LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON THE INTEGRITY COMMISSION AND STATUTORY OFFICE HOLDERS

(Reference: Inquiry into Annual and Financial Reports 2023-24)

Members:

MR E COCKS (Chair)
MR A BRADDOCK (Deputy Chair)
MR T WERNER-GIBBINGS

TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 20 FEBRUARY 2025

Secretary to the committee:
Ms K de Kleuver (Ph: 620 70524)

By authority of the Legislative Assembly for the Australian Capital Territory

APPEARANCES

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Amended 20 May 2013

The committee met at 12.05 pm.

Appearances:

Cheyne, Ms Tara, Attorney-General, Minister for Human Rights, Minister for City and Government Services and Minister for the Night-Time Economy

Justice and Community Safety Directorate
Ng, Mr Daniel, Executive Group Manager, Legislation, Policy and Programs
Manzoney, Ms Lisa, Acting Deputy Director-General, Justice
Marjan, Ms Nadia, Acting Executive Branch Manager, Civil and Regulatory Law Branch

THE CHAIR: Good afternoon, and welcome to the public hearing of the Standing Committee on the Integrity Commission and Statutory Office Holders for its inquiry into annual and financial reports 2023-24. The committee will today hear from the Attorney-General, the Ombudsman and the Integrity Commissioner.

The committee wishes to acknowledge the traditional custodians of the land that we are meeting on, the Ngunnawal people. We wish to acknowledge and respect their continuing culture and the contribution they make to the life of the city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be attending today's event.

The proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses used these words, "I will take that question on notice." It will help the committee and witnesses to confirm questions taken on notice from the transcript.

We welcome Ms Tara Cheyne MLA, the Attorney-General, and officials. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Please confirm that you understand the implications of the privilege statement and that you agree to comply with it.

Ms Marjan: I have read and acknowledge the privilege statement.

Mr Ng: I have read and acknowledge the privilege statement.

Ms Manzoney: I have read, acknowledge and agree to abide by the privilege statement.

THE CHAIR: Minister, could you acknowledge the privilege statement?

Ms Cheyne: I do.

THE CHAIR: Thank you. As we are not inviting opening statements, we will now proceed to questions. Ms Castley?

MS CASTLEY: Minister, I note that we had a redistribution prior to last year's election, yet the total number of formal votes ranged from 49,000 in Kurrajong to 58,000 in Brindabella. Is the government concerned about the disproportionality across the electorates and, if so, what are you doing to make sure there is a bit more fairness?

Ms Cheyne: We were talking about this before the hearing formally commenced. We are in a funny position, without having received the Electoral Commissioner's report at this stage, let alone that of the committee inquiry. I acknowledge, though, that there is certainly an attempt at fairness, one vote, one value, across our electorates, and that there is a process each term where the Electoral Commission invites submissions about how the distribution should be undertaken.

I do understand, at least anecdotally, if not from what I have read in the media, that we did see some different rates of voting compared to previous years, in terms of voter turnout against numbers of people enrolled. I would like to understand that better, and the reasons behind that, in any consideration about overall fairness of population distribution.

MS CASTLEY: My next question is: in Kurrajong, only 83 per cent of those enrolled to vote turned out, compared to 88 per cent in Brindabella. Other than the inquiry, is there anything that you are doing about it, or you will just wait to see what comes out of the inquiry and what the commissioner has to say?

Ms Cheyne: Yes. I appreciate that that is not a helpful answer, Ms Castley, and I am trying to be as helpful as possible. It is quite difficult for us to pre-empt the commissioner's report. It may have been in this hearing yesterday that they made clear that they needed a little bit more time for their report, as well. Ideally, we would have that report, and I would have some views on it by this stage, but I do not.

MS CASTLEY: At least two per cent of votes cast in Brindabella, Ginninderra and Yerrabi were informal at last year's election, but no electorate had a rate that high in 2020. What are you feeling about that? What do you think might be driving these levels?

Ms Cheyne: I do not have any solid data to back up any assumptions I might make, Ms Castley. Overall, we have seen across democracies, almost globally, I think, from peak levels of seeking to trust government in the early stages of COVID in the 2020 year, to 2021, when we saw a much greater emergence, I suppose, of some resistance to government actions. That may, overall, translate to what we are seeing with voter turnout and how people are voting. But, because these are inherently secret ballots and we do not do a terrible amount of exit polling in the ACT, it is difficult for me to be sure. I would expect that it is similar to what we are seeing in other democracies.

MS CASTLEY: Do you know what the fine is if you do not turn out to vote, and how is that process handled?

Ms Cheyne: I do have it. It is in the legislation. I believe it is less than $100, and I believe it is all handled by the Electoral Commission, in terms of determining whether someone has voted or not, and what steps they take. I do understand there is some flexibility there, regarding who is fined.

MR BRADDOCK: Regarding the election laws that passed the federal parliament in the last week or two, which I do not anticipate the ACT government to have reviewed and gone through in detail yet, I want to ask whether that is something that the ACT government will examine in the future, to see whether there are any issues of incompatibility or opportunities for harmonisation between the ACT legislation and the federal legislation.

Ms Cheyne: In terms of incompatibility and any flow-on effects for the ACT, with an upcoming election federally, we will be able to see those in practice. We will certainly take any advice from the Electoral Commission, parties or otherwise and, indeed, this committee's inquiry, before any electoral reform is undertaken.

MR BRADDOCK: They seemed to include quite significant reforms concerning the segregation of federal funds into campaign and administration accounts, exclusively for federal purposes. This is something that the territory does not consider as part of its laws. Is that something that the territory will also examine and see whether there might be opportunities to harmonise our laws with the federal legislation?

Ms Cheyne: Potentially, Mr Braddock. That is really a future decision of government. I noted your questions to the Electoral Commission yesterday regarding this and ensuring that they were aware of the distinction regarding overall costs to a person—that there are electoral material costs, and then there is everything else, not least the cost to our personal lives. On that, Mr Braddock, I cannot say anything one way or the other at this stage.

