



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

**STANDING COMMITTEE ON JUSTICE
AND COMMUNITY SAFETY**

(Reference: [Inquiry into ACT Budget 2021-22](#))

Members:

**MR J HANSON (Chair)
DR M PATERSON (Deputy Chair)
MS J CLAY**

TRANSCRIPT OF EVIDENCE

CANBERRA

TUESDAY, 26 OCTOBER 2021

**Secretary to the committee:
Ms B McGill (Ph: 620 70524)**

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

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Amended 20 May 2013

The committee met at 9 am.

Appearances:

Office of the Director of Public Prosecutions

Drumgold, Mr Shane, Director of Public Prosecutions

THE CHAIR: Welcome to the fourth of six public hearings of the Standing Committee on Justice and Community Safety inquiry into the ACT budget 2021-22. This morning we will hear from the Director of Public Prosecutions, Legal Aid and the Solicitor-General. I remind you that we are being recorded, transcribed and broadcast. If you take a question on notice, Mr Drumgold, indicate that you acknowledge that.

Mr Drumgold, welcome. Let us confirm that you have seen the privilege statement and that you understand it.

Mr Drumgold: Yes. I agree to be bound by the privilege statement.

THE CHAIR: Mr Drumgold, can you give me a bit of an update on the implications that COVID has had on the operations of your office internally as well as on your ability to do effective prosecutions in the courts? I know that there have been issues with court hearings online and so on. How is it all going?

Mr Drumgold: It has been a challenge. It has been a challenge for every business. We were able to adapt fairly quickly. Going back, at the start of COVID in about May 2020, we implemented our business continuity plan. The challenge has been with evolving the operations of the office in accordance with the demands of COVID. Back in May—it seems like a million years ago—we did not know whether we were in this position for five years or 10 years. We did not know how long it would be for, so we implemented a business continuity plan that split our entire workforce into three. Workforce 1 would be in the office for two days; then workforce 2 would be in, with a view that if we did have COVID, we could retire that team and operate on the other two teams.

We came out of the BCP late in 2020. In the most recent shutdown, we have not implemented the BCP, but we created a situation where staff worked from home unless they had to come into the office. The main volume lists—the A1, the A2 and the B list—are all run via AV from this office. We have three locations with large Webex boards, and they have become virtual courtrooms where my prosecutors are appearing in A1, A2 and B lists. The impact on operation has not been significant. We have managed to shuffle things around through most of 2020. We do not have the backlogs that my colleagues in Victoria and New South Wales are experiencing.

DR PATERSON: My question is related to the sexual offences unit. Obviously, this year, with the Brittany Higgins case in March this year and the March4Justice, a lot of agencies have reported an increase in reporting of sexual assault. Have you noticed an increase in presentations to the courts on sexual assault matters since March this year?

Mr Drumgold: The short answer is no. I will just find the figures. We have actually

seen a reduction in the number of sexual assault trials coming through. Across the board, our matters finalised have increased by around 13 per cent. We predicted an increase of around three to four per cent in our business plan, but it has actually increased by 13 per cent. We have seen most sectors increase, with the exception of sex matters, which had 13 trials, down seven on the previous year. So the answer is, no, we are seeing a reduction in sex trials against an increase in reporting.

DR PATERSON: Do you have any theories as to why there has been a reduction?

Mr Drumgold: I am working with the police to try to find that out at the moment. I have had a number of meetings with the Chief Police Officer and with various members of SACAT. We are looking at that at the moment. It is a concern.

THE CHAIR: We have heard from the AFPA—and, I think, from police themselves—that there are some matters they are not pursuing because of COVID and police being put onto other matters—house checks and so on. Are there offences other than sexual assault that are down in terms of prosecution?

Mr Drumgold: No. We are seeing an increase in all sectors with the exception of sex matters.

THE CHAIR: Okay.

Mr Drumgold: Including domestic violence.

THE CHAIR: Once you have a response from the police, if you do identify why that is, the committee would probably be quite interested in that. You may not have that response in time for questions on notice, but if you do, could you let us know?

Mr Drumgold: Yes, I am happy to. There has been some work going on since July this year. A sexual assault prevention and response steering committee is also looking at this. I have a very senior prosecutor that sits on that. The AFP have a senior investigator that sits on that. From that, we are looking at the figures. As I said, I have had a number of meetings with the Chief Police Officer and with various senior members of SACAT, and we are working through a plan to try and work out the cause of that. I propose being very public when that happens.

MS CLAY: You have half-answered this already: you are obviously reporting and channelling sex matters separately from domestic violence.

Mr Drumgold: Yes.

MS CLAY: Can you tell us a bit about what is going on with domestic violence and the prosecutions?

Mr Drumgold: My figures for domestic violence grew. In this reporting period, the reporting period just closed, there were 669. That is a growth from 599 in the previous reporting period. So it has increased by some 70 matters, which is a significant proportion. It is greater than 10 per cent. So we are seeing growth in that.

