

QUESTION ON NOTICE

NSW Government submissions to the Australian Industrial Relations Commission's award modernisation process

QUESTIONS

GENERAL PURPOSE STANDING COMMITTEE No. 3
INDUSTRIAL RELATIONS – FRIDAY 17 OCTOBER 2007

At page 6 of the transcript of the Budget Estimates examination of the portfolio area of the Minister for Industrial Relations:

MS MANSER (OIR): ... New South Wales is involved in making submissions to the Australian Industrial Relations Commission on each of the awards already released and we will stay involved in that process as it proceeds.

Ms LEE RHIANNON: Are you releasing those submissions?

MS MANSER: The submissions are all on the Australian Industrial Relations Commission's website. We can provide a link.

ANSWER

All NSW Government submissions to the award modernisation process may be accessed, in context, from the Australian Industrial Relations Commission's dedicated award modernisation website - <http://www.airc.gov.au/awardmod/>



Received
2.11.08 R.H.

TON 1

The Hon. JOHN AJAKA: Have new District Court judges been appointed and have new staff been retained to cater for those additional courtrooms?

Mr GLANFIELD: Partly, yes. Not an additional judge for every courtroom, obviously, because it depends on where the court is sitting at the time. But there are, as you would appreciate, sufficient District Court judges to ensure that at the moment it ranks as the best, in terms of timeliness, District Court level court in the country.

The Hon. JOHN AJAKA: What about staff?

Mr GLANFIELD: Yes, additional staff were employed.

The Hon. JOHN AJAKA: Can you tell me how many?

Mr GLANFIELD: I would have to take that on notice. The Sydney West Trial Court is fully staffed to be able to deal with—

The Hon. JOHN AJAKA: Are you aware whether additional crown prosecutors have been retained?

Mr GLANFIELD: There were at the time. We are going back a couple of years in terms of adjustments to budget. But there were additional resources throughout the system, including legal aid, that were provided as a result of the new courts.

The Hon. JOHN AJAKA: Can you tell me how many, or do you need to take that on notice?

Mr GLANFIELD: I will take it on notice.

ANSWER

I am advised

Legal Aid NSW has supported a significant expansion of courthouse facilities during the past three financial years, reflected in a combined increased staff number over this period in the Campbelltown, Parramatta, Bankstown, Blacktown, Newcastle and Nowra offices of approximately 35 full time equivalent staff.

The allocation of Crown Prosecutors is a matter for the Director of Public Prosecutions.


(John Hatzistergos)

TON 2

Ms LEE RHIANNON: That is all right, I am just trying to understand how it works. Can you give us a breakdown—and by all means you can take it on notice—of the number of calls between the lawyers and the non-lawyers?

The Hon. JOHN HATZISTERGOS: We will have to get that information to you. Some would be both.

ANSWER:

I am advised

This information appears in the Department's Annual Report. In 2007/2008, LawAccess answered 160,622 inquiries. Of those 14,748 customers were also provided with a telephone legal advice session from a practising solicitor.


(John Hatzistergos)

TON 3

Ms LEE RHIANNON: Does that mean the Assistant Director of Court Services was upgraded from SES 1 to SES 2 with no additional duties? Is that what you are saying?

Mr GLANFIELD: No, it is not what I am saying. I would have to go back and check what happened in relation to the particular position.

Ms LEE RHIANNON: Would you take that on notice? I am interested if there was a change in duties.

Mr GLANFIELD: Can I make this point about evaluation? There is a proper process by which a position changes its grading. There are very clear guidelines provided by the Department of Premier and Cabinet that we adhere to, which involve an independent appraisal of the role of a job and its position. It may be that the position you are referring to was undergraded for the value of the work that was being done. On the other hand, it may have been that additional duties were given to the role. I will look at that and take it on notice.

ANSWER

I am advised

The positions of Assistant Director Court Services are not SES positions. They were upgraded from the Senior Officer Grade 1 classification to Senior Officer Grade 2 in accordance with the *Public Sector Management Employment Act 2002* after evaluation by a panel.

