

ANNUAL AND FINANCIAL REPORTS 2012-2013

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

MARCH 2014

REPORT NUMBER 2

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RESOLUTION OF APPOINTMENT

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

The resolution stated that the Committee was to perform:

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

TERMS OF REFERENCE

On 19 September 2013 the Legislative Assembly agreed to the following motion:

That:

- (1) the annual and financial reports for the calendar year 2013 and the financial year 2012–2013 presented to the Assembly pursuant to the Annual Reports (Government Agencies) Act 2004 stand referred to the standing committees, on presentation, in accordance with the schedule below;
- (2) the annual reports of ACT Policing and the Office of the Legislative Assembly stand referred to the Standing Committee on Justice and Community Safety and Standing Committee on Public Accounts respectively;
- (3) notwithstanding standing order 229, only one standing committee may meet for the consideration of the inquiry into the calendar year 2013 and financial year 2012–2013 annual and financial reports at any given time;
- (4) standing committees are to report to the Assembly by the last sitting day in March 2014; and
- (5) the foregoing provisions of this resolution have effect notwithstanding anything contained in the standing orders.

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

Annual Report (in alphabetical order)	Reporting area	Ministerial Portfolio	Standing Committee
ACT Electoral Commission		Attorney-General	Justice and Community Safety
ACT Human Rights Commission		Attorney-General	Justice and Community Safety
ACT Policing		Minister for Police and Emergency Services	Justice and Community Safety
Chief Minister and Treasury Directorate	Industrial Relations Policy Workplace Compensation and Workplace Safety	Minister for Workplace Safety and Industrial Relations	Justice and Community Safety
Chief Minister and Treasury Directorate	Default Insurance Fund	Minister for Workplace Safety and Industrial Relations	Justice and Community Safety
Chief Minister and Treasury Directorate	Work Safety Council	Minister for Workplace Safety and Industrial Relations	Justice and Community Safety
Director of Public Prosecutions		Attorney-General	Justice and Community Safety
Justice and Community Safety Directorate		Attorney-General	Justice and Community Safety
Justice and Community Safety Directorate	Corrective Services	Minister for Corrections	Justice and Community Safety
Justice and Community Safety Directorate	Emergency Services Agency	Minister for Police and Emergency Services	Justice and Community Safety
Justice and Community Safety Directorate	Transport Policy and Regulation	Attorney-General	Justice and Community Safety
Legal Aid Commission (ACT)		Attorney-General	Justice and Community Safety
Public Advocate of the ACT		Attorney-General	Justice and Community Safety
Public Trustee for the ACT		Attorney-General	Justice and Community Safety
Victims of Crime Support Program		Attorney-General	Justice and Community Safety

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RECOMMENDATIONS

Recommendation 1

2.39 The Committee recommends that the ACT Government investigate creating a sentencing council or similar agency to perform community engagement and education on sentencing in the ACT.

Recommendation 2

2.44 The Committee recommends that the ACT Government investigate and clarify ACT courts' jurisdiction over case management.

Recommendation 3

3.34 The Committee recommends that, over time and subject to budgetary considerations, positions which combine a statutory office holder and an officer answerable to the Executive be disaggregated so that these functions performed by different persons.

Recommendation 4

3.37 The Committee recommends that the ACT Government work across all agencies to ensure that they are utilising the tests and tools offered by Shared Services when undertaking a procurement process.

Recommendation 5

3.38 The Committee recommends that the ACT Government, through Shared Services, investigate mechanisms that could be employed so that successful government tenders are audited while work is being conducted.

Recommendation 6

3.39 The Committee recommends that all ACT Government tender documents contain a statement of the Government's clear position on only engaging companies that are properly established as legitimate enterprises.

Recommendation 7

4.20 The Committee recommends that the ACT Government publish information about flood zones and risks to residential housing as soon as possible, with appropriate caveats.

Recommendation 8

5.37 The Committee recommends that the ACT Government undertake an evaluation of the Periodic Detention Centre as a sentencing option. The evaluation should include a comparison with sentencing options in other jurisdictions which have replaced periodic detention.

Recommendation 9

5.45 The Committee recommends that the ACT government investigate provision of sufficient resources to the ACT Human Rights Commission so that it can conduct a full human rights audit of the Alexander Maconochie Centre (AMC).

Recommendation 10

6.73 The Committee recommends that the ACT Government commission an independent review of the resources needed for the Human Rights Commission to fulfil its statutory obligations.

Recommendation 11

6.77 The Committee recommends that the ACT Government review the *Human Rights Act 2004* with respect to avenues for human rights complaints.

1 INTRODUCTION

INTRODUCTION

- 1.1 On 19 September 2013 the Assembly referred annual and financial reports for the calendar year 2013 and the financial year 2012–2013 to the Committee.

AGENCIES CONSIDERED

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

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

CONDUCT OF THE INQUIRY

- 1.3 The Committee held four public hearings for the inquiry, on 6, 13, 14 and 20 November 2013, at the Legislative Assembly for the ACT. Witnesses from the above Directorates and agencies appeared, as listed in Appendix B of this report.

STRUCTURE OF THE REPORT

1.4 The report considers the following matters:

- Chapter 1, which is this introduction;
- Chapter 2: the work of the Justice and Community Safety Directorate, including legal policy, the administration of the Courts and Tribunal;
- Chapter 3: Industrial Relations, Work Safety and Workers' Compensation;
- Chapter 4: the work of ACT Policing and the Emergency Services Agency (ESA);
- Chapter 5: the work of Corrective Services, including the administration of the Alexander Maconochie Centre (AMC); and
- Chapter 6: the work of statutory officers and agencies, including the:
 - ACT Human Rights Commission,
 - Victims of Crime Commissioner and Victims of Crime Support Program;
 - Legal Aid Commission (ACT);
 - Public Advocate of the ACT;
 - Public Trustee for the ACT; and the
 - ACT Electoral Commission.

1.5 For each of the agencies considered, there is:

- an introduction setting out when they appeared before the Committee;
- a dot-point listing of matters considered in the hearings;
- a 'discussion' section giving further detail on selected matters; and
- committee comment, putting forward the Committee's views and recommendations on the material considered.

2 THE DIRECTORATE

INTRODUCTION

2.1 The Justice and Community Safety Directorate's *Annual Report 2012-13* described the role of the Directorate as follows:

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

- maintaining the rule of law and the Westminster style of democratic Government
- promoting the protection of human rights in the Territory
- providing effective offender management and opportunities in relation to rehabilitation
- protecting and preserving life, property and the environment
- providing for effective and cohesive emergency response and management
- implementing and enforcing legislation covering regulatory functions of Government.¹

2.2 The Attorney-General and his officers from the Justice and Community Safety Directorate (JACS) appeared before the Committee at public hearings on 13, 14 and 20 November 2013.

MATTERS CONSIDERED

2.3 At the hearings, the following matters were considered:

- possible proposals to merge the administrative functions rights agencies such as the Human Rights Commission, the Public Advocate, and the Victims of Crime Commissioner to reduce costs;²
- the first-time offender training initiative administered by ACT Policing and the Restorative Justice Unit under the *Crimes (Restorative Justice) Act 2004*;³
- processes intended to ensure the compliance of new legislation with the *Human Rights Act 2004*;⁴

¹ Justice and Community Safety Directorate, *Annual Report 2012-13*, p.2.

² *Proof Transcript of Evidence*, 20 November 2013, pp.125-126, 132.

³ *Proof Transcript of Evidence*, 20 November 2013, pp.127-128.

⁴ *Proof Transcript of Evidence*, 20 November 2013, p.130.

- the status of the Alexander Maconochie Centre (AMC) as a human rights compliant prison;⁵
- the frequency of lockdowns at the AMC;⁶
- whether the Government would provide funding for a human rights audit of the AMC by the Human Rights Commission;⁷
- the total budget for rights agencies such as the Human Rights Commission, the Public Advocate, the Victims of Crime Commissioner and the Public Trustee;⁸
- implications of the *Marriage Equality (Same Sex) Act 2013*;⁹
- progress on changes ushered in by the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*;¹⁰
- changes in the regulation of security officers;¹¹
- the effects of the blitz on the courts backlog, and changes to the listing of cases with a view to expediting court cases in the ACT;¹²
- the effect on the courts of increases in referrals to restorative justice, and reported levels of satisfaction with restorative justice;¹³
- security at the courts;¹⁴
- questions regarding an apparent increase in custodial sentences in the ACT;¹⁵
- a new ACT Sentencing Database;¹⁶
- measures to encourage early guilty pleas by defendants, and to support pre-trial disclosure, as a means to expedite criminal cases in ACT courts;¹⁷
- a new policy by the Director of Public Prosecutions (DPP) of ‘in-house advocacy’ and consequent reductions in costs;¹⁸
- work culture and division of labour within the Office of the DPP;¹⁹
- additional funding for the DPP in the context of the ‘blitz’;²⁰

⁵ *Proof Transcript of Evidence*, 20 November 2013, p.131.

⁶ *Proof Transcript of Evidence*, 20 November 2013, p.131, and see also *Proof Transcript of Evidence*, 13 November 2013, pp.48-50.

⁷ *Proof Transcript of Evidence*, 20 November 2013, p.131.

⁸ *Proof Transcript of Evidence*, 20 November 2013, p.132.

⁹ *Proof Transcript of Evidence*, 20 November 2013, pp.132-134.

¹⁰ *Proof Transcript of Evidence*, 20 November 2013, pp.138-141.

¹¹ *Proof Transcript of Evidence*, 20 November 2013, pp.141-142.

¹² *Proof Transcript of Evidence*, 20 November 2013, pp.145-147, 154-155, 163.

¹³ *Proof Transcript of Evidence*, 20 November 2013, pp.147-149.

¹⁴ *Proof Transcript of Evidence*, 20 November 2013, p.149.

¹⁵ *Proof Transcript of Evidence*, 20 November 2013, pp.150-151.

¹⁶ *Proof Transcript of Evidence*, 20 November 2013, pp.150-151.

¹⁷ *Proof Transcript of Evidence*, 20 November 2013, pp.152-154.

¹⁸ *Proof Transcript of Evidence*, 20 November 2013, p.155.

¹⁹ *Proof Transcript of Evidence*, 20 November 2013, pp.156-157..

²⁰ *Proof Transcript of Evidence*, 20 November 2013, p.157.

- proposals for separate bail lists in the Magistrates Court as a means to increase efficiency in the conduct of court cases;²¹
- legal aspects of executive contracts;²²
- the creation and structuring of the role of Solicitor-General, and the work of his office;²³ and
- the Solicitor-General's advice to government on same-sex marriage legislation, including questions regarding the cost of the ACT's representation in the High Court in connection with the legislation.²⁴

2.4 Questions Taken on Notice were also asked and answered regarding the work of the Government Solicitor.²⁵

DISCUSSION

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

THE ALEXANDER MACONOCHIE CENTRE

2.6 The Justice and Community Safety Directorate holds responsibility for the operation of the Alexander Maconochie Centre. It reports on this in its Annual Report 2012-13 under Output 2.1 – Corrective Services.²⁶

2.7 The JACS Annual Report 2012-2013 described the objectives of Corrective Services in this way:

ACT Corrective Services aims to provide a safe, secure and humane custodial environment and an effective community corrections environment in which offenders are effectively managed in line with their needs and the risks they pose to the community.

The work of ACT Corrective Services impacts directly upon a small but significant element of the Canberra community, namely individuals on remand, sentenced to full or weekend detention, or on community supervision orders. This group includes

²¹ *Proof Transcript of Evidence*, 20 November 2013, pp.157-158.

²² *Proof Transcript of Evidence*, 20 November 2013, pp.158-159.

²³ *Proof Transcript of Evidence*, 20 November 2013, pp.159-161.

²⁴ *Proof Transcript of Evidence*, 20 November 2013, pp.162-163.

²⁵ See Questions Taken on Notice Nos. 17 & 18, http://www.parliament.act.gov.au/_data/assets/pdf_file/0007/553048/JACS-Annual-Reports-2012-13-Questions-Taken-on-Notice-with-table.pdf

²⁶ Justice and Community Safety Directorate, *Annual Report 2012-13*, p.106 ff.

approximately 1,700 to 1,800 individuals. They are a group with complex and special needs who present unique issues for the community as a whole.

ACT Corrective Services aims to increase the safety and security of the community while also reducing the risk of re-offending by providing services and program interventions that address the causes of offending, maximise the likelihood of successful reintegration into the community, and encourage offenders to adopt a law-abiding way of life.²⁷

2.8 As noted above, the following matters were discussed regarding the Alexander Maconochie Centre (AMC) in public hearings with the Directorate:

- the status of the Alexander Maconochie Centre (AMC) as a human rights compliant prison;²⁸
- the frequency of lockdowns at the AMC;²⁹ and
- whether the Government would provide funding for a human rights audit of the AMC by the Human Rights Commission.³⁰

2.9 In relation to questions on these matters, the Attorney-General responded by saying:

- that while the ‘operations of a jail will always result in potential conflicts with human rights’, the challenge was ‘to manage those as effectively and as reasonably as possible’, and that ‘our jail does so far better than any other jail around the country’ evidenced, among other things, by the highest number in the country of days when prisoners can receive visits from family and friends;³¹
- that there had been ‘a series of very detailed reviews of the day-to-day operations of the prison since it commenced operation’;³²
- that the ACT Government had ‘provided a budget to the Human Rights Commission’ and that ‘how the commission allocates its budget is a matter for it within those total global funding levels’;³³ and
- that there were ‘challenges with resources’ for rights protection.³⁴

2.10 These matters were also considered when the Minister for Corrections appeared before the Committee on 13 November 2013, and are considered further in Chapter 5 of this report.

²⁷ Justice and Community Safety Directorate, *Annual Report 2012-13*, p.105.

²⁸ *Proof Transcript of Evidence*, 20 November 2013, p.131.

²⁹ *Proof Transcript of Evidence*, 20 November 2013, p.131, and see also *Proof Transcript of Evidence*, 13 November 2013, pp.48-50.

³⁰ *Proof Transcript of Evidence*, 20 November 2013, p.131.

³¹ Minister Corbell, *Proof Transcript of Evidence*, 20 November 2013, p.131.

³² Minister Corbell, *Proof Transcript of Evidence*, 20 November 2013, p.131.

³³ Minister Corbell, *Proof Transcript of Evidence*, 20 November 2013, p.132.

³⁴ Minister Corbell, *Proof Transcript of Evidence*, 20 November 2013, p.132.

SENTENCING DATABASE

2.11 The Justice and Community Safety Directorate is the responsible agency for the new ACT Sentencing Database. Its *Annual Report 2012-13* reported on this in Output 3.1 – Courts and Tribunal.³⁵

2.12 The JACS *Annual Report 2012-13* described the new ACT Sentencing Database in the following way:

In order to provide easier access to sentencing data for the support of judicial officers, practitioners and prosecutors, funding of \$2.2 million was allocated in the 2012–13 Budget over four years for the development and ongoing maintenance of an ACT-specific sentencing database. This followed a report by the ACT Law Reform Advisory Council, which highlighted the need for better sentencing information in the ACT, and a subsequent feasibility study.

