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GENERAL PURPOSE STANDING COMMITTEE No. 3

Tuesday 14 September 2010

Examination of proposed expenditure for the portfolio areas

ATTORNEY GENERAL, REGULATORY REFORM, CITIZENSHIP

The Committee met at 2.00 p.m.

MEMBERS

The Hon. J. G. Ajaka (Chair)

The Hon. R. Borsak
The Hon. D. J. Clarke
The Hon. G. J. Donnelly
The Hon. S. Moselmane
Mr. D. Shoebridge
The Hon. L. J. Voltz

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PRESENT

The Hon. J. Hatzistergos, *Attorney General, Minister for Citizenship, Minister for Regulatory Reform, and Vice-President of the Executive Council*

Department of Justice and Attorney General
Mr L. Glanfield, *Director General*

Legal Aid NSW
Mr A. J. Kirkland, *Chief Executive Officer*

Community Relations Commission
Mr S. Kerkyasharian, *Chairperson and Chief Executive Officer*

Better Regulation Office
Ms G. Beattie, *Director*

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CORRECTIONS TO TRANSCRIPT OF COMMITTEE PROCEEDINGS

Corrections should be marked on a photocopy of the proof and forwarded to:

Budget Estimates secretariat
Room 812
Parliament House
Macquarie Street
SYDNEY NSW 2000

CHAIR: I declare this hearing for the inquiry into budget estimates 2010-2011 open to the public. I welcome Minister Hatzistergos and accompanying officials to this hearing. Today the Committee will examine the proposed expenditure for the portfolios of Attorney General, Regulatory Reform and Citizenship. Before we commence I will make some comments about procedural matters. In accordance with the Legislative Council's *Guidelines for the Broadcast of Proceedings*, only Committee members and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photos.

In reporting the proceedings of this Committee you must take responsibility for what you publish and the interpretation you place on anything that is said before the Committee. The *Guidelines for the Broadcast of Proceedings* are available on the table by the door. Any messages from attendees in the public gallery should be delivered through the Chamber and support staff or the Committee clerks. Minister, I remind you and the officers accompanying you that you are free to pass notes and refer directly to your advisers while at the table. I remind everyone to please turn off their mobile phones.

The Committee has agreed to allocate one hour and 15 minutes for questioning on the Attorney General portfolio, and 45 minutes for questioning on the Regulatory Reform and Citizenship portfolios. On the Attorney General portfolio it has been determined that the Opposition will commence questions, with 25 minutes, then 25 minutes for the crossbenchers and 25 minutes for the Government. For the Regulatory Reform and Citizenship portfolios 15 minutes each has been allocated. The House has resolved that answers to questions on notice must be provided within 21 days or as otherwise determined by the Committee. The Committee has not varied the 21-day time frame.

Transcripts of the hearing will be available on the web from tomorrow morning. All witnesses from departments, statutory bodies or corporations will be sworn prior to giving evidence. Minister, I remind you that you do not need to be sworn as you have already sworn an oath to your office as a member of Parliament. All other witnesses will be asked to state their full name, job title and agency, and whether they wish either to swear an oath or make an affirmation.

LAURIE GLANFIELD, Director General, Department of Justice and Attorney General, sworn and examined, and

ALAN JOHN KIRKLAND, Chief Executive Officer, Legal Aid NSW, affirmed and examined:

CHAIR: I declare the proposed expenditure for the portfolios of Attorney General, Regulatory Reform and Citizenship open for examination. As there is no provision for the Minister to make an opening statement before the Committee commences questioning we will begin with questions from the Opposition.

The Hon. DAVID CLARKE: Mr Glanfield, is it the normal practice of your department to provide funding for public servants who are charged with crimes of dishonesty?

Mr GLANFIELD: There are guidelines issued by the Premier that cover the issue of assistance provided to public servants who may be appearing before certain inquiries or who are charged with certain offences that arise out of their duties.

The Hon. DAVID CLARKE: So there can be circumstances where your department is providing such funding?

Mr GLANFIELD: Yes indeed. We do not provide the funding but the Premier's memorandum 99/11 provides for the process to be followed in relation to applications for ex gratia assistance.

The Hon. DAVID CLARKE: So they are in fact guidelines as it were?

Mr GLANFIELD: Yes.

The Hon. DAVID CLARKE: How many Maritime employees have received government funding for legal expenses over the past 10 years?

Mr GLANFIELD: To the best of my recollection only one, but I would have to check to be entirely sure that that is the case.

The Hon. DAVID CLARKE: Will you take that on notice and come back to us?

Mr GLANFIELD: Certainly.

The Hon. DAVID CLARKE: Who was that one?

Mr GLANFIELD: Tonette Kelly.

The Hon. DAVID CLARKE: Are you aware of how many have been rejected, if any?

Mr GLANFIELD: In general or in relation to Maritime?

The Hon. DAVID CLARKE: In relation to Maritime.

Mr GLANFIELD: I cannot recall any applications from NSW Maritime but my recollection may be incorrect. I am happy to take that on notice as well.

The Hon. DAVID CLARKE: If any had been rejected, the basis of the decision-making would have been according to the guidelines that were laid down?

Mr GLANFIELD: Absolutely.

The Hon. DAVID CLARKE: If there are any employees of Maritime services, can you take on notice how many of these employees, if any, have been accused of criminal offences?

Mr GLANFIELD: If I find that there have been applications made I am happy, on notice, to provide the details of the circumstances in which those arose.

The Hon. DAVID CLARKE: If there are any who have been accused of criminal offences, were any Ministers involved in the approval process? Will you take that on notice too?

Mr GLANFIELD: Yes. I think it would unlikely unless it was the Chief Executive because the guidelines provide that the Chief Executive is the person who supports the application by an individual public servant.

The Hon. DAVID CLARKE: In other words, if it was found that any Minister had been involved in the approval process that would be something that you would consider to be at odds with the guidelines?

The Hon. JOHN HATZISTERGOS: Sorry, what are you talking about?

The Hon. DAVID CLARKE: I am talking about the approval process.

The Hon. JOHN HATZISTERGOS: For Maritime or for generally?

The Hon. DAVID CLARKE: Generally. Let us talk about generally.

The Hon. JOHN HATZISTERGOS: I have had occasion to approve—

The Hon. DAVID CLARKE: Which departments?

The Hon. JOHN HATZISTERGOS: From my recollection, mainly police.

The Hon. DAVID CLARKE: But that was in accordance with the guidelines that have been laid down in the memorandum to which you referred earlier?

Mr GLANFIELD: Yes. My understanding is that the guidelines were tabled yesterday.

The Hon. JOHN HATZISTERGOS: They are public. They are available on the web.

Mr GLANFIELD: The guidelines provide that the decision for the actual approval can be either the Attorney General or myself, depending on circumstances. There would not be anything improper about the Attorney General having approved an application under such a matter. However, I think your question relates to the forwarding of an application. The forwarding of an application could come from anyone but the guidelines make it clear that the chief executive officer is to endorse the application with their comments.

The Hon. DAVID CLARKE: In regard to any applications that you may find have been granted in respect of Maritime employees, you have undertaken on notice to find out whether any Ministers were involved in the approval process. Can you also take on notice whether any Ministers made any submissions to the department in regard to any matter that may have come up for approval or otherwise?

Mr GLANFIELD: Certainly, but I cannot recall any submissions being made to me.

The Hon. DAVID CLARKE: But you will take that on notice to be sure?

Mr GLANFIELD: Yes.

The Hon. DAVID CLARKE: Is there any requirement for the public servant to repay any or all of the amount provided if it transpires that the employee has not made a full and frank disclosure?

Mr GLANFIELD: Yes indeed. It may be helpful if I just gave the Committee a little bit of detail about the matter you are referring to in terms of the detail of exactly where we are at in relation to Ms Kelly.

The Hon. DAVID CLARKE: As you have raised the question of Ms Kelly, I am happy to go to that. What is the situation?

Mr GLANFIELD: Let me just run through the facts.

The Hon. DAVID CLARKE: Can I just ask you this in regard to the issue you have raised? Did the Crown Solicitor represent Ms Kelly at any stage?

Mr GLANFIELD: Yes. I should give you the history, then you can ask other questions following that, if you happy with that.

The Hon. DAVID CLARKE: Yes.

Mr GLANFIELD: On 12 August 2009 Mr Steve Dunn, Chief Executive, NSW Maritime, made a request for ex gratia legal assistance pursuant to the Premier's memorandum 99/11 on behalf of Tonette Kelly to defend charges laid against her by police relating to the forwarding of certain emails. Mr Dunn advised that the matter had been subject to two internal reviews and that he had accepted the finding that the identity of the person responsible could not be determined. He stated that he had no reason to believe that he had not received full disclosure from Ms Kelly on all matters relating to the incident and was satisfied the matter was directly related to Ms Kelly's official duties. As the application met the criteria set out in the Premier's memorandum I approved a grant of ex gratia legal assistance on 14 August 2009. The grant was subject to the usual condition that should the officer later be shown not to have made a full disclosure of the matters relevant to the case then she risked having the representation withdrawn and action commenced for the recovery of money spent up to that point.

On 27 October 2009 I approved the engagement of private solicitors as the Crown Solicitor could no longer act for Ms Kelly. The decision was made on the basis that Mr Dunn expressed ongoing support of the grant to Ms Kelly. In advising Mr Dunn of this variation I noted that the grant remains subject to the usual condition that should the officer later be shown not to have made a full disclosure of the matters relevant to the case then she risked having the representation withdrawn and action commenced for the recovery of money spent up to that point. I also noted the decision as to whether such action was warranted, and whether recovery of costs would be pursued, is a matter for my determination.

On 23 December 2009 I advised Mr Dunn that if he had any concerns that Ms Kelly had not made a full disclosure when submitting material to him as part of his consideration and recommendation to me then he should review the matter urgently and advise me of the conclusion he reached. I also advised him that should there be any findings of the court, or of any investigative body, either during these proceedings or subsequently that show Ms Kelly had not made a full and frank disclosure, I would consider whether Ms Kelly's representation should be withdrawn and action commenced against her for recoveries of money spent.

On 27 April 2010 following the ICAC hearings I again wrote to Mr Dunn asking him to confirm NSW Maritime's position on Ms Kelly's application for ex gratia legal assistance for the criminal proceedings, and specifically whether he was satisfied Ms Kelly had made a full disclosure in the application for ex gratia legal assistance, and that NSW Maritime continued to support the application. On 12 May 2010 Mr Dunn advised that he was satisfied Ms Kelly had made a full and frank disclosure and that it was reasonable for the grant of assistance to continue. I agreed not to withdraw the grant of assistance at that time. On 3 September 2010, after considering the findings of the ICAC report, I wrote to Mr Dunn requiring to have Ms Kelly show cause why the grant of assistance should not be withdrawn and action taken to recover money spent to date.

The Hon. DAVID CLARKE: What has happened since 3 September?

Mr GLANFIELD: I am waiting for a response from Mr Dunn.

The Hon. DAVID CLARKE: When do you expect a response?

The Hon. JOHN HATZISTERGOS: I think we answered that in the House last week. It is currently the subject of consideration.

The Hon. DAVID CLARKE: I understand that is so. It is still under consideration and you are not looking at a timeframe?

Mr GLANFIELD: I would expect a fairly prompt response from him shortly.

The Hon. DAVID CLARKE: From 3 September to today, 14 September, seems to be a fair amount of time to consider this one specific issue. Is that a reasonable period of time?

Mr GLANFIELD: I have not spoken to Mr Dunn about the matter but I would expect a response. If there is not a response forthcoming at some point I will certainly make a decision in relation to the matter.

The Hon. DAVID CLARKE: You indicated that for a period of time the Crown Solicitor was representing Ms Kelly. Is it the normal practise for the Crown Solicitor to represent defendants in these sorts of cases?

Mr GLANFIELD: It is not uncommon and certainly relating to the suggestion that a public servant, carrying out their duties, has committed an offence it is not unusual.

The Hon. DAVID CLARKE: Did the Director of Public Prosecutions prosecute this case?

Mr GLANFIELD: I am not aware of the detail of who was actually prosecuting. I think they were Commonwealth offences.

The Hon. DAVID CLARKE: But you are not sure?

Mr GLANFIELD: No.

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

Mr GLANFIELD: If it is relevant I am happy to answer.

The Hon. DAVID CLARKE: If it were the Director of Public Prosecutions would it be unusual that on one side you had the Crown Solicitor defending a case and on the other side the Director of Public Prosecutions prosecuting?

Mr GLANFIELD: It does not strike me as unusual.

The Hon. JOHN HATZISTERGOS: The Crown Solicitor did not defend. It was passed over, as I understand it, to private solicitors.

The Hon. DAVID CLARKE: At what stage did that happen?

Mr GLANFIELD: Well it was given to a barrister to run by the Crown Solicitor. But the Crown Solicitor was simply facilitating, I think initially, some assistance to her and then there was a point at which they took the view that they were in a possible conflict of interest and should not proceed.

The Hon. DAVID CLARKE: How much has been paid by way of ex gratia payments to date to Ms Kelly?

Mr GLANFIELD: It is paid by NSW Maritime. I will have to take it on notice as I would only be guessing the amount.

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

Mr GLANFIELD: Yes, it is something in the order of about $60,000.

The Hon. DAVID CLARKE: Will you take that on notice and come back to the Committee?

Mr GLANFIELD: I will.

The Hon. DAVID CLARKE: Was any financial assistance given to Ms Kelly in relation to the ICAC investigation?

Mr GLANFIELD: Yes, she applied separately for assistance as almost all witnesses appearing before ICAC do under section 52 of the Independent Commission Against Corruption legislation.

The Hon. DAVID CLARKE: You say it is normal practise of your department to provide funding for public servants who are the subject of corruption allegations in an ICAC inquiry?