MR WERNER-GIBBINGS: I had a question yesterday about the number of corflutes, but this is more about the policy. There is a 250 limit in the legislation, but it has a much different impact on federal candidates, particularly if you are a Senate candidate. You have to cover all of the ACT with 250 corflutes. In the electorate of Bean, which is bigger than Brindabella, it is the same principle—250; whereas, with five times five in Brindabella, that is a lot of corflutes.

Is there some thinking being done about the difference in scale? For instance, the Senate candidates will struggle, I would think, to get corflutes out all around the ACT if they are limited to 250. They are not going to struggle to get them out; they are going to struggle to cover it.

Ms Cheyne: I need to confirm, for my own understanding, Mr Werner-Gibbings, whether the federal election is captured by those law reforms.

MR WERNER-GIBBINGS: If it is different, that is good, but I was assured that it was not, so I thought I would ask, anyway.

Ms Cheyne: I think it is different. I will take it on notice and come back to you.

MR WERNER-GIBBINGS: Thank you.

Ms Cheyne: Knowing that would help everyone, I am sure.

THE CHAIR: I want to go back to Mr Braddock's line of questioning, and particularly

around the incompatibility between ACT legislation and any federal legislation. Could you talk about the extent to which federal legislation would override things like definitions in the ACT? Is it the case that federal legislation would absolutely override the ACT's legislation where you are running into definitional questions, rather than precise stipulations in the legislation?

Ms Cheyne: I very much take on board the question that you are asking. In terms of answering it, Mr Cocks, there is a bit of a hypothetical in terms of the extent to which there is interaction between the federal legislation, which speaks to the conduct of federal elections—and going to Mr Werner-Gibbings' questions—and the ACT legislation, and what it provides for the conduct of elections in the ACT.

Certainly, there is, I would say, a policy approach overall where we try not to be inconsistent in some areas where we think there can be serious confusion. I would also recognise that, for example, federally, it is three or six metres, or something like that, in terms of the distance and, for us, it is 100 metres. The federal legislation in that respect does not override the ACT in terms of our conduct of elections.

THE CHAIR: Essentially, what I am trying to find out is: where is the line and when does it start to actually override the ACT legislation? I take the point; it is probably a very general question.

Ms Cheyne: It is almost a legal opinion question, I think, Mr Cocks. I will turn to a more learned colleague.

Mr Ng: I could add, in a broad sense, that the Australian Capital Territory (Self-Government) Act sets out the scope of the legislature's legislative capability. The process that you are referring to is the determination around whether a law of the territory is incompatible with a law of the commonwealth. That will be a case-by-case assessment, depending on what the law is.

The jurisprudence goes to a common law test about whether the ACT law will alter, impair or detract and be incapable of concurrent operation. You really need to look at those provisions on a case-by-case basis to see whether they can work together, side by side, or whether they do cover the same area and are incapable of concurrent operation. I give that legal context for the consideration. Obviously, you would have to look at it on a provision-by-provision basis to see whether they are incompatible or not.

THE CHAIR: How do you manage cases such as Mr Werner-Gibbings brought up, where there is scope for confusion between the federal arrangements and the ACT arrangements?

Ms Cheyne: In terms of how we manage it, it varies, again, Mr Cocks. Electoral reform is always so interesting, isn't it? We all have such personal experience with it. I do not want to repeat what we all know to be some of the areas of confusion, and even the tension or conflict that can arise, simply because someone assumes it is operating in this way, when actually that is the way that federal elections operate, and so on.

It is largely an element relating to communication. When we have gone through electoral reform in the past, the directorate and the minister have certainly tried to work

with the Electoral Commission, to the extent that is appropriate, in making sure that people are aware of what has changed and what the practical implications are of that.

THE CHAIR: There being no further questions, we can wrap up the hearing.

Ms Cheyne: I appreciate the effort in the questions, because I had no idea what was going to happen.

THE CHAIR: On behalf of the committee, I thank you for your attendance today. If you have taken any questions on notice, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*. The committee will now suspend the proceedings and reconvene at 1.35 pm.

Hearing suspended from 12.22 to 1.35 pm.

Appearances:

ACT Ombudsman's Office
Anderson, Mr Iain, ACT Ombudsman
Fintan, Mr David, Senior Assistant Ombudsman
Ramsay, Ms Georgia, Director, ACT Strategy and Inspector Team
O'Connell, Ms Erin, Director, ACT Reportable Conduct and Freedom of Information Team

THE CHAIR: We welcome witnesses from the ACT Ombudsman. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Can you please confirm that you understand the implications of the privilege statement and that you agree to comply with it?

Ms Ramsay: I have read the statement, I understand it and I agree to comply.

Mr Fintan: I have read the statement and agree to comply.

Mr Anderson: I have read the statement and agree to comply.

Ms O'Connell: I have read and understand the privilege statement and agree to comply.

THE CHAIR: Thank you, all. As we are not inviting opening statements, we will proceed directly to questions.

MS CASTLEY: I would like to understand how the relationship works between the commonwealth and the ACT. I understand it is the same Ombudsman for the commonwealth and the ACT. Is that correct?

Mr Anderson: That is correct. I am the Commonwealth Ombudsman. I am the ACT Ombudsman by virtue of an agreement between the commonwealth and the ACT which has been in place since self-government in 1989. But the ACT can, of course, at any point appoint its own ACT Ombudsman should it choose to.

MS CASTLEY: Can you walk through the arrangement and how it works in practice? Are there any challenges and how are they managed between the commonwealth and ACT relationship?

Mr Anderson: There is a services agreement between the commonwealth and the ACT, and that is coming up for renegotiation again from 1 July this year. Under that arrangement, there is an agreement as to the services to be provided and then the amount of funding that's provided by the ACT government to my office to deliver those services. In addition to being the ACT Ombudsman, I am also the Inspector of the ACT Integrity Commission. I oversight the ACT FOI Act, I oversight the Reportable Conduct Scheme in the ACT, and I am also the principal officer to the ACT Judicial Council. The ACT has seen fit to give me these additional functions, and I receive funding for all of those.

