

UNCORRECTED PROOF ISSUE

Tuesday 29 June 2010 - Estimates Committee A (Giddings) - Part 1

LEGISLATIVE COUNCIL

ESTIMATES COMMITTEE A

Tuesday 29 June 2010

MEMBERS

Dr Goodwin
Mr Hall (Chair)
Mr Harriss
Mr Wilkinson
Ms Forrest

SUBSTITUTE MEMBERS

IN ATTENDANCE

Hon. Lara Giddings MP, Attorney-General, Minister for Justice, Minister for Economic Development, Minister for Infrastructure

Department of Justice

Lisa Hutton, Secretary
Michael Stevens, Deputy Secretary
Robert Williams, Deputy Secretary
Chris Jacoora, Department Liaison Officer
Kerry Worsley, Manager, Crown Law
Jim Connolly, Administrator, Magistrates Courts
Mark Cocker, Director, Monetary Penalties Enforcement Service
Len Armsby, Director, Office of Legislation Development and Review
Norman Reaburn, Director, Legal Aid Commission of Tasmania
Elizabeth Knight, Registrar, Supreme Court
Dale Webster, Project Manager
Chris Batt, Registrar, Director, Finance

Department of Infrastructure, Energy and Resources

Norm McIlfattrick, Secretary
David Peters, Deputy Secretary, Infrastructure
Amanda Russell, General Manager, Corporate Services
David Spence, General Manager, Infrastructure Policy Strategy
Penny Nicholls, General Manager, Land and Transport Safety
Peter Todd, General Manager, Roads and Traffic
Colin Finch, Chief Executive, Marine and Safety Tasmania
Suzie Jacobson, Manager, Corporate Affairs

Department of Economic Development

Mark Kelleher, Secretary
Jonathan Wood, Deputy Secretary Industry Development
Elizabeth Jack, Deputy Secretary Culture, Sport and Recreation
Craig Watson, Executive Director, Corporate Support
Ros Harvey, Executive Director, Strategic Policy and Research
Matt McGee, General Manager, Sectoral Development
Steven Jarman, General Manager, Business Response
Alan Campbell, General Manager, Export and Enterprise Development
Karena Slaninka, Director, Screen Tasmania

Ministerial Staff

Jessica Radford, Head of Office
Margot Dawson, Adviser
Richard Dowling, Adviser
Carl Cazaly, Adviser
Cameron Lee, Attorney-General Adviser
Denise McIntyre, Adviser

The committee met at 9.30 a.m.

CHAIR (Mr Hall) - Thank you. There are a couple of housekeeping matters before we get started. We have got the order of the outputs and we just talked about Mr Allston, I think, coming in.

Ms GIDDINGS - Yes.

CHAIR - We will cut straight to the chase. Thank you very much.

Ms GIDDINGS - I can just advise you too that I do not have any overview. I think it is better we just go straight into outputs, considering the limited time for each area.

DIVISION 6

(Supreme Court Services)

UNCORRECTED PROOF ISSUE

Dr GOODWIN - I was wondering if I could ask some general sentencing-type questions. Can I ask those in this output? Would you agree with that?

Ms GIDDINGS - Yes. If it is about sentencing policy, it is output group 2. I am told, yes.

Dr GOODWIN - Okay, sure.

Ms GIDDINGS - So we can talk legislation, development and review. I assume that is where we come in there.

Dr GOODWIN - Okay.

Dr GOODWIN - Given that the court-mandated drug diversion has been demonstrated to be an effective approach for many offenders in the Magistrates Court, are there any plans -

Ms GIDDINGS - That is another output group.

Dr GOODWIN - are there any plans to enable offenders convicted in the Supreme Court to be made subject to drug treatment orders as recommended in Kate Warner's sentencing report?

Mr WILKINSON - In fact, there is not only the drug -

Mr STEVENS - The court-mandated diversions actually run through the Department of Justice rather than the Supreme Court itself. At this time we have had no discussions yet on expanding it to the Supreme Court but, as you know, all policies are under continuous review.

Mr WILKINSON - In relation to your cases pending: they said 7.8 per cent, but the actual figures are 2008, 8.996, and a 2009-10 target of 10. Do we know how we are going in relation to that figure?

Ms GIDDINGS - Right now?

Mr WILKINSON - Yes.

Ms GIDDINGS - We certainly have all the information in relation to how we have been going and that has come through the national performance indicators through the RoGS, so have you had that information presented to you?

Mr WILKINSON - No, we have not.

Ms GIDDINGS - Okay. There is some very good news in terms of our performance in relation to that and I will try to be as succinct as I can rather than read through every word for you.

Mr WILKINSON - I say we have not received it. I have not even seen it.

Ms GIDDINGS - You have not seen it? Tasmania's Supreme Court continues to report one of the lowest criminal backlog indicators of all Australian High Courts. At 30 June 2009, 9.6 per cent of all pending non-appeal cases were greater than 12 months old and 2.9 per cent were greater than 24 months old. At 30 June 2009 only one appeal case was greater than

UNCORRECTED PROOF ISSUE

12 months old and no appeal cases were greater than 24 months old. These figures are below the RoGS national standard, which is that no more than 10 per cent of pending matters should be over 12 months old. The criminal jurisdiction clearance rate for the Supreme Court for all cases, appeal and non-appeal, was 98.3 per cent, which is an increase on the previous year's figure of 79.5 per cent. That is quite a dramatic increase.

The figure of 98.3 per cent means that there were slightly more cases lodged than finalised, but it shows that the court is generally keeping up with the number of criminal matters lodged. Over the last two years there has been an increase in the number of non-appeal criminal cases lodged: 513 lodgements in 2006-07, compared with 693 in 2007-08 and 772 in 2008-09.

I understand the increase in lodgments is a result of the new criminal procedures which commenced in February 2008. This process aims to minimise the number of attendances by defendants and shorten the time the case spends in the Magistrates Court. While the new process may increase the time the case spends in the Supreme Court, the overall time for court processes is expected to be shorter. The court has reported that it has undertaken a sampling of matters prior to and after the introduction of the new process and that overall the median number of days from first appearance in the Magistrates Court to finalisation in the Supreme Court has reduced from 299 days to 166 days.

The sampling also indicates that overall time being taken in the Supreme Court is reduced; however, it has increased for cases which go to trial. There is further information on the civil jurisdiction. Are you interested in that?

Mr WILKINSON - Yes. Perhaps I can dwell on criminal cases for the moment because we will get to civil next. So you are saying that for the actual trials themselves there is a greater median time from the time they go to first appearance in the Magistrates Court until the time they come on for hearing in the criminal court.

[9.45 a.m.]

Ms GIDDINGS - It is reduced. The median number of days from first appearance in the Magistrates Court to finalisation in the Supreme Court has reduced from 299 days to 166.

Mr WILKINSON - Is that in relation to all matters?

Ms GIDDINGS - That is criminal.

Mr WILKINSON - What about in relation to matters where pleas of guilty were finally entered in the criminal court? Have you got those figures?

Ms GIDDINGS - I do not have a breakdown of that on me.

Mr WILKINSON - I am looking at that because pleas of guilty obviously are normally dealt with quicker than trials and therefore I was looking at the dates from the first date that a person appeared in the Magistrates Court until the date that the person came to the criminal court and put up their hand and pleaded guilty, compared with the first date in the Magistrates Court until the time the person comes to trial in the criminal court. Do you not have those figures?

Ms KNIGHT - Generally the time taken for finalisation by plea or withdrawal has shortened.

UNCORRECTED PROOF ISSUE

Mr WILKINSON - Yes.

Ms KNIGHT - The time taken for finalisation by trial has lengthened in the Supreme Court.

Mr WILKINSON - Yes, that is what I was looking at, yes.

Ms KNIGHT - Yes.

Mr WILKINSON - It has lengthened from what, this time last year?

Ms KNIGHT - We looked at a sample of files from before the new procedures were introduced, which was I believe February 2008, and at the sampling of files after. The sample we took is subject to the fact that the new system had not been in place for an extended period of time when we took the sample, so there is a comment by the Chief Justice about the sampling technique, that it is subject to the fact that the timing of the sampling was shorter than perhaps some period required for some cases to finalise but overall the sampling indicated that yes, the time taken was shorter for pleas and discharges and longer for trials.

Mr WILKINSON - Yes. Do you have the average in relation to first appearance in the Magistrates Court until time for trial?

Ms KNIGHT - Until time for trial?

Mr WILKINSON - Until when it actually starts.

Ms KNIGHT - No, we just looked at the time of finalisation.

Mr WILKINSON - Right. At the end of the trial?

Ms KNIGHT - If there was a sentence, when that was delivered, yes.

Mr WILKINSON - All right. Are you able to give me the difference there?

Ms KNIGHT - Yes. As I think has been stated, median number of days from the first appearance in the Magistrates Court until finalisation in the Supreme Court was 166 days. That was 299 days under the old system.

Mr WILKINSON - Yes, but that is all matters, is it not, both pleas -

Ms KNIGHT - Sorry, yes. For just trials?

Mr WILKINSON - Yes. Or do you want to give those to us at some later stage?

Ms KNIGHT - Yes.

Ms GIDDINGS - We could take it on notice.

CHAIR - Yes, that would probably be better if it could later be tabled; thank you.

Ms GIDDINGS - That is fine. We will take that on notice for you.

UNCORRECTED PROOF ISSUE

Mr WILKINSON - Why is there that difference; that is, the difference between pleas of guilty and the actual matters going to trial?

Ms KNIGHT - In some cases the difference is the fact that there is a preliminary proceeding which takes place after it comes to the Supreme Court. There is an application for a preliminary proceeding which then is sent back to the Court of Petty Sessions for that to take place and that generally, we believe, is happening where there is a trial that is going to happen in the future. Whereas if there is going to be a plea of guilty or a discharge then it is possible that that is not happening, the preliminary proceedings are not being applied for.

Mr WILKINSON - So you believe the major reason is the preliminary proceeding procedure?

Ms KNIGHT - That certainly does add to the time because it has to go back to the Court of Petty Sessions for the preliminary proceeding and then come back to the Supreme Court for the trial.

Mr WILKINSON - That is right, yes. How is that compared with when the old committal process was in place when you used to have your uncontested committals in the Magistrates Court, which again added to that delay? Is it quicker than that or, alternatively, is it about the same as under the old process where there were the committals.

Ms KNIGHT - The initial sampling did indicate that even with that, the time taken was less than a matter finished by trial would have taken under the old system.

Mr WILKINSON - The old saying is: 'Justice delayed is justice denied'. I know I have mentioned it a couple of times now: is there any indication at all whether the Supreme Court or criminal court is going to entertain contest mention days, which appear to have had great success in the Magistrates Court?

Ms GIDDINGS - I have been reminded that I did actually write to the Chief Justice about that.

Mr WILKINSON - You did that last year, yes.

Ms GIDDINGS - Yes, that matter and he was not implying to go down that pathway, so it is an issue that is there for consideration if the judges believe it is an appropriate way to go in the future.

Mr WILKINSON - Okay. So the jury is out, I suppose we could say, in relation to that.

Ms GIDDINGS - Yes.

Dr GOODWIN - I was just going to ask a question about civil cases. Are most of them now being settled at mediation?

Ms KNIGHT - It is a fact that a lot of them are being settled at mediation, yes, and that very few are going to trial.

UNCORRECTED PROOF ISSUE

Mr WILKINSON - Lawyers are crying out, aren't they, or barristers especially, that, 'Hey, there are no civil trials going on at the moment, where is our bread and butter?' Have you got the statistics about the market decrease in the number of civil matters not going to trial because it seems to be quite significant?

Ms KNIGHT - I do not have the figures over years with me.

Ms GIDDINGS - Would you like me to go through the RoGS information?

Mr WILKINSON - All right, yes, if you can just briefly, thank you.

Ms GIDDINGS - That might help you in terms of where you want to go with the questioning on it too. The backlog indicated the civil non-appeal matters in the Supreme Court greater than 12 months old at 30 June 2009 was 33.6 per cent, while the national average was 29.7 per cent. However, the Tasmanian indicator for pending matters older than 24 months was 10.9 per cent, in comparison to the national average of 13.3 per cent. RoGS reported that there were 59 civil appeal matters pending as at 30 June 2009. Of those, 30.5 per cent were greater than 12 months old and 3.4 per cent were older than 24 months. Subsequent data checking by the court has revealed that the situation was actually slightly better than that, with some 56 appeal matters pending; 14 for more than 12 months and one for more than 24 months.

Comparison of the backlog indicator across jurisdictions can be difficult for a number of reasons, including the different court structures around the country. Looking only at the jurisdictions that have a two-tiered court system - that is, Tasmania, the ACT and the Northern Territory - Tasmania has the lowest percentage of pending non-appeal matters in both cases older than 12 months and cases older than 24 months. The civil jurisdiction clearance rate for the Supreme Court for combined appeal and non-appeal matters was 98.7 per cent, meaning slightly more matters were lodged - 1 088 - than were finalised - 1 074 - but it shows that the court is generally keeping up with the number of civil matters lodged.

Mr WILKINSON - In relation to civil matters, as Vanessa was saying, are they mainly dealt with now by way of mediation?

Ms KNIGHT - The finalisation is that quite a few of them are being settled by mediation from within the court or I believe there may be some being settled by external mediation.

Mr WILKINSON - Do you believe that the mediation is taking place as soon as it should, because I know I experienced a number of years ago an offer put by way of settlement and that offer was not taken up. You get to the court doorstep two years later and exactly the same offer was accepted and the money and time that was spent as a result of that was unfortunate, to say the least. So in relation to mediation, the question is: is that happening soon after the actual matter has been filed in the court or is there still some delay prior to the mediation?

Ms KNIGHT - I think there is a range of time periods within which a matter can go to mediation. The parties can ask for it to go to mediation or it can be ordered to mediation. So in some cases it can be quite early and in other cases it might take a while to get to mediation and perhaps that is because they do not have the information they think they need. There can be a number of reasons why mediation happens when it does. I think if parties wish it to go to mediation, they can refer it there.

UNCORRECTED PROOF ISSUE

Mr WILKINSON - In relation to discharges as well in the criminal court, are you able to give the number of discharges that occurred in the criminal court last year? I know the year before they were quite significant and I just wonder whether the same type of figure occurred last year, that is, continuing the figure.

Ms KNIGHT - No, it is not possible to say this year yet because they are still in the middle of the sittings, so it is not possible to give a figure for that.

Mr WILKINSON - Yes. The sitting has just finished, though, has it not? The sitting starts again on 19 July.

Ms KNIGHT - Yes, it is still sitting. The court is still sitting this week.

