

GENERAL PURPOSE STANDING COMMITTEE No. 2

Monday 25 September 2006

Examination of proposed expenditure for the portfolio area

ABORIGINAL AFFAIRS

The Committee met at 2.00 p.m.

MEMBERS

The Hon. R. M. Parker (Chair)

The Hon. A. Catanzariti
The Hon. Dr A. Chesterfield-Evans
Ms S. P. Hale

The Hon. M. J. Pavey
The Hon. C. M. Robertson
The Hon. H. S. Tsang

PRESENT

Department of Aboriginal Affairs
Ms J. Broun, *Director General*
Mr J. Wassell, *Executive Director, Executive and Business Strategy*
Mr S. Wright, *Registrar, Aboriginal Land Rights Act 1983*

JODY BROUN, Director General, Department of Aboriginal Affairs,

JONATHAN WASSELL, Executive Director, Executive and Business Strategy, Department of Aboriginal Affairs, and

STEPHEN WRIGHT, Registrar, Aboriginal Land Rights Act 1983, New South Wales, on former affirmation:

CHAIR: I declare this budget estimates hearing of General Purpose Standing Committee No. 2 into the Department of Aboriginal Affairs open to the public and welcome the witnesses to the hearing. This is a supplementary hearing to examine the portfolio of Aboriginal Affairs, and we will continue from the previous hearing. We must deal initially with some procedural matters. According to the Legislative Council 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 filming or photographs. In reporting the proceedings of this Committee the media must take responsibility for what is published or what interpretation they place upon anything that is said before the Committee. A copy of the guidelines is available from a table near the door.

Any messages from attendees in the public gallery should be delivered through the Chamber support staff or Committee clerks. Witnesses are reminded that they are free to pass notes directly to and from their support staff or advisors. I ask everyone please to turn off their mobile telephones. The Committee has resolved to request that answers to questions on notice be provided within 21 calendar days of the date on which they are sent. Do you anticipate that that will cause any problems?

Ms BROUN: No.

CHAIR: I declare the proposed expenditure for the portfolio of Aboriginal Affairs open for examination. Do any of the witnesses wish to make a brief opening statement?

Ms BROUN: No.

The Hon. MELINDA PAVEY: Ms Broun, I do not know whether you saw on the *Sunday* program yesterday the story about children from Walgett who attend St Joseph's private school in Sydney. Is the New South Wales Department of Aboriginal Affairs involved in any way in that project?

Ms BROUN: No. I did not see the program and, no, we are not involved in it.

The Hon. MELINDA PAVEY: Obviously the Catholic diocese in that area is involved in arranging scholarships for Aboriginal children. As I understand from the program, it is aiming to have 40 operating at St Joseph's on an annual basis. Is the department interested in becoming involved in the program in terms of its outcomes?

Ms BROUN: I think I would need to know more about it before answering that question.

The Hon. MELINDA PAVEY: So you are not aware of it.

Ms BROUN: I am aware of the work that St Joseph's has been doing but I do not know the details.

The Hon. MELINDA PAVEY: I feel that it is a little unfair in that it is a great program for boys but I do not see a similar program for indigenous girls. Are there any plans to extend that sort of reciprocal program to the female indigenous population in any number of private schools within New South Wales?

Ms BROUN: Again, it is a private school issue. It is not one that I can properly comment on.

The Hon. MELINDA PAVEY: The education outcomes for Aboriginal students are below where the Aboriginal and general communities would like to see them. Do you see programs such as

this as a positive way forward? The Hon. Christine Robertson has pointed out that there are some similar programs with Calrossy private school in Tamworth. Is this approach a way of improving educational and leadership outcomes for Aboriginal people?

Ms BROUN: Is your question about whether people would support having private schools as an educational option?

The Hon. MELINDA PAVEY: Yes, and whether the department has any views about that.

Ms BROUN: It is a private school matter. It is like any school system: It is good to have different options for people but it is up to the individuals to take them up.

The Hon. MELINDA PAVEY: So you are not providing any support to Aboriginal groups in the community by giving them information about the programs that are available.

Ms BROUN: No.

The Hon. MELINDA PAVEY: Would you take it on notice to consider the idea of making opportunities available to more Aboriginal girls? Is that something you would consider looking at or taking an interest in?

Ms BROUN: Yes. We are interested in the whole area of education. As I said, any options that add value to that are important. While it is primarily the role of the Department of Education and Training, it is well known that there are large gaps between the performances of Aboriginal students and other students. We want to work with Aboriginal communities to overcome those educational disadvantages that are being experienced by Aboriginal children. I think we are seeing some improvements. There has to be a general shift and a change, but there have been some improvements.

For example, the 2005 Productivity Commission report on government services stated that over the past five years the performance of Aboriginal students in reading, writing and numeracy in year 3 in New South Wales has improved at rates above those for all students. So there is some improvement. However, further work to eliminate the gap between Aboriginal and non-Aboriginal students clearly remains. But, as I said, it is the same in the non-Aboriginal community: people make a choice about which school their children will attend. It is good that there are various options.

Education is one of the seven priority areas under the Two Ways Together Aboriginal Affairs plan, which the department leads. I reiterate that the Department of Education has primary responsibility in this area. However, under the Two Ways Together Aboriginal Affairs plan we obtained \$40 million over four years, some of which went into some education initiatives. Some \$7 million over four years went to a Kids Excel Program, which provides extra support for zero to 12-year-olds through practical measures such as breakfast programs, health services and behaviour management.

A further almost \$4 million over four years went to a Youth Excel Program, to provide additional support for high school students. That went to things such as Aboriginal-specific homework classes, student mentoring, the employment of Aboriginal teachers and programs to link students with employment or higher and further education. Those of those programs have been established at schools in Ballina, Mount Druitt and Dubbo. Some \$640,000 over those four years has been earmarked for scholarships for Aboriginal students. Each year 160 scholarships of \$1,000 are awarded to encourage increased retention rates among Aboriginal students.

The Hon. MELINDA PAVEY: How do they work?

Ms BROUN: I can get you the specifics. I do not have them with me at the moment. I will take that question on notice. My understanding is that it is for students in the high school years—for example, year 11.

The Hon. MELINDA PAVEY: Is it a cash bonus for going to school?

Ms BROUN: It is some assistance to help students stay at school. As I said, I do not have the details with me but I am quite happy to provide them.

The Hon. MELINDA PAVEY: Is there a section of your department that keeps track of Aboriginal attendance at school? I know that it is a primary concern of the Department of Education and Training. Do you have a monitoring system within the department so that you can see the problem? For example, at Walgett and Brewarrina there is very low school attendance, especially during high school years. Do you have records of that?

Ms BROUN: What we have comes under the Aboriginal Affairs plan. The role of the department is to monitor outcomes for Aboriginal people—not necessarily getting into the detail of what each school is doing, but monitoring the overall outcomes. Last year we produced the "Two Ways Together" report on indicators—that is a public document and I am happy to table it here. It contains a range of indicators in a variety of areas, including education, and has attendance as well. A report will be done every second year. So it will be able to show us where there has been improvement or otherwise in the coming years.

The Two Ways Together Aboriginal Affairs plan is a 10-year plan. It is in recognition of the fact that many of the issues that we are trying to deal with take longer than a three-year lifespan to get off the ground and then realise some outcomes. Things such as life expectancy and changing year 12 retention rates are very significant issues, and we want to see some outcomes there. So there is this report, which will be produced every two years. The plan itself is a 10-year rather than a three-year or four-year strategy. I will table the "Two Ways Together" report.

Document tabled.

In addition to the work that the department does, in 2004-05 the Department of Education and Training and the Aboriginal Education Consultative Group conducted a review of Aboriginal education. There were 71 recommendations in that review to improve Aboriginal education outcomes. In response, in the 2005 budget there was \$53 million over the next four years to target the recommendations of the review.

One of the recommendations was the Schools in Partnership Programs that encourages schools with higher populations of Aboriginal students to develop community partnerships with parents and communities. Thirty schools across the State will participate in the program over the next four years, and 10 have already been established. Again, it is a whole-of-Government approach rather than just education. The principle of the Two Ways Together is that it is a whole of Government approach; it is not just here is the Aboriginal education strategy and here is the Aboriginal health strategy. We need to connect all those different parts of Government together to get the outcomes. To get outcomes in education we have to make sure that other Government departments are providing other things that make it possible for children to do well at school. So, it is a whole-of-Government strategy to make these changes.

The Hon. MELINDA PAVEY: It surprises me that the department does not know any real detail of the program that is going on with St Josephs.

Ms BROUN: I am very interested in it but I have not been approached and I have not been provided with any information on it.