These positions were created as part of the Court Services Model that integrated the management structure of Local Courts, the District Court and the Office of the Sheriff.


(John Hatzistergos)

TON 4

Ms LEE RHIANNON: What is the Government's position in relation to the proposed personal property securities reforms being led by the Commonwealth? Is the Government aware of privacy concerns about the proposed national register expressed by the Australian Privacy Foundation and the Federal Privacy Commissioner? What, if any, advice has been obtained from the New South Wales Privacy Commissioner or other services?

The Hon. JOHN HATZISTERGOS: I will have to take the issues on privacy on notice. We have indicated we will join in the national scheme, along with the other States and Territories. I think that is important. The specific aspects of your question I will take on notice.

ANSWER

I am advised

The NSW Government signed an Intergovernmental Agreement to underpin the referral of power to the Commonwealth in relation to the reform of personal property securities (PPS) law on 2 October 2008.

The NSW Privacy Commissioner has been consulted regarding the proposed PPS reforms.

Discussions regarding privacy and other aspects of the PPS reforms are currently being undertaken in the development of the new legislation.

The NSW Government is concerned to ensure that the PPS legislation includes appropriate privacy protections.



(John Hatzistergos)

TON 5

Ms LEE RHIANNON: Can you answer questions about the automatic numberplate recognition system?

The Hon. JOHN HATZISTERGOS: What about it?

Ms LEE RHIANNON: I want to know about the New South Wales Government's involvement in and position on the development of this national system?

The Hon. JOHN HATZISTERGOS: Is this a privacy issue?

Ms LEE RHIANNON: Yes. I am trying to work out whether it comes under your responsibility.

The Hon. JOHN HATZISTERGOS: I am not sure that it does. I will ask Judge Taylor and get some information, if he has any information. I know he has been consulted generally in relation to the issue. On the specific aspects of your question, I will have to take it on notice and ask the judge.

ANSWER

I am advised

The current use of the Automatic Number Plate Recognition (ANPR) system by the NSW Police Force and the Roads and Traffic Authority (RTA) is limited and falls outside the scope of the *Privacy and Personal Information Protection Act 1998*.



(John Hatzistergos)

TON 6

Ms LEE RHIANNON: What, if any, arrangements are being made for access to New South Wales Government databases, including births, deaths and marriages and electoral enrolment information, for the purposes of identity verification under the Commonwealth Anti-Money Laundering and Counter-Terrorism Financing Act?

The Hon. JOHN HATZISTERGOS: I have some knowledge of that, but in deference to your question I will take it on notice and come back to you.

ANSWER

I am advised

NSW agencies are well advanced in the task of including NSW databases in the national Document Verification Service (DVS), established by the Commonwealth under the National Identity Security Strategy.

The NSW Registry of Births, Deaths & Marriages (BDM), hosts the online Certificate Validation Service (CVS) on behalf of all Australian Registries of Births, Deaths & Marriages. Government agencies and financial institutions use the CVS to check the validity of certificates presented to establish identity. In October 2008, some 22 financial institutions were subscribers to the CVS.

In May 2008, the Commonwealth Attorney-General and I agreed on terms for connecting the CVS to the national DVS. A Memorandum of Understanding between the NSW Registry and the Commonwealth, is in the final stages of preparation.

Questions relating to the provision of data from the electoral roll should be directed to the Premier.


(John Hatzistergos)

TON 7

Ms LEE RHIANNON: Do you have preventative detention orders under the Terrorism Legislation Amendment (Warrants) Act?

The Hon. JOHN HATZISTERGOS: I will have to take that one on notice. I was at cross-purposes.

Ms LEE RHIANNON: You do not know whether you have had any preventative detention orders? I thought you would have that on the tip of your tongue.

The Hon. JOHN HATZISTERGOS: Not that I can recall off the top of my head. I need to check it.

