

GENERAL PURPOSE STANDING COMMITTEE No. 3

Friday 16 September 2005

Examination of proposed expenditure for the portfolio area

ATTORNEY GENERAL

The Committee met at 9.00 a.m.

MEMBERS

The Hon. A. R. Fazio (Chair)

The Hon. P. J. Breen
The Hon. D. Clarke
The Hon. J. Jenkins

The Hon. C. J. S. Lynn
The Hon. E. M. Obeid
The Hon. I. W. West

PRESENT

The Hon. R. J. Debus, *Attorney General, Minister for the Environment, and Minister for the Arts*

Attorney General's Department

Mr L. Glanfield, *Director General*

Mr M. Talbot, *Director, Corporate Services*

Legal Aid Commission

Mr R. Cox, *Deputy Chief Executive Officer, Business and Client Services*

Mr S. O'Malley, *Corporate Finance Director*

CHAIR: I declare this meeting open to the public. I welcome you to this public hearing of General Purpose Standing Committee No. 3. First, I wish to thank the Hon. Bob Debus and departmental officers for attending today. At this meeting the Committee will examine the proposed expenditure for the portfolio area of Attorney General.

Before questions commence, some procedural matters need to be dealt with. I point out that, in accordance with the Legislative Council's guidelines for the broadcast of proceedings—which are available from the attendants and clerks—only members of the Committee and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee, you must take responsibility for what you publish or what interpretation you place on anything that is said before the Committee. There is no provision for members to refer directly to their own staff while at the table. Members and their staff are advised that any messages should be delivered through the attendant on duty or the Committee clerks.

The Committee has agreed to the following format for the hearing. We will start with 20 minutes for Opposition questioning, then 10 minutes for Mr Jenkins, then 10 minutes for Mr Breen, and we will go in that rotation until we have run out of time. Minister, is that acceptable to you and your officers?

Mr BOB DEBUS: Yes, it is.

CHAIR: The Committee also resolved, in a deliberative meeting before the hearing today, that questions on notice should be returned within 35 calendar days. I declare the proposed expenditure open for examination. Attorney, do you wish to make any brief opening statement?

Mr BOB DEBUS: Thank you, but no.

CHAIR: We will now have Opposition questions.

The Hon. DAVID CLARKE: Attorney, when did you first become aware that complaints had been made against Judge Dodd?

Mr BOB DEBUS: I cannot recall exactly when I became aware of that.

The Hon. DAVID CLARKE: Can you say generally when you became aware of it?

Mr BOB DEBUS: I became aware, I think it would be fair to say, not very long before there were media statements made about the medical condition that he had had. But, actually, he had had that medical condition quite some time, I think several years before the statements began to be made.

The Hon. DAVID CLARKE: Is there any member of your department here who could be more specific as to when you became aware?

Mr BOB DEBUS: No, there is not, although we could certainly give you more precise information upon notice. But, in essence, we became aware of those complaints at or about the time they actually became public and, as I say, the key fact is that the complaints began to be made by some former litigants about events that were actually years old. I did establish, relatively quickly, that the judge had had treatment for sleep apnoea, as I recall, before any of these matters had become public and, as far as I am aware, for whatever justification, the litigants who have complained about the circumstances that they experienced while they were in Judge Dodd's court all did so about events that were long past before those matters became public and before I was aware of them.

The Hon. DAVID CLARKE: So you will take that question on notice and see if you can come up with some specific information from your department?

Mr BOB DEBUS: Yes. I do not believe that my written answers will materially add to what I have said, but I will take the question on notice.

The Hon. DAVID CLARKE: Would it be fair to say that you were first made aware after being informed by the Judicial Commission?

Mr BOB DEBUS: No.

The Hon. DAVID CLARKE: Or had complaints come in to you?

Mr BOB DEBUS: To the contrary; I wrote to the Judicial Commission concerning the complaints made against Judge Dodd.

The Hon. DAVID CLARKE: Were those complaints in the form of letters to you, or verbal complaints? How did those complaints come to your attention?

Mr BOB DEBUS: The complaints came to my attention in several ways: through the media, and in consequence of correspondence from several people who had been litigants.

The Hon. DAVID CLARKE: How many complaints about Judge Dodd's conduct have in fact been lodged?

Mr BOB DEBUS: We may be able to answer that specifically. I cannot especially, without little research, be completely explicit or precise about the number of complaints that were made. Indeed, there may be some issue about defining what were significant complaints. But I can tell you that I have had three particular matters drawn to my attention by correspondence.

The Hon. DAVID CLARKE: Have you got the dates of that correspondence?

Mr BOB DEBUS: No. But all of those complaints occurred in the first part of this year—remembering that the circumstances complained about, generally speaking, involved litigation that occurred in 2003.

The Hon. DAVID CLARKE: Given that the judge has retired from the bench on medical grounds, how is it that Justice Blanch gave a public assurance on 1 March this year that Judge Dodd had successfully received treatment for his medical condition and was able to carry out his duties in the appropriate manner?

Mr BOB DEBUS: Judge Blanch's assurances were based on his understanding of the consequences of Judge Dodd's treatment for sleep apnoea. The retirement occurred because of the judge's more general medical condition, a condition that existed in the recent months, as distinct from the specific symptoms of sleep apnoea, which had been occurring, as I understand it, during 2003.

The Hon. DAVID CLARKE: Was there a period of time when Judge Dodd was not carrying on his duties in an appropriate manner?

Mr BOB DEBUS: Judge Dodd's episode of sleep apnoea has been well and truly canvassed in the media, and to a degree in the Parliament I guess, and I have no reason, I never had any reason, to for a moment doubt the assurances that Judge Blanch had given. As you are aware, the matters about which litigants have complained in consequence of Judge Dodd's episode of sleep apnoea have all been investigated, as is appropriate. From then on, as I understand it, Judge Dodd performed perfectly effectively, though at a certain point—and, again, I do not know the exact dates—but at a certain point during this year he sought leave, because of his more general medical condition, and was eventually permitted to retire on medical grounds. But I had no indication at all that Judge Dodd failed, during the period between 2003 and 2005, to perform his duties satisfactorily.

The Hon. DAVID CLARKE: So you feel that he was performing his duties satisfactorily during the whole of this period?

Mr BOB DEBUS: Well, I have no evidence to the contrary. Of course, it is always the case that litigants who feel that they have been aggrieved by the circumstances of any particular case are able to make an appeal. And, in any event, as you might be aware, it was certainly my concern about the circumstances that surrounded Judge Dodd's case that caused me to strengthen the circumstances

under which judges and magistrates might seek medical advice about their health problems. So I am not in the circumstance of wishing to in any way either diminish or enhance the assessment, as it were, of Judge Dodd's performance. But I repeat that I am not aware of him failing to perform in a reasonable manner during the period 2004 and into 2005.

The Hon. DAVID CLARKE: Taking that into account, regarding those complainants who contacted you and complained that they were aggrieved that they had not received proper justice, do you believe that there was any substance to their complaints?

Mr BOB DEBUS: I am not in a position finally to make a judgment about that. But I, of course, was sufficiently concerned, by the nature of several complaints, to ensure that they were referred to the Judicial Commission. We are indeed fortunate in New South Wales that we have that failsafe mechanism to permit us to review the circumstances of a case without interfering with the independence of the courts. That is precisely why I actually did refer some matters to the Judicial Commission.

The Hon. DAVID CLARKE: Coming up to more recent times, between 1 March and 2 June this year how many cases did Judge Dodd hear, and were any complaints made to the Judicial Commission about him in relation to those cases?

Mr BOB DEBUS: I cannot answer the number of cases that Judge Dodd heard—it would be extraordinary if I knew. I am not aware of complaints about recent cases.

The Hon. CHARLIE LYNN: How many displaced employees are there in your department?

Mr BOB DEBUS: We do actually know that.

The Hon. CHARLIE LYNN: Thank you. Can you tell us?

Mr BOB DEBUS: We can. I will ask Mr Glanfield to do it.

Mr GLANFIELD: Could I make a couple of comments leading into that, simply because it is important to put it in context, at least for my organisation? Any organisation from time to time is restructuring, particularly when you are seeking to reduce costs and so from time to time there will be people who are displaced when jobs have been restructured or the job is no longer required because of technological changes. One of the things that was a significant change for our department was the closure of the Compensation Court. At the time the Compensation Court closed it employed 142 staff, 14 judges and four commissioners. From that number we are now down to only eight staff who are displaced as result of the closure of the Compensation Court. In other words 134 staff have been offered alternative employment, applied for and received positions, or taken voluntary redundancies. All the judges have been absorbed within the District Court in existing vacancies, and the commissioners were equally looked after. It is a great success story. At the moment we have 27 displaced officers in total, 19 of them are working in vacant established offices—they are performing actively in positions benefiting the community—and the remaining eight are the eight I referred to who are Compensation Court displaced officers.