CHAIR: I want to ask some questions on the Aboriginal land council administrators. Can you tell us please in respect of each local Aboriginal land council that has had administrators appointed in the past three financial years the name of the local Aboriginal land council, the reason for the appointment of the administrator, the term of the appointment of the administrator, the proposed remuneration and, in terms of the remuneration, what was originally sought and has there been any variation, who is the administrator and, if applicable, the professional firms with which they were involved as partner or an employee and details of all fees and disbursements paid to each administrator? Could we have a breakdown of that for each financial year?

Ms BROUN: So for three financial years and all of those categories, yes.

CHAIR: Also could you indicate where those fees and disbursements were authorised by, whether they were paid or authorised by the local Aboriginal land council or by the members, which would be the administrator I guess in that issue?

Mr WRIGHT: Just a point of clarification: When a local Aboriginal land council is subject to administration as appointed by the Minister, the members have no decision-making powers other than in relation to proposals for dealings in land, and that is set out in section 230 of the Aboriginal Land Rights Act. So, the short answer to your question is there would be none of those authorisations unless the administrator had suggested to members he wanted to consider what he or she was doing. So, the decision resides with the administrator when appointed.

CHAIR: Okay. Could you also then identify what action has been taken to recover fees and what the outcome of that is as well?

Ms BROUN: We will not have that information at the moment. I will take it on notice and provide all of that.

CHAIR: Within the 21-day period?

Ms BROUN: Yes.

The Hon. MELINDA PAVEY: The 10 Aboriginal land councils that are under administration, are they all on the east coast?

Ms BROUN: The answer is no. In relation to the question previously, I do not have that level of detail you are asking for but the answer is no, they are not all on the east coast. Coonabarabran, for example, Condobolin, so there are a lot of other locations as well.

The Hon. MELINDA PAVEY: What are the 10?

Ms BROUN: As I said, I think it is probably best if I provide the full list through the questions on notice. This is not the full list.

The Hon. MELINDA PAVEY: But the 10 there, it would be interesting?

Ms BROUN: The list I have is not the current list. It is a list that has all been appointed over the past financial year, over a period. It is not the current list of 10.

The Hon. MELINDA PAVEY: I would be interested to have that tabled anyway.

Ms BROUN: It will be included in the fuller list. Do you want me to read it out or do you want me to table it?

CHAIR: Perhaps we could have it tabled if it is a lengthy document.

The Hon. HENRY TSANG: I am interested to hear it.

The Hon. MELINDA PAVEY: We can hear it and have it tabled, both.

Ms BROUN: Perhaps at the outset it might be worth giving the background to administrators and investigators before I read that. Administrators and investigators are appointed to land councils to ensure effective and efficient functioning. Administrators and investigators to land councils are on the recommendation from the State land council when a land council has breached the Aboriginal Land Rights Act. The purpose of appointing administrators or investigators is to address any breach of the Act and, most importantly, to return the function of the land council back to the members at the end of that appointment. Appointed administrators and investigators are instructed to work with members during the appointment, including monthly reporting. Members are engaged in the process to ensure that the appointment is not seen as an act of paternalism.

During the past financial year the Minister has appointed one investigator and 14 administrators to local Aboriginal land councils in New South Wales. There are 121 local Aboriginal land councils constituted across New South Wales. There has been one court challenge relating to the appointment of an investigator to Darkinjung Local Aboriginal Land Council and the decision to appoint in that case was validated through the court. The cost of administrators totally was \$1,781,000 and the cost of the investigators remuneration was \$115,000. The Government does not incur the cost of the administrators and investigators appointed to Aboriginal land councils.

The Hon. MELINDA PAVEY: The land council does?

Mr WRIGHT: Just a point of clarification on the Darkinjung matter. There was an appeal to the court, making the argument that an investigators report that had been conducted could not be used for the purposes of appointing an administrator. Before that decision was handed down the Minister acted and appointed an administrator for another reason, and subsequently the court decided that the investigators report was a report that could be used for the purposes of appointment if it was needed. So, there was just a slight disjuncture in the two, both the appointment and the consideration of legal proceedings.

CHAIR: Thank you for that clarification.

Ms BROUN: For the benefit of all members, the Albury and District Local Aboriginal Land Council, Andrew Bowcher was appointed as an investigator on 4 July 2006 and the end date to that is 4 October 2006. So that was for three months. Ashford Local Aboriginal Land Council, Barry Jameson was appointed as an administrator on 10 March 2005 to 9 September 2005, then again 10 September 2005 to 9 March 2006 and then again from 9 March 2006 to 9 September 2006. Do you want just the names rather than all the dates at this point?

CHAIR: Just the names?

Ms BROUN: Birpai Local Aboriginal Land Council, an administrator is appointed there. That was in the last session and is completed now.

The Hon. CHRISTINE ROBERTSON: Taree.

Ms BROUN: Pardon?

The Hon. CHRISTINE ROBERTSON: I was just letting them know where Birpai is. I was being kind to them.

Ms BROUN: Condobolin Local Aboriginal Land Council is again one that is completed. Coonabarabran Local Aboriginal Land Council has been completed. Darkinjung Local Aboriginal Land Council is current. Jali Local Aboriginal Land Council is current.

The Hon. MELINDA PAVEY: Where is that, Christine?

The Hon. CHRISTINE ROBERTSON: I do not know.

Mr WRIGHT: Cabbage Tree Island, Ballina, on the far North Coast.

Ms BROUN: Jerrinja Local Aboriginal Land Council, which is down near Jervis Bay, is current. Koombahtoo Local Aboriginal Land Council is current. La Pouse Local Aboriginal Land Council is finalised. Moama Local Aboriginal Land Council is completed. Moree Local Aboriginal Land Council is current. The New South Wales Aboriginal Land Council is current. Ngunnawal Local Aboriginal Land Council is completed. Purfleet/Taree Local Aboriginal Land Council is completed. Thungutti Local Aboriginal Land Council is completed, and Worimi Local Aboriginal Land Council is current. As I said, that list is not for the three financial years you are seeking and it does not contain all of the information you are seeking either. I will have to take the rest of that information on notice. If you wish I will table that document.

Leave granted.

The Hon. MELINDA PAVEY: What sort of hours per week would the work of an administrator involve?

Ms BROUN: I could not really answer that. Steve might be able to help?

Mr WRIGHT: I often work with administrators and investigators when they are appointed. I prefer to work with local Aboriginal land councils but if administrators are appointed I work with those people as well. It varies dramatically. If you take a large council, such as Darkinjung or Worimi initially there might be a considerable amount of work because of the complexity of those corporate entities, and there may be a range of work, so matters of corporate regulation, matters of litigation on foot, there could be matters of planning. So you could almost have somebody working what would amount to full-time as the administrator of that organisation.

In other instances, if you look at other communities, such as Ashford—Ashford is a tiny town in the hinterland of the North Coast. The volumes are a lot lower, the number of people involved is lower and so it scales down. Most of these people who are being appointed as administrators have backgrounds in business and accounting principally because a lot of the reasons local land councils initially have difficulty are with business-related issues.

A very small council might take a far less amount of time. It might take a lower hourly rate because it is a less senior person. It is a horses for courses issue but there is no question that with some of the large councils, with large land holdings—and particularly that is a coastal phenomena because of land values, for better or worse—there can be a considerable amount of work simply because of the amount of money involved in those enterprises.

Ms SYLVIA HALE: You say that the administrators are paid on an hourly rate, which varies according to the complexity of the issues they face, and the amount is paid by the land councils. Who determines whether it is a full-time or part-time position or how many hours are involved in the job?

Mr WRIGHT: There can be a remuneration fixed in terms of appointment for administrators, which is essentially an instrument of appointment. If not fixed, the total can be fixed as to how much over a period of time. Normally an hourly rate is simply the professional standard used or it could be bulked up to a daily or monthly rate. The determination is essentially made on what will be required as a budget for that particular administration. It becomes an open-ended issue, again to do with what matters arise and what business must be dealt with. It becomes an issue of the administrators acting prudently and properly in fulfilling their obligations.

Ms SYLVIA HALE: Are additional expenses, such as accommodation and travel, on top of the hourly rate or built into the hourly rate?

Mr WRIGHT: Normally they would be a disbursement. So you would be saying this local land council is forgoing an allocation of money from the New South Wales Aboriginal Land Council, remembering that local aboriginal land councils do not receive any funding from government. On top of that they might have other sources of income. For example, some run housing programs, some are involved in land deals. From that amount of money, normally at the end of the day the total money available to administrators to claim by way of expenses from the New South Wales Aboriginal Land Council, any additional funds, have to be within the terms of the instrument of appointment as decided by the Minister.