We are seeing growth in trials. There were 50 trials in the last reporting period, which is up by 11 from the previous reporting period. As I said, we have seen finalised matters grow by more than 700, which is a growth of 13 per cent, which is well ahead of our projected growth of three to four per cent. But, as I said, there is a clear dip in sex offences, with 13 in the reporting period, down by seven from the previous reporting period. So we have broken apart or disaggregated the figures from domestic violence to sex. Of course, there is some crossover, but we report against clear KPI reporting criteria, and we have been able to identify that there is a dip in sex prosecutions.

MS CLAY: I am interested in how you apportion funding to different areas. In particular I am interested in the breakdown and whether you have funds available for civil matters as well as criminal matters.

Mr Drumgold: We do not do any civil matters. The only thing close to civil matters that we do involves proceeds of crime, the confiscation of criminal assets, and unexplained wealth. That unit has been solidified, and that unit is achieving outstanding results: 51 COCA matters in the last reporting period, with an estimated accumulated value of seizures to be in excess of \$15 million. So that unit is working extremely well. Outside that, we do not do civil matters.

MS CLAY: It is curious that proceeds of crime is doing so well. I am pleased to hear that, because we keep hearing from the AFP and AFPA that they do not have the resources that they would like to prosecute serious crimes. That is actually an interesting piece of that puzzle. Do you have a mud map of funding apportioned to different fields in the criminal streams?

Mr Drumgold: It is quite fluid. When we say “apportion”, we have our workforce—for example, in our domestic violence team—and the number of prosecutors will change depending on demand. If we have a dip in sex prosecutions, some of the prosecutors there may pick up some domestic violence prosecutions, for example. It is really hard to allocate, in a dollars and cents way, to each team, because the teams are fluid. For example, our supervising prosecutors are grade 4. They may do trials outside their area of control. Our domestic violence supervising prosecutor may pick up, when demand is there, some mainstream prosecutions. Likewise, our crown chambers will almost invariably do domestic violence prosecutions and sex prosecutions. It is really hard to disaggregate, in a dollars and cents way, because we move the resources fluidly where they are needed.

MS CLAY: Do you feel that you have adequate controls and adequate oversight to be able to put the resources where you think they really should be, or do you feel that you are operating in a reactive way?

Mr Drumgold: Proactive in the sense that we distribute resources where they are most needed; and sitting above that we have crown chambers. Crown chambers do all types of matters, but because they are so serious they do a lot of sex matters. They do a lot of domestic violence matters. Given that many domestic violence matters are murders, they all land in crown chambers. So we are not reactive, but we allocate resources where they are demanded. The problem is that, in a dollars and cents way, it is difficult or probably impossible to allocate a particular number of dollars and cents

to domestic violence matters, because they range in severity.

MR CAIN: Good morning, Mr Drumgold. In terms of your work and what you devote your resources to, obviously, the activity in the courts et cetera is a big driver. What else affects how you allocate your resources? For example, in what way do you implement government priorities and policy projections?

Mr Drumgold: We do not. We do not engage with government policy; it is beyond the ambit of this office. I do have a small team that contributes to law reform, but it is not from a policy perspective; it is from a workability perspective. So we might get a draft of a piece of legislation, and we might say: “This is interpretively difficult.” “This will create some difficulties.” “We need some clarification on these points.” But as for government policy, we are engaged in projects. As I outlined, I have a prosecutor that sits on the Sexual Assault Prevention and Response Steering Committee. That is a resource cost, but in our view it delivers outcomes consistent with our outcomes. But the most accurate answer to the question is that we do not really engage at the policy level with government.

MR CAIN: For your law reform unit—whatever it is called—what are the major agenda items at the moment?

Mr Drumgold: If we get a decision that we do not think is in keeping with good order, we have a number of decisions to make. First of all, the question is: do we take it up on a reference appeal and let the Court of Appeal deal with it? The second option is: do we then write to the attorney and say there is a lacuna or a difficult in the law that may need some attention? If that results in law reform, we then engage with that law reform at the cabinet submission level, and again in the drafting.

We look at a legal issue, we work out the best way to ventilate that, and then we ventilate that. If it is a reference appeal, it goes off to my prosecutors to file an appeal and run that appeal in the Court of Appeal. If it is corrected through law reform, we review that process or the outcomes of that process.

THE CHAIR: Mr Drumgold, a few years ago your predecessor raised significant concerns about resourcing of the office and said, basically, they just did not have enough people sometimes to get to court for matters. Part of the solution for that was additional staff—in particular, as I recall, three senior prosecutors.

Mr Drumgold: Correct.

THE CHAIR: Can you give me a bit of an update on how that is progressing—whether those three, and any other resources you have been provided with, have meant that you can fulfil all of your obligations or whether there is still a gap there?