The Hon. CHARLIE LYNN: Are the eight you mentioned earlier only from the Compensation Court?

Mr GLANFIELD: That is right.

The Hon. CHARLIE LYNN: Is the number only the people who have registered? Are there others who have been displaced but have not elected?

Mr GLANFIELD: No, that is the total number. A further step can be taken to declare people excess, and that is effectively when you cannot find alternative employment for them within their existing structure. But, as I say, all of our people are placed against vacant positions, with the exception of the eight staff who we are still actively managing to find alternative employment for or to offer voluntary redundancy.

The Hon. CHARLIE LYNN: What numbers of displaced people have reported to the redeployment unit, the RRSU, of the Premier's Department?

Mr GLANFIELD: The last time I looked there were three, and two of those have now accepted voluntary redundancies so there is probably only one remaining on the list of the Premier's Department.

The Hon. CHARLIE LYNN: What is the number of unregistered or not elected displaced employees in your department?

Mr GLANFIELD: I am not quite sure what you mean by that, but I presume that is the 27 less 3, so that would be 24 people who are displaced. I am not sure of the nomenclature that you are using there.

The Hon. CHARLIE LYNN: Could you advise us if there was an effort by the department to remove employees from the displaced list between 27 July 2005 and August 2005?

Mr GLANFIELD: We are always actively doing that. The list to which you refer is the list upon which we had three people. As I said, two have accepted voluntary redundancy. Until people are prepared to accept voluntary redundancy all we can do is explore all the other opportunities for employing them within the public sector broadly.

Mr BOB DEBUS: These are specifically people who, in the past, have been associated with the abolished Compensation Court.

Mr GLANFIELD: Yes.

The Hon. CHARLIE LYNN: Could you advise of the number of senior officers you have in your department at each level? The salary levels are SO 1, SO 2 and SO 3.

Mr GLANFIELD: I would have to provide the details of that on notice.

The Hon. CHARLIE LYNN: And the number of chief executives, senior officers, in your department?

Mr GLANFIELD: Members of the senior executive service?

The Hon. CHARLIE LYNN: Yes.

Mr GLANFIELD: Again, I will take that on notice to give you exactly the right figure.

The Hon. CHARLIE LYNN: You will provide that information to answer that question and the previous question?

Mr GLANFIELD: Yes. Can I answer the second question? The first one you wanted was a break-up of senior officers and SES officers. For SES officers we have 44.

The Hon. CHARLIE LYNN: The number of SES officers is 44?

Mr GLANFIELD: Yes.

The Hon. CHARLIE LYNN: And how many CES officers?

Mr GLANFIELD: Chief executive?

The Hon. CHARLIE LYNN: Yes, what is the number of chief executive service officers in the department?

Mr GLANFIELD: There is only one chief executive.

Mr BOB DEBUS: That is my policy.

The Hon. DAVID CLARKE: Getting back to the question regarding Judge Dodd, do you believe it is acceptable that a rape victim whose evidence Judge Dodd slept through was kept in the dark—and a review to investigate the judges conduct?

Mr BOB DEBUS: In that question you are assuming some facts that I cannot assume, but it certainly is the case that one young victim, who has complained to me about that circumstance, has my profound sympathy and I referred that matter to the Judicial Commission.

The Hon. DAVID CLARKE: In what way are the facts different to the way I just described them?

Mr BOB DEBUS: I am simply saying that I am not in a position to confirm what you described, but I would acknowledge that those circumstances were claimed by one young rape victim, and I interviewed her. She wrote to me. I am reluctant to mention her name: I cannot without advice. I met with a young woman, which was a case in which an offender was found not guilty. I referred that matter to the Judicial Commission. We are fortunate in New South Wales that we have a mechanism, which, while not interfering with the independence of the judiciary, has the capacity to address and consider the possibilities for giving some remedy to circumstance like that.

The Hon. DAVID CLARKE: Did you come to a view about her complaints?

Mr BOB DEBUS: I was indeed concerned about the allegations she made. My view was that she was a credible person and that the complaints she made were apparently of substance, but I could not draw a final conclusion. It was entirely appropriate that, given that degree of concern about the matter, I should write to the Judicial Commission, which I did.

The Hon. DAVID CLARKE: On 29 March this year you wrote to a rape victim who complained about Judge Dodd sleeping as she gave evidence, that there were a number of unresolved issues with the Judicial Commission that you wanted to pursue. What were those unresolved issues?

Mr BOB DEBUS: Could you repeat the question?

The Hon. DAVID CLARKE: On 29 March this year you wrote to a rape victim who complained about Judge Dodd sleeping as she gave evidence, that there were a number of unresolved issues with the Judicial Commission that you wished to pursue. What were those unresolved issues?

Mr BOB DEBUS: That is exactly the matter to which I have already adverted, that is to say the young woman concerned complained to me that she believed there were aspects of the case that were unfair to her and, as I said to you, I was not in a position to finally determine whether those claims that she had made were true or not, but I found her to be a courageous and reasonable person, and I thought that the claims that she had made needed to be considered by the Judicial Commission. I cannot say that I was doing any more than acknowledging those circumstances to her when I wrote to her.

The Hon. JON JENKINS: My questions are directed more at policy areas, but I am interested in terrorism legislation. Many aspects of the legislation will affect some of the most fundamental rights we have as human beings—free speech, free association and personal freedoms. Society will have to make some decision as to whether they support those restrictions to have it, but the community would ask that the consultation before legislation, or at least during some part of the legislative process, be very wide. Have you allocated money in your budget for this presumably increased community consultation that will be required if you are going to restrict people's freedoms, and how have you done that?

Mr BOB DEBUS: I have not specifically allocated money for the purpose. Within New South Wales there is a very important subcommittee of Cabinet that concerns itself with terrorism. That subcommittee always includes the Premier, the Minister for Police, the Minister for Emergency Services, the Treasurer and me. That committee sits permanently considering matters of terrorism, of

which, obviously, there are many aspects. There are those that are associated most closely with the concerns of the police on a day-to-day basis through to those that are associated with the perceived need to change the legislation. It is some time since the New South Wales Government felt the need to alter legislation. You will remember that there were several substantial initiatives in that respect some time ago.

I can only say to you that we will continue to take each initiative on its merits, we will continue to consult with people with expertise on the actual details of counterterrorism measures that might be taken, and I will always bear in mind exactly the principles and concerns that you have expressed. On a number of public occasions I have said that I passionately believe that democracy must fight terrorism with democracy's tools. So far I feel confident that that is what we have done in New South Wales. We have introduced no measure that is not subject to intense scrutiny by appropriate bodies concerned with ensuring that government is properly conducted, and we have subjected all of our initiatives on terrorism to appropriate parliamentary procedures and to the usual forms of scrutiny that occur.

It does not immediately strike me that I need to allocate anything from the budget, although it has given you a useful mechanism by which to ask me these policy questions in the context of the estimates.

The Hon. JON JENKINS: The reason I ask that you the question is that these terrorism laws and the ones that will be introduced to support the Federal Government changes will affect the fundamental rights in a democracy. As far as I can see, there is no mechanism for the general community out there to have input apart from writing you a letter.

Mr BOB DEBUS: Yes. These are fair questions, but I believe it is the case that the Government has so far treated initiatives concerning terrorism as being part of the ordinary business of responsible government and has used the ordinary mechanisms for making decisions. That being so, I accept that these are particularly grave matters and that those who easily demand the removal of the long-established civil liberties are less sensitive than I think they ought to be to the fundamental nature of our democracy.

The Hon. JON JENKINS: The other question I want to ask you which is related to that is that we all witnessed what happened in New Orleans recently, with a complete breakdown of social order. But in the event of a large natural disaster, what plans do you have in place if we were to suffer a major terrorist attack, for instance, or a major natural disaster? It goes without saying that there would be a breakdown of social order and justice.

Mr BOB DEBUS: Yes, though strictly speaking, these matters are only tangentially related to my portfolio.

The Hon. JON JENKINS: I understand that, yes.