Often there will be some negotiation, depending on what matters arise. For example, on a couple of occasions in the last couple of years we have seen matters come to light after administrators have been appointed that require greater amounts of expenditure than otherwise would have been anticipated. Again, it becomes an ongoing process of reviewing what has to be done, trying to remain prudent and monitoring the costs.

Ms SYLVIA HALE: At the end of the day is there a detailed accounting of all the expenditure, the hours worked and the disbursements made? If so, is that made publicly available?

Mr WRIGHT: I cannot tell you because I do not authorise the accounts or send the accounts. I do not know the form of those other than, I would imagine, they are tax invoices. I do know that that expenditure for those expenses has to be reported back to the members of the local Aboriginal land council. In what form they are reported I do not know, but I would be happy to take that on notice.

Ms SYLVIA HALE: Thank you. I want to ask some questions about the Darkinjung Aboriginal Land Council. In June a number of questions were put on notice about the appointment of the administrator of that land council and the answers were recently returned. I specifically refer to question 130. At question five the Minister was asked whether he endorsed and condoned the actions and their outcomes by the administrator that he had appointed. The Minister said that he was supportive of Mr Hillig carrying out his functions throughout his period of administration.

CHAIR: I understand that these are questions on notice in the House rather than in these hearings.

Ms SYLVIA HALE: That is right.

The Hon. CHRISTINE ROBERTSON: Will they become part of the Committee's business?

Ms SYLVIA HALE: I am happy to make a copy available to the Committee.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: My question relates to a similar issue. The Minister was critical of the Darkinjung Aboriginal Land Council. Naturally the council wants to respond. My questions relate to the questions on notice in the House put by Mr Ian Cohen. I assume the department would have assisted the Minister with the response. In the absence of the Minister and the fact that the Minister was quite outspoken, the questions about the land council need to be put to the proof in this Committee. I believe it is within the terms of reference.

The Hon. CHRISTINE ROBERTSON: No-one is arguing that. We just want the piece of paper.

CHAIR: That will be tabled. While the document is being copied, do other members want to ask questions that do not relate to this issue?

The Hon. HENRY TSANG: Perhaps the Hon. Dr Arthur Chesterfield-Evans could say why he is not happy with the Minister's answer.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It is difficult for the witnesses to respond without seeing the document.

Mr WRIGHT: I was about to ask a procedural question through the Chair. The questions have been asked of the Government in the upper House. Have responses been given?

Ms SYLVIA HALE: Yes, they have.

CHAIR: That is the document that is being copied now. You and the Committee members will have that for your reference.

Mr WRIGHT: Do you wish to ask us the same questions that were asked and answered in the House?

CHAIR: Clarification on those questions.

Ms SYLVIA HALE: Clarification and questions arising from those answers.

CHAIR: Dr Arthur Chesterfield-Evans, do you have further questions or would you prefer to wait until the document is copied and made available?

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I would prefer to wait. I have a strong defence from Mr Damien Aiden to comments that he was being investigated.

CHAIR: Do Government members want to ask questions?

The Hon. CHRISTINE ROBERTSON: No further questions at this time.

The Hon. MELINDA PAVEY: I have not been able to find anything on this issue. One of the major problems in many of the regional communities where there are a high number of indigenous people is tribal warring, particularly in Dubbo, Moree and Bourke. Many social issues relate to the different tribal elements in those communities. Are you doing any work to try to solve this problem in terms of communication and bringing people together? It is a tough problem to solve.

Ms BROUN: At the outset it is probably worth defining the role of the department in general terms and then some of the work we are doing more specifically around those sorts of issues. We are a very small department: 70 staff and six locations around the State.

The Hon. MELINDA PAVEY: A \$40 million budget.

Ms BROUN: We have an operating budget of only \$10.5 million. We do run the Aboriginal Communities Development Program, which last year was \$38.6 million but changes every year, which is housing and infrastructure that we are delivering around the State. What we do is try to influence other government departments in the way they develop their policies and deliver services to Aboriginal communities. As I said, we facilitate the Aboriginal Affairs Two Ways Together, which is the report I have tabled, and work across government in a whole range of different fora to try to improve service delivery. Obviously we provide advice to the Minister, but we also work on the administration of the Aboriginal Land Rights Act and support projects and events that are around Aboriginal culture and maintaining and indexing the Aboriginal family records database, which is another part of the work that we are doing.

In terms of facilitating Aboriginal community participation, which I think is what you are talking about, and making sure that communities have some opportunities to get together and resolve some of these issues, we have done some work in what we call Aboriginal community working parties in a number of locations. In fact, Dubbo has one and so does Moree. I think Bourke was the other one you mentioned. In 2004 the department was reviewed by the Council on the Quality and Cost of Government. One of the main recommendations from that review was to establish regional offices, which is what we have done. Those regional offices have strengthened a lot of the contact with the department, as you can imagine being formerly Sydney-based only. Now having five out-of-Sydney regional offices has made a significant difference to that.

The Hon. MELINDA PAVEY: Where are those five offices?

Ms BROUN: Bourke, Tamworth, Coffs Harbour, Narooma and Wagga Wagga. The Sydney office does the metropolitan area as well. So that is the spread. The regional offices' main work is to work with other government agencies, including the Federal Government; to try to deliver better outcomes to those Aboriginal communities that they work with; to ensure that the Two Ways Together plan, which at a State level has established things like the report, is now being implemented at a regional level and with local communities; and to monitor the implementation of that work at a regional and local level. Those offices help to gain a relationship with the communities, but they are also gaining a better understanding of some of the issues affecting those communities and being responsive to those.

As I said, one of their tasks is to work closely with community working parties to improve governance. In many areas it is around making sure that all the players in a particular town get together to discuss the issues. I know in the communities that I go to, even if you go and meet half a dozen different groups, there is some common ground on the issues that people can come together on. The same with the non-Aboriginal community, you are going to get divergent views around any table. But it is about finding common ground and the solutions that the community as a whole want to work with Government on. That is some of the work we have been doing.

Places like Bourke, for instance, in fact all the communities throughout that whole western region, have developed up community action plans over the last 18 months. It is now about working with them to identify the priorities and to address those issues. That has been quite a lot of work. One of the major projects at Bourke has been a project at the Alice Edward village. I am not sure how well you know Bourke but that is in the land council area out of Bourke a little bit. There has been some work done there. That was with a lot of trainees in horticulture. That has been quite a significant achievement.

There was also some work where we helped the community with what they saw as one of their higher priorities around culture. They established and wanted to do a festival, which was the Yaamma festival. They held that for the first time last year in October and they have just had it again recently, I think last week. That was about bringing a whole group of people together to discuss how to establish this festival. It was jointly funded across government, State and Commonwealth, and I think in kind support from local government as well.

I think those issues you are talking about are significant. As you say, they are not easy to overcome. But we are working with the community on the ground and establishing a forum where they can come together and work. In most of the places those community working parties have representatives from all the Aboriginal organisations in the town and/or family groups in the town, so that they come together and do that work collectively. It is not an incorporated body. It does not get funded in that sense; there is not a monetary burden. But they keep minutes and have a quorum and those sorts of things. It is about governance at that community level and also about government working with that sort of model. I am trying to think of some of the other things we have done. If you would like, I could go through some other things we have done in various regions, or in Dubbo particularly.

The Hon. MELINDA PAVEY: I will yield to my colleagues. Perhaps we could table that document.

Ms BROUN: As a particular example, in Dubbo there have been some problems, obviously. There are challenges facing Dubbo across the whole community, not just with regard to Aboriginal people. I recently attended a Dubbo planning forum, which was a Vision 2020 type of thing. What was heartening is that it was non-Aboriginal and Aboriginal people in the room for a couple of days working on what was the vision for Dubbo. Some of the challenges for Dubbo are around not just the Aboriginal community, obviously; it is around the position of Dubbo holding, and how you keep kids in Dubbo if they just want to leave because there is not enough there for them, and those sorts of things. That sort of issue is being confronted by not just the Aboriginal community but also the non-Aboriginal community.

The Hon. MELINDA PAVEY: There are a lot of jobs in Dubbo to keep them there.

Ms BROUN: I am not really sure how much there is. But there is some work going on there, obviously. Those sorts of things were raised in Vision 2020.

CHAIR: Does the department intervene on behalf of the Aboriginal people when the Department of Housing wants to abolish their houses in the Gordon Estate?

Ms BROUN: If I can go through the response, it will become clear—

CHAIR: Do you have a role, or not?

