

INQUIRY INTO ANNUAL AND FINANCIAL REPORTS 2014-2015

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

DECEMBER 2015

REPORT 6

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RESOLUTION OF APPOINTMENT

At its meeting of 27 November 2012 the Assembly passed a resolution which, among other things provided that there would be a Standing Committee on Justice and Community Safety 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.¹

¹ Legislative Assembly for the ACT, *Debates*, 27 November 2012, p.46.

TERMS OF REFERENCE

At its meeting of 29 October 2015 the Assembly passed a motion to refer 2014-2015 Annual and Financial Reports to Standing Committees of the Assembly.²

The motion referred the Annual Report of ACT Policing to the Standing Committee on Justice and Community Safety.

It also referred the following reports to the Committee.

Annual Report (in alphabetical order)	Reporting area	Ministerial Portfolio/s	Standing Committee
ACT Electoral Commission		Officer of the Legislative Assembly	Justice and Community Safety
ACT Human Rights Commission		Attorney-General	Justice and Community Safety
ACT Long Service Leave Authority		Minister for Workplace Safety and Industrial Relations	Justice and Community Safety
ACT Policing		Minister for Police and Emergency Services	Justice and Community Safety
Chief Minister, Treasury and Economic Development Directorate	Workplace Safety and Industrial Relations	Minister for Workplace Safety and Industrial Relations	Justice and Community Safety
Chief Minister, Treasury and Economic Development Directorate	Default Insurance Fund	Minister for Workplace Safety and Industrial Relations	Justice and Community Safety

² Legislative Assembly for the ACT, *Debates*, 29 October 2015, pp.3842-3849..

Annual Report (in alphabetical order)	Reporting area	Ministerial Portfolio/s	Standing Committee
Justice and Community Safety Directorate		Attorney-General	Justice and Community Safety
Justice and Community Safety Directorate	ACT Emergency Services Agency	Minister for Police and Emergency Services	Justice and Community Safety
Justice and Community Safety Directorate	ACT Corrective Services	Minister for Justice	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 Support ACT		Attorney-General	Justice and Community Safety

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RECOMMENDATIONS

RECOMMENDATION 1

13.10 The Committee recommends, in preparation for the possibility that the next Federal election is scheduled for a day on or near voting day for the ACT election, that the ACT Government consider introducing legislative amendments in the Legislative Assembly which, if passed, would make it possible for the ACT election to be held on a date earlier than the first of December.

RECOMMENDATION 2

13.16 The Committee recommends that the ACT Government ensure sufficient resourcing to the ACT Human Rights Commission to disseminate, effectively, information about rights in connection with pregnancy and work, and return to work, and that the results of these efforts be tested and measured to ensure that there are improvements in ACT workplaces in these areas.

RECOMMENDATION 3

13.20 The Committee recommends that the Public Trustee gather information on the Indigenous status of clients, as a routine part of its interactions with clients, subject to their agreement, and that this information be published in the Public Trustee's annual report.

RECOMMENDATION 4

13.24 The Committee recommends that the ACT Government assess the expected work load for compliance under the *Mental Health Act 2015* after the Act comes into force on 1 March 2016, and ensure that there are adequate resources for effective compliance testing.

RECOMMENDATION 5

13.28 The Committee recommends that the ACT Government's response to Domestic Violence includes the measures described by the Victims of Crime Commissioner in the Committee's hearings of 6 November 2015.

RECOMMENDATION 6

13.37 The Committee recommends that the ACT Government continue to develop and refine indicators and reporting on workplace culture in the Emergency Services Agency (ESA), with the intent of ensuring its strength, stability and readiness to meet complex threats, including by ensuring greater diversity in recruitment.

RECOMMENDATION 7

13.41 The Committee recommends that the Emergency Services Agency (ESA) consider conducting staff audits of attitudes to diversity in the workplace.

RECOMMENDATION 8

13.44 The Committee recommends that the Emergency Services Agency (ESA) ensure that signage identifying facilities be consistent and of sufficient size to support ready recognition by the public of ESA facilities.

RECOMMENDATION 9

13.47 The Committee recommends that ACT Policing consider adopting a defined recruitment strategy to increase the number of Aboriginal and Torres Strait Islanders employed by the agency.

RECOMMENDATION 10

13.53 The Committee recommends that the ACT Long Service Leave Authority consults on the degree to which it would be appropriate for measures of the Authority's return on investment to be compared with those of similar agencies.

RECOMMENDATION 11

13.60 The Committee recommends that the Justice and Community Safety Directorate consult on, and develop, an auditing system for staff attitudes to diversity.

RECOMMENDATION 12

13.64 The Committee recommends that the Justice and Community Safety Directorate develop a comprehensive strategy for Indigenous recruitment, building upon the advice it has sought from the ACT Human Rights Commissioner and the Australian Human Rights Commissioner.

RECOMMENDATION 13

13.71 The Committee recommends that ACT Corrective Services consider collecting data on and undertake comparative reporting on the proportion of Aboriginal and Torres Strait Islander detainees and non-Indigenous detainees subject to assault at the Alexander Maconochie Centre (AMC).

1 BACKGROUND

INTRODUCTION

- 1.1 Consistent with a motion of the Legislative Assembly for the ACT, In November 2015 the Standing Committee held public hearings for its inquiry into Annual Reports 2014-2015.³
- 1.2 The Committee considered annual reporting on the following ACT public sector entities:
- Officer of the Legislative Assembly:
 - ACT Electoral Commission
 - Statutory officers:
 - ACT Human Rights Commission
 - Legal Aid Commission (ACT)
 - Public Advocate of the ACT
 - Public Trustee for the ACT
 - Victims Support ACT
 - ACT Long Service Leave Authority
 - Default Insurance Fund
 - Government agencies:
 - ACT Policing
 - Workplace Safety and Industrial Relations
 - Justice and Community Safety Directorate
 - ACT Emergency Services Agency
 - ACT Corrective Services

CONDUCT OF INQUIRY

- 1.3 The Committee held public hearings on 6, 11 and 13 November 2015.
- 1.4 As is conventional for inquiries into Annual Reports in the Legislative Assembly for the ACT, no submissions were called for, or received, by the Committee.

³ Legislative Assembly for the ACT, *Debates*, 29 October 2015, pp.3842-3849.

STRUCTURE OF THE REPORT

- 1.5 In broad terms the sequence of matters considered in the report follows the order in which agencies appeared before the Committee in hearings.
- 1.6 The location of Chapter 2, the first chapter which considers an agency, is one of two exceptions to this principle. In this instance the Committee has placed the section which deals with the Commission before the other sections, in consideration of its status as an Officer of Parliament.
- 1.7 A second variation has been made in relation to the Legal Aid Commission, which appeared in hearings after the Minister for Justice. In this instance the Committee has considered it useful to locate the section dealing with the Commission with those which consider other statutory agencies.
- 1.8 The structure of the report is as follows:
- this chapter, Chapter 1, which provides information on the inquiry, its conduct and the structure of the report;
 - Chapter 2, which considers the ACT Electoral Commission;
 - Chapter 3, which considers the Director of Public Prosecutions;
 - Chapter 4, which considers the ACT Human Rights Commission;
 - Chapter 5, which considers the Legal Aid Commission (ACT);
 - Chapter 6, which considers the Public Advocate and Public Trustee, due to these roles currently being vested in the same person;
 - Chapter 7, which considers Victim Support ACT;
 - Chapter 8, which considers areas under the portfolio responsibility of the Minister for Police and Emergency Services and her officers from the Emergency Services Agency (ESA);
 - Chapter 9, which considers areas under the portfolio responsibilities of the Minister for Police and Emergency Services and her officers from ACT Policing;
 - Chapter 10, which considers areas under the portfolio responsibility of the Minister for Workplace Safety and Industrial Relations including, among other things, the performance of the ACT Long Service Leave Authority;
 - Chapter 11, which considers areas under the portfolio responsibilities of the Attorney-General and his officers from the Justice and Community Safety Directorate;
 - Chapter 12, which considers areas under the portfolio responsibilities of the Minister for Justice and his officers from Corrective Services, including the Chair of the Sentence Administration Board; and
 - Chapter 13, which provides Committee comment and recommendations made in relation to testimony and other information presented in Chapters 2-12.

ANSWERS TO QUESTIONS TAKEN ON NOTICE

- 1.9 Where they are relevant to particular sections and subjects in the body of the report, answers to Questions Taken on Notice from hearings are listed at the end of the section.
- 1.10 Where answers to Questions Taken on Notice do not directly relate to subject sections, they are listed at the end of chapters.
- 1.11 For each answer, footnotes provide a page reference and a link to a document on inquiry website in which all answers are displayed.
- 1.12 A complete of Answers to Questions Taken on Notice received by the Committee is provided in Appendix B of this report.

2 ACT ELECTORAL COMMISSION

INTRODUCTION

- 2.1 The ACT Electoral Commission Annual Report 2014-2015 made a number of references to the Commission's new status as an Officer of Parliament: that is, reporting to the Legislative Assembly through the Speaker rather than to a minister of the Executive.
- 2.2 First it noted that 2014/2015 had been 'an important year for the Commission':
- From 1 July 2014, the members of the Commission became officers of the Legislative Assembly, following the commencement of the Officers of the Assembly Legislation Amendment Act 2013. This change in the status of the Commission reinforced the Commission's statutory independence from the Executive. In particular, it altered the reporting lines set out in the Electoral Act.⁴
- 2.3 Second, the report noted, the Commission's annual reports 'are now presented to the Speaker of the ACT Legislative Assembly', whereas previous annual reports 'were submitted to the Minister responsible for the Electoral Act'.⁵
- 2.4 Third, the report went on to state:
- This 2014/2015 annual report is the first report relating to the operations of the Commission under the changes establishing the Commission members as officers of the Legislative Assembly. Importantly, it is the first annual report published by the Commission that includes full audited financial reports. Previously, the Commission's audited financial reports were included in annual reports published by the Justice and Community Safety Directorate.⁶
- 2.5 The ACT Electoral Commission appeared before the Committee in public hearings of 11 November 2015. The Electoral Commissioner and Deputy Electoral Commissioner appeared on behalf of the Commission.

⁴ ACT Electoral Commission, *Annual Report 2014/2015*, p.2, available at:
http://www.elections.act.gov.au/_data/assets/pdf_file/0018/13590/15AnnualReport_-_amended.pdf

⁵ ACT Electoral Commission, *Annual Report 2014/2015*, p.2, available at:
http://www.elections.act.gov.au/_data/assets/pdf_file/0018/13590/15AnnualReport_-_amended.pdf

⁶ ACT Electoral Commission, *Annual Report 2014/2015*, p.2, available at:
http://www.elections.act.gov.au/_data/assets/pdf_file/0018/13590/15AnnualReport_-_amended.pdf

- 2.6 In hearings, the Committee several matters in connection with the Electoral Commission, including:
- the impact on management and scheduling of the ACT election if the next Federal election is scheduled within the same period;⁷
 - risks and protections associated with the use of the ACT's electronic voting system;⁸
 - mechanisms and arrangements for pre-poll voting;⁹ and
 - scrutiny of electronic votes and protections against fraud.¹⁰
- 2.7 These are considered below.

TIMING OF ACT AND FEDERAL ELECTIONS

2.8 The Committee noted that the next Federal election looked increasingly likely to be held at the time when the next ACT was scheduled, and asked the Electoral Commissioner to comment on its impact if this were to occur.¹¹

2.9 In responding, the Commissioner told the Committee that:

I understand that the Prime Minister has recently stated that he thought the next federal election might be September-October next year, which is clearly going to be very close to our election. That happened once before, in 2004. We had the federal election one week before the ACT election. It is something very much in our minds. It is something we have to make contingency plans for.¹²

2.10 If this were to take place, he told the Committee:

Under the Electoral Act, if the Governor-General were to issue a writ for a federal election on the same day as our election then our election automatically gets moved to the first Saturday in December. So that is something that we also need to be planning for as a contingency. I am hoping that that does not happen, but that is something we have to plan for.¹³

⁷ *Proof Transcript of Evidence*, 11 November 2015, pp.119-120.

⁸ *Proof Transcript of Evidence*, 11 November 2015, pp.120-121.

⁹ *Proof Transcript of Evidence*, 11 November 2015, pp.121-122.

¹⁰ *Proof Transcript of Evidence*, 11 November 2015, pp. 122-126.

¹¹ *Proof Transcript of Evidence*, 11 November 2015, p.119.

¹² Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.119.

¹³ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.119.

2.11 The Commissioner went on to say that there was a precedent for this:

We have had the experience of an election a week away from our election and we understand what we need to do there. There is particularly a question of informing the electors of the fact that there are two elections running almost concurrently, so we have to make sure that people are aware that there are two elections happening and they have got obligations for both elections.¹⁴

2.12 In addition, the Commissioner told the Committee, there were a number of other matters which would need attention if this came to pass:

We have issues regarding pre-poll voting centres, in particular, if we have overlapping pre-poll voting periods. We have a ban on canvassing and how-to-vote cards within 100 metres of the polling place at our elections, whereas at federal elections they have a six-metre ban on handing out how-to-vote cards, which is quite a different consideration. That precludes, for example, us sharing pre-poll voting centres with commonwealth elections. We effectively have to find different premises for those if we have overlapping periods, which in a sense helps to distinguish our election from their election.¹⁵

2.13 More broadly, he told the Committee:

We will have in place a range of measures designed to cater for the eventuality of the federal election happening near our election date. If we do have to move our election date then we will make all steps necessary to do that.¹⁶

2.14 The Committee asked the Commissioner whether additional staff would be required if the Federal election were scheduled for this period.¹⁷

2.15 In responding, the Commissioner told the Committee that:

If our polling day gets moved to 1 December then we would effectively be employing our staff for that extra period of time. It would probably be quite difficult at that late stage to put people off for a month and then get them to come back again.¹⁸

2.16 In addition, he told the Committee:

We would have to extend the lease on our premises. At the moment we are anticipating we would be moving out of our extended premises at the end of

¹⁴ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.119.

¹⁵ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.119.

¹⁶ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.119.

¹⁷ *Proof Transcript of Evidence*, 11 November 2015, p.120.

¹⁸ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.119.

November next year. So there would be some cost involved if we were to move the election date. We would also have to renegotiate all of our arrangements with the hire of polling places and pre-poll voting centres and things. That may well incur additional costs.¹⁹

ANSWER TO A QUESTION TAKEN ON NOTICE

- 2.17 On 16 November 2015 the Electoral Commissioner provided the Committee with an answer to a Question Taken on Notice regarding the possible coincidence of the ACT and Federal elections in 2016.²⁰

RISKS, PROTECTIONS, AND THE ELECTRONIC VOTING SYSTEM

- 2.18 The Committee asked the Electoral Commissioner about risks and protections associated with the use of the ACT's electronic voting system, used primarily to provide for pre-poll voting.²¹
- 2.19 In responding, the Commissioner told the Committee that:

The electronic voting system we will be using in 2016 is an evolved version of the system we have been using at all elections since 2001. It has been used in 2001, 2004, 2008 and 2012 so, in computing terms, it is a very mature system. The system that we will be using in 2016 will be very much like the system we used in 2012.²²

- 2.20 The Commissioner went on to say that the system would have 'some fairly minor enhancements, mostly around making it more difficult for people to cast an informal vote':²³

We will have a couple of extras to our screens where it prompts people: do you really want to cast an informal vote? We had some cases where people were inadvertently casting informal votes by just randomly hitting keys without paying a lot of attention to what they were doing. So we have made it more difficult for the random hitting of keys to result in an informal vote.²⁴

¹⁹ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.119.

²⁰ See *Inquiry into Annual Reports 2014-2015: Responses to Questions Taken on Notice*, p.3, available at: http://www.parliament.act.gov.au/data/assets/pdf_file/0004/802327/J-And-CS-Responses-to-QToNs.pdf

²¹ *Proof Transcript of Evidence*, 11 November 2015, pp.120-121.

²² Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.120.

²³ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.120.

²⁴ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, pp.120-121.

2.21 'Other than that', he told the Committee:

it is essentially the same system as we used in 2012. We consider it to be not a risky system, because it is not in any way connected to the internet. It is not internet voting. It is voting only in a polling place. It is voting using a secure local area network that is physically isolated within the polling place. The server where the votes are recorded and stored and the server that sends the ballot information to the voting clients are contained within a locked cabinet within a locked polling place. So we consider it to be a very secure way of delivering this kind of voting solution.²⁵

2.22 The Commissioner went on to note other security measures inherent to the system:

It has got a range of things built into it that are fail-safes. It has things like dual mirrored hard-drives in the servers so that if one server were to fail, there would be a back-up server. The voting would immediately stop at that point, if a hard-drive fell over. There are ways to back that up if that becomes an issue. So the chance of votes being lost is very small. As I say, it is something that has been used now for four elections without any problems. I am very confident that it will work very well in 2016.²⁶

PRE-POLL VOTING

2.23 The Committee asked the Commissioner questions about pre-poll voting at ACT elections, including whether for the coming ACT election there would be an increased number of polling places where electronic voting was available.²⁷

2.24 In response, the Commissioner told the Committee:

Probably not. In the past, for the first two, we tried having electronic voting in pre-poll centres and in ordinary polling places on election day. The amount of effort involved in setting up a polling place just for one day we thought was not really worth the return on investment, because it is quite a hardware-intensive thing to do. It is also quite complex to set up of a set of hardware in a polling place just for one day. The view we have taken is that it is really only worth doing at our pre-poll voting centres. At this stage, we are looking at using the same number of pre-poll centres as we used in 2012. While we are not increasing the number of locations for pre-poll voting, we are finding right across the country that the number of people using pre-poll voting centres is

²⁵ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.121.

²⁶ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.121.

²⁷ *Proof Transcript of Evidence*, 11 November 2015, p.121.

continuing to increase. If that means we get more people pre-poll voting then that means we will get more people electronically voting.²⁸

2.25 The Committee noted that at the previous ACT election approximately 25% of voters had cast their vote in this way, and asked what expectations were for the coming election, given upward trends in the ACT and other jurisdictions.²⁹

2.26 The Commissioner responded by saying that it was ‘very difficult to put a hard number on that’:

We will be estimating more, and we will be looking at the trajectory both here and in other jurisdictions. So 30, 35 in round terms is a guess but, really, what we will be doing is ensuring that those pre-poll centres are very well equipped to take very large numbers of voters, just in case.³⁰

2.27 The Commissioner went on to provide further detail:

The way that the electronic voting system works now is that the pre-poll centres become polling day polling places in the same locations, using the same electronic voting systems, using the same barcodes. We will have enough barcodes to cover the pre-poll period and the polling day period in those locations. We also have the capacity, if we get unexpected numbers of people turning up, to employ more staff to deal with additional voters turning up. We will certainly be anticipating what we will need to do to make sure that we cater for whatever numbers we get at the pre-poll voting centres.³¹

2.28 When asked how the Commission would respond if there was a notable increase in demand for pre-poll voting, the Commissioner told the Committee that:

The way that we would run our pre-poll centres is that if we did get large queues, we would get more staff on, in awareness of the fact that some of these premises will have space limitations—assuming we can actually fit the staff into the locations. We would endeavour to do what we had to do to make sure that there were not long queues.³²

²⁸ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.121.

²⁹ *Proof Transcript of Evidence*, 11 November 2015, p.121.

³⁰ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.121.

³¹ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, pp.121-122.

³² Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.122.

SCRUTINY OF ELECTRONIC VOTES AND PROTECTIONS AGAINST FRAUD

2.29 The Committee asked the Commissioner about scrutiny of electronic votes in ACT elections, and whether representatives of candidates or party groupings were able to observe electronic the results of electronic voting in the way provided for votes cast by traditional means.³³

2.30 In response, the Commissioner told the Committee that:

The logic behind the electronic voting system that we have is that the computer code that is used in the electronic voting system and then the electronic counting system is open-source software. It is available for download on the Elections ACT website. That has been scrutinised over the years. We have had it since 2001. Academics from the Australian National University have looked at it. They did actually find a bug at some point that was fixed as a result of their scrutiny.³⁴

2.31 The Commissioner provided the Committee with further detail on this:

rather than scrutinising the actual marking of the ballot--which is in secret anyway, so you cannot see the marking of the ballot, but you can have scrutineers present while papers are being marked--with electronic voting, we have an electronic audit trail where anyone who wants to--political parties, candidates, media, academics--can go and look at the code that we are using. The code also gets independently audited, so we can put our hands on hearts and say that the code that has actually been used in the polling places is the same code that is on the web that people are able to look at. And anyone with the appropriate computer skills is able to look at the way the electronic voting works, from translating marks on a keypad, which is the way people vote, into an actual vote stored in a ballot box.³⁵

2.32 He told the Committee that this was 'a very different way of scrutinising an election', but that it was 'still possible for someone with the right skills to look at the way the electronic voting system works' and to 'satisfy themselves that what goes into it is what comes out of it'.³⁶

2.33 Asked for further detail on this process, the Commissioner told the Committee that privacy provisions were similar for electronic voting as for conventional voting:

³³ *Proof Transcript of Evidence*, 11 November 2015, p.122.

³⁴ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.122.

³⁵ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.123.

³⁶ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.123.

It is in the same way that you cannot look at an individual's paper ballot. They get dropped into an electronic ballot box.³⁷

- 2.34 However, he told the Committee, any person could 'interrogate the database [of electronic votes] to look at each individual vote and work out the preferences of each vote':³⁸

In fact, after the election we publish those on our website, so you can download those figures. If someone were to remember or to record how they voted, they could go into the database after the election is over and find their individual ballot paper. It is sorted by polling place. If it is a pre-poll centre, it is always by pre-poll centre. If someone were to vote in a highly unusual way by numbering a candidate in a particular way, they could go into the database and verify that that had occurred. For most people, one person's vote is probably going to look like another person's vote, so that is probably not a reliable or practical way of doing it. But if you wanted to do that, you could do that.³⁹

- 2.35 The Committee also asked questions about other protections against fraud for pre-poll voting, in particular how the system protected against mis-identified or multiple voting.⁴⁰

- 2.36 In response, the Commissioner told the Committee that:

Another electronic system we used in 2012, and which we will be re-using in an enhanced form in 2016, was called our electronic Legislative Assembly polling place system. It is now going to be called the Legislative Assembly polling place and election results display system, LAPPERDS. That puts a notebook computer in front of every issuing officer in a polling place, a central computer that the officer in charge of every polling place has. They are networked within the polling place back to the central officer-in-charge's computer, which in turn is networked to a central database using the 3G telephone network.⁴¹

- 2.37 The Commissioner told the Committee that:

The practical upshot of that is that when someone comes in to vote at a pre-poll centre or an ordinary polling place, their name will be found on the net book in front of the issuing officer. They will mark that person's name on the roll as having been issued with a vote. That sends a signal back through this electronic chain, back to the central database, which marks them off as having voted on the central database. Then that

³⁷ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.123.

³⁸ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.123.

³⁹ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.123.

⁴⁰ *Proof Transcript of Evidence*, 11 November 2015, p.123.

⁴¹ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.123.

record of the name having been marked gets sent back to each of the other issuing officers' computers. The practical effect is that as soon as your name is marked off the roll in one polling place, within a few minutes, assuming that the 3G network works correctly, that name will be marked off as having voted across all of the issuing points right across the territory.⁴²

2.38 When asked whether this system employed the Internet as part of its signal-chain, the Commissioner responded by saying:

This is using the 3G telephone network, and there will be elements of internet in that, but it has nothing to do with the voting system. It is totally separate from the voting system. It is only a system for marking people's names off rolls. If someone did get into and hack the database and somehow either erase names or add names, in theory, that would be possible. But practically, that would be very difficult to do, and there are security systems built into the network security that would make that very difficult. If someone were to do that, it would not threaten the integrity of the election. The worst it would do would be to result in someone turning up to vote and having their name already marked off. They would be issued with a declaration vote, which would then be admitted, because we do all the checks to ensure that that person has not voted before. So it is very unlikely that that could in any way threaten the integrity of the election.⁴³

2.39 The Committee asked how the Commission responds in cases where a voter tries to vote more than once.⁴⁴

2.40 In responding, the Commissioner told the Committee that:

What would happen is that they would turn up to vote and their name would be marked on the roll as having voted. They would be interrogated as to whether they had voted before. If they remembered they had voted before and said, "Yes, I did vote," they would go away and not vote. If they were, for example, suffering dementia and had forgotten that they had voted earlier, which does happen, they would be issued with a declaration vote, and then we would do an investigation after the election where we would check records back. We investigate every case of potential multiple voting, to determine whether there has been a genuine mistake made, which is the most likely thing that happens. But, in a case like that, we are pretty good at working

⁴² Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, pp.123-124.

⁴³ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.124.

⁴⁴ *Proof Transcript of Evidence*, 11 November 2015, p.124.

out that people have in fact voted twice, in which case that second declaration vote would not be admitted to the count.⁴⁵

2.41 When asked for the frequency of such events, the Commissioner responded by telling the Committee that:

With the system we have got, not very often. What we find most where we have got a name marked twice is that the polling officials have marked off two very similar names. Often you will get a father and son who have both got the same name or a very similar name, and they will mark off one name twice and the other name not at all. The instances of people actually voting twice are very low and we have never had any information with which we could go and prosecute anyone.⁴⁶

2.42 The Committee asked about the extent to which Electoral Commission staff could require a person to produce identification and, in light of this, how declaration votes were issued.⁴⁷

2.43 In response the Commissioner told the Committee that:

We are talking hypotheticals, so it is a bit tricky to answer that definitively. What will happen in practice is that if a person claims to vote and states their name and address, and that name and address is on the roll and that name has not been marked off, that person will be issued with a vote. If they actually said, "I have voted lots of times before in the election," then our instructions say that they should not vote in that case.⁴⁸

2.44 However, he told the Committee:

If there is any doubt at all as to whether someone has a right to vote or not, our standing instruction to polling officials is that we ask the voters to fill in a declaration vote; then that gets investigated after the event by senior officers, usually the deputy or me in something that is quite a serious matter. We include contact details on those forms, so we will actually ring people up or send them an email or something and ask for further information. The chance of someone deliberately doing that in such a way that we were aware that they were doing it--and that we would let them get away with it--is pretty slim. The greater risk, not just in ACT elections but in any elections, is that, because the electoral roll information is publicly made available, if someone wanted to

⁴⁵ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.124.

⁴⁶ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.124.

⁴⁷ *Proof Transcript of Evidence*, 11 November 2015, pp.124-125.

⁴⁸ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.125.

go and vote in someone else's name and just walked in and said, "I am Joe Smith of this address," the way our system works, they would get a vote.⁴⁹

2.45 When asked whether there were arguments in favour of compulsorily requiring identification from voters,⁵⁰ the Commissioner told the Committee that this had been 'considered in other jurisdictions', had been 'raised in the ACT ... in past discussions', and had been legislated for in Queensland, although this had been repealed.⁵¹

2.46 The Commissioner told the Committee that his view was that it would probably 'make things more difficult for honest people but not do a lot to prevent dishonest people doing dishonest things'. He told the Committee that Australia elections were 'open' and 'convenient', and that there was 'no evidence of systematic fraud in any ACT election or elections in other jurisdictions'.⁵²

2.47 The Commissioner told the Committee that:

If people were systematically rorting elections, they need to do that in large numbers. It is very difficult to rort an election using just a small number of fraudulent votes; you would have to do it with a large number of votes to actually make a difference. I think that would get picked up. The way that we have our network rolls, meaning that if a name has been used in one place it cannot be used in another place, is probably a greater deterrent than the ID way of looking at it.⁵³

2.48 The risk of creating a requirement for identification, he told the Committee was the potential to 'disenfranchise people who might not be carrying ID with them',⁵⁴ and that:

you might actually introduce some kind of impediment to voting that might be determined by how affluent someone is, for example. Someone in certain circumstances might not have ID, whereas people in other circumstances might be more likely to have ID.⁵⁵

2.49 The Commissioner told the Committee that he 'would be reluctant to introduce anything' of this nature 'that might put an impediment in the way of people actually using their franchise'.⁵⁶

⁴⁹ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.125.

⁵⁰ *Proof Transcript of Evidence*, 11 November 2015, p.125.

⁵¹ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.125.

⁵² Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.125.

⁵³ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.125.

⁵⁴ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.125.

⁵⁵ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.125.

⁵⁶ Mr Phil Green, *Proof Transcript of Evidence*, 11 November 2015, p.125.