Mr BOB DEBUS: But it happens that, because of my past responsibilities within Emergency Services, I am rather acutely aware of the whole hierarchy of arrangements that exist in New South Wales and Australia for emergency management which are associated with our specific laws. I would say with some confidence that, first of all, an emergency of the order of Los Angeles would have a vastly more efficient and effective response from our emergency and police services, and indeed our armed forces, than was the case in the southern States of America and that, in consequence, the laws that exist would be more properly enforced.

The Hon. JON JENKINS: Let me give you a specific example of court records, for instance. If we were to have some sort of major disaster in Sydney, would the court records be protected and available?

Mr BOB DEBUS: I will let Mr Glanfield answer that in detail.

Mr GLANFIELD: We are very conscious of the need for having contingency plans and disaster recovery plans. All of our information technology systems which contain the bulk of information about court proceedings are all backed up. They are backed up off site. We have a number

of different sites so that if there were a catastrophe in Sydney we are able to continue to function, so we have contingency plans to do that. We obviously do not want to go into the detail of that, but we do certainly have plans. I think across government it has been a high priority that has been driven, can I say, by the Cabinet subcommittee on counter terrorism.

Mr BOB DEBUS: I agree with you that these really are serious issues. Remember that in New South Wales we had the Olympics. Before that we had a peculiar scare about computer viruses, Y2K, where we thought that all the traffic lights would turn off and aeroplanes would fall out of the air in a leap year. That particular bonanza for the computer industry occurred just before the Olympics. So our emergency arrangements and our police arrangements, including those concerning terrorism, were all tested and retested. Our security and intelligence arrangements in association with the Commonwealth were all tested several times in the context of the Olympics and the lead-up to it.

We have continued to embellish those arrangements so that, as I say, although I, in my present responsibilities, share only a small portion of those total arrangements, I believe on the one hand that there is no reason for complacency and on the other that we have a whole-of-government arrangement that really demonstrates how badly the Americans have failed in the face of the emergency that they have faced.

The Hon. JON JENKINS: Are you saying that your budget is enough, you have enough funds, and you are prepared—that the court system and the justice system could continue to operate in the event, for instance, of a massive power failure, which is not without the bounds of possibilities?

Mr BOB DEBUS: Well, of course, a massive power failure is going to give the court system, like every other system of government and indeed within the private sector, its difficulties. But I am sure that the court system is backed up in sensible way as, as Mr Glanfield has described.

The Hon. JON JENKINS: Let me ask you the question directly: If we lost our power tomorrow, could the court system continue to operate?

Mr GLANFIELD: Yes, but not obviously in the same way. It would be operating, but we have plans to ensure that business would be transferred, for example, to suburban major courts. They would gear up to a high level to pick up the work. But certainly the impact on our service, if we lost power for a week in the city, would be absolute, yes.

The Hon. JON JENKINS: But you plan to do this.

CHAIR: We will now have 10 minutes of questioning by the Hon. Peter Breen, but before that I remind people that they should have their mobile phones turned off. Even if they are just switched to silent, it does interfere with the Hansard recording of proceedings.

The Hon. PETER BREEN: Chief Justice Spiegelman made some observations about costs. As a result of those observations, an inquiry was convened. I understand that a report is due to be released shortly following an inquiry. Are you able to say whether the report will deal with the issue of the Supreme Court costs assessment scheme? I actually raised this issue with you before and I think your answer at the time was that the issue was likely to be covered by the current inquiry. Are you able to say whether that is in fact the position?

Mr BOB DEBUS: You are correct that the report is imminent. I expect it next month, but Mr Glanfield helpfully tells me that there are two reports. So I think I will ask him perhaps to give you a little more detail.

Mr GLANFIELD: There is the review of legal fees, which I have been undertaking jointly with the Legal Services Commissioner and the former President of the Law Society and the President of the Bar Association.

Mr BOB DEBUS: It is called the legal fees review panel.

Mr GLANFIELD: That deals with the method of charging and the basis of charging for lawyers. The costs assessment scheme review though is being undertaken within the legislation and

policy division. Because it related to provisions of the Legal Profession Act, which is the new model national regime, it was delayed while there was consultation at the national level about appropriate ways for providing an assessment of costs. That, too, is aiming to produce a report, certainly this year, for the Attorney.

The Hon. PETER BREEN: I do not wish to pre-empt the legal fees review panel report, but are you able to say whether that deals with the question that Chief Justice Spiegelman raised, that is, the question of charging by units of time as opposed to charging by items of work?

Mr BOB DEBUS: My understanding is that the report does consider that issue, but I cannot yet say what its recommendation will be in consequence. But the report is to a degree the consequence of the chief justice's remarks. I am not yet able to say whether his proposals have actually been accepted. I do not think they will be, at least in their entirety, but they certainly will be taken into account.

The Hon. PETER BREEN: The Chief Justice, prior to making those comments about costs—I think perhaps it was two years prior to that—made some observations about the legal system in relation to the issue of a bill of rights. The Chief Justice suggested that with the passing of the United Kingdom Human Rights Act 1998 there was a danger that the system that we have in Australia for determining basic questions of fundamental rights and freedoms might be at risk of going off in a different direction to the direction that we have followed since the Colony was established. He was concerned about common law rights not being formulated in a bill of rights and, as a result of that, your predecessor, Jeff Shaw, initiated a bill of rights inquiry—I think then without the authority of the Premier at the time because there was some concern by the Premier that from his point of view a bill of rights was not appropriate for New South Wales. There have since been developments on that issue. In the Australian Capital Territory, for example, we now have a statutory bill of rights and there is currently a bill of rights inquiry being undertaken in Victoria. I understand that the Cabinet in Victoria has endorsed the idea of at least half a dozen fundamental rights being incorporated in the legislation. Is there any prospect in New South Wales of this issue of a bill of rights being reconsidered? If so, in what form?

Mr BOB DEBUS: That is not a matter that is under consideration at the moment. You are quite right, of course, to suggest that the recently retired Premier had quite strong views about the effects of a bill of rights upon our system of law. The current Premier probably had more to think about in recent weeks than a bill of rights and, in truth, so have I.

The Hon. PETER BREEN: Is it an issue that the Attorney might find time to consider between now and the next hearings next year?

Mr BOB DEBUS: Well, I might.

The Hon. PETER BREEN: Do you have any strong views about the issue that you are willing to express?

Mr BOB DEBUS: No.

The Hon. PETER BREEN: I received a letter from you yesterday, which I was very grateful for, about the issue of the Innocence Panel. You indicated that the Innocence Panel will now be reconvened as the DNA review panel.

Mr BOB DEBUS: Yes.

The Hon. PETER BREEN: You said that there were some issues that remained outstanding with the police in relation to the long-term storage of biological evidence. That raises the question really of whether the police should have custody of evidence in matters that are likely to be reviewed by the courts. I think this was covered by the Standing Committee of Law and Justice in its initial review of the DNA legislation, and the committee recommended the establishment of a State Institute of Forensic Sciences so that the question of the custody of DNA evidence could be dealt with independently and with impartiality. The previous Innocence Panel suffered from the fact that the police ran the show, basically. They looked after the evidence. They actually paid for the testing by

the Division of Analytical Laboratories and then they were responsible for bringing the information back to the Innocence Panel. A State Institute of Forensic Sciences would obviously remove the problem of the obvious conflict of interest where the police are controlling it.

Mr BOB DEBUS: And those are matters that are still under active consideration within the Government. It simply cannot be avoided that some forms of arrangement that you are suggesting could be extremely expensive. We have got to quite simply consider ways in which he might deal with these issues without incurring the kinds of massive costs that would in fact exist if we adopted some of the potential strategies. These are matters that are under very active consideration at the moment. I am not able to predict the precise outcomes and it is probably not necessary for me to do so in the context of the present Committee's hearings. But I do indicate to you that I acknowledge that these are serious issues and we are very actively working on them at the moment.

The Hon. PETER BREEN: Do you agree with the principle that the department, not the police, should be responsible for biological evidence—assuming that you take over the administration?

Mr BOB DEBUS: In the face of the exponentially growing DNA and other forms of new forensic evidence, we have to make sure that we have a robust system.

The Hon. PETER BREEN: You aware of the current delays at the Division of Analytical Laboratories when it comes to testing forensic material?

Mr BOB DEBUS: Yes, they are the kinds of delays that occur in every jurisdiction in the world. Again, they are matters that I and my colleagues, especially the Minister for Police, are paying very close attention to at the moment. Again, I am not in a position to be able to describe our final conclusion to you: it has not been reached. Indeed the issues you are raising are obviously all closely associated with what we are working to resolve at the present time. As I understand it, delays are much reduced now in consequence of changed procedures than they were even a year ago. They are quite significantly reduced.

