

TON 1

The Hon. DAVID CLARKE: Minister, does the department keep records of the number of appeals from each Local Court to the District Court or other courts?

Mr BOB DEBUS: I think the most accurate answer is that the department does not keep them in an easily accessible form but would be able to identify, with the assistance of court staff, the number of appeals that there had been in any particular jurisdiction.

The Hon. DAVID CLARKE: Would you be able to obtain those figures for us?

Mr BOB DEBUS: Yes, we would.

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

Mr BOB DEBUS: Yes. Are you able to make your request with a little more precision?

The Hon. DAVID CLARKE: We are looking for the number of appeals from the Local Court to the higher courts.

Mr BOB DEBUS: Both criminal and civil?

The Hon. DAVID CLARKE: Yes.

Mr BOB DEBUS: We can obtain those figures. I am not sure whether we could do it in 21 days but we can get them.

The Hon. DAVID CLARKE: Do you keep such records in relation to magistrates? Do you have a record of how many appeals there are from each magistrate in New South Wales?

Mr BOB DEBUS: That analysis would take longer. I could not be precise about how long it would take, but I imagine it is possible to identify the magistrates from whom appeals have been made to the District Court.

The Hon. DAVID CLARKE: Would you agree that they would be fairly important figures to give an indication as to whether some magistrates have far greater appeals from their decisions than others?

Mr BOB DEBUS: Not in such a simple fashion. I would want to know more than the mere number of appeals. I would need to know about the nature of the cases that were being appealed. For instance, some sorts of criminal cases will attract appeals much more systematically than many other kinds of hearings. Indeed, Mr Glanfield has reminded me that it has not been the practise of the courts to regard the number of appeals from a magistrate to be an appropriate measure of performance by themselves.

The Hon. DAVID CLARKE: But it would be an indication of competency, would it not? It would show whether particular magistrates had a large number of appeals which were upheld, based on errors of law or inconsistency in sentencing, for example.

Mr BOB DEBUS: I do not think you can in any way automatically draw that conclusion. You need a much more complex analysis than that to judge the performance of an individual judicial officer.

The Hon. DAVID CLARKE: But the number of appeals would be a good starting point, would it not?

Mr BOB DEBUS: I cannot say that it would. I cannot say on the basis of mere numbers alone that it would be a good starting point.

The Hon. DAVID CLARKE: But it would be an important factor.

Mr BOB DEBUS: It would be a factor. I have received a note to tell me that magistrate-specific information concerning appeals is not readily available, that general statistics about appeals will be, but here is an example for you. You would have to talk about not only the numbers of appeals but the numbers of appeals that were upheld. For instance, if a particular magistrate had a number of appeals against him, all of which were dismissed by the District Court, obviously you would be looking at a circumstance where no free-minded person would be suggesting that it was evident that the magistrate made a lot of mistakes.

The Hon. DAVID CLARKE: But it would be important to show if there were a large number of appeals that were being upheld, taking into account that there are particular types of matters that may be more complex and may be generally matters that may be upheld.

Mr BOB DEBUS: I am not sure that I can add to the observations I have already made. It is clear that the raw numbers of appeals, which are not immediately available on the basis of the numbers of appeals from a specific magistrate, are proof of much at all. On the other hand, if one wants to complain about the performance of a magistrate, that may be done in New South Wales, as it may not be done anywhere else in Australia, by a reference to the Judicial Commission.

The Hon. DAVID CLARKE: But you will endeavour to get those figures.

Mr BOB DEBUS: I think I have indicated that I have had information to suggest that it will be extremely difficult to produce figures which relate the numbers of appeals to specific magistrates. It will be difficult to provide appeals that are tied to each individual magistrate, but it will be possible to provide overall figures of appeals.

Answer:

In the 2005/2006 financial year, 185,164 criminal matters were finalised in the local court. During the same period 11,595 appeals (6.2 per cent of matters finalised) were lodged against the severity of the sentence imposed. Appeals over the adequacy of sentences were sought on 44 occasions to the District Court (0.02 per cent of matters finalised). A further 2,425 appeals (1.3 per cent of matters finalised) were lodged against the conviction recorded by a magistrate where the appellant had entered a plea of not guilty.

In the 2005/2006 financial year magistrates heard and determined 15,739 defended civil matters. During the same period 189 applications (1.2 per cent of matters finalised) were made to the Supreme Court for review of a magistrate's decision in the civil jurisdiction. Appeals or applications from a magistrate's decision in the civil jurisdiction cannot be made to the District Court.

TON 2

The Hon. DAVID CLARKE: Can the Minister provide to this Committee records of the number of magistrates, both casual and permanent, allocated to each courthouse?

Mr BOB DEBUS: Of course you understand that the number of magistrates goes up and down.

The Hon. DAVID CLARKE: Yes.

Mr BOB DEBUS: The number of magistrates will reflect complex changes in the movements in the way in which matters are filed. I suppose information of a general nature could be provided about the numbers of magistrates who were at an individual courthouse in a general way, but I think it would presumably take a massive amount of analysis to give the information in the form that you have just sought it—a lot longer than 35 days—because there will be a different disposition of magistrates across the courts of New South Wales on every single court sitting day.

The Hon. DAVID CLARKE: Can you endeavour to get the information as best you could, maybe in some more simplified form?