Mr GLANFIELD: In fact, Parliament has given me funding to cover that very event.

The Hon. DAVID CLARKE: Is your answer to my question "Yes"?

Mr GLANFIELD: What I am saying is funding is given to me in budget allocation that enables me to pay for those individuals who have representation approved under section 52.

The Hon. DAVID CLARKE: Specifically in respect to allegations arising from an ICAC inquiry?

Mr GLANFIELD: Indeed. Can I say section 52 does not require me to make a subjective judgement about the merit of the matter. It requires me to have regard, and the Attorney General if he is determining the matter, to the criteria that is set out there and that has to do with the significance of the evidence that the person may be giving, the matter of public interest and it is a compulsory requirement. It is generally directed at assisting the ICAC to get the best evidence before it.

The Hon. DAVID CLARKE: Is there a requirement for the public servant to repay any or all the amount provided if ICAC finds that the person was engaged in corrupt conduct?

Mr GLANFIELD: No, and that is not the case in relation to anyone appearing before the ICAC. As I said, the principal purpose of section 52 is to ensure that the ICAC is not in any way frustrated in obtaining evidence before it.

CHAIR: The Committee understands that New South Wales has agreed to conduct trials of the alleged people smugglers which would have been dealt with in Western Australia and the Northern Territory. Is that the current situation?

The Hon. JOHN HATZISTERGOS: We are in discussions with the Commonwealth about it. When you say we have agreed, we do not get an enormous amount of choice. The Commonwealth has notified us that it proposes to move some people—and I think they have already moved some people—into administrative detention and have laid charges under Commonwealth law. As you would be aware as a lawyer those charges would ordinarily be heard in the District Court of New South Wales which is vested with jurisdiction to hear those matters. I have written to the Commonwealth, I am not quite sure who—it could have been Brendan O'Connor. I think it was Robert McClelland. I have raised it personally with Robert McClelland.

CHAIR: If the trials are conducted in the courts of New South Wales will the Commonwealth provide necessary funding to compensate?

The Hon. JOHN HATZISTERGOS: The Commonwealth has already agreed that it will fund the Legal Aid components for any defence cases. Obviously the prosecution costs would be borne by the Commonwealth DPP. The actual cost of the courts is not something that it has at this point in time agreed to fund; it does not normally. We have raised the issue that it ought to, bearing in mind the fact that these people have been brought here for reasons of its decision. It is its decision that it has chosen to bring them here. It is not as if they have a connection with New South Wales or that the crimes involved New South Wales. They are Commonwealth offences and the individuals have been brought here and charged here and that has meant that the matters are determined here. I do not think it is any secret New South Wales is the leading jurisdiction in terms of efficiency, in terms of dealing with cases, and is number one in Australia in both Local and District courts.

We and I think other jurisdictions would be concerned if one of the motivations of having these matters brought to New South Wales to be dealt with is that they feel that we have additional capacity to be able to do these cases at no cost to the Commonwealth—quite apart from, of course, the issue of incarceration costs should any of these accused persons be found guilty, which I might add involves mandatory sentences under Commonwealth law.

The Hon. DAVID CLARKE: So will you be making it a condition of asking that the Commonwealth fund these additional costs—

The Hon. JOHN HATZISTERGOS: I am more than happy to provide the Committee with a copy of the letter that I have written to the Commonwealth and that will specify the demands that I have made.

The Hon. DAVID CLARKE: That would be very helpful to us.

The Hon. JOHN HATZISTERGOS: I am more than happy to do that.

CHAIR: Let us assume for a moment that the Commonwealth agrees to fund all of the costs, which of course would involve judges, associates and staff, incarceration costs, use of premises costs and so on. Will that create an extra burden on the existing system and the availability of existing judges and existing courts, so that one would have to look at possibly employing further judges and trying to find additional courts?

The Hon. JOHN HATZISTERGOS: The logistics of it are still a matter for discussion. I have had some preliminary discussions with the Chief Judge of the District Court, but they are not finalised. I do not have a response to my letter at this point in time, so I cannot clarify that. The ideal situation for us would be to have these matters dealt with by way of additional resources being allocated. If not, obviously that is going to have some impact on us, bearing in mind that this is only a temporary impact because the cases, once they are finalised—

The Hon. DAVID CLARKE: But all facts being equal, on the face of it, there is going to be an impact.

The Hon. JOHN HATZISTERGOS: There will be a resource impact, and that is why we have sought additional resources, but we have had no response. They are serious criminal charges. I do not agree with the shadow Attorney General who said that these persons are political prisoners. That is what he said on 18 July. I hope that that comment does not resonate into any particular views on the part of the Opposition about the efficacy of bringing these people to trial or not, but, having said that, we have made representations to the Commonwealth—as I understand it, the Queensland Government has also—and part of the reason why these cases are being brought here is because the Western Australian Government has expressed very strong views about the volume of cases that they have been expected to hear.

The Hon. DAVID CLARKE: Mr Glanfield, do you agree that it is a difficult position to have a person who answers to both the Director of Public Prosecutions and yourself, that being the new position created of Executive Director of Public Prosecutions—

The Hon. JOHN HATZISTERGOS: He does not.

The Hon. DAVID CLARKE: He answers directly—

Mr GLANFIELD: To the Attorney General.

The Hon. JOHN HATZISTERGOS: If you want a response to that, have a look at the latest Director of Public Prosecutions report. The Director of Public Prosecutions describes the relationship in generally positive terms. I do not have day-to-day interactions with the Executive Director, but occasionally my office asks for information and, when we do, it is appropriately responded to.

The Hon. DAVID CLARKE: But I think Mr Cowdery has expressed some concerns about conflict.

The Hon. JOHN HATZISTERGOS: I think you should look at his latest annual report because I think he may be seen as having taken a somewhat different view by nature of experience and, in practice, I do not have that much interaction at all with the Executive Director. We do obviously have issues of budget and so on that we have to prepare for and he provides information, but on a day-to-day basis he answers to Mr Cowdery.

The Hon. DAVID CLARKE: So there is no answering at all to yourself?

Mr GLANFIELD: Not at all.

CHAIR: What happens when Mr Cowdery is absent? Does he answer to the Deputy Director of Public Prosecutions?

The Hon. JOHN HATZISTERGOS: That would be an arrangement for Mr Cowdery to have with his deputies.

CHAIR: Would the Deputy Director of Public Prosecutions have the equivalent powers? Is he seen on the same level?

The Hon. JOHN HATZISTERGOS: Yes, he is, remuneration-wise, but he does not have the powers that the deputies have under the Director of Public Prosecutions Act or the relevant delegations.

CHAIR: So the Executive Director would not have any greater power than Deputy Director so far as the staffing levels are concerned?

The Hon. JOHN HATZISTERGOS: I do not understand that question. What are you trying to suggest? It is the Director who makes the decisions and the Director is answerable to me. Our involvement with the Executive Director has been to a large extent one of obtaining information and when we are preparing things for budget committee and so on he provides us with relevant information that we need to be able to advance whatever case it is that needs to be advanced. I will give you an example. The whole issue of the new premises that the Director of Public Prosecutions moved into earlier this year was obviously something that involved a lot of his time. He had to make various arrangements in relation to leases and budget allocations, and so on, so that is the sort of thing he does. He does not deal with prosecution matters, as I understand it, and he certainly does not answer to me for any of that.

CHAIR: Could I go to one of my favourite topics, JusticeLink?

The Hon. JOHN HATZISTERGOS: You have more than one, surely.

CHAIR: We have previously had questions and answers on JusticeLink, but we are still hearing that it is just not working the way it was meant to work and more money is going into it. One Supreme Court judge emailed the chief executive officer of the court on 1 April 2010 expressing his concern that registry staff were having difficulty coping with the situation, that they were obviously working under intolerable pressures as a result and that it was an extremely unfortunate advertisement for the court. Where is JusticeLink today? We hear these continual complaints from staff—even judges—saying that the system is just not working and more money is being poured into it. Can you please indicate how much money has been spent on it to date and where it is at?

Mr GLANFIELD: I would be happy to. In relation to the amount that has been spent, as I indicated last year, $48 million is what was budgeted to be spent. That is all that has been spent on the delivery of the software. The software comprises both civil and criminal and is now in place in the local, district and supreme courts completely. The problems that arose in the Supreme Court earlier this year were in relation to the civil system. That was the first of the three tiers of courts that had the civil program put in. There was a degree of data entry, which is an interim measure, which I will explain in a minute, and that created some difficulties within the registry because they had not predicted the amount of work that would be filed just leading up to Christmas and into the New Year.

The data entry is a short-term issue because in fact the system was built for electronic filing in civil matters, so we will—we are not quite there yet, but this is an add-on to the system—have all practitioners in the State being able to electronically file all of their civil documentation. There will not be a need to re-enter the data. At the moment it is either being delivered in hard copy or in PDF files and that data is being entered by staff. It is very time-consuming and that has caused some delays. We are doing everything we can to address that, but it is not a problem with the system. We have, as referred to in the budget papers, two add-ons to the system that we are working on, which have always been seen as being additional facilities. One is Joined-Up Justice, which will enable in relation to the criminal side all of the justice agencies to have direct access to relevant parts of the database—court outcomes for police, bail decisions, those kinds of things—electronically.

The Hon. DAVID CLARKE: But you are aware that Supreme Court judges have been very strident in their criticism about the whole thing?

The Hon. JOHN HATZISTERGOS: I think you are referring to an email, which was the subject of a question in Parliament from the Hon. Marie Ficarra, as I recall it.

The Hon. DAVID CLARKE: That is right, that is the one where the Supreme Court judge said, "Tempers are flaring. I have no idea how our registry staff are coping with the situation."

The Hon. JOHN HATZISTERGOS: Yes, I think she read it out, and that was some time ago and we certainly responded to that.

Mr GLANFIELD: We provided additional staff to the registry to address this. We have engaged consultants Opticon to assist them in reframing the way they actually handle the work in the registry.

The Hon. DAVID CLARKE: Is that the way in civil registries?

Mr GLANFIELD: Yes.

The Hon. DAVID CLARKE: Are there not still delays in civil registries?

The Hon. JOHN HATZISTERGOS: Back to what they were I think before JusticeLink was introduced. Don't forget that the Supreme Court was very anxious to get it rolled out into that court first. It may have been better if we had done it in the Local Court and the District Court, but the Supreme Court was very anxious to get it into the court first. Obviously the Federal Court has a version in its court, which is a much smaller court and does not have the same challenges as the Supreme Court. It has been a very complex process because of the complexity of the work that the Supreme Court does. The rollout in the other two jurisdictions that has occurred since then has been, relatively speaking, much smoother.

The real key to JusticeLink is when electronic filing occurs. I was speaking to the director general this morning. Singapore has virtually no counter staff in its civil registries. Everything is done electronically and there is a kiosk and you go there and someone will help you. That is the way it will eventually go. The law firms obviously will have to invest to provide their outfits with the software that is necessary to interlink and to be able to go to electronic filing, and there is some resistance to that occurring. That is where the huge benefits are going to be in terms of time saving, costs and efficiency, and ultimately benefits to litigants. That is where we need to go.

The Hon. ROBERT BORSAK: Attorney General, as in past years the Shooters and Fishers Party has an interest in the activities of the Environmental Defender's Office. Has the financial assistance provided to the office from the Public Purpose Fund of the Law Society of New South Wales and the Legal Aid Commission of New South Wales in the last financial year been increased on that of the previous year and, if so, by how much, and what is the breakdown?

The Hon. JOHN HATZISTERGOS: In 2009-10 the Environmental Defender's Office received $1.83 million—are you only asking for the Public Purpose Fund?

The Hon. ROBERT BORSAK: And the Public Purpose Fund of the Law Society and the Legal Aid Commission.

The Hon. JOHN HATZISTERGOS: The Environmental Defender's Office gets funding from a variety of sources. Perhaps I can give you all the sources. In 2009-10, the Environmental Defender's Office received $1.83 million in funding, comprising $0.09 million in Commonwealth funding, $0.18 million in State funding and $1.56 million in funding from the Public Purpose Fund. In 2010-11, the Environmental Defender's Office is budgeted to receive $1.88 million, comprising $0.09 million from the Commonwealth, $0.18 million from the State and $1.6 million from the Public Purpose Fund.

The Hon. ROBERT BORSAK: I would be interested in the Government's response to comments earlier this year by Justice Reg Blanch, who went public with a call for a rethink on law and order policy in New South Wales. He is one of the State's most senior judges and believes excessive sentences and imprisonment rates have created a billion-dollar-plus prisons budget without a corresponding increase in public safety. What has been the Government's response or attitude to his comments?

The Hon. JOHN HATZISTERGOS: I do not want to respond directly to what the judge has said although I have spoken to him about his comments. The reality is that a number of those people who have raised the issue of public safety in New South Wales need to also remember that 17 crime categories are either stable

or falling. That has been the position for quite some time. Victoria, with which we are compared quite frequently, is going through a cycle of law and order auctions. Suspended sentences are going to be abolished. There is some call for mandatory sentences. I think the Opposition commented today on some of the story in the *Australian Financial Review* about changes they are going to make if they are successful in being elected. My position on this is very clear. I am prepared to give people whatever opportunities we can within appropriate boundaries to address their offending behaviour, but there comes a time and there come offences where the public rightly expects that if you transgress the law you should be punished appropriately.

The Hon. ROBERT BORSAK: Does the Government agree that the same ends in terms of public safety could be achieved at a lesser cost? What has the Government done about reviewing the bail and sentencing laws?

