

REPORT OF PROCEEDINGS BEFORE

COMMITTEE ON THE OFFICE OF THE OMBUDSMAN
AND THE POLICE INTEGRITY COMMISSION

THIRTEENTH GENERAL MEETING
WITH THE NSW OMBUDSMAN

At Sydney on Wednesday 23 November 2005

CORRECTED TRANSCRIPT

The Committee met at 10.00 a.m.

PRESENT

Mr P. G. Lynch (Chair)

Legislative Council

The Hon. P. J. Breen

The Hon. J. C. Burnswoods

The Hon. D. Clarke

Legislative Assembly

Mr S. J. Chaytor

Mr G. Corrigan

Mr M. J. Kerr

CHAIR: We will formally open the proceedings for the Committee's 13th general meeting with the NSW Ombudsman and statutory officers from his office. We will conduct this meeting in public session although we will have a short deliberative session at the end of the Committee meeting and then some in-camera evidence, which has already been discussed at a number of deliberative meetings.

BRUCE ALEXANDER BARBOUR, NSW Ombudsman, 580 George Street, Sydney,

CHRISTOPHER CHARLES WHEELER, Deputy Ombudsman, 580 George Street, Sydney,

STEVEN JOHN KINMOND, Deputy Ombudsman (Community Services Division) and Community and Disability Services Commissioner, 580 George Street, Sydney,

SIMON JUSTIN COHEN, Assistant Ombudsman, Police Team, 580 George Street, Sydney,

ANNE PATRICIA BARWICK, Assistant Ombudsman, Children and Young People, 580 George Street, Sydney, and

GREGORY ROBERT ANDREWS, Assistant Ombudsman, General Team, 580 George Street, Sydney, on former oath:

CHAIR: Thank you for appearing before the Committee. Your appearance is to provide information for the general meeting in relation to a wide range of matters concerning your office in accordance with the Committee's statutory functions. We are delighted to hear your evidence. Mr Barbour, we have received a submission signed by you and dated 18 November that consists of questions we have asked and answers you have provided. I take it you would wish your submission to be made public and included as part of your sworn evidence, with the possible exception of question number 17?

Mr BARBOUR: That is correct, thank you.

CHAIR: We can deal with question 17 in closed session later. Do you wish to make an opening statement?

Mr BARBOUR: Yes, thank you. As you would be aware, this year the Office of the Ombudsman celebrates its 30th anniversary and it also marks the 15th year of operation and oversight of my office by this Committee. These are important milestones for the office, but this year has been a milestone in a number of other ways. This year our formal complaint numbers exceeded 10,000 for the first time, having gradually crept up over the past

four years despite our best efforts to contain them. This included a 17 per cent jump in complaints about police and a 5 per cent increase in complaints about public services.

This year we tabled our first annual report about our new work in reviewing the deaths of 161 children and 110 people with a disability who died between 1 December 2002 and 31 December 2003. This year we also finalised five legislative reviews and tabled two special reports to Parliament. In early October we tabled a further special report to Parliament about the land valuation system in New South Wales. No doubt you will have had an opportunity to go through our most recent annual report. I just want to draw your attention to some of the highlights of our 2004-05 financial year and update you on some developments that have occurred since the time of writing.

One significant development relates to transit officers. We reported on our investigation into the way complaints about transit officers were being handled by RailCorp and we referred briefly to our recommendation that RailCorp's complaint handling system be subject to rigorous and systematic external oversight by a body such as our office. Since the finalisation of that investigation, discussions have continued between senior officers of my office and RailCorp. I have also met with the chief executive officer [CEO] of RailCorp and have written to the Minister. We understand that there is agreement in principle with the setting up of a legislatively based external oversight system for complaints about transit officers. We have indicated in correspondence to the Minister that our preferred position would be to see amendments to the Rail Safety Act to specifically provide for an oversight role for our office—much like Part 8A of the Police Act. I hope that these matters can be progressed quickly and that they will receive broad support within government and by Parliament. I will continue to keep the Committee informed of progress in relation to this matter. Clearly, if this new function is provided to the office, it will be essential that it be accompanied by appropriate additional resources to allow us to fulfil our responsibilities appropriately.

You may also have read with some interest the policy work that we have been doing in relation to protected disclosures. We have been actively involved in the Whistling While They Work project, a three-year collaborative national research project endeavouring to describe and compare organisational experience under various public interest disclosure schemes across the Australian public sector, in an effort to identify current best practice systems for the management of such disclosures. We also made a submission to the New South Wales Parliamentary Committee on the ICAC's current review of the Protected Disclosures Act, and hope that some of our ideas will find some support. You may recall the last review of the Act, where a proposal that a protected disclosures unit be established within our office, was recommended. We have once again put forward this proposal and await with interest the results of this review.

You will also have seen from our annual report that during the financial year we finalised over 10,000 formal matters, including over 4,300 police complaints and over 1,800 notifications received under our child protection jurisdiction. Complaints about community services, corrections and freedom of information all rose compared with the previous 12 months. We also concluded over 24,000 informal matters. In the four months since 30 June not covered by our annual report, we have received over 7,600 informal complaints and 3,700 formal complaints. If the trend these figures represent continues we will receive more complaints this year than last.

You have heard me talk about complaint numbers at each of our meetings, and they do seem to be increasing in some areas year by year. In many ways this is disappointing, in the sense that higher complaint numbers may indicate more public dissatisfaction with services and decisions. However, more significantly for our office, this trend is making it increasingly more difficult for us to fulfil our functions as thoroughly and as well as we would like. We have faced a gradual decline in our funding base in real terms in the past few years and have been advised that our budget will continue to be cut. We are acutely aware of the need to improve efficiency and provide a value for money service. However, the reality is that we are already a very lean organisation with efficient corporate services and very low other operating expenses per employee compared with similar sized agencies. In my view there are little, if any, further efficiency gains that we can make and our resource base has become dangerously eroded when compared to the community and Parliamentary expectations of our office.

We have identified a number of areas where we need additional funding to be able to continue to properly undertake our statutory functions. Perhaps the most sensitive, and therefore significant, area is our reviewable deaths function. We have found that the number of deaths and the amount of work required for each review far exceeds the indicative assessments that were made when we were originally given this function in December 2002. For example, at that time it was expected that there would be approximately 70-80 deaths of children to be reviewed for every calendar year. In the first review period—which was 13 months—there were 161 such reviewable deaths. The circumstances of the deaths of these children were such that we needed to closely examine 137 of them, and we decided to commence formal and detailed investigations into eight of them.

In addition to our first reviewable deaths annual report, we tabled at the same time a special report to Parliament in December 2004 to bring certain of those issues into the public domain for appropriate discussion and debate. The Committee will be interested to know that our second reviewable deaths annual report will be tabled in a few weeks time. The media interest in that special report and in our annual report confirmed that this is an area of significant public interest. The public reasonably expects my office to continue this work and to give it appropriate priority. The reality at the moment is that this expectation cannot continue to be met within the

resources currently provided to my office by the Government. I have raised my concerns with the Premier, the Cabinet Office and the Treasury.

Notwithstanding our budgetary constraints, we are still committed to achieving important outcomes for the public and to ensure we are as effective as possible. We constantly assess how we are travelling to identify areas where we can improve the way we do business. Since our last meeting, we have conducted program reviews looking at the functions and activities being performed in each of our business units. The reviews were conducted by statutory officers from different parts of the office and were aimed at identifying whether changes could or should be made to the way work was processed and how our performance was tracked. More detail about both of these issues is contained in the answers to various of the questions on notice from the Committee.

We also conducted a staff climate survey, asking all staff to give frank feedback on the way our organisation is being managed and the opportunities that they had to contribute to decision-making and to further their careers. I am pleased to say that the results were very positive and well above the average for organisations in the public sector. However, any issues that were raised are being dealt with.

This year we continued our outreach work. We visited 59 different regional areas to present training, talk to community groups and attend community events, meet with police Local Area Commanders, inspect correctional and juvenile justice centres, and audit the systems of various agencies within our jurisdiction. In all, our staff made over 70 speeches and presentations, and delivered over 150 training sessions to more than 2,000 people, including both those providing services and those receiving them. Regrettably, this important work is another area where it is likely that we will need to reduce the extent of the services we provide due to our budgetary commitments. Given these resources tensions, one further relevant issue I would like to raise with the Committee is our increasing concern at the resources taken to deal with persistent and difficult complainants. This is a particular problem not only for our office but also for many other customer service areas and watchdog agencies, including other Ombudsman offices throughout Australia.

This is an important and complex issue, which requires a strategic approach. To that end I have agreed to a working party being set up in my office to identify issues, look at options and report back to me early next year. I will then consider whether it is appropriate to hold a conference or a meeting of watchdog agencies in New South Wales to further canvass issues. I also propose to put this issue on the agenda of the next meeting of Australasian Ombudsmen, to ensure that the best possible uniform approach to this problem can be adopted across Australia. At a time when we must make difficult decisions about how to meet our core responsibilities effectively, the cost of dealing with difficult complainants becomes a critical issue for my organisation.

Lastly, summarising the work of our office over a 12-month period in this way only partially reflects the individual effort and commitment of each of my members of staff. At a time of ever-increasing workload and responsibilities coupled with reducing resources it is important to recognise the professionalism, dedication and attention to detail that my staff bring to their work. It is in large part these efforts that allow the office to continue to do its good work. For the information of the Committee I am happy to tender my opening statement. I also have copies of our latest updated pamphlet, which relates to our legislative review work for circulation. My senior staff and I are most happy to answer any questions that the Committee has for us.