Mr WILKINSON - Is it? Okay. Can you give us the up-to-date figures on discharges? The reason I am looking at that is it would seem to me that what is happening is the police are doing their work up until the time of arrest and then from the time of arrest until whether it go to trial or not, there seems to be a number of matters that have not been addressed. As a result of that, the matter does not proceed. My concern is that there is a waste of a lot of time and expense because the work is not done at the front end when it should have been done at the front end. It happens in the Magistrates Court as well.

Ms GIDDINGS - We will take that on notice in terms of what we can provide. Obviously that front-end work is done by police, so that is not something we can comment on but we can certainly give you the information in regard to the discharges as it becomes available.

Mr WILKINSON - Sure.

Ms GIDDINGS - When do you think that information would be available?

Ms KNIGHT - It might not be in the time frame of this estimates committee but we can get it to you. It simply requires us to finish the year.

Mr WILKINSON - I would have thought, with respect, that the actual discharge rate now would be fairly easily obtained because the DPP's office, I would imagine, would have that at their fingertips.

Ms GIDDINGS - The DPP may well have that information, it is just that Elizabeth would not have that from it being the Supreme Court.

Ms GIDDINGS - We have just been able to get some information from our officer DPP staff, Kerry. We only have figures at the moment for the last year, the 2008-09 year, which had persons discharged as 216. We believe that this year would be roughly about the same, which is about 20 per cent of cases.

Dr GOODWIN - If I can just pick up on that point. I think in the DPP's annual report on this issue of discharge - about 28 per cent, I think, in 2008-09 - he indicates that he and the acting police commissioner have commenced an audit of discharges and their reasons. I am just wondering if that audit has been completed?

UNCORRECTED PROOF ISSUE

Ms GIDDINGS - Can we come back to that? We will have a period to talk about the office of the DPP.

Dr GOODWIN - It is just that it follows on from that question.

Ms GIDDINGS - It is the next output group, so we will answer it then.

Dr GOODWIN - Okay.

Mr WILKINSON - All right. In relation to those discharges, is it 216 criminal court matters throughout Tasmania last year where people were discharged?

Ms GIDDINGS - In 2008-09, yes. I think two of those, I read in the footnote, were unfit to plead.

Mr WILKINSON - Right, okay. That is a significant number and the actual time and expense to bring those people to trial again is considerable, I would have thought. So what I am looking at is ways of ensuring that the people who are charged in the main, and there is always going to be some figure for discharge, in other words, the work is done at the front end so that discharge is going to happen much earlier or there would be no charge at all as opposed to -

Ms GIDDINGS - It might be something to discuss again when we get to the next output because it is more of an issue for the DPP than it is for the registrar of the Supreme Court.

Mr WILKINSON - Yes, okay.

Dr GOODWIN - Do we have enough judges now? Are they comfortable with the workload they have?

Ms GIDDINGS - We are doing reasonably well, I think, with our percentage of judges as well. The Supreme Court reported 1.4 judicial officers per 100 000 population, which was on par with the national average of 1.3.

Mr WILKINSON - One thing that has not only concerned me but concerned some others is the fact that, for whatever reason, sentences are reported in the paper and sometimes the courts get a pat on the back. A lot of times though, I suppose because of the nature of the crime, significant people are saying that a person should have been given a greater penalty than what they received.

Ms GIDDINGS - Yes.

[10.00 a.m.]

Mr WILKINSON - I feel sorry for the judges to a great degree because they have not got the ability to answer the critics in the paper.

Ms GIDDINGS - No.

Mr WILKINSON - As a result of that, it can lead to a situation where the actual responsibility of our courts and the respect that the courts are held in is diminished. Is there any way that we can -

UNCORRECTED PROOF ISSUE

Ms GIDDINGS - I am quite happy to discuss that when we get to the output group 2. We can have a broader discussion, if you like.

Mr WILKINSON - Yes, that is fine. That is all in relation to the Supreme Court.

1.2 Magisterial Court Services -

Mr WILKINSON - In relation to 1.2 Magisterial Court Services, there is, without doubt, I suggest, and this is only opinion, a real problem in relation to youth justice matters.

Ms GIDDINGS - Wrong minister.

Mr WILKINSON - Wrong minister?

Ms GIDDINGS - Yes, primarily. We are discussing the Magistrates Court.

Mr WILKINSON - Yes. What I am concerned with in relation to that is the actual time for children being dealt with by the Magistrates Court and. We spoke about it a number of times in relation to a dedicated magistrate to deal with the matters.

Ms GIDDINGS - Yes.

Mr WILKINSON - The reason for that is that, as I understand it, the magistrates in the court have a cycle and they appear in the Magistrates Court and youth justice area once every six weeks. If you had a dedicated magistrate, it would be a couple of times a week and therefore they would be able to proceed with the matters much quicker than what is otherwise the case.

Ms GIDDINGS - We are aware of the fact that the youth justice division has reported a clearance rate of some 91 per cent, that was the second lowest in the nation, reflecting delays in finalising charges against young offenders. One of the things that is being discussed by the magistrates at the moment is whether one of the magistrates will specialise in the children's area. It is important that they are able to do more than just children's work, mind you, so I am not sure if one or two are considering that?

Mr CONNOLLY - Primarily one but with a backup of when the other magistrate is on leave.

Ms GIDDINGS - Yes. So they are looking at that in terms of how we can improve.

Mr CONNOLLY - And that is the pilot in Hobart at this stage. That is what we are proposing, just to see if it is a workable model.

Ms GIDDINGS - Yes.

Mr WILKINSON - The pilot will last for how long? Do you know if it is going to last for six months depending upon resources, I suppose.

Mr CONNOLLY - We will probably do it for 12, a minimum of 12, I would have thought, just to be able to get some reliable data to analyse.

UNCORRECTED PROOF ISSUE

Mr WILKINSON - In relation to the clients that are referred to the mental health court, the drug diversion court that Vanessa was asking about earlier, are you able to give us any figures in relation to that to see whether they are working or not? To me they would appear to be working quite well. I just wonder whether that is consistent with the figures.

Ms GIDDINGS - We certainly think that they are working but, of course, there are always one or two people who do not do the right thing and do not take up the chance that they have been provided with and that can reflect badly on a program that has been provided. What we have to remember is that we are dealing, particularly in the court-mandated diversion program, with some of the very highest-risk offenders and who have drug addictions. So when you are dealing with the highest-risk offenders you also have a higher risk of that offender not being able to complete the program as we would hope. Certainly I think there has been a completion rate of about 40 per cent. A completion rate of 40 per cent was recently reported for the program. It is important to remember that substance addiction is a chronically relapsing condition, which is the point that I was making, and that it can take numerous attempts for people to become drug-free.

The program has a budget of \$1.265 million and manages approximately 150 offenders each year, approximately 60 of whom would have otherwise have been incarcerated. That, of course, is a cost saving to the community. It is a program that does give offenders a chance to make good in that respect and to try to break their drug addiction in the hope that if we can break the drug addiction we break the drive, the incentive to commit crime in order to be able to feed that drug habit. So it is a very difficult area but you are dealing with, as I say, some of the most difficult offenders in the system when you are talking about drug addicts.

Dr GOODWIN - Is it Commonwealth funded, do you know?

Ms GIDDINGS - Yes, it is Commonwealth funded.

Dr GOODWIN - Wholly Commonwealth funded?

Ms GIDDINGS - Yes.

Dr GOODWIN - There was a report in the *Sunday Tasmanian* that there are pressures on Drug and Alcohol Services and that they are failing to meet the increase in demand, with supposedly more than 30 people waiting to receive treatment on the Salvation Army's Bridge Program. Is that having an impact on the Drug Diversion Program or not? There are dedicated places on the Bridge Program, is that right?

Mr STEVENS - There are two beds in the Bridge Program which are paid for through CMD. Most of the treatment is counselling and that is outsourced to Anglicare, the MGA. So in terms of the program that has not, I guess, presented itself as an issue yet.

Dr GOODWIN - Presumably, if there is increase demand on Drug and Alcohol Services, including Anglicare, there may well be an impact, do you think, down the track on CMD?

Mr STEVENS - Again, because we have a client load of about 130 because we have money that we use at the moment with Anglicare, I have set up the contracts to get us a result.

Dr GOODWIN - So you might give priority -

Mr STEVENS - I am not sure we -

Ms GIDDINGS - You are paying for your own services through this, so that \$1.1 million or whatever it was that the Commonwealth provided us, we then contract to Anglicare to provide that service. The broader issue of the Drug and Alcohol Services is an issue for the health minister. I know from my time as health minister that we were reforming that area and we had invested something like \$17 million additionally into drug and alcohol. So there is a lot of work going on in that particular sphere and I really should not comment further, not being the minister responsible anymore for that.

Dr GOODWIN - Perhaps demand for a court-mandated drug diversion will increase if it is -

Ms GIDDINGS - If the demand increases though, then it is a matter of us increasing the budget or trying to encourage the Commonwealth, there is a Commonwealth program to increase the budget for it as well and if you have the money in your system, then you purchase the services. So it really should not matter. The issue will be in terms of funding of CMD, not funding of the alcohol and drug sector.

Dr GOODWIN - Yes, I understand that but has there actually been an increase? Have you noticed in the time that CMD has been in operation that the case load has actually increased?

Mr STEVENS - I think it is fair to say that the magistrates have adopted it at an increasing rate. More magistrates have seen the value in, I guess, alternatives in sentencing. So we would say yes but we are budgeted, if you like, for whatever the figures were - I think 120 clients. So at some point that is it.

Dr GOODWIN - That is sort of it; yes, okay. It has been in operation a couple of years now, I think. Do you have any figures?

Ms GIDDINGS - Since 2007, I take it.

Dr GOODWIN - So do you have some data on the case load over the last -

Ms GIDDINGS - Between 2007 and April 2010 there were 538 offenders who were referred to the CMD program. A total of 31 of these offenders declined to be screened for it and of those screened offenders deemed eligible and suitable for the program, 351 commenced the program by the end of April 2010. Approximately 48 per cent of those offenders were on bail orders, 9 per cent were on community-based orders and 44 per cent were on drug treatment orders.

Dr GOODWIN - All right.

Ms GIDDINGS - The mental health one was just mentioned as well, which was, of course, a pilot and that was commenced in May of 2007 by the now Chief Magistrate, Michael Hill. It is now being presided over by Magistrates Glenn Hay and Olivia McTaggart. We are now looking at moving or expanding that to go statewide. Launceston Magistrates Court began a pilot of it in March of this year, with Magistrates Tim Hill and Reg Marron commencing that. There certainly is the will, I think, among the magistrates to try these more therapeutic options and to try to assist defendants, particularly those with mental health issues, which can be related to their drug addictions as well, to find a more appropriate way through the legal system.

UNCORRECTED PROOF ISSUE

Dr GOODWIN - Do you have the figures for the budget for the mental health diversions?

Ms GIDDINGS - That is being done, I believe, from internal resources of the Magistrates Court and I do not have any figures with me in relation to how many people have gone through that process.

Dr GOODWIN - Are you able to provide those figures?

Ms GIDDINGS - We should be able to. Have you got figures with you, Jim?

Mr CONNOLLY - I don't have them with me.

Ms GIDDINGS - No, but we will put that on notice and we can give you some figures on that.

Dr GOODWIN - Thank you.

Mr WILKINSON - In relation to the lodgments in the Magistrates Court, there was the belief that by taking the majority of traffic matters away from the Magistrates Court that was going to assist, as far as getting through business is concerned. Has that assisted?

Mr CONNOLLY - Yes, definitely. We shared about 50 000 matters annually, which were very minor traffic parking matters.

Mr WILKINSON - 50 000?

Mr CONNOLLY - Yes. They were managed by honorary bench justices who presided in those courts, not magistrates, so the impact on the magistrates was minimal but the administrative efficiency that was gained was significant, probably one or two FTEs at least in the Hobart registry, just managing all that paper going through. That is no longer clogging up the court system in that sense. That goes straight to the Monetary Penalty Enforcement Service.

Mr WILKINSON - There were some people still out there thinking, 'Look, if I don't get served with a summons I'm right', and then the next thing they know is they get a letter to say their licence has been disqualified for however long. How many people are actually electing to take their infringement notices to court, do you know?

Mr CONNOLLY - Very few in number. As a matter of fact, another output can answer that one.

Ms GIDDINGS - When we get to the MPES Mark can answer that for you.

Mr WILKINSON - Okay, thank you. Also in the Magistrates Court criminal division, regarding pending cases older than six months, we see a bit of a jump in 2008-09 to 36.6. I know a couple of years ago there were a few deaths in custody and a couple of others which were causing problems as far as delays were concerned.

Ms GIDDINGS - We were not so concerned about that. It is true that the backlog indicated the Magistrates Court criminal court deteriorated significantly in 2008-09 and at 30 June 2009 Tasmania's Magistrates Court had the highest proportion of pending cases of all States and

UNCORRECTED PROOF ISSUE

Territories. I am advised that the result is not a matter for ongoing concern because it reflects the transition in the nature of the court's case load, again arising from the implementation of the Monetary Penalties Enforcement Service, so the MPES has had the effect of cutting off the previously large number of new lodgements for failure to pay infringement notices. With fewer younger cases in the mix, older cases as a proportion of total case load experienced a temporary spike, so it is an issue with medium - the length has gone up because we have taken out the shorter end.

Mr WILKINSON - Okay. The only other issue I was going to mention too with the Youth Court is child protection matters. How are they going as far as being dealt with in a relatively competent manner, as far as time is concerned?

Ms GIDDINGS - It is not great in terms of child protection matters. Unfortunately the clearance rate is only around 71 per cent, which is the lowest in the nation. This is often the result of the court awaiting expert reports and the family's situation, the progress on parenting skills and the welfare and the best interests of the child or children.

Mr WILKINSON - In relation to the reports, those are prepared by a willing professional, such as a psychiatrist, psychologist or, alternatively, the actual case workers?

Ms GIDDINGS - And the case workers, yes.

Mr WILKINSON - Which suggests to me that the case workers are really under the pump as far as work is concerned.

[10.15 a.m.]

Ms GIDDINGS - I am advised - and my advisers have had experience in this area too - that often what happens is that the child's representative actually asks for all parties to be referred to a psychologist, which can take up to a couple of months. There is a shortage of psychologists and psychiatrists in the State, so that would be a factor in the delay. I am also advised that the delays are unavoidable but the court is taking initiatives aimed at better case management and is currently developing new procedural rules governing care and protection applications, relevant affidavit material, information resources of parents and guardians and alternative dispute resolution mechanisms as well to try to alleviate some of that demand.

Mr WILKINSON - A number are also settled, though, by way of mediation, are they not?

Mr CONNOLLY - A very high percentage, probably it in the region of 90 per cent. Very few of these matters ever go to a hearing. When they do, they go for a number of days, which is a long case by Magistrates Court standards, but the number is very low.

Mr WILKINSON - Yes. I know I hear a lot of comment from people working on the ground that they are just starved of resources and people who work in the field day in and day out, not only the case workers but people who are at the legal end of the scale are saying that the way you can fix it, to some degree, is by adding in quite a significant amount more resources than are in there at the moment.