The Hon. JOHN HATZISTERGOS: We follow the advice of the Sentencing Council, and if you have been looking at their reports in recent times you would have seen that we have referred a number of issues to them, and where they make recommendations we generally speaking follow their recommendations. In terms of rehabilitation, we have just announced an expansion of the Drug Court to commence next year in the Hunter. The Court Referral of Eligible Defendants into Treatment program [CREDIT] currently operational at Burwood and Tamworth has been so successful so far that we have had to expand it at both those locations by putting on additional staff. We have completely revamped fines with a whole range of mechanisms to avoid secondary offending so people do not get entrapped in the justice cycle and give people other options to be able to pay fines, cut fines out, or do work development orders. There is the recalibration of forum sentencing, which gives victims a direct say in sentencing outcomes, to enable forum sentences to also focus on the underlying causes of offending behaviour.

The Magistrates Early Referral into Treatment program [MERIT] has been expanded and is now able to reach out to some 80 per cent of the defendants who appear before our courts, and it has been progressed to alcohol, which the Commonwealth has not so far agreed to fund. MERIT is a Commonwealth-State program, but they have not funded the alcohol part of it; that has been our own initiative. Youth conduct orders are currently being piloted at two locations in Sydney west and New England. There is the Youth Drug and Alcohol Court, and the next major initiative, which I have also outlined, is the intensive corrections orders.

The primary purpose of bail is to ensure that accused persons do not abscond when they are awaiting trial, to ensure that victims, witnesses and the community are protected. It is important to remember that individual bail decisions are made by courts, which look at the evidence and the circumstances in each case. However, our laws require courts to balance the need to protect the community and the interests of victims against those of the accused person having regard to a number of factors, including age, community ties, and whether or not they suffer from a mental illness. Courts are also required to examine the seriousness of offences and the person's offending history. Our laws provide for a general presumption in favour of bail as, for most offences, a person generally has a right to be presumed innocent until proven guilty. Accordingly, just under 19 out of every 20 persons who are charged with lower level offences in the Local Court are granted bail.

However, there are exceptions to the presumption in favour of bail for those who are accused of committing very serious offences, such as murder. There are no presumptions in favour of bail for serious crimes that generally involve offenders who are greater flight risks, for example those where there is a presumption against bail for the offence of supplying commercial quantities of prohibited drugs. Bail refusal rates in courts that deal with these more serious offences are therefore much higher. I refer particularly to the District Court, which is the court that deals with offences at the more serious end of the scale, where around half of all accused persons are refused bail.

There are also no presumptions in favour of bail for certain repeat and property offences and personal violence offences. The study that was conducted by the Bureau of Crime Statistics and Research in 2004 showed that the Bail Amendment (Repeat Offenders) Act of 2002, which removed the presumption in favour of bail for various classes of repeat offences, had led to increases in bail refusal rates for those with prior convictions and previous bail absconders. Importantly, the study found that since the bail amendments the rate of absconding had fallen by 18.4 per cent in Local Courts and 46.4 per cent in the higher courts. Absconding on bail is a very serious offence. It increases the cost and wastes the time of courts, police and prosecutors, further creates anguish for victims and puts the community at risk. So we are proud of the fact that we have driven this down.

I have conceded, however, that the Bail Act is now 20 years old and has been the subject of numerous amendments over time. Accordingly, we are drafting a brand new Bail Act, which we hope to release very shortly for comment. I should add also that the Bureau of Crime Statistics and Research has conducted some further research into bail refusals and into the characteristics of those individuals who are refused bail. I think you will find that very interesting when it is released.

The Hon. ROBERT BORSAK: I am aware that the New South Wales Firearms Act currently prevents the Commissioner of Police from issuing a licence to a person who has been the subject of an apprehended violence order [AVO] within the past 10 years. However, Queensland, Victoria, Western Australia and the Northern Territory have only a five-year disqualification period, and this also was the period recommended at the Australian Police Ministers Council. In 2003 the Law Reform Commission of New South Wales prepared a report on AVOs—report No. 103. Recommendation No. 43 of that report is that firearms licences be suspended only for the duration of the AVO. Why is New South Wales out of step with the other States on supposedly national firearms legislation? Why should the Government not implement the above-mentioned Law Reform Commission report?

The Hon. JOHN HATZISTERGOS: Firearms legislation is administered by the Minister for Police.

CHAIR: That is correct. The Hon. Robert Borsak should address his question to the Minister for Police. We will move to Mr David Shoebridge.

The Hon. JOHN HATZISTERGOS: Welcome on board.

Mr DAVID SHOEBRIDGE: I am not sure what answer I am seeking to this question. Can you give a guarantee that, to the extent it is in your power, you will serve out your full term as Attorney General leading up to the 2011 State election?

The Hon. JOHN HATZISTERGOS: Yes.

Mr DAVID SHOEBRIDGE: Will you also give a commitment to the people of New South Wales that in that period you will not seek or take a judicial appointment in the Federal sphere?

The Hon. JOHN HATZISTERGOS: This is nonsense; it really is nonsense.

CHAIR: Order! I will not allow that question. The member should move on.

The Hon. JOHN HATZISTERGOS: If you had been a member of the bar, you would have seen a letter that I wrote.

CHAIR: Order! I have ruled that the question is not to be allowed. We will move on.

Mr DAVID SHOEBRIDGE: Some questions were asked earlier about the cost to this State—

The Hon. JOHN HATZISTERGOS: I am not that vain.

Mr DAVID SHOEBRIDGE: Some questions were asked earlier about the cost to this State of Commonwealth prosecutions being run in our State courts. Does the Commonwealth pay hearing fees and setting down fees?

The Hon. JOHN HATZISTERGOS: No.

Mr DAVID SHOEBRIDGE: In the way in which private litigants pay?

The Hon. JOHN HATZISTERGOS: Do you mean in the civil jurisdiction?

Mr DAVID SHOEBRIDGE: No, when they are running criminal prosecutions.

The Hon. JOHN HATZISTERGOS: No.

Mr DAVID SHOEBRIDGE: Is that something you would be willing to investigate to seek to recover some of the costs of running the State courts?

The Hon. JOHN HATZISTERGOS: Constitutionally we are required to hear cases where our courts are vested with jurisdiction. Our courts have vested jurisdiction to hear criminal matters. I believe it is more appropriate that there be a single stream of criminal juris prudence. Frankly, I think it would be counterproductive to have a separate stream of Federal criminal law. I put in a submission when that cartel law was put into the Federal Court. I thought it was wrong and I wrote to the Senate committee at the time. Federal courts can be hearing one of these cases every so often and, if they are State charges, they will end up being in the Supreme Court. I have opposed that. Because of the way in which these things operate, the Federal Government claims that it takes that into account in general grants to the States.

Mr DAVID SHOEBRIDGE: The long and the short of it is no. Are you saying that it is prohibited constitutionally or it is something that—

The Hon. JOHN HATZISTERGOS: Constitutionally it is something that we have to wear, unless through the good grace of the Commonwealth it wishes to fund it.

Mr DAVID SHOEBRIDGE: How many preventive detention orders have been made under the Terrorism (Police Powers) Act in the past 12 months?

The Hon. JOHN HATZISTERGOS: That would be in the annual report, which is tabled from time to time. I can get you that information but I think you will find that it is public information.

Mr DAVID SHOEBRIDGE: But to the extent that it is not will you take that question on notice?

The Hon. JOHN HATZISTERGOS: To the extent that anything is not publicly available I am happy to provide it. However, I will not rehash reports that are already in the public domain.

Mr DAVID SHOEBRIDGE: Do you know how many covert search warrants have been executed?

The Hon. JOHN HATZISTERGOS: Again that is a matter of public information.

Mr DAVID SHOEBRIDGE: Could you identify the number and timing of those covert search warrants?

The Hon. JOHN HATZISTERGOS: I think we detailed that previously. Those covert search warrants were issued in relation to the Pendennis matter. The Ombudsman conducts a review of those powers. We will guide you to the appropriate venue where you can look at that information. It is part of the service that we provide.

Mr DAVID SHOEBRIDGE: Some questions were asked earlier of the Minister for Juvenile Justice, who kindly suggested that you might be the appropriate vehicle for answering some of those questions. Purportedly 80 per cent of juvenile offenders who are on remand end up receiving non-custodial sentences. What steps, if any, will you take to reduce that ratio?

The Hon. JOHN HATZISTERGOS: You are referring to 80 per cent of juveniles?

Mr DAVID SHOEBRIDGE: Eighty per cent of juveniles who are put on remand and who end up receiving non-custodial sentences. They serve time in detention on remand but, ultimately, when there is a merits hearing of their matter they are determined not to be appropriate for custodial sentences.

The Hon. JOHN HATZISTERGOS: There are reasons why that could occur. One of the reasons could be that the courts have taken into account the fact that they have been on remand when determining whether or not a further sentence was appropriate. That is one of the reasons why a court may decide not to grant a further period of custody, having taken into account the custody they have already had. I have been going to the Young Offenders Advisory Council. I went to the last meeting and I will continue going to those meetings to discuss these issues with various members. When I start drilling into the figures I find that a major number of remands in juvenile justice tend to be of very short duration—I am told around 14 days. That could have occurred because stringent bail conditions, for example, accommodation, could not be met.

I know that the Minister for Juvenile Justice has done some work on a bail hotline to look at alternative options for young persons in relation to those matters. An after-hours bail assistance program was recommended as part of the Wood special commission, and that is proceeding. We like to see more juveniles, where appropriate, placed in those sorts of alternative facilities where they are safe and where the community is safe. I think that is being funded in the budget to the tune of $2.24 million and it is consistent with our policy to be able to ensure that, wherever possible, young offenders who are accused of committing minor offences, are not incarcerated and are given the support they need to stop them reoffending.

Mr DAVID SHOEBRIDGE: The Noetic report into juvenile justice, which was released earlier this year, proposed in recommendation No. 6 to reduce that high level of juveniles in remand by amending the Children (Criminal Proceedings) Act 1987, in particular section 50, and the Bail Act 1978, in particular section 5, to reverse the precedence so that children-specific legislation applies to all aspects of bail proceedings, including in precedence with the Bail Act.

The Hon. JOHN HATZISTERGOS: I think you should read the Government's response to that. I am not sure whether you have.

Mr DAVID SHOEBRIDGE: I have. The Government simply said that it would not adopt that.

The Hon. JOHN HATZISTERGOS: The Bail Act is standalone legislation. When making a bail decision it requires you to take into account the special circumstances of the young person and it requires you to look at any indigenous issues. It requires you also to have the least restrictive custody arrangement or conditions that are appropriate to that case. We could have a philosophical argument about some of these matters, but we are reviewing the Bail Act to render it in plain English. I think you need to focus on the fact that about 90 per cent of those who are in custody in juvenile justice have had repeated interventions—I am not talking about one or two—on the part of the Department of Juvenile Justice. With some people there comes a point at which things do not work.

Mr DAVID SHOEBRIDGE: It just so happens that that point is reached in New South Wales four times as often, given the number of children, as it happens in Victoria. We incarcerate juveniles at four times the rate that they are incarcerated in Victoria.

The Hon. JOHN HATZISTERGOS: The level of juvenile incarceration in New South Wales is significantly less than it was 15 or 20 years ago.

Mr DAVID SHOEBRIDGE: It is still high.

The Hon. JOHN HATZISTERGOS: I have referred already to Victoria. Crime is not evenly distributed across the State. Demographic features in different jurisdictions can dictate the levels of offending. I do not think those comparisons are apt. Victoria does not have 17 crime categories that are stable or falling at the moment, and we do. There is a series of variations and things that you can take into account if you were of a mind to do so. One of the most important issues, in particular, in the remand area, that has been the focus of your questions is the bail assistance line, which, as I said, provides an alternative in appropriate cases for juveniles to be placed in accommodation that is safe for them and safe for the community. It ensures also that they are not out reoffending.

Mr DAVID SHOEBRIDGE: You are not suggesting that the demographic differences between New South Wales and Victoria explain New South Wales having four times the incarceration rate of juveniles than Victoria, are you?

The Hon. JOHN HATZISTERGOS: Demographic factors affect it.

Mr DAVID SHOEBRIDGE: Factors that produce a four-fold difference?

The Hon. JOHN HATZISTERGOS: Incarceration rates are actually higher in the Northern Territory and in Queensland. Do you want to compare around the country? Every jurisdiction is different.

Mr DAVID SHOEBRIDGE: They are higher in Russia.

The Hon. JOHN HATZISTERGOS: Yes, it is too. But there are different demographic features and socioeconomic features in jurisdictions; they are not all identical. The population is not identical around all parts of the country. They do vary. That does not mean that we do not look at alternatives. As I said to you, the level of juvenile incarceration is significantly less now than it was 20 years ago—significantly less.

Mr DAVID SHOEBRIDGE: Would you accept that the Bail Act is designed for adult offenders and does not take into account the specific considerations of juvenile offenders that you would find in, say, section 6 of the Children (Criminal Proceedings) Act?

The Hon. JOHN HATZISTERGOS: The Bail Act specifically requires that you have to take into account the circumstances of young people.

Mr DAVID SHOEBRIDGE: You would agree, would you not, that the Bail Act, unlike children-specific legislation, is designed primarily for adult offenders?

The Hon. JOHN HATZISTERGOS: No, it is designed for all offenders.

Mr DAVID SHOEBRIDGE: If you will not accept recommendation 6 of the Noetic report, would you accept recommendation 7, which states that if recommendation 6 is not accepted then the Government should "amend the Bail Act 1978 to introduce separate criteria for young people, consistent with the principles in Section 6 of the Children (Criminal Proceedings) Act 1987"—that is, include those child-specific principles in the Bail Act?

The Hon. JOHN HATZISTERGOS: I have responded already to those points and I will not deviate from that. There will be an opportunity for you and your colleagues and anyone else to make whatever comments you wish about the new and revised Bail Act. I do not see any purpose in continuing to revise the current Bail Act. The current Bail Act has been useful but it needs to be completely rewritten, and that is what we intend to do.