3 DIRECTOR OF PUBLIC PROSECUTIONS

INTRODUCTION

- 3.1 The Director of Public Prosecutions (DPP) appeared before the Committee in hearings of 6 November 2015.
- 3.2 In his opening statement the DPP noted matters he had highlighted in his Annual Report,⁵⁷ including:
- a significant shift, over time, to a higher proportion of the work of his office in Superior Courts, together with an increase in the volume and complexity of cases;⁵⁸
 - a shift, over time, to use of in-house resources for prosecutions;⁵⁹ and
 - a trend, over time, to make more extensive use of paralegals in his office, and the creation of a standards for qualifications, and a career path, for paralegals in his office.⁶⁰
- 3.3 Other matters considered by the Committee during the hearing included:
- legislative amendments such that ‘interviews of complainants in family violence matters recorded by police at the scene as the evidence in chief ... in criminal proceedings’;⁶¹
 - recommendations provided to government for legislative reform such that a breach of bail be an offence and that the DPP be given ‘an extraordinary power to review bail on our motion, not with fresh circumstances’;⁶²
 - the ACT Magistrates Court moving to list cases during intensive listing periods in the Supreme Court;⁶³
 - rise in sexual assault cases, and changes in the historical tendency for defendants to plead ‘not guilty’;⁶⁴ and

⁵⁷ See Director of Public Prosecutions, *Annual Report 2014-2015*, available at: http://www.dpp.act.gov.au/_data/assets/pdf_file/0006/782538/2014-2015-Annual-Report.pdf

⁵⁸ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.1.

⁵⁹ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, pp.1-2.

⁶⁰ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.2.

⁶¹ *Proof Transcript of Evidence*, 6 November 2015, pp.2-5.

⁶² Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.5.

⁶³ *Proof Transcript of Evidence*, 6 November 2015, pp.6-7.

⁶⁴ *Proof Transcript of Evidence*, 6 November 2015, pp.7-8.

- resource implications arising from sexual assault cases and changes to Magistrates Court listing practices.⁶⁵

3.4 These are considered below.

INTERVIEWS AS EVIDENCE IN CHIEF IN FAMILY VIOLENCE MATTERS

3.5 In questioning, the Committee noted that complainants frequently sought to withdraw statements, and asked whether the passage into law of the Crimes (Domestic and Family Violence) Legislation Amendment Bill 2015 would be a positive measure in this regard.⁶⁶

3.6 In response, the DPP told the Committee that it ‘certainly’ would, and that it embodied ‘for the ACT very similar reforms’ to those that had been put in place in New South Wales, where it had been operating ‘for some months’.⁶⁷

3.7 He told the Committee that this was, in the view of his office, ‘a very significant development’.⁶⁸ He went on to say that the significance of the new arrangements hinged on the fact that the:

graphic nature of what happens in a domestic violence incident is sometimes lost when the matters come to court months later, on the basis of a statement that was taken, often with a complainant who is reluctant. That reluctance comes from a number of different areas, as you all know, but not least among those is the pressure that is often put on complainants to withdraw their complaints or to minimise what happened on the night, so to speak.⁶⁹

3.8 In contrast, he told the Committee:

This new legislation cuts through all of that and allows a graphic representation of what was actually said at the scene to police to be presented as the evidence-in-chief of that witness. That of course will make it impossible for that witness to withdraw that statement, as complainants often try to do, because that will be their evidence-in-chief. So whatever their position when it comes to hearing about whether they wish the matter to go ahead and so forth, their statement, which is a video statement, will

⁶⁵ *Proof Transcript of Evidence*, 6 November 2015, p.9.

⁶⁶ *Proof Transcript of Evidence*, 6 November 2015, p.2.

⁶⁷ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.2.

⁶⁸ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.2.

⁶⁹ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, pp.2-3.

be tendered in evidence. We expect that that will be of great benefit and have a real impact.⁷⁰

3.9 In further questioning, the Committee asked whether this would lead to reluctance by complainants to provide statements which would be presented in court whether or not they provided consent.⁷¹

3.10 In response, the DPP told the Committee he did not think so because he thought it:

true to say that at the moment the police will take a written statement generally on the night, and that will generally be under similar circumstances. In other words the complainant will be told that the statement is for court. At that stage the complainant is very keen generally for the matter to go to court because the complainant wants the matter to be resolved, and they want the immediate issue that is in the household to be resolved. So the position does not really change from that point of view. What changes is that the record is a much more inviolable record, a much more graphic record. It will make it effectively impossible for the complainant to resile from.⁷²

3.11 In answer to further questions on whether this would lead to unintended consequences in discouraging victims from making statements, the DPP made a further response, saying that such questions raised 'some very fundamental issues'. 'One of them', he told the Committee, was: 'are we re-victimising victims by effectively forcing them to give evidence?', and stated that this was 'a very difficult question'.⁷³

3.12 He stated that his office took the view that there was 'a public interest in bringing these matters to conclusion', and noted the frustration of police officers who attend 'a domestic situation', and do 'all the paperwork associated with that, only to have the complainant withdraw their statement'. This, he told the Committee, was 'the experience of police officers across Australia'.⁷⁴

3.13 When asked as to the balance between the public interest and the interests of the victim, the DPP responded by saying that it was 'a difficult question as to whether you force a reluctant complainant to give evidence'.⁷⁵

I am not saying that is an easy decision, and it is not a decision we make one way or the other inevitably. In other words we do not inevitably force all complainants on. It is

⁷⁰ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.3.

⁷¹ *Proof Transcript of Evidence*, 6 November 2015, p.3.

⁷² Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.3.

⁷³ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.3.

⁷⁴ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.3.

⁷⁵ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.4.

very appropriate, if I might say so, to always question that issue. I think that is what you are alluding to at the base of that question. But at the end of the day the community has an interest in stamping out domestic violence. This is one of the ways; a very strong stand by prosecutors and police is one of the ways to do that.⁷⁶

- 3.14 At this point the Committee asked about the experience in NSW of implementing such measures. The DPP responded by saying that it was 'probably too early to say anything about the New South Wales experience, other than impressionistic experience':⁷⁷

In other words the system has only been up and operating in New South Wales for about six months, so I do not think there is data, so to speak. But we and the AFP, who are instituting this proposal, have been very much in touch with the New South Wales authorities as to how they introduced this, and the feedback is very positive.⁷⁸

- 3.15 The DPP went on to say:

Let us not put too much emphasis on the way in which this overrides the wishes of complainants to withdraw their complaints, which is a very appropriate thing to put into the mix. But what is also relevant is how graphic this evidence is. For example, I have seen some of the actual video statements that have been taken in New South Wales.⁷⁹

- 3.16 Noting that victims were, in the main, women, he told the Committee that:

the woman will be in a house. There will be broken furniture, there will be bruises, there will be blood, there will be broken glass and there will be a smashed-in door. All of this will be graphically represented on the video, as will the position the woman was in when various things happened to her or when she alleges various things happened to her.⁸⁰

- 3.17 Regarding this the DPP went on to say that this was 'very graphic':⁸¹

For anyone who watches one of those videos ... [it is] the graphic nature of that is brought home. That really supports the complainant because it prevents the complainant from being undermined when they come to court about what their

⁷⁶ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.4.

⁷⁷ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.4.

⁷⁸ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.4.

⁷⁹ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.4.

⁸⁰ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.4.

⁸¹ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.4.

recollection was. It is not only the immediacy of the complaint; it is the corroboration which is provided to all of that by the circumstances of the scene.⁸²

3.18 In response to further questions the DPP agreed that it was important for the ACT and NSW to record data on the effect of the new arrangements.⁸³

3.19 In addition the DPP made a further observation about effects, stating that:

One of the key issues will be whether defendants plead earlier. At the moment there is an incentive on defendants to wait and see if the complainant turns up at court, before they confirm their plea of guilty. We have the situation very often, very frequently, where immediately the complainant is seen in the precincts of the court the defendant will come and offer a plea straightaway. In other words the matter has been waiting for hearing for months. As soon as the complainant is seen walking in the doors of the court the defendant will be entering a plea. That effectively is brought forward potentially in this because we all know what the complainant will say because their evidence-in-chief has already been given. I think that will be a key measure of the success ...⁸⁴

OTHER RECOMMENDATIONS TO GOVERNMENT

3.20 In further questioning, the Committee noted that the above proposal— that an audio-visual record of a complainant’s initial statement have status as evidence-in-chief— had been one of the DPP’s recommendations to government, and asked about two other recommendations that had been made and not yet implemented.⁸⁵

3.21 In responding, the DPP noted that one of these recommendations was that ‘a breach of bail would be an offence’, which it was not in the ACT ‘at the moment’.⁸⁶

3.22 He went on to say that:

That may sound a bit technical, but the significance of that is to really trace the history of failure to comply with bail. In other words at the moment a breach of bail can lead to the arrest of a person and bring him before the court, but a breach of bail is not itself an offence. If it were an offence it would be able to be tracked through the criminal history of the offender, which would give a better history as to compliance.

⁸² Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.4.

⁸³ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.5.

⁸⁴ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.5.

⁸⁵ *Proof Transcript of Evidence*, 6 November 2015, p.5.

⁸⁶ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.5.

Members will be very aware that offences in this area tend to be perpetrated across a long period of time, and there is repetition et cetera.⁸⁷

3.23 In response to further questions about the effect of this measure, the DPP advised that creating an offence of breach of bail would not be specific to domestic violence— it ‘would be for everything’— but that ‘the greatest impact would be in the domestic violence area’.⁸⁸

3.24 The DPP told the Committee that a second recommendation was that the DPP ‘be given an extraordinary power to review bail’.⁸⁹ He told the Committee that:

At the moment, essentially the right to review bail arises only if there is a change in circumstances. So either the prosecution or the defence can seek a review of bail if there is a change of circumstances.⁹⁰

3.25 The proposal made by his office was that:

the DPP be given an extraordinary power to review bail, to capture those situations where magistrates just get things wrong, in our view.⁹¹

3.26 He went on to say that:

This particularly arises in this family violence context. Magistrates, who are doing the best they can and with a resumption in favour of bail, will sometimes—it does not happen very often—give bail to people who, in our view and in the police’s view, are dangerous. Those people walk out of court muttering under their breath dire threats against people et cetera. That is a scenario. It does not happen every day but it does happen. In that situation we would seek an extraordinary power to review bail on our motion, not with fresh circumstances.⁹²

3.27 The DPP told the Committee that in practice this would mean that the DPP would ‘have a right to bring it before the court’:

If it arises in the Magistrates Court it could be reviewed back before the Magistrates Court before another magistrate. It does not necessarily need to go to a higher court. But at the moment we do not have a power, without showing a change in

⁸⁷ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.5.

⁸⁸ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.6.

⁸⁹ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.5.

⁹⁰ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.5.

⁹¹ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.5.

⁹² Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.5.

circumstances, to even bring the matter back before the court. So that is what we have suggested.⁹³

- 3.28 In relation to both of these suggestions—regarding breaches of bail being made an offence and that the DPP be given an extraordinary power to review bail—the DPP told the Committee that while these ‘two issues [had] not been taken up by government at the moment’, it was his understanding that they were ‘still under consideration’.⁹⁴

CHANGE IN MAGISTRATES COURT LISTING PRACTICES

- 3.29 During questioning the Committee noted that the DPP had in his Annual Report stated that the ACT Magistrates Court had previously not listed matters for hearing during intensive listings periods in the Supreme Court, and asked what impact this had had on the work of the DPP.⁹⁵

- 3.30 In response to the question the DPP told the Committee that:

The Supreme Court has very successfully dealt with issues of the backlog, and also the length of time matters were taking to come on for hearing, for trial, by organising its business in a series of intensive listing periods during the year. There are four of those periods; they run for about five weeks each. During those periods, in the Supreme Court the matters are over-listed; there are typically 30, 40 or 50 trials put into a period of five weeks. Obviously, all of those trials, from the point of view of my office, need to be ready to go; that involves a lot of resources in the Supreme Court.⁹⁶

- 3.31 The DPP went on to say that:

The Magistrates Court had previously agreed that it would not list matters for hearing in the Magistrates Court during the time when the Supreme Court had its intensive listing. It is true that the Magistrates Court lists have been blowing out. The response of the Magistrates Court has been that they can no longer not list matters in those periods when intensive listing is taking place in the Supreme Court.⁹⁷

- 3.32 However this change of practice, he told the Committee ‘puts a lot of resourcing pressure on my office, because we cannot be in two places at once’. Moreover, ‘Supreme Court trials are very labour intensive; they require two or three bodies, from my point of view, for each trial,

⁹³ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.6.

⁹⁴ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.6.

⁹⁵ *Proof Transcript of Evidence*, 6 November 2015, p.6, and see Director of Public Prosecutions, *Annual Report 2014-2015*, p.3.

⁹⁶ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, pp.6-7.

⁹⁷ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.7.

for preparation et cetera'. He was able to 'understand why the Magistrates Court wants to address the issue of its hearing lists', and the combination of factors—resource requirements of Supreme Court matters and listing of Supreme and Magistrates Courts matters at the same time—amounted to a significant 'resourcing issue' for his office.⁹⁸

RISE IN SEXUAL ASSAULT CASES

3.33 In hearings the Committee asked questions regarding sexual offences, noting that the DPP had stated in his report that:

Sexual offences continue to be over represented in the types of trials that are conducted, a reflection of the fact that pleas of not guilty are more common with these offences.⁹⁹

3.34 In responding to the question DPP noted that in this context:

when we say "over-represented", we mean that people in these types of offences plead not guilty at a greater rate than other offences. In other words, for 100 offences it is more likely that the sexual offending will end up in a plea of not guilty and a contested trial than will other types of offences.¹⁰⁰

3.35 This, he told the Committee, reflected 'a number of historical facts', including that it had 'been more difficult to obtain convictions' for sexual offences.¹⁰¹

3.36 The DPP went on to say that:

they tend to be cases that are word on word. But having said that, with advances in scientific techniques and advances in the law of evidence to deal with complaint evidence and so on and so forth, in practice they are rarely straight word-on-word cases anymore. But that has been the tradition; they have tended to be that. And quite possibly accused persons have been encouraged by lack of success to plead not guilty.¹⁰²

⁹⁸ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.7.

⁹⁹ *Proof Transcript of Evidence*, 6 November 2015, p.7, citing *Director of Public Prosecutions Annual Report 2014-2015*, p.23.

¹⁰⁰ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.8.

¹⁰¹ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.8.

¹⁰² Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.8.

3.37 However, he told the Committee:

We are turning that around. One of the very gratifying aspects of this report ... is that for the first year that we can remember there were a greater number of pleas of guilty prior to trial than there were trials.¹⁰³

3.38 The DPP told the Committee that this had led to a reduction in the proportion of sexual assault cases going to trial:

With those matters, with the plea of guilty prior to trial, they were probably heading towards trial, and at some stage they changed their plea--probably not in every case: some of them would be a plea of guilty at an early stage but some of them would be a plea of guilty at a later stage, including on the doorstep of the court.¹⁰⁴

3.39 He went on to say that:

We think that is one of the most significant statistics in this annual report, and it is one that gives us great heart, because it says to us that we are doing something right about the prosecution of sexual offending. Also, the juries, quite frankly, are getting a greater understanding of the dynamics of sexual offending. The great thing about the jury system is that it is dynamic, it does reflect community attitudes. Sometimes it is said that it lags a bit, but juries do really understand the circumstances in which these sorts of offences happen, and that encourages people to plead not guilty.¹⁰⁵

3.40 The DPP was asked for further clarification on whether his office was seeing an increase in the volume of sexual assault cases, and in response the DPP confirmed that there had been a rise in sexual assault cases handled by his office.¹⁰⁶

ANSWER TO A QUESTION TAKEN ON NOTICE

3.41 On 12 November 2015 the Director of Public Prosecutions provided the Committee with an answer to a Question Taken on Notice regarding the volume of sexual offence cases.¹⁰⁷

¹⁰³ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.8, citing *Director of Public Prosecutions Annual Report 2014-2015*, p.21.

¹⁰⁴ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.8.

¹⁰⁵ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.8.

¹⁰⁶ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.8.

¹⁰⁷ See *Inquiry into Annual Reports 2014-2015: Responses to Questions Taken on Notice*, p.1, available at: http://www.parliament.act.gov.au/_data/assets/pdf_file/0004/802327/J-And-CS-Responses-to-QToNs.pdf

RESOURCING

3.42 A further element of the Committee's line of questioning about rates of sexual assaults managed by the DPP was the question of whether this placed an undue burden on resources, and if so how his office was managing.¹⁰⁸

3.43 In response the DPP told the Committee it was managing with 'great difficulty' and indicated a number of factors¹⁰⁹—some of which have been considered above—which put pressure on his office's resources:

Resources generally are another topic, but of course we are under pressure. Members can see that the work in superior courts is increasing. There has been no great change in the Magistrates Court. The complexity of work is increasing. We are doing more murder cases and we are doing them all in house et cetera. We are doing more sexual offending cases, and there is greater complexity around those, because there are more rules about pre-trial evidence and so on, special applications to do with tendency, et cetera. The area is getting more complex. That does put a bit of pressure on resources.¹¹⁰

3.44 Responding further to this line of questioning the DPP told the Committee that he was 'not going to sit here and pretend that there is not an issue with resources; there is'. He also told the Committee that in response to this his office had, for the first time, 'put in a joint bid with Legal Aid' because 'a lot of the issues that relate to my office also relate to Legal Aid in the criminal area', and so the two organisations had, in this instance 'tried to coordinate that response'.¹¹¹

¹⁰⁸ *Proof Transcript of Evidence*, 6 November 2015, p.8.

¹⁰⁹ See also *Director of Public Prosecutions Annual Report 2014-2015*, pp.3, 4, 8, 15, 16, 18, & 32.

¹¹⁰ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.9.

¹¹¹ Mr Jon White, *Proof Transcript of Evidence*, 6 November 2015, p.9.

4 ACT HUMAN RIGHTS COMMISSION

INTRODUCTION

- 4.1 The ACT Human Rights Commission appeared before the Committee in hearings of 6 November 2015.¹¹²
- 4.2 Matters considered by the Committee included:
- the prevalence of cases handled by the Commission involving Aboriginal and Torres Strait Islander people, and cultural sensitivity entailed by handling such cases;¹¹³
 - actions by the Commission in the area of domestic violence, sexual assault and disability;¹¹⁴
 - actions by the Commission in relation to raising awareness of the *Human Rights Act* amongst the legal and public service communities;
 - actions by the Commission on discrimination on grounds of pregnancy and religion;¹¹⁵
 - the proposed re-structuring of rights agencies;¹¹⁶ and
 - the Commission's views on anti-consorting laws under consideration.¹¹⁷
- 4.3 These are considered below.

CASES INVOLVING ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE

- 4.4 The Committee asked the Commission about numbers of cases it manages from Aboriginal and Torres Strait Islander people, and measures taken in responding to such cases.
- 4.5 In response, the Health Services, Disability & Community Services Commissioner told the Committee that:
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¹¹² *Proof Transcript of Evidence*, 6 November 2015, p.10.

¹¹³ *Proof Transcript of Evidence*, 6 November 2015, pp.10-11.

¹¹⁴ *Proof Transcript of Evidence*, 6 November 2015, pp.11-12.

¹¹⁵ *Proof Transcript of Evidence*, 6 November 2015, pp.14-15.

¹¹⁶ *Proof Transcript of Evidence*, 6 November 2015, pp.15-17.

¹¹⁷ *Proof Transcript of Evidence*, 6 November 2015, pp.17-18.

We do deal with complaints from Aboriginal and Torres Strait Islander people. Our intake people ask people if they would like to identify at the start of a process. We have a RAP [Reconciliation Action Plan] which outlines the processes that we will go through to try and accommodate people's wishes as much as possible.¹¹⁸

- 4.6 The Human Rights and Discrimination Commissioner also responded, telling the Committee that:

I am the RAP champion under the Human Rights Commission RAP. We were one of the first ACT agencies to have one. We regularly have events to engage the community, such as the UN declaration of rights of Indigenous people. We held a film called Charlie's Country at the National Film and Sound Archive. We have done a number of resources for Aboriginal people which we are going to launch on 9 December this year. We have put international Human Rights Day one day forward. All staff are trained in cultural sensitivity. It is a key criterion.¹¹⁹

- 4.7 Regarding number of contacts with Aboriginal and Torres Strait Islander people by the Commission, she went on to tell the Committee that:

When I started this job nearly 12 years ago we started collecting data to track whether we were serving the community. Of course it is voluntary identification. We also started fast-tracking Aboriginal clients with discrimination cases. That was so successful that all cases now have a similar process of early conciliation.¹²⁰

- 4.8 Regarding cultural sensitivities, she told the Committee that:

We certainly take into account any sensitivities that people may have in having a face-to-face conciliation. If they do not want to face the perpetrator then we will do a shuttle conciliation in a separate room. We could even do it on the papers or on the phone. We do that ordinarily for cases of sexual harassment. There are cases that are more sensitive than others and, of course, Aboriginal clients would have that right, but in my experience most of them want to face their perpetrators and say what the impact was, and that is very powerful.¹²¹

- 4.9 The Children and Young People Commissioner also responded to the question. He told the Committee that:

We do deal with complaints and approaches from members of the Aboriginal and Torres Strait Islander community. As you would be aware, there is a significant

¹¹⁸ Ms Mary Durkin, *Proof Transcript of Evidence*, 6 November 2015, p.10.

¹¹⁹ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.10.

¹²⁰ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.10.

¹²¹ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.10.

overrepresentation of Aboriginal and Torres Strait Islander children and young people not only in care but also in the youth justice system. We have contact with the community in those areas quite regularly.

We also visit the Jervis Bay territory regularly and have done so for a number of years. In doing so we visit the community, the elders and, importantly, the children and young people of the community, and we visit the school regularly. We have undertaken a number of targeted consultations down there, including short films and cartoon workshops. I am regularly contacted by the community either to go down there and talk about an issue or just get involved in something that is happening in the community.

We also last year released a co-report between me and Dr Watchirs called Passing the Message Stick, which was an initiative where we engage with the community to talk about services that work well and do not work well for Aboriginal and Torres Strait Islander children, young people and their families.¹²²

- 4.10 This report had been released in January 2015. The Commissioner told the Committee that it had been:

commended by the community as being a true engagement activity in the sense that we did not go there to investigate what the community told us. It was a conversation: tell us what you think, tell us what works well, tell us what does not work well, and we then passed that to the government for a response.¹²³

ACTIONS IN RELATION TO DOMESTIC VIOLENCE, SEXUAL ASSAULT AND DISABILITY

- 4.11 The Committee asked the Commission about its actions in relation to domestic violence, sexual assault and disability.¹²⁴

- 4.12 In response, the Human Rights and Discrimination Commissioner told the Committee:

- that the Commission had ‘a resource that has been developed with the victims commissioner that is to be launched in the next few days about explaining what the rights of victims are and not just focusing on perpetrators’;¹²⁵

¹²² Mr Alisdair Roy, *Proof Transcript of Evidence*, 6 November 2015, p.11.

¹²³ Mr Alisdair Roy, *Proof Transcript of Evidence*, 6 November 2015, p.11.

¹²⁴ *Proof Transcript of Evidence*, 6 November 2015, p.11.

¹²⁵ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, pp.11-12.

- that the Commission handled ‘cases of sexual harassment’, and noted that there ‘would be unsuccessful cases of domestic or sexual violence that still meet the criteria of sexual harassment if it was not in the domestic sphere’;¹²⁶
- that the Commission had ‘proposed that the *Discrimination Act* be amended to include domestic violence as a ground of a protected attribute, so that if you are working and a victim of domestic violence that should not be a factor in losing your job’, so that if ‘the perpetrator appears at your work then you should not lose your job over that issue’;¹²⁷
- that the Commission ‘routinely [comments] on amendments to the *Crimes Act*’, noting that herself and the Children and Young People Commissioner ‘attended the Domestic Violence Prevention Council extraordinary general meeting with proposals that we thought could make a difference for victims of domestic violence’;¹²⁸ and
- that these proposals had included ‘an amendment to the Act, and also a recommendation that the front-line services be given money to do what they are already’, and legislative amendments to provide for ‘having protected witnesses in civil cases, not just criminal cases, so that the perpetrator and the victim do not have to come face to face in the actual hearing and evidence could be videotaped’.¹²⁹

4.13 The Health Services, Disability and Community Services Commissioner also responded to the question. She told the Committee of a project, detailed in the previous year’s Annual Report, being done:

‘in conjunction with the Domestic Violence Crisis Service, Canberra Rape Crisis Centre, Women with Disabilities ACT and Victims of Crime Commissioner to look at options to assist women who had a disability and were escaping domestic violence and sexual assault’.¹³⁰

4.14 She told the Committee that information on this project was updated in the Commission’s current *Annual Report*:¹³¹

The scheme to assist women with disabilities has been in operation for 12 months now. During that first 12 months it supported five people with disabilities to escape domestic violence who otherwise would probably not have been able to do so. It provided the supports that they needed to have their disability issues addressed, like

¹²⁶ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.11.

¹²⁷ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.12.

¹²⁸ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.12.

¹²⁹ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.12.

¹³⁰ Ms Mary Durkin, *Proof Transcript of Evidence*, 6 November 2015, p.12.

¹³¹ ACT Human Rights Commission, *2014-2015 Annual Report*, p.45, available at: <http://hrc.act.gov.au/wp-content/uploads/2015/04/HRC-AR-2015-09-30-Final.pdf>

having an Auslan interpreter and getting support in relation to personal care and child care et cetera--so things to adapt to the disability.¹³²

4.15 She also told the Committee that:

The Victims of Crime Commissioner has committed to continuing to fund the supports needed for women for the next two years and the government has responded recently in relation to the report and accepted all the recommendations.¹³³

RAISING AWARENESS ABOUT THE HUMAN RIGHTS ACT

4.16 The Committee asked the Commission for further detail on actions taken to raise awareness of the *Human Rights Act 2004* by professional and government employers, what responses had been, and the extent to which this might lead to greater consideration of the Act, particularly in the Courts.¹³⁴

4.17 The Human Rights and Discrimination Commissioner responded to the question. She told the Committee that:

On 10 December 2014 we issued a report called *Look Who's Talking*. It is about the dialogue model of how the Human Rights Act has impacted on the Legislative Assembly and the executive. It was an outcome of that that showed the impact on the legal profession was not as great as we hoped.¹³⁵

4.18 In response, she told the Committee, the Commission had 'engaged in several ways by having articles in local legal journals, at local legal conferences, and talking about *pro bono* work with solicitors' firms'.¹³⁶

4.19 She went on to tell the Committee that in her view the 'problem [was] that a human rights breach has to be taken to the Supreme Court':

It would be better if lower courts such as the Administrative and Civil Tribunal could take into account and give a human rights remedy at a lower level because that is where the majority of the work is happening in relation to government services that are public authorities under the *Human Rights Act*.¹³⁷

¹³² Ms Mary Durkin, *Proof Transcript of Evidence*, 6 November 2015, p.12.

¹³³ Ms Mary Durkin, *Proof Transcript of Evidence*, 6 November 2015, p.12.

¹³⁴ *Proof Transcript of Evidence*, 6 November 2015, p.12.

¹³⁵ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.13.

¹³⁶ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.13.

¹³⁷ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.13.

DISCRIMINATION ON GROUNDS OF PREGNANCY AND RELIGION

- 4.20 The Committee asked the Commission for an update on its work to protect women from discrimination on grounds of pregnancy, breastfeeding and religion, and whether cases were coming to the Commission which would provide signals to the community on anti-discrimination law in this area.¹³⁸
- 4.21 Responding to questions regarding discrimination in relation to breastfeeding and pregnancy, the Human Rights and Discrimination Commissioner told the Committee that the Commission had ‘taken initiatives over the years’.¹³⁹
- 4.22 Regarding breastfeeding, she told the Committee that the Commission co-published a pamphlet on breastfeeding with the Australian Breastfeeding Association, and that this was distributed ‘in mothers bags at hospitals, so that has a very wide coverage’.¹⁴⁰
- 4.23 Regarding pregnancy, she told the Committee that the Commission had a pamphlet which it was ‘working on getting that distributed through to all hospitals so that new mothers get that’. However, she expressed concern that the Commission was not ‘getting the pregnancy discrimination cases that we should be’, and noted that only one had been received in the reporting year. In her view ‘the legislation [was] fine’, impediments were ‘more of a resources thing, of getting out there in the community’.¹⁴¹
- 4.24 In relation to actions by the Commission on discrimination on grounds of religion, the Human Rights and Discrimination Commissioner told the Committee:
- In relation to Muslim women, we have an initiative that is being launched on 16 November called “Diversity goes with the territory”. It is something we have been working on for a year. For five years we have had a race roundtable annually. That has been something that has been asked for by the community--that we have a social media public awareness campaign. That will focus originally on race and religion. Other grounds will come into that, such as sexuality, gender and disability, but the first focus is race and religion.¹⁴²
- 4.25 She told the Committee that in her view:
- the *Discrimination Act* could be strengthened in that religion is not a ground of vilification; if someone speaks in a derogatory way to you in public, they draw on the
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¹³⁸ *Proof Transcript of Evidence*, 6 November 2015, p.14.