CHAIR: Thank you for tendering those documents. They can be included in the record. In relation to the increasing number of complaints, are there some fields where the complaints are not increasing, or is that occurring in every field of your jurisdiction?

Mr BARBOUR: It does not occur in every aspect of the jurisdiction. Interestingly, we are seeing the trend of a slight decline in our informal complaints, the matters that come in generally over the telephone. We are not sure whether there is a reason for that. But what we are noticing, particularly in the police area, is that the complaints are trending up. Also, our general complaints area, the complaints seem to be continuing to trend up this year, as is the trend in the Community Services division. It is too early to say whether it will continue during the year, but certainly an extrapolation of the figures would suggest that we are going to end up with more again this year.

CHAIR: Is there any reason you can proffer, or speculation you can make about why the complaints are increasing in those areas?

Mr BARBOUR: No, not really. I think it probably was a range of things. It is more awareness of the office and the scope of the work that we are able to undertake. In the police area we believe that our educative functions, in particular, and the work that we have done with Local Area Commands and talking with police probably has prompted an increased awareness of that complaint role. In the police area, because of the particularly large percentage of increases, we are going to try to do some work during the next year to see whether there are any particular trends that we can identify as contributing directly to the increase.

CHAIR: In relation to reviewable deaths, the number that was reviewed in the first 30 months of operation was 161. The estimate was for 70 to 80. Where did the estimate come from? Was it based on previous incidents?

Mr BARBOUR: The Child Death Review Team was the source of information around the number of child deaths. Because we are focusing on only a subcategory of the total number of child deaths in our reviews we basically were trying to do the best estimate we could on the data that was available to the Child Death Review Team. But it was not data that was

completely complementary, so an estimate was made at the time between Cabinet Office, the Child Death Review Team and us. But it was only that, it was only an estimate. We did not know how many we would get. I am pleased to say that the number has reduced slightly this year, and the number we are reporting on in our next annual report is slightly less. That is not just because of a slight reduction in total deaths, but it is also because of some changes in our definitions for capturing those and reviewing, particularly in relation to neglect. But nonetheless, the number is well above that initial estimate.

CHAIR: What level of funding, in your view, is needed to enable you to perform the reviewable death functions, both at an individual and a systemic level?

Mr BARBOUR: We have put forward to Treasury, in relation to the reviewable death function, that we need a minimum of \$300,000 in addition to our existing budget for that area to manage the work. However, as I have indicated to Treasury that figure is dependent on the current numbers and current review roles. What we are seeing is a trend that requires us to investigate in more detail some of these deaths. If that trend continues then we may need to revise that figure in future years.

CHAIR: Has there been any discussion with Treasury about the amount of money for you to carry out that function with the number of cases you are reviewing?

Mr BARBOUR: In previous years we have attempted to have a relationship with Treasury that would be built on those sorts of calculations, as have other organisations. Regrettably, that is not the way Treasury will proceed to operate. If I can give an example, the Community Visitor Program, which we co-ordinate, originally was co-ordinated by the Community Services Commission [CSC]. Prior to the merger of that body with us in December 2002 there was an agreement with Treasury that there be a certain number of visits conducted—16 hours of visits per year to each visitable service—and the amount of money that Treasury would provide in support of that program would be calculated on that arrangement. That is no longer adhered to. We are now in the situation with the Community Visitor Program where we have barely enough funding to conduct nine hours of visits to the visitable services.

CHAIR: The agreement about official visitors was with the CSC, and that has not been continued by Treasury with the Ombudsman?

Mr BARBOUR: No, and my understanding is that Treasury is reluctant to continue with agreements that are based on a funding model that relates to the number of items of work, the number of visits made, or the number of deaths that we might review.

CHAIR: There must be other agencies or departments that have reached an agreement with Treasury based on that sort of model; on the number of things they have to do?

Mr BARBOUR: I am unaware of any. Certainly, Treasury has not adopted that suggestion when we have put it to them. I have to say, though, in contradistinction to that, it would be rather difficult for us to rely on that model as well. The simple number of deaths is not going to provide an equal quotation, if you like, translating into the amount of work because it is not clear to us how many we will have to actually conduct detailed reviews on because some will be complex and some will not.

CHAIR: I understand that. While we are talking about official visitors, what level of extra funds is needed for that?

Mr BARBOUR: We have put to Treasury that we require an additional \$314,000 for that program.

CHAIR: One of the other issues you touched on in your opening statement was a possible amendment to the Rail Safety Act. I did not have a sense from what you said as to whether you think your proposal that the Rail Safety Act be amended is likely to meet with success?

Mr BARBOUR: That is probably deliberate.

CHAIR: I thought it might be.

Mr BARBOUR: I have correspondence from the Minister for Transport, indicating in principle agreement that there ought to be external oversight, and it should be by my office. The meetings that we have conducted with his staff and also with RailCorp have been ones where we have indicated that, in our view, that is the best model to adopt. The Chief Executive Officer of RailCorp has given a broad agreement to that from his perspective, but we are yet to see anything translated in a significant way to progress that. There are a number of issues, as I understand it, going to Cabinet that relate to the Rail Safety Act, and we are hopeful that this will be one that will be included in that. But we have no direct confirmation of that at this stage, nor what the preferred model will be. But that certainly is our preferred model. We have also indicated in our discussions that that particular function probably would require an additional increase to our resources in the order of about \$1 million.

CHAIR: Have you seen, or do you know about, the bill that was introduced into this place last Thursday called the Terrorism (Police Powers) Amendment (Preventative Detention) Bill?

Mr BARBOUR: I am aware of the bill.

CHAIR: I think you were consulted in relation to part of the bill during its drafting?

Mr BARBOUR: No. I received contact only about the bill on the day it was introduced, and at that stage various models were put to me and I was asked which model would be the most appropriate from my view. I had not seen the bill at that time, so I asked to see a copy of the bill. We took a decision, given the very brief time that we had available, that the review model would best serve a balancing role, as was recommended for our office. But I also indicated during those discussions that I would be very concerned if there were no formal agreement as to funding being provided for us to do that, and that became an issue of discussion as well. My advice is that funding will be approved for that, and that has been confirmed. The model that has been put forward is not completely the model we recommended. We recommended, following from our discussions with the parliamentary committee and its interest in relation to how reports ought be tabled when we conclude reviews, that there ought to be a different form of wording in the legislation, but our recommendation was not accepted.

CHAIR: There would be a view that there ought to be a 28-day time period specified rather than simply allow it to be tabled as soon as practicable?

Mr BARBOUR: Yes, that certainly is the model we put.

CHAIR: Obviously, you have seen the bill as it was introduced?

Mr BARBOUR: Yes.

CHAIR: My reading of it suggests a widening of the jurisdiction of the Ombudsman. It says that "the Ombudsman is to keep under scrutiny the exercise of powers conferred on police officers or correctional officers under this part". To me that seems a significant expansion of your current jurisdiction.

Mr BARBOUR: I do not believe so. I think it fits very comfortably with our existing jurisdiction. I think all that the review is making clear is that the contact, which relates specifically to performing functions under the Act, is something that we are entitled to look at. But, arguably, unless it were excluded, police conduct or the conduct of correctional officers would come under our various jurisdictional bases in any event.

CHAIR: Although generally you would focus on misconduct rather than simply on the ordinary use of powers?

Mr BARBOUR: That is correct. Normally you would have a lever of a complaint or some issue arising for you to look at.

CHAIR: But this effectively allows you to use your powers without having a complaint to trigger your actions?

Mr BARBOUR: For the purposes of the review, and it is consistent with other review roles that we have performed, both in terms of correctional officers and also in terms of police.

CHAIR: Although it seems to go beyond just preparing a report of the review, does it not? Is that not true?

Mr BARBOUR: Well, not really, in my view. What is it that you particularly think gives us a greater role?

CHAIR: It seems to me the wording—that you are to keep it under scrutiny for five years—is a much broader thing than you have been given in other Acts where you have been asked to prepare reports.

Mr BARBOUR: I suppose, technically, that is correct, but whenever we have done other reviews, we have always interpreted the language fairly broadly. If there are any issues or concerns that we identify during the course of our review, I would not hesitate to bring those to the attention of the Parliament, independent of the formal review reporting role. So, I see this as being akin to that.

CHAIR: Clearly all of your formal powers, which some call royal commission powers, would be able to be used in the exercise of this function?

Mr BARBOUR: Yes.

CHAIR: If there were a matter that particularly you wanted to draw to our attention, or to the Parliament's attention, you would not be restricted by having to give the report to a Minister and have him table it. Your powers are quite sufficient to be able to give a separate independent report at any time?

Mr BARBOUR: That is right. In my view, our functions would be inclusive of conducting this particular review and keeping the systems under scrutiny. If there was an issue of significance that we thought we ought to report on, then I would be able to use my reporting powers to Parliament to do so.

CHAIR: And you have an agreement for extra funding to deal with the functions that have been given to you, or that will be given to you, under this amendment?

Mr BARBOUR: We have had indicated to us that the funding will be approved. The only funding thus far that has been approved is funding for the remainder of this financial year, but we have received assurances from Treasury that the funding will be approved in our future allocations. That is for a period of six years, to see us through the end of the five-year review period.

CHAIR: That concludes my questioning arising out of the opening statement. I think the Hon. Peter Breen caught my attention first. Do you have some questions about rail safety?

The Hon. PETER BREEN: I was interested in the current complaints mechanism for rail safety. Are those complaints to do with the actual safety of track and transport, or are they to do with complaints by commuters?