The NSW Judicial Commission (which currently also hosts Queensland and Commonwealth sentencing data) was selected to host the database. A formal agreement between the NSW Judicial Commission and the ACT Government was entered into in April 2013. It is envisaged that the sentencing database will improve access to sentencing decisions and statistics, and will support the work of judicial officers in making sentencing assessments.³⁶

2.13 In public hearings, the Attorney-General spoke to the Committee about the new ACT Sentencing Database during discussion of trends in sentencing in the ACT, particularly as regards custodial sentences. The Attorney-General told the Committee:

- that the database would be ‘for judicial officers and other participants in the criminal justice process’;
- that it will provide for the first time an electronic record of sentencing in the ACT;
- that through the database judges will be ‘able to more readily and easily access precedent for sentencing and will also be able to reference all the relevant considerations that they need to take into account’;
- that the database will provide ‘a better picture of sentencing trends’; and
- that the data held will go back to the 1959, ‘from paper-based records’, which has been keyed into the database.³⁷

³⁵ Justice and Community Safety Directorate, *Annual Report 2012-13*, p.118.

³⁶ Justice and Community Safety Directorate, *Annual Report 2012-13*, p.121.

³⁷ *Proof Transcript of Evidence*, 20 November 2013, pp.150-152.

MEASURES TO SUPPORT TIMELY RESOLUTION OF CASES

- 2.14 The Justice and Community Safety Directorate is the responsible agency in connection with the timely resolution of court cases in the ACT. Its *Annual Report 2012-13* reported on this in Output 3.1 – Courts and Tribunal.³⁸
- 2.15 In public hearings, a number of matters were discussed which were relevant to the timely resolution of court cases.

REFORMS TO ENCOURAGE EARLY PLEAS

- 2.16 The Attorney-General told the Committee that the government was in the process of putting in place reforms which to encourage early guilty pleas by ‘having the accused have regard to what are really the most reasonable prospects for them in a trial’.³⁹ In connection with this, he told the Committee that the government had:

provided the courts with the ability to have regard to the severity of the sentence they hand down if an offender who is subsequently found guilty assists with the administration of justice—for example, through early disclosure of certain facts, cooperation with the prosecution and the court, agreement on what matters will be dealt with in a trial and the exclusion of other matters that are just extraneous and not really in dispute.⁴⁰

- 2.17 The Attorney-General went on to tell the Committee that ‘re-trial disclosure was ‘a key issue’⁴¹ in achieving timely outcomes in the courts:

As the [Director of Public Prosecutions] notes in his report, the ACT is the only jurisdiction in the country that does not require pre-trial disclosure on the part of the defence. This can sometimes result in circumstances where the defence leads with matters which the prosecution has no understanding of or prior knowledge of.⁴²

- 2.18 The Attorney-General told the Committee that this could ‘lead to delay in the courts because there is a need to consider and respond appropriately on the part of the prosecution’. It could also result ‘in the offender or the accused having perhaps unrealistic expectations of what their prospects are in court’.⁴³

³⁸ Justice and Community Safety Directorate, *Annual Report 2012-13*, p.118.

³⁹ *Proof Transcript of Evidence*, 20 November 2013, p.152.

⁴⁰ *Proof Transcript of Evidence*, 20 November 2013, pp.152-153.

⁴¹ *Proof Transcript of Evidence*, 20 November 2013, p.153.

⁴² Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 20 November 2013, p.153.

⁴³ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 20 November 2013, p.153.

2.19 He went on to observe that it was:

far better to have all the circumstances on the table at the beginning of a trial, before a trial happens, rather than them arising late. That leads to delay, it can lead to unrealistic expectations on the part of one party or another and it does not lead to an expeditious justice system.⁴⁴

2.20 The Director of Public Prosecutions (DPP) also made comment on this. He told the Committee of statistics from the previous year regarding late entry pleas (that is, guilty pleas entered late in the process of preparation for trial, or during trial):

From memory, there were 87 matters where a person was committed for trial— that is, they pleaded not guilty in the Magistrates Court and were committed for trial—yet, before their trial took place in the Supreme Court, they pleaded guilty. A lot of those pleas, more than 50 per cent of them, were in the last couple of weeks before the trial.⁴⁵

2.21 He spoke to the Committee of the impact on his office of these late pleas:

Obviously, what is concerning about that is the amount of public resources that have been expended in getting the matter to that stage ... By that stage, we have prepared and we are ready to go. We cannot ever get those resources back.⁴⁶

2.22 There were also negative effects for the accused:

Of course, it also means that accused persons who plead guilty at that late time miss out to a certain extent on the discounts that are available, or they minimise the discounts that are available by pleading late.⁴⁷

2.23 In either case, the DPP told the Committee, it was 'well worth exploring avenues for encouraging people to confront the issues earlier'. This not 'just about getting pleas of guilty': it was also 'about defining the issues in trials and working out what really needs to take place if there is a trial'.⁴⁸

2.24 The DPP also noted that he had made other suggestions with a view to more timely resolutions of court cases. He told the Committee that he had in his Annual Report advocated 'a general power of case management for the courts'. He told the Committee that:

It may well be that the courts have that inherent power in any event. I have every confidence that the Supreme Court, as now constituted, will be very vigorous in

⁴⁴ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 20 November 2013, p.153.

⁴⁵ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 20 November 2013, p.153.

⁴⁶ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 20 November 2013, p.153.

⁴⁷ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 20 November 2013, p.153.

⁴⁸ Mr Jon White, *Proof Transcript of Evidence*, 20 November 2013, p.153.

exercising those case management powers that it does have. But there may be a case for further legislative reform in that area, and in a specific area to do with the provision of expert reports.⁴⁹

INFLUENCE OF CASE SCHEDULING

2.25 To this the Attorney-General added the view that:

Early pleas, too, are encouraged if there is a timetable set down for the matter to be heard. It is much easier to hold off on your decision and, as the director says, not confront the reality of what you are facing if you know the trial is not going to happen until 12 months time. But if you know the trial is going to happen more quickly, you have to face up to the circumstances you are facing and make a decision as the accused as to how you are going to plead.⁵⁰

2.26 Regarding this, he went on to say that:

This comes back to the issue we were discussing earlier about the decision of the Chief Justice to undertake some trial changes to the way criminal matters are listed. That brings forward the prospect of a hearing occurring, a trial occurring. Therefore the defence counsel are able to advise their clients as to what their prospects are and what they should be thinking about and the accused are forced to that point of making a decision on what they are going to plead early. That has benefits throughout the system.⁵¹

2.27 This 'still means significant preparation on the part of the DPP and the cost to Legal Aid and so on as well' but if it were to become 'more of the norm', it would 'deliver efficiencies in the longer term'.⁵²

2.28 In response the Committee asked about whether courts in other jurisdictions enjoyed the case management powers referred to by the DPP. The DPP responded, saying that 'certainly' there were:

legislative provisions in other jurisdictions ... which have, to varying degrees, case management powers that are vested in courts. Some of them go to great particularity about the sorts of things that courts can order and the sorts of information that need to be supplied by both the Crown and the defence. There are a lot of different models out there, but they all, essentially, emphasise the necessity for courts to have case

⁴⁹ Mr Jon White, *Proof Transcript of Evidence*, 20 November 2013, pp.153-154.

⁵⁰ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 20 November 2013, p.154.

⁵¹ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 20 November 2013, p.154.

⁵² Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 20 November 2013, p.154.

management powers and for there to be some expectation that both parties to the transaction will disclose information that is relevant to making decisions.⁵³

- 2.29 To this the DPP added that a listing proposal put forward by the new Chief Justice of the Supreme Court would ‘further cut into the backlog’. He suggested that the ACT ‘should really aspire to having a minimum length of time between committal and trial—say, six months’, compared to the current period of ‘between nine and 12 months’.⁵⁴
- 2.30 He stated that this could be ‘reduced further by this [pilot listing program in the Supreme Court] and by continuing listing reforms that are foreshadowed by the Chief Justice’.⁵⁵

REFORM OF LISTING PRACTICES IN THE MAGISTRATES COURT

BAIL LISTS

- 2.31 The DPP told the Committee that those reforms were centred on ‘the formation of separate bail lists that can sit every day’.⁵⁶
- 2.32 He went on to say that:

At the moment, there is a tendency for some bails to be heard later in the day, and I think we and the rest of the profession agree that it would be desirable if bails could be dealt with as soon as possible and in one court. The consequence of taking bail matters out of what is the general list, which is known as the A list, is that it should be possible to avoid having an A list on every day. It may be now possible to run an A list, which is a plea or mention list, on, say, two days a week.⁵⁷

FIXED TIMETABLES FOR MATTERS FOR HEARING

- 2.33 The DPP also told the Committee that there had been proposals for reforming the case management system so that ‘an automatic timetable’⁵⁸ would apply to matters that are for hearing:

There would be an automatic expectation that the prosecution will serve its brief in a particular time, the defence will reply indicating which witnesses they require in a certain time and so on and so forth.⁵⁹

⁵³ Mr Jon White, *Proof Transcript of Evidence*, 20 November 2013, p.153.

⁵⁴ Mr Jon White, *Proof Transcript of Evidence*, 20 November 2013, p.155.

⁵⁵ Mr Jon White, *Proof Transcript of Evidence*, 20 November 2013, p.155 and see p.157.

⁵⁶ Mr Jon White, *Proof Transcript of Evidence*, 20 November 2013, p.158.

⁵⁷ Mr Jon White, *Proof Transcript of Evidence*, 20 November 2013, p.158.

⁵⁸ Mr Jon White, *Proof Transcript of Evidence*, 20 November 2013, p.158.

⁵⁹ Mr Jon White, *Proof Transcript of Evidence*, 20 November 2013, p.158.

- 2.34 This would, he hoped, 'obviate ... in most instances the need for matters to be mentioned in case management, which happens at the moment'.⁶⁰

COMMITTEE COMMENT

ALEXANDER MACONOCHIE CENTRE

- 2.35 The matters regarding the AMC discussed in this chapter are discussed in Chapter 5 of this report, where the Committee's recommendations are put forward. In brief, the Committee considers that the Human Rights Commission should conduct a human rights audit at the AMC and should be resourced to do so. The recent review of youth justice, conducted by the Commission, could be a model in this regard.
- 2.36 As will be seen in Chapter 5, the Committee is concerned about the overcrowding reported at the AMC and considers that measures should be taken, as a matter of urgency, to relieve this.

SENTENCING DATABASE

- 2.37 The Committee welcomes the advent of the ACT Sentencing Database. It considers that the information held in the database could be leveraged, to good purpose, beyond the initial user base of those immediately involved in the administration of justice. The Committee considers that useful work could be done on this data to engage the wider community and keep it informed on issues raised by sentencing. This would appear in the current climate, where in other jurisdictions sentencing has become a contentious issue, to be a matter of some importance, which would deliver a considerable benefit in the ACT with little further investment. The work of the Sentencing Council and Judicial Commission in NSW, and the Sentencing Advisory Council in Victoria, are useful models for the kind of value adding that is appropriate in connection with the information to be captured by the database.
- 2.38 In light of this the Committee makes the following recommendation.

Recommendation 1

- 2.39 The Committee recommends that the ACT Government investigate creating a sentencing council or similar agency to perform community engagement and education on sentencing in the ACT.**

⁶⁰ Mr Jon White, *Proof Transcript of Evidence*, 20 November 2013, p.158.

- 2.40 This matter will also be taken up in the Committee's current inquiry into sentencing in the ACT, due to report in November 2014.

MEASURES TO SUPPORT TIMELY RESOLUTION OF COURT CASES

- 2.41 The Standing Committee on Justice and Community Safety has in this and previous Assemblies expressed concern over long-standing problems with timeliness in ACT courts. In view of this, the Community welcomes new and proposed changes in listing practices, and endorses moves toward more determined timelines for court cases.
- 2.42 The Committee considers that the ACT Government should assist the courts by ascertaining the extent of their jurisdiction over case management and, if necessary, that it should amend legislation to ensure the capacity of the courts in this regard.
- 2.43 In light of this the Committee makes the following recommendation.

Recommendation 2

- 2.44 The Committee recommends that the ACT Government investigate and clarify ACT courts' jurisdiction over case management.**
- 2.45 The Committee acknowledges statements by witnesses to the inquiry that delays have been more a feature of Supreme than Magistrates Court cases, but also considers it important that the culture of court and case scheduling should change more broadly. In that regard the Committee welcomes moves, overall, to institute more definite timelines and reduce wasted time and effort by courts and their officers.

3 INDUSTRIAL RELATIONS AND RELATED MATTERS

INTRODUCTION

- 3.1 In 2012 there were changes to Administrative Arrangements which saw the transfer of responsibility for Industrial Relations from the portfolio responsibility of the Chief Minister to that of Minister Corbell as the Minister for Workplace Safety and Industrial Relations.⁶¹
- 3.2 Under these arrangements the Office of Industrial Relations (OIR) continues to be situated within the Chief Minister and Treasury Directorate (CMTD) but reports to Minister Corbell as ACT Minister for Workplace Safety and Industrial Relations. This is also the case for Continuous Improvement and Workers' Compensation Branch (CIWC). WorkSafe ACT continues to be part of the Justice and Community Safety Directorate reports to the Minister for Workplace Safety and Industrial Relations.
- 3.3 The work of the OIR and CIWC are reported on in Output 1.3, Industrial Relations Policy, in the CMTD *Annual Report 2012-13*.⁶² The work of WorkSafe ACT is reported on in Output 1.7 – Regulatory Services, in specific section on WorkSafe ACT in the JACS *Annual Report 2012-13*.⁶³
- 3.4 These arrangements have prompted changes of responsibility for oversight by Assembly committees. Under the previous arrangements responsibility for oversight over Industrial Relations was held by Standing Committee on Public Accounts (PAC). In 2013, after an exchange of letters with the PAC, the Standing Committee on Justice and Community Safety assumed this responsibility.
- 3.5 The Committee considered a number of matters relating to industrial relations and workplace safety in its public hearings of 14 and 20 November 2013.

MATTERS CONSIDERED

- 3.6 The following matters were considered:
- administrative responses to allegations of bullying at the Canberra Institute of Technology (CIT);⁶⁴

⁶¹ The changes were introduced in Administrative Arrangements 2012 (No 1), NI2012-579. Administrative Arrangements 2011 (No 3), NI2011-712, provided that Minister Corbell held responsibility over aspects of workplace safety and related matters prior to the change.

⁶² Chief Minister and Treasury Directorate, *Annual Report 2012-13*, p.35 ff.

⁶³ Justice and Community Safety Directorate, *Annual Report 2012-13*, p.90 ff.

