5.23 The response noted that, irrespective of these errors, ACT Police fell short of the target on this KPI:

The target in 2009-2010 should have been 65 or less, not 45 or less. Irrespective of the error, ACT Policing still would have failed to meet the target in 2009-2010.¹⁹²

5.24 However, the Attorney's response also specified a remedy which had been adopted for this problem:

The target for this measure in the 2010-2011 ACT Policing Purchase Agreement is now based on a three year average using the correct figures. The target for 2010-2011 is 72 established complaint issues against police, or less.¹⁹³

¹⁹⁰ Response to Question on Notice No.55, available at:
<<http://www.legassembly.act.gov.au/downloads/issues-papers/51-70.PDF>>

¹⁹¹ Response to Question on Notice No.55, available at:
<<http://www.legassembly.act.gov.au/downloads/issues-papers/51-70.PDF>>

¹⁹² Response to Question on Notice No.55, available at:
<<http://www.legassembly.act.gov.au/downloads/issues-papers/51-70.PDF>>

¹⁹³ Response to Question on Notice No.55, available at:
<<http://www.legassembly.act.gov.au/downloads/issues-papers/51-70.PDF>>

5.25 This matter is discussed further in *Committee comment* below.

Committee comment

- 5.26 It is the Committee's view that reporting against KPIs and other indicators is an important part of accountability for police services. It is also crucial if they are to respond effectively to the challenges they face: within, in terms of organisational change and without, as social change produces new dilemmas.
- 5.27 The Committee notes that many of the indicators for ACT Policing are workload indicators rather than performance indicators, and it takes the view that there should be a transition from outputs to outcomes-based indicators.
- 5.28 The Committee is also concerned about some of the indicators quoted by ACT Policing within its present reporting framework. It notes that a number of the indicators are framed around public perception of the police, and of various categories of crime. This has some utility in showing the extent to which police services, delivered on the ground, match public expectations.
- 5.29 However, the Committee notes with interest the tables regarding public perceptions of crime which appear in the *Report on Government Services 2011*. These tables show, for the most part, a surprisingly consistent level of interest for various types of crime, and police services in-general, across all Australian state and territory jurisdictions (except for the Northern Territory).¹⁹⁴
- 5.30 Given the different conditions that occur in different jurisdictions, the Committee believes that this raises some doubt as to whether they are reliable indicators. If these doubts proved to be warranted, it would throw doubt, also, on the reliance by ACT Policing of these indicators.
- 5.31 The Committee holds greater concerns with regard to other indicators. While the 'Perceptions of Crime' KPIs targets are 'National Average or less', little information is provided on how other KPIs are formulated.¹⁹⁵ For example,

¹⁹⁴ See *Report on Government Services 2011*, Figure 6.16, "Proportion of people who consider the identified issues to be either a 'major problem' or 'somewhat of a problem' in their neighbourhood, 2009-10", and "Figure 6.9 People who were 'satisfied' or 'very satisfied' with police services.

¹⁹⁵ ACT Policing, *Annual Report 2009/10*, p.36.

ACT Policing advise, through its annual report, that the KPI for 'Offences against the person' for 2009/10 was 850 or less, and that a result of 784.8 was achieved.¹⁹⁶ While the annual report observes that this 'was a substantial improvement', it is difficult to judge the validity of this claim without further context.

- 5.32 In view of this, the Committee recommends that, in addition to reporting against KPIs, there should also be further material showing how targets for KPIs are formulated.

RECOMMENDATION 5

- 5.33 **The Committee recommends that the Department of Justice and Community Safety present in its Annual Reports the rationale and evidential basis for KPI targets used for ACT Policing.**

¹⁹⁶ ACT Policing, *Annual Report 2009/10*, p.12.