Mr BARBOUR: No. The investigation that we conducted was into the complaints system relating to complaints about the conduct of transit officers. Our concern was brought to a head not only by complaints that we had received but also by a great deal of media commentary some time ago about excessive use of force, allegations that transit officers were assaulting commuters, that they were exercising their powers inappropriately, and so on. Given that there are some 600 transit officers—they carry appointments and they operate as a law enforcement entity—we wanted to make sure that any complaints about their conduct were appropriately managed and dealt with.

We audited a significant number over a full year of the complaints that had been received about the transit officers. Our audit concluded that the quality of handling those complaints was appalling, in essence. Investigations were not conducted effectively. People who should have been spoken to were not. Even people who had made complaints about serious issues like assault were not even contacted before a decision was made that the transit officer had done nothing wrong.

We prepared a report, and that report made wide-ranging recommendations about improving the complaints system and also for the need for there to be external oversight, similar to our oversight of police complaints. It was that report and those recommendations that led the Minister to advise that he accepted that position. We are currently in the process of finalising a further review of a particular matter that has come to our attention where it would not appear as though the level of improvements that we had hoped for are evident in the system. But we are aware that RailCorp is moving to improve its employment practices of transit officers and managing of complaints. They are reworking their systems and we are monitoring how they are doing that.

The Hon. PETER BREEN: Are you aware of a proposal for police to actually take over the job of transit officers?

Mr BARBOUR: No, I am not, but certainly police used to do that role before transit officers were employed to do it.

The Hon. DAVID CLARKE: Mr Barbour, your office clearly has a growing workload. You have said that you have been advised that your budget will be cut. Is that correct?

Mr BARBOUR: All agencies, I believe, in the State, with the exception of a few, have received similar advice to our office—and that there will be a standard cut across the board.

The Hon. DAVID CLARKE: In your view, is the problem of budget constraints, as far as the Ombudsman is concerned, as serious as it has ever been?

Mr BARBOUR: I can probably only comment about my time as Ombudsman, but certainly they are now more serious than they have been in the 5½ years that I have been Ombudsman. We effectively have 13 fewer staff than we had not that long ago to do the work and we have an increasing workload. I think the community's expectation, given the very serious issues that we are now looking at, is that we are going to be adequately resourced to do that very important work. You cannot cut corners when you are reviewing the deaths of children. If you are going to make meaningful recommendations at the conclusion of those reviews, you need to be confident that you have been able to assess them effectively and you have the resources to do it.

The Hon. DAVID CLARKE: Your budgetary constraints are more serious than they have ever been as far as you can recall, or certainly during your term as Ombudsman.

Mr BARBOUR: They are certainly serious and if we do not receive any relief, we will continue to have to reduce the quality of service that we provide.

The Hon. DAVID CLARKE: You have indicated that you have been advised that your budget will be cut. Who advised you of that?

Mr BARBOUR: That is a standard advice that has been received by all agencies from the Treasury.

The Hon. DAVID CLARKE: From Treasury?

Mr BARBOUR: Yes. There is a 1 per cent cut for the budget 2006-07 that has already been forecast and there was a similar cut to the 2005-06 budget, and a 3 per cent cut the year before. So the cumulative loss to our budget since 2002, as predicted up to the end of the financial year 2007, would amount to just under \$1 million.

The Hon. DAVID CLARKE: When did you get this advice that your budget would be cut?

Mr BARBOUR: The advice comes annually whenever Treasury advises of what our budget is going to be for the future years.

The Hon. DAVID CLARKE: That came in the form of a letter, did it?

Mr BARBOUR: A range of correspondence and a letter, yes.

The Hon. DAVID CLARKE: Are you able to produce that?

Mr BARBOUR: I do not have it available to me, but we could provide the Committee with copies of it.

The Hon. DAVID CLARKE: Will you take that on notice?

Mr BARBOUR: I will take it on notice, yes.

The Hon. DAVID CLARKE: Thank you. You have said that you have raised your concerns about this growing problem with the Premier. Is that correct?

Mr BARBOUR: That is correct.

The Hon. DAVID CLARKE: Did you raise those concerns with him verbally or in writing, or both?

Mr BARBOUR: Verbally. I recently, only in the last few weeks, had the opportunity of meeting the Premier for the first time. The reason for that is because the Premier is the Minister who has responsibility for my office. It is rather fortuitous for my office that he also happens to be the Treasurer. During the course of a general briefing, I took the opportunity to advise him of my concern about the trend in terms of our budget and also the potential consequences of our financial situation in terms of our work. I provided him with a copy of a document which we prepared for the Treasury and Cabinet Office about the specifics of our financial difficulties. He indicated to me that he would certainly be considering those issues very closely and seriously. As I say, that was a matter of weeks ago.

The Hon. DAVID CLARKE: Have you raised these concerns in the past with the Premier before the present Premier?

Mr BARBOUR: Not directly with the Premier, but we have continually raised our concerns around budgetary matters and sought additional funding when we have put in our applications to Treasury. One of the dilemmas for the Ombudsman is that we do not have a traditional relationship with a Minister. The way budgetary matters are generally considered is that there is often an opportunity for Ministers to lobby the budget committee and/or Treasury on behalf of their agencies. Obviously, given the independence of my office, we do not have a traditional relationship with a Minister as such. At a recent meeting with Treasury officials that are responsible for my office, I took the opportunity of raising with them this problem and they have agreed to work with me to try to identify an alternative way of dealing with that particular situation.

The Hon. DAVID CLARKE: You said that you have also raised concerns with the Cabinet Office. Is that correct?

Mr BARBOUR: Yes, that is correct.

The Hon. DAVID CLARKE: What response did you get?

Mr BARBOUR: The Cabinet Office I provided with a copy of the document I just referred to and I asked if those issues could be looked at in the context of how we might approach the budgetary issue. A representative from the Cabinet Office was also at the recent meeting with Treasury officials, which is described as a budgetary scene-setting meeting. I understand all organisations have them. I am not sure why it is termed that, but that is what it is called.

The Hon. DAVID CLARKE: When did you raise the concerns about these budgetary cuts with the Cabinet Office—approximately how long ago?

Mr BARBOUR: I would need to look at the records, Mr Clarke. I would not want to mislead you by giving you a date, but I would say that it would be a few months ago.

The Hon. DAVID CLARKE: Have you had any response to raising those concerns?

Mr BARBOUR: I think because the Cabinet Office was going to attend the scene-stealing meeting—that was an interesting gaffe, was it not?—rather, the scene-setting meeting, and you would need to ask the Cabinet Office this, but I think the view was that further information would come back from that meeting and then they would be reviewing the issues.

The Hon. DAVID CLARKE: I see. I think you said that you have also raised the concerns about these budgetary cuts with Treasury as well?

Mr BARBOUR: That is correct. Over the past few years, we have put in for additional funding to Treasury, identifying the specific areas where we believed that we needed additional funding. We recently prepared this particular document which set out what we saw as being the critical issues. We provided a copy of that to Treasury staff before we had our scene-setting meeting and we have, subsequent to that, been required to put in our estimates for additional funding. We have modelled those on what we understand to be our most critical and urgent areas for additional funding.

The Hon. DAVID CLARKE: Would it be true to say that this is the situation: That this year and in the past couple of years, you have put in very strong recommendations for increased funding for you to properly carry out the work of your office, and your requests have actually been met on each occasion with budgetary cuts. Would that be more or less the situation?

Mr BARBOUR: We have not received a substantial increase to our budget, recognising the concerns that we have raised, that is correct. I have to say that it has really only been in the last six months that we have put together all the figures and we have realised how critical the issue is going to be for us. The other challenge that we have faced is that there was a 6 per cent pay increase negotiated for public sector staff in this State, which was unfunded. That was a significant impost on an organisation of my size to come up with the funding for that, so it is not simply as a consequence of cuts that we find ourselves in this situation, but we have also had to meet the unfunded pay increases.

The Hon. DAVID CLARKE: In real terms, your budget has been cut, has it not?

Mr BARBOUR: Yes, and almost by a million dollars.

The Hon. DAVID CLARKE: On the question of reviewable deaths, you said that they are in excess of your expectations, or of what your expectations were. Is that correct?

Mr BARBOUR: Yes.

The Hon. DAVID CLARKE: When we are talking about reviewable deaths, are we talking mainly about children?

Mr BARBOUR: No. Our responsibilities relate—

The Hon. JAN BURNSWOODS: Chair, I wonder if I could interrupt for a second. I am a member of the Committee for Children and Young People and I was going to ask some questions about this because we had a hearing with Gillian Calvert yesterday and we spent a lot of time on this issue.

CHAIR: Are you perhaps suggesting that you might want to ask questions now and that the Hon. David Clarke might want to defer until you have finished?

The Hon. JAN BURNSWOODS: I am just pointing it out because, as I said, we got quite a lot of information yesterday. Some of my questions relate, for instance, to any overlap that may exist between the different organisations.

The Hon. DAVID CLARKE: Well, I guess that the more questions on this problem of reviewable deaths, the better.

Mr BARBOUR: I am not sure I would necessarily agree with you, Mr Clarke, but nonetheless.

The Hon. DAVID CLARKE: Would you regard this area of reviewable deaths as one of the most important areas?

Mr BARBOUR: I think it is extremely important. It is very difficult in our work to try to equate areas of work. They all have particular importance and they all are seen by different people to have different weights of importance. But unquestionably, this is a very important area of our work.

The Hon. DAVID CLARKE: Because it involves the loss of life?

Mr BARBOUR: Well, partly because it involves the loss of life, which is clearly important, but also because of the purpose of the work, which is to try to improve systems to reduce loss of life. So, clearly there is an underlying significance to the work.