Ms GIDDINGS - What people do not understand, though, is that it is not always necessarily about money, it is actually about getting the people. Again, I am starting to go into another minister's area but having had experience with child protection issues only two years ago, I

UNCORRECTED PROOF ISSUE

understand even this year and in December of last year, the Department of Health and Human Services advertised for more child protection officers and there was not one applicant. So it is not about resources on the ground in terms of government putting more money in to provide the job positions, it is just very difficult to recruit to that area.

This is where, I think, part of the passion of Lin Thorp last week in my House came out, that when you have these allegations in the child protection system being raised in public forums like Parliament, it actually damages the morale of the existing case workers because often it is not actually as it is presented at all. The story is often not that way. Even with last week's story it was not the way it was presented. It undermines the case workers in the system so you end up actually having a position where you burn out your case workers and you cannot recruit new ones. We really have to be very sensitive around this issue. In trying to be helpful, in discussing it, debating it publicly and thinking we are airing these issues publicly and being transparent, we actually can end up causing some real problems for the child protection system.

Mr WILKINSON - I spoke with perhaps four or five of them about a month ago and they thought part of the reason for the burnout is because of the actual amount of work they have to do. They are finding they just do not have the time to do it.

Ms GIDDINGS - Yes, absolutely. If you cannot recruit the workers, then the case load on the existing workers just grows.

Mr WILKINSON - Sure.

Ms GIDDINGS - It is a real problem and I do not think there is an easy answer to it, unfortunately.

Ms FORREST - Can I just ask one question on that point, minister?

CHAIR - Yes - Ms Forrest.

Ms FORREST - I appreciate it is not a totally new area, but is there a wage equity issue for these workers we are trying to recruit in this State?

Ms GIDDINGS - You would have to ask the minister that in terms of the wage issue there. I certainly believe that they are paid at a reasonable level, in terms of what you would expect, but I am sure if you spoke to their union they would say that we should be increasing the -

Ms FORREST - I am not interested in what the union says, I am interested in the equity of a similar child protection worker in other jurisdictions.

Ms GIDDINGS - Yes. I would suspect I am not actually up-to-date enough to be able to really give you advice on that here and because it is not my area I cannot get advice either. We were just saying between the two of us that we suspect there is a national shortage. The other issue here, of course, too in child protection matters is that you have parents who do not want to give up their kids so they are going to fight to the very end of a process to try to keep their children. That also can mean that issues are not resolved earlier or that the matter is pushed to its nth degree in the courts as well; that can impact on that.

UNCORRECTED PROOF ISSUE

Dr GOODWIN - In the context of this discussion the Legal Aid funding issue is also relevant, isn't it, because they have been -

Ms GIDDINGS - We will come back to Legal Aid because we have Norman Reaburn who can address that for you.

Dr GOODWIN - Yes, but surely part of the issue in the delays would be because the parents are trying to get Legal Aid.

Ms GIDDINGS - It could be, I do not know. We can discuss that when Norman comes to the table.

Dr GOODWIN - Yes, okay.

Mr WILKINSON - Are the offices where these child protection workers work at St Johns Park?

Ms GIDDINGS - Yes.

Mr WILKINSON - I suggest to you that one of the reasons it is not that sexy to get into the area itself is the actual working conditions at St Johns Park. These people are saying, 'Look, it is not the ideal situation for looking after the children as compared to other States in Australia', so that is a real concern as well.

Ms GIDDINGS - I would certainly urge you to talk to Lin Thorp about it; not necessarily in the House, I mean in your conversations wherever. We are always looking at ways that we can try to improve the child protection system.

Mr WILKINSON - Okay.

Dr GOODWIN - Because, of course, you can often track people from child protection to youth justice in the adult correctional system. It is pretty disturbing, really.

Ms GIDDINGS - It is the early intervention argument.

Dr GOODWIN - And then the intergenerational and so it goes on, yes.

Mr WILKINSON - In the Magistrates Court Coronial Division there was a reasonable jump between 2008 and 2009 actual and the 2009-10 target for real net recurrent expenditure per finalisation from 1586 to 1900. Is there any particular explanation for that?

Ms GIDDINGS - In terms of costs, Jim?

Mr CONNOLLY - I think that is the impact of more inquests that we are holding.

Ms GIDDINGS - The Beaconsfield inquest and the like.

Mr CONNOLLY - The Beaconsfield, the Myer fire inquest. We have had some big ones in recent times but there is also a slightly different approach being taken by the coroners that when we reviewed the situation we came to the view that perhaps there were some cases that should be

UNCORRECTED PROOF ISSUE

inquested that were not being inquested, so we have made provision for that so that there is public ventilation of these issues.

Mr WILKINSON - What about the SMS texting to say 'Come to court', you know, 'You're appearing in court today'? I know some of these people need it, the great majority need it. How is that going?

Mr CONNOLLY - It is about somewhere between 15 and 20 per cent reduction in the rate of failures to appear, so that has been a good efficiency saving for us because every wasted listing delays the finalisation of the matter, obviously, but there also is a cost involved in getting the matter listed, getting the solicitors along and then their clients do not turn up and witnesses who turn up and then put in a claim for expenses and then it has all been for nothing.

Mr WILKINSON - What about witnesses for the prosecution? Some have stated that they have found that one of the reasons for these adjournments is that the actual prosecution witnesses - let alone the defendant - are not turning up?

Mr CONNOLLY - That does occur on occasions, definitely. I cannot really comment on why that happens, that is something you would need to direct to the Minister for -

Ms GIDDINGS - Would we consider SMSing witnesses too? I presume that is what you are thinking.

Mr WILKINSON - That is what I was getting at, yes.

Mr CONNOLLY - Yes.

Mr WILKINSON - Police involved as well sometimes.

Ms FORREST - And the lawyer perhaps as well.

Laughter.

Mr CONNOLLY - The potential is there.

Mr WILKINSON - Yes.

Mr CONNOLLY - We have the mechanism in place, it is just a matter of identifying the people but usually it is a matter of capturing the mobile phone numbers obviously as well of everyone that you are going to text and police do a great job in obtaining that mobile phone number at the point of arrest and charge and then they transfer that data on to us, then we can use it to send the message out.

Mr WILKINSON - Any areas in the magistrates division that you believe can be improved as a result of some innovation?

Ms GIDDINGS - They are constantly innovative right there.

Mr WILKINSON - That is right.

UNCORRECTED PROOF ISSUE

Ms GIDDINGS - I think Chief Magistrate Hill is always looking at new ways of doing things and he has been one of the progressive magistrates that has brought in a lot of this therapeutic jurisprudence, really.

Mr WILKINSON - I accept that. Are there any new plans?

Ms GIDDINGS - They are bedding down what they have got. I have been advised there is some new legislation that we are looking at. We will just find for you what might be in that. The big thing right now is trying to expand these new programs, the CMD or the mental health, particularly to other parts of the State. The mental health one particularly I think is very good, very impressive.

Mr WILKINSON - Is there any part of the State which is faring not as well as others in relation to the time delay for the hearing of cases?

Ms GIDDINGS - There was an issue on the north-west coast when we only had the two magistrates. There was a backlog that was really starting to grow on the north-west coast and we also had the illness of one of our magistrates as well last year. Out of that period of time we determined that actually we needed to put an additional magistrate on the north-west coast, so that is when we recruited Michael Brett to become the third magistrate. I understand from my briefings that that is working, in terms of bringing that case backlog back down again and make it a much more manageable case load but I understand that Launceston is operating reasonably well with the number of magistrates that they have there and, in fact, we have got a slightly higher proportion of magistrates now than you would expect per 100,000 people as well.

We are looking at a package of new legislation or around legislation for the Magistrates Court. The Magistrates Court Management Group has for several years seen the need to review and modernise the legislative framework that the courts criminal jurisdiction operates within. Such a modernisation would substantially replace the framework that currently applies in the Justices Act. The complete package of proposed legislation makes substantial and long-awaited changes to the operation of the Magistrates Court. It will serve to enhance respect for the court of the criminal justice system generally.

There is a number of bills there, a number of consequential and transitional amendments as well and the proposed legislative package is substantial. Although it was hoped to be introduced in 2010, I am advised that the court is currently awaiting a further draft so it can commence the final consultation and communications strategy with key stakeholders. It will create a platform from which the court will be able to use new technology, such as electronic lodgement of documents; new or modified business processes and more efficient court management practices. This in turn should also help contribute to reducing delay in the court and enable the court to use resources more efficiently and effectively.

The aims and objectives of the legislative package are: to establish a modern, coherent and new legislative program work for the criminal and general division of the court that provides for the timely and expeditious resolution of criminal matters; provide a legal framework that offers greater understanding for the lay person and self-represented litigant; ensure that every court appearance by person or organisation advances the litigation in a meaningful way towards finalisation; and to clarify and simplify the procedures of the division to enhance the efficiency of the court and provide improved access to justice. Major procedural initiatives contained in the proposed suite of legislation are a new way of commencing criminal proceedings via a court

UNCORRECTED PROOF ISSUE

attendance notice instead of a complaint and summons. Among them are: a new prosecution and defence evidentiary disclosure framework for Summary Court matters; new contempt of court powers and increased powers for the court to control its process; new case management procedures, including time standards and sentence indication powers designed to promote the just and efficient determination of matters of fact or law; and increased thresholds for offences they may be dealt with summarily in the Magistrates Court to cover property up to \$50,000. The current threshold for property offences is up to \$20,000 in value. Also, there will be a clear and contemporary scale of costs for lawyers practising in the criminal and general jurisdiction of the court.

Dr GOODWIN - When will we see that package - some time next year?

Ms GIDDINGS - I would assume so now that they are having to go to further consultation; this further draft and then go on to consultation. It is quite a package - I did not read out all the provisions that we will be debating.

Dr GOODWIN - Yes, I can see that. I was just going to ask you a question about the use of video conferencing and technology within the Magistrates Court because that has been something that is growing. How is that tracking?

Ms GIDDINGS - It is going well.

[10.30 a.m.]

Mr CONNOLLY - That is going well. We are in the process at the moment of upgrading some of our infrastructure around the state. We have upgraded Launceston Magistrates' Court and we are about to start Burnie, then we will do Devonport and Hobart. It is used on an almost daily basis, I would say. In Hobart we have the capacity for three courts to run simultaneously on video link, two on roll-about systems and one on fixed system. It is delivering efficiencies all around the place. There are fewer prisoner transports to the courts for formal appearances, and it is used for taking witnesses' evidence from here, there and everywhere.

Dr GOODWIN - I am also advised there is another separate room that has the videoconferencing in it, Jim, that lawyers can speak to their clients at Ashley through?

Mr CONNOLLY - Yes, the protected women's room is able to be run as a separate video link facility and we encourage the legal profession to use that. The Department of Health and Human Services kindly agreed to meet the cost of any of those video link transmissions, to help facilitate the early finalisation of youth justice matters, for young people in custody at Ashley. Unfortunately, the take-up rate is very low. But we live in hope.

Ms FORREST - Do you have any idea why that is?

Mr CONNOLLY - I could posit a few suggestions. I think it is the way legal practitioners run their practices. Quite often, they are very busy, so they have to make a separate booking to come down to the court to take the instructions. Whereas if they leave it until the day of the appearance, they come down, they ask for the matter to be stood down, they go next door to the remand centre and take their instructions there face to face. I think it is just a traditional work practice.

Ms FORREST - Right.

Mr HARRISS - I do not know whether it is covered, but you mentioned Michael Brett. Is he the only new appointment in the last 12 months?

Ms GIDDINGS - No he is not. Catherine Rheinberger was also appointed in the last 12 months. Prior to that was Melanie Bartlett, she was appointed the year before that, and Reg Marron and Robert Pearce as well. We have had a turnover of magistrates since I have been Attorney-General. I think I have had the most appointments of any Attorney-General.

I can let you know in Hobart we have Chief Magistrate Michael Hill, which was an appointment that I made; Peter Dixon; Sam Mollard; Catherine Rheinberger, the new one; Olivia McTaggart; Chris Webster; Glenn Hay; and Michael Daly. Launceston is Tim Hill, who moved from Devonport to Launceston; Reg Marron; and Robert Pearce. Devonport is now Melanie Bartlett and Michael Brett, and Burnie is Don Jones.

Mr HARRISS - Any looming retirements?

Ms GIDDINGS - Not that I am aware of in the magisterial service. Considering I have almost appointed half of them. No, I am not expecting any.

Mr WILKINSON - What about appeals coming out of each of the jurisdictions? Have you noticed that there are a few coming from Launceston at the moment?

Ms GIDDINGS - There was an appeal but it is not my habit as Attorney-General to comment on appeals, I do not get involved in those.

Mr WILKINSON - I do not want you to comment on any of them, I was just wondering about the numbers. We can find that out at some later stage.

Ms GIDDINGS - It is pretty much on a par with last year. It is 32 this year to May, and it was 31 last year at the same time.

CHAIR - We have finished 1.2. We will move to 1.3, enforcement and monetary penalties.

1.3 Enforcement of monetary penalties

CHAIR - Any questions? Dr Goodwin.

Dr GOODWIN - There has been some new money allocated to this area.

Ms GIDDINGS - I invite Mark Cocker to the table.

Dr GOODWIN - I wonder if you could elaborate on what the new additional funding will be used for?

Ms GIDDINGS - Yes, I certainly can. We have some road safety initiatives that are being funded through the additional funding that has come through. There has been additional funding of \$600,000 for 2010-11 and \$500,000 each year thereafter that has been provided to the Department of Justice to support MPES. This additional funding has been provided to help

UNCORRECTED PROOF ISSUE

improve the responsiveness and capabilities of the MPES and associated information systems that are supporting increased demand for its service.

Specific initiatives where this additional funding will be used include improving the functionality and system efficiencies of the fines and infringement notices database, otherwise known as FIND, which is used across government, specifically Justice and Police, and increasing the capabilities of the MPES to respond to significantly increased demand for services, resulting in maximised effectiveness of the enforcement process.

The benefits of this additional funding include improving our capability to support the deterrent effect of monetary penalties, more appropriately supporting partnership initiatives, specifically the road safety strategy, and improving our ability to increase awareness of the consequences of noncompliance.

Dr GOODWIN - What do you mean when you talk about improving the deterrent capability?

Ms GIDDINGS - I take it the sooner we get on to it, alerting people that they are at fault, the faster we can collect the fines. But also we can let them know, if they do not pay their fines, what the consequences of that will be.

Dr GOODWIN - This is speeding up the process?

Mr CONNOLLY - The enforcement process, yes.

Dr GOODWIN - Are there any outstanding technical issues that may need to be resolved? There seemed to be some early issues, where I was getting a few constituents ringing up, saying the system was apparently not being updated and the police had pulled them over for having been an unregistered car and they thought it had been paid, and all that sort of stuff.