Mr DAVID SHOEBRIDGE: I am informed that the Coroner's inquiry into the death of Veronica Baxter will not commence until February 2011. Veronica died at the Silverwater Correctional Centre three days after the Mardi Gras on 10 March 2009. Can you explain the delay in that coronial inquest?

The Hon. JOHN HATZISTERGOS: No. I do not set the dates.

Mr DAVID SHOEBRIDGE: Do you know whether there has been any increased delay in coronial inquests since the closure of the Westmead coroner's office?

The Hon. JOHN HATZISTERGOS: I think the Coroner's Court has actually improved, if you look at the Productivity Commission statistics.

Mr DAVID SHOEBRIDGE: At last year's estimates hearing the position was adopted that the DPP had reported—

The Hon. JOHN HATZISTERGOS: I have some more information to add to that last question. The Coroner's Court has significantly improved its clearance rate in recent times. The backlog of coronial matters older than 12 months has reduced from 40 per cent in 2004-05 to 27.5 per cent in 2006-07 and 20.7 per cent in 2007-08. The backlog for 2008-09 was 21.4 per cent. The State Coroner has introduced a number of new initiatives to reduce delays in the finalisation of coronial matters. This should see the timeliness and efficiency of the Coroner's Court improve even further. The department has undertaken a comprehensive review of the Coroner's Court and implemented a number of changes, including new information brochures to assist people to understand the coronial process, a Coroner's brochure translated into Arabic, developing a new website, creating a new reporting structure for coronial staff, and amalgamating the Westmead and Glebe registries.

Mr DAVID SHOEBRIDGE: Last year it was reported that the DPP's caseload had gone down but the workload had gone up. Has that trend continued?

The Hon. JOHN HATZISTERGOS: The workload is not measured. There is a tool called activity-based costing, which the DPP proposes to introduce by the end of the year, I have been told. Hopefully, this will

give us a better indication of time. I can give you some information about the caseload. The figures I have are for the last 10 years. Do you want those?

Mr DAVID SHOEBRIDGE: Not for the last 10 years. I am interested really in the last two years. If you have not got the figures, perhaps you could take the question on notice.

The Hon. JOHN HATZISTERGOS: I can give you the figures, which are the latest published, but I would have to update them.

Mr DAVID SHOEBRIDGE: My question simply was whether the trend was continuing with the sheer number of cases going down but the workload going up, indicating a greater complexity of figures.

The Hon. JOHN HATZISTERGOS: I believe at the moment they are reasonably stable, but I would have to give you more up-to-date figures. The ones I have at the moment are for 2008. They are the latest figures we have. They were not available last year. If you want them now, I will give them to you. They are about the same as last year. There were 1,785 criminal trials registered compared with 1,726 in 2007. Of the trials dealt with in 2008—that is 66 per cent—44 per cent pleaded guilty, 35 per cent went to verdict, 8 per cent were no billed, 3 per cent were transferred, 4 per cent were aborted, 2 per cent resulted in a hung jury, 3 per cent were otherwise disposed of, and 1 per cent had bench warrants issued. Over the past 10 years the annual reviews show—

Mr DAVID SHOEBRIDGE: I do not need the last 10 years.

The Hon. JOHN HATZISTERGOS: It is over that period. You should read the Auditor-General's report. Are you interested in length of trials?

The Hon. LYNDA VOLTZ: What is the Government doing to protect the rights of children born from surrogacy arrangements?

The Hon. JOHN HATZISTERGOS: Currently New South Wales does not have stand-alone surrogacy laws. This means that people who enter into surrogacy arrangements because they are unable to have children face difficulty in gaining legal parentage of their children. The only options currently available are adoption or orders from the Family Court, which do not fully transfer parental rights and cease to have effect when the child turns 18. As I informed members during last year's budget estimates hearings, the Keneally Government has been undertaking a measured and thorough examination of options for the regulation of surrogacy arrangements in New South Wales since 2008. In July that year I referred the issue of legislation on altruistic surrogacy to the Legislative Council Standing Committee on Law and Justice.

Given the complex legal, social and ethical issues surrounding the use of surrogacy arrangements, I believe the committee process was an essential aspect of ensuring bipartisan examination of the issues and extensive public consultation. The committee certainly met and exceeded my expectations by delivering a very thoughtful and comprehensive report on 27 May 2009. The report followed four public hearings held in November 2008 and March 2009 at which a range of stakeholders, including my department, the Department of Community Services, artificial reproductive treatment services, church groups, the Gay and Lesbian Rights Lobby, support groups, academics and parents with children born through surrogacy arrangements gave evidence. The committee also received 40 written submissions.

Concurrent with the law and justice committee's inquiry into altruistic surrogacy in New South Wales, the Standing Committee of Attorneys-General was carrying out a national review of the way surrogacy laws work across all jurisdictions with the aim of achieving a consistent national approach. Reform at the national level is important to minimise confusion between different regimes in different jurisdictions and avoid the problem of forum shopping by commissioning parents. The Standing Committee of Attorneys-General conducted its own public consultation process, releasing a discussion paper prepared jointly with the Australian Health Ministers' Conference, and the Community and Disability Services Ministers' Conference in January 2009. In November 2009 the Government responded to the law and justice committee's report, noting that its 10 recommendations would inform the development of surrogacy laws for the State.

The Government's response also noted that it would await the outcome of the Standing Committee of Attorneys-General process for developing model surrogacy provisions before legislating in this area and that New South Wales may need to supplement the model provisions to create a comprehensive regulatory regime.

At its meeting on 7 May 2010, the Standing Committee of Attorneys-General considered draft model provisions—based on 15 principles for surrogacy laws previously endorsed at its August 2009 meeting—and agreed to refer these model provisions to the Australian Health and Community Services Ministers' Conference for its consideration.

The draft model provisions are grounded in the following key features that are common to all jurisdictions that currently have comprehensive surrogacy legislation: commercial surrogacy is illegal, non-commercial surrogacy arrangements are lawful but agreements are unenforceable in that the birth mother cannot be legally compelled to relinquish the child or to pay damages for refusing to do so; informed consent of all parties is essential; there must be mandatory specialist counselling for all parties; and court orders are available, recognising the intended parents as the legal parents when the surrogacy arrangement meets the legal requirements and is in the best interests of the child.

Now that this comprehensive national and State-based review process is complete, I am pleased to inform the Committee that Government will introduce legislation to regulate surrogacy in coming months. The New South Wales law will be based on the Standing Committee of Attorneys-General draft model provisions with some additions and modifications to ensure the legislation creates a comprehensive regulatory framework that delivers certainty and stability for children and their parents. The laws will create a special form of parentage order to be available in surrogacy situations, provided that the order is in the child's best interests and that certain other conditions are met. The orders will make it easier for surrogate parents to obtain full parentage rights so that they do not face obstacles when they seek to enrol their child in school, obtain a passport, or make decisions about their child's health. The orders will also ensure that children born of surrogacy arrangements have full access to a range of rights that would otherwise be denied to them, such as inheritance under succession laws, eligibility for compensation arising from their parents' death or injury, and so forth.

The greatest beneficiary of these reforms will be the children themselves because they will be treated equally under the law, and those caring for them will have the full capacity to make decisions in their interests. This focus on the rights and needs of children will be reinforced by an objects clause to be included in the legislation: that the laws are to be administered according to the principle that the wellbeing and best interests of a child born as a result of the surrogacy arrangement are paramount. Under the proposed legislation, parentage orders will transfer the parentage of a child to the child's intended parents named in the order and will have the effect that the birth parents are no longer the child's parents.

It is proposed that the Supreme Court may grant a parentage order if it is satisfied of the following matters: firstly, granting the order is in the best interests of the child; secondly, a surrogacy arrangement was entered into by the surrogate mother, her partner, if any, and the intended parents prior to conception and this agreement must be in writing; thirdly, all parties have undergone counselling with an accredited counsellor in relation to the surrogacy arrangement prior to entry into the surrogacy arrangement, the birth parents must have undergone counselling after the birth of the child, the parties seeking assisted reproductive technology treatment to facilitate a surrogacy arrangement are assessed for suitability by a counsellor who is independent of the relevant assisted reproductive technology clinic, the clinic must take into account a report of the counsellor when deciding whether to provide treatment, and a report from the counsellor addressing the counsellor's qualifications and the counsellor's opinion about the suitability of the parties to participate in a surrogacy arrangement must be filed with the court; and, fourthly, prior to entering the arrangement all parties have received independent legal advice about the surrogacy arrangement.

The Supreme Court must be satisfied also that the arrangement is not a commercial surrogacy arrangement and that there is a medical or social need for the surrogacy. Although further consideration will be given to that definition, it is intended to include categories similar to those that apply in Queensland. In addition, the court must be satisfied that an application was made to the court at least 30 days before the birth, but not more than six months after the birth, although the court will be able to extend this time in exceptional circumstances; that the intended parents reside in New South Wales; that the birth mother was at least 25 years old at the time of entering into the surrogacy arrangement; that all parties to the surrogacy arrangement have given their informed consent to the granting of a parentage order; that the child is living with the intended parents at the time the application is heard; that the parties to the surrogacy arrangement have provided to the Director General, NSW Health, the information to be recorded on the central register created by the Assisted Reproductive Technology Act 2007, except when intended parents satisfy the court that they have been unable to obtain this information; and that the birth has been registered under section 16 of the Births, Deaths and Marriages Registration Act 1995, or its interstate equivalent.

It is not proposed that the legislation will impose any limitations or restrictions relating to genetic connection between the birth mother or parents or the intended parents and the child, or the method of insemination. It is considered that these issues should be assessed according to the circumstances of the individual case and left to expert counsellors and the court to determine whether they impact on the suitability of a surrogacy arrangement. It is proposed that, in exceptional circumstances, the court may dispense with the requirements set out above, except the following requirements: firstly, the consent of a birth parent may be dispensed with only if the birth parent cannot be found after reasonable inquiries, is deceased, or is, due to their physical or mental state, incapable of properly considering whether to give consent; secondly, the requirements that the agreement be non-commercial and that there be a pre-conception surrogacy arrangement that cannot be dispensed with; and, thirdly, only if it is in the best interests of the child to do so.

It is also proposed that the law operate retrospectively for pre-existing surrogacy arrangements by providing that a court may grant a parentage order to parents who are now lawfully raising children under the age of 18 years who were conceived through surrogacy if the court is satisfied that a surrogacy arrangement was entered into prior to conception, that the surrogacy arrangement was not a commercial arrangement, that all parties consent to the granting of the order and that it is in the best interests of the child. There will be a two-year time limit on the making of such orders in relation to a pre-existing surrogacy arrangement from the commencement of the Act. The laws will also accommodate making parentage orders for overseas surrogacy arrangements. There will be no eligibility requirement that a child be born in Australia. Parentage orders may be available for overseas surrogacies, provided that the requirements for an order are met.

Finally, the existing prohibition on commercial surrogacy arrangements will be clarified by defining "commercial surrogacy arrangement" to include all pre- and post-conception arrangements entered into for fee or reward, but to exclude arrangements for reimbursing the birth mother's reasonable costs. The surrogate mother will be able to enforce an arrangement for the reimbursement of reasonable expenses. The birth mother's reasonable expenses must be verifiable and the types of expenses will be identified, such as medical expenses, legal expenses, the cost of counselling, and other reasonable costs. The prohibition on soliciting commercial surrogacy will be extended so that it will be an offence to advertise a person's willingness to enter into a surrogacy arrangement, including altruistic surrogacy arrangements. The surrogacy legislation I have foreshadowed constitutes important and meaningful reform that I believe will make a difference to the lives of children and parents on a day-to-day basis.

The Hon. GREG DONNELLY: Attorney, what is the Government's most recent financial commitment to court diversion programs? How well are those programs working in the State?

The Hon. JOHN HATZISTERGOS: I thank the member for his question. The Government has a strong commitment to promoting rehabilitation through the court system. This has included providing, when appropriate, diversionary court programs that seek to encourage criminal offenders to address the causes of their offending behaviour. To answer the first part of the member's question, I advise that in this year's State budget there was in fact a 13 per cent increase in spending on court rehabilitative and diversionary programs.

Within this increase, investment in innovative court initiatives, which are designed to tackle the causes of crime and increase victim participation in the justice process, will rise to $26.7 million, which is an increase of $3.1 million. This significantly increased budget allocation includes $5.5 million to fund the innovative Forum Sentencing Program, which gives victims a say in sentencing and will be rolled out to an additional 25 courts over serve the next year; $1.1 million towards circle sentencing, which is an alternative form of sentencing for indigenous offenders that involves local Aboriginal communities and victims of the court process; $2.2 million to fund the Western Sydney Drug Court, which forces drug-dependent offenders to engage in an intensive, supervised program of treatment and rehabilitation; $483,000 to continue the trial of Court Early Referral of Eligible Defendants Into Treatment [CREDIT], which is based on the New York's Community Court; $13 million for Magistrates Early Referral into Treatment [MERIT] which, as indicated earlier, is a joint New South Wales and Commonwealth initiative that allows magistrates to refer offenders with drug problems into treatment prior to sentencing.

However, I should add that the $26.7 million figure does not include the additional $3.7 million for a new Drug Court in the Hunter region. That was approved and announced after the budget was delivered. I should also make the point that this investment in court-based programs comes on top of the $144 million that Corrective Services spent on rehabilitation. In answering the second part of the member's question—how well our court rehabilitation and division programs are working—I think it is important to be clear about how we measure success. As I recently wrote in the New South Wales *Law Society Journal* in an article on determining

the appropriate outcomes for those who have committed criminal offences, it is not a simple undertaking. Indeed, sentencing is an area, in both legal and policy terms, in which there are very strong competing considerations. Of course there is the need to punish offenders. We expect criminal sentences to correct past wrongs and for offenders to be penalised with sanctions that are equal to the crime. This not only provides justice to the victims of the crime but also ensures that punishment expresses society's relative moral condemnation of different kinds of criminal behaviour.