Ms LEE RHIANNON: If there are any, could you supply circumstances for each incident and whether any complaints were made?

The Hon. JOHN HATZISTERGOS: I do not recall any, but I just need to check it. I do not recall any, but I will doublecheck.

ANSWER

I am advised

Preventative detention orders are available under Part 2A of the *Terrorism (Police Powers) Act 2002*. They were not introduced by the Terrorism Legislation Amendment (Warrants) Bill. These powers have never been used.


(John Hatzistergos)

TON 8

Ms LEE RHIANNON: The Terrorism Legislation Amendment (Warrants) Act 2005 introduced covert search warrant powers. In the last year how many of these warrants were issued and executed in New South Wales?

The Hon. JOHN HATZISTERGOS: There is an annual report that comes out on that sort of information. I will refer you to it when it comes.

Ms LEE RHIANNON: Is that information not yet available?

The Hon. JOHN HATZISTERGOS: We provide information in a public report. I will check that that will be in the public report and, if so, refer it to you. If there is any other information that you want that will not be in that report, I will be happy to answer it.

Ms LEE RHIANNON: Will you take the question on notice?

The Hon. JOHN HATZISTERGOS: I will. To the extent that it will not be publicly available I will supply you with an answer.

ANSWER

I am advised

None. The operation of the covert search warrant scheme is subject to oversight by the Ombudsman.


(John Hatzistergos)

TON 9

Ms LEE RHIANNON: Have there been any complaints about the deployment of these powers?

The Hon. JOHN HATZISTERGOS: Which powers?

Ms LEE RHIANNON: The powers in the Terrorism Legislation Amendment (Warrants) Act 2005?

The Hon. JOHN HATZISTERGOS: There may be, I do not know. They may have been to the Ombudsman or some other agency that I am not aware of.

Ms LEE RHIANNON: Do you want to take it on notice?

The Hon. JOHN HATZISTERGOS: I will, but it will be limited to the extent of my knowledge. I will not be will to go to all the complaint handling agencies and ascertain. There may have been a privacy complaint, there may have been all sorts of complaints, I do not know. I will do my best endeavours.

ANSWER

I am not aware of any complaints in relation to these powers. The exercise of powers conferred on police is subject to the oversight by the Ombudsman.


(John Hatzistergos)

TON 10

Ms LEE RHIANNON: Have the expanded powers in the Terrorism (Police Powers) Act 2002 been used in the last 12 months?

The Hon. JOHN HATZISTERGOS: Again, I will have to take that on notice. That is information I would have to obtain from another agency. To the extent of this issue, I will try to do what I can.

Ms LEE RHIANNON: I understand that the Commissioner of Police is required to furnish you a written report when there is an exercise of the special powers. Is that how it works?

The Hon. JOHN HATZISTERGOS: I understand that is part of it. I cannot off the top of my head recall receiving a report from the Commissioner of Police in recent times. Again, in deference to your question and I do not want to be inaccurate, I will come back to you.

Ms LEE RHIANNON: If there are any occasions, for each occasion these expanded powers were used—

The Hon. JOHN HATZISTERGOS: Perhaps you can put all those questions relating to that aspect on notice, so that I do not waste your time, and I will come back to you.

ANSWER

I am advised

If Ms Rhiannon is referring to the issue of covert search warrants and preventative detention orders then the answer is no.


(John Hatzistergos)

TON 11

Ms LEE RHIANNON: I just want to ask about the regional solicitors scheme. Is this scheme still running?

The Hon. JOHN HATZISTERGOS: This is the legal aid one? Yes, it is.

Ms LEE RHIANNON: If so, how much of the public purpose fund has been spent on the regional solicitors scheme?

The Hon. JOHN HATZISTERGOS: I might take that on notice. Have you got many of these sorts of questions?

ANSWER

I am advised

As at the end of September 2008, Legal Aid NSW had spent \$469,000 on the Regional Solicitors Scheme.