Mr COCKER - There were certainly some early issues identified with the software. A lot of those issues have been resolved. We still have some outstanding issues, albeit more of an administrative nature than an operational nature, and those matters are still being addressed as we speak.

Dr GOODWIN - I wanted to ask you about the current fine collection rate and whether the target for 2009-10, in table 7.4, has been achieved?

Mr COCKER - The current collection rate is 89 per cent of referred debt. Every single debt referred to us, we are collecting 89 per cent of them.

Dr GOODWIN - Do you think you will be able to improve on that?

Mr CONNOLLY - Yes, I do.

Mr WILKINSON - To what extent, is the next question?

Mr COCKER - I would not be so brave as to say 100 per cent, but certainly we are collecting 130 per cent of all court fines, so we have achieved that mark.

UNCORRECTED PROOF ISSUE

Dr GOODWIN - There is still some aged debt outstanding?

Mr CONNOLLY - Yes, there is. We are slowly making inroads into that. Considering that a majority of the monetary penalties that are referred to MPES for enforcement are to persons who have existing outstanding debt --

Dr GOODWIN - The repeat offenders?

Mr COCKER - Effectively. It is that existing aged debt that, if you like, gets paid out first. So we are slowly reducing the balance of outstanding debt.

Dr GOODWIN - How common is it for infringement notices referred to MPES for enforcement to be withdrawn?

Mr COCKER - I cannot really comment on how common or otherwise it may be. The withdrawal of an infringement notice rests with the issuing authority. At any stage certain issuing authorities can withdraw an infringement notice, either on their own notice or based on application from the alleged offender. Certainly they are withdrawn. I do not have the exact percentage figures or number handy.

Dr GOODWIN - Is that something you can provide on notice?

Mr COCKER - I can, yes.

Dr GOODWIN - One of the rationales behind the monetary penalties enforcement service was to reduce the use of imprisonment for fine defaulters. Has that objective been achieved?

Ms GIDDINGS - I am advised it was not a key reason for why we drove the MPES reforms. It was only ever going to have a very minor effect on that, I am advised, because in reality the number of people who were ever imprisoned in the first place was very small.

Dr GOODWIN - So there are still people presumably being imprisoned for defaulting on their fines?

Ms GIDDINGS - Not at the moment.

Dr GOODWIN - Okay. So it has had an impact.

Mr WILKINSON - There are other things that are put in place, are there not, such as not renewing licences?

Ms GIDDINGS - Absolutely, yes.

Mr WILKINSON - What are the other penalties, other than the fines, if people do not pay fines?

Ms GIDDINGS - Publishing of the names on the website if they refuse to pay. Suspension of their licence if they refuse to pay.

UNCORRECTED PROOF ISSUE

Mr COCKER - Suspension of their motor vehicle registration or, in the case of a corporation, an entire fleet of vehicles.

Mr WILKINSON - It would be a problem if Parliament was involved, wouldn't it?

Laughter.

Mr COCKER - Yes. Seizing and sale of assets and redirection of moneys owed.

Mr WILKINSON - Can I ask, in relation to that - because they seem to be the really recalcitrant offenders - have you any figures at all as to licence disqualifications, registrations taken away?

Mr CONNOLLY - Yes, I do.

Mr WILKINSON - I thought you would.

Ms GIDDINGS - The new technology does work.

Mr COCKER - The figures as of this morning for the current financial year, 10 461 enforcement debtors have been subject to a suspension of driver's licence; 33 311 monetary penalties were involved there. With respect to the suspension of motor vehicle registrations, 4 935 enforcement letters or 17 641 monetary penalties.

Mr WILKINSON - To see whether or not it is working, what has happened after they have gone that far?

Mr COCKER - With respect to the driver licence suspension sanctions, 4 869 remain active out of the 10 000; 848 have been revoked by reason of the director's discretion, because the person has either presented sufficient information to suggest that they would be overly disadvantaged through the imposition of that sanction or they have made arrangements to pay. Of that 10 400, 872 have been revoked because the person has made arrangements to pay and has commenced payment in accordance with those arrangements.

Mr WILKINSON - Of course, that is what you want, isn't it?

Mr COCKER - Exactly. Or the last figure we need is 3 872 have paid their monetary penalties in full.

Ms FORREST - Those people who have had their licence revoked or their car registration removed are the people who have nothing to lose, therefore, when they go on the road and drive; they have already lost their licence, their car is no longer registered and they do not have the insurance required in the event of a crash. Do you have a plan for dealing with those people as far as penalties?

Mr COCKER - In terms of?

Ms FORREST - If they are going to continue to break the law from that point.

UNCORRECTED PROOF ISSUE

Ms GIDDINGS - Unfortunately, they leave themselves vulnerable to being caught by the police and charged with other charges, like driving whilst disqualified, and then ending up with even more serious criminal problems if they do not. So you try to avoid that.

Ultimately, it is down to the individual to do the right thing. MPES, I think, is reasonable in terms of coming to some agreement with people to pay back. If they are really in a position where they are struggling to pay their fine back, that will be taken into consideration and a reasonable arrangement made in terms of the payback of fines. You can avoid any of those other more serious consequences just by starting to pay back. That is the message we have to get out there.

We have needed the stick as big as the stick that MPES has because of the fact we had more than \$30 million or \$35 million of outstanding fines. People just felt they could put their head in the sand and it would go away, and we did not have the mechanisms in place to say, 'Actually, that is money that is now owed to the taxpayers of Tasmania, and you have to pay up because you did the wrong thing in the first place.'

Mr WILKINSON - I noticed in the Budget it spoke about policy and parameter statements, where it showed that new road safety policies - this may not be in your area, but it might be - will yield \$26.5 million between 2009-10 and 2013-14. Does that relate to recovery of fines or is it something completely different from that and I will have to ask road safety?

Ms GIDDINGS - No, it is road safety. Ask me again at the end of the day when I have the road safety people with me.

Mr WILKINSON - All right.

Dr GOODWIN - Are there many issues in tracking down fine defaulters?

Ms GIDDINGS - There are one or two. One has gone overseas, perhaps never to be found again.

Mr COCKER - Skip tracing is a big issue for us. We rely quite heavily on the information passed on to us by the relevant issuing authorities. Principally, a lot of the address information we use emanates from the Registrar of Motor Vehicles system. That said, some of that information is accurate, some of it is not up to date. People who want to be found will be found and those who will not want to be found do not want to be found.

[10.45 a.m.]

Dr GOODWIN - Do you persist with it or do you just have to write some of them off because they are too difficult?

Mr CONNOLLY - That certainly is an option. We have not exercised that option to date to any great degree. We undertake a lot of investigations into where someone may be residing, and we try to get as many documents out to the person as we can.

Mr COCKER - That certainly is an option. While we have not exercised that option to date to any great degree, we do undertake a lot of investigations into where someone may be residing and certainly try to get as many documents out to the person as we can.

UNCORRECTED PROOF ISSUE

Mr WILKINSON - In relation to that, when you say get as many documents out to the person as you can, is that by way of registered mail or you just send a letter to the last known place of address?

Mr COCKER - The last known place of address that we have stored in our database.

Mr WILKINSON - Is there any problem in relation to sharing information that you need to try and find these people that just do not want to be found because of the money they owe?

Mr COCKER - Sharing it with?

Mr WILKINSON - Sharing of information with other agencies?

Mr COCKER - I am not aware of any. We certainly go back to the various issuing authorities from time to time, asking them if they have any more up to date information with respect to a particular person.

Mr WILKINSON - Would it help if there was a better sharing of this information from other agencies, or do you believe you have got it pretty right?

Ms GIDDINGS - It's not an issue that we really have a problem with. If it became an issue, certainly that would be raised with me and I could deal with that at that point.

Mr HARRISS - With regard to the naming and shaming that was mentioned ago, the publication on the website and so on, have there been any instances of incorrect or inaccurate identification of people, with the embarrassment that might bring? The follow-on question, obviously, would be what measures have been put in place to avoid such an occurrence, if it has occurred in the past?

Ms GIDDINGS - I can get Mark to talk through the process that is taken before someone's name is even put on the naming and shaming list. They would be given other warnings before that happens. So if they really felt that it was not appropriate or there was a mistake anyway, that would be fixed in the early stages.

The issue we have had has been in relation to a person who has an apprehended violence order out against the perpetrator of the family violence, and that person's name and address was put on the MPES list. As soon as that was drawn to our attention we withdrew the naming and shaming list, and we have not put it back on until we had more robust procedures in place that enable us to check off any names with the family violence unit of Justice, before the names are put up on the website. They are back up now. It has been live again since March, but it was offline for six months or so.

Mr COCKER - Correct.

Ms FORREST - Is that the only issue of privacy?

Ms GIDDINGS - Yes.

Ms FORREST - That was an issue that was raised, and rightly so.

Ms GIDDINGS - Yes.

Ms FORREST - Are there other privacy issues that people have raised, aside from the family violence orders?

Mr COCKER - Not specifically with me. I am not aware of any others.

Ms GIDDINGS - No. The legislative sanction is available. People are given fair warning that this is going to happen, and if they choose to ignore that and it ends up happening, so be it. I am aware of people who have suddenly found their name on the list and it has been at that point that they have actually started to realise that they are in trouble and they have got in touch with MPES and started to pay it back. Until that point, they were living in absolute denial that they had an issue.

Ms FORREST - Those people had got the information and they had just ignored it; is that what you are saying? It was not that they did not have it?

Ms GIDDINGS - In this particular case that I am aware of, absolutely, they ignored it, ignored it, ignored it. As soon as their name was up on the list, and they thought, 'Oh, no, now my friends and colleagues and business workers and others will know,' they panicked. At that point they got on the phone to MPES and said, 'Right, how do I pay this off?' It's amazing how people think, it really is.

Ms FORREST - It is a bit like denying a pregnancy. You can only do that for so long.

Ms GIDDINGS - That is exactly right. We had to get to a maternity issue at some point.

CHAIR - Any more questions on 1.3?

Mr WILKINSON - The only question I have is the question that was referred to earlier about the infringement notices. How many people are actually taking their infringement notices to court?

Mr COCKER - In the 10 months to 30 April, or this financial year effectively, 691 persons have lodged a notice to elect a court hearing.

Mr WILKINSON - Out of? Do you know how many infringement notices have been handed out?

Mr COCKER - Yes, in that period, approximately 160,000.

Mr WILKINSON - That is good. Then you would say that is working.

Mr COCKER - Yes.

Ms FORREST - They must be pretty sure that they have got a case.

CHAIR - We will move on to 1.4.

1.4 Support and compensation for victims of crime and others

UNCORRECTED PROOF ISSUE

Dr GOODWIN - Last year a decision was made to outsource the victims of crime service and deliver those services in-house. Has that resulted in budget savings, and can you talk about whether the same level of service has been provided and how it is tracking.

Ms GIDDINGS - Absolutely. In fact, I can assure you that we have increased services happening as a result of bringing this into the department. I do not want that at all to be seen as any bad reflection on Lifeline, because Lifeline does a fantastic job and they are a very good organisation. But the cost at which they could provide the same service is higher, and that is why we decided, particularly in light of the global financial crisis and having to find ways to be more efficient, that we could be more efficient by bringing the service into the department but also, in doing so, increase the levels of service that we are able to provide.

The other absolute benefit of doing this was the fact that we had some confusion with people not knowing exactly where to go for services. We had a victims of crime service within the department that provided the actual counselling and possible compensation, and we also had a victims of crime service outside of the department that you could ring, being a counselling service. So we brought all of those into the one organisation, which certainly provides a better service in that respect.

The benefits of the new arrangement are that our office opening hours on the north-west coast have increased by three days per week. We have an extra 14 counselling hours across the state, during business hours; no answering services are to be used during business hours; full-time reception services in Launceston; an increase in counselling staff; and external professional supervision for all counselling staff across the state. We still have the victims of crime 24-hour counselling support line that continues to operate as normal, but we note that there are very few calls in the 24 hours. That is something we are monitoring, because there is obviously a cost to providing a 24-hour service if you are only actually having that service used a couple of times a month. That is something we are keeping an eye on. At this point in time it is available, it is all there and, as I say, it has in fact increased.

Dr GOODWIN - Do you have the statistics comparing this year with last year? It has not been around for that long, has it?

Ms GIDDINGS - No, it only came in last year. Our own internal statistics would not have a comparison. I am not sure what auditing was done of Lifeline, whether we could make comparisons.

Mr WILLIAMS - I do not have those statistics with me, but we have been tracking it. We said when we took it over that we would review our performance after a year, to see how we have been going.

Debra Rabe has been tracking the comments from people to make sure that we are providing a quality service. Thirty-four very positive comments have been received in relation to the operation of that service and only one person has said they are not satisfied. So we think we have provided a continuous service. Lifeline was very good but we think we are also providing the same level of service at a high level.

CHAIR - What has been the average pay-out over the last 12 months and how does that compare to previous years?

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Ms GIDDINGS - From July 2009 to 2 June 2010, 319 applications were received. The total number of awards finalised was 200 and the average award was \$10 815.

CHAIR - Comparing that with previous years, as a percentage, has there been a lift or a reduction or has it been fairly flat?

Ms GIDDINGS - It is all reasonably standard, in a sense. In 2006-07 the average pay-out was \$9 244. That dropped to \$8 210 the following year, increased to \$11 341 last year, and this year is \$10 815. So it is all within that band in that respect.

The important point that I am being reminded of is that compensation is only one small part of what we provide to victims of crime. In many respects it is the counselling support that is more important.

CHAIR - Do most people take that option up, or if they get a cash pay-out, do they feel justice has been done and they do not need counselling?

Ms GIDDINGS - Most people do.

Mr WILLIAMS - There is a whole range of services that the unit offers, and they get a very good response.

Ms GIDDINGS - The awards consist of costs for dental, medical reports, other expenses, solicitor costs, all of those sorts of things. We provide information on support services, court processes and court outcomes.

CHAIR - Could the medical and dental costs exceed the actual cash pay-out, or does the cash pay-out encompass the costs for new teeth or whatever? Does it encompass that or how does it work?

Ms GIDDINGS - I will ask Debra Rabe, who heads up the victims support services.

Ms RABE - The medical costs are often provided as a separate component of the award and retained by the unit to be paid for those services. Previously the monies used to be provided as one payment, then people weren't getting the medical services they needed, such as their teeth replaced or whatever. Now the money is retained by the unit and paid to the dentist or the medical practitioner who is providing the service.

CHAIR - That answers that, thank you.

Dr GOODWIN - How well is the victims of crime scheme operating? Are you happy with the model we have or have you looked at other models interstate?

Ms GIDDINGS - I personally have not looked at other models but I have been satisfied with the way the service has been operating here. It has not been an area where I have had complaints of any magnitude that would make me think, 'Hang on, we have a problem that we need to address.' I am certainly happy for Debra to speak in terms of what other models are around, and whether you have had conversations around that.