- definitions of ‘bullying’ and work toward a national definition;⁶⁵
- the process by which WorkSafe ACT decides whether a matter is to be investigated;⁶⁶
- complaints regarding bullying in the ACT Ambulance Service and other parts of the ACT Public Service, and how such complaints would be dealt with if they warranted investigation;⁶⁷
- the ACT government’s response to sham contacting;⁶⁸
- questions about bullying in the ACT public service;⁶⁹
- consultations and progress on work safety;⁷⁰
- the introduction of a portable long service leave scheme for waste workers;⁷¹
- the costs to employers of an increase in the workers compensation levy, and the average cost to employers of workers compensation insurance policies;⁷²
- the work of the Default Insurance Fund;⁷³
- the work of the Work Safety Council;⁷⁴
- implementation of recommendations from the *Getting home safely* report on workplace safety;⁷⁵
- the work of the ACT Long Service Leave Authority;⁷⁶
- levels of compliance among employers obliged to register their employees with the Long Service Leave Authority;⁷⁷ and
- administration of investments by the Long Service Leave Authority.⁷⁸

3.7 Questions Taken on Notice were also asked and answered regarding workers compensation and work safety.⁷⁹

⁶⁴ *Proof Transcript of Evidence*, 20 November 2013, pp.135-137.

⁶⁵ *Proof Transcript of Evidence*, 20 November 2013, pp.137-138.

⁶⁶ *Proof Transcript of Evidence*, 20 November 2013, pp.142-143.

⁶⁷ *Proof Transcript of Evidence*, 20 November 2013, pp.143-144.

⁶⁸ *Proof Transcript of Evidence*, 14 November 2013, pp.86-88.

⁶⁹ *Proof Transcript of Evidence*, 14 November 2013, p.89.

⁷⁰ *Proof Transcript of Evidence*, 14 November 2013, pp.91-92.

⁷¹ *Proof Transcript of Evidence*, 14 November 2013, pp.92-93.

⁷² *Proof Transcript of Evidence*, 14 November 2013, pp.93-95.

⁷³ *Proof Transcript of Evidence*, 14 November 2013, pp.95-98.

⁷⁴ *Proof Transcript of Evidence*, 14 November 2013, pp.99-100.

⁷⁵ *Proof Transcript of Evidence*, 14 November 2013, p.100.

⁷⁶ *Proof Transcript of Evidence*, 14 November 2013, pp.101-102.

⁷⁷ *Proof Transcript of Evidence*, 14 November 2013, p.101.

⁷⁸ *Proof Transcript of Evidence*, 14 November 2013, p.102.

⁷⁹ See Question Taken on Notice No.9, and Nos. 15 and 16, http://www.parliament.act.gov.au/_data/assets/pdf_file/0007/553048/JACS-Annual-Reports-2012-13-Questions-Taken-on-Notice-with-table.pdf

DISCUSSION

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

ALLEGATIONS OF BULLYING AT CANBERRA INSTITUTE OF TECHNOLOGY

- 3.9 In hearings, the Work Safety Commissioner was asked about comments he had made in his April 2011 report on allegations of bullying at the Canberra Institute of Technology (CIT), and was asked to advise the Committee on progress made in relation to those matters.⁸⁰
- 3.10 References are made to this issue in Justice and Community Safety Directorate's *Annual Report 2012-13* in connection with Recommendation 75 of the report of the Select Committee on Estimates 2012-13. The Select Committee's report also made reference to this issue in Recommendations 76 and 77 and supporting narrative.⁸¹
- 3.11 In the Commissioner's 2011 report he stated, among other things, that:
- Given that the complaints which had been made were clearly of a serious nature and involved allegations about senior managers, the WorkSafe ACT investigation found that the CIT's consideration of the complaints by its internal People Support area was inadequate and insufficiently independent to satisfy the requirement that the CIT take all reasonably practicable steps to identify and manage health and safety risks to the CIT's workers.⁸²
- 3.12 He also put the view that 'the investigations that were undertaken by the People Support area at the CIT appear not to have adhered to principles of natural justice'.⁸³
- 3.13 In public hearings, the Commissioner reported that a 'lot has happened at CIT since that time' and that CIT had 'taken enormous steps to improve the culture in their workplace', resulting in 'enormous improvements'.⁸⁴

⁸⁰ *Proof Transcript of Evidence*, 20 November 2013, p.135.

⁸¹ References are made to this issue in Justice and Community Safety Directorate, *Annual Report 2012-13*, p.176, in connection with Recommendation 75 of the report of the Select Committee on Estimates 2012-13, pp. xxiv, 124-5 and see Recommendations 75, 76 and 77, available at http://www.parliament.act.gov.au/data/assets/pdf_file/0007/374956/Vol_1_Estimates.pdf

⁸² *Investigation into compliance by the CIT with its duties under the Work Safety Act 2008 and the Work Health and Safety Act 2011 in response to allegations of bullying at CIT*, viewed 14 February 2014, http://cdn.justice.act.gov.au/resources/uploads/Worksafe/Publications/Investigation_Reports/CIT_Report_Final_-_11_April_2012.pdf, p.3.

⁸³ *Investigation into compliance by the CIT with its duties under the Work Safety Act 2008 and the Work Health and Safety Act 2011 in response to allegations of bullying at CIT*, viewed 14 February 2014, http://cdn.justice.act.gov.au/resources/uploads/Worksafe/Publications/Investigation_Reports/CIT_Report_Final_-_11_April_2012.pdf, p.4.

⁸⁴ *Proof Transcript of Evidence*, 20 November 2013, p.135.

3.14 Asked about numbers of specific cases, and numbers resolved in the period since the release of the 2011 report, the Commissioner referred the Committee to the Commissioner for Public Administration.⁸⁵

3.15 However, he made some general observations about bullying, seeking to place the matters at CIT in context. He told the Committee that of 40 allegations of bullying received by Work Safe ACT from the public sector ‘we found only 12 to be bullying’⁸⁶:

So a large number of matters that are brought before us are not in fact bullying. They are perceptions of staff about actions that are being taken against them, sometimes in an industrial relations sense or performance management sense. Although there are some very real cases of bullying that happen—and I am very empathetic to that and think it is a terrible thing—there is also misuse of the term “bullying” in some quarters, which, unfortunately, from my point of view, undermines the seriousness of the issue.⁸⁷

3.16 The Commissioner went on to say that current definitions of bullying were problematic and characterised this as ‘an area ... shrouded in greyness’. He told the Committee that he had appeared before a House of Representatives committee where he spoke about the need for ‘one agreed definition’, nationally, of bullying.⁸⁸

3.17 The Minister for Workplace Safety and Industrial Relations also contributed to this discussion, where he too emphasised the need for ‘clarity’ through an agreed national definition of bullying. Without this, he told the Committee, there were additional risks of ‘duplicated complaint-handling mechanisms’ between the federal and state / territory jurisdictions.⁸⁹

3.18 Questions were also asked about bullying in the ACT public service more widely. The Attorney-General responded by saying that the Chief Minister was the minister responsible for ‘the management of the ACT public service as a whole’, and that questions should be directed to her.⁹⁰

SHAM CONTRACTING

3.19 As noted above, the Committee put questions to the Minister regarding sham contracting.

3.20 According to the Fair Work Ombudsman, ‘Sham contracting’, refers to arrangements where ‘an employer attempts to disguise an employment relationship as an independent contracting

⁸⁵ *Proof Transcript of Evidence*, 20 November 2013, p.136.

⁸⁶ *Proof Transcript of Evidence*, 20 November 2013, p.136.

⁸⁷ Mr Mark McCabe, *Proof Transcript of Evidence*, 20 November 2013, p.136.

⁸⁸ Mr Mark McCabe, *Proof Transcript of Evidence*, 20 November 2013, p.136.

⁸⁹ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 20 November 2013, p.138.

⁹⁰ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 14 November 2013, p.89.

arrangement' and that this is 'usually done for the purposes of avoiding responsibility for employee entitlements'.

3.21 Such arrangements are specifically prohibited in the *Fair Work Act 2009* (Cwth) at s 357, 'Misrepresenting employment as independent contracting arrangement'; s 358, 'Dismissing to engage as independent contractor', and s 359, 'Misrepresentation to engage as independent contractor'.

3.22 In response to questions, the Minister told the Committee that:

Sham contracting, of course, is an important issue in the context of broader issues around occupational health and safety. Companies that engage in sham contracting are often companies that are not ensuring that their workers are appropriately protected when it comes to issues such as workers compensation and also may be avoiding their obligations in relation to taxation.⁹¹

3.23 In response to a further question, the Minister spoke about measures taken by the ACT Government against sham contracting, and invited the Deputy Director-General, Workforce Capability and Governance Division, to provide additional information to the Committee.

3.24 The Deputy Director-General told the Committee that:

There are a range of measures in place in the public service. There is a test and tool applied by our colleagues in the Shared Services function which assesses a range of matters, including those which go to the proper structure and arrangements of companies that are tendering for work in the ACT or for the ACT government. It was also one of the recommendations in the Getting home safely report.⁹²

3.25 He also told the Committee that the ACT Government had:

taken steps with our interjurisdictional colleagues to continue discussions at that level about data sharing and cooperation between jurisdictions, including the commonwealth and the Australian Taxation Office, so that there are levels of comfort in our jurisdiction and in the territory more broadly about those firms with which we are entering into commercial arrangements.⁹³

3.26 Furthermore there was, he told the Committee, 'work being done on a claims and data policy warehouse' which would:

allow us to engage better and continue work already underway in terms of data matching across various elements of the ACT jurisdiction—again with a view to

⁹¹ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 14 November 2013, p.87.

⁹² Mr Andrew Kefford, *Proof Transcript of Evidence*, 14 November 2013, p.87.

⁹³ Mr Andrew Kefford, *Proof Transcript of Evidence*, 14 November 2013, p.87.

assuring ourselves of the structures and the arrangements of the firms with which we are contracting as we enter into those arrangements.⁹⁴

PROGRESS ON WORK SAFETY

- 3.27 As noted above, in hearings the Committee asked questions regarding progress on the implementation of recommendations from the *Getting home safely* report on workplace safety.⁹⁵
- 3.28 In response, the Minister for Workplace Safety and Industrial Relations told the Committee:
- that the ACT government had ‘significantly increased’ resources available to WorkSafe ACT ‘to deal with occupational health and safety matters as a whole’;⁹⁶
 - that positions for an additional 12 work safety inspectors had been funded, as recommended by *Getting home safely*;⁹⁷
 - that changes in resourcing would result in an increased ‘capacity of WorkSafe ACT to refer matters for prosecution to the Director of Public Prosecution and have the appropriate briefs of evidence well prepared’ for the Director;⁹⁸ and
 - that the government had undertaken consultations with stakeholders, including employer and employee representatives, in the area with a view to implementing the recommendations of *Getting home safely*.⁹⁹

COMMITTEE COMMENT

BULLYING AT CIT AND ELSEWHERE

- 3.29 The Committee regards workplace bullying as a very serious issue. This was borne out by the responses of the Work Safety Commissioner who, when asked about consequences, told the Committee that instances of workplace bullying often resulted in ‘very long periods of time off work’.¹⁰⁰

⁹⁴ Mr Andrew Kefford, *Proof Transcript of Evidence*, 14 November 2013, p.87.

⁹⁵ *Proof Transcript of Evidence*, 14 November 2013, p.100. The *Getting home safely* report is available at: http://cdn.justice.act.gov.au/resources/uploads/Worksafe/Publications/Handbooks/Getting_Home_Safely_report_-_Construction_Safety_Inquiry_Nov_2012.pdf

⁹⁶ *Proof Transcript of Evidence*, 14 November 2013, pp.89-90.

⁹⁷ *Proof Transcript of Evidence*, 14 November 2013, p.90.

⁹⁸ *Proof Transcript of Evidence*, 14 November 2013, p.90.

⁹⁹ *Proof Transcript of Evidence*, 14 November 2013, pp.91-92.

¹⁰⁰ Mr Mark McCabe, *Proof Transcript of Evidence*, 20 November 2013, p.136.

3.30 The Committee was concerned that not all questions regarding bullying were answered. As noted, in one instance a question was redirected to another minister.¹⁰¹ In another instance questions were asked when the Commissioner for Public Administration was present, and could have responded, but the Committee was told that he was present only in his role as Deputy Director-General, Workforce Capability and Governance Division, CMTD.¹⁰² The Committee wishes to note that the work of Assembly Committees, and the Legislative Assembly for the ACT more generally, relies on powers to put questions and have them responded to. In this instance Members of the Committee took different views of the Minister's responses to questions. Some Members took the view that more information should have been provided to the Committee on the matter. Other Members took the view that the Minister had provided extensive answers to questions put to him in hearings, both verbally and in writing.

PROGRESS ON GETTING HOME SAFELY

3.31 In the Committee's view it appears that the ACT government has responded appropriately to the recommendations of *Getting home safely*. The expansion of resources available to Work Safety ACT appears to be an important step in moving toward a work safety compliant culture in the ACT.

3.32 The Committee notes that the positions of ACT Work Safety Commissioner and Senior Director WorkSafe ACT are vested in the same person.¹⁰³ The Commissioner is a statutory office holder while the Senior Director is part of, and answers to, the Executive. The Committee understands that this is a response to resource pressures in a small jurisdiction. It has no wish to reflect on the work of the present incumbent, but it considers that in time the positions should be held by two different people so as to achieve a more appropriate separation between the statutory office holder and the officer answerable to the Executive.

3.33 In light of the Committee makes the following recommendation.

Recommendation 3

3.34 The Committee recommends that, over time and subject to budgetary considerations, positions which combine a statutory office holder and an officer answerable to the Executive be disaggregated so that these functions performed by different persons.

¹⁰¹ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 14 November 2013, p.89.

¹⁰² Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 14 November 2013, p.90. The subject of questioning was bullying at CIT.

¹⁰³ WorkSafe ACT, 'About Us', http://www.worksafe.act.gov.au/about_us#Work%20Safety%20Commissioner, viewed 18 February 2014.

SHAM CONTRACTING

- 3.35 The Committee notes the Minister's comments on sham contracting and the additional evidence provided by the Deputy Director-General, Workforce Capability and Governance Division that the ACT Government is investigating ways to address sham contracting.
- 3.36 In light of the evidence provided, the Committee makes the following recommendations.

Recommendation 4

- 3.37 The Committee recommends that the ACT Government work across all agencies to ensure that they are utilising the tests and tools offered by Shared Services when undertaking a procurement process.**

Recommendation 5

- 3.38 The Committee recommends that the ACT Government, through Shared Services, investigate mechanisms that could be employed so that successful government tenders are audited while work is being conducted.**

Recommendation 6

- 3.39 The Committee recommends that all ACT Government tender documents contain a statement of the Government's clear position on only engaging companies that are properly established as legitimate enterprises.**
- 3.40 In addition, the Committee supports the ACT Government's efforts in building a data policy warehouse across government to ensure that Directorates are equipped with the information they need to avoid engaging sham contractors.

4 ACT POLICING, THE EMERGENCY SERVICES AGENCY

INTRODUCTION

- 4.1 The Minister for Police and Emergency Services, and Officers of ACT Policing and the Emergency Services (ESA), appeared before the Committee at public hearings on 14 November 2013.