Mr Drumgold: Yes. The short answer is that that built crown chambers. I think I gave evidence about that at the last estimates hearing. We now have solid data as to the impact that crown chambers are having on the operations of the office. The only way to describe it is extremely positive. I have a business plan, and in that business plan I project certain results. One of those results is the percentage of matters committed that result in a verdict of not guilty. Our business plan of 2021 to 2025

anticipated that that would be around 30 to 40 per cent. The reality is that, in the last reporting period, that was only 12 per cent. So we are getting much better results than we had anticipated. I have tracked that back to two reasons, one of which is crown chambers. Crown chambers and comparative salaries mean that I have been able to retain crown prosecutors who would have otherwise moved on to other options.

First of all, the experience level in crown chambers is much higher than we have ever had. Secondly, we have created an environment where they are better equipped to prepare. They get the trials earlier. The third element is that we have introduced an appeals unit. The appeals unit engages with briefs earlier and prepares them and works with the police to overcome any evidentiary gaps. More quality coming from committal, and more time and experience dealing with them mean that there are fewer not guilty verdicts that should have otherwise been guilty verdicts.

THE CHAIR: I am glad it is going well.

DR PATERSON: My question is in regard to the annual report. It says that last year there were 186 illicit drug offences in the Magistrates Court. I was interested to understand your views. If drugs were decriminalised in the ACT, do you believe there would be a reduction in those presentations, in those matters being brought to the court?

Mr Drumgold: I do not think the bill is proposing that drugs will be decriminalised. I think the proposal is that lower-end drug offences are dealt with either via fine or without a fine. But I do not understand that the type of matters that go to trial—matters like drug trafficking—is part of the agenda to decriminalise drug trafficking. Most of those figures that find their way into court are drug trafficking—whether it is sale or supply is another charge under the Drugs of Dependence Act, or trafficking in various substances under the Criminal Code. I have not seen a proposal to decriminalise the type of things that we deal with, only the lower-end matters.

DR PATERSON: Has the Drug and Alcohol Court been active over the COVID period?

Mr Drumgold: Yes, it has been. All courts have been active. They have just changed the way that they run business, and there is funding for the ongoing Drug and Alcohol Court for the next financial year.

DR PATERSON: Is that sufficient funding for that particular court to function?

Mr Drumgold: “Sufficient” is a difficult term to grapple with. The reality is that we have 0.5, or half of a grade 1/2, and we have a full paralegal. That is our funding for engagement. It is probably a little behind what we use, and we cross-resource that with some mainstream resources. But we also understand that the Drug and Alcohol Court is embryonic and is still working out where its equilibrium is by way of operations. The most accurate answer is that we cross-fund through our mainstream operations.

MR CAIN: Touching on the proposed decriminalisation of possession of small quantities of drugs, Mr Drumgold, how many, if any, court matters would you manage

where the only issue is possession of a small quantity of one of these current drugs?

Mr Drumgold: It is difficult to answer that. I think we had a question on notice on that last year. The problem is that they are so wrapped up. At the moment a small quantity of cannabis proceeds by way of a simple cannabis offence notice. That can be paid or disputed. Another way that a small quantity drug matter can come into court is that it can be summonsed at first instance. It is impossible to work out which of the low-level drug matters that come into court started as simple cannabis offence notices that were disputed or not paid and which of those matters come into court in first instance. I do not think the answer is fruitful, because often what can bring a matter in first instance in a court can be determined by what other offences there are.

If someone commits a burglary and they are found with a small quantity of drugs on them, the police might say, “Well, they are going to court for the burglary. We might as well just send the small quantity of drugs straight through.” Whereas, if it is just a drug matter, I think it is more likely to go to a simple cannabis offence notice. So the numbers are almost impossible. In order to extract it, we would basically need to peruse 5,000-odd files by opening them up and reading the statement of facts. So we do not keep the data.

MS CLAY: I am interested in unpicking, a little bit, the difference between infringement notices—and I was thinking about the traffic infringement notice context, but obviously we have just touched on it in another context—and prosecutions through the court. I have heard conflicting tales from different authorities about pros and cons. Obviously, traffic infringement notices for appropriate offences are a less resource-intensive tool to use, where they are correctly applied. But they also do not give people as full an access to their rights as court prosecution. Have you had any thoughts about the use of TINs versus court prosecution offences in the traffic context and road safety context?

Mr Drumgold: There are about 50 different approaches to that issue. It is not all removal of rights. If a matter proceeds by way of infringement notice rather than by way of summons, the person has a right to pay it there and then. There are all sorts of ongoing benefits of that. You do not have to take a day off work and sit in a court list and wait for your name to be called, appear and probably adjourn it. You do not need a lawyer. But there is not an infringement notice that is issued in the territory that you do not have a right to dispute. So it is not a final situation.

It is an interim situation. It is an option for someone who might have been speeding or, in fact, has been found with a small amount of cannabis, to admit guilt and pay an administrative fine. It is not necessarily small; many speeding fines are quite large. That gives you an ability to deal with it without having to interrupt your life. But, again, it is only if you acknowledge the guilt of it. If you do not acknowledge the guilt of it then you have a right to dispute it, the same as any other matter.