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Ms RABE - We have certainly looked at what other states are doing. Queensland particularly is doing some ground breaking things, and we would like to have discussions about some new proposals when the time arises.

Dr GOODWIN - You are waiting to see how that goes? Is it fairly new in Queensland?

Ms RABE - It was started in December 2008, and they have done some really good things. New South Wales, South Australia and Victoria have already followed their model.

Dr GOODWIN - In relation to who is eligible for assistance through the scheme, is it the case that it is only victims of violent crime? Does the crime have to be one actual incident? If someone has been experiencing a series of incidents or some sort of vendetta, which might not be a physical assault, but they are being terrorised by the local kids throwing rocks on their roof or terrorising them in some way, would they be eligible for assistance for psychological distress?

[11.00 a.m.]

Ms GIDDINGS - I am advised that there has to be a crime against the person as such.

Dr GOODWIN - Do you think there would be some merit in extending it to some of those other types of incidents?

Ms GIDDINGS - The Queensland model does extend it further, so there may well be some merit in that. The issue is whether or not we can afford it. If it ends up costing a lot of money, obviously that is something that becomes a Budget issue for Government.

Dr GOODWIN - I am aware of one case in particular where someone was terrorised over a long period of time, which had a huge impact on their quality of life.

Ms GIDDINGS - On their mental health and wellbeing.

Dr GOODWIN - Yes.

Ms GIDDINGS - They could still get counselling, if they needed to. The unit is open for wider than that. You would not get criminal compensation, but you could access the counselling services and get other support through the unit.

Dr GOODWIN - A victims of crime charter was mooted at one stage. Are you still looking at that?

Ms GIDDINGS - I believe the department has been looking at it. It has not come back up to me at this point, that I am aware of.

Ms RABE - We have done some work on a victims of crime charter. Tasmania is the only state in Australia that does not have one. But when I meet with my counterparts, we are very lucky that we have the best relationship with the police and courts. So a lot of things that are happening in Tasmania which are par for the course, a lot of other states can only dream about. But yes, we have done some work on a charter.

Dr GOODWIN - That might be something that you could pursue with the Attorney.

Ms RABE - Yes.

Dr GOODWIN - I wonder whether you have considered establishing a generic court support service for victims of crime. I guess this comes back to the resources issue. There is - please correct me if I am wrong - a court support and liaison service for victims of family violence and the serious witness service for people attending the Supreme Court. What about all the other victims attending court, do they get any support or can they access support?

Mr WILLIAMS - The serious witness service is run out of the DPP's office and performs a slightly different function from the mainstream support that victims get through the victims of crime assistance unit. The victims assistance unit provides counselling and support to the whole range of people, and they work very closely with the serious witness unit, when sometimes they are common clients; they make sure that they do not fall between the cracks. It is a slightly different role, but often with common clients.

I do not think we have any particular issues in terms of how that works. Once again, we have had very positive responses to the work that the victims assistance unit does. We get a lot of people volunteering their praise for what happens in the unit.

Dr GOODWIN - I guess my question was around court support more broadly, in terms of people who might not fall within the victims of family violence or within the serious witness area, but other areas.

Mr WILLIAMS - Family violence is actually done by the victims assistance unit. That is one of the points the Minister made, that putting the victims of crime service in with the victims assistance unit puts it all in a one-stop-shop environment. The family violence stuff is done by the same people who are doing the broad range, it all comes out of the same place.

Ms GIDDINGS - The victims of crime service does provide some court support as well.

Dr GOODWIN - Some people who do not fall within the victims assistance or the family violence areas can still access support?

Ms GIDDINGS - They can still access support through victims of crime.

Mr WILLIAMS - Absolutely.

Dr GOODWIN - Have you considered extending victim impact statements to summary offences?

Ms GIDDINGS - No, we have not.

Mr WILKINSON - What often happens is that the prosecution tell the magistrates what effect it has had on the individual, as far as sentencing is concerned, and the magistrate will there take that into account. Even though it is not a proper victim impact statement --

Ms GIDDINGS - It is taken into account.

CHAIR - It is handy to have another adviser on this side of the table, isn't it?

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Ms GIDDINGS - It is very handy to have someone with practical court experience.

Dr GOODWIN - It is not formalised?

Mr WILLIAMS - No, not within our service.

Ms GIDDINGS - It would be a policy matter for Government, but it would probably be more of a matter for the police, in terms that somebody has to write the statement, for it to be presented to court. It is certainly not something that I would oppose, and I am pleased to know that it does happen on an informal level anyway to that extent. To formalise it is not a decision that we have taken as a policy decision at this point.

The issue is much easier at the Supreme Court level, where you have fewer cases, whereas at the magisterial level you have so many cases that the workload that could come into it at that point would be quite substantial.

Dr GOODWIN - Through my involvement with the U-Turn program, I understand what the impact of motor vehicle theft can be on some people, for example. I guess there could be some benefit in --

Ms GIDDINGS - The Youth Justice Act does use this. It is part of the process of the Youth Justice Act to get offenders and victims together so that the offender can actually understand the impact of the crime on the victim. Once you are talking about the adult courts, the volume is much bigger.

Dr GOODWIN - I suppose that leads nicely into another question around victim/offender mediation, whether that is something that has been considered.

Mr WILLIAMS - We do offer some mediation for sentenced offenders, once they have been sentenced, through the victims assistance unit.

Ms GIDDINGS - We have a situation where victims can write to the offender, through that process. I am aware that has happened.

CHAIR - How are we going? I am aware that we need to break shortly and we have a long way to go.

Dr GOODWIN - Just one quick question.

CHAIR - One quick question, then we will break.

Dr GOODWIN - Have you thought about including a victims of crime representative on the Parole Board?

Ms GIDDINGS - The Parole Board is not actually my purview. You may want to raise that with Minister McKim.

Mr HARRISS - It is all good news from victims of crime. Just as well we did not abolish it!

CHAIR - Exactly.

Ms GIDDINGS - I am advised on this side that it was never going to be abolished.

CHAIR - We will adjourn for a cup of tea.

The committee suspended from 11.08 a.m. to 11.27 a.m.

CHAIR - Welcome back, Minister. Is there anybody else we need to acknowledge at the table?

Ms GIDDINGS - Yes, we now have the director of Legal Aid Services, Norman Reaburn, at the table.

CHAIR - We will move straight into 1.15, legal aid.

1.15 Legal Aid

CHAIR - Dr Goodwin.

Dr GOODWIN - Attorney, do you think the injection of an extra \$200 000 a year into legal aid will be sufficient to ensure that parents will be represented in child protection cases?

Ms GIDDINGS - I certainly think that the extra \$200 000 will go a reasonable way for Legal Aid to be able to deal with some of the demand pressures they have. I will ask Norman to address that.

I am aware we have a situation where demand is outstripping supply. I do not know that we will ever get to a position where we will actually be able to manage demand; there will always be people that we end up having to say no to. Constantly, Legal Aid themselves, as budgets contract and expand, deal with that through their own policy decisions as to who should be eligible for legal aid and who should not. Child protection matters have been an issue of concern and I would ask Norman to speak to that.

Mr REABURN - The commission will be sitting down some time in the next couple of weeks and reviewing all its priorities in terms of the ways in which it has to ration resources. I have absolutely no doubt that, as a consequence of the additional money that came in the State Budget, the commission will be able to alter its approach. Now, to what extent it will be able to alter its approach, I cannot say until after the commission has met. But certainly I would anticipate that it will enable the commission to at least move away from the idea of taking particular categories of matter and saying that we cannot deal with them and at least move to particular attributes of applicants, so it will be a more finely focused sort of approach to the question of rationing.

The commission is very conscious of the impact of this decision. It is in constant communication with those members of the legal profession who do the work on a regular basis, so it is aware of the difficulties that are involved in the exercise. I have no doubt that there will be an announcement by the commission in the next couple of weeks.

[11.30 a.m.]

Mr WILKINSON - It is a difficult situation you have been placed in, Norman, because obviously the legal practitioners who wish to act as a result of being requested to by the parents of these children are saying, 'Well, what greater need is there for somebody who cannot properly put their own case, for a number of reasons, to get some assistance in order to try and look after and care for their children?'

Mr REABURN - That is certainly true. The commission's answer to that is that there is a greater case, and the greater case is the interests of the child. Of course, one of the things the commission has done is to say that the appointment of independent lawyers for the children in these matters is its higher priority, so we have maintained the appointment of lawyers for the children.

I appreciate the point about a parent, with difficulties in approaching the complexity of a matter, being able to feel that they are putting their case. But to the extent that there is something about the parents' situation which is of value and benefit or potential benefit to the child, that aspect of the case is, of course, being put by the child's lawyer. This is the bit of it that lets me and the commission and my people sleep at night.

Mr WILKINSON - You can only cut your cloth to suit your cost.

Mr REABURN - That is right.

Mr WILKINSON - What I am saying is that a lot of the time the actual parent, because of their issues, cannot properly state matters which may be of great assistance, not only to their case but also to the child's case.

Mr REABURN - Yes.

Mr WILKINSON - In all these matters, the child is the paramount interest, no question about that.

Mr REABURN - Absolutely.

Mr WILKINSON - But the parent may say, 'I believe if I had proper representation I would be able to put all my matters on the table to enable the child's solicitor to be able to properly deal with the matter as well.'

Mr REABURN - That is certainly true. I am hopeful - again, bear in mind that the commission has to meet to conduct this review - that we will be able to be more finely focused on attribute of applicant rather than category of matter. That does mean there may well still be cases where we say to a parent in a care and protection matter, 'We are not going to give you aid.' And we will be saying it essentially because 'we believe there is not a lot you can contribute to this matter, thank you very much; no matter how much you might like to or think you can, there is not.' So it will move from category to that kind of decision.

Mr WILKINSON - One of the issues there is that it is coming before a court, as you know.

Mr REABURN - Yes.

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Mr WILKINSON - The solicitor, who might be doing it for nothing, pro bono, because of not being granted aid, is saying, 'Look, I have just been asked to act for so and so,' therefore the matter is put off. So what you are saving in relation to legal aid you are costing because of the delay in the court process.

Mr REABURN - We are conscious of that, yes.

Ms GIDDINGS - The other important point in terms of the funding issue is that there is the extra \$200 000 recurrent, which gives Norman and the board some comfort in terms of their long-term budgeting, but we also have every year the solicitors' trust fund and my top priority for the disbursement of additional funds that come out of that trust fund has always been legal aid. In the last 12 months we have put an additional \$250 000 in through that trust fund. Some of that went to additional resourcing of crime and child protection matters statewide, as well as additional representation in the Magistrates' Court for traffic matters and an additional duty lawyer for criminal matters on the north-west coast. We try to boost the legal aid funding on the state side of the ledger through that trust fund as well.

Dr GOODWIN - Going forward into the next financial year, that may be another option, if the \$200 000 is not enough?

Ms GIDDINGS - Yes. There will be further funds available for disbursement over the next 12 months, and I expect legal aid will be coming back for some of that.

Mr WILKINSON - Any assistance is greatly appreciated, no doubt. One could argue, though, that the \$200 000, compared to the amount of requests that are made, is a drop in the ocean.

Ms GIDDINGS - Yes.

Mr WILKINSON - Therefore there is a greater need for funding. As I understand it, you are saying that there could well be a situation where another \$250 000 is inserted into that?

Ms GIDDINGS - Possibly. The problem with the Solicitors Trust Fund is that you do not know how much will be available at any one time, and that can go up and down. As a minimum, they now have to have \$4.5 million sitting in the trust fund, which was lifted from \$3.5 million last year. It depends how much is sitting there that can be disbursed. The problem is it is not recurrent, you cannot budget on it, which is not great for the Legal Aid Commission. However, when the funding does become available, it means they can open up more services to deal with the demand pressures they have at that given time.

It is not ideal, but I was very pleased we were able to get the lift in legal aid funding in the Budget for the next four years recurrent, and we will keep trying to lobby for extra funds for legal aid, as we do all of our various areas of responsibility in government. All of these things come down to priority, and if I can help in another way, that is what I will do.

The other side of the ledger is the Commonwealth side of the ledger. We are going through the process now of finalising the national partnership agreement. It is known on the public record that I was very disappointed with the outcome of the national partnership agreement, that there seems to have been a change in the formula that was used for that. When they took the population element of the algorithm, as they call it, into account, they took the entire population into account,

rather than the population on benefits into account, which is what was used in past. That distorted the formula in that sense, but that has been taken into account. I have written to the federal Attorney-General about it and I have been to Canberra and had a face-to-face meeting with him about it. Certainly it seems that there is some goodwill coming on board from the Commonwealth to assist in that. Already they have made it known there is an extra \$200 000 that the Commonwealth will provide this year as well.

Mr WILKINSON - That is over and above the \$200 000?

Ms GIDDINGS - That is over and above the State contribution.

In the past, as I understand it, there have been fairly much two separate books kept for legal aid. Under the national partnership agreement there will be a little bit more crossover of state funds and federal funds being able to be used across jurisdictions, so it gives a bit of cash flow ability for legal aid as well. All indications are that the Commonwealth is listening very seriously to us about the problem. I do not think they necessarily realised it was the case with the algorithm they used.

Dr GOODWIN - They might rethink the formula they are using?

Ms GIDDINGS - They are certainly willing to work with us over the period of the NPA to see what the demand pressures are at any given time on the ground. We will not be able to change the NPA, that is set in stone, but certainly there is goodwill to work with us. We have already had indications, in terms of the extra \$200,000 that is going in, that there is that goodwill there.

Dr GOODWIN - In terms of the increased flexibility that you have to use the Commonwealth funding for state matters, does there have to be a Commonwealth link? Does it have to be a child protection matter and a Family Court matter?

Mr REABURN - There are two areas where Commonwealth funds will be able to be used under the agreement for matters which arise under state law. The first area is child protection and family violence. In those areas there has to be a link between either an existing or a potential Commonwealth matter. The second area is what the Commonwealth is describing as prevention and early intervention. The Commonwealth, because it is so convinced of the value of prevention and early intervention services, is prepared to allow Commonwealth money to be used on any matter and there does not have to be a link.

Dr GOODWIN - What do you think that could that mean?

Mr REABURN - Prevention and early intervention services we categorise as our telephone service, our clinic service, our community outreach, our community education service and our family dispute resolution service. The family dispute resolution service is already Commonwealth, in a sense, but the other things cover a whole range of matters, both Commonwealth and state.

It means, for example, that we can use Commonwealth money to expand our community outreach. In that respect we can offer a whole range of things, like granny flat issues, for example, there is some complex stuff about that, and consumer matters. Consumer matters are about to become Commonwealth, because of the Commonwealth's takeover, in a sense, of the

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legislation in this area. But we can do a whole degree of additional focused statewide community work, and the additional costs of that come the Commonwealth side.