But we also expect sentences to prevent the commission of future wrongs. There are different ways to achieve this, including specific deterrence, which use the punishment to dissuade individual offenders from committing further offences; general deterrence, which uses the example of punishment to dissuade others; incapacitation, which uses imprisonment or intensive supervision to physically prevent an offender from committing further offences; and rehabilitation, which seeks to address the causes of an offender's behaviour so that they are not influenced to keep committing crime. Different purposes of criminal punishment are given expression through our State sentencing legislation. With the exception of rehabilitation, all of them tend towards the imposition of stronger sentences. Obviously, tension arises. However, through these programs we are trying to bridge that gap between the sometimes competing demands of punishment, deterrence and incapacitation on the one hand and rehabilitation on the other.

As I also indicated in the article that I referred to, the Government believes that these irreconcilable conceptions do not need to be mutually exclusive. That brings me back to the honourable member's question. In assessing whether our court programs are working, I want to look at how we are both punishing and rehabilitating. Let me look at two things. Firstly, does the program have a punitive element—that is, does it actually have sanctions and impose obligations on the offender for which they are held accountable? Secondly, does participation in the program have a positive impact in terms of reducing the rate at which that person may reoffend? With this approach in mind, I will now outline in more detail how the Government's rehabilitative and diversionary programs are going.

First, there is the Drug Court. The program, which operates as an alternative to imprisonment, offers non-violent drug-dependent adult offenders the opportunity to participate in an intensive, supervised program of treatment and rehabilitation, with those who fail risking the chance of being sent back to court and being imprisoned. Since its inception in 1999, we have spent about $4 million per year on the Drug Court, and about 2,000 offenders have successfully completed the program. A recent evaluation from the Bureau of Crimes Statistics and Research [BOCSAR] indicated that there was a 17 per cent less chance of being reconvicted for any offence, 30 per cent less likely to be reconvicted for a violence offence, and 38 per cent less likely to be reconvicted for a drug offence.

As I noted earlier, we have announced that work is underway to expand this program to the Hunter region, at a cost of $3.7 million per year. That is important as it is the first expansion of the Drug Court into a regional area. Obviously, that will have some issues because we want to maintain the same quality. The senior judge, Judge Dive, intends at least initially to sit there himself to ensure that we are able to maintain the same standards that we have developed at western Sydney. The Magistrates Early Referral into Treatment [MERIT] Program is the State and Commonwealth initiative that engages defendants with drug treatment as part of their bail conditions.

With an annual budget of about $13 million, MERIT is now available in 64 local courts around the State. The evidence from the Bureau of Crime Statistics and Research is that it reduces reconviction rates by about 12 per cent. Since 2000 more than 8,000 offenders have successfully completed the program. Recently we have commenced trialling the application of MERIT to offenders with alcohol dependency at seven local courts, and pending discussions with the Commonwealth we hope to be able to introduce alcohol MERIT into more courts across the State. We are giving courts new options for dealing with those who have other problems that we know contribute to being able to turn around recidivist behaviour.

The Court Referral of Eligible Defendants into Treatment [CREDIT] Program, which we are currently trialling at two courts, is based on the New York community court and offers the opportunity for issues such as homelessness, financial management, gambling addiction and mental problems are able to be addressed in the community. Since that program commenced in August of last year 75 defendants have entered the program, with 17 having successfully completed their intervention plan. We will evaluate that within two years and consider whether it should be expanded, but we are looking at a model that will be able to be spread around the whole State, not one place. Basically, it is a stand-alone in two locations and will not be able to be spread around.

Forum sentencing brings together the offender, the victim, a facilitator and support people, police officers and other relevant people to discuss the harm caused by an offence and prepare an intervention plan. Again, we have modified that in recent times to include a rehabilitative element, but the analysis from BOCSAR shows that it has increased victim satisfaction quite significantly in the justice process. We have recalibrated circle sentencing in order to address the issue of reoffending. To ensure that it is focussed on that, a representative of Corrective Services usually sits on these circles to give advice as to relevant programs which may throw up options for other interventions. Similarly, with forum sentencing, a number of stakeholders sit around and work together but also including the magistrate, prosecutor and defendant to work out an appropriate sentence and intervention plan.

Currently we are examining a range of options, and we have implemented options through these processes. I have not closed the door on other initiatives. Indeed, one initiative will be commencing shortly and that is the new Intensive Correction Order, which will replace periodic detention. That will be starting before the end of the year. I think that is another avenue by which we are able to target particularly those people who are the frequent flyers in the system who get some form of sanction, go away and then they come back again and consume an enormous amount of court time but their underlying issues are not addressed.

The Hon. SHAOQUETT MOSELMANE: What is the Government's progress in implementing the Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill?

The Hon. JOHN HATZISTERGOS: In June this year we approved the Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill. That has been enacted. This legislation introduces important reforms which will have a significant and lasting impact on the criminal justice system in New South Wales. There is, firstly, a new sentencing option—the Intensive Correction Order [ICO]—which is designed to reduce an offender's risk of reoffending through the provision of intensive rehabilitation and supervision in the community. An Intensive Correction Order will be a sentence of imprisonment of up to two years that is ordered to be served in the community, where offenders can be subject to a range of conditions, including monitoring, regular community work and a combination of tailored educational, rehabilitative and other therapeutic activities.

The order will offer offenders the opportunity to turn their lives around by addressing the identified factors associated with their offending. At the same time the community will be safeguarded through the intensive monitoring and supervision of offenders. The legislation also abolishes the sentence of periodic detention, again giving effect to recommendations of the New South Wales Sentencing Council. To answer the honourable member's question as to how implementation of the bill is progressing, I am pleased to advise that the Executive Council will tomorrow consider a proposal to formally commence the new legislation on 1 October.

This means that from 1 October courts will be able to impose an Intensive Correction Order as a sentencing option. Of course, such orders will be able to be made only within the bounds prescribed by the legislation. At the same time periodic detention will cease to be a sentencing option. As I noted earlier, both of these changes arise from recommendations made by the Sentencing Council. Indeed, the recommendation to introduce what has become the Intensive Correction Order, and its corresponding recommendation to abolish periodic detention, emerged from a review of periodic detention that I asked the council to undertake in 2007. As part of this review, the Sentencing Council was asked to look at a number of issues, including the extent to which periodic detention is used, its advantages and disadvantages, and whether there are other alternatives.

The Sentencing Council received 26 submissions from members of the judiciary, legal groups, the Law Society, various agencies, local councils and representatives of victims of crime. The council also issued 260 community consultation letters addressed to a range of other smaller community organisations, receiving a further 72 responses. In recommending the abolition of periodic detention and its replacement with a new community based order, the council highlighted a number of problems with periodic detention. The most significant of these was that it is not available across the State. While the council considered that this could potentially be remedied by making periodic detention available in every area of the State, it noted that expansion would carry "very substantial capital costs and ongoing expenditure for facilities which, in some areas, would be likely to be underutilised".

I recall visiting Broken Hill where we set up a periodic detention centre. I think four offenders were sentenced to it. Not one of them completed the sentence; they were all revoked. The council recommended its

replacement by this community-based order, which could be more easily implemented and more realistically made available on a statewide basis. The council also found that current periodic detention facilities are underutilised and noted the significant downward trend in the making of periodic detention orders. I understand that the situation did not improve. The latest statistics show that only 1,137 orders were made in 2008. The council also found that just under a third of periodic detainees fail to complete their orders, with indigenous detainees four times more likely to have unsuccessful outcomes.

The council found that case management does not exist in any meaningful way in periodic detention. It drew attention to several submissions which questioned the rehabilitative value of periodic detention, noting that 39 per cent of all offenders sentenced to periodic detention had another proven offence within the following two years, with this rate increasing to 55 per cent for indigenous offenders.

In highlighting these deficiencies, the council noted that periodic detention provided no case management or therapeutic or rehabilitative support for offenders. It found that the introduction of a community-based order like the Intensive Correction Order would have the benefit of enabling offenders to participate in rehabilitative or educational programs. The council further noted that several submissions had highlighted the negative impact of periodic detention in relation to employment and family duties, with suggestions that alternative community-based sanctions could have less of an impact in terms of dislocation.

The Sentencing Council also noted the reasons why retaining periodic detention and introducing a new community-based order would not be appropriate. Among these reasons include the potential for the resources needed to support the new order to be diluted, thereby weakening its value, along with the risk that the problems identified with periodic detention may simply be perpetuated if the existing resources directed towards that sentencing option were not put to better use.

So this is very important legislation that we are commencing. It does away with a sentencing option which, quite frankly, has had its day. It introduces a new option which represents a new chapter in therapeutic justice. It will ensure that our courts are further equipped with a sentencing option which has real potential to properly rehabilitate offenders and help them turn away from a life of crime. In doing so, it is hoped these changes will assist in our ongoing efforts to keep driving down not only rates of crime but also the rate and extent to which criminals re-offend.

I will take this opportunity to respond to some questions asked by Mr David Shoebridge. In relation to the covert search warrants under the Law Enforcement (Powers and Responsibilities) Act, the report was tabled under section 242 A of the Act on 10 November 2009 for the year ended 30 June 2009 with figures for covert search warrants under that legislation. In relation to covert search warrants under the Terrorism (Police Powers) Act, the statutory report for those was tabled on 10 September 2009 by then Minister Campbell.

(The witness withdrew)

CHAIR: There will be 45 minutes allocated for Regulatory Reform: Opposition 15 minutes; crossbench 15 minutes and Government 15 minutes. I will not repeat my earlier opening statement. The Committee has resolved that all answers to questions taken on notice must be provided within 21 days.

GEORGINA BEATTIE, Director, Better Regulation Office, Department of Premier and Cabinet, sworn and examined:

The Hon. DAVID CLARKE: The Premier has issued a memorandum outlining the responsibilities of each director general of each department for reducing red tape. The memorandum states:

> The Directors General need to report in writing twice a year on their achievements in cutting red tape, identifying various things including achievements over the past six months, quantification of the costs of savings, of reforms to business, government and the community and plans to cut red tape over the next six months, including estimates of expected cost savings of reform using the measurement tool.

How many directors general have complied with the Premier's requirements?

The Hon. JOHN HATZISTERGOS: All of them, I am told.

The Hon. DAVID CLARKE: You say, "I am told", so you are confirming that they have all complied?

Ms BEATTIE: Yes, the Premier's memorandum of understanding requires all Attorneys General to comply with those reporting requirements and we have received reports from all of them.

The Hon. DAVID CLARKE: Are those reports available?

Ms BEATTIE: They are not publicly available. The Better Regulation Office uses those reports to prepare its annual report, which is released every 12 months. The reports that we have received most recently are currently being evaluated and the reforms will be reported in the 2009-10 annual update, which is due to be released next month.

The Hon. DAVID CLARKE: Is it proposed that these reports will be made available?

Ms BEATTIE: No, it is not. The reforms that are reported by directors general are evaluated by the Better Regulation Office. We check the information that is provided, the methodology used to calculate the savings to business, community and the Government from those reports. We often go back to agencies to clarify certain information. Many of the reforms have not yet been to Cabinet, so the reports themselves are not publicly available, but any reforms that are used to contribute to the target are reported in the annual report.

The Hon. DAVID CLARKE: Was there a time frame to lodge those reports?

Ms BEATTIE: The directors general report every six months.

The Hon. DAVID CLARKE: Were all the reports received on time?

Ms BEATTIE: Yes.

The Hon. DAVID CLARKE: All of them?

Ms BEATTIE: Sometimes we allow a week's extension or two weeks extension based on discussion with the agency, but we received reports from all agencies.

The Hon. DAVID CLARKE: What will happen to directors general who fail to make savings or adequate cuts to red tape?

Ms BEATTIE: The Better Regulation Office works with all agencies and directors general to make sure they are focusing on opportunities to cut red tape. We receive reports from all agencies. As well as the reforms that they report have been achieved in the previous six months, they also need to identify reforms for

the future six months. So in areas we would work with agencies to make sure they have a list of reforms that they are intending to do in the next six months.

The Hon. DAVID CLARKE: What will happen to those who fail to make the savings or cuts? What is the process then?

Ms BEATTIE: We would work with the agency to look at what it could be doing. A lot of the reforms that agencies are working on are part of existing regulatory reviews that they are undertaking and we want to make sure that they are using that opportunity to identify ways to streamline processes for business and community.

The Hon. DAVID CLARKE: So there will be a process of consultation?

Ms BEATTIE: Yes.

The Hon. DAVID CLARKE: A process of consultation only.

CHAIR: Could you walk me through an example of one department and how the process actually works—what type of red tape it is trying to reduce, how it is trying to save funds and how it is implemented from then on?

Ms BEATTIE: Sure. During the course of their business, if agencies are undertaking reviews of their regulatory frameworks, they should be using those opportunities to identify ways to cut red tape for business and the community and also for savings internally within government. When they report to the Better Regulation Office they need to identify the reforms that they are intending to implement or have implemented. The Better Regulation Office receives those and we work through the methodology that they have provided about the savings. The Better Regulation Office has a tool called Measuring the Costs of Regulation, which assists agencies to calculate the savings that are likely to accrue to business or the community. They could be savings such as savings in time for businesses complying with regulation, savings in substantive compliance costs or avoided costs such as holding costs. We work with them to calculate those savings and they are reported to us in six-monthly reports. We go back to clarify anything that is unclear. We use those reports to work out the contribution towards the target and agencies report to us then in the next six months how they are going with implementing those reforms.

