

# **GENERAL PURPOSE STANDING COMMITTEE NO. 4**

**Wednesday 10 October 2012**

**Examination of proposed expenditure for the portfolio area**

## **ATTORNEY GENERAL, JUSTICE**

**The Committee met at 2.00 p.m.**

### **MEMBERS**

The Hon. S. Mitchell (Chair)

The Hon. A. R. Fazio  
The Hon. T. Khan  
The Hon. C. J. S. Lynn

The Hon. S. Moselmane  
The Hon. A. Searle  
Mr D. M. Shoebridge

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### **PRESENT**

**The Hon Greg Smith, Attorney General, and Minister for Justice**

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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 open to the public the hearing for the inquiry into budget estimates 2012-13. I welcome Minister Smith and his accompanying officials to this hearing. Today the Committee will examine proposed expenditures for the portfolios of Attorney General and Justice. The portfolio of Attorney General will be examined between 2.00 p.m. to 4.00 p.m. and the portfolio for Justice from 4.00 p.m. to 6.00 p.m. The sequence of questions to be asked will alternate between the Opposition, crossbench members and Government, with 20 minutes allocated to each. 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 photographs. In reporting the proceedings of the Committee, members of the media must take responsibility for what they publish or what interpretation they place on anything that is said before the Committee. The guidelines for the broadcast of proceedings are available at the table by the door.

Any messages from advisers or members' staff seated in the public gallery should be delivered through the Chamber and support staff, or the Committee clerks. I remind the Attorney General and the officers accompanying him that they are free to pass notes and may refer directly to the advisers seated at the table behind them. Transcripts of this hearing will be available on the web from tomorrow morning. The House has resolved that answers to questions on notice must be provided within 21 days. I remind everyone to turn off their mobile phones. All witnesses from departments, statutory bodies or corporations will be sworn prior to giving evidence. I remind the Attorney General that he does not need to be sworn, having already sworn an oath to his office as a member of Parliament. For all other witnesses, I ask that each in turn state their full name, job title and agency, and swear either an oath or make an affirmation.

**LAURENCE GEOFFREY GLANFIELD**, Director General, Department of Attorney General and Justice, and

**PETER SEVERIN**, Commissioner, Corrective Services NSW, sworn and examined:

**KATHRINA LO**, Acting Chief Executive, Juvenile Justice NSW, affirmed and examined:

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

**The Hon. ADAM SEARLE:** I am asking you these questions in your capacity as the first law officer of the State and Cabinet's senior legal adviser. In the Ministerial Code of Conduct, part 3 Conflict of Interest, clauses 3.3 and 3.4 indicate that Ministers should not have any undisclosed interest in any decision taken in his or her office and where in the exercise of office an actual or apparent conflict of interest arises, or is likely to arise, a Minister shall disclose the nature of that conflict to the Premier and a record of the disclosure shall be caused to be recorded. Where in any meeting of the Executive Council, Cabinet or in any committee or sub-committee of Cabinet an actual or apparent conflict of interest arises a Minister shall, as soon as practicable after the commencement of the meeting, disclose the existence and nature of that conflict, and that should be recorded. That being the case, did Treasurer Baird at any time disclose to you or any other Cabinet colleague his conflict of interest that Mr Roger Massy-Greene was a major political donor to his campaign?

**The Hon. TREVOR KHAN:** Point of order: My point of order firstly is that this does not go to the responsibilities of the Minister as Attorney General. Secondly, it may go to issues of Cabinet confidentiality.

**The Hon. ADAM SEARLE:** I will preface my question by stating that I am not asking the Attorney General to disclose anything that occurred in the Cabinet room. I am asking the Attorney General whether prior to that appointment being made by Cabinet that conflict of interest was disclosed to him or to any of his Cabinet colleagues.

**The Hon. TREVOR KHAN:** That still does not address the other part of my point of order—that is, it does not go to the Minister's responsibilities. We are here to deal with the issue of budget estimates, not an extensive dissertation on matters beyond that. It is my submission that that goes well beyond the appropriate scope of this inquiry.

**The Hon. ADAM SEARLE:** It goes to the Attorney's responsibility as Attorney General and it is in order in that regard. If the Government wants to cover this up it is a matter for the Government members of this Committee.

**CHAIR:** It is generally acknowledged that wide latitude is available in budget estimates proceedings. I will allow the question. The Attorney General can answer in the manner that he sees fit.

**Mr GREG SMITH:** I have not discussed that matter or any similar matter with anyone, let alone the Treasurer.

**The Hon. ADAM SEARLE:** But was that apparent conflict of interest on the part of the Treasurer disclosed to you or, to your knowledge, to any of your other colleagues prior to the Cabinet deliberating on that appointment?

**Mr GREG SMITH:** I am not in a position to judge whether it is an apparent conflict of interest but nothing of that nature was discussed with me, no.

**The Hon. ADAM SEARLE:** Do you recall whether the Treasurer disclosed that conflict at Cabinet when this matter arose? I am not asking for any detailed discussion about the appointment.

**The Hon. TREVOR KHAN:** Good try.

**The Hon. ADAM SEARLE:** I am going directly to a matter that is covered in the ministerial handbook. There is a requirement set down in the ministerial handbook.

**The Hon. TREVOR KHAN:** Point of order: It may but I take the point of order that the Hon. Adam Searle is seeking to invite the Attorney General to breach Cabinet confidentiality.

**CHAIR:** Order! I uphold the point of order. The Attorney General does not have to breach Cabinet confidentiality. If the Hon. Adam Searle is trying to get to another matter I suggest that he do so quickly.

**The Hon. ADAM SEARLE:** Has the Premier or Treasurer sought your advice as Attorney General on this matter?

**Mr GREG SMITH:** No.

**The Hon. ADAM SEARLE:** Will you as the Attorney General and Cabinet's senior legal adviser investigate whether the appointment of the Treasurer's friend constitutes a conflict of interest, given that Mr Massy-Greene is a major donor to the Treasurer's election campaign?

**Mr GREG SMITH:** I would only do that if asked by the Premier. I have not been asked.

**The Hon. ADAM SEARLE:** Attorney, you and all of your Cabinet colleagues have a legislative obligation to notify the Independent Commission Against Corruption of possible corrupt conduct under section 11. Have you turned your mind to whether or not the apparent conflict of interest on the part of the Treasurer could constitute possible corrupt conduct in this regard and have you turned your mind to whether you have an obligation to refer this matter to the Independent Commission Against Corruption?

**Mr GREG SMITH:** No.

**The Hon. ADAM SEARLE:** Has the Premier sought your advice as to whether this is the case?

**Mr GREG SMITH:** No.

**The Hon. ADAM SEARLE:** Is there any obligation on you as Attorney General to proffer some advice to the Premier or the Cabinet on this matter?

**Mr GREG SMITH:** No.

**The Hon. ADAM SEARLE:** Really?

**Mr GREG SMITH:** No.

**The Hon. ADAM SEARLE:** Mr Attorney, how many magistrates have retired since 27 March 2011 and how many magistrates has the Government appointed since that time?

**Mr GREG SMITH:** I do not know; probably in the order of seven or eight have retired. I have not replaced all the magistrates who have retired. We are in the process, I think, of replacing one at the moment, or looking at one, but otherwise, no.

**The Hon. ADAM SEARLE:** If it is the case you have not replaced each of the ones who have retired why is that the case?

**Mr GREG SMITH:** Because after 16 years of Labor Government this State is very poorly financed and we cannot afford to replace all judicial officers when they leave.

**The Hon. ADAM SEARLE:** How many magistrates do you expect to retire in the next 12 months?

**Mr GREG SMITH:** I do not know. It is probably in the realm of three or four.

**The Hon. ADAM SEARLE:** You do not know how many have been appointed. I am happy for you to take this on notice: What have been the consequences of not filling all of those vacancies as they have occurred?

**Mr GREG SMITH:** I would assume it would mean that cases are not dealt with as quickly as they otherwise would be. If I could just add to that, the Productivity Commission has the Local Court of New South

Wales as the best Local Court in the country, well above others, as I understand it, and from all accounts they have been maintaining very good performances.

**The Hon. ADAM SEARLE:** Have you had discussions with the Chief Magistrate about not replacing magistrates as they retire?

**Mr GREG SMITH:** Yes, but we have acting magistrates and we are making as much use of them as we can. They are all retired magistrates, as I recall, and when there are not enough permanent magistrates we bring in an acting magistrate.

**The Hon. ADAM SEARLE:** Is that cost-effective? Is that, on balance, less expensive than having full-time magistrates dealing with matters?

**Mr GREG SMITH:** I think it is less expensive; I am not quite sure.

**The Hon. ADAM SEARLE:** I am happy for you to take that on notice as well.

**Mr GLANFIELD:** I can answer that.

**Mr GREG SMITH:** If I can ask my director general, Mr Glanfield, to answer that?

**The Hon. ADAM SEARLE:** I would be happy for Mr Glanfield to answer that.

**Mr GLANFIELD:** And perhaps I can fill in a little bit more information for you. The rate that is struck for an acting magistrate effectively works out at a lesser rate because there are not holidays and the way it works out if we were to fill a year with acting magistrates, we would actually spend more but we do not use them that way; we only use them for a day here or for a hearing for a week or whatever. It gives the Chief Magistrate flexibility.

Can I say in relation to the whole issue of the appointment of magistrates and vacancies as they came up, we had discussions at a departmental level with the Chief Magistrate about how we would manage the judicial budget during the course of the coming years over the forward estimates and we have settled with him, for the current year, arrangements in relation to the replacement of all magistrates during the course of the year but, as the Attorney said, there is some delay—and that is part of the agreement with the Chief Magistrate—in the appointment or the replacement of some magistrates who have retired during the course of the year.

The net effect of that is that it actually reduces the total expenditure on magistrates during the course of the year to within the budget and part of that will be the continuing use of acting magistrates but that is all within the budget that the Chief Magistrate has. There is no difference between the Chief Magistrate and the department or the Attorney in relation to that schedule of appointments.

**The Hon. ADAM SEARLE:** You have anticipated my next question. Has the Chief Magistrate raised any concerns about the non-replacement of magistrates as they retire?

**Mr GLANFIELD:** If I can answer that as well? His preference, like ours, would be to be able to fill all these positions. We are not in a financial position to do that.

**The Hon. ADAM SEARLE:** Mr Attorney, has the Chief Magistrate raised any specific concerns with you about this?

**Mr GREG SMITH:** No, we have had these discussions. He has agreed to the timetable that we have discussed with him.

**The Hon. ADAM SEARLE:** Has he written any letters to you or engaged in any correspondence with you about this issue other than in face-to-face conversations?

**Mr GREG SMITH:** I think there has been at least one letter about it.

**The Hon. ADAM SEARLE:** Are you able to table that letter?

**Mr GREG SMITH:** I cannot at the moment.

**The Hon. ADAM SEARLE:** No, but are you happy to provide it to the Committee?

**Mr GREG SMITH:** If it is there and subject to it not being privileged in some way or another; yes, I cannot see why that would not be available.

**The Hon. ADAM SEARLE:** Will there be a reduction in the budget of the Office of the Legal Services Commissioner this year and, if so, by how much?

**Mr GREG SMITH:** All agencies in my department are taking a cut. I am not sure. Mr Glanfield will be able to tell you what the percentage is. I am not sure what the figures are.

**Mr GLANFIELD:** The Legal Services Commissioner's budget is funded through the Public Purpose Fund. The arrangement with the discretionary beneficiaries of that fund was that they were all going to get no more than they received in actual dollars last year; in other words, we trimmed back all beneficiaries and we did exactly the same with the Legal Services Commissioner. So the Legal Services Commissioner's budget has remained the same in actual dollars, but in real terms has been cut by probably around 2.5 to 3 per cent.

**The Hon. ADAM SEARLE:** How will this affect his statutory duty to investigate alleged misconduct by solicitors? What impact will that have?

**Mr GLANFIELD:** The bottom line with all these cuts is that everyone would prefer not to have them but the bottom line is we have to have them. We have only got so much money and we have to adjust our expenditure to match the available funds. But he has indicated that that is manageable. He has, like most areas, some discretionary expenditure so he has to trim back on travel, on use of people to assist him in inquiries but he has not indicated to me any concern about it impacting on delays in handling of complaints or reviews.

**The Hon. ADAM SEARLE:** Just to be clear: He has not indicated to you, Mr Attorney, or to the department that it will impact on the delivery of his core services?

**Mr GREG SMITH:** No, he has not.

**The Hon. ADAM SEARLE:** What other services are currently funded out of the Public Purpose Fund?

**Mr GREG SMITH:** I think it funds certain matters to do with legal aid, for example; part of the legal aid budget and part of the community legal service centres. I am not sure what else.

**Mr GLANFIELD:** There are two components to it. There are those bodies that have a right to claim public purpose funding. They tend to be the regulatory bodies, which include the Law Society and Bar Association in relation to their regulatory functions, and the Legal Services Commission and the Legal Services Tribunal. There are also discretionary beneficiaries and they tend to be listed not so much by their name, apart from the Legal Aid Commission, but by function, so there is a list of functions under section 292 of the Legal Profession Act that sets out the range of activities that can be funded by the Public Purpose Fund trustees.

**The Hon. ADAM SEARLE:** Mr Attorney, have you turned your mind to what impact this effective reduction in money from the Public Purpose Fund will have on those functions and the delivery of those functions?

**Mr GREG SMITH:** Yes, I have realised that we will have to be very careful in our spending of that money because the amount available has dropped, so to ensure that the poor and homeless and those in real need get some assistance from legal sources, we will place an emphasis on that. At the moment they may not be doing as well as they should be.

**The Hon. ADAM SEARLE:** According to budget papers, \$5.6 million has been cut from the Crime Prevention and Community Services division's budget. Which particular programs and services will be reduced as a result? For example, are any jobs going and, if so, how many?

**Mr GREG SMITH:** The witness assistance service of the Director of Public Prosecutions was the responsibility of the Crime Prevention and Community Services area of the Attorney General. However, it has been transferred back to the Director of Public Prosecutions and, as I understand it, the money has to come out of the Director of Public Prosecutions budget. That accounts for \$2.837 million. There has been a \$1 million decrease in the victims compensation fund to cater for an anticipated increase in revenue of the same amount. There has been a reduction of \$0.965 million in victims funds to cater for an increase we got last year from proceeds of crime funds. There was a transfer of \$0.36 million from Crime Prevention and Community Services to LawAccess to fund the graffiti hotline and there was an efficiency dividend and labour savings for 2012-13 of \$0.6 million. There has been no reduction in crime prevention initiatives.

**Mr GLANFIELD:** Could I add to that, just in case it relates to the point, at page 2-9 of Budget Paper No. 3? Under Crime Prevention and Community Services there appears to be a big difference of six-point-something million dollars there. You may not have it in front of you, but there is one line, "Employee related", where there appears to be an over-expenditure of \$6 million and then there is another line, "Grants and subsidies", which appears to be underspent. The bottom line is that the two balance each other out. We actually shifted the costs related to victims compensation from one line to the other, so it was not an employee-related expenditure and it now is. It used to be in grants and subsidies with the \$63 million that is made available for victims grants. The kinds of changes the Attorney talked about basically balance out, but the significant change in the budget papers is reflected in simply a movement of that amount from one category to another.

**The Hon. ADAM SEARLE:** The budget papers also indicate reduction in funding for court support services in the order of about 6 per cent. Are you able to indicate which specific programs and services are being cut, including whether any jobs will be lost from the division and, if so, from which areas?

**Mr GREG SMITH:** I will pass that over to the director general.

**Mr GLANFIELD:** I never like having to do this, but you have picked a number of issues. Corrections were made to these budget papers, but the papers had been sent to be printed. We pointed out to Treasury that there had been some changes that had been made in the system and were not reflected. In part, the item you are looking at, which is again at page 2-9 of Budget Paper No. 3 under Court Support Services, employee-related is said to be \$64 million. In fact that is \$2.4 million higher than it was supposed to be, so it was quite a few million dollars less to start with. In terms of court support, in terms of the budget for the coming period, it is in excess of the budget that was spent. The problem is that the budget for 2011-12 is not correctly expressed.

**The Hon. ADAM SEARLE:** Are you saying there are no jobs to be lost?

**Mr GLANFIELD:** No, there are cuts pretty much equal across the whole organisation, the whole cluster in fact, which is less than 5 per cent generally, but savings have to be found from everywhere, so certainly we are looking to fund it. Not all of it comes from job cuts. A lot of it has to do with the use of technology, transforming business and looking at other ways of doing our work more efficiently. It does not necessarily mean job cuts.

**The Hon. ADAM SEARLE:** On the issue of job cuts, have you determined how many jobs will be lost, outside the corrections area, from the department?

**Mr GLANFIELD:** I do not have the figures with me.

**The Hon. ADAM SEARLE:** I am happy for you to take it on notice.

**Mr GLANFIELD:** Could I just make the point that court support is actually sheriffs, court libraries and transcription reporting services branch, not the actual court registry staff who are under courts.

**The Hon. ADAM SEARLE:** No, but are we losing any sheriffs? Are there cuts to the court library? What is happening to the Industrial Relations Commission library, for example? Are you going to cut that? These are the questions.

**Mr GLANFIELD:** We are currently recruiting for seven additional sheriffs. Where the need is, we are trying to make sure that we maintain the capacity, but there are other areas where there may be duplication or there is an opportunity to effect savings and, yes, we are looking at effecting savings. As far as I am concerned, at this stage we have come up with a range of initiatives within the department that balance our budget for this



year, but we have to have sustainable savings into the whole forward estimates. We have not settled that yet. We are working on that. That is going to involve pretty much transformational change in some areas, so we will be using technology much more, such as videoconferencing. There will be investments in some areas and there will be savings made in other areas. We have not settled that; we are still working on it.

**The Hon. ADAM SEARLE:** Does that mean you have not worked out how many jobs will be lost? Do you have a ballpark figure?

**Mr GLANFIELD:** No, I do not have a figure. Obviously, from my point of view, I would like it to be as low as possible.

**The Hon. ADAM SEARLE:** Will there be any cuts to staff, for example, at the Anti-Discrimination Board? Are you aware of any reductions in staff in that agency and, if so, what are they?

**Mr GLANFIELD:** Yes, there are, but can I say some areas of my department have also been overspending the budget they already had, so to the extent that they were not even meeting their budget last year, there is a greater impact this year for them. As I said earlier, everyone is sharing the pain equally, and yes, the Anti-Discrimination Board, but its performance has been very strong and positive and in a sense we are looking to see how they can handle complaints equally efficiently, but yes, they have to make some savings.