The Hon. PETER BREEN: The whole issue of the previous Innocence Panel was brought to a head by the case of Stephen "Shorty" Jamieson. As a consequence of the material that was made available from the previous Innocence Panel, there was a question of a head scarf being tested. The head scarf was forwarded to the department by the Public Defender, Peter Zahra, about nine months ago as I understand it. The department has made a decision to not be involved in testing that material. Are you able to say what the delay was?

Mr BOB DEBUS: Consistent with your previous questions, my department never did have that responsibility and never possessed the material.

The Hon. PETER BREEN: I understood that the material was forwarded by the Public Defender. I recall receiving a letter from Mr Glanfield saying that he was in communication with the Public Defender about it. The inference I drew from that was that he was actually considering getting it tested.

Mr BOB DEBUS: We had Mr Zahra's letter, not the scarf.

The Hon. PETER BREEN: So there was never any question of the department taking responsibility for that testing?

Mr BOB DEBUS: No.

The Hon. PETER BREEN: Why has it taken so long to make that decision?

Mr BOB DEBUS: The department did not have to make that decision. Jamieson made application for an inquiry into his conviction under section 474 of the Crimes Act. Ultimately that application was dismissed on the basis that the material provided did not raise a doubt and did not give rise to a sense of unease about his conviction. He is able to make another application for an inquiry. We understand him to be looking for further DNA testing of some crime scene evidence. The

proceedings so far, as I understand it, have not directly involved my department at all. Requests were passed back and forth, but that was all.

CHAIR: We will now take 20 minutes of questions from the Opposition members.

The Hon. DAVID CLARKE: Attorney, in a large part of rural and regional New South Wales the position is, I think, that certain sentencing options available in metropolitan areas, such as periodic detention at home detention, are not available to offenders. Does that mean that we have an unfair system of justice, because those options are not available to offenders in those rural and regional areas?

Mr BOB DEBUS: I do not think it means we have an unfair system of justice; it means that judges and magistrates must work harder in some remote areas to find appropriate resolutions to particular cases. It means that sometimes offenders must be sent further away from home than they might otherwise be.

The Hon. DAVID CLARKE: Presently in New South Wales we have the situation that people are serving gaol sentences in rural and regional New South Wales who, had they been sentenced in Sydney, would not have been sent to gaol, do we not?

Mr BOB DEBUS: We are continuing to consider these matters. I understand that there is an upper House inquiry into this matter, and that inquiry was begun at my request to look at the issues that you are speaking about and to make further recommendations about how the Department of Corrective Services might provide a wider range of sentencing options in the most remote areas. It is true that throughout the history of New South Wales there has been a narrower set of sentencing options in the most remote places.

It is certainly true that during the whole of my time in Government I have been interested in wishing to broaden those possibilities. We have had some success, I should say. There are community service order arrangements, there are particular mechanisms such as circle sentencing for Aboriginal people being made available in remote places. I hope that that initiative especially will be effective in overcoming a lot of the circumstances that you have described. In my own estimation of these things, the most difficult issues arise when people in places such as Wilcannia and Bourke do not have particular mechanisms available to them, such as periodic detention.

On the other hand, periodic detention, when introduced to the system at Broken Hill, was not much used. Circle sentencing provides the possibility for a much more flexible response in the case of Aboriginal offenders and, of course, they are the majority of people in those very remote far western towns who are before the courts. I think that on the one hand circle sentencing, and on the other the upper House inquiry, will bring us some useful responses.

The Hon. DAVID CLARKE: So I am pretty right in saying, am I not, that we probably have quite a number of people, probably many people, who, over a lengthy period of time, have been serving time in gaol in those areas? Had their matters been dealt with in the metropolitan areas they would not be in gaol at this present time, is that correct?

Mr BOB DEBUS: There are some people in that category. I could not say that there are a lot in that category, because, as I mentioned, periodic detention is a form of sentencing that appears to be most effective with white collar middle-class folk rather than with Aboriginal offenders from Wilcannia. Nevertheless it is an issue, I freely acknowledge it to be an issue, and that is why I initiated the upper House inquiry and why, most particularly, I have been especially anxious that circle sentencing should be established in those locations that are particularly remote and where, obviously, it is most difficult from an administrative and budgetary point of view to provide the widest range of sentencing options.

The Hon. DAVID CLARKE: But it is an unsatisfactory state of affairs, is it not?

Mr BOB DEBUS: It is a state of affairs which I would like to see ameliorated.

The Hon. DAVID CLARKE: It is a state of affairs which has been going on for some considerable time?

Mr BOB DEBUS: For 200 years.

The Hon. DAVID CLARKE: Yes, but periodic detention and home detention options have been available to judges for a number of years in New South Wales in metropolitan areas, but not in country areas. I am talking about recent times, not 200 years ago.

Mr BOB DEBUS: Yes, that is true. It is also true, and I can speak about this quite directly because when I had responsibility for the Department of Corrective Services a number of years ago, I had been concerned about these issues and I specifically arranged for the periodic detention provision in Broken Hill. My recollection is that in the end that facility was used for something else, because periodic detention was ineffective. I am not wishing to be tricky about this, we are talking about a specific policy issue that needs to be assessed in an objective fashion. Periodic detention for very remote communities is extremely difficult to implement.

The point is that nobody can set up a periodic detention centre in, say, Wilcannia, because there would have to be a very large number of officers of the Department of Corrective Services sitting around looking after a very small number of people who are in for only a couple of days a week. So if you have periodic detention in far western New South Wales, you would have it at Broken Hill and maybe some other place. At Broken Hill it did not work, because periodic detention detainees had to show up. How can you show up at Broken Hill from Wilcannia? In the end they put on a bus and that still did not work. On the other hand, a system for which I was also responsible that the time, was a mobile prison.

That has worked really well. In that case, offenders—mainly Aboriginal offenders—are sentenced to a prison term but then when they achieve a minimum security classification, which with a minor offender would happen very quickly, they are put into the mobile prison. The mobile prison is supervised and moves about. It is a fantastic sentencing option, because it gives a level of discipline that is impossible with periodic detention. Nevertheless it brings that degree of flexibility into the prison regime that is very useful for a minor offender who is to be encouraged to rehabilitate. We do have mobile prisons out in that part of the world. The issue you are raising is serious: I have never regarded the situation as being totally satisfactory, but I do not think that merely putting home detention or periodic detention into the far west is any particular answer. Circle sentencing and mobile prisons are much more likely to be successful.

The Hon. DAVID CLARKE: You agree it is a serious issue and we need to deal with it urgently—

Mr BOB DEBUS: No, you are putting many words into my mouth.

The Hon. DAVID CLARKE: I am putting that as a proposition. I put to you that this is a serious matter, and I think you have agreed that it is. I am putting to you that it is a matter that needs to be dealt with urgently. Would you agree with me that that is the case, because justice delayed is justice denied?

Mr BOB DEBUS: No, you are now ignoring the—

The Hon. IAN WEST: History.

Mr BOB DEBUS: You are ignoring the actual breadth of the response that I have made. I am freely acknowledging that we need to continue to pay attention to the way that sentencing is carried out in remote parts of New South Wales. But I am saying to you that I do not at all accept that the mere availability of periodic or home detention is any great answer. I am pointing out to you that indeed the attempts that have so far occurred to make it available, when they have actually been put into place, have not worked very well. Therefore, the kinds of initiatives that have actually been taken are those that are most appropriate. I am not merely accepting your proposition, apart from saying that it is a matter which we ought to be serious about. I then appear to continue to divert from your idea of what the response should be.

The Hon. DAVID CLARKE: Getting back to the Judge Dodd affair, on 1 March this year Judge Blanch gave a public assurance that Judge Dodd had successfully received treatment for sleep apnoea and was able to carry out his duties appropriately as a judge, yet the Roads and Traffic Authority [RTA] saw fit to suspend his drivers licence indefinitely on 3 June this year as it was not convinced he had been cured of his sleep disorder.

Mr BOB DEBUS: I am not a medical person, I am not the RTA and I am not Judge Blanch. All I can say to you is that you and I can probably continue to do our work here today while the RTA might have some doubts about whether we should be allowed to drive.

The Hon. DAVID CLARKE: Do you think Judge Blanch's assurance made on 1 March this year was wrong or premature?