Mr BOB DEBUS: Yes.

Answer:

The Chief Magistrate continually reviews the sitting arrangements of local courts throughout New South Wales to ensure the maximum use of judicial resources.

There are currently 135 magistrate positions that sit at 154 locations across the state. They service:

- 21 metropolitan local courts
- 5 metropolitan children's courts
- 3 children's courts regional circuits
- 37 local court regional circuits
- 2 coroner's courts
- 1 licensing court
- the Administrative Decisions Tribunal
- 1 mining warden court

TON 3

The Hon. DAVID CLARKE: What education does the department provide to magistrates who experience a high number of successful judicial appeals, especially where there are suggestions of errors of law or inconsistency in sentencing?

Mr BOB DEBUS: That depends on the individual case. Arrangements can be made through the Judicial Commission and the Australian Judicial Institute of Administration. There are systems of committees, conferences and seminars. There are bench books provided, which of course give guidance to magistrates on how to conduct individual kinds of cases. Presumably from time to time there is a degree of counselling by senior magistrates of those with less experience. There is a permanent process of judicial education, overseen by the Chief Magistrate and the Judicial Commission.

The Hon. DAVID CLARKE: It is an important matter when magistrates are experiencing an abnormally high number of successful appeals against their decisions. Can you take that question on notice and at least give us some broad outline of the various avenues that are used to deal with this problem?

Mr BOB DEBUS: Yes. Reminding you that anybody who has a particular complaint against any judicial officer may submit it to the Judicial Commission.

The Hon. DAVID CLARKE: But there will, I assume, from time to time be magistrates who stand out as having had an abnormally high number of their decisions overturned?

Mr BOB DEBUS: I think I already indicated to you that the mere number of appeals is not proof of very much one way or the other.

The Hon. DAVID CLARKE: I am talking about successful appeals.

Mr BOB DEBUS: Yes, but what is your question though?

The Hon. DAVID CLARKE: Could you provide us with an outline of the various avenues used by the department to educate magistrates who do have an abnormally high or unacceptable level of decisions overturned?

Mr BOB DEBUS: Yes. I am responding to the fact that in some sense that is a loaded question.

The Hon. DAVID CLARKE: I am sorry, it is not meant to be.

Mr BOB DEBUS: But I have already indicated to you that within a reasonable time we can provide a general account of the way in which judicial education is carried out in a continuing fashion.

The Hon. DAVID CLARKE: Is that continuing education in respect of all magistrates or particularly regarding magistrates who have a high level of appeals against their decisions upheld?

Mr BOB DEBUS: Well, one half of that question, again, is loaded. I am saying to you that there are a range of measures that are calculated to assist magistrates to do their jobs better.

The Hon. DAVID CLARKE: So, there would be continuing education for all magistrates and there would be other special programs available to those who have an abnormally high number of appeals against their decisions upheld? Would that be the case or not the case?

Mr BOB DEBUS: I think I have dealt with this a number of times. There are processes for education of a general sort which in the particular case may well assist the magistrate who has had a particular difficulty of one sort or another. In my experience the Chief Magistrate, whoever it may be, pays the closest attention to the general conduct of the court and will respond as he or she thinks necessary in circumstances in which there is some degree of concern expressed by the profession or whoever it may be.

The Hon. DAVID CLARKE: But you are going to give us a broad outline of what those avenues are?

Mr BOB DEBUS: I am.

Answer:

The Judicial Commission of New South Wales provides magistrates with an ongoing extensive program of education in relation to sentencing matters.

Every new magistrate undergoes induction and orientation. They are also paired with an experienced magistrate who serves as a mentor, providing useful, informal and immediate practical assistance. A residential orientation program is conducted for all new magistrates with between 5-18 months experience. This training is highly practical and includes a number of exercises dealing with decision-making, sentencing, judicial ethics, judicial administration and conduct.

A comprehensive set of reference materials is provided to assist magistrates in the performance of their judicial functions. This material includes a bench book, a loose-leaf service that contains material of practical assistance and keeps magistrates informed about significant changes to the law, trial practice and procedure.

In addition to induction or orientation training, each magistrate attends at least five days of educational programs each year.

Research and education monographs, bulletins and journals are regularly published on topics including criminal law, sentencing, judicial administration, practice and procedure and social context issues.

All magistrates have access to the on-line Judicial Officers Information Research System (JIRS), a judicial support system developed by the Commission. This system contains case law, legislation, principles of sentencing and sentencing statistics. The provision of JIRS is one of the Judicial Commission's main strategies to achieve a consistent approach to sentencing in New South Wales.

TON 4

The Hon. DAVID CLARKE: Mr Glanfield, how many chamber magistrates were there in 2003?

Mr GLANFIELD: I do not have that information. I will have to take that on notice.

The Hon. DAVID CLARKE: Does anyone else here have that information?

Mr GLANFIELD: Can I just say in relation to the chamber magistrates, many of the chamber magistrates also hold appointment as the registrars of the court, so it is a dual appointment. In many of the country courts the registrar is registrar and chamber magistrate. We have a number of chamber magistrates in the specific position in some of our larger courts, but I do not have that number in front of me.

The Hon. DAVID CLARKE: Could you take that on notice and get that information for us?