The challenges are not, in my view, a matter of the relationship between the commonwealth and the ACT; they are just challenges that are common to being an ombudsman in itself, in that you can never predict the workload. One complaint may be far more complex than another complaint or maybe much more pressing with more vulnerable people and things like that.

Amongst my different functions, I omitted to mention that I am also part of the ACT National Preventive Mechanism under the Optional Protocol to the Convention Against Torture. So I have six different ACT functions. I have a number of staff who deliver parts of those different functions. It is really just making sure that we are managing the workload. As you will have seen from our reports, we are not necessarily meeting our key performance indicators in all areas, which is an ongoing challenge for us of just making sure that we are delivering the services in the best possible way we can.

MS CASTLEY: Given that you have obligations within two separate governments who may operate on different timeframes—and you mentioned that there are some areas that you would like to be able to do more—and different expectations, how do you manage that workload to ensure that both governments are satisfied? Is it something that you can come to the ACT government and say, "We are not able to fulfil our duties; we need more resourcing", or how does that work?

Mr Anderson: Absolutely, I can put in budget bids through the Speaker into the ACT budget process. I can talk with CMTEDD, in particular, if I want to suggest that any policies that have been put forward by the government or developed with the government might have a workload impact upon my office and that future resourcing might be required. I similarly engage with the commonwealth government with respect to my commonwealth functions. Because my staff are dedicated to particular functions, for the most part, it is not a challenge for them as to where they put their energies; it is primarily, I guess, a question for me in that I need to be across all of the different functions of my office. But, to date, I have found that I can satisfactorily meet all those demands, and I am accountable to both the Assembly and the commonwealth parliament in doing that.

MS CASTLEY: In your view, Ombudsman, is the model one that could be adopted by other agencies where there is a similar degree or overlap?

Mr Anderson: I think it certainly could be. I think there is a challenge with setting up a small agency; a part of its efforts are always going to be just to the administrative functions—the back-office functions of keeping the lights on and things like that. If you set up a very small agency, a counter argument might be: can you borrow part of a larger agency so that the part that is doing the ACT function is wholly focused on the ACT functions and services and does not have to be worrying also about running an IT system and things like that?

MS CASTLEY: Thank you.

MR BRADDOCK: I have a question about where the ACT government has refused an FOI request on the basis of cabinet information. I understand there were 50 instances in the past year. How many of those have been brought to your attention where you are of the view that the information was not necessarily cabinet information and hence the

decision needed to be varied or set aside? Do you have any concerns about the application of this particular piece of the legislation?

Mr Anderson: We have certainly had matters that have come to us on review where we have formed a different view to the relevant directorate and we have said, for example, that a document that might have gone to cabinet, nonetheless had purely factual information in it and that purely factual information can be disclosed. I do not know if we can necessarily say how many matters involved that. We would have to take that on notice to get that specific answer.

Ms O'Connell: We can take that on notice.

MR BRADDOCK: Thank you.

Mr Anderson: But, where we have seen it, we have raised it with the particular directorate, and we have put our views, clearly and simply, that the way in which the FOI Act applies to cabinet material is that it does not exempt it if it is purely factual. It comes up now and again, but I have not been concerned in terms of seeing a particular pattern of behaviour of agencies not having regard at all to that. I do think, though, that it is not the first thing that necessarily occurs to an agency when they have cabinet material.

MR BRADDOCK: So you are not seeing any instances of repeated behaviour from one particular agency and denying incorrectly access to cabinet information?

Mr Anderson: I do not believe so. CMTEDD is more likely than not to be the agency that is dealing with cabinet information. It might unfairly suggest that I had a concern with them if I was varying more decisions by them about cabinet information. It might just reflect the fact that they are most likely to be making the decisions about cabinet information. But we will come back to you about the number of matters where we have changed the decision of a directorate with respect to cabinet information.

MR BRADDOCK: Thank you.

THE CHAIR: So you will take that on notice?

Mr Anderson: We will take that on notice.

THE CHAIR: Wonderful. Thank you.

MR WERNER-GIBBINGS: This is a question about the numbers in the report. Over the last three years, there has been an overall decrease, it looks like, in the complaints received about ACT entities. Would you have oversight of those individual agency numbers that have fluctuated somewhat?

Mr Anderson: That is correct.

MR WERNER-GIBBINGS: Do you have a view or an insight? To what do you attribute this reduction in the numbers of complaints?

Mr Anderson: That is very complicated question. Sometimes it might be because there has been a particular policy or a program change introduced that a directorate is

administering, and that leads to an increase in complaints. Sometimes it might be that in fact we have done an investigation or something has happened that has led an agency to change the way it is administering a program, and that leads to a decrease in complaints. We continually encourage agencies to self-assess the way in which they handle complaints and to see whether they are being sufficiently attuned to complaints. Complaints are a free source of feedback. So they are actually a really good source of intelligence for an agency about how they are doing things. When directorates are paying a lot of attention to complaints, it can mean that they start doing things generally better, and that can lead to a decrease in complaints.

It is hard to say for the ACT public service as a whole or even for particular agencies whether they are necessarily doing things better or worse. I do think, though, that over the time we have been the ACT Ombudsman—so since 1989—generally, culture continues to improve within agencies. We do see agencies making a lot of efforts to comply with the various laws and obligations that apply to them and to be citizen-centred in their administration. But, from time to time, they do need to be reminded of that.

MR WERNER-GIBBINGS: I guess a complaint is not necessarily a bad thing in terms of it is feedback. So, perhaps the less complaints an agency is getting, the less feedback it is getting as well about whether or not its systems are up to date. Is there a two-way street in that, if you are in contact with agencies saying, "These are the numbers that we are looking at and this might be a reason; so you should keep doing what you are doing," or take it to the next level, there is that the sort of conversation that goes on?