Ms BROUN: In making sure that they have an opportunity to have their voice heard. Very much at the meeting I went to, there were a lot of Aboriginal people from Dubbo in that room. What is important is that we do not have to be the conduit for people; it is very good if they can come to the table themselves.

CHAIR: When it comes to an issue like the Gordon Estate and demolishing houses, you take a step back rather than getting involved—

Ms BROUN: As an agency—

CHAIR:—with the Department of Housing. Is that what you do?

Ms BROUN: If I could answer the question—

CHAIR: Is that what you do?

Ms BROUN: I will answer the question. As I said, the causes and challenges facing the Dubbo community are quite complex and require a strategic and long-term approach, together with an immediate focus on both community support and law and order, and neither of those approaches works in isolation. There is a lot of hard work. The point I am trying to make is that that is currently under way.

Law and order issues are being addressed, in partnership with the Dubbo Aboriginal Community Justice Group, which is an Aboriginal community group that works with justice agencies to develop strategies to minimise Aboriginal people's contact with the justice system; and the local area command is working with the community to develop a program to employ Aboriginal security guards to reduce levels of offending in Dubbo. The Attorney General's Department has also implemented a number of initiatives, including a range of motor vehicle theft reduction programs aimed at juvenile offenders.

Under Two Ways Together, the New South Wales Government's 10-year Aboriginal affairs plan, the Government is supporting a program being implemented in Dubbo aimed at reducing levels of family violence. The program is run by the Department of Corrective Services and is receiving \$732,000 over four years, and again that is from that total package I spoke about, of \$40 million over four years. This was one of the other initiatives. While public safety is obviously a key focus, there needs to be more than just arresting people after they have offended. In recognising that, there is a whole range of strategies aimed at strengthening communities and addressing the causes of offending. As I said, there is a community working party in Dubbo.

In terms of the Department of Aboriginal Affairs' role, it is working between State and Federal Government agencies and the community to try to address some of those challenges that are faced in Dubbo. The Dubbo Aboriginal community working party is a representative body that works with all of us in ensuring the needs of the Aboriginal people are considered. The Department of Aboriginal Affairs has worked with the community working party to ensure it has had representation from across Dubbo, including four elected representatives from the Gordon Estate, so they are on the community working party as well. That was one of my earlier points: trying to make sure that all the various and divergent groups are represented.

The Department of Aboriginal Affairs has worked to ensure that that important representative structure has sufficient resourcing and support. As a department we have provided \$8,000 towards the running costs of the community working party. There is some other financial support from other agencies, particularly from the Federal Government, in conjunction with the Premier's Department and the Dubbo Indigenous Co-ordination Centre, which is a Federal body. There is a consultant working with the community working party to develop a strategic plan. This will identify community priorities and strategies, and possibly target the community needs.

The Department of Aboriginal Affairs is working with the community and the Federal Government to assist people in Dubbo in planning for the future. I have spoken about the visioning one, but there was also a leadership forum between the Dubbo community working party that they established and was partly funded through us and the Dubbo Indigenous Co-ordination Centre.

Ms SYLVIA HALE: You would be aware, no doubt, that many of the residents of the Gordon Estate believe that the Department of Housing goes out of its way not to consult with them, that the officers from the department's Orange office refuse to meet with them and refuse to deal with their concerns in a serious and timely manner. What does your department do to try to bring those two groups together?

Ms BROUN: As I said, it is through the community working party, and making sure that departments come to meet with the community working party, and that there are representatives of the Gordon Estate on the community working party.

Ms SYLVIA HALE: That is an abstract, or once or twice removed, process, where you have people's houses being demolished and then being relocated. Do you intervene in any way in the decisions as to whether houses will be demolished, or whether people will have the option to buy them? Do you have any involvement in where people will be relocated to?

Ms BROUN: No. I think those questions need to be referred to the Department of Housing. And there is a specific agency around Aboriginal housing, which is the Aboriginal Housing Office.

Ms SYLVIA HALE: But where you are aware that in a community there is a lot of unhappiness and dissatisfaction with the process, is it not appropriate at that stage, being the Department of Aboriginal Affairs, that you, in your cross-government approach, try to at least facilitate a better relationship?

Ms BROUN: If a report or representation were sent to me, I would do that, and I would send it to the Department of Housing to consider it.

Ms SYLVIA HALE: If you had a report, you would read it, and then you would make recommendations—

Ms BROUN: I would send it over to—

Ms SYLVIA HALE: Sending a report from A to B does not achieve much, other than add to the postal costs. What do you do to intervene in a proactive manner?

Ms BROUN: That is what I am saying we would do.

Ms SYLVIA HALE: You would merely act as a transmission agency, rather than in any way act as an advocate for the Aboriginal community there?

Ms BROUN: As I said, as an agency we are 70 people trying to deliver broad outcomes across government. Except in sending those sorts of issues on to the responsible agency, we do not always get involved in every individual case because we just do not have the capacity to do that sort of work. As I said, one of my officers is in Wagga Wagga, and her area extends up to Dubbo. She is regularly in Dubbo and would take on board those issues. It is something that probably needs some active work in, but it is not necessarily something we could do for every single person.

Ms SYLVIA HALE: But you would agree that where you have a very significant issue—and I suggest that Dubbo, given the demolition of the Gordon Estate, and the Block in Redfern are two key issues—despite your reduced staff numbers—

Ms BROUN: As I said, my staff member does go to Dubbo regularly, and is working with the community working party through these sorts of issues. Either she or one of her staff members would be in attendance at the monthly meetings of those community working parties. So each of those regional offices has three staff members working across the region. That particular region extends from around Dubbo, down to as far as Deniliquin, over to Goulburn, and over as far as Balranald. So you can imagine the extent of area that she and the other two staff members are dealing with.

Ms SYLVIA HALE: Closer to home, at Redfern-Waterloo, do you have any involvement or discussions on negotiations with the Redfern-Waterloo Authority in terms of housing for the local community or the provision of jobs?

Ms BROUN: The provision of jobs?

Ms SYLVIA HALE: Or at least plans as to what strategies should be put in place to provide jobs for the indigenous community in the Redfern-Waterloo area?

Ms BROUN: My understanding is that the Redfern-Waterloo Authority has done a lot of work in making its capital construction category one under the Aboriginal Participation and Construction Guidelines, which means that that will generate a lot of work for Aboriginal people in that local area.

Ms SYLVIA HALE: But that is in the construction phase of any new developments. I am talking about jobs in an ongoing sense, beyond the construction phase.

Ms BROUN: There are probably a couple of answers. First, under Two Ways Together, economic development is one of those seven priority areas, and we are doing some broad things in that area around Aboriginal employment in both the private sector and the public sector. We are also doing work around enterprise development and better utilisation of assets, which includes land, for Aboriginal people. So there are some economic benefits there.

One of the major things we are doing under that strategy—and we work with a whole range of agencies; as I have said, this is a whole-of-government strategy. It is with State and Regional Development and a whole range of other agencies, as well as with the Federal Department of Employment and Workplace Relations in trying to get some outcomes in education, and obviously with the Department of Education and Training in trying to get people ready for work. There are actions there that would encompass TAFE and transitioning kids from school to work.

One of the big areas we are working on is job compacts, and we are establishing those in large regional centres with high Aboriginal populations and with industry groups to encourage the employment of Aboriginal people in those areas. Each of those compacts will identify how New South Wales Government agencies, key Aboriginal organisations, local government, local businesses and industry groups can work together to overcome some of those barriers about getting people into employment.

CHAIR: Could I interrupt and suggest that, in the interests of time, and given that we have the documentation we have been waiting for, Ms Broun be asked to table that document.

Ms SYLVIA HALE: Yes.

Ms BROUN: Could we ask for a bit of time to have a look at this?

CHAIR: For the benefit of the record, we currently have before us Legislative Council Questions and Answers No. 8, which sets out questions asked in the Legislative Council on Tuesday 29 August regarding Aboriginal Affairs and the Darkinjung Aboriginal Land Council.

[Short adjournment]

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: With regard to question 0130 from the House, the Minister stated in his response that he is supportive of Mr Hillig in carrying out his functions throughout his period of administration. Does the Minister specifically endorse and approve of the action as confirmed by the responses (1) to (4)?

Mr WRIGHT: I would like to provide some background to the questions and the responses.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That would be a good start.

Mr WRIGHT: When the administrator was appointed to Darkinjung Local Aboriginal Land Council [DLALC], there was in existence Darkinjung Pty Limited, which was the trustee of a trust referred to as the Darkinjung Trust, and a series of other related companies—a housing company, a funeral fund and a company known as Darkinjung Projects. In brief, the local land council established a board—it was a proprietary limited company—as trustee, and the chairperson of the local land council was appointed as the chair of the trustee. Two members of the board were to be members of the land council and two other directors were brought to the board for their expertise.