6 EMERGENCY SERVICES AGENCY (ESA)

Introduction

- 6.1 The Department of Justice and Community Safety Annual Report 2009/10 states that the ACT Emergency Services Agency (ESA) provides ‘emergency management arrangements for the ACT under the *Emergencies Act 2004*’, and comprises ‘four operational services within the ESA’, which are the:
- ACT Ambulance Service;
 - ACT Fire Brigade;
 - ACT Rural Fire Service; and the
 - ACT State Emergency Service.¹⁹⁷
- 6.2 The Report, among other things, highlights:
- the relocation of ESA headquarters to Fairbairn;
 - the anticipated completion of a new Training Centre at Hume;
 - the anticipated completion of the Snowy Hydro Rescue Helicopter base at Hume and of the Rural Fire Service helicopter hangar upgrades ‘in the coming year’;
 - the implementation of the ‘Strategic Bushfire Management Plan’, together with a ‘a far reaching bushfire community awareness campaign’;¹⁹⁸ and
 - the reinstatement of four Chief Officer positions to ‘strengthen governance arrangements’ in the ESA.¹⁹⁹
- 6.3 The Report also details an expansion in capacity for volunteer fire fighting, with an increase from 400 to 480 volunteers in the Rural Fire Service, and the

¹⁹⁷ JACS Annual Report 2009/10, p.63.

¹⁹⁸ JACS Annual Report 2009/10, p.10.

¹⁹⁹ JACS Annual Report 2009/10, p.63.

establishment of a further 6 Community Fire Units, creating a total of 44, six short of the government's target as part of its response to 2003 bushfires.²⁰⁰

Relocation of ESA headquarters

- 6.4 At the Committee's private meeting of 27 June 2011 the Deputy-Chair of the Committee declared a conflict of interest in that he was Minister responsible when during planning for the relocation of the ESA headquarters. The Deputy-Chair withdrew from discussion of this section of the present report, and wished it to be noted in the report, and the Committee gave its approval to do so.²⁰¹
- 6.5 In the Committee's public hearing into the Department's Annual Reports, the Committee asked a number of questions regarding the relocation of ESA headquarters to Fairbairn.
- 6.6 In response to this line of questioning, the Attorney-General advised the Committee that there were two components of the main relocation project, which included the work on a training centre at Hume, and that at the main the headquarters at Fairbairn.
- 6.7 Of these, the training centre had been delayed 'as a result largely of wet weather'. Also, 'the management of water on the site which [had proved] to be more complex than anticipated' and there had been 'delays amongst contractors supplying some of the building structures'. The Attorney expected that this part of the project would be delayed until early 2011.²⁰²
- 6.8 At the time of the hearing, the new ESA headquarters at Fairbairn were, however, considered 'complete'. This included 'building 183 at Fairbairn, the secure compound at Fairbairn, the workshop and vehicle compound at Fairbairn and the headquarters at Fairbairn'. All these were considered

²⁰⁰ JACS Annual Report 2009/10, pp.64 & 67. Community Fire Units are also discussed in *Transcript* 19 November 2010, pp.80-81. The Government's response to Questions on Notice No.41 & 42 provided a complete list of Community Fire Units and their locations, including a further 6 to be established in 2011. See <<http://www.legassembly.act.gov.au/downloads/issues-papers/31-50.pdf>>.

²⁰¹ Mr Hargreaves, Private Meeting No.84, 27 June 2011.

²⁰² JACS Annual Report 2009/10, p.76.

‘effectively complete and operational’ and were ‘now operating as anticipated’.²⁰³