Mr Anderson: Yes, there is. We engage with the directorates, and we tell them what we are seeing. We only ever see a fraction of the complaints. They see many more and, hopefully, they are resolving many more of those at first instance. We only receive escalated complaints. We give them feedback about what we are seeing and the types of complaints. If we see a cohort of complaints about the same issue, then we might do a more complicated investigation to address what seems to be a systemic issue that lies behind that.

MR WERNER-GIBBINGS: Thanks.

Mr Fintan: Chair, I thought it might be useful to add—just to emphasise that it is not always easy to predict complaint trends—that, in addition to the annual report that we produce, under legislation, under that services agreement for the ACT government, we produce a six-monthly report. In the first six months of this financial year, complaints were up 17 per cent. It may be that that does or does not continue in the second half of the financial year. But I just wanted to mention that as an indicator that complaint trends are not always settled or constant.

MR WERNER-GIBBINGS: Understood.

THE CHAIR: Does that go to that unpredictability of workload that you were referring to earlier, or is that something—

Mr Anderson: Yes, it does, because we do not know at the start of the year the volume of complaints. We also do not know the complexity of individual complaints.

THE CHAIR: Thank you. I want to go to the key performance indicators. I was looking at pages 12 and 13, and it was fairly notable to me that there is a difference between the perception of service from complainants versus satisfaction by agencies. I am a bit of a fan of Peter Drucker, the management consultant who has a phrase that "What gets measured gets managed". On the KPI that is related to formal recommendations in reports accepted by agencies and entities, is measuring performance based on the proportion of accepted recommendations an incentive to make sure your recommendations are acceptable to those agencies?

Mr Anderson: It could be, but in practice I do not believe it is. I cannot delegate the power to make recommendations. That is something that only I can exercise. It really comes down what I believe, in my opinion, and whether I am seeing something that is wrong in all the circumstances that needs a recommendation. So, yes, I could be swayed by making recommendations that agencies can live with. But I believe that our record shows that we make recommendations that sometimes are stretch tasks—that sometimes would require an agency to go to government and say, "We cannot do this thing," and I think it still important to make those recommendations whether or not an agency can in fact deliver that thing.

It is perhaps more obvious in the commonwealth sphere that I have made recommendations where agencies would have to go to government and say that perhaps the legislation would need to be changed in order to abide by this. But, yes, because I am the only person who can actually make the recommendations, I do not think it is a concern that my staff, for example, might be being induced to make the figures look better by making less challenging recommendations.

THE CHAIR: What do you think accounts for that discrepancy in perception between people making complaints and the agencies that the complaints are made about?

Mr Anderson: Firstly, we are asking different questions. We are asking: is the complainant satisfied? We also ask about whether we are accessible to them. We ask the agency whether they are satisfied about our impartiality—so not the service in a sense, but whether they are satisfied that we delivering our mandate to be independent and impartial. For complainants, a significant part—and we get detailed responses to these surveys—is about our timeliness. If we take a longer period to get back to someone—longer than three months, longer than six months and sometimes longer than a year—that can really irritate a complainant, and I understand that.

A second factor that is at play with complainant satisfaction is: did they get the outcome that they are seeking? The model of ombudsman is underpinned by an expectation that we will always be finding that some complaints are well-founded, but you are likely to find that many complaints are in fact not necessarily well-founded. It might be that someone is rightly aggrieved but that the agency did not do anything wrong or unfair in handling them. They might have communicated poorly—that is a common finding—or they might have been too passive in how they dealt with a complainant and things like that.

By the time some complainants come to us, having been working with an agency for a while and not getting anywhere, and we say, "Actually, we do not think that there is a

remedy that you need because we think it has all been fair, even though you are not happy," they will say, "I am still unhappy." So that plays into the responses we get. But I think mostly it is about the timeliness. We need to keep working on improving our speed of giving an answer to complainants in order to see that satisfaction level rise.

THE CHAIR: Are the targets set at the right level for those, given that there is the element of perception of whether they got the outcome that they wanted or not?

Mr Anderson: I believe the targets are set at the right level. For the most part, they are targets that we have had set for some period of time. But we do revisit them on a regular basis to say, "Are we challenging ourselves enough?"—for example, if we set a target that we are readily achieving, then maybe we should set a harder target for ourselves. Similarly, if we are setting a target that we are not achieving at all, should we lower the target? We have refrained generally from lowering targets just because we are not meeting them.

THE CHAIR: Thank you.

MR BRADDOCK: I have a question based on having your Inspector of the Integrity Commission hat on. I notice in your report that you talk about how you will be maintaining interest about the Witness Wellbeing Policy that we are utilising. The context of my question is that I know of one instance—and it has been reported in Falcon—where a witness was unable to appear due to medical and wellbeing reasons. My concern is: is that having any impact in terms of the ability of the Integrity Commission to actually fulfil its functions? Have you had any observations or any concerns about that wellbeing policy and how it is applied? Is it applied consistently with other judicial processes?

Mr Anderson: We engaged with the commission before they had their first public hearings, which were, I think, the Kingfisher ones in relation to Campbell Primary. We in fact suggested that they develop a witness wellbeing policy, and we pointed to wellbeing policies that have been developed by similar integrity commissions. The commission embraced that and developed a policy. In my observation, they have changed a range of their practices to be more focused on the situation for people who are subject to their processes, which can be extremely stressful.

Noticing that outcome in Falcon, I am not able to comment on that particular witness and what it was that they actually put to the commission about their inability to engage with the processes. I do think at one level, it would be a challenge for the commission if witnesses were to regularly say, "I cannot engage at all." But, really, it is a question better put to the commission about whether that is a challenge for them. From our perspective, though, we are satisfied that they have a policy and that they have had regard to how that policy should operate and how they engage with witnesses.

MR BRADDOCK: Thank you. They are next; so I will put the question to them next.

MR WERNER-GIBBINGS: Chair, if you could bear me an indulgence, I sort of have a supplementary to the question that Ms Castley asked at the start.

THE CHAIR: I am sure we can.