Dr GOODWIN - Otherwise you would have to use State money?

Mr REABURN - Yes.

Dr GOODWIN - In the past you have used State money?

Mr REABURN - Yes.

Dr GOODWIN - So it will give you a bit more flexibility.

Mr REABURN - Yes.

Ms GIDDINGS - The positive part of the NPA is that additional funding has gone into the early intervention side of the ledger through the community legal services which are primarily funded by the Commonwealth as well. There are some matters where you think there will not be early intervention. You are not going to be able to stop a neighbour from sleeping with another neighbour and upsetting their partners, there is no early intervention there that you can think of.

Mr WILKINSON - A couple of things I can think of.

Ms GIDDINGS - Obviously, in other areas, like neighbourhood disputes, there is the ability to have the increased level of services from the community legal services, which will take some demand pressure off Legal Aid as well.

Dr GOODWIN - Can I ask about the annual report. The last two annual reports have only just gone up on the website.

Mr REABURN - I have to get under the table about that. We had some problems getting them up on the website. I apologise for that, sorry. It was an internal glitch.

Dr GOODWIN - Currently they do not have to be tabled in Parliament, do they?

Mr REABURN - That is my understanding, yes.

Dr GOODWIN - Would you be amenable to a change in the legislation to make that a requirement? I think it is a requirement in other jurisdictions.

Ms GIDDINGS - It certainly does not concern me. They are public documents. If they are to be tabled in parliament, they have to be tabled by 31 October.

Mr REABURN - Yes. We sometimes have great difficulty getting ours done by that time. There have been times in the past when we have not had sign-off on our annual statements. Sometimes it takes a while for us to get that.

Ms GIDDINGS - Is that because you have the Commonwealth leg of it as well?

Mr REABURN - Yes.

Dr GOODWIN - Would you mind?

Ms GIDDINGS - I do not have any problem tabling the annual reports in parliament. We just might not be able to do it by 31 October, that is the only issue.

CHAIR - What do you actually want tabled?

Ms GIDDINGS - Not here.

CHAIR - How are you going with legal aid? I am just aware of the time. If there is nothing more on legal aid, we will move on to 1.6.

1.6 Mental health review and guardianship board decisions

Ms FORREST - I am anxious to know whether there is a planned review of the Guardianship and Administration Act to encompass the recommendations of a Select Committee last year in looking at a generic capacity based legislative framework around the protection of people with mental illness.

Ms GIDDINGS - I am reminded that there is, of course, a Mental Health Act review that has been going on and is going on.

Ms FORREST - Still?

Ms GIDDINGS - Still. The Guardianship and Administration Board is linked to that review. What comes out of that new Mental Health Bill and Act will impact on the Guardianship and Administration Board.

Ms FORREST - We will not see a comprehensive review until after that; is that what you are saying?

Ms GIDDINGS - Yes.

Ms FORREST - When can we expect that? I know that is not your portfolio now, but you are waiting on that for this more comprehensive review.

Ms GIDDINGS - It is not my portfolio. But I know, having met with OPC just recently, it is part of my work. There are still very complex issues that they are trying to work through with the Mental Health Bill, so it is proving to be a lot more complex than we first envisaged. I cannot talk about any further time lines because I am not briefed on it, so I do not know.

Ms FORREST - There is no consideration from your perspective, if it is proving to be a challenge - which obviously it is, because we are years down the track in this process that was going to be finalised two years or 18 months ago at least - that we look at this more comprehensive review and try to integrate it and fix some of those problems in the process, rather than just trying to keep flogging a dead horse, trying to get the Mental Health Act right, when perhaps a more comprehensive review would deal with some of those issues.

[11.45 a.m.]

Ms GIDDINGS - As I said, I cannot say we are flogging a dead horse at all, because in my mind that is a critical piece of legislation that we need to get through parliament, and that will occur. I am not up to date and briefed on where it is at right now. Going back in my mind, from memory, it was felt it was critical to get the Mental Health Act right first, before we revisited the role of the Guardianship and Administration Board.

I know the president of the Guardianship and Administration Board certainly has some very firm ideas, and presented to your Select Committee about those ideas. There was debate at the time about whether or not that was a direction we ought to be going. Certainly the view I held at that time, as Health Minister, was, let's get this system right first, before we start embarking on a new process which is very much leading edge and would be a first in the world process, as I recall, that was being presented to us. I think you will find that even embarking on that, that would also be quite a complex system and process review to go through.

My intention would be to still try to ensure that other piece of legislation is completed before we start embarking on what might otherwise be a very costly exercise of reviewing this element of it before we have got the other element right.

Ms FORREST - With regard to the role of the Guardianship and Administration Board in administering the power of enduring guardian, particularly in view of the recent comments regarding the reintroducing of the euthanasia bill, what are you doing to promote and support that aspect of people's choice regarding end of life decision-making?

Ms GIDDINGS - In the mid-year financial review there was \$100 000 provided to three of our tribunals - the GAB, the Mental Health Tribunal and the Tasmanian Forensic Tribunal. That \$100 000 is aimed at helping to provide more education resources. The GAB does undertake education as well around the enduring guardian process that is in place there. They have additional resources to do more and that is part of their role to do that.

In terms of the Dying with Dignity legislation, I am very happy for anybody who wants to participate in the consultation that will be occurring to raise those sort of issues within that consultation process. It is not about denigrating any existing services that are available, from enduring guardianship services to palliative care, but it is ensuring that people have that choice at the end of the day when these other things perhaps are not able to provide all of the mechanisms or supports that some individuals in the community say they require.

Ms FORREST - Dealing with people's choices that have been made through appointing a power of enduring guardian, do you believe their wishes are being respected?

Ms GIDDINGS - The point there is that you could give your power of enduring attorney and say to your guardian, 'When I get to a point where I cannot speak for myself, I cannot do anything, I am basically immobile in many senses, I want you to ensure that I have the availability of taking a drug that ends my life.' What we do not have at the moment is the ability for that guardian to step in and say, 'This person has got to the point in their life where they no longer have any dignity left. Palliative care is providing some support, but they have asked me that once they get to this point they are allowed to end their life now.' That is the bit that is missing. It is not missing that you have the power of being able to set up a guardian to look after you; what is missing is that the guardian cannot make that choice on your behalf. It is separate. It really is a separate issue in that respect.

Ms FORREST - The question was, though: for the people who have made those decisions - regardless that they cannot at this stage ask for something to be given that will end their life at that point, but many people make choices about how they want their end of life care managed - do you believe that needs strengthening, to ensure those wishes are respected? Anecdotal evidence would suggest that those wishes are not being respected currently, and we need to tighten that up further.

Ms GIDDINGS - That goes more into my old portfolio of Health, with the respecting patient choices system that we established at the Royal Hobart Hospital, for instance, to ensure that a patient's end of life experience is respected through that process. I am certainly happy to continue to look at how we can ensure that what is available is the best we can have, so that patients have their choices respected. To me, that is a very separate issue from the dying with dignity issue.

Ms FORREST - As long as we are looking at the involvement of the Guardianship and Administration Act and the enduring guardian, the point I am trying to make is that the enduring guardian is not going to make any decision until that person loses the capacity to do so for themselves. So if people are not having those choices respected at the moment about withdrawal of treatment, non-commencement of futile treatment and those matters, do we need to look at strengthening that area in this process, to make it a requirement for a health practitioner to seek a power -

Ms GIDDINGS - I am very happy to look at all of that. Again, I see it as a separate issue from the dying with dignity issue. If there are problems and weaknesses in the current way our systems work, I am very happy to look at trying to see how they can be strengthened, absolutely. That is not to say we would not need to go down the dying with dignity pathway, because I think we still do. They are two very separate issues.

Ms FORREST - I do not think they are separate - that is a matter of opinion.

Ms GIDDINGS - It comes down ultimately to the choice. Whether you make that choice yourself or the guardian makes that choice for you, the fact is right now the choice is not there.

Ms FORREST - That reflects either way. The guardian can make a choice to not start treatment, the same as I can make a choice as a competent individual not to start treatment. That is the area. I do not see how it is different from the euthanasia issue, where you take something to end of life. The decision-making processes are still the same. Whether you make a choice to have someone give you something or you make a choice not to have something started, what is the difference?

Ms GIDDINGS - I agree in that sense, absolutely. The distinction you are trying to make there is that if we brought in the dying with dignity legislation and you have an enduring guardian, that in fact the enduring guardian follows through with your wishes. That is the issue you are saying: the choice is there, and you say, 'When I am no longer capable of making that choice myself to end my own life, I want you to make that choice for me,' then we need to make sure the system is acting, that the enduring guardian does make that choice and does end that person's life.

Ms FORREST - Then you have to have the medical profession respect the choice, at the end of the day.

Ms GIDDINGS - Absolutely.

Ms FORREST - We need to increase the strength around that document.

Ms GIDDINGS - I very much see the link you are making in that context: should the dying with dignity legislation get through - and this is an important arm of it - those choices are respected. But in terms of whether you need the dying with dignity legislation or not, I do not think it is relevant.

CHAIR - Thank you. Dr Goodwin.

Dr GOODWIN - I have a question about the Tasmanian Forensic Tribunal. An issue was raised by the chair in the annual report about the tribunal's role in issuing certificates to enable people subject to a forensic board prior to the Supreme Court to have their order discharged, and she feels it should be urgently reviewed. I wonder whether that suggestion has been taken on board and considered?

Ms GIDDINGS - It is now.

Dr GOODWIN - Thank you. It seemed to me it was a legitimate concern. I appreciate that.

CHAIR - Anything else?

Ms GIDDINGS - Just on that matter, I am advised it is also part of the Mental Health Act review, so it is being considered as part of that process already.

Dr GOODWIN - Great.

CHAIR - Thank you. We have now finished with output group 1. We will move to output group 2, Legal Services.

Output Group 2 Legal Services

CHAIR - Do you need to change your personnel at the table?

Ms GIDDINGS - No. We will bring people up as required.

CHAIR - We will move to 2.1, Crown Law.

2.1 Crown Law

CHAIR - Mr Wilkinson.

Mr WILKINSON - If I can get back to what I was saying earlier, which we decided to leave until now. I will start with a statement first. I have a real concern in relation to the respect for our court system and the judges and magistrates. At times the press sensationalise a penalty that has been handed down. People immediately line up to criticise the court, judges or magistrates, for being too lenient, and they do it without knowing all the facts, the mitigating facts, the aggravating facts and the law relating to sentencing.

I think what is happening as a result of the press sensationalising and highlighting these sentences, it waters down the respect the community has for the courts. The unfortunate thing is the judges or magistrates cannot say anything in their own defence, they just have to sit back and take it. People forget there is an appeal system in place, where if the penalties are too high or too low, they can be appealed against.

After that bit of a statement, what can we do to ensure the courts have the respect that they require to carry out their business?

Ms GIDDINGS - It's like a Dorothy Dixier to me, Jim, lovely!

CHAIR - As long as the response is still succinct.

Ms GIDDINGS - I share your concern. I know this is an issue that Vanessa has been interested in as well: how do we deal with these things. Early in my time as Attorney-General I started looking at the issue of establishing a Sentencing Advisory Council. The recommendation came out of the sentencing review that was done by the Tasmanian Law Reform Institute. I visited Victoria and spoke to the Victorians about how their Sentencing Advisory Council works, and I have been working on this for some time now.

It has been difficult in a small jurisdiction to find the dollars to make a Sentencing Advisory Council effective and worthwhile having; not just being there as a tool for government to be able to refer things off to, but not having the ability to do much with it. I have been very cautious about all that as well and have been trying to find the best mechanism to establish it.

I thought in the first instance I could establish it as an adjunct to the Tasmanian Law Reform Institute, and discussed that with the university, but on the resources available they could not pick it up. They have two people in the university who are experts in this area, and they are already spread very thinly. I had to step away from that as a mechanism.

We have been able to look at establishing the Sentencing Advisory Council supported by the Department of Justice, and I am pleased that I will be able to announce that we will be establishing and starting that Sentencing Advisory Council in the very near future. I am pleased to say that Peter Tree, SC has accepted to be the chairperson of my Sentencing Advisory Council. Andrew Saint and Liz Little will be the community representatives; Arnold Shott, the former chief magistrate, will be on board; Tony Jacobs is the nominee of the Director of Public Prosecutions; the Acting Deputy Commissioner of Police, Phillip Wilkinson, is the nominee of the Commissioner of Police; Prof. Kate Warner and Dr Jeremy Prichard are nominees from the University of Tasmania and the Law School; Norman Reaburn is the nominee of the Legal Aid Commission; and Kim Baumeler and Chris Gunson are the nominees of the legal profession. That will be the board as it stands.

I expect we will be able to pull that together fairly soon. That is really hot off the press information; we have been able to get all that together now. We should be in a position to advertise for an executive officer to assist the council in its work. That executive officer will be based within Justice.

The other element that I am very pleased about is that, again, the Solicitors Trust Fund provides me with a source of funding that I will be able to provide some specific project funding

to the Sentencing Advisory Council. I can say, 'Right, you come up with a project, we will cost that project and we will try to fund that through that source of funds.'

[12.00 p.m.]

Mr WILKINSON - How is it going to work in relation to a headline in the paper, 'Judge too lenient'? What will happen to ensure that the people out there know that they may not have been too lenient? As we know, the individuals themselves, the non-lawyers, have often been asked what penalty they would give and their penalty has been a lot lighter than what the court hands down.

Ms GIDDINGS - Other Sentencing Advisory Councils have been able to undertake very much an educative role, and I would envisage that our Sentencing Advisory Council would do that in time as well. One of the first things that has been really pressed on me, particularly by Kate Warner, is at the moment we are still in a fairly old-fashioned system in our courts in terms of our data collection on sentences. So there is a lot of work that needs to be done as a first project, to basically go back through all the cases and put on to a data system what the outcome of the sentences were, so that we can start to get a feel for what level of sentencing has happened, what parameters they have been made within.

Dr GOODWIN - Is that more so the Magistrates Court?

Ms GIDDINGS - Yes, Magistrates and Supreme Court.

Dr GOODWIN - The Supreme Court is a bit better, isn't it, with their sentencing database that they have had for a while?

Ms GIDDINGS - It is a smaller number, so it is easier for them to manage that database than it is the magisterial courts. They know within parameters, because they do not want to be outside what other magistrates sentence. In terms of analysing those sentences, we need do that work. I suspect that is probably the first project that will come to me, to say we need to put money into.

I have also spoken to the Attorney-General in New South Wales about the role he has undertaken with his equivalent body. They have a very strong educative force, as does the Victorian one. The Attorney-General in New South Wales fronted public meetings on sentencing with his sentencing advisory board person. They talked about sentencing openly. They actually put scenarios to the public, to say, 'This is the crime, this is the information that was provided to the court about the victim, about the defendant. What sentence do you think would be appropriate?' More often than not, the sentence the public came up with was more lenient than the courts themselves came up with.