History of the relocation project

- 6.9 ESA’s move from its former headquarters at Curtin to Fairbairn and Hume was the subject of a case study by the Auditor-General in 2009.²⁰⁴
- 6.10 The case-study made a number of findings, including:
- That a 2005 decision to relocate to Hume ‘was not actioned’;
 - That advice given to government that the Fairbairn option was less expensive than the Hume option was contrary to evidence available before and after the decision was made to move to Fairbairn;
 - That the decision making process in favour of Fairbairn was not robust and was not supported by detailed analysis;
 - That the ESA initially lacked expertise for the project and ‘did not seek adequate assistance from other relevant agencies’;
 - That the project resulted in a multi-site solution that was not consistent with the original plan and did not deliver ‘the benefits for co-location and full integration of many ESA functions in a single location’; and that
 - ‘Between 2006 and 2008, the ACT Government’s commitment to the Fairbairn location saw a base lease increase from \$33.9 million to \$61.5 million over the 15 year period, with construction estimated to be another \$13.8 million’.²⁰⁵
- 6.11 Appendix A to the Auditor-General’s report presented a chronology of the ESA Headquarters Relocation project.²⁰⁶ The last item on the chronology showed that on 10 June 2009 construction commenced at Fairbairn, and that the Minister had at the time stated that ‘the overall cost of the ESA move to the

²⁰³ JACS Annual Report 2009/10, p.76.

²⁰⁴ ACT Auditor-General’s Office, *Performance Audit Report - Government Office Accommodation*, 2009 Chapter 5, ‘Case Study Three – The Emergency Services Agency Headquarters Relocation’, pp.83-104.

²⁰⁵ *Government Office Accommodation*, 2009, pp.83-84.

²⁰⁶ *Government Office Accommodation*, 2009, pp.103-104.

three Fairbairn premises and the two new premises at Hume [would be] \$26 million'.²⁰⁷

Costs for the project

6.12 At its public hearing of 19 November 2010, the Committee asked the Attorney-General for further information on costs for the Headquarters relocation project.²⁰⁸ The Attorney took two questions on-notice.

6.13 The Committee's Question on Notice No.40 asked the Attorney:

What amount has been expended between 1 July 2010 and now on ESA headquarters?²⁰⁹

6.14 The Attorney's reply stated that:

The Department has incurred \$6,788,168 of capital expenditure on the ESA headquarters project from 1 July to 24 November 2010. This amount does not include invoices issued by ACT Procurement Solutions (ACTPS) that the Department is yet to receive, or any invoices that ACTPS is yet to receive from contractors.²¹⁰

6.15 The Committee's Question on Notice No.34 asked the Attorney:

How much money has been paid out in rents for unoccupied buildings for the Emergency Services Agency Headquarters at Fairbairn?

6.16 The Attorney's reply was that, for the four *unoccupied* premises involved (18 & 20 Amberley Avenue; 7 Pearce and 17-19 Point Cook Avenue) \$1,775,452 had been expended from December 2006 through to the end of June 2010. Rent paid for the same period for *occupied* premises was \$4,962,174.²¹¹

²⁰⁷ *Government Office Accommodation*, 2009, p.104.

²⁰⁸ *Transcript of Evidence*, 19 November 2010, p.76 ff.

²⁰⁹ Answer to Question on Notice No.40, available at:
<<http://www.legassembly.act.gov.au/downloads/issues-papers/31-50.pdf>>.

²¹⁰ Answer to Question on Notice No.40, available at:
<<http://www.legassembly.act.gov.au/downloads/issues-papers/31-50.pdf>>.

²¹¹ Answer to Question on Notice No.34, available at:
<<http://www.legassembly.act.gov.au/downloads/issues-papers/31-50.pdf>>.

Committee comment

- 6.17 In the Committee's view the Auditor-General's case-study highlights elements of the ESA relocation project that were conducted standards below what is generally expected in public administration.
- 6.18 Although it does not give a revised indication of the overall cost of the relocation project, in the Committee's view it is a matter for concern that a significant amount of money (\$1,775,452) has been expended on rent for unoccupied premises as part of the project.
- 6.19 While the Auditor-General's chronology shows that a number of important decisions were made early in the life of the project (such as approval for a single select process for an ESA HQ at Fairbairn), others were made more recently. This includes the process over the course of 2008 which led to the signing of the Heads of Agreement, for the current model, in December 2008.²¹²
- 6.20 From the evidence tendered to the Committee, it is difficult to determine whether the very considerable expenditure on rent for unoccupied buildings is the result of historical or recent decisions. It appears likely, however, that this could have been averted if a different decision had been reached in 2008. In either case, the Committee takes the view that in this instance the ACT has not received good value for the public monies expended.
- 6.21 The Committee is aware that frameworks have been developed, since the inception of the project, to guide and constrain government accommodation projects. However, the on-going financial consequences of a flawed process for the ESA headquarters relocation should serve as a firm reminder of the gravity of poor decision-making, and the need for high standards of public administration in the future.