MR WERNER-GIBBINGS: It is not complicated; it is linking two thoughts that I had. You mentioned that, if the ACT government made a decision, it could ask another body or withdraw its request for you to keep acting as an ombudsman. We were speaking to the Human Rights Commissioner, yesterday or the day before, who has taken on the powers of a privacy commissioner from the Office of the Australian Information Commissioner, because that commissioner said that they were no longer prepared to continue. Judging from what you said, are there are thoughts from your office, or you personally, that you cannot see a moment within reason that you are unlikely to be prepared to keep doing your work as an ombudsman for the ACT?

Mr Anderson: I cannot see a reason to cease being willing to do the work. We are a larger organisation than the Office of the Australian Information Commissioner. So it is less of an additional task. I already have lots of different functions as Commonwealth Ombudsman, and, providing I am funded appropriately by both different governments—and I believe I am, for the most part—then, yes, I am prepared to keep doing the functions.

MR WERNER-GIBBINGS: Perfect. Is it an ACT branch and then a commonwealth branch, or do the complaints come through to the same teams but working in different areas?

Mr Anderson: Some parts of our office are organised so that we simply have complaint handlers and investigators. For example, complaints come into a complaints branch and then they might be investigated by the investigations branch. We do not divide that into an ACT or a commonwealth team. We have, in fact, an ACT and commonwealth investigations team, for example, and we have a complaint assessment team who assesses all the complaints that we receive.

When it comes to those more specific functions, like the inspector, the ACT Reportable Conduct Scheme and the ACT FOI Scheme, we have discrete teams who only do ACT work. We have one branch where a major part of its work is ACT work. But, as I say, for some functions, like the receipt of complaints—the higher volume functions—it makes more sense to have one function that deals with both commonwealth and ACT complaints.

MR WERNER-GIBBINGS: Okay. That is very clear.

THE CHAIR: You made a comment in there that, for the most part, you are funded adequately. Are there any areas that you can see where there are barriers due to funding?

Mr Anderson: There is one area that is a challenge. We are one part of the three-agency National Preventive Mechanism under the Optional Protocol to the Convention Against Torture, dealing with the treatment of people who are being deprived of their liberty, along with the ACT Human Rights Commission and the Office of Inspector of Custodial Services. We three agencies have all made representations to the ACT government about an additional level of resourcing to properly and fully perform that function. We were each given that function, given that we had functions that corresponded, but we did not get additional funding. So that is one area where it is easy to give us an additional function and the amount of additional funding required might be very small and, therefore, we might not get any additional funding at all. I should say that it is not a problem that is unique to the ACT government. Governments across Australia have found it challenging putting in adequate funding for this particular

function, the National Preventative Mechanism function.

THE CHAIR: That is useful. Thank you.

MR BRADDOCK: In your annual report, you referred to better practice guides and how you contributed to one about how to tell people they owe the government money. I can imagine that is always a popular message! I have had one instance where an old debt was raised which was more than seven years in the past. Hence, the complaint was basically along the lines of, "The tax office does not require records to be kept for this long; why is the government able to ask me for money when I have no records that apply to it?" Have you had any instances of complaints made to your office about that? What is the best practice for that sort of situation?

Mr Anderson: We have had complaints about that, in the context of historic land tax assessments, and we are engaging with the Revenue Office about that. As Commonwealth Ombudsman, we did a report back in 2009 about the Australian tax office's practice of recovering historic debts. The reason we did the more recent publication was because the tax office had started doing that again. So we joined, both as ACT Ombudsman and Commonwealth Ombudsman, with the Inspector-General of Taxation and the Taxation Ombudsman, to cover all three different areas of the public service, because we saw that it is a practice that can occur in many ways where agencies act in a way that makes sense and is efficient of them, but it is not at all effective for the people subject to a debt. The key principles are: communicate very clearly; tell people the reasons for the debt, because people may not have any documentations still; and tell people how they can challenge the debt as well. Those are the key things: communicate very clearly and make sure people have the ability to challenge that debt.

MR BRADDOCK: Is the ACT Revenue Office also signed up to this best practice guide?

Mr Anderson: We are having discussions with them about their practice with respect to issuing assessments for historic land tax. We have not resolved that engagement with them yet. We have not finalised that.

THE CHAIR: Are there any considerations beyond land tax? Have you had any inquiries around historic debts that are not land tax?

Mr Anderson: In the ACT, I am not sure that we have had any.

Ms Ramsay: We have in relation to stamp duty as well.

THE CHAIR: Are you able to provide, maybe on notice, how many have related to those historic debts?

Ms Ramsay: Yes.

THE CHAIR: Thank you. On behalf of the committee, I thank you for your attendance today. If you have taken any questions on notice, and there were a few, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*.

The committee suspended from 2.00 pm to 2.20 pm

Appearances:

ACT Integrity Commission
Adams, Hon Michael KC, Integrity Commissioner
Lind, Ms Judy. Chief Executive Officer
Hickey, Mr Scott, Chief Finance Officer

THE CHAIR: We welcome witnesses from the ACT Integrity Commission. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Could you please confirm that you understand the implications of the privilege statement and that you agree to comply with it?

Mr Adams: I have read the statement, and I comply with it.

Ms Lind: I have read and understand the privilege statement and will comply with it.

Mr Hickey: I have read, understood and will comply with the privilege statement.

THE CHAIR: As we are not inviting opening statements, we will proceed directly to questions.

MS CASTLEY: Thank you for coming in today. I am interested in whether you believe the commission has sufficient resources to undertake your statutory responsibilities, which are to investigate and prevent corruption in the ACT public sector. I note that an inquiry in 2022 found that the level of resourcing was not sufficient, and your budget subsequently increased from around $5.5 million to $7.4 million. Could you explain your current level of resourcing, your current workload and whether you believe the level of resourcing is sufficient to meet your responsibilities?