MS CLAY: There is a discomfort, sometimes, about where the discretion sits, depending on how an offence is drafted, and whether it is appropriate for AFP officers to be exercising that discretion or not. But if I understand you correctly, if there is discretion involved, it has a pretty minor effect on rights, given that you can dispute the guilt and then end up in the same situation as you would probably have been if it

were not a TIN. Is that how it works?

Mr Drumgold: Yes, that is right. Hypothetically, if you are given a simple cannabis offence notice, you have a right to pay that \$100 fine—I think it is around \$100—or you can just write in and dispute it, which triggers a summons being issued, and you turn up to court. You can either plead guilty in court or plead not guilty and send it through to a disputed hearing. Your analogy started with traffic matters.

MS CLAY: Yes, it did.

Mr Drumgold: With traffic matters, there is no option for many traffic matters. They have to be traffic infringement notices. But, again, you can still dispute. So there is no discretion. For many speeding fines, if you go through a red light and you get caught by a camera, there is no option to go straight to a summons and appear in court. It has to be a traffic infringement notice to start with. In the same way, if a policeman catches you speeding with a radar, they have to proceed by way of traffic infringement notice at first instance.

MS CLAY: We are moving into a territory where we have different mobility options. I am thinking of a bill at the moment that has e-scooters, and we have a couple of bills that are looking at vulnerable road users.

Mr Drumgold: Yes.

MS CLAY: Do you see that there is more difficulty in those being TINs and whether there is more discretion in defining the offence in the first place, or do you think this is proceeding in a good way if we use TINs?

Mr Drumgold: No, I think it is proceeding in a good way if we use TINs. In fact, I would like to see things like low-level drink drives proceed by way of TINs. As you can imagine, drink driving has a broad range. It has a range at one end from someone that becomes legless and gets in a car and drives, through to someone that has been out for dinner and has miscalculated the number of sips of a glass of wine that they have had, and they find themselves inadvertently just over .05. So I think that there is some scope to move into that space. But, yes, particularly in traffic matters, because of the volume of them, they work quite well with the option of traffic infringement notice.

MR CAIN: Mr Drumgold, I notice that your budget increased by about \$1.5 million this financial year. Is this funding adequate for you to meet your required service obligations?

Mr Drumgold: I think that was project funding. Most of that funding was dedicated. We had some additional funding for an additional coroner, and we had some additional funding for the Drug and Alcohol Court. But it was a tricky balance. We did have some budget growth, but it was offset by the Safer Families money that we do not get. On balance, in our budget, other than the special projects, I do not think we got any base increase for this financial year.

MR CAIN: You just said the Safer Families money that you do not get. Can you

explain that further?

Mr Drumgold: For this financial year, 2021-22, I think we were supposed to get around \$340,000. There seemed to be a policy change, and that was removed from our budget line. We did get growth of \$331,000, which was part of the five-year growth plan. So that leaves about a \$9,000 deficit.

THE CHAIR: We will have to leave it there, Mr Drumgold. Thank you very much for appearing today. I do not know whether any questions were taken on notice, but you will publicly declare some of that stuff once you have had the conversation with the Chief Police Officer about sexual offences.

Mr Drumgold: Indeed.

THE CHAIR: We will see you back here for annual reports.

Appearances:

Legal Aid Commission

Boersig, Dr John, Chief Executive Officer

Monger, Mr Brett, Chief Financial Officer

THE CHAIR: Welcome. We are being transcribed, recorded and webstreamed. Can I make sure that you have read the privilege statement?

Dr Boersig: We have, yes.

THE CHAIR: We are not taking opening statements, but can you give me an idea of how you are travelling through COVID? It has been a difficult time for you and many of your clients, I am sure. Can you give me an update on how your office is coping?

Dr Boersig: We have had to maintain quite a number of staff in the office to deliver essential services, both through the courts and through the helpline. The issues we have been trying to address most recently include pressures for people juggling kids at home as well as work, and particular pressures around working at home, working in the office, and feelings of vulnerability. We have had to invest more in mental health support, particularly around debriefing, and we are proposing to continue to do that. I do not think we have seen the end of the impact of COVID on individuals trying to work in essential services and maintain life.

THE CHAIR: Have you been able to quantify that from a resourcing point of view? Has there been impact equivalent to a certain amount of dollars or is it too difficult to quantify?

Mr Monger: It is too difficult to quantify at the moment. We have changed a lot of the way we do our practices and tried to increase our IT infrastructure et cetera to cater for more remote activity as much as possible. But as Dr Boersig said, we very much are a face-to-face or a people environment, and we have just tried to manage both ways, both remotely and in person.

DR PATERSON: One of the priorities for Legal Aid over the next three years is to provide support to victims of elder abuse.

Dr Boersig: Yes.

DR PATERSON: Can you talk about how many people you support in respect of that issue?