MATTERS CONSIDERED

ACT POLICING

- 4.2 The following matters were considered in relation to ACT Policing:
- police targeting of alcohol-related crime in Civic;¹⁰⁴
 - occupational health and safety concerns regarding the Alcohol Crime Targeting Team;¹⁰⁵
 - statistical information showing reductions in property offences;¹⁰⁶
 - workplace flexibility within ACT Policing;¹⁰⁷
 - levels of ‘established complaints’ against police;¹⁰⁸
 - community programs by ACT Policing, including ‘Kenny Koala’;¹⁰⁹
 - whether budget cuts had reduced the number of serving uniformed officers in ACT Policing;¹¹⁰
 - the work of the ACT Policing Youth Liaison Team;¹¹¹ and
 - suburban policing initiatives.¹¹²

¹⁰⁴ *Proof Transcript of Evidence*, 14 November 2013, p.114.

¹⁰⁵ *Proof Transcript of Evidence*, 14 November 2013, pp.114-117.

¹⁰⁶ *Proof Transcript of Evidence*, 14 November 2013, p.117.

¹⁰⁷ *Proof Transcript of Evidence*, 14 November 2013, pp.117-118.

¹⁰⁸ *Proof Transcript of Evidence*, 14 November 2013, pp.118-120.

¹⁰⁹ *Proof Transcript of Evidence*, 14 November 2013, pp.120-121.

¹¹⁰ *Proof Transcript of Evidence*, 14 November 2013, pp.121-122.

¹¹¹ *Proof Transcript of Evidence*, 14 November 2013, pp.122-123.

¹¹² *Proof Transcript of Evidence*, 14 November 2013, p.123.

EMERGENCY SERVICES

- 4.3 The following matters were considered in relation to Emergency Services (ESA):
- the state of bushfire preparedness in the ACT;¹¹³
 - the completion of a new Rural Fire Service (RFS) brigade building at Tidbinbilla;¹¹⁴
 - a remote area fire-fighting capacity;¹¹⁵
 - communications networks employed by Emergency Services;¹¹⁶
 - a new ESA station at Charnwood;¹¹⁷
 - the availability of information on probably flood zones in the ACT;¹¹⁸
 - whether any disciplinary proceedings were current in connection with ESA staff;¹¹⁹ and
 - awards to Emergency Services staff and volunteers.¹²⁰
- 4.4 Questions Taken on Notice were also asked and answered regarding the work of the Emergency Services Agency.¹²¹

DISCUSSION

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

ALCOHOL-RELATED CRIME AND STAFFING

- 4.6 In public hearings questions were asked regarding the effectiveness, staffing, and occupational health and safety dimensions of units in ACT Policing tasked with controlling alcohol-related crime in Civic, and concerns were raised about the safety of police officers.¹²² These matters

¹¹³ *Proof Transcript of Evidence*, 14 November 2013, pp.103-104.

¹¹⁴ *Proof Transcript of Evidence*, 14 November 2013, pp.104-105.

¹¹⁵ *Proof Transcript of Evidence*, 14 November 2013, p.105.

¹¹⁶ *Proof Transcript of Evidence*, 14 November 2013, pp.105-106.

¹¹⁷ *Proof Transcript of Evidence*, 14 November 2013, pp.106-108.

¹¹⁸ *Proof Transcript of Evidence*, 14 November 2013, pp.108-110.

¹¹⁹ *Proof Transcript of Evidence*, 14 November 2013, pp.110-113.

¹²⁰ *Proof Transcript of Evidence*, 14 November 2013, p.113.

¹²¹ See Questions Taken on Notice Nos.10, 11, 12, 13, & 19, http://www.parliament.act.gov.au/data/assets/pdf_file/0007/553048/JACS-Annual-Reports-2012-13-Questions-Taken-on-Notice-with-table.pdf

¹²² *Proof Transcript of Evidence*, 14 November 2013, p.114.

had been reported in the press.¹²³ ACT Policing had responded by merging the City Beats Team and the Alcohol Crime Targeting Team.¹²⁴

- 4.7 The Chief Police Officer responded. He told the Committee that, over a period of years, numbers in the City Beats Team had fallen, to the point where safety issues were raised by a staff member of ACT Policing. The merging of the two teams was intended to 'keep the benefits of the City Beats Team' while providing 'a response to alcohol-fuelled violence in the city'. As a result, the CPO told the Committee, there was 'a greater presence at licensed premises throughout Canberra'. An intelligence officer had been added to the unit to 'properly and strategically target and be aware of the hot spots in Canberra' and, as a result, the new team had been able to respond 'in a very practical and a very fast way to those sorts of incidents in Canberra'.¹²⁵
- 4.8 When asked in further detail about staffing for the newly merged unit, the CPO told the Committee that the current strength of the unit was 24, that this represented an increase of 2 over aggregate numbers prior to the merger. As a result, he told the Committee, licensed premises were 'getting more attention now than they ever have'.¹²⁶

INFORMATION ON FLOOD ZONES

- 4.9 In the Committee's public hearings of 14 November 2013 questions were asked regarding a previous government announcement that ACT residents would have online access to information about whether their homes were situated in flood zones.¹²⁷
- 4.10 The Minister for Police and Emergency Services responded, advising that this information had not yet been published online due it being 'the subject of final checking by ... relevant technical officials to make sure of its accuracy'. He also told the Committee he had given 'an indicative time frame' only at the time of the announcement.¹²⁸
- 4.11 The Minister told the Committee that the government was concerned regarding correct use and interpretation of the information:

The government is concerned to ensure that, whilst information about the one-in-100-year flood areas is made available, people understand that just because they are not in those areas does not mean they are not potentially subject to flood. The flood data that we are talking about is riverine flooding as a result of a major flood event that

¹²³ Lisa Cox, 'Civic needs more police, chiefs warned', *Canberra Times*, September 14, 2013, <http://www.canberratimes.com.au/act-news/civic-needs-more-police-chiefs-warned-20130913-2tqgr.html>

¹²⁴ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 14 November 2013, p.114.

¹²⁵ Assistant Commissioner Rudi Lammers, ACT Policing, *Proof Transcript of Evidence*, 14 November 2013, p.115.

¹²⁶ Assistant Commissioner Rudi Lammers, ACT Policing, *Proof Transcript of Evidence*, 14 November 2013, p.115.

¹²⁷ *Proof Transcript of Evidence*, 14 November 2013, p.108.

¹²⁸ Mr Simon Corbell MLA, *Transcript of Evidence*, 14 November 2013, p.108.

leads to the breaking of banks of a river or other similar large tributary. The most obvious one, obviously, is the Molonglo River, should there be a one-in-100-year flood event with the Molonglo River.¹²⁹

- 4.12 The Minister told the Committee that certain interpretations of the information could lead to inaccurate assessments of risk:

We know that there are only a very small number of properties that are potentially affected by a one-in-100-year flood, but the government is concerned that, in releasing that information, people do not therefore assume that they are not subject to any flood risk at all, because, whilst they may not be subject to riverine flooding, they could still potentially be subject to flash flooding. Flash flooding as a result of blockages of drains or other infrastructure in a suburb as a result of a severe downpour event that could be highly localised could nevertheless see flash flooding occur in a suburban environment.¹³⁰

- 4.13 With this in mind, the Minister told the Committee:

the government has asked officials to ensure that when the riverine flooding information is made available, there is also clear guidance available to members of the public about what their risks are in relation to flash flooding or other flooding events that are not negotiated with riverine inundation.¹³¹

COMMITTEE COMMENT

ALCOHOL-RELATED CRIME AND STAFFING

- 4.14 The Committee notes current high levels of concern about alcohol-related crime in this and other jurisdictions. While staffing issues in ACT Policing units responsible for suppressing and responding to alcohol-related crime appear to have been addressed, the Committee notes ongoing concerns about the ability to manage this issue effectively.
- 4.15 An inquiry by the Standing Committee on Justice and Community Safety in the Seventh Assembly considered proposals for a reform of the liquor licensing fees regime.¹³² In these, licensees paid a higher fee for any trading activities, such as extended trading hours, which were known to be associated with greater risks and harms from alcohol. The fee regime

¹²⁹ Mr Simon Corbell MLA, *Transcript of Evidence*, 14 November 2013, p.108.

¹³⁰ Mr Simon Corbell MLA, *Transcript of Evidence*, 14 November 2013, pp.108-109.

¹³¹ Mr Simon Corbell MLA, *Transcript of Evidence*, 14 November 2013, p.109.

¹³² Standing Committee on Justice and Community Safety, *Inquiry into Liquor Fees and Subordinate Legislation*, May 2012, http://www.parliament.act.gov.au/data/assets/pdf_file/0003/373260/JACS11_Liquor_fee.pdf

considered by the Committee then was subsequently put in place and continues to be a major feature of alcohol regulation in the ACT.

- 4.16 The Committee supports approach taken in these measures. However, as noted in its report at the time, there are other avenues which could be pursued further to discourage alcohol-related crime. In particular, the Committee at that time noted the probable contribution, to alcohol-related crime, of alcohol purchased from off license vendors. The Committee was concerned about high numbers of off license liquor outlets and that these had, in effect, not had the same fee-for-risk model applied to them. This was in spite of evidence that alcohol from off licenses was being consumed in 'pre-loading' prior to attending licensed premises. The Committee at the time considered that this threatened the consistency of the government's model, which appeared to assume that if alcohol-related crime occurred at licensed premises then this indicated that this had arisen by virtue of alcohol sold by the premises.
- 4.17 In the Committee's view, this still remains outstanding as a matter to be addressed, all the more so because the basic principles employed by the government are consistent with those identified by alcohol researchers as being most significant in alcohol harms. While most of the basis of the current fees regime is based on evidence, this particular area is notable in that it ignores documented behavioural patterns which give rise to harm. In the Committee's view the fees regime, and other measures to curb alcohol-related crime, would more readily attract the cooperation and assent of the community if it were entirely consistent, both internally and with the reported realities of contemporary alcohol use.

FLOOD MAPS

- 4.18 While the Committee appreciates that any information provided regarding flood zones for residential housing should be provided with appropriate context and caveats, it considers that the risk of misinterpreted information must be weighed against risks created by having no information publicly available at all. It also notes that flood events have come to the attention of the Committee, such as that which made it necessary to repair the ESA communications facility at Fairbairn,¹³³ would raise levels of concern in the community. In response to this, the ESA should release information about flood risk at the first opportunity.
- 4.19 In light of this the Committee makes the following recommendation.

¹³³ See for example reference in Legislative Assembly for the ACT, *Hansard*, 26 October, 2011, p.5004, <http://www.hansard.act.gov.au/hansard/2011/week12/5004.htm>

Recommendation 7

- 4.20** The Committee recommends that the ACT Government publish information about flood zones and risks to residential housing as soon as possible, with appropriate caveats.

5 CORRECTIVE SERVICES AND THE AMC

INTRODUCTION

5.1 On 13 November 2013 the Minister for Corrections and his officers appeared before the Committee at a public hearing.

MATTERS CONSIDERED

5.2 Matters considered included:

- the availability of alcohol and drug rehabilitation programs to persons attending the Periodic Detention Centre;¹³⁴
- evaluation of rehabilitation programs offered by Corrective Services;¹³⁵
- questions on data regarding recidivism in the ACT;¹³⁶
- questions on data regarding community and workforce participation amongst ex-offenders in the ACT;¹³⁷
- rates of the granting of parole and the management of offenders on parole;¹³⁸
- an increase in referrals to Galambany court;¹³⁹
- the effect of overcrowding on human rights and rehabilitation programs at the Alexander Maconochie Centre (AMC);¹⁴⁰
- whether the Human Rights Commissioner would receive funding to perform a human rights audit at the AMC;¹⁴¹
- questions regarding a comparison between the AMC and Goulbourn jail in NSW;¹⁴²
- questions on human rights compliance at the AMC;¹⁴³

¹³⁴ *Proof Transcript of Evidence*, 13 November 2013, pp.42-43.

¹³⁵ *Proof Transcript of Evidence*, 13 November 2013, pp.43-44.

¹³⁶ *Proof Transcript of Evidence*, 13 November 2013, pp.44-45, 47.

¹³⁷ *Proof Transcript of Evidence*, 13 November 2013, pp.46-47.

¹³⁸ *Proof Transcript of Evidence*, 13 November 2013, p.47.

¹³⁹ *Proof Transcript of Evidence*, 13 November 2013, p.48.

¹⁴⁰ *Proof Transcript of Evidence*, 13 November 2013, pp.48-49.

¹⁴¹ *Proof Transcript of Evidence*, 13 November 2013, pp.48-50, and see also *Proof Transcript of Evidence*, 6 November 2013, p.131.

¹⁴² *Proof Transcript of Evidence*, 13 November 2013, pp.50-51.

¹⁴³ *Proof Transcript of Evidence*, 13 November 2013, pp.51-52.

- nature of work undertaken by offenders on community service orders, including occupational health and safety;¹⁴⁴
- proposed responses to overcrowding at the AMC;¹⁴⁵
- questions regarding breaches of parole;¹⁴⁶
- the possible involvement of Auswide in college detainee education services;¹⁴⁷
- the ACT Corrective Services operational skills training program, and the capacity of Corrective Services to attract and retain staff;¹⁴⁸
- the current state of progress on the proposed Needle and Syringe Program (NSP) at the AMC;¹⁴⁹
- questions to the Official Visitor about the effects of overcrowding at the AMC;¹⁵⁰
- the work of the Sentence Administration Board (SAB);¹⁵¹
- the process for breach inquiries by the SAB;¹⁵²
- questions regarding increases in parole breaches and underlying causes;¹⁵³ and
- questions regarding increases in cancellations of Periodic Detention Orders.¹⁵⁴

5.3 Questions Taken on Notice were also asked and answered regarding the work of Corrective Services and the Sentence Administration Board.¹⁵⁵

¹⁴⁴ *Proof Transcript of Evidence*, 13 November 2013, pp.52-53.

¹⁴⁵ *Proof Transcript of Evidence*, 13 November 2013, pp.54-55, 57-58.

¹⁴⁶ *Proof Transcript of Evidence*, 13 November 2013, pp.58-60.

¹⁴⁷ *Proof Transcript of Evidence*, 13 November 2013, pp.60-61.

¹⁴⁸ *Proof Transcript of Evidence*, 13 November 2013, pp.61-62.

¹⁴⁹ *Proof Transcript of Evidence*, 13 November 2013, pp.62-65.

¹⁵⁰ *Proof Transcript of Evidence*, 13 November 2013, pp.66-70, 71-73.

¹⁵¹ *Proof Transcript of Evidence*, 13 November 2013, pp.74-75.

¹⁵² *Proof Transcript of Evidence*, 13 November 2013, pp.75-76.

¹⁵³ *Proof Transcript of Evidence*, 13 November 2013, pp.76-77.