When the administrator of the land council was appointed—in this case "he", Peter Hillig—he found that under the Companies Act he was the sole shareholder of Darkinjung Pty Limited. We

are not talking about an Aboriginal Land Rights Act regime but the Companies Code. Then, as sole shareholder, among other actions he sought to remove the directors, one of whom was the chair who had been removed as the chair of land council—

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Was that Damien Aiden?

Mr WRIGHT: No, Damien Aiden is the former chief executive officer, who was dismissed by Mr Hillig for other reasons. Mr Bradford was the chair of the DLALC. By force of the appointment of the administrator under the Land Rights Act, Mr Bradford, along with the secretary and the treasurer, were removed from office. That is a statutory removal that happens on the appointment of the administrator; it is not a maybe, it happens. The theory is that if those three officers—chair, secretary and treasurer—are there at the point of administration, those positions need to be vacated because the administrator, for all intents and purposes, becomes the council.

Therefore, Mr Hillig, as the administrator, among other things, took action to remove the directors of Darkinjung Pty Limited on the basis that he, as the council, was the sole shareholder and he wished to exercise full control over the company. Although the company was a related entity of the local land council—it was a proprietary limited company—the directors resisted that removal, as is their right. There were court proceedings before Justice Austin in the Supreme Court. The administrator took action to have either a receiver or a provisional liquidator appointed to Darkinjung Pty Limited. The evidence in that matter is voluminous.

There had been previous proceedings in October or November 2005 commenced by Darkinjung Pty Limited—that is, the trustee company—against the local land council, the New South Wales Aboriginal Land Council and the related entity companies—the housing company, the funeral company and the project company. However, that may need clarification. The purpose of those proceedings taken by the company with the board of directors whom Mr Hillig was trying to remove, was to seek clarification on a threshold legal issue that had been around since about mid-2004. That threshold legal issue was whether money that came to DLALC could be transferred to the trustee company, Darkinjung Pty Limited, under the terms of the trust.

The principal money in issue was the money being received from Mirvac Pty Limited by DLALC as result of the sale of land at North Entrance. The figure of \$42 million is used as a general amount. That issue was whether it was lawful for DLALC to transfer those funds to the trust company. As I recall, in October 2005, the directors took legal action to seek declarations from the court that that was lawful or unlawful, depending on the decision of the court. Numerous pieces of high-level legal advice had been sought prior to that time.

If one put all the QCs in a room the view would not have been 50-50, but leaning towards the fact that it was an unlawful transaction. It was not unlawful in the sense of any corruption or fraud, and those matters were discussed the last time I appeared before this committee. This could be referred as statutory ultra vires, which means whether the local Aboriginal land council had the statutory power under the Aboriginal Land Rights Act to transfer these moneys.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: In other words, if other land councils set up companies, the issue was whether they could simply take the money and put it out of reach of the Minister and the land council.

Mr WRIGHT: That is a way to describe it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But then of course when the administrator came in and took over the land council's funds it then became poor old Darkinjung cannibalising itself in the legal system. It is paying for both sides to fight.

Mr WRIGHT: Let us be clear about that. When the administrator was appointed to the land council the majority of moneys which had been paid under the transaction with Mirvac had been transferred to the trustee company. They were not in the local land council at that time. Soon after the administrator received the next tranche of funds, because that particular transaction is being managed under what they call a put option contract, which provides for periodic payments up to the full purchase price by Mirvac.

So at that time the money was in the company. The company was controlled by the board of directors, one of whom was the chair who had been removed from the land council. I say nothing about the conduct of that person, simply to point out that he had been the chair of the land council and remained the chair of the proprietary limited company even though there was an administrator appointed to the land council.

What then happened was the proceedings taken by Darkinjung Pty Limited in October of 2005 were being headed by Justice Barrett in the Supreme Court. Those proceedings were on foot but nothing much had happened, as can occur in the Supreme Court from time to time. Justice Austin effectively was hearing an interlocutory point which was whether or not, as this question suggests, an administrator of a local Aboriginal land council as the sole shareholder of a proprietary limited company—and there is no argument that the administrator is the council; it simply states that on the face of the land rights Act. The question arose whether that sole shareholder had rights to summarily remove those directors and appoint, in this case, himself as the sole director.

Justice Austin took the view, and the judgement was published—if you want a copy I would be more than happy to provide it to the Committee. Justice Austin's views were that in relation to the company's Law, the corporate law regime under which Darkinjung Pty Limited was established, in the memorandum of articles of Darkinjung Pty Limited it said—and I am paraphrasing—"directors may only be removed by an extraordinary meeting of the Darkinjung Local Aboriginal Land Council at which two-thirds of the voting members vote to remove a director". So the land council had chosen to set the bar quite high for the removal of directors of its trustee company, for better or worse.

Justice Austin said that he thought because Darkinjung Pty Limited was in fact a private company, all be it a company wholly owned by the land council, the land council administrator had to comply, in Justice Austin's view, with the memorandum of articles of the company and convene an extraordinary meeting and achieve a two-thirds majority. With respect, it is somewhat counterintuitive to suggest that if you are the sole shareholder you cannot exercise rights in that way, but His Honour said what His Honour said. The matter is on appeal before the Court of Appeal but it has not yet been heard. Apart from that, the other proceedings which the administrator had taken were for the appointment of a receiver or provisional liquidator to Darkinjung Pty Limited.

So Justice Austin's views had come out of this process as a preliminary point of law. Once Justice Austin made his decision there was no question that the directors of Darkinjung Pty Limited whom the administrator had sought to remove could continue as directors until the court said otherwise, and they were entitled to do so. Those directors of Darkinjung Pty Limited then became, if you like, the defendants. Darkinjung Pty Limited became the defendants as well as the plaintiff—this is where it becomes confusing—because those proceedings of the administrator to appoint a provisional liquidator to Darkinjung Pty Limited were joined with the proceedings commenced at the end of 2005, which were the proceedings by which the trustee company was seeking orders that it had lawfully received moneys from Darkinjung Local Aboriginal Land Council under the terms of the trust. So in this complex legal dispute, there are funds available to all parties because of the sale of the Mirvac land, so no-one is suffering from being a straw litigant at this stage in these proceedings.

Ms SYLVIA HALE: It is a bleak house scenario, is it not?

Mr WRIGHT: I feel obliged to tell you this story because I think it is worth understanding the magnitude of this issue. Those proceedings before Justice Barrett were then joined with the proceedings before Justice Austin, to be heard by Justice Barrett. Those proceedings have now been heard and final submissions were received last week by His Honour. There were about 10 to 12 days of evidence. I take that as what I think but I could find out exactly how many days if required. His Honour then took written submissions on the law and has taken a couple of supplementary submissions as well.

I disclose at this stage that I was subpoenaed to appear in that case, and appeared and gave evidence in relation to an issue before the court. I was subpoenaed by the administrator of Darkinjung Local Aboriginal Land Council. Having said that, Justice Barrett must now come to a view about the matter of whether the original transfer of these moneys was lawful or unlawful as a question of law—I refer to it as statutory ultra vires. He must also decide on the evidence heard by him whether or not

there should be a provisional liquidator or receiver appointed to Darkinjung Pty Limited. So if you like, the decision of Justice Austin to say that the administrator had overstepped his legal bounds is the law as it stands and is before the Court of Appeal. Whether the Court of Appeal will entertain it is a matter for that court.

However, those issues to some extent have been subsumed in what is before Justice Barrett. Justice Barrett must now decide about the lawfulness of that transaction and also about the conduct of Darkinjung Pty Limited because that is the basis upon which he would make a decision about the appointment of a receiver or a provisional liquidator. At the heart of this issue is the question of the unlawfulness of the transfer of funds. It has been there all along and it is the critical issue before the courts which will determine how the rest of this matter unfolds. That is where that is up to. So when in these questions and answers I see reflected questions about whether the administrator did these things in relation to Darkinjung Pty Limited, the answer appears to me to be yes, he did them and then he was challenged in the courts and the court put his decisions to one side.

I do not think there was any malfeasance on his part or on Darkinjung Pty Limited's part in relation to that matter; it was simply a commercial dispute—a serious commercial dispute. It is now part of a larger, more fundamental commercial dispute at which at its core, what is at stake, is a very large land transaction by the Local Aboriginal Land Council with Mirvac Pty Limited. Until we know what the courts say about the lawfulness of that transaction and whether or not the courts view the conduct of Darkinjung Pty Limited as requiring the appointment of a receiver or provisional liquidator, again I say nothing about that matter. It is before His Honour. Once we know that clarification on the law, we will have a better understanding of how to remedy those issues.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: In essence your answer is that the Minister appointed the administrator and the Minister is supporting the administrator's actions at present and the court will decide whether what the administrator did was lawful or not under the Act. Is that the essence of your answer?