Dr Boersig: I would have to get back to you on the actual numbers. We deliver this through a range of programs. One is the older persons legal service. In that context we have one ongoing position and an additional person who has been helping during COVID.

As you would expect, we have had to take particular care in relation to older people. Their abuse was already hidden. COVID did not help that. We have been making greater efforts to work with a range of partners, particularly COTA, as well as other

service agencies, so that we are maintaining contact with as many people as possible. But I would have to get back to you about the actual numbers. We will be collating those for our annual report.

DR PATERSON: Do you feel that one person is enough to be dedicated to that issue, to those matters?

Dr Boersig: We found in COVID that we needed additional support, and we now have support until next June, with two people. One of the problems with elder abuse is identifying its prevalence in the community. You can parallel it to domestic violence generally. You will know that, as we have shone a light on domestic violence over the last five years, more and more people have come forward. I reckon we need to do the same thing in relation to elder abuse. It is a complex task because of the interrelationship between family members as well.

THE CHAIR: Can I confirm that you will take the number of elder abuse victims on notice?

Dr Boersig: We will.

THE CHAIR: There are five days to get that back.

MS CLAY: I have a question on elder abuse following on from that. We heard some evidence from the Public Trustee and Guardian earlier in this estimates period. They have a role in examining the accounts managed by external managers. I was personally quite disturbed. I have lodged a lot of detailed questions on notice with them and I am hoping to get some better answers than we got face-to-face.

They were unable to tell us how many managers they are examining. They were unable to give us a rough estimate of how much money they were managing. By my eyeball, if they have 750 people and each has a million-dollar estate, that is maybe \$1 billion. They could not give us any figures about that and they seemed quite reluctant to play any role in that.

If you are telling us that there may be a lot of hidden elder abuse of the financial kind out there, and that is the kind of information we are getting from one of the regulators, do you feel we have the right system in place to deal with that?

Dr Boersig: I think you are pushing in the right direction. We have to find ways of disclosing and make it easier to disclose, such as moving matters out of the Supreme Court, where we generally examine these kinds of matters, into an ACAT role. And there are the roles of the attorney That will open it up and make it cheaper and more feasible. We have had discussions with a range of providers about trying to facilitate that.

MS CLAY: I would like to check your funding situation. You are operating in quite a complicated funding environment with commonwealth and state funding and statutory interest account funding. Some of those sources have increased. I know that the commonwealth and ACT government have made some allowances. I know that the statutory interest account has probably plateaued out, and probably will for some time.

I know that there are a lot of community legal centres who need funds. How do you feel we are managing that tail end for the next year, two years or three years? How do you feel we are managing our funding situation going forward?

Dr Boersig: The loss of the statutory interest account money is very alarming, but this is happening across Australia. It is linked to the interest that comes out of conveyancing; with the moves towards electronic conveyancing, it is having an impact on the volume of money that is being held in the account. Also, of course, it is impacted by lower interest rates.

For all of us, CLCs included, it has been an integral part of our funding. Brett will correct me if I am wrong here, but at one stage, maybe 10 years ago, we got \$1.5 million out of that account, all directed to provision of services. I think we are down now to \$750,000. That is what we have been provided with by the government.

MS CLAY: Have you had any thoughts about how that might be improved? I guess it is a difficult situation. You do not have much control, but I am wondering if the smart people in your organisation have looked five years into the future. No-one knows what is going to happen with the property market, but it may not continue as it is. What are we going to do?

Dr Boersig: The move nationally is to move the statutory interest accounts into core funding, into treasuries, and make it a responsibility of government as opposed to a separate responsibility of the Law Society.

MS CLAY: Is that a good idea?

Dr Boersig: From our point of view, it has been done. For example, in New South Wales we are talking about something like \$30 million that was being drawn down just by legal aid commissions, not to mention all the other services from that account. That dropped dramatically for the same reasons. Funding for core services is a key concern of government.

MR CAIN: You have touched on this a bit with suggestions about treating elder abuse matters in the ACAT and moving the statutory interest account into the hands of government. What else is high on your law reform agenda to make justice more accessible to Canberrans?

Dr Boersig: The kinds of issues we have, particularly on the law reform agenda, continue to be around family violence. The tenancy issues would play a strong role in law reform. Indigenous incarceration and the minimum age of criminal responsibility are key issues.

The one that has emerged starkly this year has been in relation to refugees and migration. That is very strongly linked to the crisis in Afghanistan. That has been at times overwhelming to manage—overwhelming both for the numbers of people coming to us and in terms of the impact it is having on our people providing advice. I cannot describe the distress that is coming through to us.

We have been contacted by people within Afghanistan and their families. It was one

of the motivating factors for me to improve our debriefing for our staff who are on the ground dealing with this. It has been highly distressing.

MR CAIN: Some of these trends obviously are highly impacting legal providers, particularly in your category. What do you see as more medium to long-term trends? Perhaps you feel you have answered that.