The Hon. DAVID CLARKE: Is there any government department about which we should be concerned in regard to this continuing problem of reviewable deaths?

Mr BARBOUR: In our annual report for our reviewable deaths function, and also in our most recent general annual report, we set out the role in detail. But because we are specifically required by the legislation to look at only certain types of categories of children's deaths, naturally there will be an overrepresentation of deaths that relate to the Department of Community Services [DOCS]. The children that we look at are children who die from neglect, abuse and in suspicious circumstances that have been notified to DOCS within a three-year period of their deaths or who have had a sibling notified to DOCS within that time.

So the review work is focused primarily on that agency. However, our reviews have also looked at a growing issue of concern for us, which is interagency co-operation. So our reviews into some of these deaths will not only look at DOCS; they will also look at the role of the Department of Health, Police, and other agencies that have also played a role in the child's life or the circumstances of the family prior to the death.

The Hon. DAVID CLARKE: Have you raised your concerns with DOCS?

Mr BARBOUR: Oh yes.

The Hon. DAVID CLARKE: Are you satisfied with the response that you have received?

Mr BARBOUR: We deal with DOCS on a whole lot of issues. On some issues we are satisfied; on other issues we think there is room for improvement in the quality of response. We have a significant interaction with DOCS not only in relation to the reviewable death function but also in relation to our broader community services functions.

CHAIR: Mr Barbour has been too polite to tell you that there is a fair bit of detail in relation to this in Question No. 20 and in the answer to that question.

Mr BARBOUR: There is. That is in relation to the response for the particular special report we did. But it indicates broadly the nature of the issues we have raised with DOCS on a death-related matter.

The Hon. DAVID CLARKE: Do you get any complaints about the Ombudsman?

Mr BARBOUR: Oh yes.

The Hon. DAVID CLARKE: How many complaints did you receive last year, as an example?

Mr BARBOUR: I think we have that noted in the annual report. If you will just bear with me I can give you a precise figure. It depends on how you identify complaints. When we get a letter that registers concern about a particular decision we have made, we register that, if you like, as a complaint and we review it. We call it a review work. Then there are other areas that particularly raise complaints. So in 2004-05 there were a total of 39 complaints about the office, raising a total of 63 issues. The details of those issues and their outcomes are noted on page 30 of our annual report.

The Hon. DAVID CLARKE: That seems to be a small number in comparison with the many thousands of complaints you receive at your office?

Mr BARBOUR: I think it is directly relevant to the quality of the work we do.

The Hon. DAVID CLARKE: That would appear to be so.

The Hon. JAN BURNSWOODS: I have a couple of fairly general questions. It so happens that yesterday Gillian Calvert and others from the Commission on Children and Young People appeared before the oversight committee. We spent a large amount of our time on issues relating to the Child Death Review Team and the role of the commission relating to child deaths. Ms Calvert said, and I am sure quite correctly, that more research was needed. There have been some issues, for instance, relating to NSW Health.

The Committee on Children and Young People also followed up some issues relating to the reporting of cross-border deaths. For example, a child might live in New South Wales but die in a hospital in Coolangatta. Obviously the same thing could be said about different parts of the State. I am interested in the extent to which there is an overlap or confusion amongst the roles of all the different agencies involved in looking at the deaths of children and young people.

Mr BARBOUR: I do not believe there is a great deal of confusion out there. At the time a great deal of effort was put into the development of our legislation to ensure there was a minimisation of any overlap or duplication.

When our function was first set up we worked very closely with the Commission for Children and Young People and the Child Death Review Team to ensure as minimal duplication as possible. We also have a number of arrangements and understandings in place between our organisations so that we do not duplicate things.

We have a very co-operative relationship across most areas. Specifically, they do not review the deaths that we look at, and vice versa. But, clearly, there will be crossovers of issues. The legislation allows us to do joint research, if we want to. It would be my view that before we embarked on anything of that kind we would have discussions to ensure that we did not duplicate any work they were doing. But I am unaware of any stakeholder confusion, if I could use those words, about our role. If you are aware of any I would be happy to hear of it.

The Hon. JAN BURNSWOODS: I noticed in your answer to an earlier question that you talked about your role as being "to review deaths at a systemic level" but that that takes you into the circumstances surrounding individual deaths. One of the areas in which I am interested is the role of the Coroner, of DOCS and a whole number of agencies. Are there problems in defining where the role of one stops and the role of another starts?

Mr BARBOUR: There will always be crossovers no matter what area we are looking at. Certainly the Coroner's role is very clear. The Coroner is seized with the responsibility of determining cause of death. The effect of the Coroner's work sometimes means that our reviews are delayed because that process can take a considerable period of time. But where cases are particularly significant or we believe they raise significant issues we do not wait for the Coroner's report if we believe there might be systems issues that need to be reviewed. You are correct that the focus of the legislation was intended to be on providing input back into the systems to reduce problems in the systems that might reduce the number of deaths.

We have found that, in many cases, unless we do very detailed reviews of the circumstances of individual deaths it is not possible to perform that role of making recommendations about systems. It is only when we do a detailed review that we are able to identify key issues relating to any failures or strengths of the systems. We also find when doing the detailed reviews that we are better able to understand the interrelationship between different agencies that deal with children and families. Recently, at the child abuse conference that Commissioner Moroney arranged, I spoke at length about some of the concerns I had about the capacity for agencies to exchange information, which in the area of child abuse and child protection I see as being a key issue.

So these reviews are able to look closely at files and at a spread of information that very few agencies are able to look at. We can see exactly what degree of involvement agencies have had in a family and over how long. We can look at the quality of that and we can also look at the extent of the

holdings that each of these agencies has and what exchange of information there has been in relation to those holdings that may have assisted in achieving a better outcome.

CHAIR: A moment ago when I was talking about the police powers counter-terrorism legislation I forgot to ask you one question. How will you carry out the functions that we expect you will be given under the new legislation?

Mr BARBOUR: We are yet to make a decision about that in a detailed way. But our intention—and what we have received funding for—is to have a specialist officer, probably at a level 9/10 position. That officer will be working in our legislative research unit. In relation to the terrorism area we already have a role that is mentioned in our recent pamphlet entitled, "Terrorism Amendment Covert Search Warrant." It is impossible for me to keep all the names of pieces of legislation in my head. As you know, we already have in place extensive security and other systems in the office.

So they will obviously apply to these issues. There is a commonality of agencies involved in the two pieces of legislation and we have already started some work in relation to that other review. So that will prove valuable for our preparations in relation to this review. In the areas located within the police team of the office Simon Cohen will be responsible for managing staff involved in that review and presumably we will initiate some roundtable meetings with agencies that are covered by the legislation to talk through how we intend to proceed.

The Hon. PETER BREEN: Just on that question of reviewing or overseeing the new anti-terrorism powers, the Premier has been reassuring people that because the Police Integrity Commission is overseeing the police, the police will be constrained in the way that they use the new legislation. However, the Police Integrity Commission does not have any jurisdiction over the Crime Commission. Have you had any role to play in the office of the Crime Commission? For example, do you deal with complaints about the Crime Commission?

Mr BARBOUR: No, we do not deal with complaints about the Crime Commission but our two terrorism-related reviews permit us, as part of that review, to access information from the Crime Commission about its involvement pursuant to that legislation. So we will have a role in relation to it for that.

The Hon. PETER BREEN: If there were a complaint, for example, about the way a Crime Commission officer used the powers, would you deal with that?

Mr BARBOUR: No, we do not have a power to deal with a complaint. However, if it were an issue that clearly went to the application of the legislation or some improper exercise of that, we would be able to deal with it

in the context of the review. I mention also that we have a further role in relation to the Crime Commission, which relates to controlled operations and also our covert oversight responsibilities.

The Hon. PETER BREEN: And is that a role under the New South Wales Crime Commission Act?

Mr BARBOUR: No.

The Hon. PETER BREEN: What is the protocol or the guide to use?

Mr ANDREWS: Under the Law Enforcement (Controlled Operations) Act the Ombudsman is required to be notified of all control operations and to inspect the records of those eligible agencies to ensure compliance with the legislation. The Crime Commission is one of the agencies that we inspect the records of. Under the Telecommunications (Interception) (New South Wales) Act we have a similar role in relation to telephone tappers. Again, the Crime Commission is one of the agencies that we monitor in that respect.

The Hon. PETER BREEN: I notice that the number of complaints about police seems to be down and trending down.

Mr BARBOUR: No.

The Hon. PETER BREEN: I am looking at page 42, figure 22 in the annual report.

Mr BARBOUR: They have been increasing significantly over the past three reporting periods. The numbers are higher for the earlier periods because that was prior to us entering into a more detailed and more expansive class or kind of agreement to reduce the number of minor matters coming to the office. Referring to the increasing trend, we had a 17 per cent increase in complaints over the previous year. The reason in part that that is alarming is that we are looking only at the more serious complaints, if you like. To counter the reduction in the number of class or claimed agreements that are coming to us we conduct a significantly increased audit program to ensure that those matters are being handled appropriately by police without notification to us.

The Hon. PETER BREEN: In relation to complaints about Corrective Services I notice that since the Office of the Inspector General ceased to exist the number of complaints you have received about Corrections Services matters has almost doubled.

Mr BARBOUR: I am just looking at the numbers. Which reference are you looking at?

The Hon. PETER BREEN: It is in the Corrective Services section of the annual report.

Mr BARBOUR: I think you are referring to page 110. So the subtotal of formal matters has doubled, but that also includes juvenile justice and justice health. Then the informal matters are largely similar in number.