Mr WRIGHT: To clarify, the appointment of the administrator by the Minister was not for reasons associated with what I have just described to you. It was for a failure of the land council to lodge within the statutory time frame its audited financial statements. That was the specific reason given, a breach of the land rights Act. These other matters simply have been flowing through that process, and until we have the resolution of what the courts say, with respect, I cannot speak for the Minister but I can say that until we have the court's view we cannot properly deal with resolving the issues.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: When you say you cannot answer the question, the scenario I put to you, which is that the Minister appointed the administrator and the Minister is backing the administrator's actions and the court is seeing whether the administrator has acted correctly within the law presumably, that is presumably something you can answer.

Mr WRIGHT: The only reason I respectfully cannot say whether the Minister is supporting or not supporting the administrator is—

The Hon. HENRY TSANG: Point of order: This matter is in the courts. We already have a very good answer from Mr Wright and I do not think we should push him into any answer beyond what the court has to deliberate. Can you rule that any further questions on this case wait until the decision of the courts?

CHAIR: I think Mr Wright is quite capable of knowing the boundaries in which he can answer the question.

The Hon. HENRY TSANG: You have already allowed him twice but he is still—

CHAIR: I will move on to Ms Sylvia Hale's further questions.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: To the point of order: I am merely trying to clarify the position. The answers received to question 0130 are basically what I am stating, that is, the Minister's functions with regard to the administrator. Mr Wright has clarified issue but it

has been gone beyond the appointment of the administrator and the backing. The fact that I am saying the Minister backs that administrator is in a sense answered in question 0130.

The Hon. HENRY TSANG: Why ask Mr Wright—

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Please do not interrupt. I did not interrupt you. I am just basically clearly defining for anyone who is listening that the Minister's position is that he supports the administrator.

The Hon. HENRY TSANG: You cannot ask Mr Wright that question. Ask the Minister himself.

CHAIR: The Hon. Henry Tsang has made a point of order—

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: —and I am replying to it.

CHAIR: —and Hon. Dr Arthur Chesterfield-Evans has responded to his point of order. If you have one further brief question, I am aware that your time is elapsing. I think Mr Wright is able to answer.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I am just getting Mr Wright to confirm that effectively the Minister has supported the administrator and we are awaiting further developments from the court. Is that the essence of what you are saying?

Mr WRIGHT: With respect, I cannot speak for the Minister. I do not do that out of hubris; I do it as a statutory officer who is not the Minister and it would be inappropriate for me to do so. As to the second part of that question in relation to what is before the courts, the answer is most definitely yes and we will all be enlightened by the court in due course.

Ms SYLVIA HALE: Is there any indication as to when Justice Barrett's decision will be handed down?

Mr WRIGHT: If I was do in any way suggest on behalf of Justice Barrett when he will—

Ms SYLVIA HALE: He has not indicated?

Mr WRIGHT: He has not indicated, no.

Ms SYLVIA HALE: Is the department aware of the extent of the legal fees that have been incurred as a result of this case by both the administrator presumably and by Darkinjung Pty Limited?

Mr WRIGHT: The way I would suggest is neither of those parties is before you but I would certainly be willing to undertake, as the registrar, to ask both those parties if they wish to provide that information to your Committee. I would be happy to do that.

Ms SYLVIA HALE: When you are doing that could you confirm whether the administrator has budgeted \$900,000 for legal fees or whether it is in excess of that amount?

Mr WRIGHT: I am happy to take that on notice and attend to that.

Ms SYLVIA HALE: You say that the administrator was appointed because of the Darkinjung land council's failure to lodge audited financial statements. Was that just in relation to the Darkinjung trust or was it in relation to the cattle company, the funeral fund and the housing company?

Mr WRIGHT: I refer you to section 153 of the Aboriginal Land Rights Act, which is headed "Local and Regional Aboriginal Land Councils to keep accounts". Specifically, section 153 states:

- (3) The financial statements must be submitted for verification and certification to an auditor appointed by the New South Wales Aboriginal Land Council in the manner prescribed by the regulations.

- (4) The financial statements must be prepared and submitted to the auditor not later than 10 weeks after the end of the financial year to which they relate.
- (5) Each such Council must furnish to the New South Wales Aboriginal Land Council the audited financial statements and such other documents as are prescribed by the regulations, not later than 4 months after the end of each financial year.

Subsection 6, "For the avoidance of doubt, the audited and financial statements prepared and furnished to the New South Wales Aboriginal Land Council under this section must include information relating to the council's funding and operations, and not merely funding received from, and operations funded by, the New South Wales Aboriginal Land Council."

Ms SYLVIA HALE: The report is quite comprehensive.

Mr WRIGHT: It is quite comprehensive. However, there was an issue in relation to: At what point is a related entity of any local land council subject to that auditing regime? That is still a work in progress, I think is the term.

Ms SYLVIA HALE: Has that issue been resolved in the courts or is it being resolved within the department?

Mr WRIGHT: It is not a matter being resolved by the department—I do not think.

Ms BROUN: If I could go back to the process they went through in terms of the appointment of the administrator. Steve has provided a lot of detail, but I think it is worth going through that process again. On 3 March 2005 the former Minister appointed Mr Tim Kelly from Deloitte's to investigate all the affairs of the Darkinjung Local Aboriginal Land Council [DLALC], including its efficiency and effectiveness from 3 March to 2 August 2005, pursuant to section 216 (1) of the Aboriginal Land Rights Act. That term was subsequently extended to 23 August 2005. The appointment was in response to a recommendation by the State Land Council, the New South Wales Division of Land Councils, on 23 February 2005, which expressed concern over the management of DLALC, including its financial assets.

On 17 October 2005 the Minister, having considered the investigation report and its answers, wrote to DLALC stating that the investigation report cited grounds on which an administrator could be appointed to DLALC under section 222 (1) of the Aboriginal Land Rights Act. The Minister provided a complete confidential copy of the report to DLALC and requested a response from DLALC relevant to the grounds referred to in the report, to provide reasons why the Minister should not consider the appointment of an administrator. A response was due by 7 November 2005. An extension was given until 21 November 2005. So that was a total of five weeks to respond. On 18 November 2005, three days before the response was due, DLALC filed a class four action in the Land and Environment Court against Minister. I think you will have got a sense of the complexity of some of the issues through what Mr Wright has already provided.

The application was against the Minister, the State Land Council and the investigator from Deloitte's, Mr Tim Kelly, and the matter was heard by the Chief Judge, Justice Preston, over three days between 6 and 8 December. The application challenged the report and the actions of the investigator appointed by the Minister for Aboriginal Affairs. As part of those legal proceedings, on 18 November 2005 the court made orders noting that, on receipt of certain undertakings to the court from DLALC and Darkinjung Pty Limited, the Minister undertook that he would not act pursuant to section 222 of the Aboriginal Land Rights Act in relation to DLALC, pending the hearing and determination of the application. So, there were undertakings from both parties during that hearing.

With the appointment of the administrator, during the proceedings in the Land and Environment Court evidence was tendered indicating DLALC had not lodged its audited financial statements for the 2004-05 year, which is what Steve was explaining, by 1 November as required under section 153 of the Aboriginal Land Rights Act, and onto March the Minister wrote to Darkinjung asking for an explanation as to DLALC's non-compliance with the Aboriginal Land Rights Act and reasons why the Minister should not exercise his powers under section 222 (1) (b) and (c) of that Act to appoint an administrator to DLALC. Lawyers acting for DLALC sent numerous responses to the Minister. The first was received on 2 March and the last on 7 at 2006.

On 24 April 2006 the New South Wales Aboriginal Land Council's solicitors provided to the Crown Solicitor copy of a letter from solicitors from DLALC and Darkinjung Pty Limited to the Registrar of the Aboriginal Land Rights Act stating that Darkinjung Pty Limited was in the process of purchasing a property to the value of \$755, 000, as Steve explained. The letter stated that DLALC regarded earlier undertaking provided to the registrar in proceedings brought against them in 2004 for non-compliance with the Aboriginal Land Rights Act as elapsed. A letter was sent to DLALC's solicitors on 27 April 2006 notifying that the Minister regarded this, if true, as a serious breach of DLALC's undertaking to the court, and requiring a response by 4.00 p.m. on same day.