Dr Boersig: The more medium to long-term trends for us are around the missing middle—people who are not able to get legal aid. We are talking about a figure of between 106 and 120 per cent of the poverty line for people to get a grant of legal aid; then there are people who can afford private practitioners. That missing middle is an area that increasingly concerns all of us in the legal aid sector, both here in the ACT and nationally.

The other factor is that there is a strong recognition by government about the importance of wraparound services. In discussions with CLCs, you will often hear this about some of the services they are able to provide. Our struggle in that context is that we are like the heavy hitters in this area. With the volume and numbers of people—when you are dealing with 20 or 30 people around domestic violence orders a day—providing wraparound services is difficult.

We need to find ways, and we have developed a community liaison unit with specialist providers to do that. But if we were to provide the more wraparound services like the ones CLCs provide, for example, in the health-justice partnership at the hospitals, that would be a considerable investment by government.

THE CHAIR: You talked about the situation in Afghanistan. Could you explain in more detail what you are doing there? We are talking about foreign nationals or matters outside our jurisdiction. How are you getting involved in matters involving people in Afghanistan?

Dr Boersig: We provide migration and refugee advice as part of a commonwealth initiative. The people coming into the ACT—something like 60 families have come into the ACT, all on temporary visas. All of those visas have to be reviewed. These are complex and lengthy processes that have to be submitted to government, detailed applications.

In order to do that with the volume of people, we are working with Red Cross and Companion House to develop what is called a tiger team to meet this need. That all comes up in the next few weeks. Those initial three-month visas are finishing, and we are expecting a whole range of applications to come in our door. There is no-one else who is doing this work in the ACT.

THE CHAIR: Have you requested any surge funding for that?

Dr Boersig: We are talking to both the territory government and the commonwealth government about that. In other jurisdictions some support is provided by state jurisdictions. Because we are a SHEV community, we welcome people into the ACT. We are approaching the commonwealth government, but the long and the short of it is that we have to direct resources to meet this need. These are dreadful stories of people

who escaped at very short notice. It is about trying to put their affairs in order. If you do not get these applications right, three years down the track you can come a cropper. That is all used for further inquiries—for example, by ASIO.

THE CHAIR: Well done on doing that work. Have you been able to quantify what that surge means in terms of resources in dollar terms?

Dr Boersig: We were initially looking at 30 applications. We previously thought there were about 30 people here. We have since found that there are about 60. We are expecting to put on two people full time to deal with that. We are also coordinating with about 10 volunteers, mostly law students, to help us do this. And we are trying to work with migration agents to provide oversight on top of that.

THE CHAIR: Can you take on notice to give me a dollar figure of what that would be and over what period? I assume that this is a temporary arrangement; it is not going to be ongoing. It would be an amount for this financial year, maybe going into next financial year. Could you take that on notice, please?

Dr Boersig: Will do.

DR PATERSON: In respect of the missing middle, I hear about this a lot from constituents—that they do not qualify for legal aid but they cannot afford a lawyer. Is there any work done on quantifying the number of people who are in that missing middle? How big is that section of the community? Do you have any understanding of that?

Dr Boersig: The kinds of figures that have been put forward have been national figures from the Productivity Commission. There was a discussion of around \$200 million nationally. The Law Council put a figure on it of something like \$350 million annually nationally. These were put through next year.

The figures in relation to the ACT would be hard to disaggregate, but we are working on that now, to try and identify them. A lot of it is self-selecting—people know they are just not going to be able to get legal aid so they do not apply.

DR PATERSON: Is it as simple as raising the threshold and increasing your funding?

Dr Boersig: That would be one of the levers. The other levers are the ones that are already operating, and you see that on our helplines. Calls on the helpline have gone from something like 17,000 three years ago to 27,000 last year. People are seeking more advice, more assistance. The hits on our website have moved from about 80,000 a few years ago to nearly 200,000 last year. That is the kind of appetite that is out there at the moment.

MS CLAY: I would love to get some information about how you are going with your tenancy advice services. There has been quite a lot of legislative change and policy change to end evictions and help people through COVID. I know that you now have the tenancy advice line. Have your calls gone up? Do you have the resources you need? What sorts of information are your clients seeking?

Dr Boersig: About 10 per cent of our advice work is on tenancy matters at the moment. At the moment I would say that, yes, we have the right levers in place to address that need. In terms of the actual numbers, I will check whether we can provide those now, but we are talking about thousands of people. As COVID has impacted back and forth, we have seen spikes of people, particularly around the implementation around eviction and so forth and when that can be done.

MS CLAY: Do you feel that people are getting good outcomes? Do you feel that tenants are getting good outcomes with the eviction moratorium policy?

Dr Boersig: I feel confident that they are getting the right advice in a timely manner. They are contacting us on our help telephone lines. We are running clinics for 10 to 15 people every Tuesday, providing further advice and assistance if they cannot receive all of the information they need on our tenancy hotlines.