Mr BOB DEBUS: I think Judge Blanch is a fiercely truthful man and one of the most distinguished judicial administrators in the Commonwealth of Australia. I have no more comments to make. He made a judgment and he is a man whose judgments, both in a formal sense and in a general sense, I always found it appropriate to respect.

The Hon. DAVID CLARKE: So on this occasion you would rather not say whether you agree with his judgment?

Mr BOB DEBUS: It is not a question of whether I would say it; I cannot offer any observation. I have no doubt that he made his normally honest appraisal. Of course, the criteria you may use for deciding whether somebody is able to conduct, in the broader sense, the kind of activity that we are conducting now is slightly different from the decisions you might make about whether someone should drive.

The Hon. DAVID CLARKE: Did you agree with his appraisal?

Mr BOB DEBUS: I did not agree or disagree. I am not appraising Judge Dodd in those ways. I could not do so any more than you could.

The Hon. CHARLIE LYNN: Was any complaint ever received about former Justice Jeff Shaw's conduct on the bench?

Mr BOB DEBUS: I do not think I became aware of Judge Shaw's problems until he had made them public. I did not receive any complaints about his judicial deliberations at all.

The Hon. CHARLIE LYNN: Were you aware that he had a drinking problem?

Mr BOB DEBUS: Jeff Shaw spent, while I knew him, more than a decade as Attorney General of New South Wales, as a leading Queen's Counsel appearing in court, and as a judge. His work was recorded in the newspapers, on transcript and in *Hansard*. I cannot recall anybody complaining about the work that he did.

The Hon. EDDIE OBEID: It was excellent.

Mr BOB DEBUS: There has not been anybody whose work was more public than that which he carried out over that long period. I well remember that when I announced his appointment there was universal approval. People went out of their way to make it clear that they did not believe this was some sort of political appointment. People went out of their way across the legal profession and across the Parliament. My recollection is that the Leader of the Opposition went down to Jeff Shaw's swearing in. This is a man whose appointment was received with acclamation.

The Hon. CHARLIE LYNN: I accept that, but had you been advised that he had a problem with alcohol?

Mr BOB DEBUS: No.

The Hon. CHARLIE LYNN: Ever prior to that?

Mr BOB DEBUS: No.

The Hon. CHARLIE LYNN: Are you aware of anybody who may have suggested that he should be assisted, counselled, or helped with that problem?

Mr BOB DEBUS: Late in the period, after his statement was made, I was aware in a general way—or I became aware—that a significant number of his friends were attempting to assist him, of course.

The Hon. CHARLIE LYNN: In regard to a complaint by a sexual assault victim about Judge Dodd's conduct, which is reported in the *Daily Telegraph* on 26 April this year, is the report correct that the Crown prosecutor took the step of putting the judge's conduct on the record during the trial?

Mr BOB DEBUS: I am not sure whether the Crown prosecutor put the complaint on the record, but some observation was certainly made by the Crown prosecutor, apparently during that case. I believe it is something that I mentioned to the Judicial Commission.

The Hon. CHARLIE LYNN: According to the report in the *Daily Telegraph* it appears as though it was put on the record. My question to you is: How can you stand by your comment that the transcript does not disclose any examples of non-responsiveness to the Crown prosecutor's objections?

Mr BOB DEBUS: I am not sure whether I understand your question.

The Hon. CHARLIE LYNN: I understand that, according to the report, the Crown prosecutor took the step of putting the judge's conduct on the record during the trial. If that is the case I ask: How can you stand by your comment that the transcript does not disclose any examples of non-responsiveness by the Crown prosecutor's objections when the *Daily Telegraph* recorded that he took the step of putting the judge's conduct on the record?

Mr BOB DEBUS: I think you are making a quote from the decision of the Judicial Commission. You will remember that the Judicial Commission had several separate inquiries. It was not me who made the comment about the transcript not giving any indication of any problem; it was the Judicial Commission.

The Hon. CHARLIE LYNN: What happened to the papers relating to complaints against Judge Dodd now that the Judicial Commission ceases to have jurisdiction over the handling of complaints following the judge's retirement?

Mr BOB DEBUS: I presume that the Judicial Commission's papers remain with the Judicial Commission. They must.

The Hon. JON JENKINS: Minister, I have two final questions. This may encroach on the question the Hon. Peter Breen asked earlier. This is more a policy question, but it is related to the budget. The cost of litigation presents what I believe to be an inbuilt bias in the justice system. I think that is fairly obvious to any thinking person. Is this part of the inquiry that is ongoing at the moment, as to how to more fairly give people access to the courts, or at least to some judicial fairness. Does the number of senior counsels you can afford on your side of the bench determine the cost of justice?

Mr BOB DEBUS: There is a hierarchy of issues. At the most general level we constantly look to find ways in which people of modest means might be given access to justice when they really need it. It is in that context that we set up the Legal Aid Commission; it is in that context that we continue to support community justice centres; and it is in that context that we run a brilliant service called Law Access. Any person may ring up a 1800 number and get basic advice on tenancy matters, family law matters and consumer matters—essential matters about basic property transactions and those things for which most ordinary folk are overwhelmingly most likely to need to have justice. A lot of those techniques, of course, are set up to allow people to avoid going to court, and that is appropriate. An enormous amount of legal advice is best given and legal conflict is best resolved by

staying away from the courts. So far as court proceedings themselves go, apart from legal aid and increasingly sophisticated pro bono arrangements by lawyers that are associated with it, then we have to pay attention to the question of costs. It is that matter that is being dealt with by the inquiries the Hon. Peter Breen mentioned.

The Hon. JON JENKINS: So I need to wait.

Mr BOB DEBUS: Mr Glanfield reminded me that there is one other strategic direction which we take to attempt to reduce the cost of justice, that is to say, by uncomplicating the procedures of the court themselves—by reducing the amount of time that a litigant will have to spend within a court. A lesser amount of time means less expense. So things like uniform civil procedures, which were introduced earlier this year, are in that context massively important. A great deal of complication is removed and some of the procedures within the court are simplified. The ultimate consequence of that kind of change is that litigation costs are reduced.

The Hon. JON JENKINS: Let me follow on from that. This will affect perhaps both your portfolios. A large number of disabled people are considering some action under the antidiscrimination law relating to access to national parks. These are the sorts of cases where many people would like to have their cases heard or put before someone who can at least decide whether their cases have merit. These are the sorts of issues where they have no access to legal aid or they cannot afford it. These are the sorts of issues that I am talking about. A large percentage of the community has the right to access the justice system but it simply cannot.

Mr BOB DEBUS: Nevertheless, those people may approach the Anti-Discrimination Board, a mechanism set up again precisely to give people access to justice in its wider sense without having to go to court with someone with a wig on. The Anti-Discrimination Board is set up exactly for that purpose. It costs you nothing, or next to nothing.

The Hon. JON JENKINS: My final question is to do with an issue that I have raised with you before—the incident in Coffs Harbour where a large group of over 500 people assembled in a national park. The gathering, which was obviously illegal, did an extraordinary amount of damage to the national park. These people had no washing, bathing or cooking facilities and they stayed there for nearly a week. The organisers of that group were clearly identified to your departments, yet no action was taken against them. Can you explain why?

Mr BOB DEBUS: Although you say that you have raised the matter with me before, I must confess that I do not recall it.

The Hon. JON JENKINS: I have raised it with your department.

Mr BOB DEBUS: Okay. This is a matter of fact—

The Hon. JON JENKINS: I accept that.

Mr BOB DEBUS: Although it is wildly outside the leave of the Committee's deliberations, I am happy to answer it on notice. I must say it is more normal for me to receive complaints from people who say that the rangers of the National Parks and Wildlife Service have been excessively punitive in their responses to such circumstances.

The Hon. JON JENKINS: In this case the rangers supplied them with toilets and showers and allowed them to stay rather than prosecuting them. I will follow it up with you.

Mr BOB DEBUS: It sounds as though it is a very interesting circumstance.

The Hon. JON JENKINS: It is a very interesting case as to why those people were not pursued legally.

The Hon. PETER BREEN: Mr Attorney General, you mentioned in your response to a question from the Hon. Jon Jenkins that people go to court with a person wearing a wig. There is a related issue about the titles of people who wear wigs. Do you have any views about the current

process of awarding the title of "Senior Counsel" to members of the bar? There was some concern that it is being done under the old chums act as opposed to according to the experience and talents of the people receiving the title.