I understand there is an absolute need to educate the public a lot more around sentencing, so that we do not get the view, 'Oh, gosh, they have just let off a couple of crims who should have gone to jail. It's totally wrong!' That makes great media fodder, that sort of business.

Dr GOODWIN - There is one in every group, let me assure you. Whenever you go out and talk to groups, there is always one who wants to lock everyone up and throw away the key.

Mr WILKINSON - They forget that they will come out of prison. When you look at the money spent for a person to go to prison, and they come out a worse person, you have to wonder about it.

Ms GIDDINGS - That is exactly right. My hope is that the Sentencing Advisory Council will deal with some of those issues.

Of course, it is also a body that when outrage comes out over traffic matters - for instance, dangerous driving, which was an issue last year - we can refer that matter to the Sentencing Advisory Council to look at, to see whether the courts are being too lenient or not. Then that information is public information, which, while we have the separation of powers between the courts and the Parliament, I would expect that the courts would probably listen to some of that research as well.

Mr WILKINSON - The importance of it - tell me if I am wrong - is that once you start breaking down the fabric of the courts system, you start breaking down the fabric of law and order, therefore the end result is anarchy. That is why it is an important issue now, because of what has been printed over the last couple of years.

Dr GOODWIN - If people lose confidence in the criminal justice system, they stop reporting crime and everything starts to fall apart.

The Chief Magistrate gets out and about a fair bit talking to community groups.

Ms GIDDINGS - He does.

Dr GOODWIN - There was some work done on sentencing, when I was in the Police Department, the 'You Be The Judge' program.

Ms GIDDINGS - Yes. There are adult education courses we provide on that and there is also material we provide. The Supreme Court website has information on it as well. It is there.

I commend Chief Magistrate Michael Hill for the work he does in that area, which is quite critical.

Dr GOODWIN - You mentioned the Sentencing Advisory Council CEO will be appointed?

Ms GIDDINGS - The chief executive officer. We did not want to advertise for that position until we had the chair on board, so the chair could have a role in that appointment. It has to be somebody of a reasonable calibre who is able to undertake research work and do a lot of the grunt work.

Dr GOODWIN - You mentioned the project funding through the Solicitors Trust Fund. Is there recurrent funding for the council for the support?

Ms GIDDINGS - Yes, we are providing basically that internally, and we will be operational this year.

Dr GOODWIN - Do we have any Budget figures on it?

Ms GIDDINGS - We will have to double check and get back to you on that.

Dr GOODWIN - That would be appreciated. In terms of its priorities, you mentioned the data collection aspect, which is really important.

Ms GIDDINGS - I suspect that will be the first.

Dr GOODWIN - There are also a couple of matters that came up during the election campaign around the assaults against emergency workers, and the other one was the penalties for arson.

Ms GIDDINGS - Yes. Arson was the first one that came up. The assaults against emergency workers is one that I have ready to send off to the Sentencing Advisory Council as well.

Dr GOODWIN - Is sexual offences another one?

Ms GIDDINGS - Just those two are the two we have talked of at this point. I will be referring those to the council and the council will make their own considerations of it. I will respect what they prioritise as being what they think is most important to establish and get this body up and running as a robust body.

Dr GOODWIN - I think in that sentencing report sexual offences was a concern as well that was identified. Out in the community, people certainly express a lot of disquiet about the sentences handed down, so I think that is another important area.

Ms GIDDINGS - Yes.

Dr GOODWIN - Attorney, do you have an attitude or opinion on guideline judgments at all?

Ms GIDDINGS - I have written to the Supreme Court judges in relation to guideline judgments. It is an issue that has been on my agenda. I thought I had written, or we have had some conversations, and there might be some resistance around guideline judgments in that sense. I am certainly prepared to look at that as an issue.

I fundamentally have a problem with bringing in mandatory minimum penalties. I do not think we ought to be hamstringing courts to that extent. I know we do that in relation to drink-driving, and that has been a long-established precedent in that sense.

My view is that we have the courts there to make decisions for us. For the very reasons we were talking about in terms of the education issues - when you actually put the same information in front of the public, they tend to be more lenient than the judges - I do not think we need mandatory minimum sentences. Guideline judgments are certainly a step towards providing a bit more comfort to the community, but do not impinge totally on judges' discretion.

The Law Reform Institute did not actually recommend guideline judgments in the face of the lack of support from judges. That is where I got it from. I knew that judges were not supportive of it from somewhere.

Dr GOODWIN - I think they suggested the Sentencing Advisory Council could look at guideline judgments.

Ms GIDDINGS - Yes.

Dr GOODWIN - They certainly raised it because they found some inconsistencies.

Ms GIDDINGS - My understanding is the Sentencing Advisory Council will look at a number of issues that were raised through the Law Reform Institute report. The sexual offences, guideline judgments and the other recommendations that came out of the report for them to look at, it will obviously be part of their role to look at all of that.

Dr GOODWIN - In terms of alternative sentencing options - and I am not sure whether this falls under your area of responsibility or Mr McKim's - in the Governor's speech there was some mention of home detention and periodic detention.

Ms GIDDINGS - That aspect is corrections, in terms of monitoring. Obviously, the sentences are handed down by the courts, but in terms of making it actually occur and happen, that is Minister McKim.

Dr GOODWIN - Can I ask a question about safe at home in this context?

Ms GIDDINGS - Yes, you can. We are going over the entire output group 2 with these questions.

CHAIR - Yes, I know.

Ms GIDDINGS - I am comfortable with that, as long as you are.

CHAIR - Yes.

Ms GIDDINGS - We are not being strict in this one.

CHAIR - Nice concise answers, that is good.

Ms GIDDINGS - I am doing my best for you.

CHAIR - I know. I just like you to encapsulate every now and again, Minister.

Dr GOODWIN - There were 37 recommendations that came out of the Success Works review of safe at home, and in the annual report of the Justice Department for 2008-09 it was suggested that a Budget submission would be prepared for this year's Budget around those recommendations. I am looking for an update on what is happening.

Ms GIDDINGS - The work that has come out of the reviews is basically still ongoing. There were 37 recommendations made by Success Works in relation to safe at home which have been considered by our safe at home interdepartmental committee, the IDC, as part of the preparation of the recommendations to the Minister, myself, for consideration in the early part of the 2010-11 financial year. I am still waiting for that advice to come through to me.

A report is also being prepared by the Department of Justice, as the lead agency of safe at home, outlining proposed legislative reform to improve the effectiveness and operation of the Family Violence Act 2004. I am expecting that to be forwarded to me shortly.

Dr GOODWIN - The other question is around the family violence intervention program. Success Works was concerned about the small numbers completing the program. They mentioned in the review that the pilot defendant services worker was established at St Helens for a six-month trial, and they also recommended further developing that model. I am wondering what is happening in that regard.

Mr STEVENS - The model was run for six months. It was funded through the Department of Health, and it was always part of the whole package that we are going to take through the Budget process. Unfortunately, the funding has run out, so the pilot has stopped there. But there are some learnings from that. That will form part of the report that goes to the Attorney encapsulating the 37 recommendations.

Dr GOODWIN - Is it possible to get some statistics on the number of people completing the family violence intervention program or who have completed it over the past few years?

Mr STEVENS - Yes.

Ms GIDDINGS - I will take that on notice.

CHAIR - Anything else on output 2?

Ms FORREST - I have one other question on 2.2. Attorney, you spoke in your response to the Budget about the law reform processes, including your private member's bill, the euthanasia bill, and stated that you are using the resources of your department and parliamentary counsel to provide that.

Ms GIDDINGS - Yes.

Ms FORREST - Does that signify that there will be more access to parliamentary counsel for any private member who wants to introduce a private member's bill?

Ms GIDDINGS - No. Because of my role as Attorney-General, of course, I do have a privileged position in that sense of having a department that I can ask to refer matters to, to use resources that are there, and it is entirely appropriate to do that. Of course, I can, as a government member, also ask OPC to assist in drafting that legislation.

Ideally it would be fantastic to open UPC up further to all members of Parliament whenever they require. Unfortunately, we just cannot do that as a government - and it would be true of any government, whatever colour that government was - purely because there are not sufficient people with the skills to be able even to recruit into the Office of Parliamentary Counsel. The business of government must come first. We elect our governments to govern and they must be given priority to have their legislation developed through OPC.

I recognise that the dying with dignity or voluntary euthanasia legislation is something that, as Attorney-General and as a member of the government, I am able to bring more to the table than an ordinary private member would ordinarily be able to do. There is nothing much I can do about that. I have visited OPC, I have talked to OPC about their resourcing issues. Again, it is a bit like the child protection service, it is not an issue of money, it is an issue of being able to find the

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skilled workforce, and they are as rare as hen's teeth. Understandably, I commend and admire people who work in that area.

[12.15 p.m.]

Ms FORREST - Can it truly be said that this is a private member's bill rather than a Government bill?

Ms GIDDINGS - It is a private member's bill. All members of the Government have a conscience vote on this matter, therefore there is no government position on the issue.

Ms FORREST - It is not a government bill as such, even though it has been produced with the resources the Government has, that no one else has access to?

Ms GIDDINGS - Yes. It is not a government bill, in the sense that the Government does not have a position on that piece of legislation and will not have a position on that legislation.

Ms FORREST - If you were to bring in abortion law reform or anything like that --

Ms GIDDINGS - Yes, the same thing. In fact, that is exactly what happened when Judy Jackson brought in abortion law reform. At that time she was able to use the resources of the Department of Premier and Cabinet and the resources of OPC to help in the drafting of that legislation as well. In fact, the Solicitor-General was the person who provided advice at the table, I understand, or in the House, as an adviser in the box to help steer that legislation through.

CHAIR - One final question.

Dr GOODWIN - Attorney, I want to ask you about the National Legal Profession Reform Bill and the concerns that the Law Society and the Chief Justice have around the proposed method of appointing members to the National Legal Services Board. Could we get your thoughts on that?

Ms GIDDINGS - It is interesting that I think I actually have had more concerns than some elements of the law profession about the board. In fact, I have been very vocal in our SCAG meeting to say that I believe there has to be state representation on any national board. I have been through this before with the health boards, where originally the view was that we needed to keep boards to a small number of people, for very good reasons. However, when us minor states, who happened not to have any representation, kicked up a fuss, and said, 'It is not good enough. We cannot have New South Wales people, even though they are not on the board representing New South Wales, making decisions on behalf of small jurisdictions.' That was changed.

So I have been very vocal with SCAG, saying, 'Been there, done that before. You cannot do this to smaller jurisdictions. There is no such thing as people not representing their state on these national boards.' Eventually, whatever happens, they come from a large jurisdiction, they know the business of their large jurisdiction and their decisions are tainted by their experience - tainted is not necessarily always the right word, it can be a positive thing, an absolutely great thing that they come with that experience - but small jurisdictions also need to be represented.

My understanding is that some elements of the legal profession are comfortable with not having specific Tasmanian representation, but there are other elements who have acknowledged that it would be useful to have specific representation.

Dr GOODWIN - There is also the issue around how the board members are appointed, whether they are appointed by SCAG or by the legal profession.

Ms GIDDINGS - Yes. That was also, likewise, a similar concern we had in health, where doctors were concerned about politicians having too much influence on boards. I always think you need to get the right healthy balance in these things. It comes down to trust in the end as well.

We are not about setting up a board that is a political board at all, but the Attorneys-General do have a role to play and that ought to be accepted and acknowledged too. Certainly it would be an independent board, and that is the important aspect to it.

These issues are currently part of the consultation process that is occurring. There has been consultation in the last couple of weeks here in Hobart, at the botanical gardens, I understand, where these issues were raised. I do not want to pre-empt the outcome of that consultation. It may well be that the recommendations that come back to SCAG take into account those issues and there is not an issue. Equally, having been through what I have been through with the health national boards, sometimes it is important that members of parliament stick up for our rights as well.

Dr GOODWIN - You are making sure the balance is right.

Ms GIDDINGS - Certainly, yes. I am meeting again with the Law Society on Friday and I will be listening to their concerns. I am certainly happy to articulate their concerns at the table as well, to make sure those concerns are heard.

Dr GOODWIN - I am sure they will raise that.

Ms GIDDINGS - I am sure they have already mentioned it themselves.

CHAIR - Thank you. We will move on to output group 3. We have 3.1, Births, Deaths and Marriages.

Output group 3 Registration services

3.1 Births deaths and marriages

CHAIR - Mr Harriss, any questions?

Ms FORREST - Any births, deaths or marriages around the table? No.

Mr HARRISS - It is only of interest, I suppose, the number of registrations of significant relationships. The rest of it is ho-hum, it has been there for a hundred years.

Ms GIDDINGS - With the significant relationships, there has been an issue raised with me about interjurisdictional recognition of significant relationships. I anticipate we will be going down that pathway of bringing legislation to parliament which will recognise interjurisdictional significant relationships.

The issue is about how far and wide that goes internationally. We have not been able to put every single country into a bill at this point, and we do not intend to. What we intend to do is, by regulation, add different jurisdictions as we become comfortable and aware of what their legislation means and whether they are prepared to recognise it. Countries like Canada, for instance, I suspect would be put through on regulation. I think the UK might be recognised in the legislation or it will be put through on regulation. It is capable of being put prescribed. And New Zealand is another jurisdiction. New Zealand and the UK are the easiest two jurisdictions for us to recognise. Canada and others, I suspect, will come on to that list in the future.

CHAIR - Thank you. If there are no further questions on that line item, we will move on to output group 4, Anti-Discrimination Commissioner.

Output group 4
Review Services

4.1 Anti-Discrimination Commissioner

Dr GOODWIN - Perhaps I should have asked this back in the section on legislation, but with the racial vilification issue, I am wondering if there are any other forms of hate crimes in Tasmania that you are aware of that should be considered as part of that process of looking at the law?

Ms GIDDINGS - I am aware because that has been raised. I know others would like to see other hate crimes around sexual identity, gender, those sorts of issues, put into this. Originally, when we had the spate of concerning crimes last year, where there may or may not have been a racial element involved in it, I contacted Kate Warner at the Tasmania Law Reform Institute to discuss this as being an issue that the Law Reform Institute should investigate. She alerted me at the time that the Vice Chancellor, I think that very day, had raised it with her as well, and he was putting some funding in behind it, so I did not have to pursue it formally.

We did go back to her, after these issues had been raised with me, to ask whether it would be possible to look at these other areas. We were advised that, no, the terms of reference were very narrow around racial vilification and that was the important element we needed to get through. At this point the work is only on racial vilification. That is not to say that in the future you would not look at other forms of hate crimes. But in the immediate time it will be just racial vilification.