Mr Adams: May I take that in part on notice, so that I can give you some actual numbers? I can say that we are presently seeking additional funding to maintain our current resources, which are near enough to 31 FTE. We built up to that using non-recurring funds, which we had to use because when we asked for an additional budget, quite reasonably, Treasury said, "You've got money that you haven't spent yet; use that first." But we have come now to the stage where that has been used, and we have asked for money to pay for our current resourcing.

However, we have a heavy workload, and that is going to increase. We have put in a business case for increased resourcing, and we have explained the basis upon which we have sought that. We are seeking an additional 11. Is that right?

Ms Lind: In total. We have 31 FTE, of which 11 are unfunded as at 1 July 2025. In terms of getting funding to maintain that 31, our business case is also seeking an additional 14 FTE, which is a cost in the first year, the 2025-26 year, of an additional $3.3 million

Mr Adams: It is important to realise that we started from a very low base, upon a general underestimation of the amount of work that the Integrity Commission would

need to undertake. For example, the first commissioner was informed that he would only expect to be working three days a week. That has never been possible, but that worked through the early resourcing. So what we have done now—because we have been effectively, for two years, I think, working at full stretch now and have a better view of our likely resource needs--is to suggest we should go back to the re-basing, have a look at what we are likely to need, and we have done that numbering. We put forward a business case to enable us to do that. That would enable us to do more work in a more timely way.

MS CASTLEY: The government has not rejected the request yet; we are just waiting on a response?

Mr Adams: It is under review, together with all the other budget claims.

MS CASTLEY: Do you know how it works in other jurisdictions? Are they also struggling for resources? Do they have to come to parliament and say, "We've got this specific amount, we really need more?" Do you know how they go?

Mr Adams: Anecdotally, that is true, but the trouble is with comparing like with like. For example, the New South Wales ICAC has something like 160 FTE; and LECC, of which I was chairman, had about 110 or 120. When you look at that, that is a massively big organisation compared to ours. If you look at that, they have police, local government, which is a major problem of corruption risk, as well as a much larger, by a large factor, public service and, of course, political structure. And they need more money.

As I understand it, in New South Wales there is an arrangement for ad hoc financing of particular investigations that arise and cannot be efficiently done under their business-as-usual planning. Ms Lind might—

Ms Lind: New South Wales ICAC are the most akin to our jurisdiction because they do not have police oversight and neither do we. IBAC in Victoria, and Queensland and Western Australia all have police oversight; in terms of their resource base, they are not really the relevant comparator. Anecdotally, I am aware that New South Wales ICAC has recently gone through a similar budget process request for resourcing for them to do their work through their parliamentary process.

MS CASTLEY: Obviously, we need a decision before July.

Mr Adams: Hopefully.

MS CASTLEY: We will keep an ear to the ground on that. Thank you.

THE CHAIR: I want to make sure that I understand this. You have built up to 31 FTE, but a big chunk of that—was it 14 FTE?

Ms Lind: Eleven are unfunded as at 1 July.

THE CHAIR: What funding was used for that? Was that short-term funding that was provided previously?

Ms Lind: That was a combination of the previous appropriation that we got on a non-ongoing basis. We got that for the 2023-24 and 2024-25 financial year, for five FTEs. That was non-ongoing. That expires on 1 July. We have also had—and this goes back to the commencement of the commission—carry-forward reserves; all officers of the Legislative Assembly are able to carry forward to a degree, and that is a negotiated agreement with Treasury. We have used that underspent funding in prior years to be able to build up to our current capacity of 31 FTE.

THE CHAIR: In the budget at the moment, compared to the number that you have built up to, all of the forward estimates, as at the budget update, would have roughly a third less staff than you have now; is that correct?

Mr Hickey: Yes.

Ms Lind: Yes.

THE CHAIR: The impact carries forward across the forward estimates?

Mr Hickey: For 1 July 2025, the premise would be 20 FTE.

THE CHAIR: You are suggesting that, just to stay at the level that you are at, it will require the increase in funding that you have asked for in that business case?

Mr Adams: Quite. The other thing is the actual form of financing. Where the resources that you need are qualified staff, if you only get budgeting for 12 months so that you cannot offer continuing employment and you can only offer a one-year contract, that greatly handicaps your ability to recruit, especially the kind of expert people we need. That was one of our problems with the non-recurrent budgeting. In a sense, you get the money, but because it is only for one year, it cuts out its usefulness—

MS CASTLEY: You need certainty.

Mr Adams: Precisely.

THE CHAIR: Does that create challenges in terms of having investigations that span more than a year?

Mr Adams: Certainly. It is not only that—

THE CHAIR: It has an operational impact.

Mr Adams: when you get someone on, almost invariably, there is a significant lead time in getting people up to the mark for the kind of work we need. That takes you maybe six or nine months. They are working away, but not quite at the level that you want. Then, because they know they only have a one-year contract, they are already looking for other work. It is not merely that you only have them for 12 months; you lose the training that you have invested as well.

Ms Lind: And the continuity of the knowledge of the matter that they have worked on.

Mr Adams: That is right.

Ms Lind: Because they are deeply complex matters, so you have someone just up to speed with the matter, the material, and out the door they go. We then need to reassign that matter, so we are almost starting back, with the new team having to start afresh, almost, in terms of their knowledge and understanding, and how the matter is taken forward.

THE CHAIR: You mentioned a dollar figure that you require to keep at that level.

Ms Lind: Yes.

THE CHAIR: What was that, and is that per year or—

Ms Lind: That is $3.384 million in the 2025-26 year. Last year, we spent $7.447 million in our total expenses. Under the business case, which includes both maintaining our base of 31 and increasing our base to 45, that takes the budgeted amount to $10.275 million. So that is $2.8 million.

THE CHAIR: That is including the increase.

Ms Lind: Correct, yes; that then flows through the forward estimates for the following three years.

MR BRADDOCK: I am interested in circumstances where an individual is called to either a private or a public hearing of the Integrity Commission, but then they seek, for health and wellbeing reasons, not to attend. What is your process for handling that, and how do you ensure both the health and wellbeing of the individual and that justice is applied?