Mr BOB DEBUS: I think there is no more chance that any system of appointing senior counsel will be regarded as being universally fair than there is that the system of parliamentary elections will be regarded as being universally fair. In my direct experience, the Bar Association is an exemplary professional organisation. I do not say that it is perfect, but I have not seen a professional organisation that is more devoted to the proposition that it ought to proceed with professional integrity. Do not forget that the system that has been set up replaces a system that I would have preferred in which the Attorney General simply appoints these folk. I would have preferred that system only for the most self-evidently selfish reasons and I hasten to say that I have no intention of doing anything whatsoever to try to change the existing system, which I believe involves a process of peer assessment that is carried out according to principles that are well understood. Perhaps some minor changes could be considered but I truthfully do not believe claims that it is just a question of some kind of old boys and girls network stand up.

The Hon. PETER BREEN: There is a system that operates in other jurisdictions whereby a committee assesses the merit of applications and make recommendations and then the relevant bar follows those recommendations.

Mr BOB DEBUS: Yes, but the appointment of judges raises many of the same issues. If you established a committee you would simply transfer to that committee the deliberations or the concerns that exist at the present time with respect to the executive. You would just get a whole bunch of politics around the committee. The question then would be: Who would serve on the committee? Someone would say, "Well, it's just a bunch of old boys and girls".

The Hon. PETER BREEN: There is the related issue of wigs and gowns. Is there any prospect of their being abolished on your watch?

Mr BOB DEBUS: I have given some consideration to that issue. My belief is there is some justification for wearing wigs and gowns on ceremonial occasions. I might have said something different when I was a younger person but I have come to understand that the general community wants there to be a sense of ritual around the ultimate disposition of questions of the community's justice. There are strong arguments for the wearing of wigs and gowns amongst members of the judiciary who are concerned with criminal matters. The argument for anonymity cannot be ignored by the Attorney General of a State where a judge was murdered by a disgruntled litigant.

In the area of civil cases I rather favour the idea that a judge might appropriately be gowned but not wigged. But I have so far regarded it—in fact, I think I am obliged to regard it this way—as a matter that the judiciary should decide. If I am not mistaken, we would have to introduce legislation to change the circumstance, and I do not so far regard it as a matter of sufficient importance as to justify such a step.

The Hon. PETER BREEN: I raise with you the matter of Bronson Blessington. This prisoner was the subject of preventive detention legislation in May this year. Did the Government draft that legislation with any knowledge of the circumstances of this particular person other than the fact that he was the subject of a never to be released recommendation?

Mr BOB DEBUS: I believe that legislation was essentially a reassertion of the circumstances that the Government already believed existed—that is to say, the legislation confirmed the earlier legislation concerning prisoners convicted before the 1989 Sentencing Act who had been subject to a not to be released recommendation by the judge.

The Hon. PETER BREEN: According to Judge Dunford, that recommendation has now been turned into a sentence as a result of the legislation that the Government has passed. Does that raise any questions in your mind about looking at the circumstances of each of the offenders affected by that legislation?

Mr BOB DEBUS: I thought the judge's observation was, at least, tendentious. Am I mistaken in thinking the High Court has confirmed it?

The Hon. PETER BREEN: No, the matter is currently before the Court of Appeal.

Mr BOB DEBUS: So far we have been talking about questions of legal policy, which I do not really have to answer today. But we are now talking about a court case that has not been determined. I think you would concede that those are sufficient justifications for me not to discuss the details of the Blessington matter any further beyond saying what I have said.

The Hon. PETER BREEN: I tried to avoid that.

Mr BOB DEBUS: I think my general policy position is clear. On a personal level, I am not particularly sympathetic to Judge Dunford's observation—and I could quite properly have avoided making even that remark in the present circumstances.

The Hon. PETER BREEN: The question really is whether the Government considered the circumstances of the prisoners affected by the legislation. It is a general question about each of the 10 never to be released prisoners.

Mr BOB DEBUS: Yes, the Government considered the circumstances of all of those people at the time it passed its legislation some years ago. From a policy point of view, the legislation that was passed earlier this year merely confirmed the legislation from as long ago as 1999, I think, which affected all of those prisoners who had been the subject of a not to be released recommendation before 1989.

The Hon. PETER BREEN: There are questions about retrospective sentencing and whether the circumstances of each prisoner's case have been considered. Would the Government consider looking at any of those prisoners from the point of view of a petition for mercy to the Governor? That procedure has not been engaged in recent times but there was a time in New South Wales when petitions for mercy were not uncommon. If there were circumstances relating to any of those prisoners that might suggest that they have been treated unjustly as a result of retrospective sentencing, would the Government be in a position to consider recommending to the Governor that petitions be considered?

Mr BOB DEBUS: Self-evidently, the Government would consider a petition in its own terms if it were made. It is not a matter that I would make a prediction about before a petition was delivered.

CHAIR: Do Opposition members have more questions?

The Hon. CHARLIE LYNN: Yes. Minister, what were the total legal costs incurred during the Orange Grove affair?

Mr BOB DEBUS: I am not certain what the total legal costs were. I think they will become known in the relatively near future. They are quite high, as you would imagine with so many people involved in what turned out to be such a wild goose chase.

The Hon. CHARLIE LYNN: How much of those legal costs were for Ministers Craig Knowles and Joe Tripodi and former Premier Bob Carr?

Mr BOB DEBUS: I understand that those costs will become clear in the quite near future. I can tell you that the assistance provided to Ministers and staff during the Orange Grove inquiry was approved in accordance with Premier's memorandum 99/11. That is the usual procedure followed in these cases. Applications for legal and financial assistance for people appearing before the ICAC are considered in accordance with the provisions of section 52 of the ICAC Act and applications for Ministers who are required to appear before the ICAC are considered under the terms of Premier's memorandum No. 99/11. There is nothing new about that; it is the way things have always been done. As I have said, the details of the costs of the ICAC inquiry and those fees that were provided for legal counsel for those involved in it will all be made public in a relatively short time.

The Hon. CHARLIE LYNN: Could you take the question on notice? Specifically, we would like to know how much was for the Ministers I mentioned—Craig Knowles and Joe Tripodi—and for the former Premier.

Mr BOB DEBUS: Yes.

The Hon. CHARLIE LYNN: We would also like to know what costs were involved for staff Michael Meagher, Graeme Wedderburn and Jennifer Westacott. Could you take that question on notice?

Mr BOB DEBUS: Yes.

The Hon. CHARLIE LYNN: Could you advise the Committee whether the department refused any requests for legal costs in the Orange Grove affair?

Mr BOB DEBUS: We will have to check that, but there is no doubt that those who appeared were given assistance.

The Hon. CHARLIE LYNN: But none were refused?

Mr BOB DEBUS: I am not aware of that but I will take the question on notice. I am not aware that anybody who sought assistance was refused it.

It would be surprising if it were otherwise because the people that appeared before the ICAC appeared before the ICAC, and if the ICAC wants to talk someone, it does. So I would be quite surprised if there were a person who was refused aid.

The Hon. CHARLIE LYNN: In regard to the papers relating to complaints against Judge Dodd, now that the Judicial Commission has ceased to have jurisdiction over the handling of the complaints, what happens to the papers? Will a copy of those papers be held by your department as well as the Judicial Commission?

Mr BOB DEBUS: No, the Judicial Commission holds its own papers, and that is appropriate.

The Hon. CHARLIE LYNN: What happens to them if any compensation claim arises?

Mr BOB DEBUS: The Judicial Commission is governed by its own legislation and looks after its own papers. If somebody made a compensation claim they would do that through the ordinary arrangements that exist within my department. If somebody were asking for an ex gratia payment of some sort we would proceed in the way that we proceed on an almost weekly basis.

The Hon. CHARLIE LYNN: Would you have access to those papers if you required them?

Mr BOB DEBUS: No, I would not have access to those papers but that would not be of any great consequence. There are many circumstances in which a litigant may seek an ex gratia payment. Mr Glanfield will be able to tell us some provisions under which they occur. When such claims are made, the department has established procedures for examining the claim and making recommendations, which I either accept or do not accept, for a payment. In other words, the fact that there are some papers at the Judicial Commission that are not available to my department does not impede a claim for an ex gratia payment by a litigant should they choose to make it.

The Hon. CHARLIE LYNN: Some cases are very serious. Do you understand that people would have a feeling of justice denied if they knew that those papers were to be locked away forever and that the payment was at your discretion without having access to those papers?