**Mr DAVID SHOEBRIDGE:** Mr Attorney, is there a review currently being undertaken about the Public Purpose Fund?

**Mr GREG SMITH:** Yes, there is one.

**Mr DAVID SHOEBRIDGE:** That is a review that you initiated?

**Mr GREG SMITH:** Yes.

**Mr DAVID SHOEBRIDGE:** Who is conducting that review?

**Mr GREG SMITH:** I do not know. Mr Glanfield might know that.

**Mr DAVID SHOEBRIDGE:** Who is conducting the review of the Public Purpose Fund?

**Mr GLANFIELD:** There is a review in relation to legal assistance more broadly, which the department has been undertaking. The Public Purpose Fund itself in terms of its funding—there is no review at the moment in relation to that.

**Mr GREG SMITH:** Sorry.

**Mr DAVID SHOEBRIDGE:** You were reported in the *Australian* I think only earlier this month saying that you had ordered a review into the Public Purpose Fund.

**Mr GREG SMITH:** I may have mixed up the terms. There is a review into the legal support fund.

**Mr GLANFIELD:** Legal assistance broadly, which captures it all.

**Mr DAVID SHOEBRIDGE:** Perhaps you or Mr Glanfield could describe the nature of that review into legal assistance and what its scope is?

**Mr GLANFIELD:** As I understand it, there was a commitment by the Government in opposition to look at how the delivery of legal assistance services could be improved across the board. A number of things, including LawAccess, were identified at the time as areas that the now Attorney wished to look at, so there has been already a range of discussions taking place with stakeholders about how legal assistance services can be improved.

**Mr DAVID SHOEBRIDGE:** What are those legal assistant services?

**Mr GLANFIELD:** Primarily Legal Aid is by far the biggest legal service delivery outside the legal profession itself, and it works very closely in hand with all of those other service providers—community legal centres; the department itself through Law Access and through the courts, not so much in legal advice but certainly legal information—and we also have websites where we assist. Law Assist is a website of law access, and that is commonly used by people to identify legal needs as well.

**Mr DAVID SHOEBRIDGE:** What about the Public Interest Advocacy Centre and the Environmental Defender's Office and those other organisations?

**Mr GLANFIELD:** They are all part of that picture.

**Mr DAVID SHOEBRIDGE:** Has each of those organisations been invited to participate in the review?

**Mr GLANFIELD:** I am not sure whether "invited" is the right word, but they will be consulted in relation to any review that we are doing. I, through the Public Purpose Fund, have been in correspondence in relation to the Environmental Defenders Office's funding.

**Mr DAVID SHOEBRIDGE:** What is the current status of the Public Purpose Fund? Is it financially robust or is it looking to have a deficit in this year?

**Mr GLANFIELD:** The Public Purpose Fund has, over many years, built up a significant corpus. As at a week or so ago it was standing at \$136 million. At its highest it has been around \$160 million-odd. Obviously we have built that up for the very kind of financial crisis we have now, and we have been running a deficit, not an enormous deficit. It depends on the interest rates; it depends on economic activity. The higher the interest rates, the higher the economic activity, the more interest that comes into the fund. However, the fund still earns interest on that corpus. At the moment, absent anything else, that corpus could run three or more years in terms of funding existing commitments off the fund, so there is no immediate crisis.

I am only one of the trustees—the chair is Bert Evans and there are two Law Society trustees—but the public trustees have said that we need to trim back. We do not have the kind of environment we had a few years ago, and we have to make sure that the services that are being funded through the Public Purpose Fund are really focused on the needs of the community. As you would be aware, Parliament legislated some time ago to amend the Act to provide that we had to have first regard to meet the needs of Legal Aid NSW, the body, so we are very conscious of that.

As I said earlier in answer to another question, we have trimmed back all of the beneficiaries in relation to the Environmental Defenders Office. We have written to the Environmental Defenders Office raising concerns about the relevance of some of the activities they have been undertaking to the section that I referred to in terms of the authorising section of the legislation. We have had some information from them and we are still waiting for further information from the Environmental Defenders Office on that issue.

**Mr DAVID SHOEBRIDGE:** Has there been any consideration from the Government or the department about cracking down on or prohibiting advocacy work from funding coming from either the Public Purpose Fund or any other discretionary funding from the department?

**Mr GLANFIELD:** It depends what you mean by advocacy. The issue that the trustees identified and raised with the Environmental Defender's Office related to political advocacy, where the Environmental Defenders Office appeared to have its own specific outcomes it was seeking to achieve which may not have been aligned with the interests of those who needed its services. We wanted to know whether, in fact, that kind of advocacy fell within the provisions of the legislation in their opinion. I am speaking now not from the department's point of view but as a trustee, but we have some concerns about whether, in fact, some of their activities—because they are almost entirely funded by the Public Purpose Fund—fell within our discretion to be able to make payment to them for delivering those services.

**Mr DAVID SHOEBRIDGE:** Mr Attorney, is the New South Wales Government or your department considering any restrictions on public funding for advocacies similar to those that have been put in place in Queensland?

**Mr GREG SMITH:** As I said earlier, our emphasis is on the main purpose that we thought the money should be used for: those who are really poor and in need of assistance. If agencies do not seem to be spending sufficient amounts of money on those things but are spending it on other things, such as political advocacy, then we would say that money should be used by organisations that will fund the poor and the homeless. We note what Queensland has done. We have not decided to do that as at this stage, but we are looking carefully at the use of the money where the organisations could get funding from other organisations to pursue those political purposes.

**Mr DAVID SHOEBRIDGE:** If the intent of the Public Purpose Fund is to focus on homeless or poverty-stricken litigants, what about a review of the amount of the fund that is provided to the department? How much is currently being provided to the department?

**Mr GLANFIELD:** That is not a discretionary matter. That is why I mentioned earlier that there are two parts to the legislation.

**Mr DAVID SHOEBRIDGE:** Yes.

**Mr GLANFIELD:** One actually covers the costs that are spent on regulatory activities. That is not a discretionary matter, that is a reimbursement process under the legislation. The discretionary funding we are talking about, which comes under another provision, is quite a different aspect. That is where, in fact, there is discretion and the Attorney has a concurrence role in relation to the decisions of the trustees.

**Mr DAVID SHOEBRIDGE:** Does any amount of the fund go to the department itself as opposed to those other non-government regulatory bodies?

**Mr GLANFIELD:** Outside of the things I mentioned earlier?

**Mr DAVID SHOEBRIDGE:** Correct.

**Mr GLANFIELD:** Not that I am aware of. The Legal Services Tribunal is part of the department but it is specifically mentioned there. The Legal Services Commissioner is part of the department but it is specifically mentioned as well. No, we do not get general funds or discretionary funds out of the Public Purpose Fund. I should have mentioned that Law Access as well is funded partly through the Public Purpose Fund and Law Access is part of the department.

**Mr DAVID SHOEBRIDGE:** In terms of the departmental functions, has any consideration been given to funding them out of the general budget rather than from the Public Purpose Fund to free up funds for Legal Aid and those poor and homeless people who require discretionary funding out of the fund?

**Mr GLANFIELD:** To do that would mean that the cuts that we have been discussing earlier would have to be so much greater within the department, because they have no source of funding to offset it. Our budget is currently based on the fact that we get those reimbursements. Mr Shoebridge, in relation to your earlier question, I am advised that both the Public Interest Advocacy Centre and Community Legal Centres NSW were on the consultative committee that was involved in the legal assistance review I mentioned earlier.

**Mr DAVID SHOEBRIDGE:** In terms of the funding to the Community Legal Centres, is there any commitment from the Government to ensure the maintenance of their funding, either in nominal terms or real terms?

**Mr GREG SMITH:** No, I do not believe so, and there are a number of Community Legal Centres that are not funded at all. We are examining their claims as well.

**Mr DAVID SHOEBRIDGE:** When you say "examining their claims", you are examining their claims with an eye to reducing payments to those Community Legal Centres?

**Mr GREG SMITH:** No, they are not getting any funding. We are looking at those to see whether they warrant funding.

**Mr DAVID SHOEBRIDGE:** Would that funding be a redistribution of funds going to other Community Legal Centres that are currently being funded?

**Mr GREG SMITH:** Yes.

**Mr DAVID SHOEBRIDGE:** No new money?

**Mr GREG SMITH:** No new money.

**Mr DAVID SHOEBRIDGE:** What about the overall allocation of funds to Community Legal Centres? Is there any commitment from the Government to maintain its current funding in either real or nominal terms to community legal centres?

**Mr GREG SMITH:** The Government has not fully considered that at this stage. I am not expecting a reduction overall.

**Mr DAVID SHOEBRIDGE:** What about Legal Aid funding from the Government outside of the Public Purpose Funding? What are the forecasts for the Government over the next 12 months in terms of contribution to Legal Aid from the New South Wales budget?

**Mr GLANFIELD:** It is in the budget papers.

**Mr DAVID SHOEBRIDGE:** Could you distinguish between funding from the New South Wales Government and funding from the Commonwealth Government under the National Participation Grant Scheme?

**Mr GLANFIELD:** The budget papers show Legal Aid expects this current year to receive \$228 million in public funding: \$114.1 million from the State Government; \$62.6 million from the Commonwealth; and \$42.5 million from the Public Purpose Fund. There is also \$8.8 million from State and Commonwealth grants.

**Mr DAVID SHOEBRIDGE:** Has the Government committed to retaining that level of funding from Legal Aid NSW over the next 12 months?

**Mr GREG SMITH:** We will certainly be funding it, but like every other agency in the department it will have to carry its share of the cut.

**Mr DAVID SHOEBRIDGE:** Is it correct that the Victims Assistance Scheme is being reviewed?

**Mr GREG SMITH:** Yes.

**Mr DAVID SHOEBRIDGE:** What stage has that review reached?

**Mr GREG SMITH:** It is not complete; not all the material has been received. The Government inherited a scheme that is more than \$360 million in the red, and that deficit increases by more than \$30 million a year. We are looking for a more practical scheme to ensure that victims of crime receive assistance more quickly. We want them to receive better counselling, which is slow at the moment, to have their bills dealt with more quickly and to be provided with better support. The current waiting time before they get any benefit is more than 30 months. We want to reduce that.

**Mr DAVID SHOEBRIDGE:** What is the current waiting time from filing to conclusion of a matter before the Victims Compensation Tribunal?

**Mr GLANFIELD:** Many claims are dealt with quickly. However, those awaiting a hearing are waiting for up to 30 months, and that has been the case for some time.

**Mr DAVID SHOEBRIDGE:** Has that waiting time been increasing over time?

**Mr GLANFIELD:** Over the past 12 months the tribunal dealt with considerably more claims than it did during the previous year. The only figure I have relates to the estimated value of the backlog, which gives an indication of whether it is expanding.

**Mr DAVID SHOEBRIDGE:** What is it?

**Mr GLANFIELD:** It has remained the same at around \$290 million.

**Mr DAVID SHOEBRIDGE:** Is the Government considering the removal of any entitlement to what are called general damages or a sum for damages as opposed to payment for services or medical expenses?

**Mr GREG SMITH:** We are considering all options to improve the services provided to victims of crime.

**Mr DAVID SHOEBRIDGE:** When you say "improve the services", does that include removing any entitlement to a lump sum for general damages or a compensatory sum for the insult and injury that a person has suffered as a result of crime?

**Mr GREG SMITH:** I have not looked that deeply into it at this stage.

**Mr DAVID SHOEBRIDGE:** Given the answers that you have provided to this Committee and statements from the department indicating a focus on treatment, medical expenses and timely provision of services with no mention at all of general damages, should victims of crime who are awaiting a determination have any expectation that you will retain their rights to general damages or a sum for their hurt and suffering?

**Mr GREG SMITH:** We have not finalised our view. I am not sure what they should anticipate. I know that some of them ultimately get nothing because their application fails. Those people sometimes would have been better off not applying because they build up an expectation. As I understand it, about 50 per cent of applicants do not succeed with their application.

**Mr DAVID SHOEBRIDGE:** However, many of those who succeed receive a payment for what might be loosely described as general damages to compensate them in part for society's failure to prevent their becoming a victim of crime? Will you commit to retaining that entitlement?

**The Hon. TREVOR KHAN:** Point of order: I think the question has now been asked three times and the Attorney has answered it three times. It is my submission that it is bordering on repetition of the question in slightly different terms.

**The Hon. AMANDA FAZIO:** To the point of order: I think the Attorney General was answering the questions quite capably and I do not believe they were repetitious. I am interested to hear about this and I am sure the people in the gallery who have an interest in the scheme are also interested in hearing more.

**The Hon. TREVOR KHAN:** Further to the point of order: We are dealing with a partly completed review. The member is asking the Attorney to speculate about the outcome of something that is incomplete. The member has asked the question three times and the Attorney has answered it three times, yet he persists. It is essentially the same question.

**Mr DAVID SHOEBRIDGE:** To the point of order: I am asking for a particular commitment to those thousands of people who have outstanding claims for compensation. Madam Chair, I ask that you to allow the question.

**CHAIR:** I will allow the question to be answered by the Attorney General.

**Mr GREG SMITH:** We want the scheme to provide prompt and practical financial support to victims rather than be a drawn-out process that delivers lump sum payments to people long after their injuries have been treated. Following a tender process, the Government engaged independent experts PricewaterhouseCoopers Australia to develop a profile of victims eligible for compensation, to examine alternative ways to provide support and rehabilitation services to victims and to conduct a comparative assessment of compensation schemes in other jurisdictions.

**Mr DAVID SHOEBRIDGE:** I take it from that that the Government's intention is to remove lump sum payments to victims of crime and that that is where this review is heading?

**The Hon. TREVOR KHAN:** Point of order: I again make the point that we are now onto the fourth or fifth question about the same issue. The question has now been answered four or five times.

**CHAIR:** I uphold the point of order. The Attorney has answered the question. I suggest that Mr Shoebridge move on to a new line of questioning.

**Mr DAVID SHOEBRIDGE:** Has the Government considered alternative funding options for the Victims Assistance Scheme as opposed to cutting benefits in the course of its review?

**Mr GREG SMITH:** I am not fully on top of what the report says. I am not sure whether those issues were examined.

**Mr DAVID SHOEBRIDGE:** Perhaps Mr Glanville can cast some light on whether the department looked at alternative funding models as opposed to cutting benefits.

**Mr GLANFIELD:** I am sure everything is being considered. There have been changes. It is not as though the department has not examined different ways in which it can raise funds to cover victims' needs over the years, whether that involves compensation, counselling or other measures. You will recall the Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010. Since those amendments, 50 per cent of that money goes to the fund. We are certainly alive to the need to find greater resources, irrespective of what kind of victim support we are providing. Not long ago we increased the victims compensation levy imposed by courts. We have explored a range of things, but there is a limit to how much offenders can pay through the levy processes before we start encouraging more offending. We are examining all those issues. I expect the review to be balanced and to provide that information to the Attorney.

**Mr DAVID SHOEBRIDGE:** When can we expect the review— *[Time expired.]*

**The Hon. CHARLIE LYNN:** Attorney, can you outline some of the significant reforms that you have implemented?

**Mr GREG SMITH:** We are making the streets of New South Wales safer and have given the NSW Police Force the power to deal with intoxicated and disorderly people. Alcohol-related violence and antisocial behaviour have been a source of concern to the community. In 2011 we amended the Law Enforcement (Powers and Responsibilities) Act 2002 to allow police officers to issue move-on directions to intoxicated individuals who are likely to cause injury or damage. Previously such directions were restricted to groups of three or more intoxicated individuals. We also introduced an offence of intoxicated and disorderly conduct. That offence applies where a person has been given a move-on direction for being intoxicated and disorderly in a public place and at any time within six hours after that order was given the person is intoxicated and disorderly in the same or another public place. It sends a clear message that alcohol-fuelled disorderly conduct will not be tolerated.

We are also making sure that we fulfil our election commitment to honour police and send a clear message to people that the life of police officers is precious. We have amended the Crimes Act 1900 to provide that where a person murders a police officer executing his or her duty, or as a result of doing his or her duty, and the person knew the victim as a police officer and intended to kill that officer or was engaged in criminal activity that risked serious harm to police officers, that person is to be sentenced to life in prison. A life sentence is a sentence for the term of the person's natural life without release on parole.

We are fighting organised crime and have amended the Crimes Act 1900 and created new offences of directing the activities of criminal groups, punishable by 10 years imprisonment; directing the activities of a criminal group which is ongoing and organised, punishable by 15 years imprisonment; and knowingly receiving a material benefit from a criminal group, punishable by five years imprisonment. We also have created a new aggravated form of the offence of shooting into a dwelling house where the shooting occurs as a part of organised criminal activity, punishable by up to 16 years imprisonment. Amendments also repair the Crimes (Criminal Organisations Control) Act 2009 that was declared invalid by the High Court. The amendments add a requirement that an eligible judge who is making a declaration in respect of a criminal organisation must give his or her reasons for doing so.

We are providing clarity on the issue of criminal consorting and have modernised the offence of habitually consorting with convicted offenders. This amendment provides clearer guidance to the NSW Police Force on the operation of the offence. The offence now specifies that a person does not habitually consort with convicted offenders unless he or she meets with two or more convicted offenders on at least two occasions each. The penalty for this offence was increased from six months to three years. To counterbalance the new penalty,

the offence includes a number of exemptions, where reasonable in the circumstances, such as associations between family members and associations for medical treatment.

We are providing programs to reduce recidivism and are establishing a second metropolitan Drug Court at the Downing Centre. This court, the third Drug Court in the State, aims to divert drug-dependent offenders into a supervised treatment program designed to reduce or eliminate their drug dependence which, in turn, reduces a person's need to commit crime to support that dependence. Evaluations of the program have shown the Drug Court to be an effective sentencing option for reducing recidivism. In addition, we have established the Intensive Drug and Alcohol Treatment Program [IDATP] for male and female inmates at the John Moroney and Dillwynia correctional centres, located within the John Moroney correctional complex.

The Intensive Drug and Alcohol Treatment Program received its first participants on 27 February 2012 with an initial enrolment of 15 male offenders, a second intake of 15 male offenders on 12 March 2012, a third intake of 15 male offenders on 2 April 2012 and a fourth intake of 15 male offenders on 23 April 2012. I am pleased to advise that the first 20 participants graduated from the program on 13 September 2012. Those participants were from the first two program intakes and were deemed to have successfully completed treatment components of the program. Graduating offenders will now progress to maintenance programs in other correctional centres or supervised parole. Participants from the third and fourth program intakes are currently in their final treatment stage with those who are successful in completing the program scheduled to graduate on 29 October 2012.