(John Hatzistergos)

TON 12

Ms LEE RHIANNON: I will put the rest of those on notice. In the budget papers it shows that the number of mediation sessions held has decreased from 2,691 in 2005-06 to 2,166 in 2006-07 and to a revised number of 1,610 in 2007-08. That is comparing the budget papers.

The Hon. JOHN HATZISTERGOS: Which page is it on?

Ms LEE RHIANNON: I have not got the page numbers, I am sorry.

The Hon. JOHN HATZISTERGOS: This is in community justice centres?

Ms LEE RHIANNON: Yes, that is what I said. So we have got this downward trend. Do you acknowledge that this is a disappointing downward trend? How do you explain this decrease?

The Hon. JOHN HATZISTERGOS: This is not the only jurisdiction that does mediation; there is mediation now in just about every jurisdiction and there are expanded opportunities elsewhere and some people will access that. We are developing an alternative dispute resolution [ADR] framework and there should be an announcement that will follow.

Ms LEE RHIANNON: Soon?

The Hon. JOHN HATZISTERGOS: I cannot say it will be soon but we are working through it, and it will encapsulate a lot of these programs.

Ms LEE RHIANNON: So is the issue funding? Is it because of a lack of funding that there is less mediation being done?

The Hon. JOHN HATZISTERGOS: That has not been drawn to my attention as an issue, no.

Ms LEE RHIANNON: Would you be suggesting that there is a decreased demand for it? Is that what you are saying?

The Hon. JOHN HATZISTERGOS: No. What I have said to you is that mediation is now much more widespread available than it previously was and it is available across a range of other jurisdictions. Sometimes people would bring their cases in, for example, to the local court and it might have been suggested to them that they go to the community justice centre, another dispute mediator, or the district court. One of the big ones in community justice centres that was causing a lot of work was dividing fences and trees and things. That has now gone to the Land and Environment Court; they are dealing with those sorts of matters. They handle a lot of neighbourhood disputes that CJC were dealing with.

What I am saying to you is that we have now got mediation in a number of jurisdictions whereas previously it was not and people may have used the CJC as a means of having a dispute mediator whilst the case may have been in another jurisdiction pre-service. But now we are developing a whole ADR framework, which you will hear about.

Ms LEE RHIANNON: I am probably not aware of the full extent of the other jurisdictions so could you take that on notice?

The Hon. JOHN HATZISTERGOS: Yes. We can give you some information about what is available in terms of mediation assistance in other jurisdictions.

ANSWER

There is a range of Alternative Dispute Resolution (ADR) processes now available in various NSW courts and tribunals. ADR processes promote mediation within the jurisdiction where the dispute is first raised, rather being referred to the CJC for resolution. This allows parties to resolve issues in a more timely and efficient manner. The reduction in the number of mediation sessions facilitated by the CJC reflects this change in approach.

Within the Local Court small claims matters (up to \$10,000) before the Local Courts must attend a pre-trial review conducted by a court Registrar. The purpose of the pre-trial review is to encourage the parties to reach a settlement. The matter cannot be listed for hearing unless the Registrar is satisfied that reasonable prospects of settlement are exhausted. The Local Court refers suitable neighbourhood matters, for example trees, fences, dogs and noise to the Community Justice Centres for mediation.

In May 2007, the Land and Environment Court reintroduced conciliation conferences conducted under section 34 of the *Land & Environment Court Act 1979*. A single Commissioner or Registrar conducts the conciliation. In 2007/2008 the jurisdiction conducted 481 conciliations with a settlement rate of 40 per cent.

In the District Court suitable matters under the *Civil Procedure Act 2005* are referred to the Registrar for mediation. In 2007/2008 the District Court conducted 123 mediations with a 50 per cent settlement rate.

The Supreme Court may order mediation, even if the parties do not agree. Most Supreme Court Registrars are trained mediators while private mediators conduct approximately 33 per cent of mediations. In 2007/2008 the Supreme Court conducted 438 mediations. In the last five years the mediation settlement rate has been between 49 and 67 per cent.