¹³⁹ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.14.

¹⁴⁰ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.14.

¹⁴¹ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.14.

¹⁴² Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.14.

grounds of race, and that is covered, or sexuality or HIV status, but it is not covered in religion. And that is something other jurisdictions do cover: Victoria and Queensland; and WA actually has a criminal law provision.¹⁴³

4.26 In relation to this the Commissioner offered a further clarification, stating that present ACT legislation protected against *discrimination* on grounds of religion, but did not offer protections against the 'public act' *vilification* on grounds of religion.¹⁴⁴

4.27 She went on to say that she had done some 'advices about people doing letterbox drops vilifying certain religions'. In light of this, she told the Committee:

Islam in particular covers people of a number of different races, so that cannot be caught up, whereas there is case law in New South Wales saying that people of the Jewish religion or Sikh religion may be caught by broadly interpreting the race power. In my view, religion is definitely not covered in the ACT, so that is something that could be fixed.¹⁴⁵

4.28 She also referred to a comprehensive review by Law Reform Advisory Council of the *Discrimination Act*, which was 'still with the Attorney-General', which made:

proposals about possibly having vilification on any ground that is a protected attribute of discrimination. So vilification would cover everything, not just those certain grounds that are currently covered.¹⁴⁶

ANSWER TO A QUESTION TAKEN ON NOTICE

4.29 On 18 November 2015 the Attorney-General provided the Committee with an answer to a Question Taken on Notice regarding the work of the Human Rights Commission on discrimination on grounds of pregnancy and breastfeeding.¹⁴⁷

¹⁴³ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, pp.14-15.

¹⁴⁴ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.15.

¹⁴⁵ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.15.

¹⁴⁶ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.15.

¹⁴⁷ See *Inquiry into Annual Reports 2014-2015: Responses to Questions Taken on Notice*, p.42, available at: http://www.parliament.act.gov.au/_data/assets/pdf_file/0004/802327/J-And-CS-Responses-to-QToNs.pdf

PROPOSED RE-STRUCTURING OF RIGHTS AGENCIES

4.30 The Committee asked the Commission to comment on a proposal to re-structure rights agencies in the ACT, and for an update on the current status of the proposal.¹⁴⁸

4.31 In response the Children and Young People Commissioner told the Committee that:

All of the sohos [Statutory Office-Holders] that sit under the Justice and Community Safety portfolio are being reviewed and have been under review for a number of years now. The restructure has not actually begun in the sense of that many changes being made to date. We understand that the attorney is hoping to have the new proposal in place by early next year, which will require some legislative change. It simply is an amalgamation of the existing bodies, with some tinkering around the edges in terms of who is doing what. It is expected to be in place by early next year.¹⁴⁹

4.32 The Committee asked whether it was true that the proposal was to make these agencies ‘less top heavy’ and would not entail no ‘net loss of staff’, and what contribution the Commission had made to discussions on the proposal.¹⁵⁰

4.33 In response, the Children and Young People Commissioner told the Committee that:

We have been involved since—I think this kicked off probably two years ago. We as a group, so we are looking at all of the sohos [Statutory Office-Holders] who are here, had input into the discussions with the consultant who was engaged initially to come up with the first model. We commented on that. Then there was some further work done within the directorate and we had some input into that. Again, when the first model was released for public consultation, commissioners, other statutory officers and members of the community made comment on that. Then there was the latest model, which I believe has gone to cabinet and has been approved.¹⁵¹

4.34 The Committee asked whether the proposal had been initiated through a bottom-up or top-down process.

4.35 The Children and Young People Commissioner responded, telling the Committee that this had been ‘an initiative of the Attorney-General’, who had written to all of the Statutory Officer-Holders administered by the Justice and Community Safety Directorate ‘saying that the

¹⁴⁸ *Proof Transcript of Evidence*, 6 November 2015, p.15.

¹⁴⁹ Mr Alisdair Roy, *Proof Transcript of Evidence*, 6 November 2015, pp.15-16.

¹⁵⁰ *Proof Transcript of Evidence*, 6 November 2015, p.16.

¹⁵¹ Mr Alisdair Roy, *Proof Transcript of Evidence*, 6 November 2015, p.16.

attorney intended to undertake a review and would we cooperate and participate in the review' and '[o]f course, we said yes'.¹⁵²

4.36 The agencies subject to review, and flagged for amalgamation, included Human Rights Commission, the Public Advocate of the ACT, the Victims of Crime Commissioner, and the Public Trustee.¹⁵³

4.37 When asked whether Statutory Officer-Holders had been happy with the process thus far, the Children and Young People Commissioner told the Committee:

I think all of us would agree that there are opportunities to review practice. Any agency needs time to sit back and say, "Can we do things better?" The commission has done that internally over many years. In terms of whether we are happy with the model, you would have to ask individuals who have been affected by the model. Different people have different views.¹⁵⁴

4.38 When asked further questions about the merits or otherwise of the proposal, the Commission told the Committee:

It is difficult to answer at this stage, because to some extent the devil will be in the detail. The model which is currently being proposed is a high-level model which outlines the functions of commissioners and those who will be leading the different teams. The model will involve the amalgamation of about 45 people into an agency. That is quite a task. I would be very interested to see how all those staff will be allocated under the particular functions to ensure that the commission meets the expectations of the community and the government.¹⁵⁵

4.39 When asked further questions about whether the proposal would involve job losses, and timelines for implementation of the proposal, the Children and Young People Commissioner told the Committee that the prospect of job losses had not been indicated in a discussion paper which had been circulated, but that it was likely that commissioners would have to reapply for their positions, and that the Attorney-General had proposed 1 April 2016 as the date at which the new arrangements would come into force.¹⁵⁶

4.40 The Health Services, Disability and Community Services Commissioner also made comment. She agreed that 'the devil will be in the detail', and told the Committee that it would be:

¹⁵² Mr Alisdair Roy, *Proof Transcript of Evidence*, 6 November 2015, p.16.

¹⁵³ Mr Alisdair Roy, *Proof Transcript of Evidence*, 6 November 2015, p.16.

¹⁵⁴ Mr Alisdair Roy, *Proof Transcript of Evidence*, 6 November 2015, p.16.

¹⁵⁵ Mr Alisdair Roy, *Proof Transcript of Evidence*, 6 November 2015, pp.16-17.

¹⁵⁶ Mr Alisdair Roy, *Proof Transcript of Evidence*, 6 November 2015, p.17.

interesting to see how it can be set up so that conflicts of interest are dealt with when you have got direct service provision now combined into an agency with oversight of that service provision. There are going to be a few issues that will need to be worked through.¹⁵⁷

COMMISSION'S VIEW ON PROPOSED ANTI-CONSORTING LAWS

4.41 The Committee noted that the Commission's Annual Report had referred¹⁵⁸ to anti-consorting laws under consideration in the ACT in connection with Outlaw Motorcycle Gangs (OMCGs), and asked what had been proposed and the Commission's view.¹⁵⁹

4.42 In response, the Human Rights and Discrimination Commissioner told the Committee that she was 'not sure officially what stage those proposals are at', but there were:

New South Wales laws that the Ombudsman has looked at, and his report has shown that it has been over-applied to Aboriginal people and people of lower socioeconomic income. I would be concerned if provisions were over-inclusive. Any such laws--I do not think they have yet been introduced--would need to be very carefully framed, given the evidence in the New South Wales jurisdiction of such laws.¹⁶⁰

4.43 The Commissioner also told the Committee that she thought that move-on powers were 'part of the proposal' being considered for the ACT.¹⁶¹

4.44 In response to further questions, the Commissioner told the Committee:

- that move-on powers were distinct from 'outlaw motorcycle gang powers',¹⁶²
- that 'in the past when there was a national move to outlaw motorcycle gangs [the Commission was] in favour of targeting serious organised crime';¹⁶³ and
- that, given that there were 'now two gangs in the ACT', she was anticipating that new laws may be introduced.¹⁶⁴

¹⁵⁷ Ms Mary Durkin, *Proof Transcript of Evidence*, 6 November 2015, p.17.

¹⁵⁸ See ACT Human Rights Commission, *2014-2015 Annual Report*, p.13.

¹⁵⁹ *Proof Transcript of Evidence*, 6 November 2015, p.17.

¹⁶⁰ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.17.

¹⁶¹ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.17.

¹⁶² Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.18.

¹⁶³ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.18.

¹⁶⁴ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.18.

- 4.45 Making further comment, the Commissioner stated that the Commission had not seen any draft legislation, but was 'certainly aware of the problem in New South Wales that we would not want replicated in the ACT'. When asked to clarify the Commission's concern in this regard, the Commissioner told the Committee that this was the 'overapplication of move-on powers to Aboriginal people and lower socioeconomic communities such as homeless people'.¹⁶⁵

ANSWER TO A QUESTION TAKEN ON NOTICE

- 4.46 On 18 November 2015 the Attorney-General provided the Committee with an answer to a Question Taken on Notice regarding emergency actions under the *Children and Young People Act 2008*.¹⁶⁶

¹⁶⁵ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.18.

¹⁶⁶ See *Inquiry into Annual Reports 2014-2015: Responses to Questions Taken on Notice*, p.50, available at: http://www.parliament.act.gov.au/_data/assets/pdf_file/0004/802327/J-And-CS-Responses-to-QToNs.pdf

5 LEGAL AID COMMISSION (ACT)

INTRODUCTION

- 5.1 The Legal Aid Commission appeared before the Committee in hearings of 13 November 2015.
- 5.2 In hearings, matters the Committee considered included:
- the operation of the Legal Aid Commission's Helpline;¹⁶⁷
 - responses to funding losses;¹⁶⁸
 - outreach to Aboriginal and Torres Strait Islander and Cultural and Linguistically Diverse (CALD) communities on domestic violence;¹⁶⁹
 - support for staff to protect against burnout;¹⁷⁰ and
 - responses to siloing of Domestic Violence services.¹⁷¹
- 5.3 These are considered below.

OPERATION OF THE LEGAL AID COMMISSION'S HELPLINE

- 5.4 The Committee asked Legal Aid ACT about its Helpline service, described in its Annual Report 2014-15 as taking 14,000 calls in the reporting year: significantly in excess of the anticipated 9,000 calls. In relation to this, the Committee asked whether this higher than expected number of calls had affected the Commission's ability to resource its other services.¹⁷²
- 5.5 In response, the Chief Executive Officer of the Commission told the Committee:

We were required to redirect resources internally, and we have done that in a couple of areas. One is in relation to helpline services; we have had to put more people on those lines and streamline our services so that more lawyers are available for the helpline. That has been something we have been able to do within our budget.¹⁷³

¹⁶⁷ *Proof Transcript of Evidence*, 13 November 2015, pp.153-154.

¹⁶⁸ *Proof Transcript of Evidence*, 13 November 2015, pp.154-156.

¹⁶⁹ *Proof Transcript of Evidence*, 13 November 2015, pp.156-157.

¹⁷⁰ *Proof Transcript of Evidence*, 13 November 2015, pp.156-157.

¹⁷¹ *Proof Transcript of Evidence*, 13 November 2015, pp.157-160.

¹⁷² *Proof Transcript of Evidence*, 13 November 2015, p.153, citing Legal Aid ACT, *Annual Report 2014-15*, p.5.

¹⁷³ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.153.

5.6 The Chief Executive Officer told the Committee that:

The service itself, we think, is showing dividends in the sense that we think that this service is giving access to a whole lot more people in Canberra who otherwise would not be getting some advice, but it is also cutting down the applications and allowing us to channel and refer people to appropriate areas.¹⁷⁴

5.7 In relation to this last point, he told the Committee:

We have seen this particularly in relation to setting up some additional advice clinics. For example, we are now running a small business advice clinic where we target tradies, mum and dad investors and cafe owners who come in to get advice in relation to a whole range of matters. We are funnelling them in there. That is done in cooperation with the private profession and the University of Canberra.¹⁷⁵

5.8 In addition, he told the Committee the Commission had:

also just started ... moving work that we find in these areas into an employment clinic which we are running in consultation with a private firm who are doing it pro bono with our lawyers. So we are finding ways of getting more done with less money.¹⁷⁶

5.9 In relation to all these activities, the Chief Executive Officer told the Committee that:

The helpline is a real trigger for people and it is fantastic to see the growth in those numbers. They are up from 9,000 or fewer only a few years ago. That says that Canberrans really want some advice and assistance for these kinds of matters. If we assume that the legal aid environment really is, in the end, about helping people help themselves, it is these kinds of early intervention services which are going to be efficient and economical for the government to fund.¹⁷⁷

5.10 In response to further questions, the Chief Executive Officer told the Committee that the Helpline was run in-house, by lawyers employed by the Commission. The Commission had responded to increases in calls to the Helpline by hiring further staff, paid for by redirecting funds already allocated to the Commission.¹⁷⁸

¹⁷⁴ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.153.

¹⁷⁵ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.153.

¹⁷⁶ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, pp.153-154.

¹⁷⁷ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.154.

¹⁷⁸ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.154.

- 5.11 When asked the average length of calls to the Helpline, the Chief Executive Officer told the Committee:

Optimally, they are done within about six minutes. It can take longer. If it starts to take a bit longer, they are referred into our advice services and our walk-in service if it is a trickier or more complicated matter. If, as I said, it is a small business owner, we refer them to the advice clinics. They can come in and have half an hour of free assistance. Sometimes it can be very quick. I drop in and do 10 calls on the advice line from time to time just to get a feel of what people are saying. It is a whole range of matters from dividing fences to dog bites, annoying neighbours, nuisances and family and domestic violence issues. We are able to pick them up and refer them.¹⁷⁹

RESPONSE TO FUNDING LOSSES

- 5.12 The Committee asked the Chief Executive Officer about a loss of funding experienced by the Commission, and how this had come to pass.¹⁸⁰

- 5.13 In response, the Chief Executive Office told the Committee that:

the funding losses relate to the Law Society's statutory interest account. We basically receive funds in four ways. One is from the Commonwealth; one is from the Territory; and then there is the Law Society through their statutory interest account where they provide legal aid funds for use by community legal centres and legal aid commissions. We also generate some income from client contributions.¹⁸¹

- 5.14 He told the Committee that in relation to funds provided by the Law Society of the ACT, the loss to the Commission had been 'significant':¹⁸²

It has moved from 1.4 million less than a year ago back to 9.6 hundred thousand dollars. That is probably the largest drop in legal aid funds in the history of legal aid in the ACT.¹⁸³

- 5.15 He went on to say that he was 'not at all blaming the Law Society for this':

This money is generated by and depends on the interest they earn in their statutory interest account and they need to distribute that money as best they can. I am not blaming them at all.¹⁸⁴

¹⁷⁹ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.154.

¹⁸⁰ *Proof Transcript of Evidence*, 13 November 2015, p.154.

¹⁸¹ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.154.

¹⁸² Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.155.

¹⁸³ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.155.

5.16 However, he told the Committee 'the reality is that that is a 30 per cent loss and we have had to find ways of coping with that'.¹⁸⁵

5.17 Asked whether this loss, of 'close to' \$500,000 had made it necessary to reduce staff, the Chief Executive Officer told the Committee that the Commission had not. Rather, the Commission was 'regearing our staffing so that we have more junior employees'. Numbers of senior employees were reduced through 'natural attrition' and the Commission's Enterprise Bargaining Agreement had been changed to allow for a 'third category of lawyer', where previously the Commission 'only had two'.¹⁸⁶

5.18 The Chief Executive Officer went on to say that:

The EBA was 100 agreed by our staff last year. That meant that when someone left at the top of the legal 2 level they could be replaced by 1½ to two people at the legal 1 level. So we have done that. In addition, we looked at our costing structures, where we were actually expending money, in particular around consultancies and in the corporate area; we did not renew some positions in that corporate area when people left. We are putting our money into front-line service delivery. In the past year, we have actually increased our FTE. Of those, six are lawyers.¹⁸⁷

5.19 When asked whether changing the proportion of senior to junior staff would affect the quality of output, the Chief Executive Officer told the Committee that:

The key to this is to identify the nature of the work and ensure it is appropriate. For example, with duty work in the criminal court here in the ACT we can train lawyers at legal 1 level to do that kind of front-line service work in relation to bail applications; they can keep up with volume and standard in that way. Then we look to identify the more complex cases to be delivered by more senior lawyers. We are doing the same in family law.¹⁸⁸

5.20 He went on to tell the Committee that:

The other way we have saved is by getting more matters done in family law through family dispute resolution. We have got a success rate there of about 72 to 75 per cent annually. What that means is that whenever a matter settles at that stage, it cuts our costs downstream. We have moved from doing about 100 of those a year a few years

¹⁸⁴ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.155.

¹⁸⁵ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.155.

¹⁸⁶ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.155.

¹⁸⁷ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.155.

¹⁸⁸ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.155.

ago to doing over 200. And 125 settled family law matters is a big saving both to the courts and to our external legal budget.¹⁸⁹

- 5.21 The Chief Executive Officer told the Committee that, more broadly, the Commission had responded to the loss of funding by ‘regearing and identifying’:

I suppose the best analogy is that we stepped back, had a look at the commission and said, “If you were a business, if you were running as a business, how would you expend your money in the most efficient ways?” We have set up a system for that.¹⁹⁰

- 5.22 When asked if further use of Information Technology could assist the Commission in this process, the Chief Executive Officer answered in the affirmative and told the Committee that:

We have been talking about the use of smart forums, for example. It would be fantastic if people could apply for legal aid or come to Legal Aid and do that from wherever they were—whether it was in your office, at the local library or at Access Canberra. We have had an initial meeting with Access Canberra. We may not use smart forums, but we are going to be using electronic technology to help that. Access is crucial from that point of view, and IT is the future.¹⁹¹

OUTREACH TO ABORIGINAL AND TORRES STRAIT ISLANDER AND CALD COMMUNITIES ON DOMESTIC VIOLENCE

- 5.23 The Committee asked questions regarding references in the Commission’s Annual Report to:

Improving outreach services, particularly to the Aboriginal and Torres Strait Islanders and culturally and linguistically diverse communities.¹⁹²

- 5.24 In responding, the Chief Executive Officer told the Committee that:

We have taken particular strategies to improve our services to the [CALD] communities as well as Aboriginals and Torres Strait Islanders. The commission’s public face needs to be an open door to everyone in Canberra. If you walked in now you would see “welcome” in about 10 different languages on our doors. You would see a lot more colour around the walls. We do not look like a dentist’s surgery anymore. We have a lot of colour going on. It is not a sterile looking place.¹⁹³

¹⁸⁹ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, pp.155-156.

¹⁹⁰ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.156.

¹⁹¹ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.156.

¹⁹² *Proof Transcript of Evidence*, 13 November 2015, p.156, citing Legal Aid ACT, *Annual Report 2014-15*, p.26.

¹⁹³ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.156.

5.25 He went on to tell the Committee that:

In the past year we have employed an African communities liaison officer who is a fellow from Zimbabwe. We have trialled that. We have just advertised for a Muslim communities liaison officer. We may employ two. We have had great success with our Aboriginal and Torres Strait Islander liaison officers. We are looking to break down those barriers and make ourselves an open and welcome place.¹⁹⁴

PROTECTING STAFF FROM BURNOUT

5.26 The Committee asked how the Commission supported staff dealing with traumatised clients, and how it protected against burnout in the workplace.¹⁹⁵

5.27 In response, the Chief Executive Officer told the Committee that the Commission had a counselling program. He also suggested that these potential hazards created a need for ‘better supervision and better systems of supervision’. The Commission had found that its former flat staffing structure ‘was not allowing us to provide the best supervision for our lawyers and our front-line staff’.¹⁹⁶

5.28 The Chief Executive Officer described a new staffing structure employed by the Commission in this way:

Putting it in terms of people—and this is the trend in the commercial world—the favourite phrase used by most businesses now is “pods of people”. I cannot quite come at the pods. I like “teams” a bit better. They are a group of people who work together and are familiar with each other’s matters and have, we would argue, a personal support for each other, which is crucial when you are dealing with clients who generally have a range of disabilities from mental illness through to other disability.¹⁹⁷

5.29 When the Committee asked whether this included capacity to rotate staff who had been working in particularly stressful roles, the Chief Executive Officer told the Committee that:

Over the past 18 months we have introduced a system that says, “You’re employed by the commission. You aren’t employed just to be a criminal lawyer. You need to be able to move around and work in different areas. We will support and train you to do that.” Particularly now with the junior lawyers we are making sure that we move them on a

¹⁹⁴ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.156.

¹⁹⁵ *Proof Transcript of Evidence*, 13 November 2015, p.156.

¹⁹⁶ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.157.

¹⁹⁷ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.157.

regular basis. That has been very well received, particularly by generations Y and X who like to move around a lot in any case.¹⁹⁸

5.30 He went on to say that:

We are trying to encourage some of the more senior lawyers to do the same thing. If they have been doing crime for 10 or 15 years or family law for 10 or 15 years, let us have a think about moving them. That requires a lot of cultural change. As you probably know, lawyers like to be familiar with what they do every day. They are very comfortable with that. Introducing this kind of culture takes time but I have got a great deputy and executive team who are right behind all that.¹⁹⁹

5.31 The Chief Executive Officer also told the Committee that, in addition to these measures:

people need to identify when they are starting to get burnt out, when they are starting to be stressed. Our HR officer has got an EPA system. Employees are adequately counselled very quickly if that is required.²⁰⁰

RESPONSES TO SILOING OF DOMESTIC VIOLENCE SERVICES

5.32 The Committee asked the Chief Executive Officer questions relating to the prevalence of Domestic Violence cases and how to break-down the siloing in services that had been commented on in hearings with the Victims of Crime Commissioner.²⁰¹

5.33 In responding, the Chief Executive Officer told the Committee that the Commission had:

increased our workload by over 29 per cent in relation to domestic violence. The statistics are on page 37. You will see we have had to resource additional lawyers. We are now running basically a full-time domestic violence advocacy service in the courts every day. On Tuesdays, which is a particularly heavy day, we have three lawyers there.²⁰²

5.34 Regarding siloing in services related to Domestic Violence, the Chief Executive Officer told the Committee that he 'could not agree more that we need to be holistic in the way these are dealt with'. For this reason, he told the Committee, the Commission was seeking to work more

¹⁹⁸ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.157.

¹⁹⁹ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.157.

²⁰⁰ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.157.

²⁰¹ *Proof Transcript of Evidence*, 13 November 2015, p.157 and see also *Proof Transcript of Evidence*, 6 November 2015, pp.30-31 and the section on the Victims of Crime Commissioner below in this report.

²⁰² Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, pp.157-158.

closely with the Women's Legal Centre, which was also in the process of recruiting to a new position in the Domestic Violence area.²⁰³

5.35 He also told the Committee that:

In the new court structure we are looking to collocate with the DVCS, the domestic violence service here. So we will actually be running our advocacy service in the same place and at the same entrance as the Victim Support service.²⁰⁴

5.36 More broadly, he told the Committee:

in particular over the past year, our role in working with other service providers, including non-legal, has been renewed. The kinds of assistance required here are obviously legal advice, but it is often in relation to housing and tenancy matters. The context is that we are starting to work much more explicitly with domestic violence shelters and other non-government services, and see that as part of our role.²⁰⁵

5.37 The Chief Executive Officer went on to say that:

The commission in the past has been a bit overly legal and a bit siloed about, "Here's your legal problem and we'll help you with that." We are changing that. We are looking at clients more holistically. And that has been required by government. Referral is key.²⁰⁶

5.38 Expanding on this, the Chief Executive Officer told the Committee that there were: 'probably in Canberra 100 to 150 families who provide the bulk of the work for a whole range of services around Canberra'.²⁰⁷ For these families:

If they have a criminal problem, there is a housing problem, there is a family law background problem, there is a domestic violence problem and there is a health problem.²⁰⁸

5.39 To respond to this, the Chief Executive Officer told the Committee:

our idea in doing outreach is to try to link all of that up. We have formed partnerships with the Migrant and Refugee Resettlement Services. We have formed a partnership

²⁰³ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.158.

²⁰⁴ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.158.

²⁰⁵ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.158.

²⁰⁶ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.158.

²⁰⁷ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.158.

²⁰⁸ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.158.

with Communities@Work. So we are providing services in their offices, to better link between them and us.²⁰⁹

5.40 As a result, he told the Committee, when clients present, they will be getting the 'whole gamut', so that 'when they come in, they have a range of problems, and we are part of the solution'. 'People make better decisions if they get good advice', he told the Committee.²¹⁰

ANSWERS TO QUESTIONS TAKEN ON NOTICE

5.41 On 27 November 2015 the Attorney-General provided the Committee with answers to Questions Taken on Notice regarding:

- Legal Aid ACT outreach services; and
- Legal Aid ACT and the proportion of work undertaken for victims and perpetrators.²¹¹

²⁰⁹ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.158.

²¹⁰ Dr John Boersig, *Proof Transcript of Evidence*, 13 November 2015, p.158.

²¹¹ See *Inquiry into Annual Reports 2014-2015: Responses to Questions Taken on Notice*, pp.97 & 105, available at: http://www.parliament.act.gov.au/_data/assets/pdf_file/0004/802327/J-And-CS-Responses-to-QToNs.pdf

6 PUBLIC ADVOCATE AND PUBLIC TRUSTEE

INTRODUCTION

6.1 The Public Advocate and Public Trustee appeared before the Committee in hearings of 6 November 2015. Previously these two roles had been separate. Regarding this the Public Advocate and Public Trustee told the Committee that:

I am currently appointed as Public Advocate in place of [the Human Rights and Discrimination Commissioner who] completed a term as Public Advocate on 30 June. I commenced on 1 July. My term of appointment is to the end of March next year pending the completion of the review of the rights of protection agencies in the ACT. I am presently undertaking the role of Public Advocate in addition to the role of Public Trustee.²¹²

6.2 The Former Public Advocate advised the Committee that she had been in the position until the end of the reporting year currently under consideration. In light of this she asked to remain at the Table and appear as a witness for hearings on the Public Advocate, to which the Committee agreed.²¹³

6.3 The Committee considered the following matters in relation to the Public Advocate and Public Trustee:

- the merging of the roles of Public Advocate and Public Trustee;²¹⁴
- obligations and compliance work flowing to Public Advocate as a result of new mental health legislation;²¹⁵
- update on a significant case of fraud at the Public Trustee and protections against future fraud;²¹⁶
- the relationship of the Public Trustee with Aboriginal and Torres Strait Islander people;²¹⁷
- the role of Public Trustee as Chair of the ACT Official Visitors Board;²¹⁸

²¹² Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.20.

²¹³ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.20.

²¹⁴ *Proof Transcript of Evidence*, 6 November 2015, pp.20-21, 22.

²¹⁵ *Proof Transcript of Evidence*, 6 November 2015, pp.23-24.

²¹⁶ *Proof Transcript of Evidence*, 6 November 2015, pp.33-35.

²¹⁷ *Proof Transcript of Evidence*, 6 November 2015, pp.35-36.

²¹⁸ *Proof Transcript of Evidence*, 6 November 2015, pp.36-37.

- source for funds repaid to defrauded clients of the Public Trustee;²¹⁹ and
- the proposed amalgamation and collocation of rights agencies.²²⁰

6.4 These are considered below.

MERGING OF ROLES OF PUBLIC ADVOCATE AND PUBLIC TRUSTEE

6.5 In hearings the Committee asked the Public Advocate and Public Trustee to respond to views quoted in the press stating that the merger of the two roles ‘threatened the reputation of the guardians unit’ [in the office of the Public Advocate] ‘at a time when two former staff of the Trustee’s office are accused of fraud’.²²¹

6.6 In responding to the question, the Public Advocate and Public Trustee told the Committee, regarding a case of fraud at the office of the Public Trustee, that:

The Public Trustee already handles the affairs, as financial manager appointed by ACAT, for some 500 people and has done so for quite some significant period of time. I have addressed this committee on several occasions about the Public Trustee, about a mature fraud, corruption and risk management strategy that we had in place. It was disappointing, notwithstanding having a policy and strategy like that in place, to discover that there had been fraud committed.