Mr GLANFIELD: Yes.

The Hon. DAVID CLARKE: Do you know how many chamber magistrates there are now?

Mr GLANFIELD: I will have to do the same, take it on notice.

Answer:

In 2006 Chamber Magistrate's (now Chamber Registrar's) services were available in 127 locations.

TON 5

The Hon. DAVID CLARKE: Mr Glanfield, what is the total amount of money spent during the financial year 2002-03, and the years 2003-04, 2004-05 and 2005-06 on the refurbishment of the director general's office and surrounding offices in the Goodsell Building?

Mr GLANFIELD: I think I can safely say zero dollars.

Mr BOB DEBUS: Nothing.

Mr GLANFIELD: Can I take it on notice and check, but I would almost be certain it is zero. It has hardly changed in 10 years.

Answer:

There has been no money spent on the refurbishment of the Director General's Office during this period. In the 2002/2003 financial year minor works were undertaken to provide nearby offices for the Assistant Directors General. A total amount of almost \$9,000 was spent on this refurbishment including the purchase of furniture.

TON 6

The Hon. DAVID CLARKE: Mr Glanfield, why have you failed to determine the shadow Attorney General's freedom of information application regarding the employment and treatment of Paul Cutbush?

Mr GLANFIELD: I have not.

The Hon. DAVID CLARKE: You say you have acted on that?

Mr GLANFIELD: You said I failed to determine it. I am saying I have not failed to determine it.

The Hon. DAVID CLARKE: Have you acted on it?

Mr GLANFIELD: I think you will find it is not a matter for me to determine. The officer who determines that is not me.

The Hon. DAVID CLARKE: Is it somebody in your department?

Mr GLANFIELD: That is right but they do not act under my direction. Under the legislation—

Mr BOB DEBUS: The Freedom of Information Act. By its terms.

Mr GLANFIELD: Effectively, I act as the internal appeal process against an unsuccessful applicant or an aggrieved applicant. But otherwise I am not aware of that matter.

The Hon. DAVID CLARKE: Can you find out?

Mr GLANFIELD: I do not know whether it would be proper for me to find out until it has been determined by that officer.

The Hon. DAVID CLARKE: Who is the officer?

Mr GLANFIELD: I would have to find out. A number of people hold the delegation.

The Hon. DAVID CLARKE: You will take that on notice?

Mr GLANFIELD: What do you want to know?

The Hon. DAVID CLARKE: Who the officer is who determines—

Mr GLANFIELD: Who determines that particular application? I am not quite sure. Is it appropriate that we should be dealing with a specific matter of that nature here? In any

event, can I simply say that it will be a senior officer who holds the delegation to deal with the matter independently of me. Once that determination is made—either positively or negatively—then it will be dealt with. I think there is an issue in relation to that matter about the breadth of the original request. I did see some documentation to the extent that the request was asking for every piece of paper relating to, I think it might have been, Mr Cutbush, which would have meant all his personal files and a whole range of things. I think the focus of the application was about the more recent publicity relating to his departure from the department. But that application needs to be dealt with on its merits, and I am sure it will be.

The Hon. DAVID CLARKE: But have you not written directly to the shadow Attorney General regarding that FOI application?

Mr GLANFIELD: I would have only done that because I was signing it on behalf of whoever the officer was involved, not because I was determining the matter.

The Hon. DAVID CLARKE: Well, you have taken responsibility for it by signing the letter.

Mr BOB DEBUS: You must understand that the Freedom of Information Act lays down procedures by which applications are determined. I would be extremely surprised if the department had not followed the requirements of the Act in making that determination.

The Hon. DAVID CLARKE: You will provide us with the name of the officer who—

Mr BOB DEBUS: No, what we will undertake to do is to provide information as appropriate about the procedure. I do not think it is at all reasonable that we should promise in this forum to give you the name of the officer.

Mr GLANFIELD: Can I simply say this: as best as I know the letters I signed were simply to clarify the breadth of the application. It in no way sought to determine or deny the application; it was more to make sure that what was being provided was really what was being sought. That will be determined—it has not been determined yet, I do not think—and I think the point really is that if there is a feeling of being aggrieved by that process people should just wait a bit longer until it is determined.

Answer:

The Department processes FOI applications in accordance with the provisions of the FOI legislation. When processing Mr Hartcher's application, the Department calculated that over 154 hours would be required to process this application that would result in a significant processing fee. The Department wrote to Mr Hartcher about refining the scope of his application and an advance deposit was requested. The Department did not receive a response from Mr Hartcher about the payment of a processing fee and the application was determined on 21 September 2006.

TON 7

Ms LEE RHIANNON: I refer to the anti-terrorist legislation. Have the preventative detention powers been used in New South Wales yet?

Mr BOB DEBUS: No, they have not.

Ms LEE RHIANNON: I refer to the Terrorism Legislation Amendment (Warrants) Act 2005. This Act introduced covert search warrant powers. How many have been issued and have they been executed?

Mr BOB DEBUS: I am not aware.

Ms LEE RHIANNON: Is that a question you need to take on notice?

Mr BOB DEBUS: You will hardly find this surprising in reality, but I do not carry around in my head the exact number of warrants issued by judges of Supreme Court of New South Wales for certain purposes.