Mr Adams: There are three major elements. This has not been formalised, and the reason is that, necessarily, it is case by case, and we just look at what is relevant. Firstly, what is the importance of the witness to your investigation? If they are of marginal significance or you have other evidence that you can rely on that you think will not get much more informed from the witness, you are less inclined to press it. That is one matter.

The second one is what you know about how serious it is. In one recent case, we had a potential witness who was suffering from PTSD. I took the view that that witness's evidence, because of the definitive character of other evidence, was less likely to be so important. It would have been useful to have, but not vital to have. I decided that I would not press the person to come and give evidence because the matters about which I was going to need to examine this witness would have been much the same matters as had led to the PTSD.

It is always a risk assessment. In that case, I have to say, I relied only on a medical certificate, and I did not insist on a medical report. That is simply because, in the circumstances, I thought it was not an unreasonable likelihood, and the person was no longer with the agency. When you look at the whole picture, I decided it was not

necessary to subject that witness to examination. That did have an effect. I assume you have in mind Falcon.

MR BRADDOCK: That is one example, and I am just concerned—

Mr Adams: In fact, there is one other example where we actually sought medical reports. We resolved the problem in part by requiring a written statement. The witness is, in fact, a key witness against whom adverse findings may well be made. But in light of the medical evidence, it would have been irresponsible to have forced—even if I could, because I can issue a summons. The person decides not to come. There are processes by which they can be arrested and brought. I have to get a warrant. I have to get a court to agree with that. The court will have a look at the medical evidence. In other words, it is far from a lay down misère, and you have to ask whether the game is worth the candle, in the end.

In the result, I left it where it was. We did have some initial private examinations, but we did not have a public examination, which I would have preferred, of that individual. I can say this because this is already on the public record in relation to Kingfisher. These things were stated in the public examination. When we undertake the procedural fairness process, that person will get a chance to respond, and I will give that person's response as much value as it is worth, considering that it is not on oath and it is not subject to cross-examination, and I will evaluate that against all the other evidence which I have.

It will not stop me, in that case, if I think there is a basis for an adverse finding. That is a matter that I am still considering, but, if I do, it will not stop me making such a finding.

MR BRADDOCK: Can I ask some clarifying questions? Do you have the power to have an independent medical assessment at your discretion, if need be?

Mr Adams: Not a power, but I am able to seek one.

MR BRADDOCK: Okay. If someone does not cooperate with that—

Mr Adams: It is then a question of whether I regard that excuse as a legitimate one.

MR BRADDOCK: If someone does not attend a hearing, does that preclude a finding of potentially corrupt conduct?

Mr Adams: Not necessarily. In most cases, no. In some cases—and Falcon was one—I decided in the result I was not sufficiently satisfied that the conduct amounted to serious corrupt conduct. Because it did not amount to serious corrupt conduct, I was not permitted by the act to say that it was corrupt conduct.

That is less important than it might at first appear because it does not prevent me from actually characterising the conduct itself. In other words, I can say, "This person had this duty, failed to do this duty. This did not have an excuse. This was wrongful," providing I limit myself to a description of the conduct and do not use the word "corrupt". It only has a limited—

Ms Lind: There is nothing in our legislation that says the commissioner cannot make an adverse finding simply because the person has not turned up to a hearing or has not agreed to give evidence to the commission because of medical or mental health grounds. As the commissioner said, he is able to look at what other evidence, how critical is the evidence of that person, and what is the impact of that on the findings that the commissioner may choose to make.

MR BRADDOCK: To reassure me, someone will not be able potentially to avoid a finding of corrupt conduct just by virtue of basically not attending a private or a public hearing?

Mr Adams: That is right. I am entitled to look at the whole of the evidence and make a decision about that, providing they have had an opportunity to give evidence; and, of course, they always have an opportunity. That is the procedural fairness requirement.

MR WERNER-GIBBINGS: Commissioner, you mentioned, Operation Kingfisher. Is there a timeline or a date when the report will be landed?

Mr Adams: Without, as my mother used to say, painting the devil on the wall, I am expecting that I will have it finished before the end of the financial year.

MR WERNER-GIBBINGS: Finished to release? What is the sort of—

Mr Adams: No; I was going to add that, when I complete my report, there is then a six-week period. Given the nature of the report and the issues of the report, which have been outlined in public in the submissions made by counsel assisting in the public examinations, it may be that six weeks will not be enough, but I would be very surprised if it was more than two months.

I am aiming to have the entire process finished by midyear, but, because of the extent of commentary, it raises very major issues about compliance with procurement, compliance with the requirements of procurement, who can be parties to procurement processes, the relationship between the minister and the directorate, the relationship between the minister's office and the directorate, and the appropriate relationship between lobbyists here, the CMFEU and government, and particular procurements.

It raises not only difficult fact-finding questions, but also evaluation of what the various parties state. One of the complicating factors is that if one party makes a comment about their responsibility, their involvement or some factual matter that reflects upon another party, I have to give that party a chance. It is a complicated process.

In the end, I might just decide to get everybody in the same room so that, if there is a fight, they can fight it out on the one occasion and I can then make decisions. I have not decided that, but that may simplify the process. But it has to be at least six weeks. The legislation says six weeks. But it would not surprise me if that moves to two months in the circumstances, because of the difficulty in scope of the investigation.

MR WERNER-GIBBINGS: I am not pinning you down, but a reasonable forecast—

Mr Adams: No; I understand.

MR WERNER-GIBBINGS: notwithstanding unforeseen obstacles would be the third quarter of 2025?

Mr Adams: That is not unreasonable.

MR WERNER-GIBBINGS: Not unreasonable.

Mr Adams: But there is hope that it might be sooner. Obviously, it is an urgent matter. There is a lot hanging on it, and I am devoting as much time as I can, amongst the other matters, to resolving it.

THE CHAIR: I want to go to a comment you made earlier; I want to make sure that I understand it correctly. You said that if you do not find that a matter is serious corruption, you cannot call it corrupt.