The Administrative Decisions Tribunal conducted 61 mediations in 2007/2008 with a 75 per cent settlement rate.


(John Hatzistergos)

TON 13

Ms LEE RHIANNON: What is the advice you have received about the validity of any cases that Mark Standen was involved with during his period with the New South Wales Crime Commission?

The Hon. JOHN HATZISTERGOS: I have some information on that and I will provide it to you as soon as my advisers get it.

Ms LEE RHIANNON: Do you mean right now or will you take that on notice?

The Hon. JOHN HATZISTERGOS: We have got some information and I will try and get it for you. I might be able to get it for you by end of the hearing.

ANSWER

The proceedings against Mr Standen are before the court and it is not appropriate for me to comment on the case.

A person who alleges that there has been a miscarriage of justice may seek a review of a conviction under Part 7 of the *Crimes (Appeal and Review) Act 2001* ('the Act').

An application may be made to the Supreme Court (section 78) or a petition made to the NSW Governor (section 76).

The conviction review procedures available under Part 7 of the Act are only used in exceptional circumstances. An application will only be considered where all appeal avenues have been exhausted, and the convicted person still asserts his or her innocence *and* is able to bring forward fresh material which was unavailable at the time of the trial or appeal and which has not been previously considered by the court.

Where the application is made to the Supreme Court, the Crown Solicitor will file submissions on my behalf. Where the Governor receives a petition, I will make a recommendation to her Excellency based on the advice of the Crown Solicitor or Crown Advocate.

Any concerns that the conduct of Mr Standen contributed to a miscarriage of justice in a particular case will need to be raised specifically in the context of a petition for a review of conviction.



(John Hatzistergos)

TON 14

Ms LEE RHIANNON: What are the ramifications for the NCC from the Mark Standen case and the NCC release of large amounts of heroin and other drugs on to Sydney streets? I am trying to explore what you are doing about the NCC?

The Hon. JOHN HATZISTERGOS: The NCC?

Ms LEE RHIANNON: The New South Wales Crime Commission.

The Hon. JOHN HATZISTERGOS: They are not under my authority.

Ms LEE RHIANNON: I will go back to the validity of the cases.

The Hon. JOHN HATZISTERGOS: In relation to issues generally, I will not refer to this particular case that is before the court and I do not propose to. There is an elaborate process that enables reviews of any cases by any aggrieved party, which you ought to be aware of. That is in the Crimes (Appeal and Review) Act, which enables a person to petition for review a conviction or a sentence. Petitions can be made to the Governor or alternatively to the Chief Justice. Upon receiving a petition, if it goes to the Governor, there is a process that is followed. The Supreme Court, as I also indicated to you, has a capacity to be able to direct its own inquiries. So there is a process that is embedded in legislation that enables reviews to take place, if that process is relevant to any case.

Ms LEE RHIANNON: It sounds like you are not being proactive. You are saying to people to use the normal channels, which seems extraordinary considering Mr Standen was involved in a plot to import 600 kilograms of chemicals to make \$120 million worth of ice. The whole workings of that body and the cases he has been involved in are under a huge question mark. Do you not have some responsibility to ensure that justice is achieved in this State?

The Hon. JOHN HATZISTERGOS: I am not quite sure what you are talking to there. Are you talking about cases?

Ms LEE RHIANNON: I am talking about the validity of cases. I took you were saying in your answer that if people feel aggrieved they can follow the normal channels. Considering the enormity of this case and its seriousness, surely some proactive advice should be given on the standing of those cases.

The Hon. JOHN HATZISTERGOS: I do not determine the guilt or innocence of people.

Ms LEE RHIANNON: I am not saying that.