My annual report as Public Trustee deals with the outcome of that and I might make the point that in that regard every cent of every amount of loss that has been occasioned by any person--there were 110 individual instances--has been fully repaid and contained within the last financial year. The two persons concerned will be before the courts on the 10th of this month.²²²

6.7 The Public Trustee and Public Advocate then went on to comment more directly on the merger of the roles of Public Trustee and Public Advocate, asserting that there was an overlap in the work done by the two offices:

²¹⁹ *Proof Transcript of Evidence*, 6 November 2015, pp.37-39.

²²⁰ *Proof Transcript of Evidence*, 6 November 2015, pp.39-40.

²²¹ *Proof Transcript of Evidence*, 6 November 2015, p.20, citing Kirsten Lawson, ‘Deep unhappiness felt in public guardian’s office at merger with Public Trustee’, *Canberra Times*, 1 November 2015, available at: <http://www.canberratimes.com.au/act-news/deep-unhappiness-felt-in-public-guardians-office-at-merger-with-public-trustee-20151028-gkklmd.html>

²²² Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.20.

of the 205 people that the Public Advocate was appointed as guardian to by ACAT during the last financial year, that number of clients has shared representation by both the Public Trustee and the Public Advocate to the tune of about 125 to 130. It varies from time to time.

So there is a commonality, if you like, of decision making under the Guardianship and Management of Property Act in relation to those 125 people. That figure has been reasonably constant for 10 years, with minor increases every year, and I am not aware of any instances, apart from the instance you mentioned of the matters before the courts, of there having been any occasion of the rights of any of those represented persons being at risk.²²³

6.8 The Public Trustee and Public Advocate went on to say, regarding the merger of these two statutory offices that:

I fully understand that change is difficult for people in any period of change. I also fully understand that people who undertake the work of guardianship are what we might call vocational. They are very, very committed to the kind of work that they do and in statutory offices like that, and perhaps in places where other vocational people are employed, such as perhaps paramedics, nurses and teachers, there can often be a tension between being vocational and being a public servant. So I do understand all of that and the strength of the feelings of people about change.²²⁴

AFFECT ON THE PUBLIC ADVOCATE OF NEW MENTAL HEALTH LEGISLATION

6.9 During questions, the Committee noted:

- the passage of the new *Mental Health Act 2015*;
- the increase of references to the Public Advocate in the Act compared with the previous Act; and
- a likelihood that this would result in increased reporting obligations on the part of the Public Trustee.²²⁵

6.10 In light of this, the Committee asked how these obligations would be met by the office of the Public Advocate.²²⁶

²²³ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, pp.20-21.

²²⁴ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.21.

²²⁵ *Proof Transcript of Evidence*, 6 November 2015, p.23.

²²⁶ *Proof Transcript of Evidence*, 6 November 2015, p.23.

- 6.11 The Human Rights and Discrimination Commissioner, formerly the Public Advocate, responded to this question. She told the Committee that:

The Public Advocate's Office was given one staff member to cope with the new mental health legislation. It was planned to come into force in November. It has been given a reprieve until March. So there are now two officers, whereas traditionally there has been only one, dealing with mental health and forensic cases. Certainly, no compliance work has been done in the period when I was Public Advocate because we were very stretched for resources. Certainly, with the new mental health legislation, there could be more compliance work done by the Public Advocate's Office with the new resources.²²⁷

- 6.12 Asked for a definition of 'compliance work', the Commissioner told the Committee that this entailed checking:

that the Act has been fulfilled regarding people being involuntarily detained: whether the proper people are being notified, whether the registers are being filled where people have force used against them or involuntary treatment.²²⁸

- 6.13 When asked whether the current level of staffing would allow the requirements set out in the new *Mental Health Act* to be fulfilled, the Commissioner told the Committee that:

Part of the work is not just doing the public advocate work but also notifying professionals who have new provisions that they need to comply with. That is probably something that should be done in partnership with the Health Directorate because Health Directorate staff perform those functions. But as an oversight agency the Public Advocate needs to do some work with consumers to tell them what their rights are and to be familiar with the new legislation. So that is a partnership in terms of responsibility about what the new provisions are and what people's responsibilities and rights are.²²⁹

- 6.14 When asked what plans there were to get that information to consumers, the Public Trustee and Public Advocate told the Committee that:

The Public Advocate's Office, moving forward, will become part of a new rights protection agency from the end of March. The role of oversight and compliance, if I can add to what Helen said, has probably been notoriously under-resourced in the past, to the extent that the additional injection of funding by Health in relation to the *Mental Health (Treatment and Care) Act* has created some relief. I should mention that the

²²⁷ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.23.

²²⁸ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.23.

²²⁹ Dr Helen Watchirs, *Proof Transcript of Evidence*, 6 November 2015, p.24.

new out of home care strategy that is proposed to be introduced will also result in extra resources being provided to the office going forward.²³⁰

ANSWER TO A QUESTION TAKEN ON NOTICE

- 6.15 On 18 November 2015 the Attorney-General provided the Committee with an answer to a Question Taken on Notice regarding the effect of the new *Mental Health Act 2015* on the Public Advocate.²³¹

UPDATE ON FRAUD AT THE PUBLIC TRUSTEE

- 6.16 In his opening statement the Public Trustee spoke about a significant fraud which had emerged in the office of the Public Trustee in 2013. He told the Committee that:

In the past two years the Public Trustee has probably undergone one of its most difficult times in my time as Public Trustee. The process, at least in terms of clients' compensation, has come to an end; 30 June is now reaching a criminal phase. It has also been, on reflection, a very difficult time at the Public Trustee in that, for completely different reasons, and I foreshadowed this many years before the last year or two, we were facing the loss of some very senior, experienced managers. That has happened with, might I say, good effect. In terms of performance, it is very often seen by, say, the Chief Minister, Treasury and Economic Development Directorate as a measure of our performance that we return a surplus, but that is not really the measure of performance, notwithstanding that it was probably the third highest surplus in the past 10 years.²³²

- 6.17 However, he told the Committee, 'probably the greater measure' was 'community confidence in the services provided by the Public Trustee' which, he said, was 'at an all-time high'.²³³

- 6.18 When asked about measures in place to guard against future instances of fraud, the Public Trustee told the Committee:

As you are aware, we immediately engaged KPMG Forensic on three bases. Two of those were to undertake a controls review, and another one was to investigate the alleged occurrences. The controls review resulted in a report. The report identified up

²³⁰ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.24.

²³¹ See *Inquiry into Annual Reports 2014-2015: Responses to Questions Taken on Notice*, p.48, available at: http://www.parliament.act.gov.au/_data/assets/pdf_file/0004/802327/J-And-CS-Responses-to-QToNs.pdf

²³² Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.33.

²³³ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.33.

to 15 items that could be addressed. Over the past 18 months we have addressed those items. Some of them have taken longer because they involve upgrading to a new database, with its own inherent problems. But most particularly, the item that makes the difference is the appointment of an independent property manager that reports to me. It takes the role away from staff in managing people's individual property.²³⁴

6.19 He went on to tell the Committee that:

The other important significant change was the acquisition of software some years ago that led to the discovery but is now used in an everyday manner to trawl our databases. Staff know that it is happening. I welcome that innovation. It is looking for metrics that are commonly evident in fraud. These were advised to us by KPMG. What I mean by that is that at the very simplistic end you would be looking for a staff bank account in a government business system. That is an absolute indicator. At another level, it may be looking at the number of times an individual staff member used an outside contractor, and why. Those have been significant and ongoing. Obviously one does not know whether fraud is happening in an organisation until you discover it, so you do not really know how effective it is.²³⁵

6.20 When asked whether the Public Trustee had its own IT [Information Technology] Auditor, the Public Trustee told the Committee that:

We have an internal audit committee that has an agenda across our complete fraud, corruption and risk strategy. In fact, that strategy is the agenda document which is used in internal audit. One of the changes that we made in the last 18 months was the appointment of an independent external person, who coincidentally was previously a member of the Public Trustee Investment Board and was also a senior executive at ACT Treasury. You may know of Roger Broughton; he has been appointed as the independent chair of that committee.

In terms of IT, we do not have any IT specialised staff and rely totally upon the services available to us from ICT Shared Services. Apart from audits of particular processes, I am not sure that there are audits of IT systems as such. The new systems have got to meet government standards before they are implemented.²³⁶

²³⁴ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.33.

²³⁵ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.34.

²³⁶ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.34.

PUBLIC TRUSTEE AND ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE

6.21 The Committee asked the Public Trustee what improvements he had noticed in the organisation as a result of Aboriginal and Torres Strait Islander awareness training for staff.²³⁷

6.22 In response, the Public Trustee told the Committee that it was 'very difficult for us to know':

We do have Aboriginal and Torres Strait Islander people as clients for financial management, for will-making and in terms of trusts, but it is very much low-level figures. We do not formally have a question that asks clients to identify whether they identify as Aboriginal or Torres Strait Islander or otherwise. We did, in the last six months, introduce free will-making for Aboriginal and Torres Strait Islander persons or for persons who identify as Aboriginal and Torres Strait Islander persons. That has been publicised. We have a webpage accordingly. We have a fact sheet. It has resulted in six wills being made for Aboriginal and Torres Strait Islander persons at no cost. And as you may know, the Public Trustee may only act to prepare a will where they are appointed as executor in that will. We followed the lead of Queensland in doing that. It has been fairly widely publicised and we propose to do more on that basis.²³⁸

6.23 He went on to tell the Committee that there was in general a low level of awareness about the need to have a will in both the Indigenous and non-Indigenous communities:

You may remember the story of Ben Catanzariti, a young fellow who died in an industrial action in Fyshwick or Kingston. His mother, Kay Catanzariti, has established an organisation called Will It Your Way. One of the planks of her crusade is to ensure that young people and Aboriginal and Torres Strait Islander people are educated about the need to have a will. The kind of common push back you get from groups in both of those cases might be, "I don't need a will; I don't have assets." We only need to look at Ben's case to know that he had a superannuation policy with a death and disability cover worth quite a lot of money. He did not realise when he was going to die and he did not know the circumstances of his death. Given the circumstances of his death, there will be a significant payment to his estate. The major problem that follows is that he had no say in where that money would go because he died without a will. So the laws of intestacy will apply, and may apply quite a different result to what he may have wished. We have now engaged with Kay Catanzariti. We promoted that at a recent

²³⁷ *Proof Transcript of Evidence*, 6 November 2015, p.35.

²³⁸ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.35.

meeting of all public trustees in Australia in Melbourne. We are hoping that they will do the same thing as we have done and become interested persons on her website.²³⁹

- 6.24 When asked why the Public Trustee did not seek to find out whether its clients wished to identify by Aboriginal or Torres Strait Islander, the Public Trustee told the Committee:

Traditionally I do not have an answer for that. I guess we can do that. We do not have systems in place to do that. I guess it is probably because the numbers have been relatively low and, whilst we did engage in a study with the University of New South Wales around customary law issues, they do not seem to apply in the ACT in the same way they do in other jurisdictions. I guess the level of assimilation into western forms of succession law here is much greater than it is in, say, the Northern Territory, Queensland and Western Australia. But that is probably something we can and should do.²⁴⁰

PUBLIC TRUSTEE AS CHAIR OF THE ACT OFFICIAL VISITORS BOARD

- 6.25 The Committee noted references in the Annual Report 2014-2015 to the Public Trustee's new role as Chair of the ACT Official Visitors Board, and asked the Public Trustee to comment on the role.²⁴¹

- 6.26 In response, the Public Trustee told the Committee:

The changes that brought about the Public Trustee's involvement were principally brought about to create separation between the roles of official visitors and the directorates that they call operational directorates, which have responsibility for those program areas. It was also intended that the Official Visitors Board would be created but not have any role in the day-to-day work of an official visitor. We do not have any influence and they do not have any reporting role to the board. The purpose of the board is to be a support mechanism that provides, once a recommendation has been made, for ensuring that the appointment is made of an official visitor and ensuring that vacancies that come up from time to time are dealt with to ensure that official visitors are trained. We have a training day every year. It is probably useful to note that people

²³⁹ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.35.

²⁴⁰ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.36.

²⁴¹ *Proof Transcript of Evidence*, 6 November 2015, p.36, citing Public Trustee 2015 Annual Report, p.11, available at: <http://www.publictrustee.act.gov.au/inf/ar/ar-ptact-2014-2015.pdf><http://www.publictrustee.act.gov.au/inf/ar/ar-ptact-2014-2015.pdf>

who come into that role are usually significantly qualified in what they do; the kind of training that we can provide them is more around what they can expect when they might go to the AMC, for example, or to a mental health institution, or to provide them with safety mechanisms around doing that. We also look after remuneration of official visitors, providing them with all the administrative trivia that might go around their engagement--posters, a website, community awareness and those kinds of things. We do not have any role in their day-to-day activities, and that was intended.²⁴²

6.27 The Committee asked²⁴³ whether the Official Visitors continued to report to their respective ACT Government Directorates, to which the Public Trustee responded:

Yes. They have a reporting role to the director-general for the directorate and then the director-general is required to collate those reports and provide an annual report. I believe that some of the official visitors will report directly to the minister concerned. I think that is allowed; some do and some do not. Then there are guidelines that have been set in terms of the numbers of physical places that they might visit; that will impact on the number of official visitors who are allocated to that particular matter.²⁴⁴

SOURCE OF FUNDS REPAID TO DEFRAUDED CLIENTS

6.28 The Committee asked the Public Trustee questions as to how compensation payments to defrauded clients of the Public Trustee would affect insurance premiums.²⁴⁵

6.29 The Public Trustee responded, saying that his office had not yet 'been made aware as yet of the increase in the premium', but that he would 'expect that to happen'. However he told the Committee that his office was insured through the ACT Insurance Authority 'as brokers' and that the understanding of his office was that 'the government insures itself'. As a result, he told the Committee, he was 'not really sure that behind our insurance policy there is in fact a private insurer', and that 'the government actually insures itself'.²⁴⁶

6.30 When asked whether this meant that costs for recompensing clients subject to the fraud had in fact come out of public revenue, the Public Trustee agreed and, additionally, stated that this process would be 'subject to confiscation of criminal assets recovery processes where appropriate'.²⁴⁷

²⁴² Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.36.

²⁴³ *Proof Transcript of Evidence*, 6 November 2015, p.36.

²⁴⁴ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.36.

²⁴⁵ *Proof Transcript of Evidence*, 6 November 2015, p.37.

²⁴⁶ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.38.

²⁴⁷ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.38.

6.31 When asked about the total figure that had been paid to defrauded clients of the Public Trustee, the Public Trustee told the Committee:

The total amount was \$1.736 million back to some 87 clients. There is a breakdown shown [in the Annual Report] of capital, \$1.468 million. On the interest payable, we arrived at an algorithm on which we calculated interest on loss that was agreeable to both ACTIA and the investigators. That helped us. The prospective capital gains, the absence of moneys from an investment scheme, was again a determination of amounts that could possibly have been lost because the money was out of an investment scheme. The additional carry forward income related more to taxation issues, which was the final item that we looked at. We had to do some amended taxation returns around that.²⁴⁸

6.32 Responding to further questions, the Public Trustee agreed:

- that the total figure for payouts to defrauded clients was the sum of these figures, quoted above;
- that this had been paid out by the ACT Insurance Agency, 'in addition to some of the costs'; and
- that this had 'come out of consolidated revenue'.²⁴⁹

PROPOSED AMALGAMATION AND COLLOCATION OF RIGHTS AGENCIES

6.33 The Committee asked the Public Trustee to comment on what the proposed amalgamation of rights agencies would entail for the location of agencies and their staff.²⁵⁰

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

The term co-location has been used liberally throughout the whole process. I understand that we are talking about one new entity with one head. Clearly co-location is what would be required. We occupy the whole ground floor of 221 London Circuit. There is no space for growth now. It has reached its maximum. I understand that there is vacant space within the building.²⁵¹

²⁴⁸ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.38, citing Public Trustee 2015 Annual Report, p.36..

²⁴⁹ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.38.

²⁵⁰ *Proof Transcript of Evidence*, 6 November 2015, p.39.

²⁵¹ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.39.

6.35 He went on to tell the Committee that:

In any accommodation change I believe it is vital that the guardianship role be collocated, but not mixed, with the financial management role. To achieve that, it would be necessary then I think to move a discrete unit such as the more legal, commercial part of Public Trustee that deals with wills, estates and trusts to another floor. That also achieves a distinction in dealing with a different client group. The Public Trustee still has an everyday appearance at its office by persons who are under financial management orders who co-mingle with people who are attending for wills.

The experience has been that sometimes it is not a good mix, and that would be improved by moving that to another level. But it is very early days. I think a person is being appointed from outside as a change manager to help us through that process.²⁵²

6.36 When asked if someone had been appointed to this position, the Public Trustee told the Committee that there was 'a process underway at the moment to recruit a person to manage not just the Public Trustee guardian change management but the whole restructure process', and that the restructure was to be finalised by 30 June 2016.²⁵³

6.37 Commenting on the proposal merger, the Public Trustee told the Committee that:

I am very well aware of some areas where the law has created, if you like, silos in ways that the community is required to deal with both the Public Trustee and the guardianship role. For example, the Public Trustee can only take a power of attorney for financial and property matters, and the guardian takes appointment for health and personal care--two separate interviews, two different appointments, two different officers--and you have the nonsensical situation where a person might attend first at the Public Trustee and be found to have capacity and then go to the other office and be found not to have capacity. That is not what you would call conjoined decision making or conjoined government response.²⁵⁴

6.38 On the other hand, he told the Committee:

the role of jointly financing and acting as guardian for the same person should, in its purest form, have those people talking to one another closely but not necessarily becoming part of the same discipline. I think that the success of this will depend very largely on ensuring that the discipline of guardianship and the discipline of financial management remain entirely separate, that one does not influence the other. And I

²⁵² Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.39.

²⁵³ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.39.

²⁵⁴ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, pp.39-40.

think that may have been at the top of concerns of some of the guardians that you mentioned earlier in the news reports.²⁵⁵

6.39 When asked if he had had the opportunity to rejection the proposal for amalgamation, the Public Trustee told the Committee that:

I have to admit that when the first iteration of what was being proposed was put forward I did not like the idea, and I expressed my dislike of the idea. I think it was based upon the fact that there would be a totally different structure in which the Public Trustee's financial management unit would be divided and part would go into the guardian's office, and that did not seem to me to make sense at all. Through the process that was facilitated by an external body I have come to think that the current model could work and should work and certainly has worked in British Columbia, which is quite a progressive jurisdiction. There is no model for this anywhere in Australia.²⁵⁶

6.40 He went on to say that he had:

attended a meeting of the Australian Guardianship and Administration Council in Melbourne recently, and I have to say they were quietly interested in what we were doing because it seems to provide a solution for other small jurisdictions like Tasmania and the Northern Territory where they are going forward in terms of small pocket offices not being able to exist on their own.²⁵⁷

²⁵⁵ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, pp.39-40.

²⁵⁶ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.40.

²⁵⁷ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.40.

7 VICTIM SUPPORT ACT

INTRODUCTION

7.1 The Victims of Crime Commissioner appeared before the Committee in public hearings of 6 November 2015.²⁵⁸

7.2 Matters considered included:

- a new Victims Of Crime Financial Assistance Scheme;²⁵⁹
- alcohol-related violence;²⁶⁰
- proposed changes in the application of Restorative Justice;²⁶¹ and
- the present experience of victims of Domestic Violence in the criminal justice system.²⁶²

7.3 These are considered below.

A NEW VICTIMS OF CRIME FINANCIAL ASSISTANCE SCHEME

7.4 The Committee asked the Commissioner to comment on a proposed new Victims Of Crime Financial Assistance Scheme. In response the Commissioner told the Committee that:

The new scheme will be implemented by, first of all, creating processes, procedures and policies. We are in the process of doing that at victim support. We need to construct a database. We are in the process of scoping that. There are staff already engaged in this activity that are permanent officers of the organisation already. We will bring on new staff early next year, two assessors in particular who will be required to assess applications.²⁶³

²⁵⁸ *Proof Transcript of Evidence*, 6 November 2015, p.26.

²⁵⁹ *Proof Transcript of Evidence*, 6 November 2015, pp.26-27.

²⁶⁰ *Proof Transcript of Evidence*, 6 November 2015, p.28.

²⁶¹ *Proof Transcript of Evidence*, 6 November 2015, pp.28-30.

²⁶² *Proof Transcript of Evidence*, 6 November 2015, pp.30-31.

²⁶³ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.26.

- 7.5 In response to questions about when the scheme would be implemented, the Commissioner told the Committee:

We would expect that the legislation will be in place and will have been debated and we would be ready to operate from 1 July if not sooner. I am aware that the bill is being drafted as we speak. One of my staff members is working closely with the Justice and Community Safety Directorate to provide drafting instructions for the bill and to contribute to the policy debate around that. So we are well advanced in preparing ourselves for the new scheme.²⁶⁴

- 7.6 The Committee asked the Commissioner for information on how the new scheme would determine appropriate amounts of compensation to victims of crime.²⁶⁵ In response, the Commissioner told the Committee:

The idea is that there will be categories of victims according to the types of offences that they have suffered and that those different categories will attract a certain amount of money, which we call recognition payments. That would be one way that we would be administering or delivering a form of recognition to the community for the harm that individuals suffer through crime.²⁶⁶

- 7.7 In addition, he told the Committee, the scheme would:

reimburse costs for people who have suffered violent crime and for the costs associated in their recovery. That might include medical expenses or loss of wages and earnings. And then there will be some capacity to provide emergency payments particularly around people's safety. We will be able to respond quickly to their safety needs, for example, assisting people change locks on houses or move. That is how the scheme will operate.²⁶⁷

- 7.8 He went on to say that it was 'difficult to determine levels of harm for people'. In response to this question, he told the Committee:

What we have thought would be the most efficient way of going about this was to equate recognition payments to the type of crime that they have suffered. Then there would be some aggravating factors associated with that. Someone that has suffered a sexual assault would attract a certain amount of recognition but if that person was a child at the time--that is an aggravating factor--there would be additional payment on top for that factor.²⁶⁸

²⁶⁴ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.26.

²⁶⁵ *Proof Transcript of Evidence*, 6 November 2015, p.26.

²⁶⁶ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.26.

²⁶⁷ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, pp.26-27.

²⁶⁸ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.27.

7.9 The Committee asked the Commissioner whether victims of crime would need to apply for financial assistance under the new scheme, or whether they would be offered assistance during a judicial process.²⁶⁹ In response, the Commissioner told the Committee that:

People will need to make application under this scheme, as is currently the case. The difference between the new scheme and the current one is that we will case-manage people through that process so that they will not be left to their own devices or have to rely on a solicitor to act on their behalf, although they still can do that. We will be incorporating this scheme in our organisation alongside our case-management process.²⁷⁰

7.10 The Committee asked the Commissioner's view on the strengths and weaknesses of the new administratively-based scheme compared with the current court-based process.²⁷¹ In response, the Commissioner told the Committee that he saw 'mostly positives' in relation to the new scheme:

I think a court is not the right place for a victim to bring forward an application for recognition or payment. I think an administrative scheme is going to be a lot less intimidating. I think it provides the capacity for case management which is not possible within a court setting. It will be, I think, a therapeutic process as well whereas a court can become, by its very nature, an adversarial setting. So I see a lot of benefits in it being an administratively based scheme.²⁷²

ALCOHOL-RELATED VIOLENCE

7.11 The Committee asked the Commissioner to elaborate on comments on alcohol-related violence he had made in his annual report, and what in his view the ACT should do to address this problem.²⁷³

7.12 In response the Commissioner told the Committee:

We need to look at what other jurisdictions are doing. We have a range of options available to us. We are witnessing the early closing of licensed premises, the restriction on sale of alcohol, more patrolling of particular places, identification of places that are

²⁶⁹ *Proof Transcript of Evidence*, 6 November 2015, p.27.

²⁷⁰ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.27.

²⁷¹ *Proof Transcript of Evidence*, 6 November 2015, p.27.

²⁷² Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.27.

²⁷³ *Proof Transcript of Evidence*, 6 November 2015, p.28, citing Victim Support ACT, *Annual Report 2014-2015*, pp.25-26, available at: http://cdn.justice.act.gov.au/resources/uploads/New_Victim_Support/151148_Victim_Support_AR_2014-15_FA_Screen.pdf

high risk. These are some of the options that we have and I believe the government is going to pursue that in its continuing review of the *Liquor Licensing Act*.²⁷⁴

7.13 When asked if there were useful parallels to be drawn between efforts to reduce smoking and alcohol, the Commissioner told the Committee that while there were some ‘parallels there about community education and the programs that might be undertaken in that sense’, tobacco was ‘a different form of drug than alcohol and is used in a different way than alcohol’.²⁷⁵

7.14 In light of this, he told the Committee, it was not accurate to ‘draw a direct analogy from the reduction in smoking with the campaigns around restriction and the increase in price’, particularly as ‘the increase in the price of alcohol may well result in cheaper forms of alcohol being sourced’, as historically had ‘been shown ... to be the case’.²⁷⁶

7.15 As a result, he suggested:

our focus needs to be on education of the community around the use of alcohol, education around the fact that getting intoxicated is not acceptable in our society. I think we have a level of tolerance to that that is unacceptable and that should go hand in hand with a justice response to violence when alcohol is used.²⁷⁷

PROPOSED CHANGES IN RESTORATIVE JUSTICE

7.16 The Committee asked the Commissioner to comment on the expansion of the ACT’s Restorative Justice program, noting that the planned implementation of ‘Phase Two’, provided for in the *Crimes (Restorative Justice) Act 2004*, would see Restorative Justice applied to adult offenders, and more serious offences, for the first time in the ACT.²⁷⁸

7.17 In response, the Commissioner told the Committee that he was ‘very optimistic about the use of restorative justice in phase two’.²⁷⁹

7.18 He went on to say that he thought that:

we need to begin thinking about restorative justice as an opportunity for victims, not a diversion or a soft option for people who cause others harm. The ACT’s restorative

²⁷⁴ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.28.

²⁷⁵ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.28.

²⁷⁶ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.28.

²⁷⁷ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.28.

²⁷⁸ *Proof Transcript of Evidence*, 6 November 2015, p.28.

²⁷⁹ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.29.

justice act is victim focused. It is one of the only acts in the country that has got as its objects a focus on the interests of victims of crime.²⁸⁰

7.19 He told the Committee that implementation of Phase Two ‘opens up opportunities for justice processes for victims and their greater participation in our criminal justice system’, and that:

the opportunity is for that process to be used in conjunction with the traditional criminal justice response and I think there will be opportunities there for everyone involved in criminal justice procedures to learn more about what victims want and are interested in what motivates them to want to participate in a justice process with their offenders.²⁸¹

7.20 The Committee asked the Commissioner for his views on the application of Restorative Justice for domestic violence and sexual offences.²⁸² In response the Commissioner told the Committee:

I support people’s choice to participate in restorative justice processes whether they are victims of any form of crime, including domestic violence and sexual assault. I recognise that there are greater risks associated in bringing those people into a process with their perpetrator but I do not believe that that decision should be taken away from them. That was the policy position that the subcommittee of the sentencing review committee established in 2003, when this debate was had. All criminal justice agencies participated in that discussion and we arrived at the point that we should not take the choice away from individuals to regain power and control, to face the person who had harmed them and to get a sense of justice back from what has happened to them.²⁸³

7.21 He went on to say that:

Many of these crimes go unpunished in many ways, according to victims, and I think victims can gain some satisfaction in holding these people to account. Yes there are risks associated with that. Those risks are to do with the implicit use of power and control and the subtle coercive forces that are at play in these relationships, and those dynamics need to be carefully managed and controlled.

This is a voluntary process, however, and there will be people who are trained. There will be input from community agencies and advocates for victims who can put forward

²⁸⁰ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.29.

²⁸¹ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.29.

²⁸² *Proof Transcript of Evidence*, 6 November 2015, p.29.