Stage two of the implementation of the Intensive Drug and Alcohol Treatment Program commenced as scheduled in July 2012, with two group intakes, 21 offenders having entered the program. In addition, 11 offenders have been notified of a place on the program due to commence on 15 October 2012. In total, 81 offenders have entered the Intensive Drug and Alcohol Treatment Program since its implementation in February 2012. Referrals are being received from correctional centres across the State and it is anticipated that a further 45 offenders will be placed on the program by the end of the 2012 calendar year.

In addition, we are expanding court-based programs and sentencing options, such as forum sentencing which was expanded to Cessnock, Dungog, East Maitland, Forster, Gloucester, Kempsey, Kurri Kurri, Maitland, Murrurundi, Muswellbrook, Port Macquarie, Scone, Singleton, Taree and Wauchope. The program was also expanded to Lismore, Ballina, Casino and Kyogle in 2011. Circle sentencing was expanded to Blacktown. We also have commenced a care circle at Lismore. This program allows respected members of the Aboriginal community to provide information and advice to magistrates with matters involving the care and protection of Aboriginal children. We have expanded the availability of the Magistrates Early Referral into Treatment [MERIT] program for those people with primary alcohol problems. MERIT for people with alcohol problems currently operates at Albion Park, Bathurst, Broken Hill, Campbelltown, Coffs Harbour, Dubbo, Fairfield, Hornsby, Kiama, Newcastle, Manly, North Sydney, Orange, Port Kembla, Ryde, Wellington, Wilcannia and Wollongong Local Courts.

Recently I received a Law Reform Commission report on diversionary programs for people with cognitive and mental health impairments that the Government is currently considering. This will feed into our State Plan goal of breaking the reoffending cycle for offenders who require specialised treatment and intervention. The Government committed to establishing the New South Wales Mental Health Commission. I am pleased that the inaugural Commissioner of the NSW Mental Health Commission, John Fenelly, commenced on 1 August 2012. One of the priorities of the commission will be to consider issues relating to the diversion of people with mental illness away from the criminal justice system.

We are assisting authorised officers, such as police, Juvenile Justice and Corrective Services officers to function more effectively to ensure the security and safety of our community and its citizens. Last year we passed the Identification Legislation Amendment Act 2011. This Act amended various pieces of legislation to confer powers upon police and other authorised officers, including those witnessing statutory declarations, to require a person to remove a face covering for the purposes of identification. The amendments to the Oaths Act 1900 now require authorised witnesses such as justices of the peace and lawyers who witness a New South Wales statutory declaration or affidavit to identify the person making the declaration or affidavit. These reforms were introduced as people need to be confident that affidavits and statutory declarations have been made by the person whose signature appears on them.

We have fulfilled our commitment to create a single statewide graffiti hotline for graffiti incidents to be reported. The hotline became operational on 1 March 2012. It operates during business hours and provides a

point of referral for members of the community who wish to report graffiti for removal. All New South Wales local government areas have been requested to provide contact points for the hotline for removal, as have State and Commonwealth government agencies who manage assets. Reports to the hotline are referred immediately to the relevant authority for removal and clean up. As at 31 July 2012 the hotline had received 1,050 calls since its establishment. This resulted in 884 graffiti reports being referred to councils and other government agencies for action. The hotline number is 1800 707 125.

The new graffiti hotline provides a single point of referral and coordination for the removal of graffiti in New South Wales. People who wish to report a current crime are asked to call the police assistance line, as is current practice. The Government conducted an open tender process to organise the 2012 Graffiti Removal Day and Rotary Down Under was the successful tenderer. The inaugural Graffiti Removal Day was held on 23 September 2012. Rotary is one of the world's most respected organisations and has been at the forefront of community-based campaigns in New South Wales to combat graffiti.

The Government is dealing with young graffiti offenders. Parliament has finally passed the Graffiti Legislation Amendment Act 2012, which requires young people charged with graffiti offences to appear before a court. These offenders will not be entitled to a warning or a caution from police. The Act is yet to commence; however, the courts will still have the power to refer a young offender to a youth justice conference. Conference outcome plans for young graffiti offenders focus on things such as graffiti cleanup work. This helps to ensure that graffiti vandals make amends for the damage that they or others like them cause. The Government is also taking action to deal with young graffiti offenders by funding a pilot graffiti education program run by Police Citizens Youth Clubs [PCYC], which a graffiti offender can be forced to undertake.

The Government is improving the understanding of jurors and the role they play in the justice system. A DVD has been launched containing important information that will be shown to every person in this State attending court for jury service. The DVD entitled *Welcome to Jury Service* explains the jury process and highlights the need for prospective jurors to inform the court if they have concerns about serving on a trial. The Law Reform Commission is currently reviewing the issue of jury directions, with a focus on measures to improve juror understanding. It released a consultation paper that considers the instructions that judges currently give to juries, whether they are necessary for a fair trial and whether they can be presented in a more effective way. Submissions have been received and the commission is considering these submissions in light of recent papers released by the Victorian and the Queensland law reform commissions. I expect a report in 2012.

The Government has harmonised laws on the liability of company directors. The Miscellaneous Acts Amendment (Directors' Liability) Act 2011 was passed in May 2011. The Act removed or lowered the imposition of personal criminal liability on directors and executive officers for corporate misconduct in relation to numerous offences across more than 30 separate pieces of legislation. These amendments were the first tranche of reforms implementing a 2009 Council of Australian Governments agreement to increase harmonisation in the imposition of personal criminal liability for corporate fault across Australian law. All Australian jurisdictions are currently revising the audit of their directors' liability provisions against agreed guidelines for applying the Council of Australian Governments principles, and this may lead to a second tranche of reforms.

The Government is protecting the community by strengthening the change of name restrictions for prisoners, parolees and former serious offenders. It has strengthened change of name restrictions in relation to inmates, parolees, remandees, forensic patients and serious sex offenders. These people will now be required to obtain the approval of their supervisory authority prior to applying to the Registrar of Births, Deaths and Marriages in order to change their name. The Government also has extended change of name restrictions to any "serious offenders" for a specified period after they finish their prison and parole term.

The Government is reviewing sentencing to ensure that the courts have the proper discretion to sentence offenders. I have made a reference to the NSW Law Reform Commission to conduct a broad review of the Crimes (Sentencing Procedure) Act 1999. In undertaking the review, the Law Reform Commission will consider current sentencing principles including those contained in the common law, the need to ensure that sentencing courts are provided with adequate options and discretions, opportunities to simplify the law, whilst providing a framework that ensures transparency and consistency, and the operation of the standard minimum non-parole scheme. The commission is consulting widely and it has released a series of question papers seeking community views.



The commission also has provided me with an interim report on standard minimum non-parole periods that the Government is currently considering. The Government is taking a wide-ranging review of the Bail Act. I have asked the Law Reform Commission to review current bail laws and consult with a wide range of stakeholders. The commission's final report on the review was provided to the Government in April 2012. We are currently carefully considering the commission's recommendations and a response will be given by the end of the year.

The Government is committed to ensuring that the State's youth justice system provides the most effective and appropriate response to offending by young people and victims. The review of the Young Offenders Act 1977 and the Children (Criminal Proceedings) Act 1987 is currently underway. Public consultation has now been completed. The review received over 55 submissions from government agencies, interested organisations and members of the public. The review is supported by an advisory committee, comprising representatives from key stakeholders and experts in juvenile justice. The review will make recommendations on whether any amendments to the legislation are needed, and how the legislation can be used more effectively in practice. The review also will specifically consider whether responsibility for hearing all children's traffic matters should be transferred from the Local Court to the Children's Court, and whether the Young Offenders Act 1997 and the Children (Criminal Proceedings) Act 1987 should be amalgamated. A final report on the review will be finalised later this year.

The Government has made it easier for people on low incomes to pay their fines by making the Work and Development Order Scheme [WDO] permanent. We have improved the administration of the scheme and increased eligibility for people who have a serious addiction to drugs, alcohol or volatile substances. Fine defaulters who fall into this category will have to undertake drug and alcohol treatment and/or counselling as their WDO activity. As at 31 July 2012 there were a total of 305 not-for-profit organisations and 203 health practitioners involved in the scheme. Since the scheme commenced there have been 2,658 clients, and 2,071 clients have satisfied some or all of their debts through the scheme.

The Government is committed to supporting victims of crime. It has ordered an independent review of the Victims Compensation Scheme to assess how it can deliver faster and more effective support to victims of violent crime. The Government wants the scheme to provide prompt and practical financial support to victims rather than being a drawn-out process that delivers lump-sum payments to people long after their injuries have been treated.

**Mr David Shoebridge:** We have heard some of this before I think.

**Mr GREG SMITH:** I have probably covered that. I turn to consultation on domestic violence. In August 2011 the department published a discussion paper to facilitate submissions to the statutory review of the Act. The discussion paper canvassed a range of issues in respect of apprehended domestic and personal violence orders, as well as definitional, procedural and technical issues arising under the Act. It also sought comment on issues arising in Stop the Violence, End the Silence—NSW Domestic and Family Violence Action Plan 2010-2015.

**The Hon. SHAOQUETT MOSELMANE:** Attorney, your draft exposure bill on limiting the right to silence proposes that no adverse inference can be drawn from an accused person's silence under police questioning if he or she did not have the opportunity to consult a lawyer?

**Mr GREG SMITH:** Yes.

**The Hon. SHAOQUETT MOSELMANE:** Attorney, you also told the Legislative Assembly on 12 September 2012 that the Government will trial a telephone advice line by lawyers to provide advice to suspects held for questioning by police. Attorney, will that telephone advice line be equipped to provide legal advice to every person arrested in New South Wales?

**Mr GREG SMITH:** No, because I think some people will immediately put up their hands and confess or say they are going to plead guilty. My understanding is that well over 50 per cent of people charged with a criminal offence do that.

**The Hon. SHAOQUETT MOSELMANE:** Who will administer the telephone advice line?

**Mr GREG SMITH:** Law Access will have a special group of properly trained solicitors to deal with that.

**The Hon. SHAOQUETT MOSELMANE:** They will employ properly trained solicitors; they will employ the lawyers?

**Mr GREG SMITH:** Yes, additional staff to handle that situation 24 hours a day.

**The Hon. SHAOQUETT MOSELMANE:** Will they be lawyers?

**Mr GREG SMITH:** The details are still being settled on.

**The Hon. SHAOQUETT MOSELMANE:** Will they be lawyers?

**Mr GREG SMITH:** Oh yes.

**The Hon. SHAOQUETT MOSELMANE:** How much additional funding are you providing, Mr Attorney?

**Mr GREG SMITH:** That is still being settled at the moment. I have no figure.

**The Hon. SHAOQUETT MOSELMANE:** Will legal aid be involved in the process?

**Mr GREG SMITH:** No.

**The Hon. SHAOQUETT MOSELMANE:** Have you consulted police about your proposal to require them to arrange legal advice for each and every arrested suspect if you want these laws to apply?

**Mr GREG SMITH:** As the exposure bill provides, it is only for serious indictable offences where these provisions will apply. They are offences punishable by five years imprisonment or more. Many offences would not be caught by that Act. We have consulted police. In fact, we have consulted a large number of people.

**The Hon. SHAOQUETT MOSELMANE:** And what was their response?

**Mr GREG SMITH:** I do not have their response at the moment. I do not have it in my head.

**The Hon. SHAOQUETT MOSELMANE:** What was the answer?

**Mr GREG SMITH:** The responses are currently being considered.

**The Hon. SHAOQUETT MOSELMANE:** Will not police who must already comply with multiple and often time-consuming procedural requirements where they are arresting and questioning suspects simply opt out of using these laws?

**Mr GREG SMITH:** I do not know. It is up to police. I cannot speculate.

**The Hon. SHAOQUETT MOSELMANE:** You are the Attorney, you produce them.

**Mr GREG SMITH:** Individual police may decide that it is not appropriate to use those provisions if it is clear there is enough evidence and the person says, for example, he or she is going to confess or has confessed.

**The Hon. SHAOQUETT MOSELMANE:** It is a discretionary matter for the police?

**Mr GREG SMITH:** The question of arrest is always discretionary for the police.

**The Hon. SHAOQUETT MOSELMANE:** Do police have the discretion to apply or not to apply these laws?

**Mr GREG SMITH:** Well, they will have that discretion, yes.

**The Hon. SHAOQUETT MOSELMANE:** Why have you not excluded hearing impaired persons from the effect of the bill?

**Mr GREG SMITH:** All I have done is circulate an exposure bill that the department is considering with a view to reporting back to me, then me to the Government any suggestions for further types of exemptions, as it were. Currently, of course, anyone under 18 is exempt and anyone with a cognitive disability as defined is there too.

**The Hon. SHAOQUETT MOSELMANE:** Clearly exempted people with cognitive impairment but not people with hearing problems. Why not?

**Mr GREG SMITH:** I do not know. I did not draft the legislation.

**The Hon. SHAOQUETT MOSELMANE:** It is your legislation, Attorney?

**Mr GREG SMITH:** It is an exposure bill. You raise that issue and what you have asked will be taken into account, as will that of the various stakeholders and people who have made submissions to us.

**The Hon. SHAOQUETT MOSELMANE:** Why have you not excluded people who have difficulty understanding English?

**Mr GREG SMITH:** That is another issue that I gather has been raised in some of the submissions and that will be taken into account.

**The Hon. SHAOQUETT MOSELMANE:** It seems to me, Attorney, that this has an uncanny likeness to a 1901 dictation test—if you pass then you are in; if not, you are thrown out. In this instance people who do not have the English language skills could suffer the consequences of being thrown in jail.

**The Hon. TREVOR KHAN:** Is that a question?

**The Hon. SHAOQUETT MOSELMANE:** That is a question.

**Mr GREG SMITH:** It does not sound like it. It sounds like an opinion.

**Mr DAVID SHOEBRIDGE:** Do you agree, I think is the question?

**Mr GREG SMITH:** My comment is that the criminal justice system deals with that type of event on a daily basis and decisions are made by juries, magistrates and judge sitting alone on that type of issue. Discretion is maintained in the tribunal of fact to decide these questions.

**The Hon. SHAOQUETT MOSELMANE:** Given your proposed bill will only apply to serious indictable offences, what will happen if a person is charged with multiple offences, including both serious indictable offences as well as those which may be dealt with summarily?

**Mr GREG SMITH:** That is a matter we have to look at too. I think that issue may have been raised in submissions, but they happen now. Under the current law there are certain things such as the law that says for indictable offences admissions made have to be on tape of some sort unless you have a reasonable excuse or some expression like that. There is sometimes a mixture of summary and indictable matters that people are charged with. You just have to decide. You would not run summary matters in a higher court with indictable matters. You may run them in a summary court, a Local Court, I suppose, and a magistrate would have to then put that aside as they have to do on many, many things where voir dres are raised, where inadmissible evidence is in documents that magistrates and judges see. They have to exclude that from their minds. That has been happening for a long, long time successfully.

**The Hon. AMANDA FAZIO:** Attorney, you mentioned earlier Graffiti Removal Day. I want to refer you to a letter that you sent to all members of this Parliament relating to Graffiti Removal Day. It was dated 20 August 2012. Attorney, why did you think it was appropriate to put paid lobbyist and known Liberal Party factional operator Jeff Egan as the contact for information about this initiative in your letter?

**Mr GREG SMITH:** I did not think it was necessary at all. I signed the letter.

**The Hon. AMANDA FAZIO:** You signed the letter; therefore, you are taking responsibility for the contents of the letter?

**Mr GREG SMITH:** The question is if Rotary Down Under wanted to use a public relations firm to do their promotion I was not going to stop them.

**The Hon. AMANDA FAZIO:** Has Jeff Egan received any payment from your department or any other New South Wales government department that you are aware of?

**Mr GREG SMITH:** No.

**The Hon. AMANDA FAZIO:** Did you check whether Jeff Egan would financially benefit from coordinating Graffiti Removal Day on behalf of Rotary New South Wales when you put him down as a contact for the event in your letter to all State members of Parliament?

**Mr GREG SMITH:** As far as I was aware Jeff Egan had no involvement in the tender process. I was not involved in the tender process myself. I only became aware that Jeff Egan had some relationship with Rotary Down Under once that letter was given to me basically to sign. The tender process was transparent and fair and the previous agreement had run out. Four tenders were assessed and Rotary Down Under was awarded the contract. It was not Jeff Egan for Rotary Down Under that was awarded the contract; it was Rotary Down Under and in fact thousands of members of Rotary, as I understand it, were involved in Graffiti Removal Day.

**The Hon. AMANDA FAZIO:** Did you or anyone in your office or department actually speak with representatives from Keep Australia Beautiful before you awarded the contract for Graffiti Removal Day to Rotary New South Wales?

**Mr GREG SMITH:** I do not think so. I think they went through the tendering process. I think I have spoken to them in the past when they had the contract; that is all.

**The Hon. AMANDA FAZIO:** Did you or anyone in your office or department speak with Jeff Egan or representatives from Rotary New South Wales before they were awarded with the contract for Graffiti Removal Day?

**Mr GREG SMITH:** No.

**The Hon. AMANDA FAZIO:** Are you aware of the role that Jeff Egan played in securing the contract for Rotary New South Wales?

**Mr GREG SMITH:** No.

**The Hon. AMANDA FAZIO:** Attorney, why did you change the name of Graffiti Clean Up Day to Graffiti Removal Day?

**Mr GREG SMITH:** I think the name that Keep Australia Beautiful had coined was Graffiti Clean Up Day—I am not sure. We had some legal advice that we should not use the name they were using previously.

**The Hon. AMANDA FAZIO:** So that is in fact an admission that you stole Keep Australia Beautiful's idea to give it to an organisation paying your factional mate Jeff Egan for lobbying services? I mean, Keep Australia Beautiful came up with concept?

**Mr GREG SMITH:** That question is objectionable. It makes a number of presumptions that I do not agree with.

**The Hon. ADAM SEARLE:** Which ones, the one relating to Mr Egan?

**The Hon. AMANDA FAZIO:** You do not get to say that questions are objectionable.

**Mr GREG SMITH:** There are so many questions there, I do not know what to say.

**The Hon. AMANDA FAZIO:** So you concede that the intellectual property of Keep Australia Beautiful was the original concept?