Mr Adams: Corruption. That is part of the complication of the act, and I think it was because of sensitivities about reputation. The fundamental question under the act is whether there is corrupt conduct or not, but the act does require priority to be given to the investigation of serious corrupt conduct, and it defines serious corrupt conduct. But the legal relevance of a finding of serious corrupt conduct is that if you do not find serious corrupt conduct, you are not able to label any conduct as corrupt.

You are able to describe what the conduct is: "They told this lie", "They hid this document", "They took that bribe"—although I cannot imagine a bribe not being serious. But the additional factor in serious corrupt conduct is that it is corrupt conduct, but not only corrupt; it is likely to lead to the result of a lessening of public trust in the integrity of government. That is an objective question. Will it have that likelihood? The answer is: if you found it is corrupt and it has that likelihood, it is serious corrupt conduct, and you can say it is serious for this reason, then you can call it corrupt conduct. If you found that it is corrupt conduct, but it does not satisfy that second test—namely, it is not such as is likely to bring about the destruction of public trust, essentially—then you go back, and you are not allowed to say it is corrupt conduct. You can just describe it.

THE CHAIR: It seems the impact is that, even if you are not making a finding of serious corrupt conduct, it does not mean that there was not corruption involved.

Mr Adams: Precisely. I am not allowed to call it corruption; I just call it as it is, as to what actually happened. It is then for the people who read my report to give it such characterisation as they think is fair. Essentially, it is a headline point. If the headline is, "X commits corrupt conduct," that is worse than saying, "X committed misconduct." It has that reputational effect. I think that is what the provision is aimed at doing, because it does not change anything in substance.

THE CHAIR: But it does change the perception.

Mr Adams: It changes the name-calling.

MR BRADDOCK: Do you have a recommendation or a view of whether the

legislation should be amended to allow you to make such a finding of corrupt conduct?

Mr Adams: No, not really. I think that it is a reasonable adjustment of the interests at stake here. It does not prevent appropriate adverse findings from being made. It just prevents me from using negative language to describe it; that is all. I can understand where it comes from, and I think it is a not unreasonable compromise.

MR BRADDOCK: The Assembly passed a motion regarding a lobbying inquiry conducted by yours truly.

Mr Adams: Yes.

MR BRADDOCK: I want to understand whether there are any barriers in terms of your legislation to undertake such an inquiry.

Mr Adams: The only barrier is that I cannot use coercive powers. In other words, it entirely depends upon cooperation.

MR BRADDOCK: That might impact in terms of some of the potential conduct of that inquiry and the outcomes.

Mr Adams: This might be an interesting case to test whether there will be adequate cooperation from government and, if it proves inadequate, I might suggest changes to the legislation that allow more directive means. But there is no reason to think, as I see it now, that lobbying will not help. It rather depends on who you are asking and, of course, it rather depends on an assumption about what is at risk.

If a lobbyist is potentially an unpopular party or a politically controversial party, it may be that they might not want to explain what their lobbying exercise has been or interest has been, and a minister who is in receipt of such lobbying may not have it in their interest to disclose it. I am not saying whether they should or not. All I am saying is that I cannot force them to, if they see it as being against their interest.

From a politician's point of view, the problem is, of course, that I disclose; I ask this question, and they decline to give me an answer, and people can draw their own conclusions. There are some pressures that are implicit in the arrangement. With respect to my impression at present, I think the context is that I will get adequate candour to make a useful report. If not, I will report to the Assembly what I have done, and the Assembly can take it on from there, if they think more should be done.

Can I raise one thing with the committee, which I think should be out there because now proceedings have actually been taken? It is in the public domain that Ms Cover has taken action against the commission in relation to the report against her that is adverse to her. The question has arisen as to whether or not that report is protected by parliamentary privilege, which may well prevent her from arguing in the court that, for some reason, there is some shortcoming or mistake.

This is a difficult question both ways. Where a report does have a devastating and catastrophic effect on reputation, in principle, one feels that someone who is aggrieved by that report should at least be able to litigate it. Even if they lose it, they have had an

opportunity to put it right if they can. If parliamentary privilege applies then they cannot do that, and that may well be the present situation.

The matter has been raised by the Speaker and proceedings have commenced on the advice, as I understand it, of the Solicitor-General in the Supreme Court to intervene or act as amicus in the proceedings that Ms Cover has taken to have the court decide, as a preliminary question, whether her action is able to proceed or not because of the problem of parliamentary privilege.

If the parliamentary privilege is maintained so that she is unable to proceed then there will be a live policy question for the Assembly to determine whether or not parliamentary privilege should extend to the reports of the commission. That raises problems on both sides of the scales, and it is not an easy one. All I am doing, because this is an Assembly committee, is saying you should be aware that this is not merely a technical question; this is a live issue that is relevant in the present case.

I might say that, with parliamentary privilege, even if no party raised it, and I did not raise it—because I think, "Fair enough, she should be entitled to have a go,"—but it is raised. I brought it to the attention of the Speaker and the Solicitor-General and said, "It's a matter for you." But if we had not, it is just on the cards that the court, the judge, would. We turn up at court and they say, "What do you do about privilege?" and we look at each other in wonderment. The court would not be impressed.

It is a privilege of such high constitutional importance that it just has to be determined, despite what any of the parties wanted. Even if every party in this case wanted the matter to proceed, parliamentary privilege may be an obstacle, and it has to be decided whether or not they want it to, because of its independent constitutional importance. That is now going to be decided by a judge one way or the other.

THE CHAIR: We might wrap up now. On behalf of the committee, I thank you for your attendance today. If you have taken any questions on notice, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*.

On behalf of the committee, I would like to thank our witnesses who have assisted the committee through their experience and knowledge. We also thank broadcasting and Hansard for their support. If a member wishes to ask questions on notice, please upload them to the parliamentary portal as soon as possible, and no later than five business days from today. On that note, this meeting is now adjourned.

The committee adjourned at 2.53 pm.