²⁸³ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.29.

their views. I am sure that those views will be taken into account and I believe those risks will be managed.²⁸⁴

7.22 The Committee also asked the Commissioner about some views in the community that saw Restorative Justice as a 'soft option' for offenders, and asked him to comment on the basis of his observation of the process.²⁸⁵

7.23 In response, the Commissioner told the Committee that in his view:

A soft option for an experienced offender is attending court and having a barrister or solicitor speak on their behalf. It is much easier to sit in a courtroom than it is to face a victim in a room where you are held to account and have to speak for yourself. What I have observed is that people who are very familiar with the criminal justice system for the wrong reasons often withdraw from wanting to participate in restorative justice because they realise the amount of scrutiny they will be under and the amount of courage it takes to face others. I think there might be a misconception in the community that the court is the hard end of the law and the restorative justice is the soft end. In my experience that is not the case.²⁸⁶

PRESENT EXPERIENCE OF VICTIMS OF DOMESTIC VIOLENCE

7.24 The Committee noted comments in the Victim Support ACT *Annual Report 2014-2015* on Domestic Violence, and in particular the need for 'long-term' support for victims.²⁸⁷ The Committee asked the Commissioner how victims were faring under new arrangements on Domestic Violence put in place by the ACT government.²⁸⁸

7.25 In response, the Commissioner told the Committee that:

We have a long way to go before victims feel as though the whole system is responding appropriately to them. I think that victims generally are still on the marginal areas of full participation in our criminal and civil justice processes. I think that there is a will in the community to do something. This is a very complex area, though, and unless we take time and work together and coordinate and focus on what can be achieved we can miss this opportunity. I believe it is an opportunity because there is some common

²⁸⁴ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.29.

²⁸⁵ *Proof Transcript of Evidence*, 6 November 2015, p.29.

²⁸⁶ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.30.

²⁸⁷ Victim Support ACT, *Annual Report 2014-2015*, p.22, available at:
http://cdn.justice.act.gov.au/resources/uploads/New_Victim_Support/151148_Victim_Support_AR_2014-15_FA_Screen.pdf

²⁸⁸ *Proof Transcript of Evidence*, 6 November 2015, p.30.

will across government and across the community sector to work differently with this problem.²⁸⁹

7.26 The Commissioner told the Committee that:

I still get stories from individuals who have unsatisfactory interactions with criminal justice agencies. I may hear only the bad news stories so I take that into account. I think that we still have a way to go before we approach domestic violence in a different way than other types of crime.²⁹⁰

7.27 In light of this, he told the Committee, it was his view that '[u]ntil we develop a whole-of-system approach and response to it, we will be tampering at the edges of the problem'.²⁹¹

7.28 The Committee asked the Commissioner to describe the characteristics of a system which dealt with victims of Domestic Violence in ways more adequate than present arrangements.²⁹²

7.29 In response, the Commissioner told the Committee that a better system would:

- 'reduce the number of times she has to tell her story';²⁹³
- ensure that 'the people who ask questions of her when she approaches different services—whether that be Health or Housing or a GP service—where she has opportunity and is in an environment of trust and confidence, to do something if she does tell her story';²⁹⁴
- 'that the story is shared by the relevant agencies in a way that does not compromise the privacy of the alleged perpetrator';²⁹⁵
- 'that there is a risk process done—a risk assessment or a screening of risk, at least—that risk of that individual is shared by service providers';²⁹⁶
- 'that there is a coordinated response';²⁹⁷ and
- 'that there is a person of her choice who is advocating for her in that process'.²⁹⁸

²⁸⁹ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.30.

²⁹⁰ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.30.

²⁹¹ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.30.

²⁹² *Proof Transcript of Evidence*, 6 November 2015, p.30.

²⁹³ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.30.

²⁹⁴ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.31.

²⁹⁵ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.31.

²⁹⁶ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.31.

²⁹⁷ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.31.

²⁹⁸ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.31.

7.30 Commenting further, the Commissioner stated that the ‘way the current system operates is that all of those services are in place, but we do not communicate with one another effectively’.²⁹⁹

7.31 In a best-practice approach, the Commissioner told the Committee, information-sharing ‘would be predicated on that person’s permission and a full awareness of how that information would be shared’.³⁰⁰

7.32 In addition, he told the Committee: ‘You would have to overcome some privacy barriers or human rights barriers for alleged perpetrators’, and suggested that this was:

where the amalgamation of my office and the Human Rights Commission might bring some benefits in that we can have these discussions in a different way than we have currently.³⁰¹

²⁹⁹ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.31.

³⁰⁰ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.31.

³⁰¹ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, p.31.

8 EMERGENCY SERVICES AGENCY

INTRODUCTION

8.1 The Minister for Police and Emergency Services appeared before the Committee with her officers from the Emergency Services Agency (ESA) in hearings of 6 November 2015.

8.2 Matters considered included:

- the Women In Emergency Services Strategy;³⁰²
- attempts to educate managers about the benefits of diversity;³⁰³
- the effect of plans to remove job duplications within ESA ;³⁰⁴
- actions to improve workplace culture in the ACT Fire & Rescue service;³⁰⁵ and
- bullying complaints received within the reporting year 2014-15.³⁰⁶

8.3 These are considered below.

THE WOMEN IN EMERGENCY SERVICES STRATEGY

8.4 The Committee asked the Minister for an update on progress in implementing the Women in Emergency Services Strategy (WIES), including whether the preparation of Strategy itself had been completed.³⁰⁷

8.5 In response, the Minister told the Committee that:

Certainly the early work has been completed and it is in its final stage now regarding how we progress that and go to the next stage, around recruitment and attraction of women into the services. There will be something out in the very near future about that. So it is almost done but it is not quite ready to go into the public domain.³⁰⁸

³⁰² *Proof Transcript of Evidence*, 6 November 2015, pp.41-43.

³⁰³ *Proof Transcript of Evidence*, 6 November 2015, pp.43-44.

³⁰⁴ *Proof Transcript of Evidence*, 6 November 2015, pp.48-52.

³⁰⁵ *Proof Transcript of Evidence*, 6 November 2015, pp.52-54, 54-56.

³⁰⁶ *Proof Transcript of Evidence*, 6 November 2015, pp.54-56.

³⁰⁷ *Proof Transcript of Evidence*, 6 November 2015, p.41.

³⁰⁸ Ms Joy Burch MLA, *Proof Transcript of Evidence*, 6 November 2015, p.41.

- 8.6 When asked if there were a timeframe for implementation, the Minister responded, telling the Committee that:

Once the strategy is out ... there will be a change of stance. So we will be active at a point in time around recruitment. Also it is about increasing and broadening diversity across the ESA service more broadly. In many ways it has no end; it is about a cultural shift and a change within recruitment and support across our services.³⁰⁹

- 8.7 The Emergency Services Commission also responded to the question. He told the Committee that:

A lot of work has been going on over the past 12 months in this particular space. We have taken the opportunity to engage and consult heavily with staff since the government announced the women in emergency services strategy. It is very critical, in undertaking an important cultural reform and change agenda like this particular one, where we are aiming to increase our diversity, to work very hard with our volunteers, our firefighters and our paramedics to understand the issues they have in relation to what we want to do.³¹⁰

- 8.8 The Commissioner told the Committee that the ESA had 'done a lot of things':

We have encouraged women to go to various leadership programs. We have had International Women's Day and special guest functions at ESA to encourage women to consider what they could do to improve their careers. We have engaged specialist consultants--one by the name of Ms Avril Henry, who was recommended to me by the then Chief of Army, David Morrison, who you may be aware has done significant work in the gender area in relation to these matters. It was General Morrison who recommended Ms Henry to work with us, with our women in emergency services, with our men and with our executive to look at how we can accept more women into the organisation, where we can go to recruit them and how we can promote women within the organisation as well.³¹¹

- 8.9 In addition, he told the Committee, the ESA had:

established five separate project groups that looked across volunteers, paramedicine and firefighters, looking at the various elements of recruitment, retention and all of those things. So it is very much about building an action plan and a strategy from the ground up, by utilising the resources of all of the people within the Emergency Services Agency. We established a project officer position to lead all of that work. Very soon we

³⁰⁹ Ms Joy Burch MLA, *Proof Transcript of Evidence*, 6 November 2015, p.42.

³¹⁰ Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, p.42.

³¹¹ Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, p.42.

will be bringing forward to government the draft strategy for implementation, and some work that we will be bringing in through that as well.³¹²

- 8.10 The Committee asked what would be the criteria for success of the Strategy once it had been implemented.³¹³ In response, the Commissioner told the Committee that there were ‘three key measures at the most basic element’:

The first is more women in the organisation. In some of our areas we have traditionally low percentages of women, and it is about growing those. The second is to recognise cultural acceptance of diversity in our organisation. Emergency services have been quite traditional in relation to employing white males. We need to increase our diversity in terms not only of gender but also of people from other backgrounds. Thirdly, it is about, when we get more women into the organisation, how we give them opportunities to be promoted and to grow within the organisation. So our most basic performance indicators go across those three parameters. But below that there is a whole host of other stuff going on as well.³¹⁴

EFFORTS TO EDUCATE MANAGERS ABOUT THE BENEFITS OF DIVERSITY

- 8.11 The Committee asked what was being done to convey to managers in the ESA the importance of diversity for generating greater capacity.³¹⁵ In responding, the Commissioner agreed with the proposition that ‘capability ... does increase with diversity’, and noted that this was ‘backed up by research’, including that done by the Bushfire and Natural Hazards Cooperative Research Centre, to which the ESA was a contributor.³¹⁶
- 8.12 He told the Committee that this research had shown the benefits of great diversity for incident management teams, ‘that is, those teams that you form together to do your planning and operational support functions in the event of things like a major bushfire’:³¹⁷

What we know is that if you have a more diverse group you get better ideas; you get a greater understanding of people who may be, for example, vulnerable to bushfire-- whether they are old, infirm or disabled, or whether it is in relation to having women on the team who can work out what it means for families that are affected by

³¹² Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, p.42.

³¹³ *Proof Transcript of Evidence*, 6 November 2015, p.42.

³¹⁴ Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, pp.42-43.

³¹⁵ *Proof Transcript of Evidence*, 6 November 2015, p.43.

³¹⁶ Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, p.43.

³¹⁷ Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, p.43.

bushfires. There are different perspectives in relation to what it means for different parts of the community, such as education groups or other areas of special need. By building that diversity, the research is very clear that you build your capability in terms of how you can protect everyone in the community.³¹⁸

8.13 A further benefit, he told the Committee, was that:

it allows people like me, in day-to-day environments, to get a greater understanding of general needs within the community. So that is about building our capability in a planning sense, what mitigation measures we should be doing, and what types of education and engagement strategies work with the community, because you have a greater generation of ideas from within your management team.³¹⁹

8.14 When asked for further detail about what was being done by the ESA to convey this to managers, the Commissioner told the Committee that:

I think the key thing is the work we have been doing with ... [consultant] Avril Henry [who] has come in and worked closely with the executive across a whole host of areas of change. She has also worked with the next levels down through a couple of important project teams that we ran earlier this year, back in April and May. We are certainly seeing, through the project groups that we have established, a strong shift to an understanding of the value of that. Recent conversations even with our industrial officers and the like have demonstrated recognition of the importance of change within our organisation.³²⁰

8.15 When asked whether the ESA had conducted audits on attitudes within the organisation, the Commissioner responded by saying that:

We run cultural surveys as part of the directorate, and those sorts of things. We have not specifically audited attitudes to women by any means, but who knows what the future holds in relation to that?³²¹

8.16 When asked what the ESA was doing to convey the message that the organisation needed diversity in recruiting in order to do its job,³²² the Commissioner responded by saying:

I think the community and the government will see that in relation to the strategy as it comes forward. In the coming weeks and months you will see a very public-facing focus in that area.³²³

³¹⁸ Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, p.43.

³¹⁹ Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, p.43.

³²⁰ Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, p.43.

³²¹ Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, p.43.

³²² *Proof Transcript of Evidence*, 6 November 2015, p.44.

EFFECT OF PLANS TO REMOVE JOB DUPLICATIONS WITHIN ESA

8.17 The Committee asked a question on the anticipated effect of plans to remove job duplications within the ESA, including effects on jobs within the Ambulance Service, Fire & Rescue, State Emergency Service and Rural Fire Service.³²⁴

8.18 In responding, the Commissioner told the Committee that these plans were part of the Strategic Reform Agenda announced in April 2015.³²⁵

8.19 He told the Committee that this related to 'the outcomes of the expenditure review undertaken by the ACT Treasury last year' when 'ESA was fortunate to receive an additional \$16 million in funding over the forward estimates to meet ESA's base cost pressures at the time'.³²⁶

8.20 He told the Committee that:

As part of launching the strategic reform agenda, we have undertaken broader reforms in relation to our executive structure ... whereby we have established the new functions across logistics and governance, people and culture and the risk and planning function.³²⁷

8.21 The Commissioner told the Committee that:

It is certainly my view that this is not about cutting full-time equivalent jobs; it is about making sure that we work better cohesively. As we say, we respect the identity of the four operational services, but we operate in a cohesive manner. That is why, when we established the strategic reform agenda, we spoke about cohesive operations, collaborative management and a unified executive. This is not about cutting jobs. This is about doing our job better. It is about making sure that we recognise, as the minister said in her opening statement, how well our firefighters, paramedics and volunteers work on the road. That is referenced in the annual report in relation to our continued improvement in response times, patient satisfaction levels and areas such as confinement of fires to the room of origin. All of those indicators continue to improve

³²³ Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, p.44.

³²⁴ *Proof Transcript of Evidence*, 6 November 2015, p.49.

³²⁵ Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, p.49.

³²⁶ Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, p.49.

³²⁷ Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, p.49.

in the main, but we do recognise that we have to do more work on how we work together as an organisation.³²⁸

8.22 The Commissioner went on to say that:

The strategic reform agenda is very much about making sure that within the ESA headquarters and within the Hume training centre it is not about cutting jobs. It is about the people who work in those areas not being compartmentalised into their four operational services, but working together across training, working together across planning and mitigation and working together across community education and engagement. Because when we go out and sell the message to the community, it should not just be Fire and Rescue, it should not just be Rural Fire Service and it should not just be SES or ambulance. There is a combined message that can come together, and we have demonstrated that through things like the Canberra bushfire ready program. The strategic reform agenda is very much about that. It is about getting a new strategic plan in place, which we will be taking to the staff next week. It is about understanding our mission and what we are doing as an organisation.³²⁹

8.23 In response to further questions by the Committee as to whether these measures would lead to a reduction in Full Time Equivalent (FTE) capacity within the sub-agencies of the ESA, the Minister answered in the negative.³³⁰

ACTIONS TO IMPROVE WORKPLACE CULTURE IN THE ACT FIRE & RESCUE SERVICE

8.24 The Committee noted that, in recent years, there had been allegations of a 'bullying, sexist and misogynistic culture' in the ACT Fire & Rescue Service, and asked for an update on efforts by the ESA to improve workplace culture.³³¹

8.25 The Commissioner responded, telling the Committee that:

Firstly, may I say we do not accept any form of bullying culture in the organisation. We will do anything we possibly can to remove that type of behaviour. I think the work has gone on very closely across a number of areas. Most certainly, the most substantive amount of work in recent times has been the government's announcement and the implementation of the blueprint for change for the Ambulance Service that was

³²⁸ Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, p.49.

³²⁹ Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, p.49.

³³⁰ Ms Joy Burch MLA, *Proof Transcript of Evidence*, 6 November 2015, p.49.

³³¹ *Proof Transcript of Evidence*, 6 November 2015, p.52.

announced earlier this year. From that we have commenced to do a lot of work in relation to that.³³²

8.26 He went on to tell the Committee that:

The blueprint for change brought forward a whole host of recommendations, which we are in the process of implementing, around improving our leadership practices, improving things like our respect, equity and diversity program, getting on with making sure we are giving good feedback through our managers to Fire staff so they understand how their role is in working with their staff and how they lead their own staff. We have established an oversight committee with an independent chair to make sure those recommendations are implemented. And all of it gets back to, as the report indicated, our behaviours and how we work with each other as an organisation.³³³

8.27 The Committee asked whether staff surveys or similar reporting measures had been conducted by the ESA to gauge progress in this area.³³⁴

8.28 In responding, the Commissioner told the Committee that no survey or similar exercise had been conducted since the implementation of the Blueprint for Change strategy.³³⁵

8.29 He told the Committee that:

One of the recommendations under the blueprint for change was to run what the reviewers called a staff workshop series. So we did that through the autumn months and the winter months of the year in relation to engaging an independent consultant. We ran five workshops across the operational staff, the paramedics and the ICPs, but also people from the communications centre and the non-emergency patient transport as well as our management people were involved in that blueprint for change staff workshops series, which is allowing us now to develop four project areas that they want to then take forward to do.³³⁶

8.30 The Commissioner also told the Committee that every two years a 'cultural engagement survey' was conducted 'across the whole directorate' and that the ESA would be 'very closely monitoring the outcomes of those results when that is next done'. The last cultural survey had been conducted 'conducted at the end of last year', and results from this survey had been made available to the Directorate.³³⁷

³³² Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, pp.52-53.

³³³ Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, p.53.

³³⁴ *Proof Transcript of Evidence*, 6 November 2015, p.53.

³³⁵ Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, p.53.

³³⁶ Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, p.53.

³³⁷ Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, p.53.

ANSWER TO A QUESTION TAKEN ON NOTICE

- 8.31 On 16 November 2015 the Minister for Police and Emergency Services provided the Committee with an answer to a Question Taken on Notice regarding the Emergency Services Agency's *Blueprint for Change*.³³⁸

BULLYING COMPLAINTS IN THE REPORTING YEAR 2014-15

- 8.32 The Committee asked questions about bullying complaints received in connection with the ESA over the 2014-15 reporting year.³³⁹
- 8.33 In response, the Executive Director, People and Workplace Strategy, Justice and Community Safety Directorate, told the Committee that five complaints 'related to bullying' had been received by the ESA over the past 12 months.³⁴⁰
- 8.34 When asked how these were addressed, the Executive Director told the Committee that:
- They are investigated, consistent with the code of practice for bullying and harassment, which is issued by WorkSafe ACT. They are generally investigated by an external investigator, an independent investigator, either Shared Services or an investigator engaged from the private sector. When they are resolved, the individuals are advised of the outcome, and if further action is required once they have been investigated that then moves potentially into a misconduct process, where relevant.³⁴¹
- 8.35 When asked about the outcomes of the five complaints, the Director-General, Justice and Community Safety Directorate, told the Committee that:
- Four of the matters were independently investigated and finalised, and none of the allegations of bullying and harassment was upheld. One of the matters was referred to the Commissioner for Public Administration, and that case has been closed.³⁴²
- 8.36 When asked at what level of the organisation complaints were made, against staff at what level, the Executive Director told the Committee that they were '[s]enior officers, in relation to executives', and 'executives in relation to executives, all of them for the past financial year'.³⁴³

³³⁸ See *Inquiry into Annual Reports 2014-2015: Responses to Questions Taken on Notice*, p.4, available at: http://www.parliament.act.gov.au/data/assets/pdf_file/0004/802327/J-And-CS-Responses-to-QToNs.pdf

³³⁹ *Proof Transcript of Evidence*, 6 November 2015, p.54.

³⁴⁰ Ms Lana Junakovic, *Proof Transcript of Evidence*, 6 November 2015, p.55.

³⁴¹ Ms Lana Junakovic, *Proof Transcript of Evidence*, 6 November 2015, p.55.

³⁴² Ms Alison Playford, *Proof Transcript of Evidence*, 6 November 2015, p.55.

³⁴³ Ms Lana Junakovic, *Proof Transcript of Evidence*, 6 November 2015, pp.55, 56.

8.37 At this point the Committee asked the Minister whether she thought it acceptable that senior officers were complaining of bullying by members of the executive of the ESA.³⁴⁴

8.38 The Minister responded by telling the Committee that:

What I find acceptable is that there is a clear process for people to make a complaint and that there is a clear process for that complaint to be investigated and addressed. What we have found, as I understand, is that the director-general has provided information that none of those was substantiated or upheld.³⁴⁵

8.39 When asked whether she were concerned about the complaints, the Minister responded by saying:

I would say that my concern is that if someone feels they have got to put something forward they do and that there is a clear, independent process that deals with it. That is the concern that I have--whether it is a front-line officer or an executive--that there is a clear independent process, there is a pathway, and what I very much want to stress is that none of those complaints was upheld.³⁴⁶

ANSWERS TO QUESTIONS TAKEN ON NOTICE

8.40 On 20 & 26 November 2015 the Minister for Police and Emergency Services provided the Committee with answers to Questions Taken on Notice regarding:

- the anticipated number of days over 40 degrees in the 2015-16 bushfire season;
- a skip purchased for use of the ESA;
- ESA staff and Post Traumatic Stress Disorder (PTSD);
- the Bronto Skylift /Aerial Platform vehicle operated by ACT Fire & Rescue; and
- protecting the community.³⁴⁷

³⁴⁴ *Proof Transcript of Evidence*, 6 November 2015, p.56.

³⁴⁵ Ms Joy Burch MLA, *Proof Transcript of Evidence*, 6 November 2015, p.56.

³⁴⁶ Ms Joy Burch MLA, *Proof Transcript of Evidence*, 6 November 2015, p.56.

³⁴⁷ See *Inquiry into Annual Reports 2014-2015: Responses to Questions Taken on Notice*, pp.67, 68, 91, 93 & 111, available at: http://www.parliament.act.gov.au/_data/assets/pdf_file/0004/802327/J-And-CS-Responses-to-QToNs.pdf

9 ACT POLICING

INTRODUCTION

9.1 ACT Policing appeared before the Committee in hearings of 6 November 2015. The Minister for Police and Emergency Services and the Chief Police Officer appeared.

9.2 Matters considered by the Committee included:

- diversity in recruiting for ACT Policing, particularly in relation to Aboriginal and Torres Strait Islander people;³⁴⁸
- staff reductions as a result of budget cuts,³⁴⁹ and
- the creation of a new Domestic Violence team.³⁵⁰

9.3 These are considered below.

DIVERSITY IN RECRUITING FOR ACT POLICING

9.4 In hearings, the Committee noted that the ACT Policing Annual Report 2014-2015 had indicated that the percentage of ACT Policing employees who identified as Aboriginal and Torres Strait Islander people was 1.5%, and was 20.8% for culturally and linguistically diverse (CALD) employees, and asked whether it was intended that this would increase over time.³⁵¹

9.5 Responding to the question, the Chief Police Office, ACT Policing, (CPO) told the Committee that:

We have in place throughout ACT Policing, as part of the broader AFP, significant diversity programs. We would try to encourage people to join our organisation. ACT Policing is exactly the same. We are challenged by an insufficient number of applicants within the various diversity groups who actually apply to join us. We are doing a lot of

³⁴⁸ *Proof Transcript of Evidence*, 6 November 2015, pp.66-68.

³⁴⁹ *Proof Transcript of Evidence*, 6 November 2015, p.69.

³⁵⁰ *Proof Transcript of Evidence*, 6 November 2015, pp.69-71.

³⁵¹ *Proof Transcript of Evidence*, 6 November 2015, p.66, citing ACT Policing, Annual Report 2014-15, p.34, available at: <http://www.police.act.gov.au/~media/act/pdf/act%20policing%20annual%20report%202014-2015.pdf>

work in social media around attracting people from various groups into our organisation, and we will continue to do that.³⁵²

9.6 The CPO told the Committee that:

The numbers of Aboriginals and Torres Strait Islanders—at 1.5 per cent—are, in my opinion, incredibly low, but it is a huge challenge to try to get people with diverse backgrounds, Aboriginals and Torres Strait Islanders and people with disability to apply to join us.³⁵³

9.7 The Committee also asked questions as to what measures were being taken to attract people from these groups to apply for positions in ACT Policing.³⁵⁴

9.8 In responding, the Director, Corporate Services, ACT Policing, told the Committee that:

The commissioner, in one of his first announcements, spoke about his desire to increase both the gender balance and the balance of other diversity groups. Across the AFP he is taking active steps, in conjunction with the national manager of people safety and security, to employ a range of actions to encourage and avail ourselves of opportunities to have a wider range of people from various diverse groups coming in, including Aboriginal and Torres Strait Islander groups. We are actively engaging with the community in that way as part of the wider AFP, and ACT community works with the wider AFP. In fact, we have some specific Aboriginal and Torres Strait Islander trainees coming into ACT Policing as part of the AFP's trainee program for Aboriginals and Torres Strait Islanders this year, and that is an ongoing program.³⁵⁵

9.9 Asked about what approaches the Commissioner of the Australian Federal Police—ACT Policing's parent body—might have in mind in this regard, the Director told the Committee:

I do not wish to speak specifically on behalf of the commissioner, but the commissioner has tasked the national manager of people security and safety, who has the overarching responsibility for these policies within the AFP, to explore all avenues available to avail ourselves of a greater access to people. ACT Policing, as part of the AFP, is working very closely with the people strategies area to ensure that, wherever possible, we get access to the greatest number of people and encourage people from diverse backgrounds to apply for positions within ACT Policing, and also to offer opportunities for people to take up things such as traineeships and the like.³⁵⁶

³⁵² Mr Rudi Lammers, *Proof Transcript of Evidence*, 6 November 2015, p.67.

³⁵³ Mr Rudi Lammers, *Proof Transcript of Evidence*, 6 November 2015, p.67.

³⁵⁴ *Proof Transcript of Evidence*, 6 November 2015, p.67.

³⁵⁵ Mr Chris Hayward, *Proof Transcript of Evidence*, 6 November 2015, p.67.

³⁵⁶ Mr Chris Hayward, *Proof Transcript of Evidence*, 6 November 2015, p.68.

9.10 The CPO also responded to the question. He told the Committee that:

Of our 932-plus FTE of last year, 612 of those were male and 320 were female, which is a third. So we are making good headway in that space to at least encourage women to join ACT Policing and increasingly provide opportunities to make decisions around their future employment, and that is working. We have got some work to do in the other areas and, as you have heard, we are working very hard towards it.³⁵⁷

9.11 In response to further questioning, the CPO told the Committee:

It is a work in progress. The issue of diversity is inculcated in everything that we do, in every job that we advertise, in every selection panel we put together and in every series of questions that we formulate to ask applicants. Diversity is foremost in our mind to make sure that we get a good spread. Unfortunately, though, there is only so much we can do if people do not want to apply for jobs. We try to develop new strategies and we try and make sure that we touch as diverse a proportion of the population as we possibly can.³⁵⁸

STAFF REDUCTIONS AS A RESULT OF BUDGET CUTS

9.12 The Committee asked how many positions had been cut in ACT Policing as a result of budget cuts.³⁵⁹

9.13 In responding, the CPO told the Committee that 13 positions had been lost in ACT Policing in the reporting year due to budget cuts.³⁶⁰ He told the Committee that of the 13 positions lost:

There were three people taken from our judicial operations. They are the ones who support the work of the DPP and a number of different areas. There were four people from our intelligence and crime reduction area, four people from our criminal investigations area and two people from our media area.³⁶¹

9.14 The Committee asked whether further staff reductions were anticipated.³⁶² The CPO responded, telling the Committee that:

We are examining next year's impact of the general savings measure. I have no intentions right now to reduce staff further, but we have not examined the one per

³⁵⁷ Mr Rudi Lammers, *Proof Transcript of Evidence*, 6 November 2015, p.68.

³⁵⁸ Mr Rudi Lammers, *Proof Transcript of Evidence*, 6 November 2015, p.68.

³⁵⁹ *Proof Transcript of Evidence*, 6 November 2015, p.69.

³⁶⁰ Mr Rudi Lammers, *Proof Transcript of Evidence*, 6 November 2015, p.69.

³⁶¹ Mr Rudi Lammers, *Proof Transcript of Evidence*, 6 November 2015, p.70.

³⁶² *Proof Transcript of Evidence*, 6 November 2015, p.69.

cent reduction on next year's budget. What I can say, though, is that 95 per cent of my total budget is allocated to employees, so people. I do not have a lot of discretionary budget. One of the things I will do, as I did last year, is to try to reshape and reform parts of ACT Policing to continue to enhance its efficiency before I consider the loss of further jobs.³⁶³

9.15 In response to further questions the CPO told the Committee that:

We get each year a finite amount of funding from ACT government. In fact, this year we received \$1.8 million more than we did last year, so the funding has increased, taking account of a number of different factors. It is a challenge to make sure that we provide a responsive police service to ACT Policing. I have managed to put together a team of 40 people to respond in part to family violence, but also to community safety components within ACT Policing. I have done that within existing resources, at no loss of responsiveness to the community, and we do that within our funding envelope.³⁶⁴

9.16 The CPO went on to say that:

We look at our priorities all the time, and not just on a yearly basis. My executive management team and I meet regularly where we talk about resources and priorities. Last year I decided that a significant priority for the ACT community was a better presence in the family violence space, so we shifted resources around and rebalanced priorities so that we could make that happen.³⁶⁵

THE CREATION OF A NEW DOMESTIC VIOLENCE TEAM

9.17 The Committee asked questions about the creation of the new Domestic Violence team referenced above. In particular, the Committee asked whether other teams had lost staff or were disbanded in order to create the team.³⁶⁶

9.18 In responding, the CPO told the Committee that there were 'no teams set up or disbanded to form the family violence teams'.³⁶⁷ He went on to say that:

The community safety team were drawn from existing resources. They were a reshaped team and they were given different priorities--but they were the same members within those teams--with a heavier focus on family violence and engagement

³⁶³ Mr Rudi Lammers, *Proof Transcript of Evidence*, 6 November 2015, p.69.