CHAIR: If we take a restaurant as an example, from my own knowledge, restaurants are bound by numerous regulations in relation to health issues, registration issues, licensing issues et cetera. How would this work in relation to a restaurant trying to reduce red tape and the cost of filing reports, inspections et cetera?

Ms BEATTIE: In the case of a restaurant there are a number of areas where reforms are happening at the moment. There could be reforms by the NSW Food Authority, and there have been a number of those in recent years, and there could also be planning approvals. If a new restaurant wants to open and needs approval to set up, reforms done through the Planning portfolio may assist that particular business.

CHAIR: The idea is to keep reducing red tape so they do not face hurdles, if I can use that expression?

Ms BEATTIE: Yes.

The Hon. JOHN HATZISTERGOS: It is a better regulation office. It is to better regulate.

CHAIR: How are restaurant owners notified of these changes?

The Hon. JOHN HATZISTERGOS: There is a series of publications available that we issue. I think the most recent one went up yesterday or the day before. They identify what we do and we measure the quantitative success.

CHAIR: I am aware of this but are they made aware of this?

Ms BEATTIE: The portfolio agency that is doing the reforms is usually responsible for the consultation with the stakeholders in a particular sector. The Better Regulation Office publishes an annual

report, which details all of the red tape reforms that have happened right across government. Someone interested in looking at reforms to cut red tape would go to that document.

The Hon. DAVID CLARKE: That deals with the question of informing business and so forth, but what about the channel whereby businesses are informing Government of their concerns about over-regulation? For instance, the NSW Business Chamber and Commonwealth Bank Business Conditions Survey for the July quarter claimed that "Businesses had reported concerns about regulatory burdens". Are you aware of this report?

Ms BEATTIE: Yes.

The Hon. DAVID CLARKE: Are you concerned about their concerns?

Ms BEATTIE: Yes, we regularly talk with business to find out their concerns about red tape. The newsletter that goes out every quarter also always asks for feedback from business about specific concerns of regulatory burden. We regularly look at submissions made by business groups and businesses themselves to see what regulatory burdens they are facing and what we might do to address those.

The Hon. DAVID CLARKE: They had very serious concerns, did they not, about the regulatory burdens imposed upon them?

The Hon. JOHN HATZISTERGOS: The Commonwealth Bank?

The Hon. DAVID CLARKE: This was a general survey not restricted to the Commonwealth Bank. This is the NSW Business Chamber and Commonwealth Bank Business Conditions Survey. You would be aware that it covers business generally, a lot of businesses.

The Hon. JOHN HATZISTERGOS: There are lots of opinions around. There is an OECD report that was published in February this year that you may be aware of. If you are not, perhaps you should be.

The Hon. DAVID CLARKE: Yes, I am.

The Hon. JOHN HATZISTERGOS: It looked at our performance in a national and international context and reported very favourably, so there is a range of opinions around. The way we measure our success, in the Better Regulation Office in particular, is by reference to our target that we are committed to delivering by 2011.

The Hon. DAVID CLARKE: I will come to that target in a minute.

The Hon. JOHN HATZISTERGOS: Our report is referable to that target.

The Hon. DAVID CLARKE: The OECD report is one thing but I am talking about the NSW Business Chamber report. They had very serious concerns, did they not?

Ms BEATTIE: They did. It is worth pointing out that there will always be a cost to business to comply with regulatory requirements and the Better Regulation Office, as the Minister said, is about getting better regulation and improving the efficiency of regulation, not reducing totally the cost of complying with regulations. Often when we talk to business groups we find they are concerned about the costs of complying with certain regulatory requirements, such as occupational health and safety laws or planning approvals. Our efforts focus on trying to make the costs of those regulatory requirements as small as possible, recognising there will always be time involved in complying with those.

The Hon. DAVID CLARKE: The New South Wales Government claims that it is more than half way to achieving its target of reducing red tape by $500 million by June 2011, so why is it that businesses appear to be still complaining very strongly about regulatory burden?

The Hon. JOHN HATZISTERGOS: As I said, there will always be some people who have views in relation to this but the best context is to look at people who comment on these issues very broadly. If you look at the performance of New South Wales in that OECD study, you will see that both nationally and internationally we have done very well, and certainly against our target, bearing in mind that we were not as heavily regulated to begin with as, say, Victoria was.

The Hon. DAVID CLARKE: That is all relative, of course.

The Hon. JOHN HATZISTERGOS: It is always relative but we are looking at reducing costs and improving the level of regulation. There will always be some regulatory burdens that some people might complain about. Some people in business complain about the Working with Children checks and think they should be dispensed with because it costs them money, but it achieves a public purpose. Some people believe we should not have planning laws, but planning laws provide a framework.

The Hon. DAVID CLARKE: I am talking about the NSW Business Chamber report, not other people. Do you believe their complaints about regulatory burdens are unreasonable?

The Hon. JOHN HATZISTERGOS: No, we are moving towards our target and we have further projects that we are doing, targeted reviews and gateway reviews towards reducing the level of regulation, but there will always be advocates for less regulation no matter how much you do. It is a matter of having a sensible balance. As I said, the OECD study was very favourable. I do not know whether you have seen it, but I have a copy of it. It is called "Towards a Seamless National Economy". I refer you to page 141. I can read it out if you wish.

The Hon. DAVID CLARKE: No, that is fine. I have the report.

The Hon. JOHN HATZISTERGOS: I am surprised you have not referred to it. Perhaps it is too optimistic for you.

The Hon. DAVID CLARKE: Unfortunately the time that is given to us by the Government to do these things—

The Hon. JOHN HATZISTERGOS: You had plenty of time to refer to the Commonwealth Bank, but there is a contrary opinion from a respected international body.

CHAIR: In looking at reviewing regulations and new regulations as they are needed and required is a proper system in place to ensure that older and obsolete regulations are being removed from the books?

The Hon. JOHN HATZISTERGOS: Yes, there are regular reviews, not only of regulations but also legislation.

CHAIR: Who is ultimately responsible for ensuring that each authority is removing old for new, if I can use that expression? Is it your department?

Ms BEATTIE: The Subordinate Legislation Act requires regulations to be reviewed every five years. In addition, the reports we receive from directors general usually focus on existing regulations, so our gatekeeping system focuses on new regulation and a combination of statutory reviews, staged repeals and the directors general reports focus on the existing regulatory burden.

CHAIR: I do not know the answer to this question, so I am probably fishing: Are statistics available to advise on the number of regulations that have been removed compared to new regulations coming in?

The Hon. JOHN HATZISTERGOS: Are you talking about quantity? As I keep saying, it is the Better Regulation Office. We are trying to improve regulations.

CHAIR: I understand that.

The Hon. JOHN HATZISTERGOS: The reports that we produce detail the progress we have made in various areas.

Mr DAVID SHOEBRIDGE: Other than the $500 million saving by 2011, are there any other benchmarks by which the office assesses the definition of better regulation or the achievement towards better regulation?

Ms BEATTIE: We have a gatekeeping system to look at new regulations that are proposed to make sure they are being developed in the most efficient way. That is consistent with gatekeeping systems in all other jurisdictions in Australia. In addition, New South Wales, as part of the business regulation and competition working group, which reports to the Council of Australian Governments, has an area that focuses also on enhancing the development of regulation making and review. In the next few years that working group will be focusing on gatekeeping systems and targets across all jurisdictions to look at benchmarking approaches in those different jurisdictions.

Mr DAVID SHOEBRIDGE: Are you giving drafting advice to other departments, or how does the gatekeeper role work?

The Hon. JOHN HATZISTERGOS: It is a *Guide to Better Regulation*, which is a publicly available document. New regulations or new legislation is assessed according to that guide. That is the gatekeeping role. They are required to outline the costs and benefits of proposals and any consultation that is undertaken. When matters come up for review, in particular by Cabinet, a report will be done to assess the impact against those regulation principles. Cabinet is aware of the better regulation statement, or the regulatory impact statement, and the impact referable to those principles.

Mr DAVID SHOEBRIDGE: Is the impact statement done by the relevant department and then assessed by you?

The Hon. JOHN HATZISTERGOS: That is correct.

Mr DAVID SHOEBRIDGE: Does that involve additional delays in the process of implementing regulations? What is the usual time frame to turn those around in your office?

Ms BEATTIE: It is very quick. We encourage agencies to talk with us early in the process. If they are going through a good regulatory process they are thinking early about the potential impacts on stakeholders and are consulting with stakeholders as part of the process. It is just a matter of documenting that process. We can turn it around very quickly.

Mr DAVID SHOEBRIDGE: So the Better Regulation Office is not adding regulations to the department. Are you consulting earlier?

Ms BEATTIE: If agencies have not done the right thing it might delay their progress. However, a necessary part of what we do is to ensure that any new regulation has been developed with proper consideration.

Mr DAVID SHOEBRIDGE: Are you and the department at loggerheads? Has there been an occasion when the department has not accepted your advice?

The Hon. JOHN HATZISTERGOS: Occasionally, but we tend to work with the agencies. We are not here to act as a body that is going to be in conflict with the agency. It is much better to work with the agencies. That has certainly been my approach and the approach of the office. We achieve a lot more through that cooperative mechanism. Generally speaking, agencies ask us for help. They come to us and they ask for help because there might be other ways of doing things. I think that is the nature of our relationship rather than a policeman-type role that promotes conflict and delays things occurring. I can give you some examples. This is one example of how the office operates.

The Department of Planning introduced a new complying development approval process for low-risk retail commercial developments, including changes of use and alterations to the interior of premises. These reforms will ensure that accredited certifiers or council officers assess development proposals against development standards and that compliant development is approved within 10 days. These changes have received a positive response from stakeholders, including from the New South Wales Business Chamber. This is what Stephen Cartwright said:

> This is a practical way of helping existing small businesses update their premises and for new small businesses to get going and open their front doors.
>
> ... An empty or closed shop that is waiting to get the green light to make small changes to a sign or internal changes like shelving, cost business owners through lost revenue and rent charges—cutting the waiting time on approvals will save business owners money.

That is just one reform that we worked through with various stakeholders. It is like the restaurant example that was referred to earlier—a new restaurant opening. This sort of thing might not be relevant to a restaurant but it might be relevant to some other low-risk type of business that wants to operate and to obtain approval. You can take the enforcer's role and sometimes that might be appropriate but, generally speaking, we try not to do so.

Mr DAVID SHOEBRIDGE: Who has the final say, though, if you get to that position?

The Hon. JOHN HATZISTERGOS: These matters are reported to Cabinet and Cabinet makes a determination if it involves legislation. I do not think there have been too many instances when that has occurred. Generally the agencies work with us. They identify areas and they ask us for help.

Mr DAVID SHOEBRIDGE: Do you keep statistics that reflect the turnaround—from the time the proposed regulation enters your office to the time that it leaves your office? Are you keeping those kinds of statistics?

Ms BEATTIE: We do not, but it is always in a matter of days. We have never had any complaint that we have taken too long. We turn things around pretty quickly.

The Hon. ROBERT BORSAK: I am aware that the Associations Incorporation Act was recently amended. What is your office doing to make the operation of volunteer organisations less burdensome and free of red tape under this Act?

The Hon. JOHN HATZISTERGOS: I think that legislation is administered by the Fair Trading portfolio. I can give you some advice in relation to not-for-profit organisations as they are the ones that are covered mainly by this kind of legislation. In April 2010 the Council of Australian Governments agreed to introduce a national standard charter for accounts in the not-for-profit sector to guide the way in which agencies ask not-for-profit groups to report basic financial information. That standard was introduced in July this year. That standard chart for not-for-profit groups will be voluntary, but it allows the groups that report to more than one government funder to be able to have one set of financial information that satisfies all their financial reporting requirements. It also cuts costs and saves time for the not-for-profit sector.

The Better Regulation Office contributed to the development of that standard by consulting with the not-for-profit sector and the government agencies and, in doing so, made sure that the national approach reflected the needs of the New South Wales not-for-profit community. The Government has committed itself also to a further reduction of red tape for not-for-profit organisations in New South Wales. In March 2010 the Government released a report, looked at the issue and made a number of short-term and long-term recommendations. The short-term recommendations that have been implemented have included the introduction of e-tendering, word limits for tenders, standardising insurance requirements, and increasing the coordination of information collected from organisations as between agencies. The medium-term recommendations are currently being implemented and include standardising and simplifying contracts with non-government organisations and establishing a risk framework in relation to funding that reduces the burden on reliable and proven not-for-profit organisations.

The Hon. ROBERT BORSAK: You referred earlier to occupational health and safety law. As you may be aware, WorkCover is the only New South Wales authority that has its own unique licensing system. What has your office done to encourage WorkCover to merge with the State Government's centralised licensing system?

The Hon. JOHN HATZISTERGOS: That is controlled by the Minister for Finance. I will have to take that question on notice.

The Hon. GREG DONNELLY: Can the Minister provide an update on the targeted reviews conducted by the Better Regulation Office?

The Hon. JOHN HATZISTERGOS: We recognise that an appropriate regulatory environment is critical to ensuring that New South Wales remains an attractive investment location for Australia's international businesses. To consolidate and build on results like these, the Government has, since its inception, instructed the office to undertake a number of targeted reviews into policy areas or industries where reducing red tape will have a significant benefit for the economy. Targeted reviews form a key component of the Government's

strategy to attack existing red tape. They have helped drive reform in a number of departments to deliver benefits for businesses and the communities across the State.