¹⁵⁴ *Proof Transcript of Evidence*, 13 November 2013, pp.77-78.

¹⁵⁵ See Questions Taken on Notice Nos. 4, 5, 6, 7 and 8, http://www.parliament.act.gov.au/_data/assets/pdf_file/0007/553048/JACS-Annual-Reports-2012-13-Questions-Taken-on-Notice-with-table.pdf

DISCUSSION

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

DRUG AND ALCOHOL PROGRAMS AT THE PERIODIC DETENTION CENTRE

- 5.5 The JACS *Annual Report* for 2012-13 reports on the Periodic Detention Centre (PDC) in Output 2.1, Corrective Services, where the PDC is described as follows:

In the ACT Periodic Detention is used as a sentencing option for periods of weekend detention. The Symonston Periodic Detention Centre (PDC) was opened in 1995 and is the last operational weekend detention centre in Australia.¹⁵⁶

Accommodation at the PDC is a mix of shared cells and dormitory-style rooms in separate buildings and is gender segregated. Detainees are expected to participate in supervised work activities designed to assist the community (such as removing graffiti from bus shelters, weeding around cemeteries or assisting charitable agencies). If not engaged in community activities, detainees are expected to participate in activities to maintain the centre such as cleaning and gardening, or in attending programs to address their offending behaviour such as alcohol and drug rehabilitation.¹⁵⁷

- 5.6 In the Committee's public hearing of 13 November 2013 questions were asked regarding the availability of drug and alcohol rehabilitation programs at the PDC.¹⁵⁸
- 5.7 The Executive Director, ACT Corrective Services, responded, saying that Corrective Services had 'scaled down some of the programs' because 'we have no control over the cohorts coming into custody in relation to whether they are all coming in with drink-driving'.¹⁵⁹ Rather, she told the Committee:

The myriad of offences is so broad that we have just scaled back and are relooking at that area. For example, we might have 40 turn up on a weekend and only a few of them might be alcohol and drug related offences; we could have some for sexual assault offending or assaults.¹⁶⁰

- 5.8 As a result of this diversity of offences, she told the Committee, '[y]ou do not get the dynamic' and 'so we are looking at other ways to provide services in that area'.¹⁶¹

¹⁵⁶ JACS Annual Report 2012-13, 'Periodic Detention Centre', p.108.

¹⁵⁷ JACS Annual Report 2012-13, 'Periodic Detention Centre', p.108.

¹⁵⁸ *Proof Transcript of Evidence*, 13 November 2013, p.42 ff.

¹⁵⁹ Mrs Bernadette Mitcherson, *Proof Transcript of Evidence*, 13 November 2013, p.42.

¹⁶⁰ Mrs Bernadette Mitcherson, *Proof Transcript of Evidence*, 13 November 2013, p.42.

¹⁶¹ Mrs Bernadette Mitcherson, *Proof Transcript of Evidence*, 13 November 2013, p.42.

- 5.9 Another problem, the Executive Director told the Committee, there was ‘no supervision component’ attached to PDC sentences, and people attending the PDC had a variety of sentences which could include short periods attending the PDC as part of a ‘combination sentence’ (combining a full custodial sentence with periods of other things such as the PDC). She told the Committee that Corrective Services was engaged in discussions about supervision components ‘for some categories of offenders’.¹⁶²
- 5.10 When asked about the effectiveness of the program, the Executive Director told the Committee that this was ‘a very broad question’, and that it was something that Corrective Services was ‘looking at in our programs generally in relation to our risk assessment’. She noted that Corrective Services conducted a level of service inventory (‘which measures risk for our clients’), as was commonly done in ‘First World countries’. Some deductions could be made from that process about risks of re-offending according to cohorts, such as first-time drink driving offenders. She told the Committee that Corrective Services was reviewing programs, its sex offender program among others.¹⁶³
- 5.11 The Executive Director went on to tell the Committee that the ACT, as a small jurisdiction, often depended on ‘information from large jurisdictions in terms of evaluation’, and that the ACT relied on ‘larger jurisdictions’ for ‘research around programming’.¹⁶⁴

HUMAN RIGHTS AUDIT AND COMPLIANCE AT THE AMC

- 5.12 The Human Rights Commission’s *Annual Report* for 2012-13 stated that Human Rights Commissioner was ‘looking forward to finalising the Human Rights Audit & Review of the women’s area of the AMC’, but noted that there were ‘not sufficient resources to conduct a comprehensive Human Rights Audit of all detainees’ conditions of detention’.¹⁶⁵
- 5.13 Questions on this subject had been put to the Human Rights Commission at the Committee’s public hearing of 6 November 2013, as were questions on the Commission’s current audit and review of human rights for women prisoners at the AMC.¹⁶⁶
- 5.14 In the Committee’s hearings of 13 November 2013 questions were asked regarding human rights compliance and the AMC, and in particular whether ACT government would provide the Human Rights Commission with resources to conduct a human rights audit at the prison.¹⁶⁷

¹⁶² Mrs Bernadette Mitcherson, *Proof Transcript of Evidence*, 13 November 2013, p.42.

¹⁶³ Mrs Bernadette Mitcherson, *Proof Transcript of Evidence*, 13 November 2013, p.43.

¹⁶⁴ Mrs Bernadette Mitcherson, *Proof Transcript of Evidence*, 13 November 2013, p.43.

¹⁶⁵ ACT Human Rights Commission, *Annual Report 2012-13*, p.7, viewed 19 February 2014, [http://www.hrc.act.gov.au/res/2013%2009%2019%20Final%20\(WCAG%20%20%20Compliant\)%20Version%203.pdf](http://www.hrc.act.gov.au/res/2013%2009%2019%20Final%20(WCAG%20%20%20Compliant)%20Version%203.pdf)

¹⁶⁶ *Proof Transcript of Evidence*, 6 November 2013, p.6.

¹⁶⁷ *Proof Transcript of Evidence*, 6 November 2013, pp.48-50, 51-52, 71-72.

- 5.15 The Minister for Corrections responded, saying that he was 'quite open' to the Human Rights Commissioner conducting an audit. He told the Committee that the AMC was 'subject to a range of oversights', including that of the Official Visitor. It had also been reviewed in the Hamburger report, and prisoners had recourse to the Ombudsman and 'a range of other oversight mechanisms'. In view of this, he told the Committee, he considered that the AMC was 'receiving a high level of scrutiny'.¹⁶⁸
- 5.16 The Minister was asked whether overcrowding had affected human rights at the AMC, and whether it had reduced the ability of prisoners to attend rehabilitation programs.¹⁶⁹
- 5.17 The Minister responded, saying that the 'current population numbers' had 'put some pressure on the facility', but that prisoners were 'still attending their programs', and there had not 'been any impact in that regard'.¹⁷⁰
- 5.18 Regarding this matter, the Committee notes comments made by the Official Visitor regarding the 'balance' needed with regard to human rights in prison:

the theory of jail is the deprivation of liberty. You do not get sent to jail for punishment; it is the loss of liberty. But, then, within the jail system you have got restrictions on movement, you have got issues about ensuring that people do not assault each other. So human rights within the jail is a bit of a balancing act. It is how many rights can you give a detainee without being excessively coercive. It is a matter of judgment.¹⁷¹

- 5.19 The Committee also notes comments by the Minister for Corrections on the AMC as a human-rights compliant prison:

I think the jail strives to be human rights compliant. I think it goes a long ... way to achieving that. I think the comments Mrs Mitcherson just made about the family visits, for example, is illustrative of that. I think the commitment to minimal use of force within the facility reflects very well on that commitment to human rights. That said, I am sure there are areas where there is always room for improvement. I have no doubt about that. There will be times when incidents will happen where we will reflect on those and perhaps look at better ways to do them. I do not think it will ever be perfectly human rights compliant in that broad sense ... circumstances will change, expectations will change. There will be different views on exactly what human rights compliance is. So I think there is probably not a definitive answer to that question.¹⁷²

¹⁶⁸ Mr Shane Rattenbury MLA, *Proof Transcript of Evidence*, 13 November 2013, p.49.

¹⁶⁹ *Proof Transcript of Evidence*, 13 November 2013, p.48.

¹⁷⁰ *Proof Transcript of Evidence*, 13 November 2013, p.48.

¹⁷¹ Mr Ivan Potas, *Proof Transcript of Evidence*, 13 November 2013, pp.71-72.

¹⁷² Mr Shane Rattenbury MLA, *Proof Transcript of Evidence*, 13 November 2013, p.252.

OFFICIAL VISITOR

- 5.20 The matter of overcrowding at the AMC was also considered when the Official Visitor appeared before the Committee later in the same hearing.¹⁷³
- 5.21 In response to questions, the Official Visitor told the Committee that due to overcrowding:
- ‘detainees are locked down more than they used to be’ because of risks arising from potential mixing of ‘various categories of detainees’,¹⁷⁴
 - extra care had to be taken ‘not to mix people who do not wish to mix or who may assault one another’,¹⁷⁵
 - there were increased perceptions of risk on the part of the ‘many prisoners who live in fear of being mixed with other prisoners’,¹⁷⁶
 - ‘in some cases they cannot get to programs when they ought to be able to’;¹⁷⁷
 - prisoners had ‘fewer privileges, if you like, for gym time [and] need to be escorted when they move from one part of the jail to another [and as a result] [o]ther detainees have to be locked in while one group is allowed out’. In view of this, the overcrowding had ‘contributed to the difficulty of handling these people’.¹⁷⁸
- 5.22 The Official Visitor was asked further questions about the extent lockdowns at the AMC. ‘Lock downs’ are periods during which prisoners cannot leave their cells, where they would otherwise be able to according to daily schedules. The Official Visitor told the Committee that lock downs happened ‘on a fairly regular basis’:
- particularly since some of the blocks have had two regimes, which means one group of detainees is allowed out in that block while another will be locked in because they cannot mix. You can see that you are actually halving the time out. Management tries to give people equal time out of cells but, unfortunately, where you have different categories of detainees that cannot mix, you have got this problem of when do you let one group out.¹⁷⁹
- 5.23 When asked if this could result in prisoners in some cell-blocks being locked down for half a day, the Official Visitor told the Committee that ‘in one or two parts of the jail’ some ‘detainees for a period of time were only having four or five hours out of cells’ per day. He considered this a low number of hours to be able to move beyond the confines of the cell.¹⁸⁰

¹⁷³ *Proof Transcript of Evidence*, 13 November 2013, p.66 ff.

¹⁷⁴ Mr Ivan Potas, *Proof Transcript of Evidence*, 13 November 2013, p.66.

¹⁷⁵ Mr Ivan Potas, *Proof Transcript of Evidence*, 13 November 2013, p.66.

¹⁷⁶ Mr Ivan Potas, *Proof Transcript of Evidence*, 13 November 2013, p.66.

¹⁷⁷ Mr Ivan Potas, *Proof Transcript of Evidence*, 13 November 2013, p.67.

¹⁷⁸ Mr Ivan Potas, *Proof Transcript of Evidence*, 13 November 2013, p.66.

¹⁷⁹ Mr Ivan Potas, *Proof Transcript of Evidence*, 13 November 2013, p.69.

¹⁸⁰ Mr Ivan Potas, *Proof Transcript of Evidence*, 13 November 2013, p.69.

Regarding this, he told the Committee that it was in his view far better to 'occupy people all day' in a prison rather than having them 'just languishing in the cell'.¹⁸¹

- 5.24 The Official Visitor told the Committee that it was 'extremely rare' for prisoners to be locked down all day. The 'ideal situation' was that prisoners were:

let out in the morning about, say, 9 o'clock. They might be locked in for lunch for an hour, and that is when the officers go for lunch—I think between 12 and 1. And then they are let out again until dusk, until dark. So they have basically the whole day, except for lunch time, out. That is the intent of the jail.¹⁸²

- 5.25 He went on to describe current conditions:

But, as I say, the complaint about lockdowns is so common that I no longer do very much about it. I just report it that people are complaining. Management knows, but they are in a situation where, if they do not lock down, there is a risk of violence or the jail could become out of control. For example, if there is an emergency and officers have to take people to hospital suddenly, you lose staff and then during that period some people may need to go back to their cells and be contained because no officers are available to manage that group of detainees.¹⁸³

- 5.26 This was, the Official Visitor told the Committee, 'a good system in the sense that you do not need a lot of officers', but it was 'a bad system when there are emergencies occurring and there are not enough staff to allow detainees their full day out of their cells'.¹⁸⁴

- 5.27 He told the Committee that overcrowding also affected relations between prisoners and officers at the AMC:

I would say, yes, it has always been the case that officers and detainees have got on reasonably well. Unfortunately, with the overcrowding, there is more tension in the jail and obviously people are being locked down and they might resent that, and so there may be a little more tension, I would say, than in the past.¹⁸⁵

- 5.28 When asked about the degree to which prisoners enjoy appropriate rights while detained, the Official Visitor told the Committee that imprisonment inherently entailed a loss of liberty. Human rights within the jail was 'a bit of a balancing act' between rights, safety, and the loss of liberty entailed by a custodial sentence, within the context of available resources, so that it

¹⁸¹ Mr Ivan Potas, *Proof Transcript of Evidence*, 13 November 2013, p.69.

¹⁸² Mr Ivan Potas, *Proof Transcript of Evidence*, 13 November 2013, pp.69-70.

¹⁸³ Mr Ivan Potas, *Proof Transcript of Evidence*, 13 November 2013, p.70.

¹⁸⁴ Mr Ivan Potas, *Proof Transcript of Evidence*, 13 November 2013, p.70.

¹⁸⁵ Mr Ivan Potas, *Proof Transcript of Evidence*, 13 November 2013, p.70.

amounted to a question of ‘how many rights can you give a detainee without being excessively coercive’.¹⁸⁶

5.29 He went on to say that he would ‘like to see more work’:

I would like to see industry. Quite a percentage of detainees do not have jobs. I would like to see them busy, and I would like to more courses, more rehabilitation, more activities. That would perhaps then reflect more like the outside than the restrictions they are currently facing.¹⁸⁷

5.30 More broadly, the Official Visitor told the Committee that lockdowns were an area which concerned him ‘in terms of human rights’.¹⁸⁸

COMMITTEE COMMENT

DRUG AND ALCOHOL PROGRAMS AT THE PERIODIC DETENTION CENTRE

5.31 In the Committee’s view there appear to be inherent difficulties in mounting drug and alcohol rehabilitation programs in connection with the Periodic Detention Centre. As the Committee was advised, this is largely to do with the absence of supervisory orders where a sentence, or part of sentence, is to be served through attendance at the PDC. In the Committee’s view these difficulties also arise through a mismatch between the periodic or interrupted nature of detention at the PDC and the need for continuity if rehabilitation programs are to be effective.

5.32 The Committee is encouraged by the advice received, that Corrective Services are exploring the possibility of supervisory orders being applied in combination with sentences involving attendance at the PDC. It is possible to envisage sentencing dispositions drawing on both of these approaches which achieve the requisite continuity.