³⁶⁴ Mr Rudi Lammers, *Proof Transcript of Evidence*, 6 November 2015, p.69.

³⁶⁵ Mr Rudi Lammers, *Proof Transcript of Evidence*, 6 November 2015, p.69.

³⁶⁶ *Proof Transcript of Evidence*, 6 November 2015, p.69.

³⁶⁷ Mr Rudi Lammers, *Proof Transcript of Evidence*, 6 November 2015, p.70.

in the community. There were eight people drawn into the family violence team from operational areas that were not front-line areas.³⁶⁸

9.19 The Executive Director, Director, Corporate Services, also responded. He told the Committee that:

As a result of some staff movements at the end of last year through some voluntary redundancies, we were able to reallocate the resourcing that was freed up from those voluntary redundancies to establish two new positions within the community safety and family violence teams. The remaining staff were reallocated from a range of areas across ACT Policing. No one area was disbanded or substantially reduced in any way.³⁶⁹

ANSWER TO A QUESTION TAKEN ON NOTICE

9.20 On 19 November 2015 the Minister for Police and Emergency Services provided the Committee with an answer to a Question Taken on Notice regarding ACT Policing's Family Violence and Community Safety (FV&CS) team.³⁷⁰

³⁶⁸ Mr Rudi Lammers, *Proof Transcript of Evidence*, 6 November 2015, p.70.

³⁶⁹ Mr Chris Hayward, *Proof Transcript of Evidence*, 6 November 2015, p.70.

³⁷⁰ See *Inquiry into Annual Reports 2014-2015: Responses to Questions Taken on Notice*, p.53, available at: http://www.parliament.act.gov.au/_data/assets/pdf_file/0004/802327/J-And-CS-Responses-to-QToNs.pdf

10 WORKPLACE SAFETY AND INDUSTRIAL RELATIONS

INTRODUCTION

10.1 The Minister for Workplace Safety and Industrial Relations appeared before the Committee with his officers in hearings of 11 November 2015.³⁷¹

10.2 In his opening statement, the Minister told the Committee:

- that in '2014-15 we saw significant improvements in the ACT public sector's injury management performance, with the number of lost-time injuries reducing by 18 per cent compared to the previous year';³⁷²
- that 'the improvement plan initiatives included the delivery of training in mental health awareness and resilience to more than 400 supervisors and managers across the service';³⁷³
- that 'an improvement of approximately 37 per cent in the proportion of incidents that are now reported within 48 hours when compared to the previous year';³⁷⁴
- that 'in view of the fact that musculoskeletal injuries were 'one of the most common types of workplace injury', in 2014-15 'an early intervention physiotherapy program was piloted';³⁷⁵
- that Improvement Plan funds had also 'been used to hire additional staff with specialised allied health qualifications or insurance experience';³⁷⁶
- that in the 2014-15 reporting year the Territory had, for the first time, 'successfully challenged the Commonwealth's premium pricing model' for workers compensation insurance and that the appeal had 'resulted in a refund of around \$6 million and a further premium reduction of approximately \$2 million per annum';³⁷⁷ and

³⁷¹ *Proof Transcript of Evidence*, 11 November 2015, p.72 ff.

³⁷² Mr Mick Gentleman MLA, *Proof Transcript of Evidence*, 11 November 2015, p.72.

³⁷³ Mr Mick Gentleman MLA, *Proof Transcript of Evidence*, 11 November 2015, p.73.

³⁷⁴ Mr Mick Gentleman MLA, *Proof Transcript of Evidence*, 11 November 2015, p.73.

³⁷⁵ Mr Mick Gentleman MLA, *Proof Transcript of Evidence*, 11 November 2015, p.73.

³⁷⁶ Mr Mick Gentleman MLA, *Proof Transcript of Evidence*, 11 November 2015, p.73.

³⁷⁷ Mr Mick Gentleman MLA, *Proof Transcript of Evidence*, 11 November 2015, p.73.

- that ‘an independent actuarial report produced during the 2014-15 period showed that in the first year following the government accepting the [Getting Home Safely] report recommendations the number of work injuries in the construction industry reduced by 27 per cent.³⁷⁸

10.3 In hearings matters considered by the Committee including the following matters:

- the redesign and oversight of the independent actuarial review of the territory’s workers compensation system;³⁷⁹
- progress on a new workers compensation scheme for the ACT public service;³⁸⁰
- progress toward national standards for work place safety;³⁸¹
- reductions in injuries in the ACT construction sector;³⁸² and
- the administration and performance of the ACT Long Service Leave Authority.³⁸³

10.4 These are considered below.

INDEPENDENT ACTUARIAL REVIEW OF THE WORKERS COMPENSATION SYSTEM

10.5 The Committee asked questions regarding an independent actuarial review of workers compensation in the ACT, referenced in the Chief Minister, Treasury and Economic Development Directorate’s *Annual Report*. In particular the Committee asked questions including: what the review found; how the scheme was progressing; what trends were observable; and whether the review report would be published.³⁸⁴

10.6 In responding to the question, the Minister told the Committee that:

The review showed that the number of new cost incurred claims fell by over five per cent in that period, to around 3,200. The number of new lost-time injury claims fell by eight per cent, to around 2,000. This was driven primarily by improvements in the

³⁷⁸ Mr Mick Gentleman MLA, *Proof Transcript of Evidence*, 11 November 2015, p.73.

³⁷⁹ *Proof Transcript of Evidence*, 11 November 2015, p.74, citing Chief Minister, Treasury and Economic Development Directorate, *Annual Report 2014-15*, Vol. 1, p.27, available at: <http://www.cmd.act.gov.au/functions/publications/2014-15annualreport/files/CMTEDD-AR-Vol-1.pdf>

³⁸⁰ *Proof Transcript of Evidence*, 11 November 2015, p.75.

³⁸¹ *Proof Transcript of Evidence*, 11 November 2015, p.78.

³⁸² *Proof Transcript of Evidence*, 11 November 2015, pp.81- 82.

³⁸³ *Proof Transcript of Evidence*, 11 November 2015, pp.89-91.

³⁸⁴ *Proof Transcript of Evidence*, 11 November 2015, p.74, citing Chief Minister, Treasury and Economic Development Directorate, *Annual Report 2014-15*, Vol. 1, p.27.

construction industry's experience. The gross average cost of a claim was around \$36,500, and we had 514 claims that received a lump sum payment.³⁸⁵

10.7 The Executive Director, Workplace Safety and Industrial Relations, also responded to the question. He first told the Committee that:

The report that was published during the 2014-15 financial year pertained to the previous financial year. That is as a result of data lag in timing. So it takes quite some time after the end of the financial year for the actuary to receive all of the information from the territory's seven approved insurers, to do the analysis and to publish the report. We expect that the report for 2014-15 will actually be published in April next year. That is one of the KPIs that we have under output class 1.3. So the results that we are talking to here today actually pertain to the previous financial year.³⁸⁶

10.8 He told the Committee, 'on the question of price' that:

for about the past four or five years the ACT private sector workers compensation scheme has had an average collected rate sitting at just under 2½ per cent of wages. I should clarify that this scheme applies only to the ACT private sector. The public sector is insured under the commonwealth's Comcare scheme. So the private sector average rate has been sitting quite stably for around the past five years at something under 2.5 per cent of wages.³⁸⁷

10.9 The Executive Director told the Committee, however, that:

we have seen cost pressures increasing over that time. The private sector insurance market is a competitive one and we have seen insurers effectively absorbing cost pressures, in order to maintain a stable premium rate. However, the report does show in the most recent year an increase in claims costs, driven predominantly by an increase in both the number and average size of common law damages claims. That is creating a cost pressure which may, in this financial year, result in an increase in prices. The scheme actuary publishes an expected reasonable premium rate, which, I believe, for the current financial year was estimated at 2.65 per cent of wages—an increase. However, it remains to be seen whether insurers will pass those prices on to employers.³⁸⁸

³⁸⁵ Mr Mick Gentleman MLA, *Proof Transcript of Evidence*, 11 November 2015, p.74.

³⁸⁶ Mr Michael Young, *Proof Transcript of Evidence*, 11 November 2015, p.74.

³⁸⁷ Mr Michael Young, *Proof Transcript of Evidence*, 11 November 2015, p.74.

³⁸⁸ Mr Michael Young, *Proof Transcript of Evidence*, 11 November 2015, pp.74-75.

10.10 He also told the Committee about trends on injuries. While he acknowledged an ‘improvement in the number of injuries that occurred [that is in] the number of lost-time injuries’, there had been a ‘mixed performance overall’:

Improvements in safety have resulted in fewer injuries occurring. However, there has been an increase in the average cost of those claims, once they come through, driven almost entirely by changes in common law utilisation patterns.³⁸⁹

10.11 The Executive Director told the Committee that, notably, ‘the reduction in the number of injuries that have occurred [had] been driven primarily by improvements in the construction industry’.³⁹⁰ He went on to say that:

It was very heartening to see in the first 12 months following the government’s take-up of the Getting home safely report recommendations quite remarkable improvements—and very rapidly, much faster than we expected, in terms of the reduction in the number of injuries and lost-time injuries in the construction industry. It outperformed all other industries against those key measures by a significant margin.³⁹¹

PROGRESS ON A NEW WORKERS COMPENSATION SCHEME

10.12 In hearings, the Committee asked questions on progress on a new workers compensation scheme for the ACT public service, in light of a decision by the ACT government to signal that it would withdraw from its present arrangement with the Commonwealth workers compensation insurer, *Comcare*.³⁹²

10.13 In response, the Minister told the Committee that:

We are working with unions and employee representatives for an outcome as we move away from the Comcare scheme. As you are aware, the Comcare scheme is unable to be affected by us as a government, so it means that any changes made to the Comcare scheme directly affect workers compensation in the ACT public service without us being able to do much about it. The government has made the decision to move away from that process and develop its own workers compensation scheme for the sector.

³⁸⁹ Mr Michael Young, *Proof Transcript of Evidence*, 11 November 2015, p.75.

³⁹⁰ Mr Michael Young, *Proof Transcript of Evidence*, 11 November 2015, p.75.

³⁹¹ Mr Michael Young, *Proof Transcript of Evidence*, 11 November 2015, p.75.

³⁹² *Proof Transcript of Evidence*, 11 November 2015, p.75, and see Noel Towell, ‘ACT dumps Comcare’, *Canberra Times*, 25 February 2015, available at: <http://www.canberratimes.com.au/national/public-service/act-dumps-comcare-20150225-13o86a.html>

We have been now working with the union movement and those groups for quite some time to develop the new scheme and progress is going well, I think.³⁹³

10.14 Asked to comment on the advantages of the ACT having its own scheme, the Minister told the Committee that:

It allows us to focus on a particular theme, and the theme that we have is to get workers back to work as quickly as possible, to improve life outcomes for them. That is the key strategy within the new scheme that is being developed. It allows us to treat, in a health way, the presence of injury as quickly as we can and move those employees into a stage where they can return to work as soon as possible and therefore, as I said, get the best life outcomes for those employees.³⁹⁴

PROGRESS TOWARD NATIONAL STANDARDS

10.15 The Committee asked the Minister to comment on progress toward national standards for workplace safety.³⁹⁵

10.16 In response, the Minister told the Committee that in some instances standards of workplace safety were 'different between different jurisdictions' and that the ACT was:

working to harmonise, as much as we can, with other jurisdictions. It really is about red tape reduction; it is an opportunity for us to make it easier for the business community, particularly, to harmonise our regulations with other states and territories. It mainly allows us to comply with essentially the same safety requirements in the same manner by regulators. Therefore, employers, for example, can be assured that the same sets of rules are in place here as in other jurisdictions.³⁹⁶

10.17 He went on to say that:

We are working through that process. Victoria and Western Australia, at the moment, remain outside those harmonised processes, but we understand that Western Australia's version of the model has been tabled in state parliament and is released for public comment. So we are looking to work with those groups as well.³⁹⁷

³⁹³ Mr Mick Gentleman MLA, *Proof Transcript of Evidence*, 11 November 2015, p.75.

³⁹⁴ Mr Mick Gentleman MLA, *Proof Transcript of Evidence*, 11 November 2015, p.75.

³⁹⁵ *Proof Transcript of Evidence*, 11 November 2015, p.78.

³⁹⁶ Mr Mick Gentleman MLA, *Proof Transcript of Evidence*, 11 November 2015, p.78.

³⁹⁷ Mr Mick Gentleman MLA, *Proof Transcript of Evidence*, 11 November 2015, p.78.

10.18 The Executive Director, Workplace Safety and Industrial Relations, also responded to the question. He told the Committee that:

Significantly, New South Wales and the commonwealth have, like the ACT, adopted the harmonised workplace health and safety laws. That is particularly significant for the ACT, obviously, as we have a fairly high proportion of employers who operate across those borders. The government, for some years, has been putting in place a range of measures to reduce red tape and make it easier for employers who are operating in New South Wales, in the ACT or potentially under contract with the commonwealth to understand and comply with their safety and workers compensation requirements.³⁹⁸

10.19 The Executive Director went on to say:

Last year we introduced legislation to clarify the cross-border arrangements for workers around workers compensation. Significantly, the adoption in the 2011 act for work safety and its subordinate regulations picked up the majority of those harmonised safety laws. That has translated to significant benefits in a number of ways. First--Mr McCabe is here and I am sure he would agree--it has allowed the regulator to tap into a national body of guidance material, education information and expertise to much more quickly respond to issues and to put out very high quality guidance in a manner that the territory's limited resourcing previously would not have allowed. That has been, I think, quite significant. Certainly the trends that we have seen in injury numbers in the ACT in the period since the adoption of the safety laws have been positive.³⁹⁹

REDUCTIONS IN INJURIES IN THE ACT CONSTRUCTION SECTOR

10.20 The Committee asked questions regarding the 2012 *Getting Home Safely* report, concerning injuries in the ACT construction sector.⁴⁰⁰

10.21 Responding to the question, the Minister told the Committee that:

during the year when the report was commissioned there were 736 workers compensation claims in the construction industry, which is equivalent to about one injury per million dollars in wages paid. In 2013-14 the number of injuries reduced to

³⁹⁸ Mr Michael Young, *Proof Transcript of Evidence*, 11 November 2015, p.78.

³⁹⁹ Mr Michael Young, *Proof Transcript of Evidence*, 11 November 2015, p.78.

⁴⁰⁰ *Proof Transcript of Evidence*, 11 November 2015, pp.81- 82. See Work Safe ACT, *Getting Home Safely*, available at: http://cdn.justice.act.gov.au/resources/uploads/Worksafe/Publications/Handbooks/Getting_Home_Safely_report_-_Construction_Safety_Inquiry_Nov_2012.pdf

527, and the number of injuries per million dollars of wages reduced to 27 per cent. The construction industry's safety improvement was significantly better than other ACT industries. It was a good outcome in that period.⁴⁰¹

10.22 The Work Safe Commissioner also responded to the question. He told the Committee that:

Recommendation 4 from the Getting home safely report had a specific target of an improvement in the injury rate for construction, which would bring the ACT rate down below the national average. In the past couple of days we have had some new statistics out of Safe Work Australia, not for the construction industry at this stage. They have only got the broad figure but they will then work on the construction stats. But they show, for the first year of data which has now become available since the Getting home safely report, a 20 per cent reduction across all injuries in the ACT in incidence rate, which is a huge improvement in one year. It takes us from, for all industries, 10 per cent above the national average to 10 per cent below the national average. That is the incidence rate for serious claims, which is one of the key measures used in the Getting home safely report. Serious claims are claims for a week or more of time off work. And for the incidence rates of claims with over 12 weeks time off work there was a 30 per cent reduction.⁴⁰²

ADMINISTRATION AND PERFORMANCE OF THE ACT LONG SERVICE LEAVE AUTHORITY

10.23 In hearings, the Committee asked questions regarding the administration and performance of the ACT Long Service Leave Authority.⁴⁰³

10.24 When asked what the Authority planned to do to improve efficiency in the coming financial year,⁴⁰⁴ its Chief Executive Officer and Registrar told the Committee:

The ACT Long Service Leave Authority is actually quite a small organisation. We have about 11 FTE. We are a little bit below that at this particular time but we are looking at recruiting and filling some vacancies. We run a fairly lean operation, I have to say, in general terms.⁴⁰⁵

⁴⁰¹ Mr Mick Gentleman MLA, *Proof Transcript of Evidence*, 11 November 2015, p.81.

⁴⁰² Mr Mark McCabe, *Proof Transcript of Evidence*, 11 November 2015, p.82.

⁴⁰³ *Proof Transcript of Evidence*, 11 November 2015, pp.89-91.

⁴⁰⁴ *Proof Transcript of Evidence*, 11 November 2015, p.89.

⁴⁰⁵ Ms Tracy Savage, *Proof Transcript of Evidence*, 11 November 2015, p.89.

10.25 She went on to say that:

One area of focus, certainly for this year, is looking at investment returns. We have seen that volatility in the market that will probably reflect against our returns for the end of this current financial year. We probably will not see the types of returns that we certainly experienced in the last financial year.

Certainly, we are looking at how we can educate, assist employers and workers on long service leave, and really looking at voluntary compliance in signing up, paying levies. We are probably looking at some efficiencies in our IT system, and that is a cycle of continuous improvement. They are probably the main areas.⁴⁰⁶

10.26 When asked to comment on return on investments held by the Authority, the Chief Executive Officer told the Committee:

I think everybody had very healthy returns, from looking at other jurisdictions' long service leave arrangements in other states and territories. I think everybody benefited from an up market situation. We have a fairly conservative investment approach, but certainly a number of people benefited from the markets last year. We will be looking at that very closely this year, though, as I said, with market volatility.⁴⁰⁷

10.27 In response to further questioning regarding the Authority's investment program, the Chief Executive Officer she told the Committee:

We are in conversation with Treasury at the moment. We are relatively small. We have got about \$125 million in funds under management, and that does, I think, restrict us in some ways in terms of looking at particular investment vehicles or options. But, as I said, we have started conversations with ACT Treasury to look at how we might be able to leverage some of their arrangements, and they have been incredibly helpful.⁴⁰⁸

ANSWERS TO QUESTIONS TAKEN ON NOTICE

10.28 On 19 November 2015 the Minister for Workplace Safety and Industrial Relations provided the Committee with answers to Questions Taken on Notice regarding:

- the budget for implementation of *Getting Home Safely* report recommendations; and
- responsibility for implementation of *Getting Home Safely* report recommendations.⁴⁰⁹

⁴⁰⁶ Ms Tracy Savage, *Proof Transcript of Evidence*, 11 November 2015, p.90.

⁴⁰⁷ Ms Tracy Savage, *Proof Transcript of Evidence*, 11 November 2015, p.90.

⁴⁰⁸ Ms Tracy Savage, *Proof Transcript of Evidence*, 11 November 2015, pp.90-91.

⁴⁰⁹ See *Inquiry into Annual Reports 2014-2015: Responses to Questions Taken on Notice*, pp.55 & 61, available at: http://www.parliament.act.gov.au/_data/assets/pdf_file/0004/802327/J-And-CS-Responses-to-QToNs.pdf

11 JUSTICE AND COMMUNITY SAFETY

DIRECTORATE

INTRODUCTION

11.1 The Attorney-General and his officers from the Justice and Community Safety Directorate appeared before the Committee in hearings of 11 November 2015.

11.2 In his opening statement the Attorney-General referred to:

- a Justice Reform Strategy, announced in May 2014, ‘a two-year project examining sentencing law and practice in the territory’, comprising a ‘move away from periodic detention and introduce a new community-based sentencing option’ and consideration of ‘longer term sentencing and related reforms with a view to ensuring that we have a more efficient and effective sentencing regime’;⁴¹⁰
- work toward a Justice Reinvestment program, described as ‘a data driven approach to reducing expenditure in criminal justice and improving outcomes’, including ‘the co-design of a justice reinvestment trial, the development of a literature review authored by the Australian Institute of Criminology, and continued development of evaluation frameworks on key justice reinvestment initiatives such as through the extended through-care model for prisoner support and through our application of restorative justice practices’;⁴¹¹
- examination by the Directorate of the ‘concept of restorative cities’;⁴¹² and
- family and domestic violence.⁴¹³

11.3 Of these matters, family and domestic violence is considered below.

11.4 Other matters considered by the Committee in hearings included:

- the expansion of the ACT Restorative Justice program;⁴¹⁴
- Aboriginal and Torres Strait Islander employees;⁴¹⁵
- Aboriginal and Torres Strait Islander justice service delivery model;⁴¹⁶ and

⁴¹⁰ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 11 November 2015, p.93.

⁴¹¹ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 11 November 2015, pp.93-94.

⁴¹² Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 11 November 2015, p.94.

⁴¹³ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 11 November 2015, p.94.

⁴¹⁴ *Proof Transcript of Evidence*, 11 November 2015, pp.95-96.

⁴¹⁵ *Proof Transcript of Evidence*, 11 November 2015, pp.96-98.

- legislative responses to Outlaw Motorcycle Gangs.⁴¹⁷

11.5 These are considered below.

FAMILY AND DOMESTIC VIOLENCE

11.6 In relation to family and domestic violence the Attorney-General told the Committee that:

Preventing domestic and family violence is, and continues to be, a high priority for the government. In 2014-15 my directorate worked closely with the Domestic Violence Prevention Council and other key government and community organisations to better respond to domestic and family violence, including sexual assaults.⁴¹⁸

11.7 He told the Committee, by way of back ground, that:

Statistics recently released by Australia's National Research Organisation for Women's Safety showed that one in four women and one in 20 men experience domestic and family violence in Australia every year. Out of those affected, 73 per cent of women experience more than one incident of violence. Domestic and family violence is the top risk factor for death, disability and illness, and almost 70 per cent of women murdered in Australia are victims of domestic and family violence. Indeed more than one woman every week in Australia is killed because of this violence. The Australian Institute of Criminology found in May this year that despite the national rate of homicide declining, two in every five homicide victims are killed by a family member. This is a reality that this government, and indeed all governments in Australia, are trying now to confront.⁴¹⁹

11.8 The Attorney-General told the Committee that in the ACT:

Here in the ACT, the *Crimes (Domestic and Family Violence) Legislation Amendment Act* was passed with the unanimous support of the Assembly in October. In addition to legislative measures, the government has been working to improve access to services and coordination across government and community sector partners through the appointment of the Coordinator-General for Domestic and Family Violence.⁴²⁰

⁴¹⁶ *Proof Transcript of Evidence*, 11 November 2015, pp.99-100.

⁴¹⁷ *Proof Transcript of Evidence*, 11 November 2015, pp.102-106.

⁴¹⁸ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 11 November 2015, p.94.

⁴¹⁹ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 11 November 2015, p.94.

⁴²⁰ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 11 November 2015, p.94.

11.9 He went on to say that:

In 2014-15 I approved the use of the confiscated assets trust fund to provide funding for grants relating to women's sector proposals, as well as a number of projects aiming to respond to domestic and family violence issues in the territory. In July last year I announced that the Domestic Violence Prevention Council would undertake a review into domestic violence deaths in the ACT. The council's review is an important opportunity to provide a clearer picture of domestic and family violence in our city, and will be a valuable tool in informing future government policymaking.⁴²¹

11.10 In relation to the review, the Attorney-General told the Committee that the Council was in the 'final stages of review' and that its final report would be provided to the Attorney-General 'early in the new year'.⁴²²

EXPANSION OF THE ACT RESTORATIVE JUSTICE PROGRAM

11.11 In hearings, the Committee asked questions regarding rates of referrals to the ACT's Restorative Justice program, noting that there had been a 27 per cent increase in the number of offences, a 13 per cent increase in the number of young offenders and an 18 per cent increase in the number of victims referred.⁴²³

11.12 In responding, the Attorney-General told the Committee that, in general:

referrals are driven by the level of suitability of the offending behaviour for RJ, as well as awareness from the referring authority as to the availability of RJ. So I would see an increase in the number of referrals as a very positive thing. It would mean that the police, the DPP or the courts themselves are recognising that RJ is available as an alternative to more traditional responses, and that is seeing greater levels of utilisation.⁴²⁴

11.13 The Manager, Restorative Justice Unit, also responded to the question. She told the Committee that:

there are fluctuations generally from year to year. Sometimes the proportion does not refer to big changes. However, we have been making a lot of headway, talking with

⁴²¹ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 11 November 2015, p.94.

⁴²² Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 11 November 2015, p.95.

⁴²³ *Proof Transcript of Evidence*, 11 November 2015, p.95, citing Justice and Community Safety Directorate, Annual Report 2014-15, p.35.

⁴²⁴ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 11 November 2015, p.95.

stakeholders and liaising very strongly with referring entities over the last year.⁴²⁵

11.14 In addition, she told the Committee:

We are building relationships to be strong in the lead-up to the expansion to phase 2. That probably accounts for a little rise in those referrals.⁴²⁶

11.15 When asked how the Restorative Justice Unit was coping with this increase in referrals, the Manager told the Committee that:

It is coping really well. We have recruited four new people to be part of phase 2. That includes a senior convenor with good experience in the domestic violence area, and two convenors with a very strong criminal justice background and experience. We will have a court liaison officer and general operational support officer on top of that. We have been engaging in training already with some eminent restorative justice trainers who have been pretty active overseas and around Australia in providing best practice training. So there is a bit of a buzz around the unit. We are very excited about the expansion and we are increasing our capacity day by day.⁴²⁷

11.16 The Committee asked questions about the use of Restorative Justice for Domestic Violence cases, and whether this had taken place or was being prepared for.⁴²⁸

11.17 In response the Attorney-General told the Committee:

The government will implement the expansion of RJ to adult offenders in a series of stages. The first stage will involve matters other than DV and sexual violence, and the second stage will include DV, family violence and sexual violence matters. So it will be a staged implementation, recognising that the most complex matters are going to be those matters that involve the imbalance between power relationships and manipulation, and emotional manipulation in particular, in the context of family violence, domestic violence and sexual assault.⁴²⁹

11.18 When asked about training in relation to Domestic Violence, the Manager, Restorative Justice Unit, told the Committee:

The Restorative Justice Unit engages in ongoing domestic violence awareness training. It is a prerequisite for anyone working in any workspace to be aware of it. You never

⁴²⁵ Ms Amanda Lutz, *Proof Transcript of Evidence*, 11 November 2015, p.95.

⁴²⁶ Ms Amanda Lutz, *Proof Transcript of Evidence*, 11 November 2015, p.95.

⁴²⁷ Ms Amanda Lutz, *Proof Transcript of Evidence*, 11 November 2015, p.95.

⁴²⁸ *Proof Transcript of Evidence*, 11 November 2015, p.95.

⁴²⁹ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 11 November 2015, pp.95-96.

know when you are dealing with a client who may have domestic violence in the background.⁴³⁰

11.19 She also told the Committee that there would be:

There will be more specific domestic violence training as we move towards what is essentially phase 3. We are looking to bring people from Project Restore from New Zealand to help train not only restorative justice staff but also the dedicated victims agencies so that we are all on the same page and we are working together.⁴³¹

11.20 The Committee also asked whether specific adaptations had been proposed for the program to allow it to work effectively for Domestic Violence cases. In response, the Manager told the Committee that there was:

a very strong set of guidelines that have been produced in collaboration with the Domestic Violence Crisis Service and other gender violence agencies in Canberra—multi-agency input into guidelines.⁴³²

11.21 She told the Committee that there would be ‘stringent risk assessment’, done by way of a ‘new, dedicated family violence risk assessment’.⁴³³

11.22 She also told the Committee that any intervention had ‘the potential to make things worse’, including ‘going through a court process’ and, in light of this, the Restorative Justice United aimed ‘to minimise those risks’ and ‘not run a process unless [it could be] sure that safety is part of the process’.⁴³⁴

ABORIGINAL AND TORRES STRAIT ISLANDER EMPLOYEES

11.23 The Committee asked questions about the number of Aboriginal and Torres Strait Islander people as a proportion of employees overall in the Justice and Community Safety Directorate. In particular the Committee noted that Aboriginal and Torres Strait Islander people amounted to 1.7 % of total staff, asked how this compared with figures for previous reporting years, and asked how the Directorate intended to improve performance on this indicator in the future.⁴³⁵

⁴³⁰ Ms Amanda Lutz, *Proof Transcript of Evidence*, 11 November 2015, p.96.