Lawyers for DLALC responded later the same day, advising they considered the purchase of the property was an action made in the ordinary course of business and therefore not in any way a breach of the undertaking to the court, but provided no further information. On 2 May 2006 Council representing the Minister sought orders from the Land and Environment Court that Darkinjung Pty Limited and DLALC had breached the undertakings they provided to the court, and also a declaration that the Minister be discharged from the cross-undertaking he gave to the court, which prevented him from acting under section 222 against DLALC. The Minister was successful in having the orders amended, thereby allowing the Minister to consider the appointment of an administrator to DLALC for breaches of section 153 of the Aboriginal Land Rights Act.

The Minister appointed the administrator based on DLALC non-compliance with section 153 (4) and (5), providing grounds under section 222 (1) (b) and (c) of the Aboriginal Land Rights Act. As you gathered from Mr Wright's evidence, it is very complex matter and it has been ongoing for some time. The Minister, at the last hearing of the Committee, tabled three of the administrator's reports. The fourth one has recently been received and I am happy to table that as well. These are reports that the Minister receives monthly from the administrator, which give detail about his activity as an administrator for the past month. The meetings he has held with members are included in that, so that they are quite detailed reports.

Document tabled.

Ms SYLVIA HALE: From what you have said, on 3 March 2005 the investigation by Mr Kelly got under way. That was in response to a complaint by the New South Wales Aboriginal Land Council about failure to lodge audited financial statements. How tardy was Darkinjung in lodging those financial statements? Was it a matter of weeks, months or years? To which financial years are we referring?

Ms BROUN: You are talking about the appointment of the investigator on 3 March?

Ms SYLVIA HALE: Yes.

Ms BROUN: That was a general concern about the management of DLALC and its financial assets, rather than specifically around the—

Ms SYLVIA HALE: From what was said earlier, the complaint was specifically about failure to lodge financial statements. You said that in one case it was 10 weeks after the financial year and in another instance it was for weeks.

Mr WRIGHT: There is a little bit of disjuncture between the investigation report and the appointment of the administrator. The investigation was commenced for a range of issues. The appointment of the administrator was for the specific issue of the failure to lodge audited financial statements. The report of the investigator was before the court, so that they are in a sense separate. There were wide-ranging issues, which, if you read the investigator's report—and you are now, I assume, able to do so because the court has said it is valid—you will find it is not just in relation to matters of financial reporting.

Ms SYLVIA HALE: What I am trying to find out is just tardy were they in lodging the financial statements that they were required to lodge? Was a question of weeks, months or years?

Ms BROUN: They still have not been lodged.

Ms SYLVIA HALE: No. When you decided to take action, how late were they at that stage?

Mr WRIGHT: I hear what you are saying. As a general point they were due in November of last year and they were not yet lodged by 2 May when the administrator was appointed—if I had that day to correct.

Ms SYLVIA HALE: So, six months. Would you take the question on notice and provide the Committee with the actual times that they were required to be lodged and when the law was invoked, as it were?

Mr WRIGHT: The time for lodgement is a specific statutory date.

Ms SYLVIA HALE: Will you also provide the Committee with information as to how many other local Aboriginal land councils had failed to comply with that deadline or had failed to comply with deadlines for the lodgement of financial statements?

The Hon. MELINDA PAVEY: That question is already on notice, as I understand it, and we have not had a response to it. The question was: "I think at least 30 per cent of Aboriginal land councils have auditing non-compliance. Minister, could you please take on notice and provide the Committee those local Aboriginal land councils who currently failed to meet audit requirements?"

Ms SYLVIA HALE: Could you also inform Committee as to whether the New South Wales Aboriginal Land Council had also requested that action be taken in relation to any of those local land councils?

Ms BROUN: We are seeking that information from the New South Wales Aboriginal Land Council. In relation your first question: The reports were due on 1 November for the 2004-05 financial year. It was 2 March, so four months afterwards, that the Minister wrote to DLALC asking for an explanation about non-compliance, and it was on 2 May that he appointed the administrator.

CHAIR: Given that there a number of questions still outstanding from the last estimates hearing and the Minister gave an undertaking that it would not be a problem to submit those to the Committee within 21 days—we have received answers to only a few questions—would you explain the cause of the delay and when the Committee might expect those responses?

Ms BROUN: The information that has been sort in those other questions is something we have to get from the State land council; it is not something that we have.

CHAIR: When can Committee expect a response from the department? Given that you have 70 people working in the department, when can Committee expect a response to the remainder of the questions that you took on notice and the Minister took on notice and undertook to provide within 21 days?

Ms BROUN: I am not sure I can give an exact date because we are seeking information from the State land council, but we will be time to get that as soon as possible.

The Hon. HENRY TSANG: Could I rephrase the question? The Committee asked for those answers to be provided within 21 days.

Ms BROUN: Yes.

The Hon. HENRY TSANG: If you are unable to provide those answers because you are relying on information from other parties, where you please nevertheless respond with an answer? In other words, it cannot provide the answer please say why you cannot, because you are relying on other people.

Ms BROUN: Yes, that is what I am saying.

The Hon. HENRY TSANG: In that way you will have answered all the questions asked of the department and the Minister. You will have answered the Committee's questions.

Ms BROUN: Yes. As I said, the answers that have been delayed are those that we are seeking information about. I will get those answers as quickly as possible.

CHAIR: Marcia Ella Duncan and Stephen Merritt were former employees of the Department of Aboriginal Affairs. Is that correct?

Ms BROUN: Yes.

CHAIR: In what capacity were they employed?

Ms BROUN: Mr Merritt was the Executive Director of Communities and Programs and Marcia Ella Duncan was Executive Director of Policy and Regulation.

CHAIR: Why were they sacked?

Ms BROUN: I would like to say a couple of things. First, both of these appointments were on a contract basis and therefore were not permanent public service positions.

The Hon. MELINDA PAVEY: How long were they employed?

Ms BROUN: I will get to that.

CHAIR: Can you explain also whether they served their full contract periods?

Ms BROUN: No, they did not. The contract they are under allows their contracts to be terminated. So both of those staff have since been replaced with two Aboriginal staff members, who are acting in those positions while they are being advertised. There is current recruitment action on those positions. The other question—

The Hon. MELINDA PAVEY: How long were they employed?

Ms BROUN: They were both appointed on 11 April 2005 and their contracts were terminated on 22 May 2006.

CHAIR: By whom and why?

Ms BROUN: By me. The details behind the decision were discussed with those individuals in detail. I really think that, out of respect for their privacy as individuals and the confidentiality around that, I am not able to disclose that information.

CHAIR: Did you think that their performance was up to scratch?

Ms BROUN: As I said, the reasons behind the decisions were discussed with those individuals. There was no suggestion of fraud, corruption or any offence on the part of those officers. But it is my role to ensure that the department continues to meet the needs of the Aboriginal community and its expectations.

CHAIR: So they were not meeting the requirements of their contracts?

Ms BROUN: As I said, the reasons behind that have been discussed and—

CHAIR: But were they meeting the requirements of their contracts?

Ms BROUN: We have got to have some respect for those individuals' privacy.

CHAIR: But were they meeting the requirements of their contracts?

The Hon. TONY CATANZARITI: Madam Chair, with respect, Ms Broun has answered the question. She has said that it is a confidentiality issue.

The Hon. HENRY TSANG: There is an agreement about confidentiality and the Committee should respect that.

CHAIR: I understand that you do not want to go into the reasons. We can assume, then, that there was some unsatisfactory performance there in some way.

Ms BROUN: I have given my answer, which is that the reasons behind the decision were discussed with both those individuals, and that is private and confidential.

The Hon. MELINDA PAVEY: Were they new positions?

Ms BROUN: As I said earlier, the department was reviewed in 2004 and recommendations were made broadly about the structure of the department into the future.

The Hon. MELINDA PAVEY: Which included the regional offices.

Ms BROUN: Yes, it included the regional offices and included three executive director positions—one executive director of policy and regulation; one executive director of communities and programs, under which the regional positions report; and one executive director of business and business strategies.

Ms SYLVIA HALE: But their positions are being filled, are they not?

Ms BROUN: Both the positions were filled very shortly afterwards. To maintain the capacity of the department I have people acting in those positions. But both positions have also been advertised and there is recruitment action currently under way on both positions.

CHAIR: Were redundancy payments made to those two people who were sacked?

Ms BROUN: Under the contract they are able to seek compensation determination through the Statutory and Other Officers Remuneration Tribunal under section 78 of the Public Sector Employment and Management Act.

The Hon. MELINDA PAVEY: Are they doing that?

Ms BROUN: That has happened. Again, out of respect for the individuals, I do not want to go into it. But they both received compensation.

Ms SYLVIA HALE: Can you provide details of the sums that they received? We are talking about public moneys.