Mr BOB DEBUS: No, but I will ask Mr Glanfield to explain.

Mr GLANFIELD: I am not sure the two necessarily follow. If we receive an application for ex gratia compensation, which of itself means that there is really no legal claim for compensation, it is more a moral issue, we would look at that on its merits. If we need to have regard to certain material, there may be other ways to obtain material and not necessarily by seeking to obtain it from the Judicial Commission. The idea that the Judicial Commission controls its records I do not think would inhibit our handling applications for compensation if we were to receive them. The Attorney is already on the record as indicating that we will seriously look at it.

Mr BOB DEBUS: I have got my papers.

The Hon. CHARLIE LYNN: On a point of clarification in relation to Orange Grove. Was there ever a refusal to disclose costs by a freedom of information [FOI] request of which you are aware?

Mr GLANFIELD: No.

Mr BOB DEBUS: An FOI request on those matters has been determined. A decision has been taken to release the material, but under the FOI legislation there has to be consultation with the affected parties before that occurs.

The Hon. CHARLIE LYNN: But it will happen?

Mr BOB DEBUS: It will happen.

The Hon. DAVID CLARKE: I will focus on allegations raised by Mr Jim Kearns that he was denied justice before Judge Dodd. On that matter Minister, do you recall saying, "There was no evidence that the judge's condition had affected his understanding of what was going on during the trial or his rulings and directions"?

Mr BOB DEBUS: I do not explicitly recall it. This is a criminal case, is it not?

The Hon. DAVID CLARKE: Yes.

Mr BOB DEBUS: And this is a man who appealed?

The Hon. DAVID CLARKE: That is right.

Mr BOB DEBUS: And lost?

The Hon. DAVID CLARKE: That is right.

Mr BOB DEBUS: What was he convicted of?

The Hon. DAVID CLARKE: In regard to the—

Mr BOB DEBUS: This is a criminal matter. There were a number of people who complained about Judge Dodd's decisions who had been convicted by him. So far as I am aware they appealed, or they had appealed, and some of those people continued to complain about the result of the appeal. Obviously they had the opportunity to raise any matter that had concerned them, through their legal counsel, when they made the appeal. So it is hard for me to see that a matter of that nature falls in any way within the same category as the victim about whom we were talking and for whom I felt very considerable sympathy, and whose matter I had referred to the Judicial Commission.

The Hon. DAVID CLARKE: Regarding your comments that there was no evidence that the judge's condition had affected his understanding of what was going on during the trial, or his rulings and directions, does that mean that you dismissed allegations by Jim Kearns that "legal counsel for the prosecution of the defence allegedly had to wait for Judge Dodd's associate to make sufficient noise to wake him up so he could address questions of evidence or procedure"?

Mr BOB DEBUS: It does not matter which way you pose these questions, the fact is that we are talking now about a case in which the judge convicted the alleged offender, and the convicted person then appealed on all grounds to the Court of Criminal Appeal and he got knocked over.

The Hon. DAVID CLARKE: It was a case about which you made some comments. You stated that you do not believe that his condition affected his understanding of what was going on at the trial.

Mr BOB DEBUS: I actually do not recall making that specific observation but if I did my opinion appears to be vindicated by the Court of Criminal Appeal. In fact, I cannot imagine I would have said it unless the second court had already made its determination. In fact, I am sure I would not have said it unless the Court of Criminal Appeal had already made a deliberation.

The Hon. DAVID CLARKE: Is the Minister aware whether Judge Dodd's associate was interviewed about these allegations?

Mr BOB DEBUS: No.

The Hon. DAVID CLARKE: So he was not interviewed?

Mr BOB DEBUS: No, I am not aware whether the associate was interviewed.

The Hon. DAVID CLARKE: Is anybody in your department aware?

Mr BOB DEBUS: It would have been the Judicial Commission that did it.

Mr GLANFIELD: I am certainly not aware.

The Hon. DAVID CLARKE: Was Jim Kearns or anyone else on his behalf interviewed about these allegations?

Mr BOB DEBUS: I am not aware that my department was so involved. But the blunt and unavoidable fact remains that this person was convicted by Judge Dodd and then this person, assisted no doubt by an extraordinarily able public defender, went to the Court of Criminal Appeal and the Court of Criminal Appeal said, "No, this conviction is completely safe." Politics cannot be made out of that. It is just the normal procedure of the judiciary.

The Hon. DAVID CLARKE: Why was the complaint of Jim Kearns classified as minor?

Mr BOB DEBUS: Do you mean classified by the Judicial Commission?

The Hon. DAVID CLARKE: Yes.

Mr BOB DEBUS: The Judicial Commission is a deliberative body and it decided that the complaint was not substantial. I should quickly say there is a definition within the Judicial Commission legislation which reflects on the relative seriousness of any particular complaint and I, myself, am not entirely happy with the particular nomenclature within the Judicial Commission legislation in the way that it uses that word "minor". Indeed, it is one of the reasons why we have a review of the Judicial Commission Act underway at the moment. Indeed, submissions for the review of the Act closed several months ago and I am intending to bring forward a range of changes to the legislation in the spring session.

One of the matters that we are specifically considering is the question of the way the present Act actually categorises complaints. If you look at the detail of the Act you will see that it uses the word "minor" in a way that reduces the flexibility of the commission itself to report upon its own deliberations. So this a way to say that some matters that the commission has in the past described as "minor", it has described appropriately in terms of its own legislation, but I want to give the capacity to give a wider range of definitions of the status of a complaint. I want it to be able to say it was really serious, it was a little bit serious, or it was minor.

The Hon. DAVID CLARKE: Given that you have some concerns about the Judicial Commission—

Mr BOB DEBUS: No, absolutely no concerns about the Judicial Commission.

The Hon. DAVID CLARKE: You have no concerns at all about the commission?

Mr BOB DEBUS: I have a concern about a definition that was written into that Act 25 years ago and which I will see modified so that the Judicial Commission is itself able to respond more flexibly to complaints that are made to it. This is absolutely not a criticism of the commission, it is a recognition that some legislation now 25 years old can be changed to advantage.

The Hon. DAVID CLARKE: In those circumstances, would you agree to the chief executive officer of the Judicial Commission attending another hearing of this committee?

Mr BOB DEBUS: This committee considers the budget estimates. This committee is given enormous tolerance by a person such as myself in so far as we are prepared to talk with you about matters that are blatantly concerned with policy, and nothing to do with estimates, but I do not think I would go so far as to agree that the chief executive officer of the Judicial Commission should be allowed to attend parliamentary estimates to discuss the drafting of the Judicial Commission legislation.

The Hon. DAVID CLARKE: Would the effective operation of the Judicial Commission come within our province?

Mr BOB DEBUS: You would have to argue that; I do not think so. There are all sorts of way that Parliament can approach matters of this nature but we are talking here about a body that is set up to allow the heads of the jurisdiction of our courts to consider complaints of a sort that cannot otherwise be dealt with in a judicial system under the Westminster approach to democracy. Parliament needs to be quite careful about the way that it actually approaches these matters.

Somebody has reminded me that, even if the chief executive did attend this Committee, he would continue to be constrained by the secrecy provisions that exist within the Judicial Commission Act, which the Parliament itself has passed. On the other hand, there is a review of the Judicial Commission Act which will produce, I hope within the present session of the Parliament, a series of proposals for amendment, and those will be debated in the Parliament. I have no doubt that you and Mr Lynn will pay particular attention to the amendments that we propose, and I rather suspect that you will support them.

The Hon. DAVID CLARKE: We will judge them when they come before us. So are you saying that you will not agree to the CEO of the Judicial Commission coming before this Committee, or that you will give it some thought?

Mr BOB DEBUS: Ultimately, I am not sure that it is for me to make a decision anyway. I think it is for you to try. I am saying that I will not willingly offer him up, because I do not think that is appropriate. There are a great bank of ladies and gentlemen behind me here concerned with an enormous range of aspects of administration of the law who are at your disposal. But the Judicial Commission is a very particular organisation. It is bound by some sensible but rather wide-ranging secrecy provisions, and it is in the service of the courts that it conducts its operations, rather than in the service of the Parliament.

The Hon. JON JENKINS: I note that the budget papers for this year state that in recognition of the increasing workload of the Crown Solicitor's Office an additional approximately \$4 million per annum is allocated. What is the total cost of the operation of the Crown Solicitor's Office? It is very hard to get a breakdown from the papers.

Mr BOB DEBUS: Mr Glanfield might answer that question.