⁴³¹ Ms Amanda Lutz, *Proof Transcript of Evidence*, 11 November 2015, p.96.

⁴³² Ms Amanda Lutz, *Proof Transcript of Evidence*, 11 November 2015, p.96.

⁴³³ Ms Amanda Lutz, *Proof Transcript of Evidence*, 11 November 2015, p.96.

⁴³⁴ Ms Amanda Lutz, *Proof Transcript of Evidence*, 11 November 2015, p.96.

⁴³⁵ *Proof Transcript of Evidence*, 11 November 2015, pp.96-97, citing Justice and Community Safety Directorate, *Annual Report 2014-15*, p.148.

11.24 In response, the Director-General told the Committee that the figures represented an increase of one staff member on the previous years' figure and that, with regard to improvement, that:

The Head of Service has put into each director-general's performance agreement specific targets for each directorate. That, of course, is a very good way of focusing. We in JACS have done a number of things over the past year, including the appointment of an inclusion officer. We have an existing employment strategy in relation to Aboriginal and Torres Strait Islander staff; that is currently due for review and renewal. We have done some work towards that; our inclusion officer is at a stage where next month there will be a workshop with our current Aboriginal staff to provide some feedback about what a new strategy might look like.⁴³⁶

11.25 The Director-General told the Committee that:

Our current strategy has been focused on how we might increase our numbers. We have a number of strategies in that, including participation in the training schemes that have been run across the whole of the ACT public service. Also, some of our business units, such as corrections, have participated in years where there has not been a whole-of-ACT scheme. Corrections participated in another scheme with a private provider and had Aboriginal trainees.⁴³⁷

11.26 Further, she told the Committee:

Our second employment strategy, as well as looking at increasing our numbers, is to look at employment development opportunities in a more structured way. In terms of disability, we are in the final stages of preparing our first disability employment strategy. We are going to have a similar workshop targeting some of our current employees, getting assistance from the disability commissioner in terms of how we might structure that where we still have some work to do.⁴³⁸

11.27 Later in hearings the Director-General provided further information in response to this question, telling the Committee that:

I should have mentioned before that we have nine identified Aboriginal and Torres Strait Islander positions across the directorate. That has grown over the past couple of years. And we have targeted recruitment into a number of sources where we are likely to attract Aboriginal and Torres Strait Islander staff for some of those specific positions. So yes, absolutely. In corrections we have a number of designated positions and we also have a number of designated positions in our legislation and policy area, including restorative justice and the Galambany court position. There is also a policy officer in

⁴³⁶ Ms Alison Playford, *Proof Transcript of Evidence*, 11 November 2015, p.97.

⁴³⁷ Ms Alison Playford, *Proof Transcript of Evidence*, 11 November 2015, p.97.

⁴³⁸ Ms Alison Playford, *Proof Transcript of Evidence*, 11 November 2015, p.98.

our legislation policy area; that is a designated position as well. So we have used that strategy. Also, in terms of our recruitment for various positions, we have tried to target our advertising.⁴³⁹

11.28 The Director-General also spoke about efforts by the Directorate to improve in terms of other dimensions of diversity:

In terms of other types of diversity, like gender diversity, again some of our business units are doing specific things. The Emergency Services Agency has its ESA strategy. Corrections, in its last lot of recruitment of custodial officers, did some very targeted recruitment aimed at increasing numbers of female custodial officers, which is an area where we have, in the past, struggled to recruit. That was done through information sessions that were held at various clubs around town and having some of our current female custodial officers be part of those.⁴⁴⁰

11.29 She went on to say that the Directorate's Inclusion Officer was 'looking generally at a whole range of strategies', and noted that the Directorate also had 'mandatory RED and cultural awareness training across the directorate' which was intended to 'provide information for all staff in terms of understanding the value of a diverse workforce'.⁴⁴¹

ANSWER TO A QUESTION TAKEN ON NOTICE

11.30 On 27 November 2015 the Attorney-General provided the Committee with an answer to a Question Taken on Notice regarding diversity within Justice and Community Safety Directorate (JASCD) recruiters.⁴⁴²

⁴³⁹ Ms Alison Playford, *Proof Transcript of Evidence*, 11 November 2015, p.97.

⁴⁴⁰ Ms Alison Playford, *Proof Transcript of Evidence*, 11 November 2015, p.97.

⁴⁴¹ Ms Alison Playford, *Proof Transcript of Evidence*, 11 November 2015, p.97.

⁴⁴² See *Inquiry into Annual Reports 2014-2015: Responses to Questions Taken on Notice*, p.107, available at: http://www.parliament.act.gov.au/_data/assets/pdf_file/0004/802327/J-And-CS-Responses-to-QToNs.pdf

ABORIGINAL AND TORRES STRAIT ISLANDER JUSTICE SERVICE DELIVERY MODEL

11.31 In hearings, the Committee asked the Attorney-General about the development of a new Aboriginal and Torres Strait Islander justice delivery model.⁴⁴³

11.32 In responding, the Attorney-General told the Committee that:

The new justice partnership was signed by the government with the Aboriginal elected body on 27 July this year. That partnership looks at the key issues around over-representation of Indigenous people in the criminal justice system, particularly in terms of people in custody, and contains a number of targets and other actions to address these problems. The focus is on reducing over-representation by reducing recidivism; increasing access to diversion, so improved diversion away from the traditional criminal justice system; and improvements to data collection and services. JACS will be meeting with the elected body in the next week or so to discuss the implementation plan that flows from the partnership and look at how those actions can be progressed.⁴⁴⁴

ANSWER TO A QUESTION TAKEN ON NOTICE

11.33 On 18 November 2015 the Attorney-General provided the Committee with an answer to a Question Taken on Notice regarding the role of the Indigenous guidance partner.⁴⁴⁵

LEGISLATIVE RESPONSES TO OUTLAW MOTORCYCLE GANGS

11.34 In hearings, the Committee asked the Attorney-General to comment on the status of proposed legislative responses to the presence of Outlaw Motorcycle Gangs in the ACT.⁴⁴⁶

11.35 In response, the Attorney-General told the Committee:

The government is looking at a range of legislative responses that address the recent changes in activity of outlaw motorcycle gangs in the territory. That analysis is ongoing.

⁴⁴³ *Proof Transcript of Evidence*, 11 November 2015, p.99, citing Justice and Community Safety Directorate, *Annual Report 2014-15*, p.18.

⁴⁴⁴ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 11 November 2015, p.99

⁴⁴⁵ See *Inquiry into Annual Reports 2014-2015: Responses to Questions Taken on Notice*, p.52, available at: http://www.parliament.act.gov.au/data/assets/pdf_file/0004/802327/J-And-CS-Responses-to-QToNs.pdf

⁴⁴⁶ *Proof Transcript of Evidence*, 11 November 2015, p.103.

There is a range of issues. The first is in relation to the ability to manage events such as organised runs, as they are known, where motorcycle gangs or members of a gang come together for essentially a parade of motorcycles to a particular location. Options to allow police to better manage, control and disperse such activity are currently under consideration.⁴⁴⁷

11.36 The Attorney-General went on to say that:

In addition, there is the issue of the operation of possible consorting legislation. The government has developed to a good level of detail a number of options in relation to these matters, but we are also of the view that we need to look closely at the issues that have arisen from the use of consorting legislation in other jurisdictions, particularly New South Wales. The New South Wales Ombudsman is currently completing its report on the operation of the New South Wales consorting law. I have indicated to ACT Policing and to my directorate that we should give consideration to the issues that arise from the Ombudsman's report before completing or concluding our decision making on a possible consorting law mechanism for the territory.⁴⁴⁸

11.37 At a later point in discussion the Attorney-General added to these comments by telling the Committee:

The facts are that consorting laws in New South Wales have not been without their problems. There has been abuse of those laws, and there have been unfair outcomes as a result of those laws. One of the key challenges with the application of consorting laws is what happens when you are dealing with people with a criminal record who are members of the same family, for example? Do you prohibit them from having contact with other family members?

These are the types of issues at play. They are not easy to deal with.⁴⁴⁹

11.38 He told the Committee that:

They are particularly complex in the ACT context because in the ACT, regrettably, a significant proportion of people involved in OMCG activity are members of some South Pacific island communities with close familial relations. The application of consorting laws in those contexts intersects with the fact that you are dealing with people who are directly related to each other. Should the criminal law in those circumstances prohibit members of the same family from residing with each other or interacting with each

⁴⁴⁷ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 11 November 2015, p.103.

⁴⁴⁸ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 11 November 2015, pp.103-104.

⁴⁴⁹ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 11 November 2015, p.104.

other in any way? You are asking why we are taking our time. It is because of the complexity of the issues, as I have just outlined, that we need to take our time.⁴⁵⁰

11.39 He confirmed that criminal activity was occurring, and told the Committee that ‘what is more important from the government’s perspective is that the nature of criminal activity is changing and the behaviour of the organised gangs is changing’ and that this was ‘why we are responding by looking at how the criminal law operates in relation to these gangs’.⁴⁵¹

ANSWER TO A QUESTION TAKEN ON NOTICE

11.40 On 23 November 2015 the Attorney-General provided the Committee with an answer to a Question Taken on Notice regarding offences committed by members of Outlaw Motorcycle Gangs.⁴⁵²

ACT GOVERNMENT SOLICITOR

11.41 In hearings of 11 November 2015 the ACT Government Solicitor appeared before the Committee.⁴⁵³

11.42 Matters considered included the Government Solicitor’s involvement in providing advice on:

- a smart parking trial;⁴⁵⁴
- the loose-fill asbestos buyback scheme;⁴⁵⁵
- matters in the mental health and workplace protections jurisdictions;⁴⁵⁶
- the Capital Metro project;⁴⁵⁷
- claims by inmates of the Alexander Maconochie Centre who allege a failure to provide appropriate care;⁴⁵⁸ and

⁴⁵⁰ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 11 November 2015, pp.104-105.

⁴⁵¹ Mr Simon Corbell MLA, *Proof Transcript of Evidence*, 11 November 2015, p.105.

⁴⁵² See *Inquiry into Annual Reports 2014-2015: Responses to Questions Taken on Notice*, p.81, available at: http://www.parliament.act.gov.au/_data/assets/pdf_file/0004/802327/J-And-CS-Responses-to-QToNs.pdf

⁴⁵³ *Proof Transcript of Evidence*, 11 November 2015, pp.108-117.

⁴⁵⁴ *Proof Transcript of Evidence*, 11 November 2015, p.108, citing Justice and Community Safety Directorate, *Annual Report 2014-15*, p.55.

⁴⁵⁵ *Proof Transcript of Evidence*, 11 November 2015, pp.108-110, citing Justice and Community Safety Directorate, *Annual Report 2014-15*, p.55.

⁴⁵⁶ *Proof Transcript of Evidence*, 11 November 2015, pp.110-111, citing Justice and Community Safety Directorate, *Annual Report 2014-15*, p.58.

⁴⁵⁷ *Proof Transcript of Evidence*, 11 November 2015, pp.111-112.

- settlement of claims against ACT Health.⁴⁵⁹

ANSWERS TO QUESTIONS TAKEN ON NOTICE

11.43 On 23 & 27 November 2015 the Attorney-General provided the Committee with answers to Questions Taken on Notice regarding:

- costs of litigation undertaken by the Government Solicitor; and
- legal costs in relation to the *Marriage Equality (Same Sex) Act 2013* (repealed).⁴⁶⁰

⁴⁵⁸ *Proof Transcript of Evidence*, 11 November 2015, pp.113-114.

⁴⁵⁹ *Proof Transcript of Evidence*, 11 November 2015, pp.114-117.

⁴⁶⁰ See *Inquiry into Annual Reports 2014-2015: Responses to Questions Taken on Notice*, pp.83 & 109, available at: http://www.parliament.act.gov.au/_data/assets/pdf_file/0004/802327/J-And-CS-Responses-to-QToNs.pdf

12 CORRECTIVE SERVICES

INTRODUCTION

12.1 The Minister for Justice and his officers from Corrective Services appeared before the Committee in hearings of 13 November 2015.

12.2 Matters considered by the Committee included:

- modelling of future capacity requirements for the Alexander Maconochie Centre (AMC);⁴⁶¹
- evaluation of the Throughcare program;⁴⁶² and
- the safety of Aboriginal and Torres Strait Islander detainees in the AMC;⁴⁶³

12.3 These are considered below.

12.4 The Chair of the Sentencing Administration Board (SAB) also appeared in these hearings, and his testimony is considered following that of the Minister and his other officers.

MODELLING OF FUTURE CAPACITY REQUIREMENTS FOR THE AMC

12.5 The Committee asked the Minister a question regarding modelling of future capacity requirements for the Alexander Maconochie Centre (AMC), and current arrangements to meet demand to accommodate adult detainees in the criminal justice system.⁴⁶⁴

12.6 In response, the Minister told the Committee that:

The estimates that the government used were from Mr John Walker, who is a recognised criminologist and certainly one of the experts in this area. He has given us a range of scenarios, going forward into the future. He has run a series of forecasts based on high, medium and low population growth. That is the basis on which the government took the decision that we did to expand the size. It was also a qualitative decision around a particular type of facility. So the special care unit is an important part

⁴⁶¹ *Proof Transcript of Evidence*, 13 November 2015, pp.127-130.

⁴⁶² *Proof Transcript of Evidence*, 13 November 2015, pp.130-132

⁴⁶³ *Proof Transcript of Evidence*, 13 November 2015, pp.136-138.

⁴⁶⁴ *Proof Transcript of Evidence*, 13 November 2015, pp.127-130.

of not just having greater capacity but having more flexible capacity, so that we can manage detainees in a different way.⁴⁶⁵

12.7 The Minister went on to say that

As I have explained to this committee before, one of our issues here in the ACT is that a lot of people know each other, so we do need improved rates of separation when we have detainees who are quite vulnerable in a range of ways. So having the capacity to treat them and their vulnerabilities or the behavioural issues that have led to their offending is an important part of the design of the additional facilities.⁴⁶⁶

12.8 The Committee asked the Minister for further information on what steps were being taken to respond to the problem of overcrowding at the AMC.⁴⁶⁷

12.9 In response, the Minister told the Committee that:

As members will know, we have opened the Symonston correctional facility to full-time detainees. We have a maximum of 30 detainees there. That has been operating very smoothly. Both the official visitor and the human rights commissioner have had full access to that facility to ensure that there are no concerns. The feedback so far has been that the facility is operating well; people have access to a full range of services there. In addition we have now opened the special care unit, with currently a 30-bed capacity. That has provided some short-term relief until the full expansion of facilities is completed next year.⁴⁶⁸

12.10 Asked about the capacity of the Symonston (that is, Periodic Detention) facility, the Minister told the Committee that:

At the moment we are using at its capacity full time for up to 30 detainees. We are still operating periodic detention on the weekends as well. Overall it can accept 104 people. We do not intend to use it for more capacity for full time detainees at this point.⁴⁶⁹

12.11 The Committee then asked about present numbers of sentenced prisoners and prisoners on remand in detention.⁴⁷⁰

⁴⁶⁵ Mr Shane Rattenbury MLA, *Proof Transcript of Evidence*, 13 November 2015, p.127.

⁴⁶⁶ Mr Shane Rattenbury MLA, *Proof Transcript of Evidence*, 13 November 2015, pp.127-128.

⁴⁶⁷ *Proof Transcript of Evidence*, 13 November 2015, p.128.

⁴⁶⁸ Mr Shane Rattenbury MLA, *Proof Transcript of Evidence*, 13 November 2015, p.128.

⁴⁶⁹ Mr Shane Rattenbury MLA, *Proof Transcript of Evidence*, 13 November 2015, p.128.

⁴⁷⁰ *Proof Transcript of Evidence*, 13 November 2015, p.128.

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

The sentenced numbers today are 281, and the remand numbers are 125. We have been operating at about a one-third or two-third capacity for some time. We have not changed for a little while.

In terms of where they are located, as you would be aware, one of the issues for the AMC is separation. We are currently sitting at just under 50 per cent of detainees who require some kind of separation due to a vulnerability related to their behaviours or their offence type or mental health. We have a remand section and a sentenced section but there are remand and sentenced mixed up in those areas where we need to keep, for example, the paedophiles or child sex offenders together, all those on strict protection. They are not totally separated.⁴⁷¹

12.13 When asked if new building works currently underway at the AMC would increase capacity to separate sentenced and remand prisoners, the Minister told the Committee that:

I best describe the new accommodation areas as being an X design. It means that the Corrective Services staff are essentially in the middle of the hub and there is a range of wings. This means that there is more scope for separation. The cell blocks which we have at the moment are single, long design in a sense.⁴⁷²

12.14 He went on to say this was:

a deliberate design feature based on the learning of the first five years of the operation of the AMC. We need those greater rates of separation. The special care unit already is in that format. The intent is to have greater flexibility in future to separate groups of detainees. As Mrs Mitcherson said, it is not just remand and sentence that is the key consideration. It is about putting like prisoners together. That is both an important security consideration and also for the safety of the detainees.⁴⁷³

12.15 The Committee asked a further question about the interaction of capacity with an increased focus on community service orders as a sentencing option.⁴⁷⁴

12.16 In response, the Executive Director, ACT Corrective Services, told the Committee that, with regard to projections of demand:

Certainly when we designed the accommodation we were very cognisant of the report that John Walker had done for us, which, as you know, takes into consideration historical figures, census data and local ACT census data as well as looking at some of

⁴⁷¹ Mrs Bernadette Mitcherson, *Proof Transcript of Evidence*, 13 November 2015, p.128.

⁴⁷² Mr Shane Rattenbury MLA, *Proof Transcript of Evidence*, 13 November 2015, p.128.

⁴⁷³ Mr Shane Rattenbury MLA, *Proof Transcript of Evidence*, 13 November 2015, p.129.

⁴⁷⁴ *Proof Transcript of Evidence*, 13 November 2015, p.129.

the drivers and some of the areas. There is a formula that we use, and we are going to redo that formula every four years, with a tabletop update in between. So we did consider that.⁴⁷⁵

12.17 With regard to the role of alternative sentencing options, she told the Committee that Corrective Services had:

also considered the potential new non-custodial community work that would target those with sentences of around two years or less: to have a community sentence with intensive supervision as opposed to going into custody. That was certainly part of the suite. The idea is to not keep filling up the jails, which, apart from being expensive, is not always the best option for rehabilitation, particularly for short sentences.⁴⁷⁶

12.18 However, she told the Committee, there were 'some drivers beyond our control', in terms of variations in rates of offending for particular types of offence:

We have had a spike in serious homicides this year in the ACT and some quite horrendous domestic violence situations. Those sorts of incidents, in any jurisdiction, and there has been some national coverage in other areas, tend to give you a spike in numbers. We think the spike at the moment is in relation to domestic violence, the peak in homicides is here and there are some sexual assaults. We are doing a bit of work on that now.⁴⁷⁷

12.19 In light of this, she told the Committee, there remained a persistent challenge in that predictions were 'not an exact science':

You can do all the things that the statisticians tell us we should do and then see events like the terrible murder of Jill Meagher 18 months ago in Victoria. Those sorts of incidents really see a spike across the country in terms of people not getting parole, people not getting released, people getting longer sentences and community outcry.⁴⁷⁸

⁴⁷⁵ Mrs Bernadette Mitcherson, *Proof Transcript of Evidence*, 13 November 2015, p.129.

⁴⁷⁶ Mrs Bernadette Mitcherson, *Proof Transcript of Evidence*, 13 November 2015, p.129.

⁴⁷⁷ Mrs Bernadette Mitcherson, *Proof Transcript of Evidence*, 13 November 2015, p.129.

⁴⁷⁸ Mrs Bernadette Mitcherson, *Proof Transcript of Evidence*, 13 November 2015, p.130.

EVALUATION OF THE EXTENDED THROUGH-CARE PROGRAM

12.20 The Committee noted that Corrective Services had engaged a consultant to conduct an evaluation of the Extended Throughcare Pilot Program and asked questions regarding the evaluation, including what would be the first year of baseline data recorded.⁴⁷⁹

12.21 In response, the Executive Director told the Committee that :

The Social Policy Research Centre of New South Wales university won our tender to do the evaluation. Because it was a new program when we first started taking clients in June 2013, we wanted not to set ourselves targets, because I did not want staff to be driven by targets; I wanted them to actually think about and be able to have a program that was responsive to what the emerging needs were.⁴⁸⁰

12.22 Rather, she told the Committee:

We set some basic principles for ourselves in terms of through care when it started, and you will be aware of some of these. First, it was a voluntary program. Also, it would be available to clients who did not have an ongoing order with us--in other words, did not have a good behaviour order or a parole order after finishing their custodial service. Also, it would be very person-centric, so the person would be involved, and their family, whatever guise that family might take for them, and they would be engaged before release. The other thing that we felt was really important was that everyone who left the AMC on a through care program is picked up; no-one is just left at the door with their bag and told, "See you later." It is really important that people get picked up.

They were our principles.⁴⁸¹

12.23 The Executive Director went on to say that:

Apart from the four main packages that we developed, which were health, accommodation, connections and one other one--we developed four that we thought were pretty important. Within the first three to six months, we realised—even those of us like myself who have been in the business for a long time realised—that most of our clients were pretty unable to cope with the basic infrastructure of life. So we developed another package, which is just called basics. And it really is basics. It was not good enough to find someone housing. There is no point in getting someone released from custody and putting them in a bedsit if they have no furniture, no light bulbs and

⁴⁷⁹ *Proof Transcript of Evidence*, 13 November 2015, pp.130-132, citing Justice and Community Safety Directorate, *Annual Report 2014-15*, p.86.

⁴⁸⁰ Mrs Bernadette Mitcherson, *Proof Transcript of Evidence*, 13 November 2015, p.130.

⁴⁸¹ Mrs Bernadette Mitcherson, *Proof Transcript of Evidence*, 13 November 2015, p.130.

no food, and they are just going to sit there. What are they going to do? We actually had to get the whole package together— somewhere to live, housing, toiletries, some basic clothes and very basic things. And St Vincent de Paul won a tender with us in relation to providing intensive services.⁴⁸²

12.24 In relation to baseline data, the Executive Director told the Committee that:

At the end of June this year we will have two years worth of data, so we will be able to do some good comparable data with the same methodology that is used in relation to ROGS [the Productivity Commissions' *Report on Government Services*⁴⁸³]. The terms of reference for the Social Policy Research Centre include a number of things, but they also include—which I think is very important for the community—a cost-benefit analysis. For example, we know that some of our clients are doing much better. If we know that someone is staying out of custody for six months instead of six weeks, which is normal for them, we want to be able to cost what that means in terms of fewer victims, less court time, less work for legal aid and so on. Even though we will be looking at who is staying out and why they are staying out, what we are doing well and what we need to improve, we will also cost the program to see whether we are providing a service that is beneficial to the ACT community. That is an important feature of it as well.⁴⁸⁴

12.25 She told the Committee informal indications on the program thus far were positive:

We are quietly optimistic. I think that 100 per cent of Aboriginal and Torres Strait Islander men and women who are eligible for the program have joined up. All women who are eligible have signed up. I think it is about two or three per cent of non-Indigenous men who have not.⁴⁸⁵

12.26 She went on to say that:

The other thing that is encouraging for me as executive director is that a third of the clients of through care have no reason to be involved with corrections, yet they are willing to sign up and keep working with us. To me that says great things about the relationships our staff have with the clients—that they are willing to sign up and be engaged, even though they are not on parole or on a good behaviour order.⁴⁸⁶

⁴⁸² Mrs Bernadette Mitcherson, *Proof Transcript of Evidence*, 13 November 2015, pp.130-131.

⁴⁸³ See for example Australian Government Productivity Commission, *Report on Government Services*, available at: <http://www.pc.gov.au/research/ongoing/report-on-government-services>

⁴⁸⁴ Mrs Bernadette Mitcherson, *Proof Transcript of Evidence*, 13 November 2015, p.131.

⁴⁸⁵ Mrs Bernadette Mitcherson, *Proof Transcript of Evidence*, 13 November 2015, p.131.

⁴⁸⁶ Mrs Bernadette Mitcherson, *Proof Transcript of Evidence*, 13 November 2015, pp.131-132.

12.27 This, she told the Committee, was 'very encouraging'.⁴⁸⁷

THE SAFETY OF ABORIGINAL AND TORRES STRAIT ISLANDER DETAINEES

12.28 The Committee asked questions about the safety of Aboriginal and Torres Strait Islander detainees in the AMC. In particular it asked questions about a specific incident in which an Aboriginal man was seriously assaulted soon after arrival at the AMC. The Committee asked for information on progress on investigations on the assault, security measures with regard to such assaults, and the prevalence of assaults on Aboriginal and Torres Strait Islander detainees.⁴⁸⁸

12.29 In responding to questions about the investigation of the assault, the Minister told the Committee that:

As you know, the investigation is being conducted by the Australian Federal Police. So in that sense it is out of the hands of Corrective Services. Corrective Services is obviously fully cooperating with the Federal Police. You may have seen, about three weeks ago, that the Federal Police released an update and sought specific information from the community. I am aware of the concerns amongst some service providers and individuals in the Indigenous community about this matter. I think their concern is that there is a racial overtone to this attack. I am very cognisant of that because we know from things like the royal commission into deaths in custody and the like that there is a strong sense that we need to ensure that Indigenous people are particularly cared for in our custodial environment. I think all of these other measures go to that. You will appreciate that I am not able to say too much more on the individual case until the AFP finish their investigation, but I am hopeful that will be soon.⁴⁸⁹

12.30 The Committee asked what was being done to protect Aboriginal and Torres Strait Islander prisoners from harms of this kind.⁴⁹⁰

12.31 In response the Minister told the Committee that:

Our rate of Indigenous population in the jail continues to be 19 to 20 per cent. It ebbs and flows a little. It is obviously incredibly disproportionate to the percentage of their population in the regular community, at 2½ per cent.⁴⁹¹

⁴⁸⁷ Mrs Bernadette Mitcherson, *Proof Transcript of Evidence*, 13 November 2015, pp.131-132.

⁴⁸⁸ *Proof Transcript of Evidence*, 13 November 2015, pp.136-138.

⁴⁸⁹ Mr Shane Rattenbury MLA, *Proof Transcript of Evidence*, 13 November 2015, p.136.

⁴⁹⁰ *Proof Transcript of Evidence*, 13 November 2015, p.136.

12.32 In relation to the specific prisoner indicated by the Committee, the Minister told the Committee that ‘after that incident, a series of measures were put in place to ensure his personal safety’.⁴⁹²

12.33 The Minister went on to say that:

individual detainee safety is very important. It is one of the reasons that mixing remanded and sentenced offenders together can sometimes be okay. Sometimes we will put Indigenous people together in a cell, to improve their sense of safety, perhaps cultural connectedness and those sorts of things. It is one of the reasons why we do not always follow that black and white rule of not having sentenced and remanded together, for those kinds of reasons.⁴⁹³

12.34 When asked whether the prisoner was in such an area at the time of the assault, the General Manager, Custodial Operations, Alexander Maconochie Centre, responded. He told the Committee that:

He certainly was ... and with the individual case certainly we consider the best placement of all our detainees, whether they be Aboriginal or non-Aboriginal, and we consider safety as a prominent part of that. But certainly we rely on detainees often for that information, and there are other sources that we have available to try to inform us as best we can. In answer to your question, yes, he was with other detainees who were sentenced and other detainees who were remanded.⁴⁹⁴

12.35 When asked whether it was a cause for alarm that video footage from security cameras was apparently not available in connection with the assault, the General Manager told the Committee that there were ‘a couple of things with security cameras’⁴⁹⁵ which needed to be taken into account:

In the first instance, we had some 340 cameras; they all are there for monitoring purposes and they transmit live feed to our master control room, where there is one officer who manages that post. Cameras had not been put in place to be permanently monitored. We had, obviously, recording capability as well.⁴⁹⁶

⁴⁹¹ Mr Shane Rattenbury MLA, *Proof Transcript of Evidence*, 13 November 2015, p.136.