5.33 On the other hand, the Committee is also aware that the ACT is the only jurisdiction which employs periodic detention as a sentencing option. Some others, such as New South Wales, abolished periodic detention in favour of strengthened forms of supervisory orders. With this in mind, it would be timely for the ACT to evaluate, systematically, the value of the PDC as a sentencing option.

5.34 In any such review the government should compare the value of the PDC, as a sentencing option, with the kinds of supervisory order currently employed in Victoria (in the form of

¹⁸⁶ Mr Ivan Potas, *Proof Transcript of Evidence*, 13 November 2013, pp.71-72.

¹⁸⁷ Mr Ivan Potas, *Proof Transcript of Evidence*, 13 November 2013, p.72.

¹⁸⁸ Mr Ivan Potas, *Proof Transcript of Evidence*, 13 November 2013, p.72.

Community Correction Orders, 'CCOs') and New South Wales (in the form of Intensive Correction Orders, 'ICOs'¹⁸⁹).

- 5.35 The Committee is concerned about the level of assessment and evaluation of Corrective Services programs. It understands that undertaking such assessments in a small jurisdiction brings challenges of its own, both in terms of resources and sample sizes, and that this makes drawing on the work of other jurisdictions attractive. But, ultimately, the ACT must effectively assess the performance of its own programs if it is to frame policies and resource them effectively.
- 5.36 In view of this, the Committee makes the following recommendation.

Recommendation 8

- 5.37 The Committee recommends that the ACT Government undertake an evaluation of the Periodic Detention Centre as a sentencing option. The evaluation should include a comparison with sentencing options in other jurisdictions which have replaced periodic detention.**
- 5.38 The Committee wishes to note that these matters will be considered in the Committee's current inquiry into sentencing in the ACT, on which it is due to report in November 2014.

HUMAN RIGHTS AUDIT AND COMPLIANCE AT THE AMC

- 5.39 In this inquiry the Committee heard from more than one witness about possible concerns over human rights for prisoners at the AMC and, in response to questions, the government did not affirm that it would provide sufficient resources to the Human Rights Commission to allow for a full human rights audit at the AMC.
- 5.40 The Committee considers that in view of the stated intention that the AMC would be human rights compliant, such an audit should be performed.
- 5.41 The Committee notes current and past reviews of the AMC:
- a review of the *Mental Health Treatment and Care Act 1994*;¹⁹⁰

¹⁸⁹ See Sentencing Advisory Council (Victoria), 'Community Correction Order', <https://sentencingcouncil.vic.gov.au/page/about-sentencing/sentencing-information/sentencing-adults/community-correcti>, viewed 19 February 2014, and, 'Judicial Commission of New South Wales, 'Intensive correction orders (ICOs)', http://www.judcom.nsw.gov.au/publications/benchbks/sentencing/intensive_correction_orders.html, viewed 19 February 2014.

¹⁹⁰ See ACT Legislative Assembly Hansard, 14 May 2013, p.1913 ff., <http://www.hansard.act.gov.au/hansard/2013/week07/1913.htm>

- a Chief Minister and Treasury Directorate-led Operational Review of Corrective Services (ERC);¹⁹¹
- a 2011 review into the Royal Commission into Aboriginal Deaths in Custody and investigation of procedures and practices surrounding administration of medication;¹⁹²
- two Knowledge Consulting reports into reviews of the AMC;¹⁹³ and
- the Burnet Report, 2010, which reviewed alcohol and other drug policies and services.¹⁹⁴

5.42 The Committee also notes ongoing oversight of the AMC through the work of the following statutory officers:

- the Ombudsman, who can receive and investigate complaints from detainees and can conduct inspections of AMC;
- the Human Rights Commissioner, who can receive and investigate complaints from detainees and can conduct audits of AMC;
- the Health Services Commissioner, who can receive complaints from detainees about health services;
- the Official Visitors, including an Indigenous Official Visitor, who regularly attend AMC and receive and investigate complaints from detainees.

5.43 The abovementioned officials and commissioners regularly meet with AMC staff to provide a forum to discuss and resolve any systematic issues which may require addressing.

5.44 In light of this, the Committee makes the following recommendation.

Recommendation 9

5.45 The Committee recommends that the ACT government investigate provision of sufficient resources to the ACT Human Rights Commission so that it can conduct a full human rights audit of the Alexander Maconochie Centre (AMC).

¹⁹¹ See Select Committee on Estimates 2013-2014, *Transcript of Evidence*, 27 June 2013, pp.1046-1047.

¹⁹² This was tabled by Dr Bourke MLA in the Legislative Assembly for the ACT on 6 December 2011, see *Hansard* p.5730.

¹⁹³ Knowledge Consulting, *Independent Review of Operations at the Alexander Maconochie Centre*, <http://www.justice.act.gov.au/publication/view/1438/title/independent-review-of-operations-at>, viewed 13 March 2014. This was tabled in the Assembly on 28 June 2011. The government's *Progress Report* was tabled on 29 March 2012.

¹⁹⁴ Burnet Institute, *External component of the evaluation of drug policies and services and their subsequent effects on prisoners and staff within the Alexander Maconochie Centre*, <http://health.act.gov.au/publications/reports/burnet-institute-report>, viewed 13 March 2014.

6 STATUTORY OFFICERS AND AGENCIES

INTRODUCTION

6.1 Statutory officers and agencies appeared before the Committee at public hearings as follows:

- ACT Human Rights Commission (6 November 2013);
- Victim Support ACT (6 November 2013);
- Legal Aid Commission (ACT) (6 November 2013);
- Public Advocate of the ACT (6 November 2013);
- Public Trustee for the ACT (6 November 2013); and
- ACT Electoral Commission (13 November 2013).

MATTERS CONSIDERED

ACT HUMAN RIGHTS COMMISSION

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

- the administrative model employed by the Human Rights Commission (HRC);¹⁹⁵
- a proposal to consider merging the offices of the HRC, the Public Advocate and the Victims of Crime Commissioner;¹⁹⁶
- a Commission report on students, bullying and disability;¹⁹⁷
- the handling of complaints in the disability area;¹⁹⁸
- a review of the human rights of women prisoners at the Alexander Maconochie Centre (AMC);¹⁹⁹
- incidents of sexual assault at the former Belconnen Remand Centre (BRC) and the AMC;²⁰⁰
- the move by the Children and Young People Commissioner (CYPC) from a 'service' to a 'systemic' practice model;²⁰¹

¹⁹⁵ *Proof Transcript of Evidence*, 6 November 2013, pp.1-2.

¹⁹⁶ *Proof Transcript of Evidence*, 6 November 2013, pp.2-3.

¹⁹⁷ *Proof Transcript of Evidence*, 6 November 2013, pp.3-4.

¹⁹⁸ *Proof Transcript of Evidence*, 6 November 2013, pp.4-5.

¹⁹⁹ *Proof Transcript of Evidence*, 6 November 2013, pp.5-6.

²⁰⁰ *Proof Transcript of Evidence*, 6 November 2013, pp.6-7.

- the effect of constraints on resourcing on the work of the HRC, including on complaints handling by commissioners in the HRC;²⁰²
- the working with children and/or vulnerable people checking program and its implications for privacy;²⁰³ and
- the involvement of the Disability Commissioner in the National Disability Insurance Scheme (NDIS).²⁰⁴

VICTIMS OF CRIME COMMISSIONER

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

- a review of the financial assistance scheme for victims of crime, including differences between this scheme in the ACT and those of Queensland and New South Wales (NSW);²⁰⁵
- elements of the *Crimes Legislation Amendment Act 2013* and their impact on the protection of children;²⁰⁶
- tenders for the provision of services to victims of crime;²⁰⁷ and
- the impact of delays in court cases on victims of crime and ways to improve the timeliness of resolutions of court cases.²⁰⁸

6.4 Questions Taken on Notice were also asked and answered regarding the work of the Victims of Crime Commissioner.²⁰⁹

LEGAL AID COMMISSION

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

- costs and funding for the Eastman board of inquiry;²¹⁰
- the family dispute resolution program;²¹¹

²⁰¹ *Proof Transcript of Evidence*, 6 November 2013, pp.7-9.

²⁰² *Proof Transcript of Evidence*, 6 November 2013, pp.10-12.

²⁰³ *Proof Transcript of Evidence*, 6 November 2013, pp.13-15.

²⁰⁴ *Proof Transcript of Evidence*, 6 November 2013, p.15.

²⁰⁵ *Proof Transcript of Evidence*, 6 November 2013, pp.17-18.

²⁰⁶ *Proof Transcript of Evidence*, 6 November 2013, p.19.

²⁰⁷ *Proof Transcript of Evidence*, 6 November 2013, pp.19-20.

²⁰⁸ *Proof Transcript of Evidence*, 6 November 2013, pp.20-22.

²⁰⁹ See Questions Taken on Notice Nos. 1 and 2, http://www.parliament.act.gov.au/data/assets/pdf_file/0007/553048/JACS-Annual-Reports-2012-13-Questions-Taken-on-Notice-with-table.pdf

²¹⁰ *Proof Transcript of Evidence*, 6 November 2013, p.24.

²¹¹ *Proof Transcript of Evidence*, 6 November 2013, pp.25-

- a decline in funding from the Commonwealth to the Commission, affecting the Commission's ability to support persons engaged in legal matters in the Commonwealth jurisdiction;²¹²
- changes in policy on debt recovery by the Commission;²¹³

PUBLIC ADVOCATE OF THE ACT

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

- workloads and staffing levels for the Public Advocate of the ACT;²¹⁴
- rates of demand for the Public Advocate's telephone advice line;²¹⁵
- growing demand for guardianship services by the Public Advocate;²¹⁶ and
- admissions of older adolescents with mental health problems to the adult mental health unit at Canberra Hospital.²¹⁷

6.7 Questions Taken on Notice were also asked and answered regarding the work of the Public Advocate.²¹⁸

PUBLIC TRUSTEE FOR THE ACT

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

- costs and funding over financial management orders and community service obligations;²¹⁹
- the role of the Public Trustee in relation to confiscated criminal assets;²²⁰
- the GreaterGood program;²²¹
- trends in the Public Trustee's operating surplus and dividend returned to government;²²²
- the capacity of the Public Trustee to attract and retain staff;²²³

²¹² *Proof Transcript of Evidence*, 6 November 2013, pp.26-27.

²¹³ *Proof Transcript of Evidence*, 6 November 2013, pp.27-28.

²¹⁴ *Proof Transcript of Evidence*, 6 November 2013, pp.30-31, 32-33, 34-35.

²¹⁵ *Proof Transcript of Evidence*, 6 November 2013, pp.31-32.

²¹⁶ *Proof Transcript of Evidence*, 6 November 2013, pp.30-31, 32-33

²¹⁷ *Proof Transcript of Evidence*, 6 November 2013, p.34.

²¹⁸ See Question Taken on Notice No.3, http://www.parliament.act.gov.au/_data/assets/pdf_file/0007/553048/JACS-Annual-Reports-2012-13-Questions-Taken-on-Notice-with-table.pdf

²¹⁹ *Proof Transcript of Evidence*, 6 November 2013, p.37.

²²⁰ *Proof Transcript of Evidence*, 6 November 2013, pp.37-38.

²²¹ *Proof Transcript of Evidence*, 6 November 2013, pp.38-39.

²²² *Proof Transcript of Evidence*, 6 November 2013, pp.39-40.

²²³ *Proof Transcript of Evidence*, 6 November 2013, pp.40-41.

ACT ELECTORAL COMMISSIONER

6.9 The following matters were considered in relation to the work of the ACT Electoral Commissioner:

- implications of the passage of the Officers of the Assembly Legislation Amendment Bill 2013;²²⁴
- short-falls on turnout targets for the ACT's 2012 election;²²⁵
- the Electoral Commission's audit process with respect to disclosure obligations under the *Electoral Act*;²²⁶
- security of cast ballot papers in the ACT;²²⁷ and
- processes used to count, aggregate, manage and report voting during ACT elections.²²⁸

6.10 A Question Taken on Notice was also asked and answered regarding funding to rights protection agencies in the ACT.²²⁹

DISCUSSION

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

HUMAN RIGHTS COMMISSION — PROPOSAL FOR MERGER AND RESOURCE ISSUES

6.12 As noted above, the Human Rights Commissioner told the Committee during hearings that there was a proposal under consideration to merge the Human Rights Commission with 'other statutory office holders, such as the Public Advocate and possibly the Victims of Crime Commissioner'.²³⁰ This was, she told the Committee, 'a government review instituted by the attorney and undertaken by the directorate'.²³¹

6.13 Regarding her views on the proposal, the Commissioner told the Committee that '[a]nything that would result in more services because of efficiencies I think would be welcomed by the

²²⁴ *Proof Transcript of Evidence*, 13 November 2013, p.79.

²²⁵ *Proof Transcript of Evidence*, 13 November 2013, pp.79-81.

²²⁶ *Proof Transcript of Evidence*, 13 November 2013, pp.81-82.

²²⁷ *Proof Transcript of Evidence*, 13 November 2013, pp.82-83.

²²⁸ *Proof Transcript of Evidence*, 13 November 2013, pp.83-85.

²²⁹ See Question Taken on Notice No.14, http://www.parliament.act.gov.au/data/assets/pdf_file/0007/553048/JACS-Annual-Reports-2012-13-Questions-Taken-on-Notice-with-table.pdf

²³⁰ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2013, p.1.

²³¹ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2013, p.2.

commission’, so long as it did not mean ‘our present resources are diluted—my team in particular, because I have four staff and two are lawyers’.²³²

6.14 The Children and Young People Commissioner went on to say that a number of models had been suggested, and that the review would take the form of a combination of submissions by statutory officers and interviews conducted by a consultant retained by the Directorate.²³³

6.15 This discussion took place in the context of wider discussions on resources available to the Human Rights Commission. In these discussions the commissioners told the Committee that:

- the Commission would conduct a human rights audit of the Alexander Maconochie Centre (AMC) if sufficient resources were available;²³⁴
- that such a review would likely cost between \$200,000 and \$300,000, based on the cost of the review on youth justice conducted by the Children and Young People Commissioner;²³⁵
- that, due to resource constraints and increasing complaints, the Children and Young People Commissioner was moving ‘from a service model to a systemic model’;²³⁶ and
- that the ACT Health Services Commissioner and ACT Disability and Community Services Commissioner, due to a significant rise in complaints since 2006, was triaging complaints and was ‘referring a lot of people back to service providers to get a solution’.²³⁷

6.16 In response to further questions about the balance between the role of the Commission and resources, the Children and Young People Commissioner told the Committee that:

it is about finding that balance and saying, “What is the priority? What is the priority of the commission as a whole?” That, in itself, is very difficult to answer. Is it more important to do a complaint about a health service, a human rights audit, a children and young people issue, a systemic issue, a policy issue or a review? There is the whole range of functions which the commission can undertake. We cannot do them all. Firstly, we do not have the resources to do them all, full stop; secondly, there is how you allocate those resources in each of the commissions to ensure that we can meet our statutory functions appropriately.²³⁸

²³² Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2013, p.1.