Ms LEE RHIANNON: I am not trying to put you on the spot; I am simply trying to get through a few questions.

Mr BOB DEBUS: The reason I am hesitating is that I am not certain whether we will have all the details, especially whether we will have them straightaway. I am not sure of the circumstances in which such details are released under the legislation.

Ms LEE RHIANNON: Can you take the question on notice? If it is not a yes or a no, can you explain why?

Mr BOB DEBUS: Indeed.

Answer:

I am advised that no covert search warrants have been issued under the *Terrorism Legislation Amendment (Warrants) Act 2005*.

TON 8

The Hon. DAVID CLARKE: Mr Glanfield, did you issue a notice to your staff that stated there was no asbestos in the Goodsell Building and then after testing it was found that there was asbestos in the building?

Mr GLANFIELD: We are going back a while in relation to this, and my memory may not be perfect, but we have had a number of clear investigations done of the Goodsell Building and certificates have issued over time. There was an occasion when such a clear certificate had been given, which I relied on in letting staff know the position. Subsequently a worker discovered what may have been asbestos in a duct. We immediately told staff that it had been located, and we immediately undertook appropriate action to address that. Best as I understand, it was in fact discovered not to be a risk but nevertheless any asbestos is something we take seriously. It was in a closed area of the building. Subsequent to that we again secured a clear certificate.

The Hon. DAVID CLARKE: Are you saying that when you incorrectly advised staff that there was no asbestos you did so on the basis of a certificate that was supplied to you advising that there was no asbestos?

Mr GLANFIELD: I try to ensure that my staff are as aware as I am of the condition of their workplace. I take my occupational health and safety obligations seriously. I am only as good as the experts are. I am not an expert in the discovery, treatment or identification of asbestos in a building. So I rely, as I imagine any chief executive would, on the advice of my experts and the experts in the community. I simply say that, as best as I recall on this occasion, I did so. I informed the staff of the position in relation to the matter, and when the position changed I informed them of that as well.

Mr BOB DEBUS: That is an absolutely reasonable response. You could not ask for better than that.

The Hon. DAVID CLARKE: Following on from that situation, are you saying that when you advised the staff that there was no asbestos in the building you did so on the basis of scientific advice that had been given to you?

Mr GLANFIELD: First, I am not sure that the words you have put in my mouth are right. I would have to recall precisely what I said to staff. I think it is unlikely I would have said it in the way you have said it, namely, there is no asbestos in the building, given that in fact there is asbestos in the building but it has been treated and sealed. As you would know, if it is treated it does not mean that it has to be removed from the building, as long as it is rendered stable. So I do not think the first part of your question would have been what I did say to staff, so I guess the rest of the question does not follow. I am happy to refresh my memory and to advise you of what I did let the staff know, but I do not think anything turns on it. I would have acted simply as I said, on the expert advice that I had at the time, which would have involved an accredited asbestos certifier producing a certificate as to the presence or not of asbestos in the building following an audit.

The Hon. DAVID CLARKE: Will you supply us with a copy of the notice that you gave to staff advising whatever you did advise them regarding asbestos being in the building?

Mr GLANFIELD: I am happy to make it available if I still have it. I do not have it but the department may well have it.

The Hon. DAVID CLARKE: You will take it on notice. Will you also provide to us the scientific or medical advice you had at the time that you gave that notice to staff?

Mr GLANFIELD: I do not have a difficulty with that.

Answer:

The Director General issued three staff circulars concerning asbestos in the Goodsell building. The first two, dated 23 July 2004 and 2 September 2004, related to a specific incident where the Construction Forestry Mining Energy Union (CFMEU), representing members working on an adjacent building site, claimed that asbestos was present in the sealant between concrete panels of the façade of the Goodsell Building. The façade was tested for asbestos and the test results found no asbestos to be present. The staff circular of 2 September 2004 advised staff of the test results of the façade sealant, which was the subject of the original complaint by CFMEU.

The third circular dated 31 January 2005 advised staff of precautionary works being undertaken by a Workcover approved contractor outside of business hours to ensure the stability of materials containing asbestos within the building.

The Department advised the Public Service Association of the proposed works and invited them to participate in a consultative process.

TON 9

The Hon. DAVID CLARKE: What is the total amount so far spent on the CourtLink project?

Mr GLANFIELD: Page 66 of the infrastructure statement would show that as at 30 June our estimation was that we had spent \$13.9 million on CourtLink phase two.

The Hon. DAVID CLARKE: When was the promise that the program would be implemented?

Mr GLANFIELD: This matter has an interesting history and I think it best if I quickly summarise it. As the Attorney referred to earlier, New South Wales has the largest court jurisdiction in Australia, and during some early tendering for this project we discovered that it is probably one of the largest in the world. Most jurisdictions, for example in America, are county based, not State based. There was considerable difficulty in identifying a supplier originally who could develop a software system for the volume that we would have. We contracted with a company.

Mr BOB DEBUS: Ours is actually one of the largest court systems in the developed world.

Mr GLANFIELD: We contracted with a company that had subcontracted out the development of the software. That company, KAZ Computer Services, is a subsidiary of Telstra at the moment. It turned out, during the course of the development of this project, that KAZ formed the view that it could not deliver under the contract and that it needed, effectively, to redevelop the platform for the software. We negotiated then with KAZ. We could have taken action against it. We renegotiated a contract with it.