Dr GOODWIN - The under-reporting issue was highlighted in the survey that the Office of the Anti-Discrimination Commissioner undertook. Is that something that work has been put into, to try to increase the reporting rate?

Ms GIDDINGS - Again, there is an education element of the role of the Anti-Discrimination Commissioner, and it is just getting the information out there. It is a body that can accept complaints and you do not have to follow right through to the very end if you do not want to.

I am advised there is a new web-based reporting mechanism that you can use to report directly to the ADC, you do not have to go through police. I would think some people would not want to make a formal complaint; they say, 'I will just live with it and get on with life.' But it is useful for us to know what level there is in the community and whether community attitudes are

changing. If you have the data, you can make that analysis. But it is a less formal way of making a complaint.

Mr HARRISS - The benchmarks or the forward measures which you had set with regard to this were for a reduction by 5 per cent in the current financial year, given that referrals to the Anti-Discrimination Commission blew out a fair bit the previous year. Can you give an indication of whether you look like meeting the 5 per cent reduction or are you still tracking upwards year to date?

Ms GIDDINGS - I do not have that information. I am happy to put it on notice for you.

Mr HARRISS - Thank you.

CHAIR - We will move on to output group 4, that unremarkable line item 5, Elections and Referendums.

Output group 4 Electoral services

5.1 Elections and Referendums

CHAIR - I have no questions, unless anybody else has.

Dr GOODWIN - I have a quick question around the participation rates for Legislative Council elections, which is still significantly lower than that for House of Assembly elections. What is the Electoral Commission doing to try to change that? Do you want this question on notice?

Ms GIDDINGS - I might take that one on notice as well because I do not have specific information with me. Because they are an independent body, I am not across all those issues in detail, but I will take that on notice for you. I have the stats, but not what they are doing to try to resolve that.

Ms FORREST - Perhaps they could SMS every voter.

Ms GIDDINGS - They do have their advertising all the time, and whenever elections are up it is all there. So I am not quite sure how much more they can do.

Ms FORREST - Some of my good friends forgot to vote in my last election!

Ms GIDDINGS - Mind you, if we said we would abolish you lot, then they would all come out and fight for you. Maybe we should do that, just to stir the pot.

CHAIR - That is why I was trying to muzzle the member asking the question.

Dr GOODWIN - Do you think there is confusion with counsel and council perhaps?

CHAIR - I will talk to you later about that.

Ms GIDDINGS - On that point, there is an initiative this year that has included the provision of a free SMS reminder to vote message service. I presume you need to register for that service, so if you are not voting you may not register for the service. We might be able to say to people who have forgotten to vote that it would be in their interests to register with our SMS service.

Ms FORREST - It is only every six years for the Legislative Council, so it is not much to remember.

Ms GIDDINGS - That is true. Thank you.

CHAIR - We will move on to output group 7, supervision of poppy and hemp crops.

**Output group 7
Other services**

7.1 Supervision of poppy and hemp crops

Ms GIDDINGS - I do not have any exciting stories this year to provide you, that went worldwide.

CHAIR - I was going to ask you a question on that. Any increase in convictions that you know of?

Ms GIDDINGS - No.

CHAIR - Nothing unremarkable there?

Ms GIDDINGS - No.

CHAIR - The only other question I have: why is hemp named in this output? As I understand it, growing of hemp is not an illegal activity in Tasmania, unless there are some licences which are given to certain people in a certain case? We are talking about hemp, Minister, not associated crops.

Ms GIDDINGS - It seems that Treasury will not let us change the name of the output. They will not let us, so we are locked into it. We cannot shift it.

CHAIR - Former Minister David Llewellyn was always a keen advocate of growing hemp in Tasmania.

Ms GIDDINGS - He was.

Ms FORREST - He can do that in his retirement. That is something he could take up.

Ms GIDDINGS - Exactly. That may well come back, for various reasons - medicinal purposes, perhaps.

CHAIR - Indeed.

Ms GIDDINGS - You never know.

[12.30 p.m.]

We will now turn back and look at 2.2. I notice we have Mr Allston at the table.

Ms GIDDINGS - Yes, we do.

CHAIR - Welcome to the table, Mr Allston. Any questions for Mr Allston?

Dr GOODWIN - Yes. I want to ask you about your annual report where you make a comment about your level of resourcing for your own motion investigations. I am wondering how that situation is now.

Mr ALLSTON - It is looking a bit better now. I was given some additional funding just before Christmas, which has given me the opportunity to employ an extra person for the right to information legislation, so I am pleased about that. In this Budget I have been given extra money to employ an education officer, and I am hoping that as that tracks through it will give me more freedom in the own motion stakes. For instance, the Tamar report that we have just finished has been a huge job of work for a small office, because we are taken up so much with our complaint management work. With the RTI position, with the new investigation position, I think I will have some more latitude.

Dr GOODWIN - I want to ask you about the Tamar report, because it took some 18 months for it to be finalised. I appreciate it is a very detailed and thorough report and I congratulate you on the work that went into it. But I wonder if whether, if you had more resources, you might have been able to finish it sooner, or was that not really a factor?

Mr ALLSTON - There is no doubt about it, we would have been able to. Essentially, I had two officers other than myself working on that report. My input came much later in the piece. For each of those people, for a while I tried to do it with those officers just continuing with the complaint management work, but that became untenable, so one of them then went offline to work on it. Then the manager of that section of the office, the Ombudsman's section, went offline for a couple of months. I am sure we could have completed it at least six months beforehand if we had not been so stretched for resources.

Dr GOODWIN - You mentioned also in your annual report the volume of complaints you get into relation to the prisons. Is that a continuing trend, that a lot of your work is around prison complaints?

Mr ALLSTON - Yes, it is a really substantial proportion of the work. Part of that, I suppose, is self-inflicted. In June 2007 I decided to effectively have a hotline to the prison, so any prisoner can ring, and their phone calls are not taken off their phone allocation, if they have one. We get a lot of calls coming in. Most of those we are able to refer back to the resources within the prison, but a number of them turn into fully fledged complaints that we have to deal with. Then there are complaints that come in by correspondence, and we hear about stuff through the official visitors scheme as well.

I regard it as a major proportion of our work and a major function of the office is to keep any on what is happening in the prison space. If you add into that the mental health official visitors scheme, the office does have, in my view, a role as an overwatch for human rights, because there is nobody else in the state who has that watch.

Dr GOODWIN - The official prison visitors, do they have any issues getting access to the prisons?

Mr ALLSTON - No.

Dr GOODWIN - There are no problems with that?

Mr ALLSTON - No, that works really well.

Dr GOODWIN - The pay parity issue with official visitors and mental health, has that all been resolved?

Mr ALLSTON - It has, because I have been given \$18,000 in the latest Budget to pay prison official visitors in the same way that mental health official visitors have been paid for some years. I am very pleased about that.

Dr GOODWIN - That has been resolved to your satisfaction?

Mr ALLSTON - Yes. It is only \$18,000 but I am very pleased.

Dr GOODWIN - What about Ashley Detention Centre, do you receive complaints in relation to that as well?

Mr ALLSTON - Yes, we do.

Dr GOODWIN - Has there been any change in the number of complaints you are getting from Ashley?

Mr ALLSTON - No, it is a fairly consistent flow. One might say they are generally low level complaints, but you always have to keep an eye out for something that looks banal but is actually hiding something that is important. So we take that work pretty seriously. But there is nothing in particular on that front to mention.

Dr GOODWIN - And child protection would be another area?

Mr ALLSTON- We receive a quiet flow of child protection complaints. I have just completed one where the report will go out today - it is not public, I am not going to disseminate it publicly - where I have looked very closely at the changes in child protection over the last few years to see whether the deficiencies in that particular case have been addressed, and it appeared to me that they had been. There are a couple on the books at the moment, one of which has been mentioned publicly.

Mr WILKINSON - Can I have a couple of quick questions. Obviously, you get a significant number of requests to carry out work?

Mr ALLSTON - Yes, there is a constant complaint load. We have not seen the figures for this year but I am sure they will be up from last year.

Mr WILKINSON - My understanding is they will be quite significantly up from last year; is that right?

Mr ALLSTON - I expect so. There are a few things that make me think that will be the case. I am told that in the health complaints area they are probably about the same or slightly up. We had a boom in energy complaints in the first three to four months of this financial year, which I suspect will show an increase in that jurisdiction. The Ombudsman has seen a lot of activity on the FOI front and Ombudsman complaints attached to that from a particular individual who was discussed in Estimates yesterday. That will no doubt boost the figures in that jurisdiction. It is pretty constant.

Mr WILKINSON - There are some people who just continue to bombard your office with complaint and requests?

Mr ALLSTON - Yes. It is a feature of Ombudsman that you get persistent complaints.

Mr WILKINSON - I suppose, if you endeavoured to look at the complaint and the amount of resources going into that complaint, it would amount to a significant sum of money?

Mr ALLSTON - Yes, no doubt about it.

Ms GIDDINGS - There has been some benefit, as we were talking yesterday, that the right to information legislation will provide some ability to declare the complaint vexatious.

Mr ALLSTON - The application vexatious.

Ms GIDDINGS - Yes, the application vexatious - not the complainant but the application. If it is basically the same matter coming back or a very similar coming back and back and back, under the new legislation we can refuse to look into it any further.

Mr WILKINSON - That is what I was going to get to: these people do keep coming back and back and they endeavour to get a different slant to what has originally been the problem. It must be difficult work, because from time to time something is a gem amongst a lot of the things they say, yet they can be lost because of the continuation of the requests being made.

Mr ALLSTON - That is right.

Ms FORREST - What impact do you think it will have? Once it kicks in and you can make a determination, what sort of percentage reduction in workload would you expect, particularly in light of the comment you made about the number?

Mr ALLSTON - I think I should be wary in answering that question, because ultimately it is a discretion for the Ombudsman to exercise as to whether or not the person has been vexatious - I am sorry, the application has been vexatious. It is really quite tricky. Because the qualification 'vexatious' is attaching to the application, not the applicant, I do not think we are totally confident as to how that provision will track through.

Ms FORREST - If the same person complains about the same matter in a slightly different way, you will still have to consider it?

UNCORRECTED PROOF ISSUE

Mr ALLSTON - It may well be the case. I have designed some guidelines, because the Right to Information Act requires that, for the application of section 20. They will go on the website on Thursday, 1 July, which is the commencement of the Act.

Looking at how that provision ought to work, I would like to see a particular case before I answer that. It is often the case in the law that you can talk endlessly in theory, but it is very different when you actually look at a particular case and the evidence, and try and decide whether or not it is going to attach.

Ms FORREST - You expect there will be a reduction, though?

Mr ALLSTON - I expect we will be able to use that provision to control some problems we have had in the past.

Mr WILKINSON - Final question: a couple of years ago you were really concerned, quite understandably so, about the lack of resources to be able to get more people to assist you with the work involved. Is that - with no disrespect - as good as can be expected at the moment? Obviously you can always say you need more.

Mr ALLSTON - Indeed you can. I am really pleased about the two additional positions.

I am a bit wary about the RTI work, I do not know how big that will be. Already yesterday I got somebody writing to me for advice on how the Act will work. One of the responsibilities of the Ombudsman is to give advice on the operation of the Act. If we start getting requests for advice from every public authority in the state, it could be an enormous burden on top of the applications for review and dealing with those. So I am cautious about how big that burden is going to be.

For the other jurisdictions of Ombudsman's complaints - energy, I am really pleased with the extra position and I think that will make some difference. We are starting to see a lot of pressure in conciliation of health complaints, and sooner or later I am going to need resources so that we can move those cases through quickly. I am hopeful that I will not be complaining.

CHAIR - Thank you. No further questions, thank you, Mr Allston.

Minister, we will move to Integrity Commission.

Integrity Commission

CHAIR - Do members have any questions in relation to the Integrity Commission?

Dr GOODWIN - I am wondering how the budget allocation was determined and whether it is possible that it might need to be readjusted, once it gets going and you get a feel for what sort of activity level there will be.

Ms GIDDINGS - There will always be reviewing of budgets in the future of every area, and the Ombudsman gave us a case in point just then.

We believe the budget we have provided is sufficient to establish the Integrity Commission and to support its operations, understanding that any inquiry the Integrity Commission may decide

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to undertake as a formal inquiry or commission of inquiry, the cost of that is reserved by law. I do not anticipate needing to change the budget in the immediate future at all.

Dr GOODWIN - What is the cost of the rent for the premises and the building work that has been done?

Ms GIDDINGS - We went out to tender for the building work. It is \$196 000 a year on rent. The building work is \$524 000, some of which we can recover from the owner of the building.

Dr GOODWIN - That is fairly significant.

Ms GIDDINGS - Absolutely. It is a significant body, and you need to establish something which has the authority that it ought to have. I suspect that the building works will provide us with what is a very professional looking work environment for an Integrity Commission.

Dr GOODWIN - In the Joint Select Committee on Ethical Conduct report, there are a number of recommendations around the need for legislative reform. One is the clarification of the relationship between the Police minister and the commissioner.

Ms GIDDINGS - Yes. That is an issue that I think there is ongoing consultation that was occurring around that. Because it related to the Police Act, it was an issue for the Police Minister and the Police Act. In terms of what the police are doing, you would need to talk to Lin Thorp about that.

I think the police were willing to look at it as a review issue; that is what was accepted. It is really a Police minister's matter, not mine, to comment on. The recommendation of the Select Committee, we have accepted that in principle. I think there was an issue that was more than that, in relation to the Police Act, which was raised with my office while we were developing the legislation, that impacted on a bigger review of the Police Act, which is beyond the scope of the recommendations, in my memory.

Dr GOODWIN - That was around the way the police code of conduct matters were dealt with.

Ms GIDDINGS - Yes.

Dr GOODWIN - There are some other recommendations. One was about the criminal code offences relating to members of parliament and those who seek to influence them, and the need for a review of that through the Law Reform Institute. I am wondering whether that has advanced at all? Is it something the commission will look at when it is formed?

[12.45 p.m.]

Ms GIDDINGS - The response to recommendation 28 was that we accepted that in principle and the review is to be undertaken by the Department of Justice.

Dr GOODWIN - That will happen?

Ms GIDDINGS - Yes.

UNCORRECTED PROOF ISSUE

Dr GOODWIN - The other one is in relation to the oversight of the Ombudsman's performance by a joint parliamentary committee, which is recommendation 19. I note the Ombudsman did mention that in his annual report as well.

Ms GIDDINGS - Substantially accepted that element of the recommendation. In terms of recommendation 19, substantially in terms the whole recommendation was accepted and it is already reflected in section 34 of the Integrity Commission Act, which is the oversight role of the Ombudsman.

CHAIR - Are we done on integrity?

Minister, thank you in your role as Attorney-General. We are done for this morning. We will now go and have some lunch.

The committee suspended from 12.46 p.m. to 1.45 p.m.