Mr Monger, do you have any figures?

Mr Monger: Yes. There were about 1,100 cases of legal advice provided on tenancy matters in 2021.

MS CLAY: Do you do any follow-up work? When you have seen a client about a tenancy matter or anything else, do you have any follow-up work to find out what has happened in their life, whether the problem actually improved?

Dr Boersig: Under the national partnership agreement, we are required to undertake a client survey. The last one was two years ago. The response rate was very positive. We are required to do another one this year, and we are preparing to do that now. It is a great question. The thing we want to know is: “How much benefit has there been in the assistance you have been provided on the telephone and by the service three months down the track?”

MS CLAY: Absolutely; that is exactly it. It is not necessarily your advice; it may sometimes be that the policies or the legislative framework are not right. But if something is not working, we need to measure that.

Dr Boersig: Yes. That is the question we are asking, too, and we will have that information by next year.

THE CHAIR: Thank you for attending today. There were a couple of questions that you agreed to take on notice. Could you get those through to the secretary as soon as you are able to? You have five days. Well done to you and your office, and thank you for all of the very important work that you are doing out there in our community.

Dr Boersig: Thank you.

Appearances:

Justice and Community Safety Directorate

Garrison, Mr Peter, Solicitor-General for the Australian Capital Territory

THE CHAIR: Welcome. We are being recorded, broadcast and webstreamed. Can you confirm that you have received the privilege statement, and that you understand it and agree to it?

Mr Garrison: I have, I do, and I do.

THE CHAIR: Obviously, COVID has disrupted a whole bunch of areas of government. I want to know how you are coping with it in terms of the delivery of your services.

Mr Garrison: The shutdown happened abruptly, as in we found out at 3 o'clock and we were all out of the office by 5 o'clock. But at that point a reasonable number of people in my office were working from home in any event, so the departure from the office was not quite as spectacular as it might otherwise have been. Another aspect to it was that we are in temporary accommodation at the moment, pending our move to our final home in the next month or so, so people were already operating on a slimline model in terms of access to papers, documents and the like. People had adjusted to the electronic focus for their practices.

The transition was virtually seamless. There was a shortage of laptops and there were the usual challenges, but we addressed that over a period of time. To an extent some people were using their personal devices, and that was fine. Basically, we did not break stride. The work that we have been doing, particularly over the last three months, has continued unabated. There have been very significant levels of work.

As you will appreciate, we have also been doing a tremendous amount of work in relation to COVID-19 issues. It has amounted to probably a little more than 10 per cent of our work, of our budget-funded resources, and it has covered the whole gamut. One would ordinarily think that we are giving advice on health directions—which we are—but we are also working on a whole range of other issues.

If you look at the impact of COVID-19, both in the immediate period and in the last 12 months, and if you think of all of the territory's activities—the performance of contracts, government assets, sportsgrounds, venues—there has been an impact on all of those. We have been giving advice on contractual arrangements, on how that works. It has pretty much covered the spectrum of the government's activities. We have picked it up and run with it, together with—dare I say it—the business-as-usual work. There has been a very significant amount of that as well.

It has been an interesting challenge. I think it has resulted, and will result, in permanent changes to the way work is done. I think that is widely acknowledged in most sectors. We have had some challenges with court attendances, the physical aspect of litigation, the provision of copies of documents or the getting of copies of documents from the court and the like.

I have had in place a very strict protocol in relation to people attending in the office or in court—indeed, anywhere—which has required a request and a formal approval by me. That is recorded. Everyone has been very content with that process, but it means that we ensure the protection of our staff at all times and we have them in a controlled environment.

For example, in the last couple of weeks particularly we have had more people having to attend in the office, so we have controlled which floors they are on and how many are on a floor. That is just to minimise any risk, not that there is going to be very much risk in this office. But we have the protocols in place, and they are there for a reason. That has worked very well.

The next challenge is about what we do in terms of a return to the office. We will be moving to our new offices on 6 December. That will take a few days. Over the course of the next month, we will have to schedule people to come in to pack up their workspaces and everything else preparatory to the move. Then we are working on the process of how we move and how we locate people in the new office.

It will be interesting, but there will be permanent changes to the way people work. The hybrid work model appears to be the term of art now. We are looking forward to it. Productivity has not missed a beat. But, as with any workplace, after a period of time there are aspects to working in the same physical office which have positive influences on people. That is why we are keen to make sure that we have a properly staged return to the workplace.

We will still have a lot of people who will be working from home, but it might be for one, two or three days a week, depending on the particular circumstances. What I do not propose to do is impose a fixed rule. I know that there are a number of law firms and crown law offices in other jurisdictions where they have imposed a fixed rule—for example, that people will only work from home for two days a week.

I do not like that approach. I operate on a basis of trust, and I trust my teams to do the job they need to do. If they can do it more effectively from home, so be it. That is bearing in mind that from a health and welfare perspective, we do want people back in the office for a period of time each week, even if it is only one day. But that would depend on individual circumstances and on the work practices for that particular practice group. My practice leaders will be discussing with their teams how best that can work. That is a bit of a thumbnail sketch.