The Hon. JOHN HATZISTERGOS: I just do not, that is not my job. We have a court system that does that and it has a capacity to be able to deal with any grievances that people have in the normal appellate process or through the petition process. That is the

facility we provide to keep me away from those sorts of issues. That is one thing. I am not comfortable answering questions in relation to this case in this forum.

Ms LEE RHIANNON: Because you do not think they should be public?

The Hon. JOHN HATZISTERGOS: I think there are issues relating to the fact that this case is now before the court. It is a very sensitive issue and I do not think it is appropriate. I will take some advice about whether I can provide some other information confidentially. At this point in time I do not think it is appropriate.

Ms LEE RHIANNON: So you are taking that on notice to come back to me?

The Hon. JOHN HATZISTERGOS: I will take some advice about it. I am not trying to obfuscate but I do have responsibilities and I have to be very conscious of what I say in forums such as this. I think I have said as much as I can say publicly. But if I am advised that I can say more to you confidentially, then I will do so.

ANSWER

I am advised:

Any concerns that the conduct of Mr Standen contributed to a miscarriage of justice in a particular case will need to be raised specifically in the context of a petition for a review of conviction.

It is my role to advise the Governor or make submissions to the court in relation to any applications that are made and it would be inappropriate for me to take a role in initiating the review of cases or, in effect, petition on behalf of a convicted person.

Any convicted person that alleges a miscarriage of justice as a result of any conduct by Mr Standen should seek independent legal advice on the merits of an application under Part 7 of the *Crimes (Appeal and Review) Act 2001*.



(John Hatzistergos)

TON 15

Ms LEE RHIANNON: Thank you, Minister. I have received queries about the rollout of technology for vulnerable witnesses in rural and regional areas. People have reported to me that they your department has told them that it is all going ahead but the reports we get on the ground are that there are many problems, including technical staff to make it work. Could you inform us what is happening?

The Hon. JOHN HATZISTERGOS: I do not know about your informants. It is an ongoing process. We have about nearly 200 witness facilities now, with \$3.25 million to be spent just this year. It is growing and we are using it much more. The new Act will be proclaimed early next year in relation to audiovisual links in courts, following the settling of the practice notes.

Ms LEE RHIANNON: Can you give quantitative data?

The Hon. JOHN HATZISTERGOS: Are we talking about remote witness facilities or audiovisual link [AVL]? Do you want the locations?

Ms LEE RHIANNON: Yes.

The Hon. JOHN HATZISTERGOS: I will give you the locations, the new locations.

Ms LEE RHIANNON: You just gave a figure of about 400. Is that in the remote areas?

The Hon. JOHN HATZISTERGOS: Around 200, I am not clear.

The Hon. JOHN HATZISTERGOS: I am not quite clear.

Ms LEE RHIANNON: I understood that you were supposed to be setting up various changes in how vulnerable witnesses present their evidence in regional and rural areas. That is correct, is it not?

The Hon. JOHN HATZISTERGOS: Yes.

Ms LEE RHIANNON: That is what we understand you are committed to doing, but what we are hearing is that there are considerable delays in achieving that.

The Hon. JOHN HATZISTERGOS: Do you know what locations?

Ms LEE RHIANNON: I can find those out. If you could take it on notice to give us some quantitative data where you have delivered it?

Mr GLANFIELD: These are rolling programs so although we have indicated where these facilities will be going, technically it takes time to install them. So the expectations may be greater than our ability to deliver.

The Hon. JOHN HATZISTERGOS: Plus we do have portable units that we make available in those locations where there are the fixed units. If a court does not have one permanently there but there is a need for one then we can arrange for portable facilities to be provided. So I think the need is being met. But I will take those issues on notice. If you could provide me with any additional information that might make the inquiry more focused that would be appreciated.

ANSWER

I am advised:

All NSW courtrooms have access to remote witness recording facilities to assist vulnerable witnesses, either through permanent recording facilities or via portable remote witness kits.

A handwritten signature in black ink, appearing to read "John Hatzistergos". The signature is stylized with a large initial "J" and a long, sweeping underline.