The Hon. PETER BREEN: That is figure 49.

Mr BARBOUR: That is figure 49; that is right.

The Hon. PETER BREEN: It seems evident that even after excluding justice health and juvenile justice there still appears to be a doubling in the number of complaints about correctional centres and corrections issues generally?

Mr BARBOUR: I think part of that is explained by the significant increase in the prison population as well. There are more than 9,000 prisoners in the State, and that number is trending up. Also, I think that with the advent of our corrections unit, we have had a great deal more exposure now than we have ever had. Although we have been involved in dealing with Corrections matters for the entire 30 years of the operation of the office, we now have, as a consequence of the demise of the Inspector General's office, a dedicated Corrections unit and we are actively visiting centres. I think that greater awareness of people has probably contributed in part to that as well. Greg, are you aware of any additional matters that might have led to the increase?

Mr ANDREWS: Even during the time the Inspector General existed we received far more complaints about Corrections matters than the Inspector General would have received. With the demise of his office, there certainly has been an increase in complaints. There were certainly a number of people who took their complaints to the Inspector General; now that he does not exist, they are coming to us as well. But the number of complaints has always been relatively higher in that area.

The Hon. PETER BREEN: Have you noticed any particular area of Corrections where the complaints are increasing more so than other areas?

Mr ANDREWS: No. As you will see from the table that is also on page 110, the complaints cover a large range of issues. Over the years, if you go back on our previous annual reports you will probably find a similar spread of the nature of what the complaints are about. They range from simple matters about food to allegations of misconduct by officers, so there is a huge range.

The Hon. PETER BREEN: Have you noticed any increase in the complaints about segregation? It seems to me on anecdotal evidence that more and more prisoners are being placed in segregation for one reason or another. At Goulburn, for example, people are segregated according to their race. Have there been complaints about this aspect of prison administration?

Mr ANDREWS: We have always had complaints about segregation. I do not think there has been a particular rise in the number of those complaints. One of the significant reforms that we were able to bring about quite a few years ago now was to introduce into the legislation an appeal right. For those who are subject to segregation orders, there is an appeal right to the Serious Offenders Review Council. That decreased the number of complaints about segregation that previously did come to our office, and we certainly encourage people to take advantage of that appeal right where necessary.

The Hon. PETER BREEN: Does that appeal right apply to all prisoners, or just to serious offenders?

Mr ANDREWS: Only those under a formal segregation order. The term you are using about the "yarding" of people at Goulburn is not technically correct in terms of segregation. Segregation is a specific order that is issued by the Commissioner or his delegate to restrict the access an individual prisoner has to other prisoners. The "yarding" system, where people of different ethnic groups are managed at Goulburn, is really just mainstream prison administration.

The Hon. PETER BREEN: Why is that the policy used at Goulburn; it is not used in any of the other prisons?

Mr ANDREWS: I am not exactly sure, except to say that they have found that to be the most productive way they can manage the mix of people at Goulburn.

The Hon. PETER BREEN: When I refer to segregation, I refer to prisoners being placed in cells on their own. I think the technical term is "limited association". They might be able to mix with one or two other prisoners. In my view, this seems to be an increasing problem: prisoners are put into what I call segregation for disciplinary purposes and there is no real provision for it under the legislation or the regulations.

Mr ANDREWS: You may be referring to some of the specialist programs that have been introduced over recent years, which do limit association. Technically they are not regarded as segregation but as a specialist management program. There is certainly a program that has been designed to deal with gangs in gaols, and a number of those programs are having some reasonably good outcomes. But they certainly do limit association rights, and also rights to privileges and out-of-cell time.

The Hon. PETER BREEN: It is the equivalent of the old solitary confinement. I have met prisoners who have spent up to six months in this isolated state where they are not permitted to associate with other prisoners.

Mr ANDREWS: I think solitary confinement is prohibited under the present legislation, and I would be very concerned to hear about any

individual case of anyone being in solitary confinement. We would certainly look at that.

The Hon. PETER BREEN: If a prisoner is in his or her cell and can only come out to make phone calls, surely that is, by any definition, some form of solitary confinement. Phone calls and legal visits are the only opportunity they have to come out of their cells. There are a lot of prisoners in that category.

Mr ANDREWS: Most prisoners who would be in that category would probably be required to be on a segregation order.

The Hon. PETER BREEN: Do we know how many of those orders there are?

Mr ANDREWS: I do not know offhand.

The Hon. PETER BREEN: Would you take that question on notice: How many prisoners are the subject of segregation orders?

Mr ANDREWS: Yes.

Mr MALCOLM KERR: Mr Barbour, you mentioned the preparation of a document relating to the budget. Could that document be produced to the Committee?

Mr BARBOUR: Yes, I have no difficulty producing it. It has formed the basis of our submission to Treasury, and I will organise for a copy to be provided.

The Hon. DAVID CLARKE: Mr Barbour, I think you said earlier that your office received many complaints about the complaints system used by the State Transit Authority, is that correct?

Mr BARBOUR: No.

The Hon. DAVID CLARKE: I may have misunderstood you.

Mr BARBOUR: We do not receive many complaints about that specific system, but we have done a detailed investigation into it and we have received a few complaints about it.

The Hon. DAVID CLARKE: I think you said that the quality of the system they had in place was "appalling"?

Mr BARBOUR: Yes. We were very concerned about the quality of the system of handling these complaints.

The Hon. DAVID CLARKE: Have you made your concerns known to the State Transit Authority?

Mr BARBOUR: To RailCorp, absolutely, and the Minister. The details are documented in our annual reports, and I referred to that specifically in my opening statement.

The Hon. DAVID CLARKE: You have raised your concerns with RailCorp over a period of time?

Mr BARBOUR: We have raised the concerns following our investigation. We have another investigation on foot, and we have had some meetings since then. The total period of time, I cannot give you a figure on. The original detailed investigation, which audited more than 200 matters, took some time.

Mr COHEN: The original investigation commenced in July last year. The audit took place in November and December. A provisional report was provided to RailCorp in February this year, and the final report was provided to the Minister and to Mr Graham in August this year.

The Hon. DAVID CLARKE: Are you satisfied with RailCorp's response to the concerns you have raised?

Mr BARBOUR: As I have indicated, one of the major recommendations we made was that there be an independent oversight system, and that still seems to be under negotiation. But I am hopeful, given the commitment the Minister has made, that that will happen. In terms of the improvements on the ground to the system, we are monitoring and we are getting responses from them. But, as I also indicated earlier, we have had a subsequent matter referred to us which we are currently investigating, and it causes me concern because the way in which the matter has been handled postdates the issues we raised with RailCorp. So I am, I suppose, not as optimistic that the reforms are as widespread as we would like, and we are certainly continuing to monitor those reforms.

CHAIR: Mr Barbour, for the benefit of those who have not read the answers you have already provided to us in written form, it is true to say that your answer on this topic is as follows:

Our report about the investigation by RailCorp of complaints against transit officers made 6 recommendations, all of which have been accepted. I have been pleased with the genuine commitment by senior RailCorp managers to implement those recommendations.

Mr BARBOUR: Yes. There is no doubt that there is commitment there to do it. As I say, our only concern is that the most recent investigation seems to suggest that perhaps things on the ground are not working as effectively. We recognise that in changing any complaints system, when you have 600

officers and you are receiving hundreds of complaints, it is going to take time for those measures to go through. So I remain optimistic that that will happen, but certainly it is an area that will benefit from appropriate external oversight.

Mr MALCOLM KERR: On page 31 of the report there is a photograph of a publication titled "YAPRap". Who produces that?

Mr BARBOUR: It is the newsletter of the Youth Action and Policy Association NSW, and they are called YAPA. I believe that that is a copy of a document which referred to publicity that attended our review.

Mr MALCOLM KERR: Of RailCorp?

Mr BARBOUR: That is correct.

Mr MALCOLM KERR: Would it be possible for the Committee to be provided with a copy of that publication?

Mr BARBOUR: I do not want to mislead the Committee. Mr Cohen has just indicated to me that YAPA was one of the organisations that raised concerns specifically about the complaints system and the conduct of RailCorp officers. So that is probably referring to that, rather than our direct involvement. I assume we have a copy of it, and I am happy to get it. If we do not have a copy, I will get it from YAPA for you.

CHAIR: A little while ago you spoke about the class in kind agreement between the Police Integrity Commission and the Ombudsman. Is there any need to review that?

Mr BARBOUR: Obviously, we constantly revisit those particular agreements, and we have reviewed it not that long ago. But I might ask Simon Cohen to detail for the Committee what we have done.

Mr COHEN: With the legislative changes in 2001, meaning that not all complaints from members of the public have to be notified to the Ombudsman, some immediate amendments were made to the class in kind agreement at that time to facilitate the legislative change. There was a long period of discussion with the Commission and with NSW Police about a new and simpler class in kind agreement, and that was signed off by the Ombudsman and the Police Integrity Commissioner on 1 October 2004. As part of our business processes for 2006, we propose to undertake a review of the impact of the class in kind agreement as part of an overall review of the reasons for the increase in complaints on that which we have received in the past period of time.

CHAIR: While we are talking about police complaints, I am still a little astonished, as I assume a few other people are, that the ICAC managed not to refer to you 600 police complaints matters. I also note your advice that the

ICAC has not managed to provide a detailed explanation as to how they manage to do that, or manage not to do that. Over what period of time has the ICAC's failure extended? Has it been from the time the jurisdiction first changed? Is that the range of the period we are talking about?