The Better Regulation Office has made excellent progress in undertaking its own red tape reviews. Nine targeted reviews have been completed to date, which is a remarkable achievement for the office. The office has two reviews that are currently underway, with a review of corrosion protection, and a review into improving compliance and enforcement on New South Wales toll roads. In 2008-09 the Better Regulation Office completed or implemented four reviews into occupational licensing, gas regulation, plumbing and draining regulation, and shop trading hours. Since July 2009 a further five reviews have been completed by the Better Regulation Office.

The benefits of these reviews have been spread across the New South Wales economy and include: streamlining requirements for taxi drives and not-for-profit organisations—a matter to which I have already referred—improving regulation in the entertainment industry; reducing regulatory burden in the contestable electricity network services; and improving competitive outcomes through changes to the New South Wales planning system. In April 2010 the office completed a targeted review with the Department of Planning on the impacts of the New South Wales planning system on competition. Reforms to be implemented as a result of the review will ensure that the New South Wales planning system achieves the right balance between achieving sustainable social and environmental outcomes and promoting a competitive business environment.

The key reform is the introduction of a competition State environmental planning policy. The policy will ensure that businesses can get started in New South Wales without unnecessary and anti-competitive restrictions in the planning system, such as restrictions on the number of particular types of stores in an area or proximity restrictions on particular types of stores; and by clarifying the limited circumstances under which loss of trade can be a relevant planning consideration.

Important reforms also are to be implemented as a result of a targeted review of the Accredited Service Providers scheme, which underpins the contestable market providing electricity connections for New South Wales consumers. The review makes recommendations that will result in the more efficient running of the scheme, and a tougher approach to compliance and enforcement. As a result of the reforms, service providers are expected to save around $450,000 a year from reduced paperwork, while network service providers are expected to save several hundred thousand dollars a year from fewer duplicative services.

Another targeted review with significant benefits was the joint Better Regulation Office and Transport New South Wales review of taxi licensing, about which a number of Committee members would be aware. This review resulted in significant reforms to taxi licensing arrangements. That review led to the release of new annual, renewable taxi licences, which replace the costly ordinary and perpetual licenses. The reforms ensure that the supply of taxis responds more closely to growth in passenger demand, existing taxi licence structures are simplified, and provides a more affordable means of entry into the taxi market while limiting impacts on the values of existing licences. Each year the Director General of Transport New South Wales will make an assessment of the demand for taxis in Sydney and will release licences that accord with this unmet demand. Already, 100 new licences have been taken up and the director general is releasing a further 167 new licences in 2010-11 to meet the increasing demand for taxis in Sydney.

The 2009 occupational licensing review found that licensing for entertainment agents and venue managers should be removed once the Entertainment Industry Act was reviewed to ensure it provides adequate protection for performers. The aim of that review was to improve regulation of the agent/performer commercial relationship by reducing red tape and maintaining an appropriately strong regime for performer protections. Once these protections are in place, it will allow the removal of three licences: the entertainment industry agent licences, the entertainment industry manager licence and the entertainment industry venue consultant licence. The final report on the Entertainment Industry Act review will be released shortly. Finally, the Better Regulation Office worked with the Council of Australian Governments to introduce a national standard chart of accounts for not-for-profit organisations, which I have mentioned. That should particularly facilitate those agencies to deal with more than one government agency but have to supply different sets of information to different agencies in order to meet the terms of their funding grants.

Building on all of this success, I am pleased to say that the Better Regulation Office currently is working on a further two reviews: the corrosion protection systems, and the compliance and enforcement on New South Wales toll roads. The corrosion protection review is being conducted with the Department of Industry and Investment and is examining the approach to regulating corrosion protection systems. Currently the

New South Wales Government makes sure that the systems operate safely and effectively by approving them and keeping information about them on a register.

Industry and Investment New South Wales has identified that the framework could be improved by reducing unnecessary cost to both industry and government and more effectively mitigating the risk of corrosion. This will ensure an efficient and effective approach that minimises the regulatory burden for system operators, proposed system operators and owners of third party assets. It is encouraging that departments such as Industry and Investment are proactive in approaching the Better Regulation Office about undertaking reviews. Over time, I hope to announce that more agencies have identified areas for review with the assistance of the Better Regulation Office. The Better Regulation Office is working on developing new targeted reviews and I look forward to announcing these in the near future.

The Hon. SHAOQUETT MOSELMANE: Could you inform the Committee about the achievements of the COAG Business Regulation and Competition Working Group?

The Hon. JOHN HATZISTERGOS: The New South Wales Government is working with the Commonwealth, States and Territories through the Council of Australian Governments to deliver a seamless national economy, and to resolve the red tape issues that arise when doing business across State borders. The Better Regulation Office, the Department of Premier and Cabinet, and Treasury represent New South Wales on the COAG Business Regulation and Competition Working Group, which has an extensive and broad-ranging agenda for cross-jurisdictional reform. The working group has 27 priority reform areas that will deliver significant benefits to the New South Wales and broader economies, including through improved labour mobility, reduced red tape and lower costs of doing business, both within and across State borders.

The National Partnership Agreement to Deliver a Seamless National Economy will deliver significant economic benefits across New South Wales and Australia and contribute to substantial reductions of red tape for business and the community. As a formal COAG agreement, all jurisdictions are obligated to progress the reforms in accordance with a strict implementation plan with key milestones that must be met to claim reward payments. After two years into the five-year agreement, 12 of the 27 areas of regulatory reform have been completed, an additional seven areas are on track for completion by 1 July 2011 and all reforms will be completed by 2013. The office is represented on the Business Regulation and Competition Working Group, which coordinates reform activity and reports on reform progress each year to the COAG Reform Council.

The work involved is complex and requires significant coordination, timing and cooperation across multiple jurisdictions. Many reforms have required each jurisdiction to introduce referral and repeal legislation, formalise intergovernmental agreements, transfer staff and assets or conduct reviews to ensure that the reforms are delivered effectively and according to milestones. The reforms completed to date are, first, a national system of trade measurement. A new national system of weights and measures funded and administered by the Commonwealth has commenced, replacing the different systems that operated in the States and territories. Second is the health workforce agreement. A national registration and accreditation scheme for health professionals started on 1 July this year. Third is a national regulation of trustee corporations. The national regulation of licensing and supervision of trustee corporations has been implemented, ending the patchwork coverage of the States and territories.

Fourth is the national regulation of consumer credit. A national approach to consumer protection regulation for mortgage broking, margin lending and non-deposit lending institutions has commenced. The Commonwealth has assumed responsibility for more effective, national regulation. Fifth is standard business reporting. A simplified business to government reporting system has commenced, which is estimated to save business around $800 million a year. Sixth is environmental assessment and approval. New assessment bilateral agreements with the States and Territories have been finalised. Seventh is payroll tax harmonisation. The first stage of payroll tax harmonisation has been rolled out. New South Wales led the way with this reform, harmonising requirements with Victoria. Eighth is wine labelling. Domestic and export wine labelling requirements have been harmonised, saving business $25 million a year. Ninth is rail safety regulation. Legislation has been passed by all jurisdictions to establish a nationally consistent rail safety regulatory framework with only the supporting regulations to be finalised in a small number of jurisdictions.

Reforms that are underway include a national system for the recognition of trade licences. The system will make it easier for New South Wales businesses to employ tradespeople from anywhere in Australia, and easier for New South Wales based tradespeople to access work in other States when the opportunity arises. Legislation for this reform should be in place by the end of this year. The working group is continuing to

develop a national construction code incorporating all building, plumbing, electrical and telecommunications standards from across Australia. This is due to commence in October 2012. The working group also is progressing reforms in the chemicals and plastics sector and developing a more consistent enforcement of food regulations. In addition to the 27 deregulation priorities, an additional eight competition reforms deal with the establishment of open and competitive national markets across the energy, transport and infrastructure sectors.

Finally, the reform program embraces the reform of the regulation-making and review processes in each jurisdiction. This reform aims to ensure that jurisdictions are aware of and maintain optimal regulatory processes to ensure that regulation is not unnecessary and overly burdensome. This will see New South Wales' gatekeeping requirements reviewed against national criteria to identify what works best across all jurisdictions with the aim of enhancing processes for regulation making to minimise the impact on business. Comparisons with requirements in other jurisdictions will be used to ensure that New South Wales has the best possible gatekeeping process. Together these initiatives represent a significant package of regulatory reforms. The Government is committed to continuing to work with the Commonwealth and other States and Territories to ensure an effective regulatory environment that keeps costs down and ensures that New South Wales remains a vibrant and competitive economy.

CHAIR: That concludes the time allocated for the portfolio of Regulatory Reform.

(The witnesses withdrew.)

CHAIR: The Committee will now proceed to questions in respect to the portfolio of Citizenship. I will not read again all the requirements and procedures; most of the people present were in the room when I read them earlier.

STEPAN KERKYASHARIAN, Chairman and Chief Executive Officer, Community Relations Commission, sworn and examined:

The Hon. DAVID CLARKE: Minister, in providing translation services to government departments, does the Community Relations Commission provide interpreting and translation services to Commonwealth departments?

Mr KERKYASHARIAN: The Community Relations Commission will provide free interpreting services in relation to the courts. It provides interpreting services to any other organisation or entity, including the Commonwealth, on a user pays basis.

The Hon. DAVID CLARKE: How many times in 2009-10 have Federal departments used the service?

Mr KERKYASHARIAN: I am sorry, I will have to take that on notice.

The Hon. DAVID CLARKE: You may take it on notice and come back to us.

Mr KERKYASHARIAN: Yes. Mr Chairman, may I? We do provide more than 50,000 interpreting and translation assignments per year. It will take a bit of time to dig out that information.

The Hon. JOHN HATZISTERGOS: In 2010-11, it was 46,807, to be precise. In 2010-11 it is estimated to be 49,000.

The Hon. DAVID CLARKE: I think you indicated the Commonwealth pays a fee for the use of these services. That is correct?

Mr KERKYASHARIAN: It does. There is one area which might include neighbourhood legal centres where on the first visit we may not be clear whether it is Commonwealth or State jurisdiction. But once we have established that it is a Commonwealth jurisdiction issue, it does become user pays and they are invoiced.

The Hon. DAVID CLARKE: Is there a scale of fees applicable to the cover the Commonwealth using the department's translation and interpreting services?

Mr KERKYASHARIAN: There is a scale of fees for any user. It is the same. There are no special fees for the Commonwealth.

The Hon. DAVID CLARKE: So everybody pays the same?

Mr KERKYASHARIAN: That is right, and that is on our website, Mr Chairman.

The Hon. DAVID CLARKE: Thank you. How many grants have been provided since 1 July 2009 to 30 June 2010? What is the average value of a grant?

The Hon. JOHN HATZISTERGOS: For what?

The Hon. DAVID CLARKE: For instance, there are grants to various organisations.

The Hon. JOHN HATZISTERGOS: All of that, I think you will find, is on the website and in the annual report, so you can have a look at both of those—two resources.

The Hon. DAVID CLARKE: Does that specify the number of grants to each organisation?

The Hon. JOHN HATZISTERGOS: Whoever gets a grant is listed there, on my understanding.

The Hon. DAVID CLARKE: What factors are taken into consideration when providing such grants, and their amounts?

The Hon. JOHN HATZISTERGOS: All of the criteria for making a grant are set out on the website.

The Hon. DAVID CLARKE: Between the year 2008-09 to the year 2009-10, why did the number of community grants given by the commission decrease from 119 to 110?

The Hon. JOHN HATZISTERGOS: I am sorry, from when?

The Hon. DAVID CLARKE: From 2008-09 to 2009-10. There was actually a decrease in the number of community grants given.

The Hon. JOHN HATZISTERGOS: I would have to look at that. It has to go through an assessment process. You advertise; people apply.

The Hon. DAVID CLARKE: I understand that, but why did the number of grants fall? I understand that this year's forecast is for the level to stay at 110. Why is the commission not planning for any expansion of growth in these grants?

Mr KERKYASHARIAN: The grants go through a fairly astringent assessment process, which is also a publicly accessible process. A lot depends on how many applicants there are. It depends on the merits of the project. Therefore, I think a shift of about 9 per cent or 10 per cent would be acceptable in such circumstances because it is an unknown.

The Hon. DAVID CLARKE: Does that mirror that there has been a fall in the number of applications by approximately 10 per cent that occurred over that period?

Mr KERKYASHARIAN: I am not sure because I do not have the figures in front of me, but I think at the end of the day the number of grants which are given depends on the merits, how they meet the assessment criteria, and how much is available for the grants.

CHAIR: I will go to a completely different area, if I may. Some concerns have been expressed to me from many of the younger persons of Islamic communities that they are beginning to feel that there is a sector that really is going in for—and these are their words, not mine—Muslim bashing, and that Muslim bashing seems to be the flavour of the time. They appear to be criticised for everything, and it is having an effect on them. Through your commission and through your experience, I am wondering if you are aware that that is in fact happening? If so, what measures are being taken to ensure that one group of our society does not feel isolated in that regard?

Mr KERKYASHARIAN: We are aware that there is a view held by elements within the Muslim community, and that includes young people of the Islamic faith, that there is a negative view of them and that occasionally there are people, opinion makers or opinion leaders—usually the criticism is directed to some radio broadcasters—who will use every opportunity to attack Muslims, simply on the basis of their religion. The commission looks at every possible opportunity to promote inter-faith harmony. In fact we are in the process of holding a youth symposium today and a community leaders' symposium tomorrow at which such issues are being discussed. I did make some statements which were broadcast today on the basis that there are hundreds of thousands of Australians of the Muslim faith who are contributing to the development of our society in our country at all levels. We organise inter-faith meetings. We use every possible opportunity that is given to us to promote the view that a person's religion is not a measure of that person's loyalty to Australia.

CHAIR: Can you indicate what assistance, by referring to the grants, is being provided to people of non-English-speaking backgrounds to obtain the grants? Is any additional assistance being provided to them to access the grants?