Vicki Dunne MLA
Chair
27 June 2011

²¹² *Government Office Accommodation*, 2009, p.104.

APPENDIX A: Witnesses

The following witnesses appeared at the Committee's public hearing into Annual Reports 2009/2010 on Wednesday 19 November 2010:

Mr Simon Corbell, Attorney-General, Minister for the Environment, Climate Change and Water, Minister for Energy and Minister for Police and Emergency Services

Department of Justice and Community Safety

- Ms Kathy Leigh, Chief Executive
- Mr Stephen Goggs, Deputy Chief Executive Officer, Community Safety
- Ms Moira Crowhurst, Chief Financial Officer, Strategic Finance
- Mr Greg Hammond, Executive Director; Capital Works and Infrastructure
- Ms Julie Field, Executive Director, Legislation and Policy Branch
- Ms Judith Kendrick, Director, Corporate Services
- Mr Peter Garrisson, Chief Solicitor, ACT Government Solicitor Branch
- Mr Jon White, Director of Public Prosecutions, Office of the Director of Public Prosecutions
- Mr Brett Phillips, Executive Director, Office of Regulatory Services
- Mr Mark McCabe, Work Safety Commissioner and Senior Director, WorkSafe ACT, Office of Regulatory Services
- Mr James Ryan, Executive Director, ACT Corrective Services
- Ms Alison Purvis, Acting Courts Administrator, ACT Law Courts and Tribunals Administration
- Mr Mark Crosweller, Commissioner, ACT Emergency Services Agency
- Mr David Foot, Chief Officer, ACT Ambulance Service
- Mr Paul Swain, Chief Officer, ACT Fire Brigade

- Mr Nick Lhuede, Director, Risk and Planning Group, ACT Emergency Services Agency
- Dr Helen Watchirs, Human Rights and Discrimination Commissioner, ACT Human Rights Commission
- Ms Mary Durkin, Health Services Commissioner and Disability and Community Services Commissioner, ACT Human Rights Commission
- Mr Alasdair Roy, Children and Young People Commissioner, ACT Human Rights Commission

ACT Policing

- Mr David McLean, Acting Chief Police Officer

APPENDIX B: Questions taken on Notice

Questions on Notice and their Responses can be accessed via the inquiry web page at:

<<http://www.parliament.act.gov.au/committees/index1.asp?committee=114&inquiry=987&category=15>>

Question No.	Subject	Date asked	Date responded
1	Greenhouse, water, policies;	06/12/2010	12/01/2011
2	Breakdown of greenhouse, water, across Department	06/12/2010	12/01/2011
3	Consultation for Victims of Crime Amdt Act	06/12/2010	12/01/2011
4	Consultation re. Victims of Crime Amdt Act #2	06/12/2010	12/01/2011
5	National Partnership on Legal Aid	06/12/2010	20/01/2011
6	Commonwealth grants	06/12/2010	20/01/2011
7	Women's Legal Aid Centre request for funds	06/12/2010	07/01/2011
8	Co-location of Community Legal Centres	06/12/2010	20/01/2011
9	Cost of litigation by Mr Eastman	06/12/2010	07/01/2011
10	Examples of good case management in courts	06/12/2010	20/01/2011
11	Young people & restorative justice	06/12/2010	07/01/2011
12	Administrative work by JACS for HRC	06/12/2010	20/01/2011
13	Proportion of sentence to remand prisoners	06/12/2010	02/02/2011
14	Performance measures on drug and alcohol	06/12/2010	24/02/2011
15	Figures on successful completion of programs	06/12/2010	07/01/2011
16	Number of times drugs prevented entering AMC	06/12/2010	07/01/2011
17	List of community orgs working in AMC	06/12/2010	07/01/2011
18	Drug use in AMC	06/12/2010	14/01/2011
18	Supplementary response	06/12/2010	23/02/2011
19	Targets for reoffending rates	06/12/2010	02/02/2011
20	Level of Service Inventory	06/12/2010	02/02/2011
21	Use of acting judges in ACT	06/12/2010	07/01/2011
22	Numbers of acting judges hearing cases in period	06/12/2010	07/01/2011