Mr BARBOUR: Yes. Our understanding is that at the time of the changes to the legislation and the new obligation on the ICAC to refer to the Police Integrity Commission or us any police-related matter, that simply was not in a formal and widespread way put into operation. But from time to time there were matters that were referred to us, so—

CHAIR: So the ICAC did send some matters to you?

Mr BARBOUR: Yes, some. That is why it was not apparent to either the Police Integrity Commission or ourselves that there was a large number that had not been. Many of these matters, of course, are not just about police; they relate to allegations of a range of conduct, and police might play a role in it. So that also probably mitigated to some extent—if the Commission focused on a particular different part of the complaint, not realising that the other part might need to be referred on for appropriate investigation. But I am not sure the Commission knows—and I think that, given that it extended over a period of time, it would be very difficult for them to provide a comprehensive answer. But the consequences are not particularly good.

CHAIR: Why do you think it happened?

Mr BARBOUR: Because of a lack of awareness of their obligations to send those matters over, and perhaps a lack of clarity about the fact that corruption allegations, on the face of them, might relate to more than just the obvious.

CHAIR: So, they did not know what they were supposed to do?

Mr BARBOUR: That is one way of putting it.

CHAIR: I am assuming that members of the Committee do not have any other questions arising out of the opening address. I propose to ask some questions about the answers to questions on notice. In your answers you indicate that a review of the Police Team Intelligence Plan is being completed and that that will enable the Police Team to focus on police officers and commands of most concern. What is involved in that review? How will it help the Police Team to set the strategic directions?

Mr COHEN: Two reviews have been conducted in relation to our intelligence capacity. The first was that conducted as part of the overall review of the Police Team's activities that suggested that we could better imbed the use of intelligence products into our oversight and general work with police. The second was a review of the original intelligence plan that was put in place in 2001 to ensure that it was meeting the objectives that we had

set out at that time for an intelligence capacity to meet. We think that the sorts of changes that we will see will focus on ensuring that we obtain the best information that we can from our oversight and our fieldwork, and that we are actively using that information in our oversight and targeting of command work.

Increasingly as we look to become more efficient in dealing with complaints and focus on the most serious or those areas that present the most risk, the better the intelligence we have about officers and about commands and the better we are able to ensure that our resources are focused on those areas. We would hope towards the middle next year to have bedded in all the changes that should result from those two reviews.

CHAIR: Does the Ombudsman have a view of the early warning system in relation to police that the Committee proposed and the police decision to propose an alternative risk assessment system?

Mr COHEN: I think it is fair to say that the report that was produced by NSW Police consequent to the recommendations of the Committee that research be done in that respect did not suggest a clear path forward to a comprehensive early warning system for police officers. We have seen the early work that police had done in terms of the new risk assessment processes and we have been consulted. We are yet to see the results of the pilot, but it appears anecdotally from what we have heard and from what we know about those commands, that the officers who present the most risk may well be being identified through that process. It is somewhat short, I think, of what the Committee and we were hoping out of it. We will certainly look to work with what police have put on the table and look to the, I think they call it the computer operated police system [COPS] 2 project, or the mainframe replacement project, to provide better computer capacity to facilitate a better warning system going into the future.

CHAIR: One other area of interest arises out of the answers you gave in relation to the questions on police. You advised that domestic violence by police officers is an area requiring significant attention by the police service. What initiatives do you think ought be considered by the police?

Mr BARBOUR: We are actually targeting the issue of domestic violence in a significant project. That project is going to examine a wide range of issues and that will potentially be one of those issues. We see domestic violence arising across a range of our areas of responsibility, not just in terms of police and their particular conduct in perpetrating domestic violence, but also of course in responding to it and dealing with the issues that arise when they respond. That correlates to our work in relation to reviewing child deaths and also our work in relation to the Department of Community Services [DOCS]. There are clear crossovers in terms of those particular issues. There are also significant issues in Aboriginal communities about the extent of domestic violence and so we are actually developing a fairly significant project, which will look at domestic violence. Once we have the terms of that

settled I would be happy to provide the Committee with some further details if the Committee is interested in that.

Mr COHEN: One of the primary focuses of the project to date is to look at the guidelines that are given to police when they are dealing with domestic violence, and look at how they are actually being applied in the field to see whether, for practitioners, the sort of arrangements that are in place—both legislatively and procedurally—are appropriate to permit them to be able to intervene, in a criminal justice sense but also in a preventative sense. That is our primary focus at the moment.

CHAIR: I think the Committee would appreciate being kept up-to-date with that information.

Mr BARBOUR: Can I just add something here because we have mentioned the project. I do not want to labour the point about budget and money, but the dilemma we face at the office at the moment is that much of our project work, which we see as being extremely important and adding significant value to agencies and the New South Wales community in general, is probably one of the areas that is going to be most significantly affected by budgetary constraints because it is discretionary. I do not want to put in place systems that reduce further the number of complaints we are able to attend to or the number of issues that we need to deal with which are particularly covered in our statutory obligations. So I just flag that we have already reduced our project list and our project work because of this, and it may well be that, despite what we see as being the importance of some of this project work, we may need to look at that in the future. I just put the Committee on notice about that. Certainly, this is not a project that we have identified that we would have to pull, but it is something that is under active consideration at all times.

CHAIR: I suppose the problem is that as you have become more and more reactive and less proactive you deal more with complaints and less with the broader projects that in the long run might actually be more productive but which you cannot afford to pursue because you have to keep focusing on complaints.

Mr BARBOUR: That is exactly right. Certainly during my term as Ombudsman I have increasingly taken the office into a much more proactive environment and role, and I see that being genuinely the real future of Ombudsman offices. However, the core of our work is always going to be reactive. We have statutory responsibilities that we must adhere to and to the best of our ability. Much of our proactive work is discretionary so that is an area that we constantly have to revisit.

CHAIR: While we are dealing with police I will turn to the dissemination of telephone intercept [TI] product. As I understand your answers, NSW Police has a view that the dissemination of TI product to the

Ombudsman is not a permitted purpose. Do you understand the reasoning behind that proposition?

Mr BARBOUR: I can update the Committee a little bit in terms of the answer to our question, but I do not have a formal resolution to the issue. NSW Police have been reluctant to provide us with the information because they genuinely believe that the legislation created sufficient ambiguity about whether they can lawfully give it to us. We tried to remedy that situation by getting an opinion from the Solicitor General. The Solicitor General's opinion came down largely on the view that they were in fact able to provide that information. Nonetheless, there were some concerns that, unless there was formal agreement to them being able to do that, from the Commonwealth authorities, they were very reluctant to do it.

Literally only in the last week or so we have had a further meeting about this issue with NSW Police, my staff and staff from the Commonwealth Attorney General's Office. The Staff of the Commonwealth Attorney General's Office have indicated to police that they believe the police can provide information to us and that they would not prosecute, or move to prosecute, if they did. I think that the police position, once that advice is confirmed in writing, might change and we might as a consequence be provided with the information, but until such time as I see it in writing I am reluctant to say that it has been sewn up.

The dilemma, of course, for us is that we cannot perform our oversight role effectively if a particular investigation has used TI product and reached particular conclusions. Without access to that we just simply would not be able to do our job properly. But we are hopeful. We have been working on it now for about 18 months and we are hopeful that we will shortly have a resolution to the problem. I am very happy to keep the Committee up to date with that.

CHAIR: The Committee would find interest in that. The issue is the federal legislation, is that not the case?

Mr BARBOUR: That is correct.

CHAIR: It is almost identical, by the sound of it, to the problem with the Inspector of the Police Integrity Commission a couple of years ago.

Mr BARBOUR: Yes.

CHAIR: That was eventually resolved with federal amendments, I think.

Mr BARBOUR: Yes. The difficulty was that, although amendments to the Act were contemplated, they were not actually going to deal with that specific issue.

CHAIR: Are there any cases at the moment, or any specific instances, where this is a practical problem?

Mr BARBOUR: We have a number of matters where we need to have this resolved as quickly as possible and they have been delayed to some degree as a result of uncertainty about this, but not many. As you can imagine, there would not be that many matters that we would need this for.

CHAIR: While we are still on police, the targeted approach, it would seem from your answers, has had a fairly positive impact on delays in the completion of police complaint investigations by the police. What progress has NSW Police made on the internal measures that have been recommended by the Ombudsman?

Mr COHEN: I cannot give you a precise date, but only in the last short period have NSW Police formally adopted performance measures for timeliness in complaints handling, although those measures have been informally adopted by the Professional Standards Command prior to that period of time. They require the vast majority of complaints to be dealt with within 90 days, and set a benchmark figure for that. The capacity of NSW Police to monitor that is increasing, and some of the products that they have produced to chase up old investigations seem to be working very well. It is an area that they have focused on because of our interest in it. Our view is the results of that are being demonstrated in more timely investigations, particularly in resolving delayed investigations by NSW Police.

Mr BARBOUR: Simon is being particularly polite in his description of the issue. Had we not gone to the step of doing what we did and investigating it, we do not believe that NSW Police would have given the issue of delays the appropriate attention.

CHAIR: You actually conducted an investigation into the delay?

Mr BARBOUR: We got into the practice of investigating formally, by way of notice, all of the delayed matters as to why they were delayed. We had to do that repeatedly to get them to respond—in our view appropriately—to the issue.

CHAIR: Are there any other fields where that approach might be useful?

Mr BARBOUR: For NSW Police?

CHAIR: Well, perhaps start with them, yes.