The new contract, which the Attorney General signed on 15 July 2005, now provides us with a \$25 million bond if KAZ fails to deliver in relation to the project. The original estimated cost of the project, some years ago, was \$41.5 million all up, for all the phases. The estimated cost now, notwithstanding that we have had certainly in excess of 18 months delay in the project, is estimated to be \$44.8 million. The difference of \$3.3 million is because we have now insisted, and are happy to pay for, much improved data security to prevent inappropriate Internet access, because the system will be able to provide online filing of documents and payment of filing fees. It will provide on-line access to court documents, but only those that the party accessing is entitled to access, and it will also provide services such as e-bulletins and the ability to do minor mentions by the Internet. So, the new extra functionality has cost us a little bit more to add.

We have also spent a little bit more of that money, which is the difference, developing better interfaces with other justice sector agencies such as police, the Director of Public Prosecutions and Legal Aid. So, we are getting a far, far better product for pretty much exactly the same price we originally sought in the tender some years ago.

Mr BOB DEBUS: It is worth emphasising this point: That under the new contract signed last July 12 months, there are three points in the proposed schedule of delivery at which, if the system fails to pass a test that Mr Glanfield will design the company will pay up to \$25 million to the department. I never heard of such an arrangement before but it is a kind of insurance policy of an especially gratifying nature.

Mr GLANFIELD: We already have it working in the Supreme Court, in corporations and possessions matters. I was at a meeting of the regional presidents of the Law Society the other day, where the Parramatta regional president said it was the best thing he had worked with. We now have over 1,500 documents that have been filed electronically in the system. We have already delivered in that area and during the course of next year we will be delivering for Supreme Court and District Court crime and then for the civil system before the end of the year.

The Hon. DAVID CLARKE: In getting back to my original question, which was when was it promised that this project would be implemented?

Mr GLANFIELD: I do not have the year off the top of my head. I would not deny there was a delay.

Mr BOB DEBUS: We are not arguing that there was a delay of 18 months.

Mr GLANFIELD: To two years. There has been a delay, there is no doubt about that. But, first of all, we got a better product and, secondly, it is not costing us anything more.

The Hon. DAVID CLARKE: Costing is a separate thing. So, you are saying there has been a delay of 18 months to two years, approximately?

Mr BOB DEBUS: We said that several times.

The Hon. DAVID CLARKE: Could it be three years?

Mr GLANFIELD: It could be, but it depends what you are talking about. This has been broken up into stages. Initially we were simply going to develop a system for the Supreme Court and the District Court. Then we decided it would be expanded to cover the Local Court and the Sheriff's Office.

The Hon. DAVID CLARKE: What part do you say has been delayed by up to 18 months to two years, or possibly three years?

Mr GLANFIELD: No, I would say 18 months to two years for the total project.

The Hon. DAVID CLARKE: The total project has been delayed for 18 months to two years?

Mr GLANFIELD: But not because of any fault of mine. This was because the supplier was unable to deliver. I could have made the decision that I would litigate against KAZ, a

subsidiary of Telstra, an organisation of some considerable resources, and we would have spent years of litigating at great expense to the community. I think I have just shown you that we negotiated what I believe was a tremendous deal—and that KAZ was happy with and Telstra was happy with, because it backed the financial guarantee—to deliver for the people of New South Wales a much better system for the same price.

Mr BOB DEBUS: A system that has no parallel in the world. I think it would be the exceptional new IT system that was delivered at exactly the time that its designers first promised any large institution.

The Hon. DAVID CLARKE: And a system that was delayed, as you indicated, possibly up to three years?

Mr GLANFIELD: There may have been delays of parts of the project for different periods. I am happy to take it on notice and provide a detailed answer.

The Hon. DAVID CLARKE: Yes, can you do that?

Mr GLANFIELD: But I do not think anything turns on it.

The Hon. DAVID CLARKE: We will look at it and see whether anything turns on it. But if you could take that on notice, I would appreciate it.

Answer:

The CourtLink project consists of four phases. Phase one of CourtLink was implemented in the Adoptions and Cost Assessment areas of the Supreme Court in 2003.

Phase two was implemented into the criminal jurisdictions of the Supreme Court and the Court of Criminal Appeal in August 2004.

Immediately prior to the implementation of Phase two into the criminal jurisdiction of the District Court, KAZ Technology Services informed the Department that system enhancements would be required.

KAZ Technology Services is now supplying an enhanced product. The development and installation of a revised product has caused some adjustments to the original timeframe for CourtLink's implementation.

The remaining phases of the CourtLink program will be completed in 2007.

TON 10

The Hon. DAVID CLARKE: Why was there such a long delay between the date that Ms Sadie Cossar—I think that name would mean something to you—submitted her grievance claiming harassment and intimidation and the date when the department was finally forced into proceeding in the Industrial Relations Commission?

Mr GLANFIELD: That was an interesting case. It was a matter that was subject to a number of different confusing aspects about what was being complained about. There was certainly some delay within the department in handling the grievance. Nevertheless, when it came to our attention that the grievance had not progressed as quickly as we would have liked, we progressed it. It was raised at the Industrial Relations Commission. It was the subject of an independent investigation, the report of which I accepted, and I guess they are the facts.