**Mr GREG SMITH:** No. As I understood it, Keep Australia Beautiful had been given a contract two years before. As I understood it, it was the previous Government's idea to get this day going. I am not privy to what the previous Government did, but I know that for one year—2011—the contract had already been granted and Keep Australia Beautiful did the day, whatever you call it, in that year, but I was advised that there would need to be a tender process for the next year.

**The Hon. AMANDA FAZIO:** Can you advise why Keep Australia Beautiful was unsuccessful in its tender for ongoing funding?

**Mr GREG SMITH:** The only advice I had was that Rotary Down Under was the superior tender.

**The Hon. AMANDA FAZIO:** What was the basis for declaring it a superior tender? Was it cheaper?

**Mr GREG SMITH:** I was not part of the tender process, so I do not know.

**The Hon. AMANDA FAZIO:** Can Mr Glanfield—

**Mr GLANFIELD:** I was not part of the tender process either. It was independent and it included an independent police officer on the panel. As best I am aware, they transparently dealt with the tenders they had and formed a conclusion, and that is what was passed to the Minister.

**The Hon. AMANDA FAZIO:** Can you take on notice to provide the Committee with the criteria for the tender and the membership of the tender assessment panel?

**Mr GREG SMITH:** Yes.

**The Hon. ADAM SEARLE:** I want to return to the issue of how many magistrates have retired. I think you said about seven or eight had retired, is that correct?

**Mr GREG SMITH:** In the past year I think.

**The Hon. ADAM SEARLE:** It was since 27 March 2011.

**Mr GREG SMITH:** Yes, since we were elected.

**The Hon. ADAM SEARLE:** Seven or eight have retired and you have appointed five or six. Was that your answer?

**Mr GREG SMITH:** Something like that I thought. I think there are only about two vacancies at the moment and we are filling one of them, I know that. We recently advertised the positions and we are setting up a panel to decide who we recommend.

**The Hon. ADAM SEARLE:** Will any appointments be made in the current financial year? You say one, is that right?

**Mr GREG SMITH:** No, there might be more, but one this calendar year that I am aware of. I think we have another three or four extra ones before the end of the financial year that we will probably appoint.

**The Hon. ADAM SEARLE:** You will probably appoint, but you are not sure; you will deal with it on a case-by-case basis.

**Mr GREG SMITH:** We will have to keep reviewing the financial situation. I am told from what I have seen and read that the GST revenue may be a lot worse than was foreshadowed a couple of months ago and if that happens there will have to be more cuts right across the board.

**The Hon. ADAM SEARLE:** What is the progress of your legal services blueprint?

**Mr GREG SMITH:** My legal services—

**The Hon. ADAM SEARLE:** The blueprint that was announced I think in August last year.

**Mr GREG SMITH:** There have been regular meetings with senior general counsel from the leading departments to progress a whole-of-government legal services procurement strategy.

**The Hon. ADAM SEARLE:** Perhaps I can be a bit more focused then. What is your target expenditure on legal services and what was the expenditure on legal services in the 2011-12 financial year?

**Mr GREG SMITH:** I do not have that figure off the top of my head.

**The Hon. ADAM SEARLE:** I am happy for you to take that question on notice.

**Mr GREG SMITH:** Yes, I will take it on notice. Our aim is to reduce the expenditure by government on legal services.

**The Hon. ADAM SEARLE:** I understand, but in order to know whether your blueprint is any kind of success, there must be a target in mind.

**Mr GLANFIELD:** To date we have tended to rely on surveys of legal agencies to identify their expenditure, but part of the process of the legal services coordination director is to, I guess, formalise that so we now start to have some genuine reporting on government expenditure on legal services.

**The Hon. ADAM SEARLE:** So you do not have a target?

**Mr GLANFIELD:** The figure we would have at the moment will not be precise, but we are moving into an era where the data will be collected and recorded, and it will be reported publicly.

**The Hon. ADAM SEARLE:** Then you will have a target and that will be the measure of whether you succeed?

**Mr GLANFIELD:** We will have a baseline. What the target is will be another issue, but certainly the target is to reduce the expenditure and to make it more effective, and we are introducing an informed purchaser model so that agencies are being supported in getting the best legal advice suitable for the legal needs they have at the best price.

**Mr GREG SMITH:** If I could come back to something I should have said to Ms Fazio, or it might have been Mr Moselmane. LawAccess would have access to interpreters to assist if people have language difficulties.

**The Hon. ADAM SEARLE:** Why will you not back the Law Reform Commission's recommendation and support the Opposition's private member's bill to allow the families of asbestos victims who die before their case is finished to receive part of the compensation that the victim would have received?

**Mr DAVID SHOEBRIDGE:** Why did you not support my bill when you were in government?

**The Hon. ADAM SEARLE:** Because it was referred to the Law Reform Commission, Mr Shoebridge, and now we know what the Law Reform Commission says.

**Mr GREG SMITH:** That was a hard decision, reluctantly made in what we believe to be the overall best interests of both current and future asbestos victims and their families. There is not an unending supply of money. James Hardie has made it clear that it will not waive its rights under the funding agreement and the funding agreement puts the Government in this invidious position. We cannot criticise either the former Government or James Hardie for having signed it—it has been of great assistance to victims—but the agreement is the primary vehicle by which asbestos victims now have access to around \$1.5 billion in net present value terms and \$4.5 billion in nominal terms of compensation.

Whilst James Hardie has agreed to pay billions of dollars in compensation to asbestos victims in accordance with common law rules, a quid pro quo was a government undertaking not to change those common

law rules. The Labor Government agreed to that. Whilst in hindsight it may now regret having done so in such unqualified terms, we appreciate why it provided that undertaking, neither to increase nor decrease common law damages. That undertaking has been a feature of the negotiations from early on, we understand, and it was listed as a key principle in the earlier heads of agreement with both unions and asbestos victim representatives, which it also signed. Again, this is not to criticise those who were involved in the negotiation or the very tragic victims and their families who have suffered, but we care about the ones in the future too and if all the money goes because we give more money to the current victims there will be nothing left to be passed on.

**The Hon. ADAM SEARLE:** Do you agree with the proposition that politicians or Ministers should not become personally involved in the conduct of criminal proceedings conducted by government agencies?

**Mr GREG SMITH:** Generally, yes.

**The Hon. ADAM SEARLE:** In that case, why did you agree with Minister Hartcher and Minister Pearce to seek a stay of all proceedings under the Occupational Health and Safety Act while the Government obtained advice about whether or not to discontinue proceedings commenced under the now repealed Occupational Health and Safety Act?

**Mr GREG SMITH:** There was a question raised to me that it was unfair. If you are going to bring in a new regime, which in a sense provided more defences, and take it into the criminal jurisdiction, with criminal onuses, with experienced judges of the District Court, it seemed unfair that others who had committed the same offence previously should have to face the old laws, which I think were unique to Australia in that they penalised employers quite significantly and shifted the onus to them to prove their innocence, effectively.

**The Hon. ADAM SEARLE:** These proceedings had already been commenced under the existing law—[*Time expired.*]

**Mr DAVID SHOEBRIDGE:** Did you consider the schedules to the new Act, which explicitly dealt with retrospectivity and maintained the law and all existing prosecutions on foot, when you wrote that letter about a stay?

**Mr GREG SMITH:** I cannot remember what I considered.

**Mr DAVID SHOEBRIDGE:** Surely you would have looked at the law and realised that the Parliament had specifically turned its mind to retaining, through the schedules to the Act, those prosecutions on foot? Surely you would have done that before you co-signed a letter about these stays?

**Mr GREG SMITH:** I wanted to get some advice, as requested, as to whether there could be a change that created greater fairness than apparently existed at the time.

**Mr DAVID SHOEBRIDGE:** Of the three Ministers, whose proposition was it? Where did the impetus come from?

**Mr GREG SMITH:** It certainly did not come from me.

**Mr DAVID SHOEBRIDGE:** If not from you there are only two other options.

**Mr GREG SMITH:** Only two and I am not sure—

**Mr DAVID SHOEBRIDGE:** Which one was it?

**Mr GREG SMITH:** I am not sure which of the two.

**The Hon. ADAM SEARLE:** Mr Shoebridge, we have the letter.

**Mr DAVID SHOEBRIDGE:** How many people currently have matters filed before the Victims Compensation Tribunal? Maybe Mr Glanfield knows.

**Mr GLANFIELD:** Firstly, can I answer your earlier question about the backlog? I indicated that I felt the backlog last year was about the same as the previous year and that probably reflected the same number of

matters. In fact that is true. In 2010-11 there were 21,610 pending claims and in 2011-12 there were 21,911, so about 300 more. What I said is right; the number of the backlog has not increased over that 18 months into this year. Your question was how many people are waiting.

**Mr DAVID SHOEBRIDGE:** 21,900.

**Mr GLANFIELD:** There were 21,900 applications as at 30 June 2012.

**Mr DAVID SHOEBRIDGE:** Which are live?

**Mr GLANFIELD:** Yes.

**Mr DAVID SHOEBRIDGE:** Attorney, will you give a commitment not to retrospectively change the law on those applications that have been filed with the Victims Compensation Tribunal?

**Mr GREG SMITH:** No, I am not giving commitments here.

**Mr DAVID SHOEBRIDGE:** Who did you consult before you put forward the law reform removing spousal privilege?

**Mr GREG SMITH:** I am not sure. I think I got some advice from the department but I had considerable knowledge of that area of the law in any event having argued the issue in the Court of Criminal Appeal, having read Acting Judge Lerve's judgement in the case involving a prosecution under section 316 and having read the High Court's decision in a case that came out of Queensland, which said that the so-called immunity never existed.

**Mr DAVID SHOEBRIDGE:** So who did you consult with?

**Mr GREG SMITH:** I did not need to consult much having read that but I did get advice from the department.

**Mr DAVID SHOEBRIDGE:** Did you get advice from the Director of Public Prosecutions?

**Mr GREG SMITH:** I do not think so. I had discussed the question of an appeal against Judge Lerve's decision at one stage.

**Mr DAVID SHOEBRIDGE:** Could you take it on notice whether you got advice from the Director of Public Prosecutions or anyone other than the department?

**Mr GREG SMITH:** Yes, I can take it on notice.

**Mr DAVID SHOEBRIDGE:** You said in your answer to the Hon. Charlie Lynn that one of the achievements of your Government was the change to the law in relation to consorting. Do you remember that?

**Mr GREG SMITH:** Yes.

**Mr DAVID SHOEBRIDGE:** How many convictions have there been under those new consorting laws?

**Mr GREG SMITH:** As I understand it, there was only one and that plea of guilty was withdrawn and the matter was referred back to the magistrate. I think that is all, but I gather there are well over a hundred people who have been warned for consorting since then.

**Mr DAVID SHOEBRIDGE:** So, not a single bokie, not a single member of organised crime—no-one has been caught by the change in consorting laws?

**Mr GREG SMITH:** I do not know. That is more in the area of the police. They enforce the law. There is talk of a High Court challenge by some so-called bikies who are charged at the moment. There are a number of people charged at the moment but they are talking about a challenge to the law, so they are defending the case.



**Mr DAVID SHOEBRIDGE:** Of those charged, do you know how many would fit within the category of being an alleged bikie or an alleged member of organised crime and how many are not?

**Mr GREG SMITH:** The only ones I know of are all so-called bikies. They are in the same matter or before the same court, and there are about three or four of them.

**Mr DAVID SHOEBRIDGE:** Could you provide those details on notice?

**Mr GREG SMITH:** Yes, we will.

**Mr DAVID SHOEBRIDGE:** How many convictions have there been for breaches of a move-on order under the Government's new legislation?

**Mr GREG SMITH:** I do not know. I will have to take that on notice.

**Mr DAVID SHOEBRIDGE:** When you do that could you advise what proportion of those persons who have been convicted for breach of a move-on order were identified as Aboriginal?

**Mr GREG SMITH:** Yes, we could look at that.

**Mr DAVID SHOEBRIDGE:** How many complaints have been made in the last 12 months to the office of the Legal Services Commissioner?

**Mr GLANFIELD:** I will have to take that on notice but it is in the order of a few thousand, I think. I do not have the figure.

**Mr DAVID SHOEBRIDGE:** Do you know what proportion of those complaints ultimately result in a finding of either professional misconduct or unsatisfactory professional conduct?

**Mr GLANFIELD:** Not many because the way it works, and the new model national legal profession regime kind of reinforces this, the emphasis in that office is to try to resolve matters and only take the ones that involve professional misconduct. The vast majority of complaints that Steve Mark, the Legal Services Commissioner, receives involve communication misunderstandings between lawyer and client and issues about costs, most of which can be resolved through a process of discussion and maybe even mediation. It is only where it is clear that there has been professional misconduct or unsatisfactory professional conduct that the matter would go forward. I think I can be fairly safe saying the vast majority of complaints are resolved without the need to do that. That is positive, not a negative.

**Mr DAVID SHOEBRIDGE:** Could you provide the figures on notice?

**Mr GLANFIELD:** They would be published in the annual report of the Legal Services Commissioner so it would all be on the website of the Legal Services Commissioner. I am happy to take it on notice but it is there and published.

**Mr DAVID SHOEBRIDGE:** Does either the department or the office test whether or not complainants are satisfied with the outcomes of their complaints?

**Mr GLANFIELD:** Leaving the Legal Services Commissioner to one side, we are very strong across the department—

**Mr DAVID SHOEBRIDGE:** I am only interested in the Legal Services Commissioner.

**Mr GLANFIELD:** For the department as a whole our culture is that we are very interested in getting feedback. We run a whole range of things from mystery shopping to client surveys to identify how people are finding our services. Although the Legal Services Commissioner is part of the department administratively, it is an independent office. I cannot give directions to the commissioner about how he will or will not act. He is aware of the culture within the organisation. I am sure he has his own complainant surveys and again that would be published in his annual report.

**Mr DAVID SHOEBRIDGE:** Attorney, is the primary reason changes are being proposed to the right to silence is because there is concern about ambush defences being taken by defendants in courts?

**Mr GREG SMITH:** That is one reason. I do not know that it is the primary reason.

**Mr DAVID SHOEBRIDGE:** What are the other reasons?

**Mr GREG SMITH:** Some of the other reasons are that the disclosure rules all seem to go one way. The defence disclosure adherence to a wish or will to disclose anything has always been resisted. Schemes have been brought in to allow courts to order disclosure and they are very rarely successfully used. I think to some extent it is intended to even up the disclosure, particularly where alibis are sprung on the Crown, as it were, shortly before or during the trial. Maybe a day is allowed for the police to investigate, but it is not a very satisfactory situation. Particularly criminals, hardened criminals, dangerous criminals are the ones that know all these tricks and they use them with some success.

**Mr DAVID SHOEBRIDGE:** The disclosure requirement you are thinking about is section 150 of the Criminal Procedure Act, which requires the disclosure of an alibi, details of witnesses, contact material. Is that the primary disclosure concern you have?

**Mr GREG SMITH:** Yes.

**Mr DAVID SHOEBRIDGE:** Are there any others?

**Mr GREG SMITH:** I do not know. I have not prosecuted for a number of years now. There are instances where if someone comes up with—take the Weissensteiner case in the High Court: Two people go out in a boat and one comes back. A body is found floating and the surviving person says nothing and continues to say nothing. It is just a matter of common sense that an inference be allowed to be drawn there. That is more in the area of comment at the trial about no response at the trial.

**Mr DAVID SHOEBRIDGE:** The law allows for an inference in many of those circumstances.

**Mr GREG SMITH:** It allows a comment to be made, but RPS v Azzopardi, a decision of the High Court in the late 1990s, severely restricted that use.

**Mr DAVID SHOEBRIDGE:** If the primary concern about disclosure is section 150, why not limit the ability to draw an adverse inference when a defendant has breached the obligations under section 150 and has sought leave of the court?

**Mr GREG SMITH:** I take that on board as a submission. That is all.

**Mr DAVID SHOEBRIDGE:** If that is the primary concern—

**Mr GREG SMITH:** No, that is a submission.

**Mr DAVID SHOEBRIDGE:** I have heard you made this comment publicly that the courts are not being tough enough on the alibi notice provisions and are too readily granting leave—

**Mr GREG SMITH:** That is right.

**Mr DAVID SHOEBRIDGE:** If that is your primary concern, why not allow an adverse inference to be drawn when there is a breach of section 150 and leave has been sought, rather than take away that right from everyone?

**Mr GREG SMITH:** That is something we can look at too.

**Mr DAVID SHOEBRIDGE:** When you are dealing with something as fundamental as the golden thread about the right of silence and not to be convicted out of one's own mouth, surely your Government should be looking at the protecting those existing rights and privileges rather than wiping them out across the board.

**The Hon. TREVOR KHAN:** Point of order: Mr David Shoebridge has asked the question three times.

**Mr DAVID SHOEBRIDGE:** It is a different question.

**The Hon. TREVOR KHAN:** He has had a response twice. I suspect the Attorney General is not going to change his answer on the third time round.

**Mr DAVID SHOEBRIDGE:** It is a different question, Madam Chair.

**The Hon. AMANDA FAZIO:** To the point of order: Madam Chair, I gained the impression that the Attorney General was quite enjoying this exchange of questions and answers and I would ask him to continue.

**The Hon. TREVOR KHAN:** I am sure he is.

**Mr GREG SMITH:** I always enjoy the company of Mr David Shoebridge and the comments he makes.

**CHAIR:** I will allow the question and the Attorney General can answer in the manner that he sees fit.

**Mr DAVID SHOEBRIDGE:** There is a great deal of mutual pleasure here.

**The Hon. ADAM SEARLE:** We cannot possibly stand in your way.

**Mr GREG SMITH:** It is not just my baby, if we can put it that way. That right to silence concept and the provisions of the draft bill that has been sent around are Government decisions. It is not just my decision, so there are Police people involved in the decision. There are prosecutorial people who will be and have been involved in the decision. There are a lot of people—defence people—who are making these submissions now as to the wording that is being circulated. We are talking about a hypothetical situation at the moment. The Government has informed its final policy on what it puts forward.

**Mr DAVID SHOEBRIDGE:** In terms of the very real exposure draft that has been issued, what was the Government's intention by the phrase "opportunity to consult an Australian legal practitioner"? Does that include consulting with a legal practitioner who refuses to act for you? Is that an opportunity to consult with an Australian legal practitioner?

**Mr GREG SMITH:** I can only speak for my mind. My mind is that you have the opportunity to speak to someone who will actually speak with you, and that is why Law Access is being used. They are not going to refuse to talk to people.