The Hon. MELINDA PAVEY: You are obliged to, Ms Broun.

CHAIR: Will you take that question on notice?

Ms BROUN: Okay.

CHAIR: Thank you. Mr Merritt currently has a role within the Darkinjung Local Aboriginal Land Council. Is that correct?

Ms BROUN: That is what I understand.

CHAIR: What is that role?

Ms BROUN: I understand that he has been appointed as CEO. Steve answered that question at the last hearing.

CHAIR: Yes, I know. We have been down this track before, Mr Wright. Can you tell me, please?

Mr WRIGHT: I am happy to reiterate my answer from the first appearance, which is to say that the Darkinjung Local Aboriginal Land Council is a statutory corporation under the Aboriginal Land Rights Act. It is subject to administration and it can employ or appoint as a consultant whom it thinks fit under the Act on the basis of merit—no pun intended. I understand that Mr Merritt has been retained by the administrator of the Darkinjung Local Aboriginal Land Council as a temporary employee, essentially filling—

The Hon. MELINDA PAVEY: As a consultant.

Mr WRIGHT: No, as a temporary employee. That is my understanding. He will essentially fill the role that was being undertaken by Mr Aiden, who was referred to as the chief executive officer. I am unsure whether Mr Merritt goes by that title.

Ms BROWN: If I may add to that, the report I have tabled by the administrator of Darkinjung refers to Mr Merritt's appointment. It says, "I have appointed Mr Stephen Merritt, an ex-DAA senior executive, to the position of general manager on a casual basis. Mr Merritt will assist me in negotiations with the various parties who have previously expressed interest in commercial arrangements with Darkinjung Local Aboriginal Land Council, pursuing arrangements which may be beneficial to DLALC and day-to-day management functions. A report from Mr Merritt is attached at annexure B." That is with the report.

It continues, "Mr Merritt has worked with the Aboriginal community for a number of years and may be known to some members of the Darkinjung Local Aboriginal Land Council. I expect Mr Merritt will provide valuable assistance in moving forward those matters where negotiations had commenced prior to my appointment on 2 May 2006. These negotiations have not received adequate attention due to my time being necessarily spent on legal proceedings referred to at section 14.1 of this report." That is a summary of the appointment of Mr Merritt. It is in the report that I have tabled.

CHAIR: Ms Broun, do you think it is appropriate that there is no due process in terms of appointing employees with Aboriginal land councils under administration?

Ms BROWN: I think Steve answered this question at the last hearing.

Mr WRIGHT: With respect, Chair, I refer you, firstly, to section 78 of the Act. It says, "A local Aboriginal land council may employ such staff and engage such consultants as are necessary to enable the council to exercise its functions." Section 79 refers to some exclusions, which are essentially to do with criminal convictions and people not holding office as well as being employed by the land council. Section 80, which is important to your comments, is headed, "Appointments and promotion to be on merit". It says, "Appointments to the staff of local Aboriginal land councils and promotions to members of that staff are to be made on the basis of the merit of the applicants for appointment or promotion. The merit of a person eligible for appointment or promotion to a vacant position is to be determined having regard to the nature of the duties of the position and the abilities, qualifications, experience, standard of work performance and personal qualities of those persons that are relevant to the performance of those duties." The Act is quite clear in suggesting that it is merit based. But that of course has to be balanced against the nature of the position—temporary, full-time et cetera—as to how the employer may go about obtaining such staff.

CHAIR: Does the Act specify that the positions need to be advertised?

Mr WRIGHT: There is no requirement for competitive recruitment set out in the Act. I have read to you the limits of how merit is used to establish whether you should employ or not employ. That is why I referred you to the importance of understanding the nature of the position and its status.

CHAIR: Mr Merritt was appointed without advertisement, without an interview panel and without other applicants applying for the position. Is that correct?

Mr WRIGHT: Again, I cannot speak for the administrator, but Ms Broun has told you what he reported in his published report. I would be happy to get him to provide to the Committee the details of that appointment.

CHAIR: Yes, please.

Mr WRIGHT: Okay.

CHAIR: Thank you. Ms Broun, you talked about zone offices, regional offices and so on. On what date did the administrator of the New South Wales Aboriginal Land Council abolish the eastern zone office?

Ms BROUN: That is not a question I can answer.

Mr WRIGHT: That is a question for the administrator of the New South Wales Aboriginal Land Council, which is a private statutory corporation, Chair.

CHAIR: This Committee has asked for the administrator to attend but we have not been able to get him to do so¹. Is someone else able to provide that information?

Ms BROUN: Can we take that question on notice and refer it to the land council? It is a NSWALC question.

CHAIR: Can we find out at the same time whether a review of the operations of the eastern zone was conducted?

Ms BROUN: So you want to know what date the eastern zone office was abolished.

CHAIR: Yes. Was there a review and what led to the decision to abolish that office? Was there consultation with the Aboriginal people before that zone office was abolished? On what date, and why, was the former director of the eastern zone dismissed?

Ms BROUN: Okay.

CHAIR: Can you verify that that was a Mr Jurrotte?

Mr WRIGHT: The name of the gentleman in question is Ken Jurrotte.

CHAIR: Can you provide an explanation of why, after Mr Jurrotte was dismissed—

Ms BROUN: I am sorry, can you repeat the question, please?

CHAIR: We have had verification that Mr Jurrotte was dismissed as the director—

Mr WRIGHT: I am not verifying any of those facts, with respect, Chair. I am simply telling you his name because, as we know, the New South Wales Aboriginal Land Council is not responsible for government money. It is a statutory corporation that exists on the compensation payment. These are questions that need to be put to that corporate entity, and which it may or may not choose to answer, with respect to the Committee.

The Hon. MELINDA PAVEY: I have had an opportunity to look at the "Two Ways Together" report. In relation to goals and outcomes, the pyramid has a typo—I think it is meant to read, "Report action areas". The report contains not a lot of comparative data for the past 20 years and does not outline your key performance indicators—a popular phrase of the moment. There are no goals or challenges; there are just words rather than desired outcomes in terms of health, education, housing and other outcomes that we would like to see improved for Aboriginal populations. Would you have preferred to see clearer indicators and clearer benchmarking in this report?

¹ Mr Chapman attended the hearing of 28 August 2006, but was not requested by the Committee to attend the hearing of 25 September 2006.

Ms BROUN: There are a couple of points. One is that I would suggest that they are there. Under culture and heritage, it says that the Aboriginal people of New South Wales are able to protect, practise and promote their culture. Is that a goal or a vision? I suggest it is a goal. Under education, it says "Aboriginal people achieving the same educational outcomes as the non-Aboriginal population." They are goals, and they are goals for the 10-year life of the plan.

The Hon. MELINDA PAVEY: But they are not quantifiable. There are no percentages. It seems to be words rather than specifics.

Ms BROUN: I will check. I think the question is about targets and milestones. This report is about where we are at now. Under each of the priority areas there is an action plan around what we are going to achieve—not in all of those areas but there are some distinct milestones in that.

The Hon. MELINDA PAVEY: What is one of the milestones?

Ms BROUN: I do not think they are in his report. I will have to provide some of those for you.

Mr WASSELL: If I may assist. I think the Committee members are looking at the introduction section of the report, are you, on page 13?

The Hon. MELINDA PAVEY: I was on page 12.

Mr WASSELL: Pages 12 and 13? That is the introduction section of the report. When you get to the later sections of the report, for example, under health, there are targets around figures of life expectancy at birth, infant mortality, birth weight. These are the statistics being measured through his report. The intention of publishing this report every two years—it is a baseline report—is to be able to measure the progress in those key indicators. Those key indicators are occurring in health, education, economic development, justice.

The Hon. MELINDA PAVEY: With respect, I do not see any figures in the back pages of the report giving goals for 10 years hence. It is talking about current, but it is not talking about what you would like to reach.

Mr WASSELL: It is talking about, as a target, reducing incarceration rates and then measuring it. It is talking about reducing infant mortality and then measuring it.

The Hon. MELINDA PAVEY: So it is targeting to reduction but not stating what the goal is? Okay.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You mentioned in your comments, Mr Wright, Damien Aiden, who was the ex-chief executive officer, I understand, of the Darkinjung Local Aboriginal Land Council. Are you aware that he has written to the Minister basically saying that he has been accused of misappropriating money but he alleges it is about his own mobile phone that he owned and the council did not own?

Mr WRIGHT: Mr Aiden copied me the letter you are referring to, and I am aware of it, yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So you are aware that he denies very much the allegations made by the administrator against him?

Mr WRIGHT: Yes.

(The witnesses withdrew)

The Committee proceeded to deliberate.