⁴⁹² Mr Shane Rattenbury MLA, *Proof Transcript of Evidence*, 13 November 2015, p.136.

⁴⁹³ Mr Shane Rattenbury MLA, *Proof Transcript of Evidence*, 13 November 2015, p.136.

⁴⁹⁴ Mr Don Taylor, *Proof Transcript of Evidence*, 13 November 2015, p.137.

⁴⁹⁵ Mr Don Taylor, *Proof Transcript of Evidence*, 13 November 2015, p.137.

⁴⁹⁶ Mr Don Taylor, *Proof Transcript of Evidence*, 13 November 2015, p.137.

12.36 Having said this, however, he told the Committee that:

As far as the prevention measure goes, there certainly is the capability for prevention, and we get that at times, because we understand, by looking through our footage, what is going on. In this case—again, following on from the minister’s comments, I do not want to say too much because it is still under investigation—there certainly has been footage of the area, which has been handed over to the AFP and has helped them in their investigations.⁴⁹⁷

12.37 At this point the Committee asked further questions about rates of assaults, seeking to gauge whether there were a disproportionate of assaults in relation to the prevalence of Indigenous detainees at the AMC, and the Minister took the question as a Question Taken on Notice.⁴⁹⁸

SENTENCE ADMINISTRATION BOARD

12.38 The Chair of the Sentence Administration Board (SAB) appeared in hearings of 13 November 2015.⁴⁹⁹

12.39 Matters considered by the Committee included:

- variations in numbers of matters considered by the SAB related to the management or breach of periodic detention orders;⁵⁰⁰
- the effect of increases in the detainee population at the AMC on the work of the SAB;⁵⁰¹
- the anticipated effect of an expanded community corrections scheme on the work of the SAB;⁵⁰²
- trends and dynamics in numbers of victims of crime registering with, and making submissions to, the SAB;⁵⁰³ and
- contributing causes of upward pressure on numbers of detainees in the ACT criminal justice system.⁵⁰⁴

⁴⁹⁷ Mr Don Taylor, *Proof Transcript of Evidence*, 13 November 2015, p.137.

⁴⁹⁸ *Proof Transcript of Evidence*, 13 November 2015, pp.137-138.

⁴⁹⁹ *Proof Transcript of Evidence*, 13 November 2015, p.149 ff.

⁵⁰⁰ *Proof Transcript of Evidence*, 13 November 2015, p.149.

⁵⁰¹ *Proof Transcript of Evidence*, 13 November 2015, pp.149-150.

⁵⁰² *Proof Transcript of Evidence*, 13 November 2015, p. 150.

⁵⁰³ *Proof Transcript of Evidence*, 13 November 2015, p. 151.

⁵⁰⁴ *Proof Transcript of Evidence*, 13 November 2015, pp. 151-152.

ANSWERS TO QUESTIONS TAKEN ON NOTICE

12.40 On 20 & 24 November 2015 the Minister for Justice provided the Committee with answers to Questions Taken on Notice regarding:

- prison occupations;
- staff numbers in community corrections;
- a trial of mobile phone jamming technology in prisons;
- the cost per detainee of community corrections compared with other jurisdictions.⁵⁰⁵

⁵⁰⁵ See *Inquiry into Annual Reports 2014-2015: Responses to Questions Taken on Notice*, pp.70, 74, 75 & 87, available at: http://www.parliament.act.gov.au/_data/assets/pdf_file/0004/802327/J-And-CS-Responses-to-QToNs.pdf

13 COMMITTEE COMMENT

13.1 This chapter presents the Committee's views and recommendations made in relation to evidence provided to it in the course of the inquiry.

STATUTORY OFFICERS AND AGENCIES

13.2 The Committee notes and values the high quality of evidence, and high degree of independence, of statutory officers and agencies appearing before the Committee in hearings. In the Committee's view, both of these enhance the ability of the Committee to perform due diligence in scrutinising the work of both these officers and agencies, and of government overall.

13.3 With this in mind the Committee has reflected on aspects of the independence of these officers and agencies, including proposals for a change in arrangements for rights-based Statutory Office- holders associated with the Justice and Community Safety Directorate. Since the Committee's hearings for this report the Attorney-General has presented in the Assembly (on 19 November 2015) the Protection of Rights (Services) Legislation Amendment Bill 2015,⁵⁰⁶ which if passed would provide among other things for:

- the creation of a new position of President of the Human Rights Commission;⁵⁰⁷
- the incorporation of the Public Advocate, 'performing advocacy functions only', and the Victims of Crime Commissioner into the Human Rights Commission;⁵⁰⁸ and
- the creation of a new position of Public Trustee and Guardian, 'who will be a public servant', and an office of the Public Trustee and Guardian, separate from the Human Rights Commission.⁵⁰⁹

13.4 The Committee regards these and the other changes proposed as important developments in the rights framework in the ACT. In light of this, the Committee looks forward to debates in the Legislative Assembly on the Bill.

⁵⁰⁶ Protection of Rights (Services) Legislation Amendment Bill 2015, available from ACT Legislation Register at: http://www.legislation.act.gov.au/b/db_53095/current/pdf/db_53095.pdf

⁵⁰⁷ Explanatory Statement, Protection of Rights (Services) Legislation Amendment Bill 2015, p.2, available at: http://www.legislation.act.gov.au/es/db_53085/current/pdf/db_53085.pdf

⁵⁰⁸ Explanatory Statement, Protection of Rights (Services) Legislation Amendment Bill 2015, p.2.

⁵⁰⁹ Mr Simon Corbell MLA, *Uncorrected Proof Transcript of Evidence*, Legislative Assembly for the ACT, 19 November 2015, p.13.

EFFICIENCIES IN TIMES OF FINANCIAL CONSTRAINT

- 13.5 In relation to the work of the Director of Public Prosecutions, the Human Rights Commission, Legal Aid Commission and Victim Support ACT the Committee was pleased to hear that these agencies were finding ways to provide, foster—and in some cases even expand—services in times of financial constraint. These agencies showed a constructive and forward-looking approach to the dual challenges of increasing demand and constrained resources, and also displayed a constructive stance on potentials for collaborative work made possible, perhaps, by the administrative amalgamation proposed for rights agencies.
- 13.6 In addition, the Committee was pleased to be told that these agencies were focusing on, and facilitating, a more coordinated and active approach to domestic violence, an area which has attracted considerable concern and attention in recent times.

ELECTORAL COMMISSION

- 13.7 In hearings with the Electoral Commission, the Committee considered that statutory arrangements, engaged when polling day for Federal elections is scheduled close to polling day for ACT elections, were unduly inflexible.⁵¹⁰
- 13.8 The Committee was concerned that these arrangements placed an unnecessary impost on ACT voters and potentially discouraged electors from exercising their right to vote.
- 13.9 In light of this the Committee makes the following recommendation.

Recommendation 1

- 13.10 The Committee recommends, in preparation for the possibility that the next Federal election is scheduled for a day on or near voting day for the ACT election, that the ACT Government consider introducing legislative amendments in the Legislative Assembly which, if passed, would make it possible for the ACT election to be held on a date earlier than the first of December.**

⁵¹⁰ See *Proof Transcript of Evidence*, 11 November 2015, pp.119-120. The relevant provision is s 100 (2) of the *Electoral Act 1992* (ACT), available at: <http://www.legislation.act.gov.au/a/1992-71/current/pdf/1992-71.pdf>

HUMAN RIGHTS COMMISSION

13.11 The Committee notes matters raised in hearings in connection with discrimination on grounds of pregnancy and breastfeeding.⁵¹¹

13.12 The Committee was pleased to hear about measures taken by the Commission to disseminate information about discrimination on grounds of pregnancy and breastfeeding.

13.13 However the Committee is also concerned at findings by the Australian Human Rights Commission about the prevalence of discrimination on these grounds. A 2014 report by the Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review*, stated that:

the National Prevalence Survey conducted as part of this Review – the first of its kind in Australia – has revealed that one in two (49%) mothers reported experiencing discrimination in the workplace at some point during pregnancy, parental leave or on return to work. What’s more, it also revealed that over a quarter (27%) of the fathers and partners surveyed reported experiencing discrimination in the workplace related to parental leave and return to work as well.⁵¹²

13.14 In light of these findings, the Committee takes the view that if we are to make progress on changing societal attitudes in this area, there needs to be a concerted campaign, with resources to match.

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

Recommendation 2

13.16 The Committee recommends that the ACT Government ensure sufficient resourcing to the ACT Human Rights Commission to disseminate, effectively, information about rights in connection with pregnancy and work, and return to work, and that the results of these efforts be tested and measured to ensure that there are improvements in ACT workplaces in these areas.

⁵¹¹ *Proof Transcript of Evidence*, 6 November 2015, pp.14-15.

⁵¹² Australian Human Rights Commission, 2014, *Supporting Working Parents: Pregnancy and Return to Work National Review – Report*, p.1, available at: https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_Annual%20Report%202014%E2%80%9C15_Web%20version.pdf

PUBLIC TRUSTEE

- 13.17 The Committee notes that during questioning the Public Trustee was not able to tell the Committee what proportion of its clientele were Indigenous or non-Indigenous.⁵¹³
- 13.18 The Committee takes the view that this is an important metric which, if measured, would allow the Public Trustee to gauge, more accurately, the effectiveness of outreach and services to the Indigenous community in the ACT.
- 13.19 In light of this the Committee makes the following recommendation.

Recommendation 3

- 13.20 The Committee recommends that the Public Trustee gather information on the Indigenous status of clients, as a routine part of its interactions with clients, subject to their agreement, and that this information be published in the Public Trustee's annual report.**
- 13.21 The Committee notes questions it asked in hearings Committee regarding increased workloads on guardianship staff due to the advent of new arrangements under the ACT's *Mental Health Act 2015*.⁵¹⁴ The Committee also notes responses which indicated that 'oversight and compliance' had been 'been notoriously under-resourced in the past'.⁵¹⁵
- 13.22 While it notes advice to the effect that 'additional injection of funding by Health in relation to the *Mental Health (Treatment and Care) Act*' had 'created some relief', the Committee takes the view that continued and adequate support for these functions under the *Mental Health Act 2015* is vital.⁵¹⁶
- 13.23 In light of this the Committee makes the following recommendation.

Recommendation 4

- 13.24 The Committee recommends that the ACT Government assess the expected work load for compliance under the *Mental Health Act 2015* after the Act comes into force on 1 March 2016, and ensure that there are adequate resources for effective compliance testing.**

⁵¹³ *Proof Transcript of Evidence*, 6 November 2015, p.35.

⁵¹⁴ *Proof Transcript of Evidence*, 6 November 2015, pp.23-24.

⁵¹⁵ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.24.

⁵¹⁶ Mr Andrew Taylor, *Proof Transcript of Evidence*, 6 November 2015, p.24.

VICTIM SUPPORT ACT

- 13.25 The Committee notes the testimony of the Victims of Crime Commissioner in hearings, regarding the experience of victims of domestic violence in the criminal justice system.⁵¹⁷
- 13.26 In particular the Committee notes and commends the description provided by the Commissioner of a system of better arrangements for victims of domestic violence.⁵¹⁸
- 13.27 In light of this, the Committee makes the following recommendation.

Recommendation 5

- 13.28 The Committee recommends that the ACT Government's response to Domestic Violence includes the measures described by the Victims of Crime Commissioner in the Committee's hearings of 6 November 2015.**

EMERGENCY SERVICES AGENCY

- 13.29 Testimony heard by the Committee suggests that the Emergency Services Agency is making efforts to improve on an organisational which has been subject to criticism in recent years.
- 13.30 In this report the Committee has considered the ESA's capacity to expand diversity in its workforce along dimensions of gender, ethnic and cultural diversity, and its capacity to improve workplace culture overall. It also asked whether the ESA had been able to convey, to its management, the practical imperative which underlies greater diversity in recruitment, and for a profile of bullying complaints in the agency.
- 13.31 In the Committee's view the answers to these questions provided support for an equivocal view of progress in these areas. Advice that there had been complaints of bullying from senior officers in relation to members of the agency's executive, and by members of the executive against other members of the executive, was not encouraging, despite assurances that the complaints had been investigated and not upheld.⁵¹⁹
- 13.32 The Committee notes the importance of the ESA in managing significant hazards to the ACT community. Bushfire is just one of these, on which the preparedness of the ESA is critical in

⁵¹⁷ *Proof Transcript of Evidence*, 6 November 2015, pp.30-31.

⁵¹⁸ Mr John Hinchey, *Proof Transcript of Evidence*, 6 November 2015, pp.30-31.

⁵¹⁹ *Proof Transcript of Evidence*, 6 November 2015, pp.55, 56.

relation to a risk that has, in fact, been borne out in acute bushfire events, most recently in 2003.

13.33 The Committee also notes that negative perceptions of organisations, and the presence of internal factors that could hinder them from fulfilling their remit, are likely to have a direct result on the ability of the ESA to meet community expectations about the protection they should provide.

13.34 In view of these important factors, the Committee takes the view that the introduction of programs and strategies is only one part of the picture when it comes to organisational and cultural change. It is also necessary for an organisation to face up to its difficulties and ensure that progress is delivered, and measured, in concrete terms. For this reason it is essential that the ESA employ, and report against, appropriate indicators which will provide an accurate picture of the state of the agency.

13.35 In connection with these matters the Committee notes a recent report of the Standing Committee on Public Accounts (PAC), the result of a PAC inquiry into a report by the ACT Auditor-General into *Bushfire Preparedness*. Careful reading of this report and the testimony considered in the present report suggests that discrepancies between first-hand accounts from outside of the agency and the views put forward by the ESA could raise doubts about the readiness of the ESA to meet complex threats.⁵²⁰

13.36 In light of the above, the Committee makes the following recommendation.

Recommendation 6

13.37 The Committee recommends that the ACT Government continue to develop and refine indicators and reporting on workplace culture in the Emergency Services Agency (ESA), with the intent of ensuring its strength, stability and readiness to meet complex threats, including by ensuring greater diversity in recruitment.

13.38 The Committee notes that when asked, the ESA told the Committee that it did not conduct audits of staff attitudes to diversity in the workplace, although it noted some such process conducted by its parent agency, the Justice and Community Safety Directorate, and that this discussion occurred within the context of a wider discussion about efforts to change workplace culture in the ESA.⁵²¹

⁵²⁰ See for example *Proof Transcript of Evidence*, 6 November 2015, p.44 compared with *Review Of Auditor- General's Report No. 5 of 2013: Bushfire Preparedness*, tabled 17 November 2015, pp.111-112, available at: http://www.parliament.act.gov.au/data/assets/pdf_file/0011/793829/8th-PAC-19-AG-5-of-2013-Bushfire.pdf

⁵²¹ *Proof Transcript of Evidence*, 6 November 2015, p.43.

13.39 In the Committee's view it is vital that detailed information on staff attitudes to diversity be collected so as to provide indicators against which to measure efforts toward cultural change.

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

Recommendation 7

13.41 The Committee recommends that the Emergency Services Agency (ESA) consider conducting staff audits of attitudes to diversity in the workplace.

13.42 The Committee notes discussion on signage for ESA facilities emerged as a matter for discussion in hearings, during which the Committee noted differences in the size of signage for different facilities. It was suggested that this could lead to low levels of public recognition of the facilities, and that larger and more consistent signage would protect against this possibility.⁵²²

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

Recommendation 8

13.44 The Committee recommends that the Emergency Services Agency (ESA) ensure that signage identifying facilities be consistent and of sufficient size to support ready recognition by the public of ESA facilities.

ACT POLICING

13.45 The Committee notes that in hearings with ACT Policing, considered above, it emerged that ACT Policing did not have a clear and defined recruitment strategy in order to improve upon the low numbers of Aboriginal and Torres Strait Islander people employed in the organisation, as reported in its *Annual Report 2014-15*.⁵²³

⁵²² *Proof Transcript of Evidence*, 6 November 2015, p.44.

⁵²³ *Proof Transcript of Evidence*, 6 November 2015, pp.66-68, citing ACT Policing, *Annual Report 2014-2015*, p.34.

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

Recommendation 9

13.47 The Committee recommends that ACT Policing consider adopting a defined recruitment strategy to increase the number of Aboriginal and Torres Strait Islanders employed by the agency.

WORKPLACE SAFETY AND INDUSTRIAL RELATIONS

13.48 The Committee was pleased to hear the testimony of the Minister for Workplace Safety and Industrial Relations, and his officers, regarding progress on improving workplace safety in the ACT. In particular, the Committee was pleased to hear of improvements in reported figures on workplace safety in the ACT construction industry, which had been the focus of significant concern in the lead-up, publication and implementation of the *Getting Home Safely* report.

13.49 The Committee was also pleased to hear about work on a new workers compensation scheme for ACT public sector workers in the wake of a decision by the ACT Government not to proceed, in the future, with participation in the Comcare scheme, and that savings were anticipated as a result of this change in arrangements.⁵²⁴

13.50 In relation to the ACT Long Service Leave Authority, the Committee notes that discussion in hearings established that while the Authority had achieved above its target for returns on investment in the reporting year, there was no benchmarking being done for return on investment using appropriate comparators, such as other statutory authorities.⁵²⁵

13.51 The Committee takes the view that it would be useful for returns on investment by the Authority to be benchmarked against appropriate comparators.

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

Recommendation 10

13.53 The Committee recommends that the ACT Long Service Leave Authority consults on the degree to which it would be appropriate for measures of the Authority's return on investment to be compared with those of similar agencies.

⁵²⁴ See Mr Mick Gentleman MLA, *Proof Transcript of Evidence*, 11 November 2015, p.75.

⁵²⁵ *Proof Transcript of Evidence*, 11 November 2015, p.90.

JUSTICE AND COMMUNITY SAFETY DIRECTORATE

- 13.54 The Committee notes that it expressed a consistent interest, throughout this year's inquiry into annual reports, in the situation of Aboriginal and Torres Strait Islander people. This interest was expressed in questions as to how many Aboriginal and Torres Strait Islander people were being employed in the different areas of the ACT Public Sector considered in this report, and in questions on the intersection between Aboriginal and Torres Strait Islander people with the criminal justice system.
- 13.55 In relation to the first item, it is apparent to the Committee that agencies were most often able to report as to the proportion of Aboriginal and Torres Strait Islander people in their employ. Agencies seemed less certain when asked more probing questions about how to engage prospective staff—and current management—in order to make more substantial progress toward achieving benefits from putting in place a diverse workforce.
- 13.56 It is the Committee's view that in many respects, the ability to quote raw figures on recruiting diversity is just the first step of cultural change in this regard. A more complete picture would see agencies going outside of their comfort zone so that there would be a clear difference between 'before and after' once organisational culture had been changed in a substantive sense.
- 13.57 In addition, the Committee notes that in questioning on whether audits were conducted on attitudes to diversity in the workplace in the ESA, it was suggested that 'cultural surveys' were conducted in the Justice and Community Safety Directorate as a whole.⁵²⁶ However, when the Committee asked the Director-General of the Justice and Community Safety Directorate whether audits of staff attitudes to diversity were conducted she replied in the negative, although she stated that this could be considered 'for future years'.⁵²⁷
- 13.58 The Committee takes the view that this kind of auditing is necessary so that measures to increase diversity in the workplace can be evaluated, and so that appropriate goals can be formulated.
- 13.59 In light of this the Committee makes the following recommendation.

⁵²⁶ Mr Dominic Lane, *Proof Transcript of Evidence*, 6 November 2015, p.43.

⁵²⁷ Ms Alison Playford, *Proof Transcript of Evidence*, 11 November 2015, p.98.

Recommendation 11

13.60 The Committee recommends that the Justice and Community Safety Directorate consult on, and develop, an auditing system for staff attitudes to diversity.

13.61 The Committee notes that it had emerged from discussion on the degree to which Aboriginal and Torres Strait Islander people were encouraged to join the workforce in the Justice and Community Safety Directorate that the Directorate had sought advice from the ACT Human Rights Commissioner and the Australian Human Rights Commissioner on measures to increase gender diversity in the workforce.⁵²⁸

13.62 The Committee takes the view that this advice is valuable in that it comes from sources which can bring a broader awareness, and expertise, in relation to measures for inclusion. In the Committee's view this advice is likely to contain a number of elements which could be adapted and applied to form the basis for a stronger and more comprehensive strategy for Indigenous recruitment as well.

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

Recommendation 12

13.64 The Committee recommends that the Justice and Community Safety Directorate develop a comprehensive strategy for Indigenous recruitment, building upon the advice it has sought from the ACT Human Rights Commissioner and the Australian Human Rights Commissioner.

CORRECTIVE SERVICES

13.65 The Committee has noted, above, a number of matters which touch upon Aboriginal and Torres Strait Islander people in the ACT.

13.66 For the justice system in this regard, while the picture is mixed with regard to some elements—such as the safety of Aboriginal and Torres Strait Islander detainees—there are also grounds for cautious optimism in the expansion of Restorative Justice, and the proposed expansion of community corrections. These appear likely to divert those Aboriginal and Torres Strait Islander people who are in contact with the criminal justice system away from prison-based detention, bringing the likelihood of significant benefits due to reduced exposure to the

⁵²⁸ Ms Alison Playford, *Proof Transcript of Evidence*, 11 November 2015, p.98.

prison environment and increased sentencing options available to address drivers of offending behaviour, such as alcohol and drug use.

13.67 The Committee notes that efforts on both of these fronts are consistent with the ACT *Aboriginal and Torres Strait Islander Agreement 2015-2018* and *Aboriginal and Torres Strait Islander Justice Agreement*⁵²⁹

13.68 The Committee notes that, in hearings, Corrective Services was not able to answer questions on the number of Aboriginal and Torres Strait Islander detainees assaulted at the Alexander Maconochie Centre (AMC).⁵³⁰ It was noted that such assaults had not been isolated events and that they had caused significant concern in the community.⁵³¹

13.69 The Committee noted that it wished to determine whether the risk of assault for Aboriginal and Torres Strait Islander detainees was similar or different to that for non-Indigenous detainees,⁵³² but such a comparison appeared not to be supported by current data gathering.

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

Recommendation 13

13.71 The Committee recommends that ACT Corrective Services consider collecting data on and undertake comparative reporting on the proportion of Aboriginal and Torres Strait Islander detainees and non-Indigenous detainees subject to assault at the Alexander Maconochie Centre (AMC).

Steve Dospot MLA

Chair

⁵²⁹ ACT *Aboriginal and Torres Strait Islander Agreement 2015-2018*, available at: <http://www.communityservices.act.gov.au/atsia/agreement-2015-18> and *Aboriginal and Torres Strait Islander Justice Agreement 2015-18*, available at: http://cdn.justice.act.gov.au/resources/uploads/JACS/PDF/ACT_JACS_ATSIEB_Justice_Agreement_15-18.pdf

⁵³⁰ *Proof Transcript of Evidence*, 13 November 2015, pp.137-138.

⁵³¹ *Proof Transcript of Evidence*, 13 November 2015, p.137.

⁵³² *Proof Transcript of Evidence*, 13 November 2015, p.137.

Appendix A — Witnesses and hearings

In order of appearance

6 November 2015:

Director of Public Prosecutions

- Mr Jon White, Director of Public Prosecutions

ACT Human Rights Commission

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

Public Advocate of the ACT

- Mr Andrew Taylor, Public Advocate
- Dr Helen Watchirs, Public Advocate

Victims of Crime Commission

- Mr John Hinchey, Victims of Crime Commission

Public Trustee for the ACT

- Mr Andrew Taylor, Public Trustee

Ms Joy Burch MLA, Minister for Education and Training, Minister for Police and Emergency Services, Minister for Disability, Minister for Racing and Gaming and Minister for the Arts

Justice and Community Safety Directorate

- Ms Alison Playford, Director-General
- Ms Lana Junakovic, Executive Director, People and Workplace Strategy
- Mr Dominic Lane, Commissioner, ACT Emergency Services Agency
- Mr Mark Brown, Chief Officer, ACT Fire & Rescue

- Mr Andrew Stark, Chief Officer, ACT Rural Fire Service

ACT Policing

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

11 November 2015:

Mr Mick Gentleman MLA, Minister for Planning, Minister for Roads and Parking, Minister for Workplace Safety and Industrial Relations, Minister for Children and Young People and Minister for Ageing

Chief Minister, Treasury and Economic Development Directorate

- Mr Michael Young, Executive Director, Workplace Safety and Industrial Relations
- Mr Mark McCabe, Executive Director, Construction and Workplace Protection, and ACT Work Safety Commissioner

ACT Long Service Leave Authority

- Savage, Ms Tracy, Chief Executive Officer and Registrar

Mr Simon Corbell MLA, Deputy Chief Minister, Attorney-General, Minister for Health, Minister for the Environment and Minister for Capital Metro

Justice and Community Safety Directorate

- Ms Alison Playford, Director-General
- Ms Amanda Lutz, Manager, Restorative Justice Unit

ACT Government Solicitor

- Mr Peter Garrisson, Solicitor-General for the Australian Capital Territory

ACT Electoral Commission

- Mr Phillip Green, Electoral Commissioner

13 November 2015:

Mr Shane Rattenbury MLA, Minister for Territory and Municipal Services, Minister for Justice, Minister for Sport and Recreation and Minister assisting the Chief Minister on Transport Reform

Justice and Community Safety Directorate

- Mrs Bernadette Mitcherson, Executive Director, ACT Corrective Services
- Mr Don, Taylor, General Manager, Custodial Operations, Alexander Maconochie Centre, ACT Corrective Services

Sentence Administration Board

- Mr Grahame Delaney, Chair

Legal Aid Commission

- Dr John Boersig, Chief Executive Officer

Appendix B — Answers to Questions Taken on Notice

No.	Responder	Regarding	Received
1	Director of Public Prosecutions	trends in the volume of sexual offence cases	12 November 2015
2	ACT Electoral Commission	the possible coincidence of the ACT and Federal elections in 2016	16 November 2015
3	Minister for Police and Emergency Services	the Emergency Services Agency Blueprint for Change	16 November 2015
4	Attorney-General	discrimination on grounds of pregnancy and breastfeeding	18 November 2015
5	Attorney-General	effect of the new Mental Health Act 2015 on the Public Advocate	18 November 2015
6	Attorney-General	emergency actions under the Children and Young People Act 2018	18 November 2015
7	Attorney-General	the role of the Indigenous guidance partner	18 November 2015
8	Minister for Police and Emergency Services	the Family Violence and Community Safety (FV&CS) team	19 November 2015
9	Minister for Workplace Safety and Industrial Relations	the budget for implementation of Getting Home Safely report recommendations	19 November 2015
10	Minister for Workplace Safety and Industrial Relations	responsibility for implementation of Getting Home Safely report recommendations	19 November 2015
11	Minister for Police and Emergency Services	anticipated number of days over 40 degrees in the 2015-16 bushfire season	20 November 2015
12	Minister for Police and Emergency Services	regarding a skip purchased for use of the ESA	20 November 2015
13	Minister for Justice	prison occupations	20 November 2015

No.	Responder	Regarding	Received
14	Minister for Justice	staff numbers in community corrections	20 November 2015
15	Minister for Justice	a trial of mobile phone jamming technology in prisons	20 November 2015
16	Attorney-General	costs of litigation undertaken by the Government Solicitor	23 November 2015
17	Attorney-General	offences committed by members of Outlaw Motorcycle Gangs	23 November 2015
18	Minister for Justice	the cost per detainee of community corrections compared with other jurisdictions	24 November 2015
19	Minister for Police and Emergency Services	ESA staff and Post Traumatic Stress Disorder (PTSD)	26 November 2015
20	Minister for Police and Emergency Services	the Bronto Skylift /Aerial Platform vehicle operated by ACT Fire & Rescue	26 November 2015
21	Attorney-General	Legal Aid ACT outreach services	27 November 2015
22	Attorney-General	trends in numbers of JACSD Indigenous employees	27 November 2015
23	Attorney-General	Legal Aid ACT and the proportion of work undertaken for victims and perpetrators	received 27 November 2015
24	Attorney-General	diversity within JASCD recruiters	27 November 2015
25	Attorney-General	legal costs in relation to the <i>Marriage Equality (Same Sex) Act 2013</i> (repealed)	27 November 2015
26	Minister for Police and Emergency Services	protecting the community	27 November 2015
27	Minister for Police and Emergency Services	numbers of ESA employees seeking help for stress-related disorders	2 December 2015
28	Minister for Justice	sittings of the Sentence Administration Board	2 December 2015