**Mr DAVID SHOEBRIDGE:** What if you consult with a legal practitioner and they are not in a position to give you adequate legal advice? Is that still an opportunity to consult?

**Mr GREG SMITH:** I do not know. That is more for the trial court; that is for the appeal courts later on. At this stage if somebody said, "I have not had the opportunity", and puts that on the record, a tape-recorded interview, that would undoubtedly be a factor that would be taken into account by the trial judge when dealing with any application by the Crown to use the refusal to say anything as evidence in the case.

**Mr DAVID SHOEBRIDGE:** Mr Attorney, you would agree that courts primarily make factual determinations about things that have happened in the past?

**Mr GREG SMITH:** Yes.

**Mr DAVID SHOEBRIDGE:** Indeed, that is their fact-finding role, is it not, to determine what has happened in the past for the purposes of criminal or civil proceedings?

**Mr GREG SMITH:** Yes.

**Mr DAVID SHOEBRIDGE:** Do you know of any court that has expertise in assessing what will happen in the future?

**Mr GREG SMITH:** No, but I know the High Court makes the law for the future.

**Mr DAVID SHOEBRIDGE:** No, but in terms of—

**Mr GREG SMITH:** The common law of the Commonwealth and that is it, what applies after they make that decision. It might go back to Governor Bligh coming here. They will say that is what the common law has always been, even though they are only stating it today.

**Mr DAVID SHOEBRIDGE:** That determination is about the way the law will apply in the future. I am talking about factual determinations, not how the law will apply in the future, about what will happen in the future. They have no skill at that, do they?

**Mr GREG SMITH:** No.

**Mr DAVID SHOEBRIDGE:** On what basis are you proposing that courts will make determinations about future crime, whether or not an offender will commit a crime in the future? What skills do courts have to undertake that?

**Mr GREG SMITH:** I do not know. If somebody says, "I am going to keep doing this", and they have been doing it for a long time, they are a compulsive criminal. A compulsive sex offender, for example, I would imagine a court could probably say, "He says he is going to do it again, so I am going to punish him so that he doesn't."

**Mr DAVID SHOEBRIDGE:** Apart from a direct admission, do courts have any proven competence at all in trying to guess future crime and the propensity of a person to undertake future crimes? Is the answer no?

**Mr GREG SMITH:** I think the answer is no.

**Mr DAVID SHOEBRIDGE:** On what basis are you proposing to have the Supreme Court make continuing detention orders, because that is what are you asking courts to do, to have a guess about future crime.

**Mr GREG SMITH:** The issue of serious sex offenders has already been covered by this Parliament some years ago, and the law that was brought into place was enacted after the Queensland law was made valid. Evidence is taken from experts—psychologists, psychiatrists—and other people who assess prisoners in jail, and if the prisoner's behaviour seems to be deteriorating rather than improving that would cause great concern, I would imagine. Will it be a danger to release this person into the community? I support the community, and the safety of the community is paramount.

**Mr DAVID SHOEBRIDGE:** You fully acknowledge that courts have no expertise, no proven historical expertise, no proven technical expertise to have this stab in the dark about whether a future crime will or may be committed. It is entirely outside of their scope and their competence, is it not?

**Mr GREG SMITH:** No, you have an answer on that. But now you have explained in what context you were asking those questions. Courts have been able, I believe, to make those assessments and to make orders that were necessary to protect our community.

**Mr DAVID SHOEBRIDGE:** Have you reviewed those court orders and the rationale and the integrity of those determinations that have been made?

**Mr GREG SMITH:** I get reports on those cases regularly and I consider them. I sometimes make decisions on whether a further application should be made or not. Corrective Services has actuarial risk assessments to assess the risk of reoffending. There are a small number of people who have been kept in prison on detention orders, a larger number have been released on strict orders as to their movements. That system seems to be working reasonably well. We have concerns that there are some seriously violent offenders who currently are being released into the community who are a future danger to the community, and we want to do something to protect the community.

**Mr DAVID SHOEBRIDGE:** Are you proposing that actuarial studies and assumptions will be used to keep people behind bars after their sentence is completed? Is that what I am to understand from that answer?

**Mr GREG SMITH:** No, I think that is something that can be taken into account. The main thing is the evidence of those who are professionally trained psychologists and psychiatrists and who are running programs for, in this case, serious violent offenders and their assessment whether a person is willing to do it. It is pretty easy to see if they are not willing to do it, but others are seen to be a danger. I think the courts have accepted that. The High Court accepted that that was a valid area of enactment. I think that you are trying to turn back the clock, Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** The High Court did not assess the merits of the legislation; it just found it was not unconstitutional. That is correct, is it not?

**Mr GREG SMITH:** That is right.

**Mr DAVID SHOEBRIDGE:** They did not give some benediction to it.

**Mr GREG SMITH:** No, but the voters of this State and other States have.

**CHAIR:** The Government members have decided to forego their second round of questions.

**(Short adjournment)**

**CHAIR:** We will now deal with the Justice portfolio.

**The Hon. AMANDA FAZIO:** In response to a question earlier you stated, "I support the community and the safety of the community is paramount." In view of that, I will ask some questions about the Community Compliance and Monitoring Group in Corrective Services NSW. Has the group been axed?

**Mr GREG SMITH:** No, it has not. As I understand it, it will be merged with the Probation and Parole Service and both groups will use the one set of offices and so on. At the moment they are separate.

**The Hon. AMANDA FAZIO:** Will compliance and monitoring officers currently working with the Community Compliance and Monitoring Group be transferred to the Probation and Parole Service? Will all of them be transferred with their current conditions?

**Mr GREG SMITH:** I am not sure about the arrangements. The commissioner may be able to help.

**Mr SEVERIN:** We are doing a review as part of a previous review undertaken to determine the best way of delivering services to the community. Evidently we have two groups that perform the same function for different types of offenders. That is not the most effective way to monitor offenders, and particularly high-risk offenders, in the community. The review will ensure that we have a more streamlined and risk-based approach to monitoring offenders. We will not change any of the arrangements as they relate to 24-hour monitoring of offenders in the community. Indeed, it will strengthen the arrangements that we have at the moment by bringing together a very strong focus on compliance and a very strong emphasis on case management. I anticipate that the changes, which are yet to be finalised, will result in some streamlining of resources. That is because we are completely duplicating our function at the moment, which is highly inefficient. It will result in a much more streamlined and better way of monitoring offenders in the community.

**The Hon. AMANDA FAZIO:** Will these workers maintain their after-hours and weekend rostering arrangements?

**Mr GREG SMITH:** Yes, I would imagine so. That is the whole purpose of having that group for people who are wearing anklets.

**The Hon. AMANDA FAZIO:** If that is the case, why has Assistant Commissioner Lee Downes written to the Community Compliance and Monitoring Group managers and senior compliance and monitoring staff advising them that staff will have their rosters reduced to just three afternoon shifts and a weekend roster shift per period? I refer to memorandum No. 2012/18 from the Security Intelligence Division of your department.

**Mr GREG SMITH:** I will get the commissioner to answer that question because she works for him.

**Mr SEVERIN:** An analysis of the distribution of cases for the Community Compliance and Monitoring Group has identified that indeed we are currently managing and monitoring a very high number of medium- to low-risk offenders in the community who clearly do not require the same level of surveillance and service that high-risk offenders require across the State. The streamlining of rostering does not change the night shift and/or afternoon shift. It deploys the resources more effectively to target those offenders who are assessed as high risk rather than sending precious resources out to control people who clearly, according to risk assessment, do not require that level of surveillance. Those changes, which were made in light of the current budget situation, certainly have my support. They are not to be confused with what we will do in the future. However, they are an immediate measure designed to ensure that we deploy our resources most effectively and also obviously in a responsible and efficient way.

**The Hon. AMANDA FAZIO:** Will these rostering changes not mean that on weekends and after hours there will be fewer staff monitoring serious sex offenders and other community-based offenders? You cannot have fewer staff in the field and say that you will do as good a job of monitoring as you are doing at the moment.

**Mr SEVERIN:** With respect, there will be no reduction in the level of monitoring of serious sex offenders or serious high-risk offenders. Clearly we will not have the same level of surveillance for lower-risk offenders because they do not require that level of supervision.

**The Hon. AMANDA FAZIO:** Does it not also mean that there will now be occasions when serious sex offenders and other criminals currently under supervision in the community simply will not be subject to random home visits?

**Mr SEVERIN:** No, that is not the case.

**The Hon. AMANDA FAZIO:** If not, can you explain why a Corrective Services worker has told me that monitoring of community-based offenders will be reduced from four weekends and 16 afternoon shifts a month to just two weekends and six afternoon shifts a month? That will more than halve the number of visits to these people.

**Mr SEVERIN:** They are changes to the roster for individual staff; they are not changes to the coverage that we provide in relation to the afternoon, evening and night shifts. We will still have staff rostered every afternoon, every evening and every weekend. There will be fewer staff, and, as I said, that is clearly a result of an analysis that we undertook that identified we were using those staff to monitor lower-risk offenders. We will continue to be able to monitor serious high-risk and sex offenders in accordance with the same criteria and service standards that are currently applied.

**The Hon. AMANDA FAZIO:** You are saving money by cutting the supervision of these offenders by more than half and you are telling us that there will be no greater risk to the community.

**Mr SEVERIN:** I am saying that we are not saving any money at this time; we are simply arresting clear budget over-expenditure. In doing so, we are also reviewing the most effective way of organising this service in the future by amalgamating two groups that are effectively doing exactly the same job, although with a slightly different approach. We will end up having the best of both worlds in one service across New South Wales. I assure you that I will not accept any solution that will in any way reduce the community safety aspects of the work we are doing.

**The Hon. AMANDA FAZIO:** The level of concern in the Corrective Services workforce is so great about this matter that I have had an email from an officer who says that on a random home visit he caught a paedophile with a child in their home. Will your cuts not make it easier for paedophiles to get away with committing further crimes because they know that you are reducing random visits by more than half?

**Mr SEVERIN:** As I said, we are not cutting the frequency of visits to high-risk offenders. One of the important factors of compliance monitoring is targeting those offenders in the community who are considered to present the highest risk of reoffending and those serious offenders who are considered to be a high risk to the community.

**The Hon. AMANDA FAZIO:** Is it not the case that for many chronic, serious sex offenders and other violent offenders, alcohol and/or drug usage acts as a precursor to offending behaviour?

**Mr SEVERIN:** Yes.

**The Hon. AMANDA FAZIO:** Is it not also the case that for many chronic, serious sex offenders and violent offenders, controlling alcohol and/or drug abuse is a key to preventing repeat offending behaviour?

**Mr SEVERIN:** Monitoring the use of illicit drugs in the community, and obviously also for those who have a prevention of drinking or consuming alcohol, is very important. We are obviously doing that through random and targeted urine testing and likewise random and targeted breath analysis, and that will continue.

**The Hon. AMANDA FAZIO:** It is my understanding that Probation and Parole conduct urine tests by appointment at a pathology laboratory whereas the Community Compliance and Monitoring Group conducts them randomly during unannounced home visits. Is that correct?

**Mr SEVERIN:** It is not quite like that but by and large the Compliance Monitoring Group has a mobile arrangement to go to the homes of offenders and collect urine samples, as determined through a random and targeted approach. Urine analysis in Probation and Parole is a mixture of utilising laboratory services but also doing it through us collecting those and having them analysed in laboratories. We will move and transition to a singular approach which again will have both components used because there are obviously logistical issues, particularly in regional areas, where we currently also cannot provide that same level of service through the Community Compliance Monitoring Group, just because of the tyranny of distance et cetera.

We are looking at a mixed model which will continue to have home visits for the purposes of collecting urine. We will continue to have a randomised approach to collect urine from those offenders when they report to a Community Corrections or Probation and Parole office. I think it is important to ensure that our system is unpredictable and continues to be one that we manage, and that offenders can actually not second-guess in order to prepare themselves for those tests.

**The Hon. AMANDA FAZIO:** Minister and Commissioner, are you aware of offenders openly boasting in Internet chat forums about how they routinely cheat probation urine testing?

**Mr GREG SMITH:** I am certainly not aware of it, although from what has been publicised in recent times about community chat forums it indicates that there is almost no control over them and people can say what they like without anyone being able to test whether it is true.

**The Hon. AMANDA FAZIO:** I will quote an Internet site that is used frequently:

My mate was on parole and used to smoke himself silly with me. His trick to beat the piss test is to drink a cup of vinegar before he goes in for testing. Make sure you don't piss between the time you drink it until you do the time of piss test, of course.

**Mr DAVID SHOEBRIDGE:** Has that been scientifically tested?

**The Hon. AMANDA FAZIO:** You might think it is a laughing matter, Mr David Shoebridge—

**Mr DAVID SHOEBRIDGE:** The prospect of a glass of vinegar negating a urine test, seriously?

**The Hon. AMANDA FAZIO:** It is not your time. If prisoners are doing this and are boasting about it on the Internet chat rooms, how can the Minister expect the public to have any confidence that the Government's reduced arrangements for urine and drug testing of people who were previously dealt with by the Community Compliance and Monitoring Group will actually catch people who are using drugs and alcohol when the Minister knows and has admitted that that is often a precursor to them reoffending, particularly sex offenders?

**Mr GREG SMITH:** I understand from what I have heard Mr Severin eloquently answer so far that any sex offender or serious violent offender will still be treated as they are at the moment with random testing and targeted testing. It is the less serious offenders who sometimes may have their rehabilitation actually diminished, or their opportunities diminished, because they get angry with having their homes invaded or by people coming to their homes after hours when they do not need supervision as they are trying to go straight. That is how this Government has changed the emphasis. We are looking more at reducing reoffending than just pinches; getting numbers up as existed under your Government's State Plan.

**The Hon. AMANDA FAZIO:** Our Government may have had a State Plan that you do not agree with but the simple fact is that magistrates and judges are sentencing people to serve time on home detention and intensive corrections orders and you are saying that in order to reduce an overspend, to quote the commissioner, you will be cutting those services by more than half. How does that fit in with your commitment to community safety? It simply does not.

**Mr GREG SMITH:** That is your opinion. I say that if we can work out a more practical and efficient way to spend resources by combining groups that have similar functions by using different methods, that is something to be desired. As the commissioner has said, it will allow greater expansion into remote areas where we have Probation and Parole officers to have some Community Compliance Monitoring Group people in those offices as well so that we can cover people who, at the moment, have not been covered.

**The Hon. AMANDA FAZIO:** Attorney, you have said that some of these people will be monitored 24 hours a day if they have an electronic bracelet.

**Mr GREG SMITH:** Yes.

**The Hon. AMANDA FAZIO:** How will that happen? Who will be monitoring them?

**Mr GREG SMITH:** The same group. I would imagine that the group that does the monitoring has a base from where the monitoring is conducted and it will stay exactly the same. That will not be affected at all. We have to maintain that system.

**The Hon. ADAM SEARLE:** Is one of the objectives to reduce recidivism?

**Mr GREG SMITH:** Yes.

**The Hon. ADAM SEARLE:** One of the things that reduces recidivism is the ability of former inmates to secure employment?

**Mr GREG SMITH:** Yes.

**The Hon. ADAM SEARLE:** In that regard has your Government cut funding for prisoner education programs in the current budget?

**Mr GREG SMITH:** I think actually we have increased funding for education, certainly TAFE education which is aimed at giving employable skills so that in Corrective Service industries, for example, we have more TAFE teachers to assist. We are putting an extra \$20 million over three years into education.

**The Hon. ADAM SEARLE:** If you do not have the figures with you, please take this question on notice. What is the total figure for prisoner education?

**Mr GREG SMITH:** Corrective Services will direct approximately \$8 million of the \$20 million enhancement towards the Intensive Learning Centre project that has operated at John Morony Correctional Centre from 2004 until now. It has been an excellent model to engage inmates in learning. So we are putting in more money so that more inmates can achieve certificate level completion. That expansion is critical to achieving the targets that we have set out in the State Plan. An Intensive Learning Centre will also be established at the mid North Coast Correctional Centre, Lithgow Correctional Centre and South Coast Correctional Centre. There is already one established at Wellington Correctional Centre, which will be restructured. That model is a significant change in the way education is delivered to inmates across the State.

Sites for the Intensive Learning Centres have been strategically selected to maximise opportunities for those inmates that meet the eligibility criteria to participate in the program early in their custodial sentence. It is expected that inmates in Intensive Learning Centres will be identified soon after reception to the centre and be allocated to the Intensive Learning Centre at an appropriate time in their sentence. The department is also in the process of identifying a suitable site for a woman's program.

**The Hon. AMANDA FAZIO:** Earlier I referred to a case where during a random home visit a paedophile was found with a child in his house. Are you aware of that case?



**Mr GREG SMITH:** No.

**The Hon. AMANDA FAZIO:** Why not? Is that not of suitable importance that it should have been brought to your attention?

**Mr GREG SMITH:** Yes, I would expect to be told but when I say "no" I have great concern about paedophiles and the damage that they cause to children. It is something I would have hoped to have got but an enormous amount of activity goes on within my departments and I cannot be sure of everything that is happening at once. I expect officers in my departments to handle those matters properly and I being aware may not change anything except to emphasise that that must not happen again.

**The Hon. AMANDA FAZIO:** Will you take it on notice to find out why you were not advised of that incident?

**Mr GREG SMITH:** Yes, but I think it is more a police matter. I think police should be told of that. For example, if a breach of parole is committed I would imagine that matter would be reported to the Parole Board and if an actual offence is committed the police would arrest and charge.

**The Hon. ADAM SEARLE:** Attorney, just to be clear: Are you saying that the prisoner education programs have not been affected at all by the Government's \$1.7 billion cuts to education?

**Mr GREG SMITH:** No. It is my understanding that this is in our budget, not in Education's budget.

**The Hon. ADAM SEARLE:** Can I have the budget figure for last year as opposed to this year for prisoner education programs in total?

**Mr GREG SMITH:** We will take that question on notice.

**The Hon. ADAM SEARLE:** Given your commitment to rehabilitation, why have you cut \$9 million in this year's budget from offender programs?

**Mr GREG SMITH:** Perhaps Mr Severin can answer that question.

**Mr SEVERIN:** My understanding is that the area of offender programs and services has been subject to the same reduction in budget as other areas of the agency. That is not to mean that we are actually reducing the program services to offenders but there are other corporate overheads and other arrangements that certainly need to be looked at. At this point in time my understanding is—and I obviously have not been in the agency for very long and I was not part of the original budget distribution—that we are reorganising the way we deliver our services in certain areas, also in anticipation of the possible legislation relating to serious violent offenders, to ensure that we meet our service requirements both in relation to cognitive-skills based and therapeutic intervention programs, as well as prisoner education and vocational training.