The Hon. DAVID CLARKE: How long was that delay that you have just said occurred?

Mr GLANFIELD: I think it was in terms of months.

The Hon. DAVID CLARKE: Can you take that on notice and tell us specifically how long that delay was?

Mr GLANFIELD: Well, first of all, any grievance will take some time to determine. I am happy to indicate how it might have been dealt with at odds with our normal time of dealing with matters.

The Hon. DAVID CLARKE: That is the delay between the time she submitted her grievance and the date the department was finally forced into proceeding?

Mr BOB DEBUS: That cannot possibly all be called delay.

The Hon. DAVID CLARKE: All right, the period of time that elapsed.

Mr BOB DEBUS: There was a longer period than the department might normally have taken.

The Hon. DAVID CLARKE: So, you will get us the information as to how much longer it took the department than normally would have been the case?

Mr GLANFIELD: Yes, happy to do so.

The Hon. DAVID CLARKE: Did you authorise a senior officer of the department and your executive assistant to meet with Ms Cossar and a union delegate to present anonymous and false allegations against her?

Mr BOB DEBUS: Oh, come on.

Mr GLANFIELD: I am not in a position to answer that question. That is not an appropriate question, I wouldn't think.

The Hon. DAVID CLARKE: First of all, was there a meeting with Ms Cossar?

Mr GLANFIELD: There were a number of meetings with Ms Cossar.

The Hon. DAVID CLARKE: Well, a meeting with a senior officer of your department, your executive assistant and a union delegate?

Mr GLANFIELD: I really could not answer precisely whether those people were present at any particular meeting. There were a number of meetings with her and certainly with some of my senior officers.

The Hon. DAVID CLARKE: Were any allegations made against her at any of these meetings?

Mr GLANFIELD: I honestly could not answer that. There may well have been.

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

CHAIR: Can I clarify something? Paragraph 4.11 of the Budget Estimates Guide provides:

A witness may object to a question or a particular line of questioning ... [if he believes] ...

- The question seeks adverse reflection on another person.
- The question is not relevant to the committee's inquiry ...
- ... [or might be] prejudicial to the privacy or the rights of other persons ...

I thought I would advise you of that, because you seem to be having some difficulty in determining whether it is appropriate to answer these questions.

The Hon. DAVID CLARKE: You did say, Mr Glanfield, that you believe that there could have been allegations made against her?

Mr BOB DEBUS: What I would be prepared to undertake is that some account will be given to the Committee of this particular matter that you raise. But I specifically do not undertake to provide information in the form that you are precisely requesting it, particularly because your questions are loaded with imputations whose effect we cannot presently judge.

The Hon. DAVID CLARKE: Can you clarify whether in those meetings there were any allegations put to her that subsequently proved to be false or that were anonymous allegations? You can clarify that, surely.

Mr GLANFIELD: I do not know the answer to that.

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

Mr BOB DEBUS: I think that the answer I have given is, in all the circumstances, appropriate. We will provide an account of this matter to the Committee. But I cannot tell and cannot implicitly accept whether or not something was said that was inappropriate or whether there was an accusation made that was later proved to be wrong. These are detailed allegations that you are effectively asking us to confirm or deny now, and we do not. We will give an account of what went on and in that account we will make judgments about what is appropriate in terms of privacy and the law.

The Hon. DAVID CLARKE: Mr Glanfield, getting back to the matter of Sadie Cossar, is it true that you refused to provide her with a copy of the independent investigator's report?

Mr GLANFIELD: It is not my practice to always provide copies of investigation reports. In fact, this investigation report arose out of the Industrial Relations Commission proceedings that she commenced. It was undertaken by an independent person. I acted upon it. I think she may have requested a copy of it, to the best of my recollection; it may or may not have been provided to her. I am not sure.

The Hon. DAVID CLARKE: Can you take on notice whether she did request a copy from you?

Mr GLANFIELD: Sure.

The Hon. DAVID CLARKE: Was there any reason why you could not have given her a copy of that report?

Mr GLANFIELD: It is just generally not the practice to provide these reports because the nature of them is that they are dealing with grievances and comments made by not only the parties to the grievance but others, and it raises all kinds of privacy issues generally, but we would always try to make available the relevant parts of any such report that might be useful for the officer who has made the complaint so as to understand the nature of the decision. And, can I say, I accepted fully the recommendations of the independent investigator.

The Hon. DAVID CLARKE: Did you provide her with any part of the investigator's report?

Mr GLANFIELD: I honestly cannot recall.

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

Mr GLANFIELD: Yes, I am happy to.

The Hon. DAVID CLARKE: I asked questions earlier regarding a meeting or meetings with Sadie Cossar and departmental officers. Mr McGrath, is it correct that you were one of the officers present?

Mr McGRATH: I have met with Ms Cossar on a number of occasions but I would take objection to the question at this stage along the lines of your earlier statement in relation to the guidelines of privacy of other people. I take the question on notice and I would be quite happy to provide an answer to the Committee in accordance with the undertaking given by the Attorney and by the Director General earlier.

Answer:

This particular grievance was complex and involved meetings with Ms Cossar, the Public Service Association (PSA) and Assistant Director General, Mr McGrath. At this time the Department became aware of a number of cross grievances and Ms Cossar indicated that she would seek further advice.