²³³ Mr Alisdair Roy, *Proof Transcript of Evidence*, 6 November 2013, pp.2-3.

²³⁴ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2013, p.7.

²³⁵ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2013, p.7.

²³⁶ *Proof Transcript of Evidence*, 6 November 2013, p.7, and Mr Alisdair Roy *Proof Transcript of Evidence*, 6 November 2013, p.8 ff.

²³⁷ Ms Mary Durkin, *Proof Transcript of Evidence*, 6 November 2013, p.10 ff.

²³⁸ Mr Alisdair Roy, *Proof Transcript of Evidence*, 6 November 2013, p.12.

VICTIMS OF CRIME SUPPORT PROGRAM — REVIEW OF THE FINANCIAL ASSISTANCE SCHEME FOR VICTIMS OF CRIME

- 6.17 The Victims of Crime Support Program *Annual Report 2012-13* reported a review of its Financial Assistance Scheme was in progress. It noted that the scheme had been ‘the subject of commentary and scrutiny on a number of occasions’, including in 2002, 2004 and 2012.²³⁹
- 6.18 This was discussed in the Committee’s public hearing of 6 November 2014, where the Victims of Crime Commissioner appeared.
- 6.19 In response to questions, the Commissioner told the Committee that he hoped that a new scheme would represent ‘a major change in the way financial assistance is administered to victims of crime’, and that he expected to see ‘more victims of crime accessing the scheme’.²⁴⁰ He told the Committee that ‘about 100 cases per year’ were processed through the scheme, in its present form, but this did not reflect ‘the numbers of victims that are being seriously harmed or affected by crime’.²⁴¹
- 6.20 When asked about differences between the present scheme and its counterparts in Queensland and New South Wales, the Commissioner told the Committee that:
- They employ assessors as opposed to having applications lodged at court. The clients are assisted to complete application forms. The assessors are not lawyers or court staff; they are public servants employed to assess a case on its merits. The legislation they work under is a bit more prescriptive in the form of what categories of crime or harm can be judged eligible for the scheme. And the outlay of the range of payments that are made as recognition payments is a bit more prescriptive.²⁴²
- 6.21 The Commissioner went on to say that:
- The main difference, of course, is that someone is responsible for the case management of their applications. In our scheme, no-one is responsible for that case management. We do it by default, because we have a role to assist victims of crime.²⁴³
- 6.22 The Commissioner highlighted difficulties in victims of crime gaining access to the scheme. He told the Committee that in accessing the scheme victims were either dependent on Victims of Crime Support or, if able, would engage lawyers in order to access the scheme:
- We would not see all cases; not all applicants would come to us for assistance to access that scheme. People can engage lawyers. In the past, the number of lawyers that have

²³⁹ Victims of Crime Support Program *Annual Report 2012-13*, p.2 & ff.

²⁴⁰ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2013, p.17.

²⁴¹ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2013, pp.17-18.

²⁴² Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2013, p.18.

²⁴³ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2013, p.18.

been available to victims has been pretty low. People have blamed the cap on legal fees for that. The cap has risen substantially from its base of \$650 to, I think, over \$1,000 now, but it takes time for lawyers to become expert in this field.²⁴⁴

LEGAL AID COMMISSION — DECLINE IN LEGAL AID FUNDING FROM THE COMMONWEALTH

6.23 The Legal Aid Commission (ACT) *Annual Report* for 2012-13 states that:

The purpose of Legal Aid ACT is to promote a just society in the Australian Capital Territory by:

- ensuring that vulnerable and disadvantaged people receive the legal services they need to protect their rights and interests;
- developing an improved community understanding of the law; and
- seeking reform of laws that adversely affect those we assist.²⁴⁵

6.24 In relation to funding, the *Annual Report* states that:

The Commission receives funding from the ACT Government, and from the Commonwealth Government under the National Partnership Agreement on Legal Assistance Services.²⁴⁶

6.25 In the Committee's public hearing of 6 November 2013, questions were put to the Chief Executive Officer of the Commission regarding levels of Commonwealth funding for legal aid.

6.26 In response he told the Committee that:

There has been a decline in the number of commonwealth grants. In fact we are probably running close to a situation where we have a substantial deficit on the commonwealth side. Commonwealth indexation of funding is around 1.6 to 1.9 per cent per annum, so it is well below the rate of inflation. That is the rate that is set in the national partnership agreement, and there will not be an opportunity to renegotiate that until the current agreement goes into the process of renegotiation.²⁴⁷

6.27 When asked about timelines for negotiations about levels of Commonwealth funding, the Chief Executive Officer told the Committee:

²⁴⁴ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2013, p.18.

²⁴⁵ Legal Aid ACT, *Annual Report 2012-13*, p.12, viewed 20 February 2014, http://www.legalaidact.org.au/pdf/annualreport_2012-2013.pdf

²⁴⁶ Legal Aid ACT, *Annual Report 2012-13*, p.13, viewed 20 February 2014, http://www.legalaidact.org.au/pdf/annualreport_2012-2013.pdf

²⁴⁷ Mr Andrew Crockett, *Proof Transcript of Evidence*, 6 November 2013, p.26.

It is not clear when that process will start. The current agreement is supposed to expire at the end of June next year. But given that there has been this review of the national partnership agreement carried out by the Allen Consulting Group, and that report has gone to the federal Attorney-General but it has not been released yet, we do not know what recommendations are in that around the question of the next funding arrangements.²⁴⁸

6.28 In addition, he told the Committee, there was a Productivity Commission inquiry being conducted into access to justice, and that the Commonwealth would consider both reports before 'making a decision ... about the form that the next funding agreement takes'. In light of this, he considered it unlikely that there would be 'much in the way of negotiation ... for 12 months at least', and for the intervening period 'the current agreement will just be rolled over'.²⁴⁹

6.29 At the same time, the Chief Executive Officer told the Committee, the Commission's service levels were increasing overall, including 'quite substantial increases in a number of them' in the preceding year. While some services were increasing, however, there was a decline in 'grants of assistance—that is, grants of financial assistance to people to enable them to be legally represented, usually in court or tribunal proceedings'.²⁵⁰ In this area, he told the Committee:

we have seen a decline over the last six years purely as a result of the fact that funding is not keeping pace with increases in operating costs and the cost of providing legal assistance.²⁵¹

6.30 Reflecting on this, he told the Committee that:

We are now seeing grants at the lowest level they have been since 1990, which is not something, obviously, we are very proud of, because the population of the ACT has grown considerably since 1990. So, in that sense, we are not meeting the needs of the community, and there is an increasing gap—some people are calling it the justice gap—between those who qualify for legal assistance and those who can afford, without undue hardship, to pay for a private lawyer. There is an increasing number in the middle who are falling through that gap.²⁵²

²⁴⁸ Mr Andrew Crockett, *Proof Transcript of Evidence*, 6 November 2013, p.26.

²⁴⁹ Mr Andrew Crockett, *Proof Transcript of Evidence*, 6 November 2013, p.26.

²⁵⁰ Mr Andrew Crockett, *Proof Transcript of Evidence*, 6 November 2013, p.26.

²⁵¹ Mr Andrew Crockett, *Proof Transcript of Evidence*, 6 November 2013, p.26.

²⁵² Mr Andrew Crockett, *Proof Transcript of Evidence*, 6 November 2013, p.26.

PUBLIC ADVOCATE — RESOURCE CONSTRAINTS AND INCREASING DEMAND

6.31 The Public Advocate of the ACT *Annual Report* for 2012-13 noted the functions set out in the *Public Advocate Act 2005*.

6.32 These included:

- acting as advocate for the rights of people with a disability;
- representing people with a disability at hearings before the ACAT in relation to guardianship applications;
- representing forensic patients before the ACAT or a court;
- acting as advocate for the rights of children and young people
- monitoring the provision of services for the protection of children and young people;
- dealing, on behalf of people with a disability and children and young people, with entities providing services;
- investigating, reporting and making recommendations to the Minister on anything relating to the operation of this Act referred to the public advocate by the Minister;
- acting as a guardian or manager when appointed by the ACAT;
- promoting community discussion, and providing community education and information; and
- exercising the functions given to the public advocate under the *Children and Young People Act 2008*, the *Guardianship and Management of Property Act 1991* and the *Mental Health (Treatment and Care) Act 1994*.²⁵³

6.33 In the Committee's public hearing of 6 November 2013 the Public Advocate was asked to comment on the balance between resources available and the demand for services provided by the Public Advocate.²⁵⁴

6.34 In response, the Public Advocate told the Committee that:

Currently I have an FTE [compliment of Full Time Equivalent staff] of 13.5, which includes me. So I have 12.5 staff. Of those, 6.5 or seven of them work in the guardianship area, but once I take out managerial staff, one admin staff and one who person who does all of our advice line—that is, she answers all of the queries every day—I only have four guardianship staff and a case load at the moment of about 250 people for whom I am legal guardian.²⁵⁵

²⁵³ Selected from s 10 of the *Public Advocate Act 2005* (ACT).

²⁵⁴ *Proof Transcript of Evidence*, 6 November 2013, p.30.

²⁵⁵ *Proof Transcript of Evidence*, 6 November 2013, p.30.

6.35 This, she said, was ‘over and above any other jurisdiction in Australia’, and she noted that the ACT was comparatively ‘only a small jurisdiction’.²⁵⁶

6.36 She went on to speak about high levels of demand:

We, however, do have a high number of people who are referred to the Public Advocate as guardian. I suspect one of the reasons for that is the mobility of the Canberra community. We do not have a lot of second and third-generation families, although, as we were discussing before, that is increasingly becoming the norm. There are not families for a lot of people—elderly people whose children have moved away for work or whatever—and they do not have anybody who can be their guardian. So the Public Advocate is, in fact, appointed as guardian in a higher percentage of cases than in other jurisdictions.²⁵⁷

6.37 This, she told the Committee, resulted in ‘a workload or a case load of 50’ for each officer, which was ‘untenable for my four guardianship staff’.²⁵⁸

6.38 The Public Advocate and her Deputy went on to tell the Committee, in response to questions, about levels of demand for services offered through the Public Advocate’s telephone advice line. The Deputy Public Advocate told the Committee that in the reporting period 2012-13 833 new inquiries had been received through the service, which represented an increase of 25%. The office had one staff member assigned to fielding calls, and in consequence it was necessary for other staff to answer calls along with their other duties.

6.39 Many of the inquiries concerned having the Public Advocate take the role of enduring power of attorney in which, the Public Advocate told the Committee:

people in the community who do not have anybody or do not trust anybody in their family or friends to make those decisions, should they lose capacity, then have the opportunity of being able to ask me or my delegate in the office to take on that role.²⁵⁹

6.40 She told the Committee that an increase in people in the community arranging for enduring power of attorney would ease demand for guardianship by her office:

when a person comes to a situation of lacking capacity, they will have already appointed somebody ... that they have chosen to be their substitute decision maker.²⁶⁰

6.41 However, she also said that this ‘it might be me, so I might not lose a lot of the case load’.²⁶¹

²⁵⁶ Ms Anita Phillips, *Proof Transcript of Evidence*, 6 November 2013, p.30.

²⁵⁷ Ms Anita Phillips, *Proof Transcript of Evidence*, 6 November 2013, pp.30-31.

²⁵⁸ Ms Anita Phillips, *Proof Transcript of Evidence*, 6 November 2013, p.31.

²⁵⁹ Ms Anita Phillips, *Proof Transcript of Evidence*, 6 November 2013, p.32.

²⁶⁰ Ms Anita Phillips, *Proof Transcript of Evidence*, 6 November 2013, p.32.

²⁶¹ Ms Anita Phillips, *Proof Transcript of Evidence*, 6 November 2013, p.32.

6.42 Overall, the Public Advocate told the Committee, the level of demand, and changes in legislation, had resulted in a situation where the Public Advocate was being appointed 'on average once a fortnight at least' as attorney. When she had taken up her role as Public Advocate, the office held responsibility for enduring power of attorney for six people. The current level, according to her Deputy, 'was more like in the 80s now'.²⁶²

6.43 In addition, she also noted competing claims on the time of her staff:

For example ... we attend ACAT, the guardianship tribunal. It is held each week, and a number of people have applications come to that tribunal. Usually the tribunal meets for two or three hours in the morning. Yesterday it sat all day, which meant that my manager, my senior principal guardian, was occupied in the tribunal all day for the number of cases.²⁶³

6.44 Reflecting on this level of demand and activity, the Public Advocate told the Committee, that doing the work of the Public Advocate, 'to do this face-to-face, interviewing and work that we do with clients' required 'significant resources'. It was, however 'complex to try to explain [this] to government, and this resulted in a mismatch between the level of demand and resources available to her office.'²⁶⁴

PUBLIC TRUSTEE — REVENUE, DIVIDENDS AND INVESTMENTS

6.45 The *Annual Report 2012-13* for the Public Trustee for the Australian Capital Territory describes the role of the Public Trustee as follows:

PTACT is an independent statutory office established under the Public Trustee Act 1985.

Our services include -

- Will services (as executor)
- Enduring Powers of Attorney services (as attorney)
- Estate Administration (as executor or administrator)
- Trust Administration
- Financial Management for persons with a decision-making disability
- Funds administration/investment for government and non-government trusts
- Asset management under the Confiscation of Criminal Assets Act 2003
- Unclaimed Money - administration under the Unclaimed Money Act 1950
- Examination of accounts prepared by private financial managers appointed by the ACT

²⁶² Ms Anita Phillips, Ms Marion Pearce, *Proof Transcript of Evidence*, 6 November 2013, p.32.

²⁶³ Ms Anita Phillips, *Proof Transcript of Evidence*, 6 November 2013, p.32.

²⁶⁴ Ms Anita Phillips, *Proof Transcript of Evidence*, 6 November 2013, p.32.

- Civil and Administration Tribunal (ACAT)
- Administration of GreaterGood - The Capital Region Community Foundation.²⁶⁵

6.46 In addition, the Annual Report stated that the Public Trustee had been ‘appointed as *ex officio* Chair of the Official Visitor’s Board established under the Official Visitor Act 2012 with effect from 1 September 2013’.²⁶⁶

6.47 In the Committee’s public hearing of 6 November 2013 the Public Trustee was asked questions about downward variations in operating surplus and reduced dividends to government.²⁶⁷

6.48 The Public Trustee responded. He told the Committee that while revenue ‘was about 3.5 per cent down on the year before’, that year had been ‘a record’ and that actual ‘drop in revenue’ was ‘marginal’.²⁶⁸

6.49 However, he told the Committee, there had been a ‘difference [on] the other side of the ledger, with expenditure’:

As I mentioned at the outset, the continuing cost of community service obligations and the complexity of those cases is a three to one drain on the revenue, if you like, that we do achieve.²⁶⁹

6.50 In addition, he told the Committee:

We have had to significantly invest in the business in an IT sense. I have made a number of briefings where we have had to invest money back into IT.