Mr BARBOUR: We believe that, over the past few years in particular, we have become a lot more strategic in the way we use our resources and our powers. You will have seen from our annual report that last year we conducted 67 formal investigations, which is probably more than in any other recent

time. So far this year we have 55 investigations on foot. What we are trying to do is not only investigate those matters that we have traditionally needed to investigate, but we are trying to use our powers in a very strategic way to deal with systems issues and with particular systemic problems that we identify in any agency that is within our jurisdiction. We would certainly adopt that sort of practice where it was necessary.

The Hon. PETER BREEN: Could I interpose for a moment?

CHAIR: Certainly.

The Hon. PETER BREEN: I know we have discussed this before, but I am afraid I have just lost it for a moment. What is the protocol when someone makes a complaint about police? Do they go to the Ombudsman, or to the police? What is the way in which the complaint is identified as being one suitable for the Professional Standards Command or for the Ombudsman?

Mr BARBOUR: People can make a complaint to the Ombudsman, to the Police Integrity Commission or to police directly. Unless it is a matter that the Police Integrity Commission wants to deal with directly, the vast majority of complaints are dealt with by police in the first instance and oversighted by my office—we oversight about 99 per cent of all complaints. We do not do initial investigations, although if we chose to do a particular investigation at some stage during the course of the police investigation we can technically take over if we want. Our focus is on oversight of the systems and making sure those work effectively. There are various protocols in place for how those matters are dealt with. Unless the matters are particularly serious they are not done by Professional Standards Command; they are done in the local regions and are the responsibility of the Local Area Commanders and their particular complaint management teams.

The Hon. DAVID CLARKE: I think your office was required to monitor the provisions of the Police Powers Vehicles Amendment Act 2001, is that right?

Mr BARBOUR: Yes.

The Hon. DAVID CLARKE: And I think you did that and you provided your report to the Minister for Police, it says here in September 2003.

Mr BARBOUR: Yes.

The Hon. DAVID CLARKE: And then I think the Minister is to table that report to Parliament, is that correct?

Mr BARBOUR: No, as we have indicated in our answers to the questions. Question 10 is specifically on it, and that particular issue is dealt with in my answer. There is no formal requirement in that particular

legislation for the Minister to table the report in Parliament, but certainly our expectation would be that he would do so.

The Hon. DAVID CLARKE: So you provided that in 2003. Are you aware of whether or not he will table that report?

Mr BARBOUR: We have certainly requested that the report be tabled, as we do with all reports. The report was originally provided to the former Minister, Minister Watkins, but as I say the legislation does not require the Minister to table it in Parliament.

The Hon. DAVID CLARKE: When did you request that it be tabled?

Mr BARBOUR: I do not know. When we forward these to the Minister we always ask that they be tabled as soon as appropriate by the Minister. So it probably would have been when we forwarded it in 2003.

The Hon. DAVID CLARKE: Could you take that question on notice and come back to us as to when you requested that it be tabled?

Mr BARBOUR: I am happy to take that on notice. I am also reminded that recently Hon. Catherine Cusack passed a motion in the Upper House—

The Hon. PETER BREEN: I think she only gave notice of it.

Mr BARBOUR: Gave notice of it? Okay. No I think it was agreed to. You may not have been there on that day. The Hon. Catherine Cusack has identified from our annual report the concern that we have about the number of reports still with Ministers that have not yet been tabled and she has moved a motion, which has been agreed to, that those particular reports be provided.

The Hon. DAVID CLARKE: You are not sure when you made that request to the Minister that this report be tabled in Parliament but you think it would have been at the time that the report was made available to the Minister.

Mr BARBOUR: I am just referring to our standard practice, and our standard practice when we provide review reports is to request that they be tabled as soon as possible. From time to time we further write to Ministers to give them a progress report and we set out by way of a table what reports have been completed and are with them and which are yet to be tabled and those reports that we are currently working on. So at various times responsible Ministers would be aware of the relevant time line in relation to all of the reviews, both those complete and provided to the Minister and those that we are currently working on. So there would be a number of times where we have identified those particular issues to each of the relevant Ministers.

The Hon. DAVID CLARKE: So in response to your report on the Police Powers Vehicles Amendment Act and your request to the Minister that this be

tabled in Parliament, have you received any response from the Minister since you made that request of him?

Mr BARBOUR: I am not in a position to be able to indicate that at this stage. As I said, it was the former Minister. I am not sure what the former Minister said and I am not sure whether I have received a direct response about the issue from the current Minister. So I would need to check that, and I am happy to take that on notice and get back to the Committee.

The Hon. DAVID CLARKE: As to whether there has been any response from the previous Minister or the present Minister for Police.

Mr BARBOUR: Certainly.

CHAIR: The concerns in your report about the non-tabling of your review reports has been a matter of concern to this Committee over a period of time. As you know, we have essentially supported your position. In that context, I am quite impressed by the ingenuity of your answer to question 10, where you make the point that rather than banging on the desk with Ministers demanding that reports be tabled, what you are now doing is checking to see whether the recommendations in reports are actually being adopted. It seems to me from this answer that the report that we have just been talking about made three recommendations, all of which have been adopted, which to some extent means that the tabling of the report is not such a big deal. But what I am interested in particularly is whether you are doing that with all the other reports that have not been tabled, that you are effectively getting the same result by a different course.

Mr BARBOUR: We are where recommendations are agreed to. The process of the preparation of these reviews, as you can imagine, they take a great deal of time to prepare and they are frequently very detailed. At the conclusion of the preparation of a draft document we will provide it to the relevant agency to comment upon, and at that stage we will have draft recommendations. Once we formalise that process we then hold the agency to the recommendations. We see no reason why they should not be complying with those if they have already accepted them. So where it is possible to do that, we are doing that.

CHAIR: Do you have a general power to table reports to Parliament on topics that are of relevance that are within your jurisdiction?

Mr BARBOUR: We have a capacity to issue reports to Parliament on areas where we are concerned and believe that they should be made the subject of a report to Parliament. If your question is directed towards the review issue, the dilemma is that there is a statutory framework which requires us to actually report to the Minister, and I think until such time as there is reflected in the statute an opportunity for us to do something within a time period if the Minister does not table it, the Act allows the Minister to table it, generally the wording is "as soon as practicable". So it would be

rather difficult for us to go behind the Minister to do that. I think the appropriate course is to try to follow the course we have talked about in terms of getting the recommendations complied with and to also regularly advise the Minister that we are still concerned that the report has not been tabled.

CHAIR: And you have a capacity if the case was serious enough to do a report on the non-tabling of a report you had reviewed.

Mr BARBOUR: That would be about ministerial conduct and that would be something that I would need to consider because technically ministerial conduct is outside our jurisdiction. Can I say though that sometimes there are competing issues which are not really just simply about, as one would assume, a Minister being tardy in tabling it or not having good reason to. Because we are dealing with reviews that are being prepared after a significant period of time there has often been supplementary legislation, reviews of practice, new legislation introduced and so the relevance sometimes of the review reports or how they might be dealt with in that context of a new legislative framework becomes much more complicated and I think perhaps some of the reviews, that has arisen because of the LEPR legislation and so on. So I am certainly not making excuses for the Ministers but I expect that there may be some issues of that kind which interfere with the smooth timing of tabling.

The Hon. DAVID CLARKE: Following on from that, are you aware of any reason why your report provided in September 2003 regarding the Police Powers Vehicles Amendment Act would not have been tabled by now?

Mr BARBOUR: No. I am on record previously with this Committee and also in other public forums of indicating that I believe it is in the best interests of everybody to have our reviews tabled as promptly as possible.

CHAIR: When do you expect to report to Parliament on forensic procedures?

Mr BARBOUR: The final report is currently under way, I think by December.

Mr COHEN: We should have a draft report completed by December of this year, and we will consult with NSW Police and other agencies in the early part of next year with a view, we would have thought, to having finalised the report hopefully by March or April of 2006.

The Hon. PETER BREEN: That is a different report to the one referred to in this brochure, which is Crimes (Forensic Procedures) Act report which has already been tabled.

Mr COHEN: There are two parts to the review. The report that has been tabled deals specifically with the forensic testing of serious and indictable offenders. In addition to that the Forensic Procedures Act deals with suspects

and volunteers, and the report that is being finalised at the moment deals with the impacts of the new legislation on those categories of people. There was an additional period of time provided to permit the review to specifically include volunteers.

The Hon. PETER BREEN: I notice that in your answers to the questions you refer to a problem with the Department of Analytical Laboratories regarding preservation or testing of forensic material. Is that dealt with in the report which you are currently undertaking?

Mr COHEN: It is. It was touched on in the previous report and in terms of the inconsistency in information held by the Department of Analytical Laboratories [DAL] and NSW Police, and that is a matter that we indicated we would consider further in the current review, and it will be canvassed in the report.

Mr BARBOUR: We are also in the process of completing a separate investigation into issues relating to the laboratory. As indicated in answer to question nine, that statement of provisional findings and recommendations was provided to the DAL in August.

The Hon. PETER BREEN: There has been a recommendation by other committees for an independent forensic science laboratory separate from the Department of Health and NSW Police. Is that an issue that you would be considering, or would that be regarded as a policy matter?

Mr BARBOUR: It is not something that we are considering. Certainly, during the course of the review a range of options have been put forward and depending on who you talk to different views are put forward. Some people believe it should be done in house by police; other people believe it should be done completely independently; and other people believe the current structure is okay but just needs to improve in a systems sense. But we are not specifically looking at that issue in terms of our review. We are looking at the efficacy of the legislation and how it is being implemented by police.