**Mr DAVID SHOEBRIDGE:** Can you tell the Committee whether the new wing built at Cessnock Jail has been opened yet?

**Mr GREG SMITH:** No, it has not.

**Mr DAVID SHOEBRIDGE:** It was due to open in May, was it not?

**Mr GREG SMITH:** I think it was due to be completed in May. It took a lot longer to complete than expected, but that is not unusual I suppose. There were weather problems in recent years and it has taken years to build. Mr Severin will be able to give you more detail on this, but it certainly has not been cleared for occupation yet. That involves making sure there is no bits of iron and other things that could be used as weapons, matters of that sort.

**Mr DAVID SHOEBRIDGE:** Has it been substantially completed?

**Mr SEVERIN:** The prison construction has been completed. There are still works continuing in relation to installing and testing the security systems. There then needs to be a pre-commissioning audit to make sure that, as the Attorney pointed out, we have a safe site for occupancy of maximum security prisoners. We

then need to test our procedures by utilising minimum security prisoners for a period of time to ensure that our operational routines work and to also ensure that the building fabric under some level of not stress but certainly usage stands up to requirements. Following that, of course, we have to induct our staff into the routines. Then the centre will be formally commissioned.

The fortunate situation for me coming into this organisation has been that the prisoner numbers have been declining. While, of course, the Cessnock Correctional Centre is a state-of-the-art maximum security facility, fortunately, we do not currently have the pressure of having to rush into opening something that then may prove not to be as robust as we thought it would be. So we can take a little bit more time. Certainly we do not want to procrastinate but I do have an expectation that all of those arrangements are well and truly in place and well and truly tested before we occupy a maximum security facility.

**Mr DAVID SHOEBRIDGE:** Has it met its staffing targets? Have you got the appropriate number of staff that you wanted?

**Mr SEVERIN:** No, we are in the process of organising staff for the site. We have an agreed staffing number.

**Mr DAVID SHOEBRIDGE:** It is scores of officers short from the target?

**Mr SEVERIN:** We do actually have more requests for staff wanting to transfer to Cessnock than we will have positions available to them, but there is no point in us appointing staff at this point in time before we physically start operating the facility. I have also commissioned a broader review of the roles and functions of our facilities across the State to ensure that we get the prisoner mix right and to ensure that we are commensurate with the decline in offending numbers, also identifying opportunities to refurbish existing facilities and in doing that try to streamline a little bit more the need to transfer people across the State at times quite extensive distances. That work will continue well past the commissioning of Cessnock but it is part of it. I am very confident that we will have the staff available to manage the facility. I am very satisfied with the staffing numbers that have been agreed to. They do provide a very effective way of managing that facility.

**Mr DAVID SHOEBRIDGE:** Is it true that only five correctional services officers from Grafton have been relocated to Cessnock?

**Mr SEVERIN:** That is correct.

**Mr DAVID SHOEBRIDGE:** What was the target at the time when Grafton was closed for transfer to Cessnock?

**Mr SEVERIN:** I do not have information as to what the target was but my understanding is that there was an expectation that more staff would take the offer up to transfer to Cessnock. However, of course, staff cannot be forced to do that. A range of staff took the option of a voluntary redundancy. Others have been redeployed to other facilities in the State and a small number has transferred to Cessnock. But the opening of Cessnock will not depend on the number of staff who transferred from Grafton; I have certainly been assured of that.

**Mr DAVID SHOEBRIDGE:** Do you say that David Mumford, jail general manager, was wrong when he told the ABC last week that there was a staff shortage at Cessnock?

**Mr SEVERIN:** If I could clarify that?

**Mr DAVID SHOEBRIDGE:** Please do.

**Mr SEVERIN:** There is no staff shortage in relation to the staff that we will have available to start organising the operation of the new facility. I am not across the detail as to whether at the moment we have all staff for the existing facility in place or if there are some vacancies. We do have a number of vacancies across a number of our facilities, but at this point in time we do not have the 65 staff required to manage the new facility identified because we have not actually commissioned the new facility.

**Mr DAVID SHOEBRIDGE:** Will you provide on notice how many staff you are short for the new facility and how many staff Cessnock is short otherwise than for the new facility?

**Mr SEVERIN:** We are not short at all in relation to the new facility because we do have a large number of applications for staff to transfer. I can certainly take on notice any information in relation to the current staff establishment and actuals.

**Mr DAVID SHOEBRIDGE:** What are the current numbers for adult inmates in New South Wales correctional facilities and what is the projection over the next 12 months?

**Mr SEVERIN:** On 30 September we had 9,624 inmates in custody across all facilities, male and female, remand and sentence. I would have to take the question in relation to our forward projections on notice because I am not across that detail at this point in time.

**Mr DAVID SHOEBRIDGE:** What proportion of those prisoners are on remand?

**Mr SEVERIN:** We had 9,624 and the remand population was 2,534 inmates.

**Mr DAVID SHOEBRIDGE:** Do you think that is an acceptable outcome, that more than a quarter of the prisoners being held in New South Wales prisons as we speak have not been found guilty of an offence and are being held on remand?

**Mr GREG SMITH:** No, I think it is undesirable; I think it is too high, but that is the way the trend has gone in recent years and I expect that gradually that number will fall.

**Mr DAVID SHOEBRIDGE:** What is your Government doing to try to reduce those numbers, the numbers that are held in jail without having been found guilty?

**Mr GREG SMITH:** We are considering the Law Reform Commission's report on bail and we have decided to implement a risk management approach which looks at the dangers of prisoners reoffending or people charged not attending court when required, interfering with witnesses or victims again. I expect that when that approach is applied in the legislation by courts that fewer offenders or alleged offenders will have bail refused.

**Mr DAVID SHOEBRIDGE:** When will we get the Government's response to the Law Reform Commission's report on bail?

**Mr GREG SMITH:** I expect it will be given out before the end of November this year.

**Mr DAVID SHOEBRIDGE:** Ms Lo or Attorney, what is the current number of juveniles held in detention in New South Wales facilities, both Kariong and any other—

**Mr GREG SMITH:** Well, Kariong is not a juvenile facility; it is a Corrective Services facility.

**Ms LO:** I do not have data on Kariong because Kariong is the responsibility of Corrective Services but as at 7.00 a.m. 320 young people were on remand and in custody—under control, sorry.

**Mr DAVID SHOEBRIDGE:** Is that number projected to rise or fall over the next 12 months?

**Ms LO:** We are expecting that it will fall but I do not have a figure. It has been falling for the past few years.

**Mr DAVID SHOEBRIDGE:** What proportion of those 320 juveniles or young people were held on remand?

**Ms LO:** In 2011-12, 53 per cent of young people were on remand.

**Mr DAVID SHOEBRIDGE:** Do you think it is an acceptable situation that more than half the juveniles in detention are being held in detention without having been convicted of a crime?

**Ms LO:** I think I would have to agree with the Attorney that the number is too high. Juvenile Justice has a number of initiatives underway to try to assist young people who are facing remand to find suitable

accommodation, to find suitable adults to supervise them and to provide them with supervision if they are granted bail.

**Mr DAVID SHOEBRIDGE:** Do you know what proportion of those young people who are being held on remand are ultimately acquitted or given a non-custodial sentence?

**Ms LO:** Eighty-four per cent of young people who are held on remand do not go on to receive a custodial order within 12 months.

**Mr DAVID SHOEBRIDGE:** And do you believe that is an acceptable outcome for the hundreds of young people held in remand in New South Wales juvenile correctional facilities?

**Ms LO:** I would agree with the Attorney's comments on remand rates.

**Mr DAVID SHOEBRIDGE:** Attorney, what is your Government doing to reduce those extraordinary figures with more than one in two young people held in our correctional facilities being held on remand and a staggering 84 per cent of them being acquitted or given a non-custodial sentence?

**The Hon. TREVOR KHAN:** The mere fact that they have been in remand is why they get a non-custodial sentence.

**The Hon. AMANDA FAZIO:** You are not the Attorney General. Don't you try answering!

**Mr GREG SMITH:** Our Government is giving assistance to non-government organisations to provide accommodation for homeless young people. A substantial number apparently are bail refused because they cannot comply with that condition.

**Mr DAVID SHOEBRIDGE:** Is there any funding for that?

**Mr GREG SMITH:** There has been funding.

**Mr DAVID SHOEBRIDGE:** How much?

**Mr GREG SMITH:** I do not know.

**Mr DAVID SHOEBRIDGE:** Could you take that question on notice and provide that information?

**Ms LO:** Yes.

**Mr DAVID SHOEBRIDGE:** For those young people who cannot provide a fixed address to the court and who are having bail refused for that reason.

**Mr GREG SMITH:** And I understand some more beds are becoming available as a result of initiatives by Father Chris Riley, Youth on Track and the St Vincent de Paul Society proposing a centre near Wollongong to look after some more young people. As part of a review of the laws and practices of Juvenile Justice, we are looking to get more involved in the future with early intervention so as to work with potential offenders, their families and schools, along with other departments, to try to deter them from a life of crime. Those are some of the things we are doing.

**Mr DAVID SHOEBRIDGE:** What proportion of those young people in detention identify as Aboriginal?

**Ms LO:** About 50 per cent of young people in custody are Aboriginal.

**Mr DAVID SHOEBRIDGE:** What is the proportion of young people who are Aboriginal in the general community?

**Ms LO:** Approximately 3 per cent for that age group.

**Mr DAVID SHOEBRIDGE:** So we are talking about more than 20—a close to 30 times greater incidence of young Aboriginal people being held in jail than the general population, is that right?

**Ms LO:** I think we all acknowledge that the overrepresentation of Aboriginal young people in the system is a major concern.

**Mr DAVID SHOEBRIDGE:** What is the Government doing to address it?

**Ms LO:** I think we are doing a whole range of things to address it. For example, in Juvenile Justice we have an Aboriginal strategic plan, which covers objectives such as reducing reoffending and increasing participation in youth justice conferencing. We also have a very effective Aboriginal recruitment and retention strategy in place and we have various targeted recidivism programs tailored to Aboriginal people. On a more general level the department currently is undertaking a review of the Young Offenders Act and will look at how the interventions under that Act can be better targeted at Aboriginal people and better targeted at reducing reoffending. The department also has a project underway called Youth on Track, which is looking at best practice in reducing reoffending and how that can perhaps achieve some reforms in New South Wales.

**Mr DAVID SHOEBRIDGE:** Commissioner, do you know what proportion of the prisoner population has hepatitis C when they enter New South Wales prisons?

**Mr SEVERIN:** No, I do not have that information available. I am not even sure whether Justice Health tests for hepatitis C on entry. The assumption that our staff makes is that anybody who is in custody potentially could have an infectious disease and therefore they have safe handling practices in place when they have to deal physically with prisoners. We do not segregate offenders in relation to any of those communicable diseases but I am not aware of any—

**Mr DAVID SHOEBRIDGE:** Could you take that question on notice to see whether those figures are held by the department?

**Mr SEVERIN:** They would be held by Justice Health; they would not be held by us.

**Mr DAVID SHOEBRIDGE:** They would be held by Justice Health?

**Mr SEVERIN:** And certainly Justice Health comes under a different portfolio.

**Mr DAVID SHOEBRIDGE:** Could you look to see whether or not the department has figures on the prevalence of hepatitis C in both inmates when they enter New South Wales prisons and inmates when they leave New South Wales prisons?

**Mr SEVERIN:** I am certainly happy to take that question on notice but I am almost certain that we would not have those figures available.

**Mr DAVID SHOEBRIDGE:** What is the current approach of Corrective Services to smoking in prisons?

**Mr SEVERIN:** Smoking is permitted in cells and in designated outdoor areas. We have a no smoking buildings trial going at the Lithgow correctional facility at this point in time.

**Mr DAVID SHOEBRIDGE:** What is the status of that trial?

**Mr SEVERIN:** It is a joint trial between us, Justice Health and the Forensic Mental Health Network. It commenced on 28 May 2012 for a six-month period and the mid-trial report is currently being prepared. The project was costed for a 12-month period and then there is a commitment to identify the opportunity to expand it to other sites. There is in principle agreement that we also look at Cessnock becoming a smoke-free prison—the new parts.

**Mr DAVID SHOEBRIDGE:** The new wing already is.

**Mr SEVERIN:** Yes. As with these types of trials and also the expansion, it needs to be very carefully managed. We have taken careful note of what New Zealand has successfully done in recent times and that is

being looked at nationally as well. That has worked very well and obviously we are going to learn from that experience. However, a very large percentage of inmates do smoke and depriving them of that needs to be very carefully managed, and we need to take a very positive approach. The same goes for staff, of course.

**Mr DAVID SHOEBRIDGE:** Are you aware of an improvement notice issued to Lithgow Correctional Centre because of exposure to second-hand smoke for prison officers?

**Mr SEVERIN:** No, I am not aware of that.

**Mr DAVID SHOEBRIDGE:** Could you take on notice whether or not an order was issued and what response, if any, Corrective Services had?

**Mr SEVERIN:** Yes.

**Mr DAVID SHOEBRIDGE:** Is the Emu Plains Juvenile Justice Centre fully compliant with the Australasian Juvenile Justice Administrators Standards for Juvenile Custodial Facilities?

**Ms LO:** That was not a purpose-built centre for juveniles. Whether it complies I am not sure because I do not have the details of the Australian Standards. It was never meant to be a long-term facility for juveniles and once Cobham is expanded we will be transferring the detainees into a purpose-built juvenile facility.

**Mr DAVID SHOEBRIDGE:** When is that expected to be?

**Ms LO:** In the first half of the calendar year 2013.

**Mr DAVID SHOEBRIDGE:** How long has the Emu Plains Juvenile Justice Centre been in operation?

**Ms LO:** I will have to check that for you.

**Mr DAVID SHOEBRIDGE:** Perhaps you could give that answer on notice together with whether or not it is compliant with the Australasian Juvenile Justice Administrators Standards.

**Ms LO:** Certainly.

**Mr DAVID SHOEBRIDGE:** And, if it is not compliant, in what circumstances it is not compliant.

**Ms LO:** Certainly.

**Mr DAVID SHOEBRIDGE:** Are the conditions and facilities within other correctional centres run by Juvenile Justice consistent with Australasian Juvenile Justice Administrators Standards?

**Ms LO:** As far as I am aware, yes.

**Mr DAVID SHOEBRIDGE:** Do you test your facilities for compliance?

**Ms LO:** I will take that on notice, but there are regular reviews of centres.

**Mr DAVID SHOEBRIDGE:** To the extent there is any non-compliance, could you provide details of non-compliance?

**Ms LO:** I can give details of rectification, yes.

**Mr SEVERIN:** If I could clarify your last question, I have looked at a note that I have and a WorkCover improvement notice I am advised was issued in November 2011 at Lithgow with regard to staff and inmate exposure to environmental tobacco smoke. As a result, the strategy was developed to have a no smoking in buildings approach at Lithgow, and indeed the trial was a direct result of this improvement notice that was issued.

**The Hon. TREVOR KHAN:** Attorney, could you please update the Committee on the progress of the new Intensive Drug and Alcohol Treatment Program?

**Mr GREG SMITH:** Prior to the 2011 State election, the New South Wales Liberals-Nationals committed to establishing a 300-bed metropolitan drug treatment facility. In November last year I announced that the Government would be establishing such a program for inmates at John Morony Correctional Centre and Dillwynia Correctional Centre, both at Windsor. The program will provide a total of 300 beds, comprising 250 male beds at John Morony and 50 female beds at Dillwynia, when fully operational. Eligible offenders are sentenced inmates with a documented history of problematic drug and/or alcohol use, with a minimum non-parole period of 12 months still to serve and a minimum or medium security classification. Corrective Services NSW data indicates that more than 4,500 inmates across New South Wales are currently identified as requiring medium to high level intervention to address alcohol and drug related needs.

The program has five treatment phases. Phase 1 includes induction, comprehensive assessment and treatment plan formulation conducted at the John Morony centre, or Dillwynia when women start in the program. Phase 2 includes pre-treatment and motivation-readiness programs at the John Morony centre. Phase 3 includes a treatment program, the Criminal Conduct and Substance Abuse—Pathways—Program. Phase 4 includes post-treatment assessment and maintenance and pre-release programs. Phase 5 includes community resettlement both with and without supervised parole.

Offenders subject to the program will be supported in their transition back into the community. The program offers a comprehensive resettlement phase to all offenders, whether subject to parole supervision or release without supervision, to ensure that they are released with structured support plans in place. The success of the program model relies on specialist staff, including a clinical director providing direction and guidance for the treatment program, and therapeutic managers and integration managers who support and supervise staff and offenders.

In late 2011 approval was given for the program to proceed in stages comprising stage 1, a 62-bed dedicated drug and alcohol treatment unit for males at the John Morony centre at Dharruk House; stage 2, another 62-bed unit for males in Castlereagh House, and that commenced in August 2012; stage 3, 124 beds using the remaining two units, Archerfield House and Berkshire House, which is scheduled to commence around July 2013; and stage 4, a 50-bed female unit at Dillwynia Correctional Centre scheduled to commence around July 2014.

Thirteen staff members with significant experience in treating alcohol and other drug dependence, and offending behaviour, have been employed to implement and deliver the program. Approval of the recommended appointment for a psychologist is pending and recruitment for the director of the program is still in progress. All other program staff have commenced duty. The program will have in place a rigorous control regime of drug testing and supervision. Offenders will be subject to three program urine tests per week. However, alternative drug testing and frequency protocols are being reviewed that could result in a reduction in drug testing costs.

The program is expected to cost \$2,118,329 in the current financial year. This includes \$261,800 for urinalysis testing. The projected annual cost for the program when fully implemented in the 2014-15 financial year is \$3,347,820. This will include \$633,360 for the urinalysis program. The Intensive Drug and Alcohol Treatment Program costing is in addition to the general operational costs of the correctional centre. Of the total costs, \$2 million will be provided from election commitment enhancement funding. The shortfall will be managed through savings achieved following organisational restructure.

I have given details of intakes in answer to an earlier question, but four intakes, each of 15 male offenders, have already taken place. To date, all of the program participants have been young offenders aged between 19 and 25 years of age. The profile of program participants indicates that the most serious offences committed are offences against the person and property-fraud offences, and the drugs of choice are mainly alcohol, cannabis and methamphetamines.