THE CHAIR: That is quite extensive, thanks; I have a good impression of how that is all working.

DR PATERSON: What are the current priorities for your office?

Mr Garrison: There are short, medium and long-term priorities. Short term, it is about continuing to support our staff in the current circumstances; managing the transition back to the office; and managing our move, which is going to be our second move in 12 months. Those are quite challenging.

Of course, our overarching commitment is to continue to provide legal services to

government. That has been challenging. We have an increasing amount of work. We have a challenging budgetary environment. Part of what we are doing over the course of the next medium term is to take on board the additional resources in terms of funding that the government has provided us with—it does not give us extra resources; it enables us to retain some existing resources on temporary contract.

As I think Mr Hanson is aware—he has heard me on this a number of times in the past—we have a hybrid model for the funding at the office. We have the budget funding, but we also have almost 50 per cent of our funding coming from a range of resourcing models for recovery.

We are undergoing a review at the moment to look at it more precisely in relation to which agencies are going to be funding particular types of legal services. We are looking at our fee rates and we are looking at the territory's arrangements for a range of pieces of legal work where, in accordance with the legal services directions, we are entitled to charge. I am briefing the Attorney-General in relation to those issues over the next little while to better harmonise our business model with the reality of what we are having to deal with in terms of resourcing.

We have 130 effective full-time staff, which includes 85 lawyers. Approximately one-third of those staff are on temporary contract. That is not particularly desirable, but that is the result of our funding model. And there are a number of staff who are engaged permanently for whom we do not technically have permanent funding, budget funding—where it comes from revenue streams, but those revenue streams are of sufficient certainty that I have made business decisions to engage those people.

In terms of the management of the practice, those are the issues that we are dealing with in the short and medium terms.

One of the other issues that we are addressing and which has been implemented—if I can say so, quite successfully—has been our legal services model. Even though our office is the exclusive provider of the territory's legal services, we outsource a significant amount of work as well. A couple of years ago, we renewed, created, a series of panels through a tender process with private law firms. If you look at it in round terms, we have \$10 million in budget funding, about \$9 million in revenue and about \$9 million that is outsourced to the private sector.

We have been refining our outsourcing model. We have a very careful process in place by which agencies can request that work be outsourced. Indeed if we get instructions and we review them and think they should go out to the private sector, that can happen. That has been working very successfully. Of course, we cannot do everything. The management of those processes and the provision of the services is something that we have a very strong focus on. It is a medium and long-term goal for us in relation to that.

It ties in with the internal restructure that we put in place over the last 18 months. We have been refining that process. We had what I would call a fairly traditional model, where I had two deputy chief solicitors and we had three sections. We had civil litigation, government law, and property and commercial. We have completely restructured. There is one Deputy Chief Solicitor, who has a whole-of-office

governance and assurance function. And we have created an executive group manager, legal practice, who is responsible for the allocation of work, the review of instructions and management across the whole office.

THE CHAIR: Mr Garrisson, I will interrupt you, because we only have three minutes left. I know that Ms Clay is very keen to ask a question, as is Mr Cain.

Mr Garrisson: I will stop right there.

MS CLAY: In the budget, you note that there has been a growth in demand for the constitutional, public and admin law advice services. There is a lot going on. Obviously, there are the public health directions which you have mentioned. There is raising the age. There is probably a lot going on. Are you able to give us an outline of what types of matters are in that growth in demand?

Mr Garrisson: It is continuing demand. For example, we intervened in Mr Palmer's well-known litigation in the High Court. That took up quite significant resources. I then intervened in the ACT Supreme Court in relation to the jury trial issue, which was a constitutional argument. We have been not just providing advice on issues associated with COVID-19 and everything that has flowed from that in the directions; we have given advice on electoral law reform and we have been conducting quite a broad range of matters which have drawn on those resources significantly.

The other aspect of it is that our public and constitutional law practice has been providing input to other parts of the office with the work that they are doing, because of another trend that we have seen, increasingly. Back in the day, a piece of work would come in, you would give it to a section, and you would be done. These days, the nature of the work is far more complex. For example, there are things like the administration of crown leases. You would think that is a property law issue, but it is not, because there is a range of other issues associated with it—dealing with the ACT's constitutional position and how that works.

There is an increasing number of pieces of work that come in that touch on those issues. And because of the new model for managing our work, simply, more people talk to each other when in the office, so issues are more readily addressed earlier in the piece, and that generally would involve multiple—

THE CHAIR: Mr Garrisson, I am going to have to cut you short again, I am afraid, because we have run out of time for this hearing. Thank you very much for attending today. I do not think you took any questions on notice.

Mr Garrisson: No. You do have another go on Thursday, as I recall.

THE CHAIR: I look forward to seeing you then.

The committee adjourned at 10.10 am.