Question No.	Subject	Date asked	Date responded
23	Lodgements & increase of jurisdiction for Magistrates Court	06/12/2010	14/01/2011
24	Referral of Indigenous offenders to circle sentencing	06/12/2010	14/01/2011
25	Request for Practice Directions re. circle sentencing	06/12/2010	14/01/2011
26	Request for report on circle sentencing	06/12/2010	14/01/2011
27	Clearance rates for divisions of ACAT	06/12/2010	07/01/2011
28	Achievements or backlogs for ACAT	06/12/2010	07/01/2011
29	Are planning matters deal with in stat timeframe?	06/12/2010	07/01/2011
30	Planning backlog improved by changes in Act?	06/12/2010	20/01/2011
31	Internal review & 'discrepancy' re. ACAT	06/12/2010	23/12/2010
32	Use of sexual assault reform program facilities	06/12/2010	14/01/2011
33	Agencies involved in fine enforcement program	06/12/2010	07/01/2011
34	Rents for unoccupied buildings for ESA headquarters	06/12/2010	07/01/2011
35	NSW officers required by ESA command centre?	06/12/2010	07/01/2011
36	Provision of ambulance to Murrumbateman field day	06/12/2010	07/01/2011
37	Gungahlin ambulance provided to Murrumbateman	06/12/2010	07/01/2011
38	NSW ambulance required to assist at Gungahlin?	06/12/2010	07/01/2011
39	ESA ambulance services to NSW?	06/12/2010	07/01/2011
40	Underspends and rollovers for new headquarters	06/12/2010	07/01/2011
41	New CFUs	06/12/2010	07/01/2011
42	Complete list of CFUs?	06/12/2010	07/01/2011
43	Request for attendance management policy	06/12/2010	20/01/2011
44	How many interviews conducted under policy?	06/12/2010	20/01/2011
45	How many (automatic) false alarms to Fire Brigade?	06/12/2010	02/02/2011
46	Incidents counted by both Fire Brigade and SES?	06/12/2010	07/01/2011
47	What are 'other incidents'?	06/12/2010	07/01/2011
48	Rate of deliberately lit fires?	06/12/2010	07/01/2011
49	Final cost of ESA headquarters?	06/12/2010	02/02/2011
50	Amount of funding to Police Consultative Committees?	06/12/2010	07/01/2011
51	Update on Police Scouts	06/12/2010	07/01/2011
52	What was funding for Woden Police Station?	06/12/2010	14/01/2011
53	Number of officers, Woden and Belconnen Police Stations?	06/12/2010	14/01/2011
54	Comparison of holding cells, workstations for Woden & Belconnen stations	06/12/2010	14/01/2011