During the intervening period representations were received from Ms Cossar's lawyer. The matter was listed before the Industrial Relations Commission on 14 September 2005 and report backs were held before Justice Schmidt on 6 October 2005, 15 December 2005, 2 March 2006, 13 March 2006, 29 March 2006, 13 April 2006, 2 May 2006 and 9 May 2006. On 30 May 2006 Justice Schmidt gave the PSA an opportunity to arbitrate the dispute however the PSA discontinued proceedings.

The Department assigned an independent investigator to resolve Ms Cossar's grievance and has implemented all the recommendations contained in the investigator's report.

Ms Cossar did not request a copy of the independent investigator's report from the Director General. However, Ms Cossar's legal representative sought a recommendation from Justice Schmidt that the Department release a copy of the report. Justice Schmidt repeatedly declined to make this recommendation.

Inquiries are conducted in confidence and the report contains observations in relation to a number of people. The grievance process stipulates strict confidentiality and any release of the report would breach these guidelines.

TON 11

Ms LEE RHIANNON: What progress has been made in implementing the recommendation made by Deputy State Coroner Dorelle Pinch in the inquest into the death in custody of Mr Scott Simpson that the Attorney General develop a protocol between referring courts and the Mental Health Review Tribunal to ensure that notification of the court's decision that a person has been found not guilty on the grounds of mental illness occurs at the earliest possible time and, at the outside, no later than seven days?

Mr BOB DEBUS: Those matters are included in the review of the Mental Health Review Tribunal being conducted by former Supreme Court Justice Greg James.

Answer:

Detailed registry procedures for mental health matters have been developed that require the Mental Health Review Tribunal to be notified within 24 hours of the court's decision.

TON 12

Ms LEE RHIANNON: Some of my colleagues who cannot be here tonight have asked questions of the Health and Justice Ministers and they are flicking them to you. We are trying to sort this one out. Do you believe that the Health Minister should have the discretion to ignore the release of recommendations of the Mental Health Review Tribunal?

Mr BOB DEBUS: These are some of the matters that are the subject of the review, as I understand it.

Ms LEE RHIANNON: Are you aware that the Health Minister has not allowed the release of any prisoners assessed by the Mental Health Review Tribunal?

Mr BOB DEBUS: No, I am not aware of whether that is true.

Ms LEE RHIANNON: Are you able to take the question about the terms of reference on notice, or are you saying that I need to go back to the Health Minister? Can you circumvent this and get them for us?

Mr BOB DEBUS: I will provide a reply insofar as I think the matters are within my responsibility.

Answer:

The Government has announced a review of the Forensic Provisions of the *Mental Health Act 1999* and the *Mental Health (Criminal Procedure) Act 1999* to be conducted by The Hon Greg James QC, President of the Mental Health Review Tribunal. The Terms of Reference for that review are published in the Report of the Review of the Mental Health Act that is available on the following website: www.health.nsw.gov.au/legal

Questions from Mr Jenkins

Environmental Defenders Office

1. How much was the EDO funded by the state and which budget did this come from?
 - (a) Provide a breakdown of funding/services given to EDO clients for the last year i.e. How much in \$ terms was done for individuals or organisations such as the NCC, the NPA, Wilderness etc and no, this particular breakdown is not available in the EDO annual reports or their website.
 - (b) What were the cases and what were the criteria used to ascertain merit of funding?
 - (c) Has the EDO ever acted on behalf of a farmer or landholder or landowner against any government department and if so which government department and which legal issues were involved in the last year?
 - (d) Does the EDO act on behalf of clients applying for legal aid?
 - (e) Are there any qualifications, financial constraints or a means test or other financially based assessment criteria applied to individuals or organisations that ask the EDO to act on their behalf?
 - (f) Is this not a conflict of interest for the EDO to act on behalf of clients who are appealing for Legal Aid when it is legal who funds the EDO?
 - (g) Does the minister consider it an inappropriate use of the Environmental Defender's office funds to threaten legal action against single individuals for no other reason than the fact they joined a local community/environmental group, and I refer specifically to the Friends of Durras affair (letter attached). How is this issue related to the legislative and regulatory role of the Environmental Defender's Office?
 - (h) On how many other occasions has the Environmental Defender's Office threatened legal action against individuals or groups of individuals on matters not directly related to environmental issues?
 - (i) In view of the fact that the vast majority of clients of the Environmental Defender's Office are either one of the prominent environmental organisations such as the Nature Conservation Council or the National Parks Association (who are already funded by the Department of Environment and Conservation) is it not a true statement to say that the funding to the Environmental Defender's office is just another recurrent grant to these environmental organisations?

Answer:

The Legal Aid Commission administers funds provided by the State and Commonwealth Governments and the NSW Law Society's Fidelity Trust Account's Public Purpose Fund, to Community Legal Centres (CLCs) across NSW including the Environmental Defender's Office (EDO). CLCs are independent, non-profit organisations that provide a range of legal services to address the specific needs of the community.