The first 20 participants graduated on 13 September 2012. They are deemed to have successfully completed treatment components of the program. Graduating offenders will now progress to maintenance programs in other correctional centres or supervised parole. We know that the third and fourth program intakes are due to graduate on 29 October 2012. The second stage of the program commenced as scheduled in July with two group intakes, 21 offenders. We talked about that earlier. In total, 81 offenders have entered the program since it commenced in February this year. Referrals are being received from correctional centres across the State. It is expected that a further 45 offenders will be placed in the program by the end of this calendar year.

**The Hon. TREVOR KHAN:** Can you update the Committee on the performance of Corrective Service Industries?

**Mr GREG SMITH:** Yes. This is a very important aspect of rehabilitation or attempted rehabilitation of prisoners and it also brings in income for the department and provides income for the prisoners themselves to supplement their food and other things and allows them to send money home in many cases. Corrective Services Industries [CSI] is an organisational unit of Corrective Services NSW which develops and manages correctional industry programs in correctional centres operated by Corrective Services. It has a correctional industry philosophy, which it has developed, implemented and refined over a number of years. This philosophy is aimed at providing inmates with meaningful work, basic education and vocational training resulting in skills sets being gained by inmates that lead to them being placed in work opportunities in the community when they are released; providing the correctional centre management team with the ability to manage large numbers of inmates effectively—this results in fewer assaults by inmates on inmates and inmates on staff; and providing an economic performance that assists in reducing the cost of corrections in New South Wales.

The CSI consists of 14 commercial divisions, including buy-ups, agriculture, textiles, furniture, engineering and food services. These divisions include 99 business units in 21 correctional centres providing employment opportunities for around 3,400 inmates. The CSI is not commercial but provides correctional centres with services, including general centre maintenance, ground maintenance, centre hygiene, community projects and mobile outreach programs. There are a total of 50 service industries in 25 correctional centres providing employment opportunities for around 2,415 inmates.

The CSI aims to provide continuous real-world work experience for inmates to enhance their chances of gaining employment upon release. That is, it tries to establish and maintain industries that are relevant to the industries in the community, which includes using similar manufacturing equipment. The CSI provides a work-readiness measurement that measures the work-readiness skills that an inmate has when they enter the system and works on improving these work-readiness skills for the inmate until they are released. CSI provides training and qualifications to inmates in its commercial and service industries in the following areas: customer service, quality management systems, occupational health and safety systems, environmental systems, business manager systems, known as Pronto, logistics and warehousing, forklift licence, crane driver licence, dogman certificate, and white card for construction.

The CSI provides opportunities for Aboriginal inmates that relate to their artistic talents and cover cultural awareness, contact with Aboriginal elders, and specialised education sources through the Girrawaa Centre at Bathurst Correctional Centre and Nurra Warra Umer Centre at Goulburn Correctional Centre. The CSI is a member of the Australian Government's Indigenous Employment Panel and has established an Aboriginal support program, Gundi, which focuses on providing employment opportunities for Aboriginal inmates upon their release. The CSI provides real-world work opportunities for inmates with intellectual disabilities in the following correctional centres: Goulburn Correctional Centre, Dillwynia Correctional Centre, Metropolitan Remand and Reception Centre at Silverwater, Mid North Coast Correctional Centre and Metropolitan Special Programs Centre. The CSI provides women inmates with real-world business activities that relate to telemarketing, logistics and warehousing, injured animal wildlife care skills, dairying skills, animal husbandry, milk processing, laboratory skills and horticultural skills.

The key achievements for the 2011-12 financial year were: CSI remained at the forefront of Australia's correctional industry programs, achieving 76 per cent employed of the total available inmate population. This is substantially higher than the Australian national benchmark of 65 per cent. In 2011-12, the average employment rate for inmates in Corrective Services NSW-operated correctional centres was 82.8 per cent, which is above the national average of the previous year. In 2011-12, CSI achieved improved actual financial performance when compared with budgeted financial performance, making an actual gross sales contribution of \$24.3 million when compared with the budget of \$21.3 million. The establishment of the affordable housing business unit employing up to 30 inmates at St Heliers Correctional Centre for the purpose of construction of modular homes for Aboriginal people in remote areas saw three more homes completed, which were installed in the town of Wilcannia. These modular homes are being constructed by Aboriginal inmates who are engaged in Certificate II in Building and Construction.

Corrective Services through CSI has been working with the Designing Out Crime Research Centre, which is part of the University of Technology Sydney School of Architecture, to make the design of the modular homes more appealing to Aboriginal people, reduce construction costs and make these homes a safer place. Connected with this project, CSI through its panel membership of the Indigenous Employment Panel established



an Aboriginal support program, Gundi, that focuses on providing employment opportunities for Aboriginal inmates upon their release. This involved gaining a grant of \$410,000 from the Australian Government.

The CSI increased the integration of in-house farm produce into the inmate food ration supply chain, resulting in annual savings to Corrective Services of over \$200,000. The CSI developed and established a new model to manage the general maintenance and security maintenance of Cessnock Correctional Centre, together with enterprise assets that will result in an annual savings to Corrective Services NSW of over \$600,000. The CSI made significant inroads in developing its reintegration model that will see a structured approach to providing inmates with work opportunities in the community when they are released. The CSI completed the conversion of inmate buy-ups from privately run to an all in-house buy-up service provided by CSI based on a full cost recovery model and commenced returning to Corrective Services NSW net annual contributions of \$1.5 million. It is a very impressive program and the commissioner has been most impressed since he has come to New South Wales.

**Mr DAVID SHOEBRIDGE:** More training in prisons than out, with TAFE cuts.

**The Hon. TREVOR KHAN:** Attorney, you have already given evidence to the Committee with regard to education and vocational training. Can you give further information to the Committee about improvements to education and vocational training for inmates prior to their return to the community?

**Mr GREG SMITH:** Yes. The New South Wales Government has placed high priority on inmates attaining levels of education to a minimum level of Australian Qualifications Framework, or AQF as it is known, Certificate II. This is part of the State's plan NSW 2021 goals. Before I give the Committee more information about the education and vocational training of inmates specifically, it is important to explain what the Government's goals are generally in this area. Goal 6 of NSW 2021 is to "Strengthen the NSW skill base". The target of this goal is that more people gain higher level tertiary qualifications. The sub-targets of goal 6 are:

- 50% increase in the proportion of people between the ages of 20 and 64 with qualifications at AQF Certificate III and above by 2020
- 100% increase in the number of completions in higher level qualifications at Diploma level and above by 2020
- 20% increase in the number of completions in higher level VET qualifications at AQF Certificate III and above by women by 2020
- 20% increase in the number of completions in higher level VET qualifications at AQF Certificate III and above by students in rural and regional NSW by 2020
- 20% increase in the number of completions in higher level VET qualifications at AQF Certificate III and above by Aboriginal students by 2020

Another target of goal 6 of the State Plan 2012 is for more young people to participate in post-school education and training. The sub-target relating to this is that 90 per cent of young people who have left school are participating in further education and training or employment by 2020.

Goal 15 of NSW 2021 is to improve education and learning outcomes for all students. The target of goal 15 is that more students finish high school or equivalent. The sub-targets relating to this goal are that 90 per cent of 20-year-olds to 24-year-olds have obtained a year 12 or AQF qualification and Certificate II or above by 2015. Also, 90 per cent of 20-year-olds to 24-year-olds have obtained a year 12 or AQF qualification at Certificate III or above by 2020. The target action is to provide innovative and tailored learning opportunities, mentoring and target case management strategies to assist students facing disadvantage, including regional and rural students, Aboriginal students, students from backgrounds where English is not their first language, and students with a disability.

Goal 17 of NSW 2021 is to prevent and reduce the level of re-offending. The target of this goal is to reduce juvenile and adult re-offending by 5 per cent by 2016. In order to achieve this, the priority action is to improve effectiveness of literacy and numeracy education programs provided to inmates. Another target of goal 17 is to increase completion rates for key treatment and intervention programs. In order to achieve this, the priority action is to review treatment and intervention programs to identify ways to increase completion rates. In order to achieve these goals in the context of Corrective Services NSW [CSNSW], this Government has made a commitment to enhance funding for education and vocational training programs in correctional centres over the four-year period from 2011-2012 to 2014-2015.

CSNSW will direct approximately \$8 million of the \$20 million enhancement towards the Intensive Learning Centre [ILC]. I have already gone into detail about that and I will not repeat it. An ILC offers a full-time—minimum of four hours in a class per day, five days a week—intensive learning program based on the Access to Education, Employment and Training framework [AEET], which is also delivered at TAFE. This framework leads to a certificate being completed in a six-month time frame. The program is expected to be new and innovative, based more on a therapeutic model in which the participants are required to take ownership of their learning progress. This also means there will be very high expectations on inmates in terms of engagement, attitude and behaviour. There is a set start and end date for the program and a fixed cohort of inmates who progress through the program until completion, working with the same specialist teachers.

**The Hon. SHAOQUETT MOSELMANE:** Attorney, has the Juvenile Justice budget been cut and, if so, by how much?

**Mr GREG SMITH:** I think it would be cut by the same figures as the other budgetary outfit of our division.

**The Hon. SHAOQUETT MOSELMANE:** And that is?

**Ms LO:** That is correct. The Juvenile Justice budget has been cut. In the current financial year we are required to make \$8.5 million in savings.

**The Hon. SHAOQUETT MOSELMANE:** How much was cut from Juvenile Justice?

**Ms LO:** It was \$8.5 million from the previous financial year.

**The Hon. SHAOQUETT MOSELMANE:** Have managers within Juvenile Justice been told to reduce expenditure, Attorney? If so, by how much?

**Mr GREG SMITH:** Again, I will pass that to Ms Lo.

**Ms LO:** Once again, we are required to make \$8.5 million across the organisation, and we are doing this by implementing a number of saving strategies, and we are also realigning our business due to the declining detainee numbers.

**The Hon. SHAOQUETT MOSELMANE:** Is there a reduction of labour expenses occurring within Juvenile Justice as well?

**Ms LO:** That is correct. That would apply right across government.

**The Hon. SHAOQUETT MOSELMANE:** What is the reduction in dollar terms, in particular labour terms?

**Ms LO:** The labour cap saving that we are supposed to achieve in the current financial year is \$2.041 million.

**The Hon. SHAOQUETT MOSELMANE:** How many jobs does that translate to?

**Ms LO:** As part of our savings initiatives, we are cutting approximately 113,114 jobs in the current financial year. More than 50 per cent of the positions we have targeted are vacant.

**The Hon. SHAOQUETT MOSELMANE:** Attorney, if the budget has been cut, can you explain why Budget Paper No. 3 shows a 3.1 per cent increase in expenditure for Juvenile Justice?

**Mr GREG SMITH:** No, I cannot. If Ms Lo cannot, we will take that on notice.

**Ms LO:** I think we will take that on notice. I do not have the budget paper in front of me.

**The Hon. SHAOQUETT MOSELMANE:** Would it be right to say there is other incorrect information in the budget paper?

**Ms LO:** I do not know. I will take that on notice.

**The Hon. SHAOQUETT MOSELMANE:** You will provide that information and other mistakes that could be in the budget paper?

**Mr GREG SMITH:** That it is a mistake is subject to your interpretation of course.

**Mr GLANFIELD:** Can I ask you to draw our attention to where you are referring to? It would help us in understanding the point that you have made.

**The Hon. SHAOQUETT MOSELMANE:** It is Budget Paper No. 3, which shows a 3.1 per cent increase.

**Mr GLANFIELD:** For community-based services, it shows total expenses reducing from \$70 million to \$68 million effectively. That is a reduction, as I see it. Anyway, we will take it on notice and come back to you.

**Mr GREG SMITH:** Can I say this in response to earlier questions from Mr Searle about magistrates, I have received some information. There have been six vacancies since the 2011 election. Of these, we have filled four. There are two current positions vacant. Of these, one position is currently awaiting finalisation of the recruitment process or selection, and one position will be filled in November, as agreed with the Chief Magistrate.

**The Hon. ADAM SEARLE:** A delayed appointment?

**Mr GREG SMITH:** Yes.

**The Hon. AMANDA FAZIO:** Minister, I wanted to talk to you about the prisoner escort service. Late last year, as you are aware, the Parsons review of the NSW Police Force recommended that responsibility for escorting prisoners be either transferred to Corrective Services or contracted out to the private sector. Police currently undertake this duty. Minister, are you planning to privatise or contract out prisoner escort duties?

**Mr GREG SMITH:** I think the matter is still under review.

**Mr GLANFIELD:** I am happy to answer that. We have engaged Deloitte's as consultants to review the whole of the transport of inmates and offenders, both adults and juveniles.

**The Hon. AMANDA FAZIO:** Can I ask you, what particular expertise does Deloitte's have in relation to this matter that you have to get them to make a decision for you, rather than make it yourself?

**Mr GLANFIELD:** No, it involves serious issues of rostering and economics to ensure—a bit like a transport system—that you move people efficiently from one place to another as they are needed. Deloitte's, in fact, were the consultants who did work for the Victorian Government and have experience in this area. We engaged them because they had a track record of having looked very closely at this particular area. It is extremely complicated. At the moment, we have police transporting people, we have Corrective Services transporting people and Juvenile Justice transporting people. We have charter flights that are needed because of rostering arrangements, so we have asked them to do a review. That does not mean we just automatically accept their recommendations. We have asked them to review the whole area and come to us with recommendations about how we can make it work more efficiently. It is not finalised yet. We do not have the final report. When we do, we will be looking at it and consulting, and then we will be putting proposals to the Minister.

**The Hon. AMANDA FAZIO:** In relation to that, Minister, I would like to ask you, would you be comfortable with having an Ivan Milat or Bassam Hamzy being driven around by a bunch of private security guards, because that is the reality of what would happen if the prison transport service is privatised, is it not?

**Mr GREG SMITH:** I do not know if my comfort is such an important thing; it is whether it is—

**The Hon. AMANDA FAZIO:** How about the community's comfort?

**Mr GREG SMITH:** Well, if the community are kept safe and assured, I do not really see why private people could not do the job as well as prison officers, but I am not pushing one way or the other. I prefer, as often as possible, to use experienced prison officers to do these jobs.

**The Hon. AMANDA FAZIO:** Given that the department already has some special arrangements in place for the transport of high-risk prisoners in terms of special vehicles, would you not concede that these people must be treated with the greatest care, given the risk that they pose to the community, and the lack of community confidence in the regulation of the private security system is such that you could not be sure the community would be safe and could be confident they would be safe if a private service were ferrying these sorts of people around the State of New South Wales?

**Mr GREG SMITH:** If the prison vans are secured and opportunities for escape are low, I do not know whether it makes a real difference as to who is driving. Usually it is just a driver and passenger, as I understand it. But I agree that the public are concerned, and I am concerned to ensure that any high-risk prisoners do not escape, do not self-harm or do not harm others who might be in the same van—although I believe they are kept separate in little mini cells, as it were. We certainly have upgraded the safety aspects for prisoners in prison vans. Since we have been in government improvements have been made following the unfortunate case of the man who died of a heart attack en route. Prison vans now have a lot more safety arrangements: water and food are provided en route, provided the journey is more than two hours I believe, and checks are made from time to time. We have done that, but prison vans are very secure. Of course, if there were some organised attempt to help people escape, we would hope that the security was good enough to resist that too with police back-up.

**The Hon. AMANDA FAZIO:** That brings me to another point. If the service were privatised would private security guards have the same powers as police with respect to the use of force? If not, would that not then make those transfers more vulnerable?

**Mr GREG SMITH:** I am not sure whether prison officers at the moment have the same powers as police. People can be made special constables and they can be given additional powers if they do not already have them. I see your point and I agree that we have a duty to the community to safeguard it as much as possible and as best we can.

**The Hon. AMANDA FAZIO:** My next question relates to the Corrective Services liaison and media unit. How many positions currently are in the commissioner's media unit?

**Mr GREG SMITH:** I will pass that question to the commissioner.

**Mr SEVERIN:** Currently, there are three positions, two of which are filled and the third one is going to be advertised shortly.

**The Hon. AMANDA FAZIO:** How many other media, communications or public relations staff are employed in Corrective Services?

**Mr SEVERIN:** Only one other person is employed to provide internal communications and they are the only people who deal with communications and the media.

**The Hon. AMANDA FAZIO:** Have any staff in the commissioner's media unit or have any other Corrective Services media, communications or public relations staff been transferred to other divisions within the Department of Attorney General and Justice?

**Mr GLANFIELD:** Not that I am aware.

**Mr GREG SMITH:** Nor me.

**The Hon. AMANDA FAZIO:** I might put some more questions about that on notice. I have one further question in relation to a matter I find quite disturbing, that is, the duty of care for prisoners. Why would a young man who is placed into a Corrective Services facility and is attacked by another prisoner, losing his front teeth in the process, be released on parole without having that rectified when he obviously has a criminal record after having served time? Who on earth will employ that person when his front teeth have not been restored after being assaulted in jail? Why was that not rectified before the person was released?

**Mr GREG SMITH:** I will have to take that question on notice, unless Mr Severin knows.

**Mr SEVERIN:** I am certainly not aware of the case. I could make some very general comments. Of course, dental services are provided through Justice Health. We have very comprehensive procedures in place to ensure that the transition of inmates from custody into the community is well managed and facilitated. Those matters should be taken care of, provided there is sufficient time and no other reasons prevent these medical treatments from being carried out. I am certainly prepared to have a look at that. I am not aware of that case. It most probably happened before my time, but we can take that question on notice.

**The Hon. ADAM SEARLE:** Attorney, how many full-time equivalent staff are currently employed in Corrective Services NSW?

**Mr GREG SMITH:** Mr Severin will answer that question.

**Mr SEVERIN:** As at 30 June 6,373.58 full-time equivalent staff were employed by Corrective Services.

**The Hon. ADAM SEARLE:** How do you get 0.58 of an employee?

**Mr SEVERIN:** That is the full-time equivalent. So we are talking about part-time staff and that is a mathematical issue obviously.

**The Hon. ADAM SEARLE:** I understand. How many staff positions have been cut from Corrective Services since 1 July 2011?

**Mr SEVERIN:** I can give you the figure of those voluntary redundancies that have been effected during the past financial year and up to 5 October.

**The Hon. ADAM SEARLE:** Sure.

**Mr SEVERIN:** I would have to take on notice the detailed question in relation to how many net position reductions there were.