Question No.	Subject	Date asked	Date responded
55	Correct figures for p.36 table of performance indicators	06/12/2010	07/01/2011
56	Documents outlining the Continuum of Force doctrine	06/12/2010	07/01/2011
57	Were AMC cells designed for one or two prisoners?	06/12/2010	20/01/2011
58	How many cells designed for one or two prisoners?	06/12/2010	20/01/2011
59	How many with two occupants under buddy system?	06/12/2010	20/01/2011
60	Who makes decisions on buddy system?	06/12/2010	20/01/2011
61	What are criteria for decisions on buddy system?	06/12/2010	20/01/2011
62	How many cells house two under buddy system, or not?	06/12/2010	20/01/2011
63	How many prisoners are former clients of Quamby?	06/12/2010	20/01/2011
64	How many have been transferred from Quamby to AMC?	06/12/2010	20/01/2011
65	Links between High Density project and Health Communities?	06/12/2010	20/01/2011
66	Cost of Ainslie Avenue programs?	06/12/2010	20/01/2011
67	Other areas earmarked for the Project?	06/12/2010	20/01/2011
68	Civil partnerships: ceremonies versus paper-based recorded?	06/12/2010	07/01/2011
69	What is breakdown?	06/12/2010	07/01/2011
70	Can this be recorded in future?	06/12/2010	07/01/2011
71	How many appointments to Legal Aid review Panel in reporting period?	06/12/2010	23/12/2010
72	What process followed to make appointments?	06/12/2010	23/12/2010
73	Attempts to ensure adequate Indigenous representation?	06/12/2010	23/12/2010
74	Does Legal Aid ACT have a role in forming the list for the Panel?	06/12/2010	23/12/2010
75	If so, what is that role?	06/12/2010	23/12/2010
76	Legal Aid ACT's role in proposing members for 3 person review committee?	06/12/2010	23/12/2010
77	Attempts for Indigenous role where review concerns Indigenous people?	06/12/2010	23/12/2010
78	If not, can this be implemented in future?	06/12/2010	23/12/2010
79	DPP's view on how Ngambra Circle Sentencing Court is operating?	06/12/2010	23/12/2010
80	Did ombudsman take account of risk assessments on registered offenders?	06/12/2010	12/01/2011
81	Were improvements to process envisaged?	06/12/2010	12/01/2011
82	Are statistics kept on rates of reoffending by registered offenders?	06/12/2010	12/01/2011
83	HRC: what systemic concerns do you wish to investigate?	06/12/2010	07/01/2011
84	Financial impacts of National Registration and Accreditation Scheme on HRC?	06/12/2010	07/01/2011

Question No.	Subject	Date asked	Date responded
85	Notices served re. mental health hazards?	06/12/2010	20/01/2011
86	Inspections of finance and insurance businesses?	06/12/2010	20/01/2011
87	How many security work licences granted for workers from interstate?	06/12/2010	20/01/2011
88	Possible concerns that it is easier to get a security licence in the ACT?	06/12/2010	20/01/2011
89	Cost of issuing licences for interstate security workers?	06/12/2010	20/01/2011
90	Per capita number of police officers in ACT for 10 reporting periods 2001-06?	06/12/2010	02/02/2011
91	Why user charges increased by 13 per cent over budget estimate?	06/12/2010	02/02/2011
92	Reasons for increase in revenue from non-ACT Government users?	06/12/2010	02/02/2011
93	Will this source of revenue continue to grow?	06/12/2010	02/02/2011
94	In Other [Income] Gains, what was the source of the \$3 million?	06/12/2010	02/02/2011
95	Will this be repeated during 2010-11 or in later years?	06/12/2010	02/02/2011
96	Reason for increase in Employee Expenses?	06/12/2010	02/02/2011
97	Effect of these other factors not budgeted for?	06/12/2010	02/02/2011
98	Trends in employee expenses in 2010-11?	06/12/2010	02/02/2011
99	Why did spending on Supplies and Services fall below budget by 17%?	06/12/2010	02/02/2011
100	Will this pattern be repeated in 2010-11?	06/12/2010	02/02/2011
101	Why did funds for Depreciation and Amortisation fall 19% below budget?	06/12/2010	02/02/2011
102	What new equipment was taken into service by ESA during 2009-10?	06/12/2010	02/02/2011
103	Was a new Bronto truck taken on, and what effect did this have on depreciation?	06/12/2010	02/02/2011
104	What equipment was taken out of service and effects of this on depreciation?	06/12/2010	02/02/2011
105	Why did spending on Other Expenses increase by 38%?	06/12/2010	02/02/2011
106	Will this trend be continued into 2010-11?	06/12/2010	02/02/2011