Mr GLANFIELD: I agree that it is hard to determine that from the papers. It operates as a commercial enterprise. The part of its budget that comes within these papers is the allocation to the

Crown Solicitor's Office for its undertaking of what is core legal work for government. It does non-core legal work, for which it has to compete with the private sector across all government agencies. That comprises about 50 to 55 per cent of its work. It varies each year. In recent times, core work has been particularly high, with a number of inquiries, coronial inquests and other litigation in which it has been involved. The amount in this year's budget that has been increased by \$4 million, I think about \$23 million, represents the cost of core legal work.

The Hon. JON JENKINS: Is that \$23 million, including the \$4 million?

Mr GLANFIELD: I think it is \$23 million all up.

The Hon. JON JENKINS: From where is the other 45 per cent of the Crown Solicitor's income derived?

Mr GLANFIELD: It operates like a normal commercial firm. It bills my department for the core fund, and those bills are passed by the client agency, if it is core work, to another government agency. That government agency certifies the accounts as being appropriate, then they come to me and we then pay them from the core fund, and that is reflected in our budget. For all other non-core work, the bills are sent to the departments and agencies, and they pay those bills directly.

The Hon. JON JENKINS: I am trying to work out the all-up cost, including what I presume are external legal people provided to the ICAC inquiry. What is a rough estimate of the all-up legal bills for the past 12 months?

Mr GLANFIELD: The core legal work includes disbursements, so that figure of \$23 million includes briefing out to barristers and paying disbursements. At page 34-1 of Budget Paper No. 3, Volume 1, you will see "Other expenses" under "Operating statement". For the Crown Solicitor's Office, the current budget this year is \$22.74 million. Last year it was \$23.9 million. That includes all of the costs incurred in handling core work. I can take the question on notice, but, roughly, double that would be the total cost of running the Crown Solicitor's Office.

The Hon. JON JENKINS: So that \$45 million is a reasonable estimate?

Mr GLANFIELD: Yes. Our view is that it saves government an enormous amount of legal costs, because first of all we ensure there is greater efficiency.

The Hon. JON JENKINS: Do you know that for a fact?

Mr GLANFIELD: We have had a number of reviews that have determined that. Can I say that for the core work the Crown Solicitor's charge-out rate is 15 per cent lower than the rate charged for non-core work. So in fact we know that for that portion of the \$22 million that relates to the fees of the Crown Solicitor's Office, it is certainly less than market rate. So we are saving on that alone. But they are very competitive. They have to compete, in tenders that agencies put out publicly, to win the non-core legal work. The only monopoly they have is in relation to that core work. The rest of the work they have to compete for competitively and win on a competitive financial basis.

The Hon. PETER BREEN: Attorney, if I might revisit this question of the attire of people in court—wigs and gowns. I was intending to refer to counsel appearing in courts, whereas I think you might have interpreted the question in relation to the bench.

Mr BOB DEBUS: I did, I am sorry.

The Hon. PETER BREEN: Are your views any different in relation to counsel appearing in court in wigs and gowns?

Mr BOB DEBUS: Counsel do not appear in wigs and gowns in the Local Court, which of course is appropriate. For the rest—I am sorry to disappoint you with this conservatism—I generally take the view that you make a change from the traditions in this respect only with the greatest of care, and I have no particular wish to impose a change, as it were, on the profession. I know that some Attorneys General from time to time have felt as if it was a mark of their independence and capacity

for assertion that they do exactly that. But I confess that I simply do not see it as an issue of any great significance at a policy level.

The issue that is worth talking about still is the same one that I mentioned—wigs for judges. There is a quite strong argument that a degree of anonymity is highly desirable in criminal cases, for the reasons I previously mentioned. There is a quite good argument that a barrister should at least wear a robe in order to at least diminish the kinds of differences that might otherwise be assumed between those representing one side and those representing the other. But these are, I can only say to you again, not first order issues for me.

The Hon. PETER BREEN: Can I ask you about a first order issue called Law Access, which is one of the programs that you strongly support.

Mr BOB DEBUS: Yes.

The Hon. PETER BREEN: Are there any results out yet as to how successful it has been?

Mr BOB DEBUS: There are some, which Mr Glanfield may be able to speak of. One thing I can say is that Law Access has achieved exemplary levels of response time. If you ring Law Access, they answer you with alarming speed. I think Mr Glanfield has some more details about the actual achievements of proper content.

Mr GLANFIELD: As you are aware, Law Access NSW is a free service. It was the result of a combined partnership between the Law Society of New South Wales, the Bar Association, the Legal Aid Commission and my own department. Last year it provided assistance to more than 110,000 customers and it provided 16,000 legal advice sessions, that is, provision of legal advice. It provided advice to a significant number of Aboriginal and Torres Strait Islander individuals, as well as to a significant number of people with a disability. In fact, 12 per cent of people were identified as having a disability, and 7 per cent of people who phoned in had a language other than English at home.

Its customer survey showed that 95 per cent of customers were highly satisfied—not just satisfied, but highly satisfied—with the service provided by Law Access. We refer many people to the appropriate service provider within the community. They may have a particular interest in a family law matter, or it may be an issue relating to immigration. We will refer them to a specialist service. All of those referrals are followed up to see whether they were satisfactorily handled, and records are kept for that. In the call centre itself there is on the wall a digitised screen showing the longest time that a person has been waiting on the telephone, and there is a competition between the various operators to ensure that is kept to a minimum. So it is almost measured in terms of seconds, rather than minutes.

I might mention a couple of other highlights. We have tried to ensure that Law Access provides continuing expansion of its services. We have been talking about Law Access taking over from Local Courts some of the telephone advice service that we provide through the chamber magistrates at the moment. We will still provide chamber magistrates face-to-face interviews, but we are looking at how we can provide a much better service to our customers through the use of Law Access. Also, just recently, as was reflected in the papers, we have made an arrangement between the Registry of Births, Deaths and Marriages to move to Law Access the whole of the registry's call centre—which comprises about 23 people, and has not been performing as well as we would have liked, with people waiting sometimes 5 minutes for their call to be answered, with a bit of a drop-out rate, standards that are simply unheard of at Law Access. That will happen during this year, and that will be handled by them. We are hopeful that that will not impact on the rest of its service, because Births, Deaths and Marriages is fully funding those additional resources.

The Hon. PETER BREEN: Law Access work is all on the telephone, is it not?

Mr GLANFIELD: Yes.

Mr BOB DEBUS: It reflects the fact that in an enormous proportion of legal advice needed by the community is for family law matters, neighbourhood disputes, consumer concerns, immigration concerns and landlord and tenant matters. It reflects the fact that a high proportion of even that need

for advice is actually also a need for quite simple advice, or just quite simple guidance: how to stay out of trouble, how to understand some really basic element of the law in those circumstances, so that a person knows what to do.

Law Access is really a source of some pride to the department and not just for the effectiveness with which it is able to deal with those things. There is also a web site these days.

Mr GLANFIELD: Which, can I say, provides thousands of facts sheets on various areas of the law so that people do not have to make a phone call. If they type "Law Access NSW" into Google and go to the web site, there is an enormous amount of information, multilingual, that contains the kind of information someone needs to look at to start to find the answer to their problem.

The Hon. PETER BREEN: I do not wish to sound like a killjoy, but is it possible that the big response to Law Access reflects the local service that is provided by courts, particularly Local Courts? The other day I was out at Liverpool court and the Sisters of Charity were running the list, which surprised me.

Mr GLANFIELD: I see them as two separate exercises altogether. What Law Access replaces really is legal advice and assistance. The courts have never provided that. Even the chamber magistrate service primarily is about assisting people who come to court with their documentation or guidance about the court rules and procedures, rather than provision of legal advice or information. It certainly will help people who come to the courts, but Law Access, as I said earlier, had its genesis in the Community Assistance Line of the Law Society and the Legal Assistance Line at the Legal Aid Commission. So it is more a telephone advice service—they have recorded messages on an interactive system that you can go to as well as going to the web site—rather than replacing anything we do within the courts. But there are some people who come to the courts who probably would be better serviced through Law Access, and we try to ensure that they are referred to Law Access so they have a very prompt response to the inquiry.

CHAIR: The Committee resolved at its deliberative meeting prior to commencement of the public hearing to seek return of answers to questions taken on notice at the hearing within 35 calendar days. If there should be a need for any further hearings, would you or your departmental officers be available?

Mr BOB DEBUS: Yes, my departmental officers.

The Committee proceeded to deliberate.