The Hon. JOHN HATZISTERGOS: The information is provided. It is disseminated by the Community Relations Commission to virtually every peak and affiliated group so that they are aware of it. We certainly encourage the groups. Occasionally we have had to reach out to groups and encourage them to apply—you are right; some of the groups are not very well organised—and in those cases we have had to work with local councils.

There was one recent case in Auburn I was concerned about in relation to African youth. Africans, generally speaking, are not particularly well organised and there are some differences among them. We have been able to work with Auburn Council. We have given them some support to provide some coordination and some activity support. It does vary, depending upon the group. Bhutan is another one in Albury. I think we have worked with the Albury council there. In its community and some of the other areas, they are not particularly well organised and they do not have the capacity that you are speaking to. Local government is a good source for us to be able to provide some interaction and reaching out, plus of course the commission itself knows individuals and people we can reach out to, to be able to go out and provide some capacity building.

The Hon. DAVID CLARKE: Minister, what assistance, if any, did the Community Relations Commission provide to the excellent Ethnic Business Awards?

The Hon. JOHN HATZISTERGOS: Is this the National Multicultural Marketing Awards?

The Hon. DAVID CLARKE: I understand they go by the name of excellent Ethnic Business Awards.

Mr KERKYASHARIAN: If they are the awards that involve the National Australia Bank, my understanding is that that is a commercial activity, and the Community Relations Commission is not involved in that activity. To my understanding—and I may be corrected on this—it is a promotional exercise involving the National Australia Bank and other private companies.

The Hon. JOHN HATZISTERGOS: We are involved in the national multicultural marketing awards, which is a long-term, highly successful project run by the commission. I can give you some information on that if you want it.

The Hon. DAVID CLARKE: Yes, if you could take that on notice, we would very much like to receive it. [*Time expired.*]

Mr DAVID SHOEBRIDGE: Mr Kerkeyasharian, were there any reports to your office of an increasing level of concern from, or any increasing reports of victimisation of, the Muslim community following the recent parliamentary debate on a proposed burka ban?

The Hon. JOHN HATZISTERGOS: I think more accurately following the legislation that was proposed by Fred Nile. I think he maintains that it does not even mention the word "burka".

Mr DAVID SHOEBRIDGE: Following the legislation, which was interpreted broadly as a burka ban, and it was obviously directed at that.

The Hon. JOHN HATZISTERGOS: Are you aware of any?

Mr KERKYASHARIAN: I do not think there was any noticeable or significant increase. Obviously some of the feedback we got indicated that the Islamic community was not supportive of it. They saw it as a particularly anti-Muslim initiative. But it would be wrong to say that we were inundated by letters.

The Hon. JOHN HATZISTERGOS: I think the context of that debate needs also to be reflected upon. When the bill was introduced there was not a groundswell of support amongst legislators at the time, and that probably contributed to most people regarding the legislation as a fairly unique proposal that was being sponsored by one particular party and not having broad-based support. More recently both the Premier and the Leader of the Opposition have made it quite clear that they do not intend to support it.

Mr DAVID SHOEBRIDGE: I refer to the recent decision that was made in a Western Australia court in relation to a witness being required to remove her face veil. Is any consultation being undertaken by you, whether it is with the Community Relations Commission or otherwise, with the Muslim community to get a Government response to that or a Government position on that kind of proposition happening in New South Wales courts?

The Hon. JOHN HATZISTERGOS: I am not sure what the proposition in New South Wales is. The answer to the question is no.

Mr DAVID SHOEBRIDGE: It was raised by a defence council or a prosecutor seeking to have a witness's face veil removed.

The Hon. JOHN HATZISTERGOS: I am aware of the context but I am also aware of the fact that the judge in that case indicated that the decision that she took needs to be looked at in the circumstances of that particular case. What happened in that particular case may not necessarily be appropriate in another case. So I do not think there is punitive value according to her own decision on the matter, and at this point in time it has not arisen as an issue.

Mr DAVID SHOEBRIDGE: Is the Government developing a proactive position in terms of whether or not that kind of direction to a witness is proper in a New South Wales court?

The Hon. JOHN HATZISTERGOS: A direction to?

Mr DAVID SHOEBRIDGE: Remove a face veil.

The Hon. JOHN HATZISTERGOS: Those matters are matters for courts to determine in fairness to the parties that are before them. I am not sure that heavy-handed legislation from the Government is appropriate. Obviously they are aware of the issues in the case and the sensitivities of any individual witnesses but also of the course of justice and how that is best discharged. Frankly, I think the best approach is to allow courts to deal with those matters. In that particular case the judge made a decision preferable to all the different characteristics of the particular case. No doubt if it came up here again, the judge would be perfectly empowered to do the same sort of thing.

Mr DAVID SHOEBRIDGE: Do you know what, if any, criteria would be applied by the judge in making those kinds of determinations, or are there no set criteria?

The Hon. JOHN HATZISTERGOS: There is a useful judgement on these sorts of matters that you might want to look at—perhaps I can try to dig it out for you—but I think the judge's judgement in that case specified that it was a case that fell on its particular facts. This was a prosecution witness. The prosecution chose to call her. The judge felt that it was important that the jury have the opportunity of being able to look at the facial expressions but I think enabled that to be done in a way that was sensitive to her by a remote witness facility.

Mr DAVID SHOEBRIDGE: In all assessments of community indicators, whether they be participation in cultural events, sport or volunteering, is any effort made by the New South Wales Government to assess the level of inclusion or participation of ethnic communities, for example, the participation and the attendance on cultural venues? Is any assessment made of the level of participation of ethnic communities?

The Hon. LYNDA VOLTZ: In soccer.

Mr DAVID SHOEBRIDGE: Soccer.

The Hon. JOHN HATZISTERGOS: We do what we can to assist. Again, it is a process. I outlined in the House last week—I do not know whether you were following; perhaps you were focussed on when Ms Hale was going to retire.

Mr DAVID SHOEBRIDGE: I knew that last week.

The Hon. JOHN HATZISTERGOS: She was more uncertain about it.

Mr DAVID SHOEBRIDGE: She retired on Monday.

The Hon. JOHN HATZISTERGOS: Yes, I know, but there was a suggestion that she was going to do it last week.

Mr DAVID SHOEBRIDGE: But last week I knew though.

The Hon. JOHN HATZISTERGOS: Did you? Okay.

CHAIR: The Attorney might like to move on to answering the question.

The Hon. JOHN HATZISTERGOS: It was a matter of some speculation, but be that as it may. There is an answer in *Hansard* about what we do to try to help particularly vulnerable groups, and I imagine that your question is directed at vulnerable groups. Obviously many people from non-English speaking backgrounds are able to participate much more easily than others. But the commission has done an enormous amount of work to try to provide assistance. Recently I was in Lismore, where we sponsored some young African refuges from Sierra Leone and other parts of Africa; we paid for their uniforms and registration fees so that they could participate in the local soccer club. Those young people were participants; they were very good sports people, from all accounts that I received. Moreover, what was encouraging in that case was the interaction between the parents and the organisers of the club.

The parents who did not have transport were assisted by members of the club. The parents of the African children were coming along and assisting in fundraising and things like barbecues and so on and social interactions. They were getting involved, and you are getting community cohesion. So we do those sorts of activities. There are about 21 clubs where we try to involve people in those sorts of matters. I think the commission has also been involved in some other activities involving sponsorships, particularly of a cultural nature.

Mr DAVID SHOEBRIDGE: The question was about how you identify those ethnic groups that might be at risk of being isolated from participating in the community, not the adult responses to ethnic groups. How do you identify which ethnic groups to assist to which to respond?

The Hon. JOHN HATZISTERGOS: It all goes with settlement policy and the discussions that you have around those issues with the Commonwealth. The commission has discussions with the Commonwealth. We know where newly arrived refuges and migrants are going to, where issues are likely to emerge, and we work with them. We chair the settlement committee for New South Wales so we know those areas where we need to do the work.

Mr DAVID SHOEBRIDGE: Of the about $239 million allocated to assist the operation of the State's cultural institutions in the budget, what proportion supports cultural institutions associated with ethnic communities?

The Hon. JOHN HATZISTERGOS: That relates to the Arts portfolio.. You will have to ask the Minister for the Arts about that. I know about the Sydney Festival and various other activities, but those matters are all run out of Arts. [*Time expired.*]

The Hon. SHAOQUETT MOSELMANE: What is the Government doing to recognise the positive contribution of multiculturalism?

The Hon. JOHN HATZISTERGOS: I thank the Hon. Shaoquett Moselmane for this question and the opportunity to provide information to the Committee on this important topic. The Government is committed to promoting community harmony and cohesion through the organisation of a regular awards program. A good example of the Government's commitment is the Premier's annual Chinese Community Service Awards. The Chinese community has been present since the earliest days of the colony of New South Wales and is now one of the largest and fastest-growing groups in Australia. The Chinese community has long been active in philanthropic and voluntary community activities. In recognition of its distinguished history in New South Wales, the awards honour Chinese individuals for outstanding service within and beyond the Chinese community and awarded to those who have demonstrated active and distinguished service to the community. The purpose of the awards is to acknowledge the social value of voluntary work within the Chinese community. The awards are presented each year by the Premier of New South Wales during the Lunar New Year celebrations. In announcing the last round of winners in February, the Premier, Kristina Keneally, said:

> These annual awards—set up in 2004—recognise the role the Chinese community plays in the professional, philanthropic, business and cultural life of New South Wales.

The purposes of the various awards are: to recognise and promote the benefits of diversity to the community, to provide opportunities to communities to inform decision-making by government, and to recognise the contribution and facilitate the participation of people of culturally diverse backgrounds in a range of activities. Another important award administered by the Community Relations Commission is the National Multicultural Marketing Awards. Those awards acknowledge the cultural diversity of the Australian marketplace and, after 21

years, they have come of age not as ethnic awards or minority awards but as awards for creative marketing, for those who have realised the untapped potential of multicultural marketing. Cultural diversity is good for business and good for the community. What the awards seek out is innovation and success.

Last year's grand award winner, Polyglot, is a company that seized the opportunity offered by Australia's multilingual and multicultural workforce to create a human resource company, providing expert staff for projects around the world. Polyglot correctly identified Australia's rich resource of knowledge in language, culture and foreign business practice and put it to work in a successful export enterprise. The award submission told the judges:

> Polyglot's entire business model and strategy is based on promoting, and turning into an asset, the multiculturalism of Australian society. We are what we sell.

By creatively harnessing the multicultural character of our nation, Australia's position in the global economy is promoted and strengthened. Last year's Commercial Big Business Award was won by Woolworths. Its television commercial featuring a Greek husband and wife, Maria and Stavros, speaking only in Greek was innovative and, despite the foreign language, was cleverly directed so that a series of images and gesticulations evoking a scene from the domestic life of two immigrants narrated the relationship between husband and wife and an elaborate contraption that scares hungry birds from the vegetable patch was understood by one and all. The subtle message behind the commercial was that Woolworths has an inclusive approach to its millions of customers and is prepared to meet the diversity of tastes found amongst them.

The winner of the community category of the National Multicultural Marketing Awards in 2009 was an educative program by the Federation of Ethnic Communities Councils and the National Prescribing Service aimed at helping older migrants learn more about the medicines they take. It was aptly named, "Get to Know Your Medicines". By improving awareness and knowledge among Cantonese, Mandarin and Italian speaking seniors about the safe use of medicines, thousands of people who experience problems using medicines correctly potentially avoided sickness, permanent disability and even death. The results speak for themselves—I understand that more than 110,000 information resources were ordered as a result of the seminars, which attracted more than 3,000 seniors. Clearly, multicultural marketing had a critical role to play in the success of this important health information project.

The National Multicultural Marketing Awards, which were established in 1990, are open to any government, business and community organisation in Australia that plan to use Australia's cultural diversity as a basis for producing, exporting or marketing a product, service, event et cetera; target a particular market by way of language, culture or ethnicity; have broken out of the traditional marketing mould in an attempt to reach a wider market within a culturally diverse society; use the language and cultural skills of their staff to market a product or service either domestically or internationally; or use innovative multicultural marketing techniques in a mass media context.

As you one can see, multicultural marketing is all about engaging the many faces of our multicultural society, breaking down the forces of marginalisation and reaping the economic benefits. On 25 May this year I was honoured to launch the 2010 awards, the winners of which will be announced at a gala presentation on 1 November 2010. The Community Relations Commission also sponsors prizes, including the national Dorothea Mackellar poetry prize for primary and high school students. Last week, the commission was pleased to name the latest winner of the poetry prize. It went to Benjamin Gibson for his poem *This Great Nation*. Benjamin is a junior secondary student at Redeemer Baptist School in North Parramatta. I understand that he will be coming to Parliament House with his parents and the school principal to accept the award in a few weeks time.

The Community Relations Commission Poetry Award is given for a poem that best highlights the value of cultural diversity within the Australian community. The criteria against which poems are to be judged include celebrating the cultural and linguistic diversity of Australia; canvassing issues arising from the Australian migration and settlement experience; and treating issues in one or more cultural settings. The commission also sponsors prizes at the Premier's Literary Awards and the Sydney Film Festival. Those awards recognise the ongoing value and contribution of multiculturalism to the arts. Indeed, all the awards I have outlined to the Committee illustrate how multiculturalism is not merely an idea but a vital force in New South Wales, cultivating community harmony, producing economic benefits and making this State such a great place to live.

CHAIR: That concludes the hearing today. I remind the Minister and his officers that any questions taken on notice are to be answered within 21 days. You may receive further questions from Committee members

to which the 21 days time frame also applies. The Committee may hold additional supplementary hearings after 19 November 2010, and if that is the case you will be notified.

(The witnesses withdrew)

The Committee proceeded to deliberate.