The Legal Aid Commission administered the following funding for the EDO in the 2006/2007 financial year:

Commonwealth:	\$ 86,946
State:	\$ 163,967
Public Purpose Fund:	\$1,081,383

The Legal Aid Commission does not manage the operations of Community Legal Centres. In accordance with the terms outlined in the Service Agreement with the State and Commonwealth Governments, it is the responsibility of a CLC's Board of Management to determine the work undertaken and the assessment criteria used. The Legal Aid Commission does not receive any information regarding the services provided to individual CLC clients. I cannot therefore comment on the use of funds for a matter involving the Friends of Durras, which is essentially a matter for the individuals involved and the EDO.

CLC clients may apply for grants of legal aid and there is no conflict of interest in this process. Legal aid is available to all people subject to them meeting the Legal Aid Commission's means test, merits test, policies and guidelines. The Legal Aid Commission does not fund Community Legal Centres; its involvement is limited to administering the funding on behalf of the State and Commonwealth Governments and the NSW Law Society.

Legal Aid

2. What legal aid was given to matters pertaining to environmental issues and please do not refer us to the budget statement because neither the annual reports from legal aid nor the budget statements give any detail whatsoever about how much of the Legal Aid budget is spent in this area?
- (a) How many people were refused Legal Aid this year?
 - (b) How many people who applied for Legal Aid for environmental issues were accepted and how many were refused this year?
 - (c) How many people who applied for Legal Aid for environmental issues and who were represented by the Environmental Defender's office were accepted and how many were refused Legal Aid this year?
 - (d) What was the total dollar value of Legal Aid cases undertaken on behalf of environmental issues this year?
 - (e) Can we have a list of all those cases and all the individuals who were granted Legal Aid in the previous year?
 - (f) Is it not a farcical situation when an allegedly large organisation such as the Nature Conservation Council who was funded to the tune of hundreds of thousands of dollars each year out of the Department of Environment Conservation can appoint a single individual to act on their behalf to apply for legal aid to take on cases which should otherwise be fought by either the Environmental Defender's Office or the organisation itself?
 - (g) How is it possible that the major office bearers and holders of organisations such as the Nature Conservation Council qualify for legal aid?
 - (h) How is a case considered to be of 'public interest' to merit legal aid? What is the exact process that is undertaken and who makes the decision to spend precious Legal Aid funds on environmental cases on behalf of the nature conservation Council instead of individuals confronted with equally legitimate legal situations?
 - (i) Should it not be the case that any legal aid granted to undertake actions in environmental issues are shown in the budget papers as effectively another grant to the environmental organisations?

Answer:

Information regarding the overall number of legal aid applications and refusals is available in the annual report.

Environmental issues may encompass several categories of matters for which legal aid may be granted, and the following data provided relates to public interest environmental matters.

During the 2005-2006 financial year, the Commission received seven applications for legal aid in relation to public interest environmental issues. Of these three applications

were granted, two were refused and two remain pending final determination of the application.

Five applicants were represented by the Environmental Defender's Office (EDO), of which three applications were granted, one was refused and one is pending final determination. Grants totalling \$57,221 were made for public interest environmental matters in the 2005-2006 financial year.

The confidentiality provisions contained in sections 25 and 26 of the *Legal Aid Commission Act (NSW) 1979* prohibit the Commission from divulging any information regarding individual applicant's dealings with the Commission.

Legal aid is available to all people whether individuals, associations or other organisations; subject to the Commission's means test, merits test and policies and guidelines. However, the office bearers of organisations do not apply for legal aid in their own right but on behalf of their organisation. In the case of unincorporated associations or groups, legal proceedings may need to be commenced in the names of an individual or individuals. Organisations applying for legal aid in relation to public interest environmental matters need to show widespread grassroots support and community interest and involvement in the issue, to satisfy the public interest requirement.

Where a group is seeking legal aid for an environmental matter the Commission considers the financial means of all the members of the group and other avenues of financial support available when determining an application. The Commission also requires people or groups to whom legal aid is granted in environmental matters to contribute towards the cost of their legal representation.

Legal aid is available for representation in environmental law matters under the following circumstances:

i. Where proceedings are taken by or for the benefit of a person having substantial difficulty in dealing with the legal system by reason of a substantial:

- psychiatric condition
- developmental disability
- intellectual impairment
- physical disability

ii. For public interest environment matters where the activity or proposed undertaking raises a matter of substantial public concern about the environment. In deciding where there is a substantial public concern, regard is had to at least the following:

- whether or not the activity or proposed undertaking is likely to have a significant impact on the environment in NSW or to substantially affect public use, or enjoyment of that environment
- the scarcity of the particular attribute(s) of that environment

- the value of that environment to the community of NSW
- the community interests that may be affected, including the impact on the social and cultural needs of the community.

Legal aid is only available for matters coming within Class 1 and Class 4 of the Land and Environment Court and in relation to proceedings before a judge.

In assessing applications for legal aid in relation to public interest environmental law matters the Commission considers whether the matter is a public interest environmental matter or another type of matter within the Commission's civil law policy guidelines, the means of the applicant and any associated person or group and whether the application meets the Commission's merits test.

To ensure the most efficient use of limited legal aid funds in public interest environmental law matters, the Environmental Consultative Committee, a panel of independent experts provides advice to the Commission as to whether legal aid should be granted.

The Director of the Commission's Grants Division takes the Committee's recommendations into account when determining applications for legal aid. In particularly significant matters, the Chief Executive Officer of the Legal Aid Commission makes the final decision.