The Hon. PETER BREEN: The issue of the preservation of forensic material by the Department of Analytical Laboratories came up in the old version of the Innocence Panel where police were providing information as to what was held by the DAL and then the DAL was providing different information as to what it held. There is a new version of the Innocence Panel on the agenda. Have you been consulted in relation to the proposed DNA review panel?

Mr BARBOUR: No.

The Hon. PETER BREEN: Has the old Innocence Panel been the subject of any review by the Ombudsman, particularly in the context of that question of forensic material being held by the DAL?

Mr BARBOUR: No.

CHAIR: Does the Ombudsman have any indication of when the Child Protection (Offenders Registration) Act review report is likely to be tabled?

Mr BARBOUR: No. I am reminded that that is one of the reports that is included in the Hon. Catherine Cusack's order, so it may well be that that will lead to the tabling of it.

CHAIR: What has been the response of NSW Police to your request to review standard operating procedures in relation to the recording of COPS events in the context of knife searches and so on?

Mr COHEN: The request originally arose out of not only our legislative review work but also a separate complaint matter that we received about inflated knife search figures for a particular Local Area Command. NSW Police has indicated that it has revised the standard operating procedures for those. We have not seen a copy of those procedures yet and have requested them, and we will review them to ensure that they meet the issues that were raised both in our reviews and in our report following our review of knife search investigation by police.

CHAIR: I think there is an attempt to modernise COPS. Will you keep an eye on the standard of record keeping as that process goes on?

Mr COHEN: The difficulty with the record keeping to date has been across so many different areas. We do not think that police are perhaps receiving as much training as they might about how to make records. There appears to be inconsistent practice amongst police about how records are created or whether in fact a record should be created. Those things make it very difficult sometimes to analyse information usefully to identify good and poor practice or particular issues in relation to searches. So we are particularly interested with the new review that we have under the Law Enforcement (Powers and Responsibilities) legislation [LEPRA] to look at how police are implementing the recording of searches that they undertake as part of the review that we have in relation to the general search powers after arrest. So we will certainly be closely following how police implement the new legislation in terms of their recording, and we think that will have an overlap with the new mainframe replacement program. So we will certainly be looking at that in that context.

CHAIR: Have you had any discussions with the police about potential difficulties from the new controlled operations scheme with the two tiers?

Mr BARBOUR: There are concerns about how it might operate. I am happy for Greg to take the question.

Mr ANDREWS: The proposal here is to create two tiers in a streamlined application and authorisation process for what is termed the less

serious matters. We were consulted on a draft bill earlier in the year and our assessment at that stage was that what was termed the less serious matters would be about 95 per cent of the controlled operations that take place. Until the new amended Act and the procedures particularly followed by NSW Police are made known to us it is hard to really access how we are going to approach it. At the moment all the authorities and records are centralised, they are kept in one place, and the reasonably detailed application format and the authority format used is fairly conducive to the auditing process.

We certainly have concerns that that may not be the case under the new system. Obviously it is an attempt to decentralise the authorisation process so that means potentially the records will be kept at each Local Area Command, which means we may have to go around to each Local Area Command to inspect the records as we are required to under the Act. We are also concerned that a streamlined application may not make it obvious how the mandatory considerations that the authorising officer has to address may have been taken into account, which is one of the things we have to check out. So, at the moment we are a bit in the dark. I received a call earlier in the week from someone from a particular agency who was commenting on a Cabinet minute, so apparently something is happening at this moment so it may be before you as members very shortly.

Mr BARBOUR: Can I just add, in relation to controlled operations, we anticipate tabling our annual report on Monday 5 December at this stage.

CHAIR: The answer you gave to the question on notice about controlled operations referred to a thing called a surveillance devices bill. What is that?

Mr ANDREWS: At the moment there is a Listening Devices Act which authorises various law enforcement agencies to plant listening devices. Under that Act, apart from the approval of the warrants by a judicial officer in the first instance, there is no monitoring regime as there is for telecommunications interception or controlled operations. Following September 11 and various Council of Australian Governments [COAG] meetings and an attempt to develop a national approach to cross-border investigations and terrorism and so forth, there was a push for some uniform surveillance devices legislation. It has already happened in the Commonwealth and progressively it is going around the States, and that includes introducing a monitoring regime similar to the other Acts. We were consulted by NSW Police—I think in December last year. They were starting to put together a proposal for New South Wales. We have heard nothing since about it. So, we do not know where it has gone and where it is up to.

Mr BARBOUR: Importantly, at that meeting I was not present, but I understand that the suggestion was made that when it was introduced we would have a monitoring or oversight role similar to some of our other roles in relation to it.

CHAIR: Are there significant differences in the National model they are proposing and what we currently have?

Mr ANDREWS: From memory, there are some minor differences which are to do with the regularity of reporting and who the reports are made to. At the moment, under the telecommunications interception legislation, we have to make an annual report to the Attorney General who in turn has the report to the Commonwealth Attorney-General. With controlled operations we make an annual report to Parliament. I think from memory the new Commonwealth legislation requires reports not from the independent agency but the agency reports to the agencies it is monitoring and they report to the Minister. We would not favour that, of course, but we are not sure what will happen in New South Wales.

CHAIR: Has the department released its neglect policy yet?

Mr BARBOUR: No, not yet. We anticipate, from the most recent information, we can expect it soon.

CHAIR: Has the department clarified the difference between informal undertakings and care plans not registered with Children's Court?

Mr BARBOUR: That is a very good question. Before specifically answering that, can I make the observation that with the reforms currently under way within the department sometimes the policy and reform process has yet to be seen in evidence in practice in the particular community services centres and in the case work. We will be raising in our reviewable death report our concern that in some of the cases we reviewed the practice of informal undertakings was still being used in cases where we thought that was inappropriate and which appeared on the face to be inconsistent with current policy within the department. Certainly the policy is that informal undertakings should not be used any further, and my understanding is that the department is committed to that.

Mr KINMOND: On the question of informal undertakings, whether they are registered care plans or informal undertakings, the key issue really relates to the risk assessment associated with that and the monitoring, even if one has a formal undertaking that is a care plan that is registered with the court. If, for example, you have an issue of ongoing substance abuse, the real question is what monitoring is in place to ascertain whether the commitments that have been made are being met. So, we see that as a real issue.

CHAIR: Is the Ombudsman going to continue to monitor the Department of Community Services compliance of with data entry requirements?

Mr BARBOUR: Yes. Certainly the introduction of KIDS has been an extraordinary challenge for DOCS, and we monitor regularly how it is working. Steve Kinmond and I and another staff member recently attended three

community service centres and talked to staff. One of the things we talked about was how the system was working, whether or not it was user-friendly, whether or not they found it takes too long to use the system, and so on. DOCS has indicated it is continuing to monitor the development. As you can imagine, a system that size and scale will have problems with it, but we will continue to see how it impacts either positively or negatively.

The Hon. PETER BREEN: Can I ask about that proposed surveillance legislation, Mr Andrews? If I understood correctly, that has been agreed to by COAG?

Mr ANDREWS: Yes. COAG set up a working group that proposed model legislation and there is a report, which is probably in the Parliamentary Library somewhere, setting that out.

The Hon. PETER BREEN: Will it effectively replace the Listening Devices Act?

Mr ANDREWS: Yes. It will not only cover listening devices but other optical devices as well, tracking devices and things like that.

The Hon. PETER BREEN: The Listening Devices Act deals with, amongst other things, private individuals recording conversations with other people without their consent. Will the new surveillance legislation deal with that situation?

Mr ANDREWS: I have not seen the proposed legislation for New South Wales, so I do not know.

The Hon. PETER BREEN: So you do not know whether it has come up as an issue?

Mr ANDREWS: No.

The Hon. PETER BREEN: I raise that because there are some deficiencies in the Listening Devices Act in that area of people recording other people conversations. It seems to me if they are going to review the legislation or replace it, it would be an opportunity to deal with those issues. On another matter, the monitoring of the HRMU at Goulburn, which you undertake, do you have any record of complaints by prisoners about access to legal advice?

Mr ANDREWS: Sorry, offhand I am only familiar with one particular complaint that raised that issue. I would have to check our complaints records to see if it was more general. That particular complaint related to an allegation that there had been a contravention by a legal officer in terms of the alleged passing of contraband, and they were subsequently banned from visiting that particular prisoner or any correctional centre. I think that got

some publicity at that time, a year or so ago. I think that is the only one I am familiar with.

The Hon. PETER BREEN: I do not recall the publicity, but I take it that involved the lawyer bringing contraband in, did it?

Mr ANDREWS: From memory, there was an allegation that the prisoner had been observed passing something that was unauthorised to the lawyer.

The Hon. PETER BREEN: The reason I raise the issue is that there is a practice at the HRMU in the case of a couple of prisoners and/or a couple of lawyers that they will not let the lawyer interview the prisoner at the HRMU and they take the prisoner from the HRMU through the back lanes of the prison into the multipurpose unit in the main prison. In order to do that they have to close down the whole unit in the HRMU because they need four or five officers to escort the prisoner across to the multipurpose unit. It seems to me that that process is quite arbitrary in relation to the lawyers and/or the prisoners and does not seem to have any security basis for it. I wonder whether you, in the course of investigating the HRMU, have been aware of that issue?

Mr ANDREWS: No, I am not aware of that. I can only presume they are doing it for security reasons.

The Hon. PETER BREEN: It is hard to imagine whose security is at risk—the lawyers', the prisoners' or the department's.

Mr ANDREWS: I am sorry, I am not aware of it. I do not know.

The Hon. PETER BREEN: So, it is not an issue that has come up with you?

Mr ANDREWS: No.

(Conclusion of public hearing. Hearing continued in camera)