We already have a business system which is two versions behind the current one; we have got to invest again to upgrade to those kinds of software, the latest version. That could be in the order of \$100,000, but it is not recurrent. Additionally, we have invested in an unclaimed moneys database during the year. We have further developed the precedent letter database, or precedents database. We have acquired a share price index update tool called Tactics, which allows us to present our data to clients in a much more professional way; it more or less allows you to use data in your business system to present in a manner that you otherwise would have had to have reprogrammed to do.²⁷⁰

²⁶⁵ Public Trustee for the Australian Capital Territory, *Annual Report 2012-13*, p.2.

²⁶⁶ Public Trustee for the Australian Capital Territory, *Annual Report 2012-13*, p.2.

²⁶⁷ *Proof Transcript of Evidence*, 6 November 2013, p.39.

²⁶⁸ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2013, p.39.

²⁶⁹ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2013, p.39.

²⁷⁰ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2013, pp.39-40.

- 6.51 Further investment and expenditure had occurred in staffing. The Public Trustee told the Committee that some issues had been identified in connection with succession planning and, in response:

We have had to recruit, in particular, two new people from other public trustee offices around Australia to fill identified gaps that will be coming up. We have probably three to four managers who may leave the Public Trustee within the next three years. People like that, with that kind of background, do not come cheaply, I am afraid, particularly people who write wills. It is a very niche part of succession law.²⁷¹

- 6.52 Further factors affecting finances, he told the Committee, were the inherent uncertainties of their business:

it is impossible to predict the revenue that we are going to achieve. We are in a business that relies upon death and disability, and that is impossible to predict.²⁷²

- 6.53 Moreover, he told the Committee that 'we are only permitted to make wills where somebody appoints us as the executor', and '[n]ot everybody wants to do that'. As a result the Public Trustee 'only tend[s] to administer deceased estates arising from the wills that we make'. He went on to say that those wills 'could have been made five years back, 10 years back, 20 years back', and as a result it was 'a very unpredictable business'.²⁷³

ACT ELECTORAL COMMISSIONER – LEGISLATIVE CHANGES

- 6.54 The Electoral Commissioner and Deputy Commissioner appeared at the before the Committee at its public hearing of 13 November 2014.

SHORTFALL ON TURNOUT TARGETS

- 6.55 In the Committee's public hearing of 13 November 2013 the Electoral Commissioner and the Deputy Commissioner appeared. Among other things they were asked about shortfalls on voter turnout targets for the 2012 ACT election.²⁷⁴

- 6.56 The Commissioner responded. He told the Committee that this was 'a very difficult issue' which was 'also tied up with the enrolment participation rates':

There seems to be an indication that there are people in the general population who are not inclined to be as participative in the electoral process as they might have been

²⁷¹ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2013, p.40.

²⁷² Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2013, p.40.

²⁷³ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2013, p.40.

²⁷⁴ *Proof Transcript of Evidence*, 13 November 2014, p.79.

in years gone past. That is not just an ACT phenomenon but a phenomenon that is being experienced across all jurisdictions in Australia.²⁷⁵

6.57 The Commissioner went on to talk about enrolment participation where, he said:

we notice, from the most recent figures we have got from the Australian Electoral Commission, the participation rates on the electoral roll, particularly of young people, have improved considerably since the federal election. I think there are two particular reasons for that. One is the fact that the federal election has happened has encouraged people to get on the electoral roll, but also the automatic enrolment system that has been recently introduced by the commonwealth parliament for the commonwealth electoral roll, which then flows across to the ACT electoral roll, is increasing the number of people on the roll. And that is coming through to the ACT roll as well. It is showing that the participation rate for particularly 18 and 19-year-olds is now over 90 per cent for both the federal and ACT rolls.²⁷⁶

6.58 This, he said, was 'very encouraging'. In contrast, when he returned to the question of voter turnout, the view was less positive:

what we experienced at the ACT election was a lower than normal turnout. The target we had for turnout as a percentage of enrolment was 92. The actual turnout was 89 per cent. So we are talking three per cent. It is not a huge drop, but it is a drop nonetheless.²⁷⁷

6.59 Reflecting on this, the Commissioner told the Committee that:

I think what we have experienced not just in the ACT but across Australia is a tendency in some parts of the population to not want to participate in the electoral process.²⁷⁸

6.60 In response, he said, the Electoral Commission had:

... tried in the election to publicise the election as well or better than we had ever done. We used new media, we used social media to get out to young people. We sent two different household brochures to every household in the ACT. We did a lot of advertising on radio, television, newspapers and on the internet for the first time. There were signs all over Canberra. It would have been very hard to miss that there was an ACT election on.²⁷⁹

²⁷⁵ Mr Phillip Green, *Proof Transcript of Evidence*, 13 November 2014, p.79.

²⁷⁶ Mr Phillip Green, *Proof Transcript of Evidence*, 13 November 2014, p.79.

²⁷⁷ Mr Phillip Green, *Proof Transcript of Evidence*, 13 November 2014, p.80.

²⁷⁸ Mr Phillip Green, *Proof Transcript of Evidence*, 13 November 2014, p.80.

²⁷⁹ Mr Phillip Green, *Proof Transcript of Evidence*, 13 November 2014, p.80.

EFFECT OF LEGISLATIVE CHANGE

- 6.61 In his opening statement the Electoral Commissioner referenced legislative changes brought about by the enactment of the *Officers of the Assembly Legislation Amendment Act 2013*.²⁸⁰
- 6.62 The Act made amendments to a number of Acts. It made the Electoral Commissioner (in s 18), and the Ombudsman (in s 46) ‘independent officer[s] of the Legislative Assembly’. This replaced previous arrangements that had made these statutory officers answerable to executive government.²⁸¹
- 6.63 Regarding this, the Commissioner stated that the amendments would:
- create a new arrangement between the commission and the Speaker and also with the relevant Assembly committee, which I imagine will be this committee. I would like to put on record that we are very much looking forward to that new arrangement and to working with the committee.²⁸²

COMMITTEE COMMENT

RESOURCES AND THE HUMAN RIGHTS COMMISSION

- 6.64 Reflecting on the evidence presented by the Human Rights Commission, it is evident to the Committee that the current level of resources made available to the Commission is a significant constraint on its activities. It appears that this in fact prevents the Commission from fulfilling, to a full extent, its statutory obligations. Despite assurances by the Commission, which the Committee takes in good faith, the re-routing of complaints back to the original service-provider, a government agency, would appear to attract a higher level of risk than if the complaints were able to be dealt with by a separate and specialised agency: that is, the Human Rights Commission itself.
- 6.65 Elsewhere in this report the Committee has recommended that the Human Rights Commission be given special funding to conduct a human rights audit of the Alexander Maconochie Centre

²⁸⁰ *Officers of the Assembly Legislation Amendment Act 2013*, viewed 21 February 2014, <http://www.legislation.act.gov.au/a/2013-41/default.asp>

²⁸¹ The Act, in s 4, made similar provision for the Auditor-General, who under previous versions of the Auditor-General Act 1996 already enjoyed that status by virtue of provisions in s 4 (‘Reports to be given to Speaker’), s 8 (‘Veto by public accounts committee’) and s 9 (‘Independence’) of the ACT. *The Act, in s 4, made similar provision for the Auditor-General, who under previous versions of the Auditor-General Act 1996 already enjoyed that status by virtue of provisions in s 4 (‘Reports to be given to Speaker’), s 8 (‘Veto by public accounts committee’) and s 9 (‘Independence’) of the ACT Auditor-General Act 1996*, R11, effective: 01/07/12-19/02/14, <http://www.legislation.act.gov.au/a/1996-23/20120701-2560/pdf/1996-23.pdf>. In the current version of the Act, these matters are provided for in s 7. See *Auditor-General Act 1996*, R12, effective 20/02/14, <http://www.legislation.act.gov.au/a/1996-23/current/pdf/1996-23.pdf>

²⁸² Mr Phillip Green, *Proof Transcript of Evidence*, 13 November 2014, p.79.

(the AMC). The fact that the Commission has not been able to do this, some 5-6 years after it was opened.²⁸³

6.66 This, together with the resource issues considered above, appears to indicate that the Human Rights Commission, while formally created as an independent agency, lead by statutorily-appointed commissioners, is constrained from fully acquitting its statutory obligations by its reliance on executive government for 'spot' funding, rather than being adequately resourced and being able to exercise full discretion over its program of activities.

6.67 In the Committee's view this is contrary to the spirit of the *Human Rights Commission Act 2005*, particularly at s 16, 'Independence of Commission', where it provides that:

6.68 The commission is not subject to the direction of anyone else in relation to the exercise of a function under this Act or a related Act, subject to section 17.

6.69 At s 17, the Act provides that:

(1) The Minister may, in writing, direct the commission to inquire into and report to the Minister in relation to a matter that can be complained about under this Act.

(2) The commission must comply with the direction.

6.70 However this, in the Committee's view, appears different from the apparent informal power of veto held by the executive by virtue of resource constraints on the Commission.

6.71 In light of this, the Committee considers that there should be an independent review of the resources needed for the Human Rights Commission to fulfil its statutory obligations in full.

6.72 In light of this, the Committee makes the following recommendation.

Recommendation 10

6.73 The Committee recommends that the ACT Government commission an independent review of the resources needed for the Human Rights Commission to fulfil its statutory obligations.

6.74 In addition, through the process of engaging with the Commission, the Committee has become aware that unlike arrangements for children and young people, disability, discrimination, disability and health under the current *Human Rights Act 2004* there is no complaints process that can be taken up by the Commission with respect to human rights.²⁸⁴ As the Human Rights

²⁸³ See Standing Committee on Justice and Community Safety, *Inquiry into the delay in the commencement of operations at the Alexander Maconochie Centre*, November 2009, p. ii, viewed 21 February 2014, http://www.parliament.act.gov.au/_data/assets/pdf_file/0009/373509/JACS03_AMC.pdf

²⁸⁴ There is also no power for the Commission 'to investigate complaints about community services'. See *Proof Transcript of Evidence*, 6 November 2013, p.4 and ACT Human Rights Commission, *Annual Report 2012-13*, p.33.

Commissioner stated in hearings, the Human Rights Commission ‘cannot take human rights complaints; we can only take discrimination complaints’.²⁸⁵

- 6.75 This was considered in the Committee’s report on annual reports for 2011-12, where the Human Rights Commissioner told the Committee that in the absence of a human rights complaints process ‘people need to go to the Supreme Court in order to make a claim of action under the Human Rights Act’.²⁸⁶
- 6.76 In view of this, the Committee makes the following recommendation.

Recommendation 11

6.77 The Committee recommends that the ACT Government review the *Human Rights Act 2004* with respect to avenues for human rights complaints.

- 6.78 In the Committee’s view this could take one of a number of forms, but one possibility would be for the Human Rights Commissioner to have stronger powers with respect to human rights complaints, and to extend the jurisdiction of the ACT Civil and Administrative Tribunal (ACAT) so that it can consider such complaints in the first instance. In this model the Supreme Court would be retain a role as an avenue for escalated complaints or appeals.

ELECTORAL COMMISSION – NEW LEGISLATIVE ARRANGEMENTS

- 6.79 The Committee notes the advent of new legislative arrangements that will see the Commission increase its independence from executive government. The Committee looks forward to its new role in performing scrutiny, on behalf of the Legislative Assembly, over the work of the Electoral Commission. It looks forward to assisting the Commission in its work, in a relationship similar to that between the Standing Committee on Public Accounts and the ACT Auditor-General.
- 6.80 In the Committee’s view this enhances the work and position of the Commission. It also enhances that of the Assembly which, by way of the Committee, moves into a new and distinctive role in protecting, and holding to account, this important statutory office. Clearly, elections hold a central place in the political system of the ACT. The enhanced perception of independence and impartiality that will arise from these new arrangements is a significant contribution to the future health and reputation of the ACT system of government.

²⁸⁵ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2014, p.5.

²⁸⁶ Standing Committee on Justice and Community Safety, *Report On Annual And Financial Reports 2011-2012*, p.55.

Chair

Appendix A Witnesses and hearings

6 November 2013– Legislative Assembly for the ACT

ACT Human Rights Commission —

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

Victim Support ACT—

- Mr John Hinchey, Victims of Crime Commissioner

Legal Aid Commission (ACT) —

- Mr Andrew Crockett, Chief Executive Officer

Public Advocate of the ACT—

- Ms Anita Phillips, Public Advocate
- Ms Marion Pearce, Senior Guardian, Office of the Community Advocate
- Ms Patricia Mackey, Principal Advocate, Advocacy Unit

Public Trustee for the ACT—

- Mr Andrew Taylor, Public Trustee

13 November 2013– Legislative Assembly for the ACT

Minister—

- Mr Shane Rattenbury, Minister for Territory and Municipal Services, Minister for Corrections, Minister for Housing, Minister for Aboriginal and Torres Strait Islander Affairs and Minister for Ageing

Justice and Community Safety Directorate—

- Ms Kathy Leigh, Director-General
- Mrs Bernadette Mitcherson, Executive Director, ACT Corrective Services
- Ms Julie Field, Executive Director, Legislation and Policy Branch
- Mr Ivan Potas, Official Visitor
- Mr Grahame Delaney, Chair, Sentence Administration Board

ACT Electoral Commission—

- Mr Phillip Green, ACT Electoral Commissioner

14 November 2013 – Legislative Assembly for the ACT

Minister—

- Mr Simon Corbell, Attorney-General, Minister for Police and Emergency Services, Minister for Workplace Safety and Industrial Relations and Minister for the Environment and Sustainable Development

Chief Minister and Treasury Directorate—

- Mr Andrew Kefford, Deputy Director-General, Workforce Capability and Governance Division
- Mr Michael Young, Acting Director, Continuous Improvement and Workers Compensation, Workforce Capability Governance Division

ACT Insurance Authority—

- Mr John Fletcher, General Manager

ACT Long Service Leave Authority—

- Mr Robert Barnes, Chief Executive Officer and Registrar

ACT Emergency Services Agency—

- Mr Dominic Lane, Commissioner

ACT Policing—

- Mr Rudi Lammers, Chief Police Officer, ACT Policing
- Mr Chris Haywood, Director, Corporate Services, ACT Policing

20 November 2013 – Legislative Assembly for the ACT

Minister—

- Mr Simon Corbell, Attorney-General, Minister for Police and Emergency Services, Minister for Workplace Safety and Industrial Relations and Minister for the Environment and Sustainable Development

Justice and Community Safety Directorate—

- Ms Tracey Blundell, Acting Manager, Restorative Justice Unit
- Ms Wilhelmina Blount, Acting Chief Financial Officer
- Mr Brett Phillips, Executive Director, Office of Regulatory Services
- Mr Mark McCabe, Work Safety Commissioner, WorkSafe ACT, Office of Regulatory Services
- Ms Alison Purvis, Courts Administrator
- Mr Jon White, Director of Public Prosecutions
- Mr Peter Garrisson SC, Solicitor-General for the ACT, ACT Government Solicitor