**The Hon. ADAM SEARLE:** I am happy for you to take that on notice.

**Mr SEVERIN:** We have had 453 staff accept a voluntary redundancy and that was 403 up to 30 June and 50 since then. Up to 5 October, eight voluntary redundancy assessments are pending.

**The Hon. ADAM SEARLE:** How many of those positions were located at Berrima, Parramatta, Kirkconnell and Grafton jails? I am happy for you to take that question on notice.

**Mr SEVERIN:** The vast majority of those would have come out of those three prisons.

**Mr GREG SMITH:** The first three.

**Mr SEVERIN:** There is then an additional number of voluntary redundancies resulting from phase one of the Hamburger review, a knowledge consulting review that was undertaken of Corrective Services last financial year.

**The Hon. AMANDA FAZIO:** A fair percentage of Indigenous prisoners were at Kirkconnell and many of them were transferred to Windsor. That means there is no provision for their families, who were able to visit them in Kirkconnell, to get down to Windsor. It has made it difficult for them to keep their family contact arrangements. Given that that was one of the prime recommendations of the Royal Commission into Aboriginal Deaths in Custody, what arrangements have you made, or will make, to ensure that some transport assistance is provided to the families of those prisoners so that they are not isolated from their families due to being transferred to Windsor?

**Mr SEVERIN:** I can make some general comments. I need to take on notice the detail of that question in relation to the impact of the closure of the Kirkconnell Correctional Centre. Consistent with the recommendations of the royal commission, we obviously endeavour to place Aboriginal prisoners and, indeed,

non-Aboriginal prisoners, as close as possible to their place of origin or where their families are. At times that proves to be very difficult, particularly when we have security matters that need to be considered or given high consideration. That limits the ability to place prisoners in a number of facilities. That principle is very strong and certainly since I commenced in early September I review the recommendations from the Serious Offender Review Council. It makes placement recommendations very much based on those considerations. I have a high degree of confidence in that continuing to be a guiding principle. I have just been provided with advice that funding is available to support families without means to visit prisoners, the details of which I am happy to provide in due course.

**Mr GREG SMITH:** I would like to add something to an earlier answer about private contractors. Private contractors of the company affiliated with GEO have been given all the powers of correctional officers under the Crimes (Administration of Sentences) Act 1999 and that includes the use of force. If the escort service were given to private companies, obviously that could be used too. I am not saying it will. I just thought I would add that.

**Mr DAVID SHOEBRIDGE:** That is in current private prisons?

**Mr GREG SMITH:** They run the private prison. This is in other prisons for perimeter security.

**The Hon. ADAM SEARLE:** As part of your Government's nearly \$30 million of budget cuts to offender programs and custody management, has funding been reduced for addiction programs, aggression and violence programs, employment programs, drug treatment, mental health services or therapeutic treatment for violent and sexual offending? If yes, how much from each?

**Mr GREG SMITH:** As far as I am aware, no. They have been kept intact.

**The Hon. ADAM SEARLE:** As part of those budget cuts, have there been or will there be reductions in any of the following staffing positions: psychologists, counsellors, social workers, mental health specialists, other medical staff or teachers and trainers?

**Mr SEVERIN:** There are no plans to reduce any of those specialist functions. I cannot talk about health professionals because we do not employ them. We need to identify where we place staff. With the commissioning of Cessnock Correctional Centre, for example, in all likelihood we will need to transfer some expertise because they are highly specialised staff who provide specialist programs. We cannot simply recruit someone and have that person run these programs. In all likelihood there will be a redistribution of resources. If there is a reduction in offender numbers or other opportunities to achieve more effective outcomes arise, they will also be examined. One of the initiatives implemented before my time identified whether we could have a more generic specialist staff member rather than a welfare officer, a drug and alcohol officer and so on. We could combine those skills in one person rather than duplicate those positions. That would enhance services rather than do away with those very important resources.

**The Hon. ADAM SEARLE:** What is the projected net reduction in employment in Corrective Services over this budget year?

**Mr SEVERIN:** Net employment of specialist staff?

**The Hon. ADAM SEARLE:** Is there projected to be a net reduction in staff?

**Mr SEVERIN:** I will take that question on notice.

**The Hon. ADAM SEARLE:** Has the number of staff allocated to the Custody Based Intensive Treatment Program, known as CUBIT, been reduced?

**Mr SEVERIN:** Not to my knowledge.

**The Hon. ADAM SEARLE:** If that changes, please advise the Committee. How many inmates are currently participating in that program?

**Mr SEVERIN:** We had about 65 completions of the program last financial year. The CUBIT program is being run at Long Bay and Parklea prisons. It will be run at Cessnock in a dedicated unit.

**The Hon. ADAM SEARLE:** How many inmates are involved?

**Mr SEVERIN:** The average number of prisoners in each program is 12 and we are running four programs each year in each of those locations. I understand we are running two programs at Long Bay and one at Parklea. There is an annual program for deniers, which is governed by Serious Offenders Review Council decisions. There are also maintenance programs for those who have completed the program to ensure that the effect is maintained and hopefully strengthened.

**Mr DAVID SHOEBRIDGE:** Mr Severin, I was asking questions about the improvement notice issued to Lithgow Correctional Centre. What were the terms of the improvement notice?

**Mr SEVERIN:** I do not know.

**Mr DAVID SHOEBRIDGE:** Do you accept that there was nothing particularly unusual about the environment for smoking in Lithgow Correctional Centre as opposed to other jails throughout New South Wales?

**Mr SEVERIN:** Again, I am not entirely familiar with the physical layout of every facility at this time. As I said, smoking in enclosed spaces, and particularly in cells, is a concern. Like a number of other jurisdictions, we are actively looking at a feasible way forward to eliminate smoking in prisons in this State. New Zealand has implemented a successful model that has been referenced in that context. I would like to think that at some stage we will have a completely smoke-free system. That is a very ambitious target and I am satisfied that we have made a start. We are certainly committed to continuing that process. The Cessnock industrial unions have unanimously decided to approach us to see whether we can create a smoke-free environment at that facility. It is a very constructive move and it also obviously addresses occupational health and safety concerns.

**Mr DAVID SHOEBRIDGE:** Have you had ongoing negotiations with representatives at other facilities about having smoke-free prisons in New South Wales?

**Mr SEVERIN:** There have been discussions, and only this week I met with two executives of the Prison Officers Vocational Branch and the union organiser. They represent the vast majority of our officers. Without going into the detail of the discussions, it is clear that they are keen to consider a measured and structured approach to turning our facilities largely into non-smoking environments.

**Mr DAVID SHOEBRIDGE:** Minister, are you aware that the injury rates of Corrective Services officers are comparable with the injury rates of police officers as assessed by WorkCover New South Wales?

**Mr GREG SMITH:** No.

**Mr DAVID SHOEBRIDGE:** I ask you to assume that that is true. Given that, is the Government or the department considering any death and disability scheme to assist injured Corrective Services officers given the recent cuts to their workers compensation entitlements?

**Mr GREG SMITH:** I will take that question on notice.

**Mr DAVID SHOEBRIDGE:** Has the Government or the department reviewed the Computers in Cells Program that has been implemented at the Alexander Maconochie Centre in the ACT?

**Mr SEVERIN:** I am aware of the program. Of course, the Alexander Maconochie Centre is a very new facility that has been cabled to allow for that access. We are somewhat limited in that regard in the majority of our facilities. However, I have been advised that our new facilities have the technical ability to achieve that. More importantly, we are introducing kiosk arrangements that enable inmates to access their personal details. In the future they will also be able to access information about their trust accounts, their buy-ups and their program schedule. I have also been advised that we are commencing a trial of computers in cells at the South Coast Correctional Centre.

**Mr DAVID SHOEBRIDGE:** That is the Nowra facility, which is wired for it.

**Mr SEVERIN:** Yes. Personally I think that we should have a very open approach to new technology. That being said, there are some significant risks and they must be very carefully managed. The technologies already being used at Nowra are an enhancement of what we are doing.

**Mr DAVID SHOEBRIDGE:** When is that trial due to commence, or has it already commenced?

**Mr SEVERIN:** My advice is that we are about to commence it.

**Mr DAVID SHOEBRIDGE:** Can you provide some details on notice?

**Mr SEVERIN:** Certainly.

**Mr DAVID SHOEBRIDGE:** Is it intended to conduct a similar trial or to implement a similar service at the soon to be opened Cessnock facility?

**Mr SEVERIN:** If we are doing a trial at Nowra and it is successful, there would be no reason not to extend it to the facilities where we have those cabling arrangements.

**Mr DAVID SHOEBRIDGE:** You are aware that the ACT is about to commence a needle exchange program at the Alexander Maconochie Centre.

**Mr GREG SMITH:** I have read that.

**Mr DAVID SHOEBRIDGE:** Minister, have you or the department had any contact with Australian Capital Territory prison authorities regarding the proposed needle exchange program?

**Mr GREG SMITH:** I have not but maybe the department has.

**Mr SEVERIN:** I have but not in my capacity as Commissioner in New South Wales. I am a longstanding member of the Correctional Services Administrators Council and we have taken a clear and careful note of what the Australian Capital Territory has done. My current advice to the Attorney General would be that we should not engage in a needle exchange program, because I believe that there are significant occupational health and safety risks. Also, it is incompatible with the objectives of a correctional facility in relation to keeping those implements out that facilitate the use of illicit substances—one of the most significant problems we are having in our systems right across the globe.

What we are doing is providing a very strong detection system through upgrades of our access control, through preventing drugs from coming in through the use of intelligence and also treatment. The Attorney General alluded to that in relation to the government initiative we are implementing at John Maroney and Dillwynia. We continue to exchange our experiences across Australia but currently certainly my advice would be not to plan for such a trial.

**Mr DAVID SHOEBRIDGE:** Is Corrective Services successful in stopping prisoners in New South Wales who are addicted to drugs getting access to needles at present? Does it work?

**Mr SEVERIN:** I believe that we have a system that is consistently improving through the introduction of better technology on our gatehouses, the use of X-ray facilities, the use of better metal detection facilities plus also our searching where we detect and prevent those implements coming into Corrections.

**Mr DAVID SHOEBRIDGE:** Does it work? Do you prevent prisoners—

**Mr SEVERIN:** I do believe that works. However, do I think that we do not have needles in our system? No, I do not believe that. Do I believe that we will ever be in a position that we can say with 100 per cent certainty that we have eliminated those kinds of paraphernalia and implements coming into the system? In all likelihood not. However, that does not mean that we will not continue to improve the way we prevent those type of implements coming into prisons. We are going to be relentless in pursuing that at the same time as we acknowledge the fact that we need to assist offenders in addressing their illicit drug problems. We are doing that through those programs that we know work.



**Mr DAVID SHOEBRIDGE:** If the Australian Capital Territory program is successful in terms of no injury or significant risk of injury to prison officers, a reduction in drug use and an improvement in prisoner health, would your Government consider reviewing those outcomes and adopting a similar program?

**Mr GREG SMITH:** I am sure we will always have an open mind about the programs but the number one priority has to be to protect prison officers, visitors and other prisoners from attack, and using needles is certainly a form of attack that has been used in the past and that is something we are conscious of.

**Mr DAVID SHOEBRIDGE:** Clearly it was in the past. That is in the context of no needle exchange and the current and no doubt future laws prohibiting the ownership of needles. Past attacks cannot be explained on needle exchange, can they?

**Mr GREG SMITH:** No, not on a needle exchange program. We will keep an open mind on all these things.

**Mr DAVID SHOEBRIDGE:** Would it not be safer for corrective services officers if the prison population had a lower prevalence of hepatitis C and they were far less likely to face dirty needles in any exchange or confrontation with prisoners?

**Mr GREG SMITH:** There are other things that can be on needles, other infections. A prisoner officer died from an AIDS-related illness some years ago after he was attacked by a prisoner. I gather the prisoner was convicted of murder or something of that sort. That is a great concern I have. I do not know that prisoners can be expected to have best behaviour rules and that they will not use anything for a weapon, on occasions, that they can get their hands on. If you go to see any prison you will see a little museum out the front where they show the shivs and other weapons made out of things like toothbrushes that have been seized in recent times.

**Mr DAVID SHOEBRIDGE:** Prisoners are already getting their hands on needles throughout New South Wales prisons and the current ban has not been effective, has it?

**Mr GREG SMITH:** Crime is committed every day despite all the resources we put into it. We do our best and we are improving, as the Commissioner has said. We are trying to improve. Human failings will always add a threat to prison officers. I do not think it will ever be a totally safe environment.

**Mr DAVID SHOEBRIDGE:** Minister, what is the current policy, if there is one, on taser use in New South Wales prisons?

**Mr SEVERIN:** We do not use tasers at this point in time.

**Mr DAVID SHOEBRIDGE:** Is there any consideration or planning for the use of tasers in New South Wales prisons?

**Mr SEVERIN:** Not at this point in time.

**Mr GREG SMITH:** I have spoken out against that myself.

**Mr DAVID SHOEBRIDGE:** In terms of prisoner welfare and lowering recidivism rates, do you accept that one of the important features is prisoners maintaining a connection with family members while in jail?

**Mr GREG SMITH:** I agree with that.

**Mr DAVID SHOEBRIDGE:** What policy does Corrective Services have at the moment in terms of encouraging those family connections through family visits in Corrective Services facilities?

**Mr SEVERIN:** I will give you a general answer to start off with. Every correctional facility has visiting facilities and families are encouraged to visit on designated visiting days. As an inmate progresses through the classification system to lower level facilities those visits become far more extensive and they include family days. For example, the graduation ceremony of those inmates who participated in the intensive drug treatment program involves their families. They were proud of the achievements of their family member in

this program—they were inside the prison—and similar type of arrangements exist right across the State, particularly for women and their children.

There is an extensive program ensuring that female offenders have access to their kids and even a program when kids can come in during school holidays and stay with their mums for periods of time. There is a very clear acknowledgment that the maintenance and the strength of the family unit are absolutely essential for successful reintegration. As people progress through the system that bond and relationship are strengthened through operational arrangements.

**Mr GREG SMITH:** There is a group called SHINE for Kids, which the department has close relations with, that has a number of homes close to jails for parents to come and stay. Also they use remote video conference facilities in case people are too far away too travel so they can see each other face to face and talk to each other.

**Mr DAVID SHOEBRIDGE:** Has your Government maintained the level of funding to SHINE?

**Mr GREG SMITH:** Yes, I believe we have.

**Mr DAVID SHOEBRIDGE:** In terms of the screening of prisoners, in what circumstances does Corrective Services employ their own sniffer dogs or police sniffer dogs to screen visitors to Corrective Services facilities?

**Mr SEVERIN:** We have a dedicated passive alert drug dog unit and they do have a systematic approach to screen visitors—obviously on a non-announced basis. That is based on the available intelligence and other matters that are carefully considered. Obviously, the passive alert drug dogs are the small dogs that are not aggressive and all they do is they indicate that somebody may have been in touch with drugs.

**Mr DAVID SHOEBRIDGE:** What are they trained to do when they indicate a person is in possession of drugs?

**The Hon. CHARLIE LYNN:** Wag their tail.

**Mr SEVERIN:** Again, I can answer that in general terms. I am absolutely certain that there is no difference in New South Wales to what we have in the Customs Service or any other jurisdiction. Generally they are Labradors or similar dogs. The dog indicates by sitting down and by being extremely friendly. When the dog is really nice to someone, he or she is in trouble.

**Mr DAVID SHOEBRIDGE:** Would you be disturbed by reports that Corrective Services officers used sniffer dogs at the Wellington correctional facility and encouraged the dogs to jump and bark at visitors seeking to visit their family members? They use the fact of a dog barking and jumping at a person as a positive indication of the possession of drugs. Would that disturb you?

**Mr SEVERIN:** It would certainly be a matter of concern if a dog makes physical contact with a visitor.

**Mr DAVID SHOEBRIDGE:** In fact, being encouraged to do so by a Corrective Services officer?

**Mr SEVERIN:** Yes, that would be a matter of concern.

**Mr DAVID SHOEBRIDGE:** Would that be a breach of policy?

**Mr SEVERIN:** It would be a breach of policy.

**Mr DAVID SHOEBRIDGE:** Do you have any protocols in place to keep an eye on and observe the operation of the sniffer dog unit?

**Mr SEVERIN:** That unit is always observed when it conducts its business. Obviously that group is very highly trained and it has a strong supervisory arrangement because we need to keep up the accreditation of those dogs. The dogs have to continue their training throughout their active life in the service in order to maintain the integrity of what they are supposed to do. That type of behaviour, if indeed it occurred, would be unacceptable.

**Mr DAVID SHOEBRIDGE:** Is it an appropriate circumstance to prevent a family member who has travelled for four or five hours from Sydney to Wellington from visiting his or her father or partner when there has been a so-called positive indication from a sniffer dog, followed by an intrusive and full search that identified that no drugs were present? Is that an appropriate circumstance in which to refuse family visitation rights?

**Mr GREG SMITH:** No, I do not think it is appropriate.

**Mr DAVID SHOEBRIDGE:** Is there any oversight by the department of the individual reasons given by managers of Corrective Services facilities to refuse visitation?

**Mr GREG SMITH:** I do not know that.

**Mr SEVERIN:** There would be oversight within the facility. In order to exercise that oversight you need to have the delegated authority to do so. In addition to my answer to your previous assertion relating to the Wellington incident, the Professional Standards Unit of the department would deal with those types of matters and not only would review them through an investigation but also would take any action required to address any misconduct by staff. We have a crime prevention function in our Security Intelligence Unit, of which the dog group is a part, and we also have a separate unit that conducts independent investigations. It has a police component attached to it for those types of alleged breaches that may have criminal conduct involved. There is quite a significant degree of governance around those types of follow ups when we become aware that there might have been a breach of procedure, policy or indeed the law.

**Mr DAVID SHOEBRIDGE:** Is it lawful for Corrective Services officers to demand a strip search of a 16-year-old girl who is visiting a Corrective Services facility following a so-called positive indication from a sniffer dog?

**Mr SEVERIN:** I would have to take that question on notice because it is subject to a policy. General practice would indicate that we would not strip search underage people. I have just been advised that any strip search of visitors can be carried out only by police and not by Corrective Services officers.

**CHAIR:** Once again Government members have decided to forego their second round of questioning. I thank the Attorney and his officers for their attendance this afternoon.

**(The witnesses withdrew)**

**The Committee proceeded to deliberate.**

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